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# A BILL FOR AN ACT

RELATING TO CORRECTIONS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1       SECTION 1. The legislature finds that experts have long  
2 documented the detrimental effects of solitary confinement on  
3 individuals. Spending time in solitary confinement has been  
4 found to increase the risk of premature death, even after  
5 release from incarceration. Solitary confinement is a severe  
6 form of punishment that is closely associated with long-lasting  
7 psychological harm and poor post-release outcomes. The official  
8 purposes of solitary confinement are typically divided into  
9 punishment and correctional facility management. When used as  
10 punishment by facility authorities, sometimes called  
11 "disciplinary custody" or "disciplinary segregation", solitary  
12 confinement serves as a response to misconduct charges such as  
13 fighting or drug use. When used for correctional facility  
14 management, often called "administrative custody" or  
15 "administrative segregation", solitary confinement serves to  
16 separate inmates deemed to pose a threat to staff or other  
17 inmates, or as protective custody for inmates who seem or are



1 determined to be unsafe in the general prison population.

2 Although the purposes of solitary confinement vary, correctional  
3 facility conditions and restrictions are often similar whether  
4 an incarcerated person is in disciplinary or administrative  
5 custody.

6 The legislature also finds that an overwhelming body of  
7 evidence shows that solitary confinement--which deprives inmates  
8 of meaningful human contact, including phone privileges that  
9 allow them to speak with loved ones--creates permanent  
10 psychological, neurological, and physical damage. The  
11 legislature notes that House Concurrent Resolution No. 85, H.D.  
12 2, S.D. 1 (2016), requested the establishment of a task force to  
13 study effective incarceration policies to improve Hawaii's  
14 correctional system. The interim report of the task force,  
15 which was dated February 2017 and provided to the legislature,  
16 included an observation by the Vera Institute of Justice that  
17 the prevalence of incarcerated people having mental illness is  
18 at odds with the design, operation, and resources of most  
19 correctional facilities. Studies show that the detrimental  
20 effects of solitary confinement far exceed the immediate  
21 psychological consequences identified by previous research, such



1 as anxiety, depression, and hallucinations. Unfortunately,  
2 these detrimental effects do not disappear once an inmate is  
3 released from solitary confinement. Even after release back  
4 into a community setting, a former inmate faces an elevated risk  
5 of suicide, drug overdose, heart attack, and stroke.

6 The legislature recognizes that in 2019, twenty-eight  
7 states introduced legislation to ban or restrict the use of  
8 solitary confinement. Further, twelve states have passed reform  
9 legislation, including Arkansas, Connecticut, Georgia, Maryland,  
10 Minnesota, Montana, Nebraska, New Jersey, New Mexico, Texas,  
11 Washington, and Virginia. Some of these new laws, such as those  
12 enacted by Connecticut and Washington, reflect tentative and  
13 piecemeal approaches to change. However, most of the new laws  
14 represent significant reforms to existing practices and thus  
15 have the potential to facilitate more humane and effective  
16 practices in prisons and jails.

17 The legislature further finds that the revised United  
18 Nations Standard Minimum Rules for the Treatment of Prisoners,  
19 also known as "the Nelson Mandela Rules" to honor the legacy of  
20 the late South African president, are based upon an obligation  
21 to treat all prisoners with respect for their inherent dignity



1 and value as human beings. The rules prohibit torture and other  
2 forms of maltreatment. Notably, the rules also restrict the use  
3 of solitary confinement as a measure of last resort, to be used  
4 only in exceptional circumstances. Moreover, the rules prohibit  
5 the use of solitary confinement for a time period exceeding  
6 fifteen consecutive days and characterize this disciplinary  
7 sanction as a form of "torture or other cruel, inhuman or  
8 degrading treatment or punishment". Indeed, Nelson Mandela said  
9 he found solitary confinement to be "the most forbidding aspect  
10 of prison life" and stated that "[t]here was no end and no  
11 beginning; there's only one's own mind, which can begin to play  
12 tricks."

13 Accordingly, the purpose of this Act is to:

- 14 (1) Restrict the use of solitary confinement in state-  
15 operated and state-contracted correctional facilities,  
16 including:
- 17 (A) Prohibiting indefinite solitary confinement;
  - 18 (B) Prohibiting prolonged solitary confinement; and
  - 19 (C) Prohibiting the placement of a committed person  
20 in a dark or constantly lit cell,  
21 with certain specified exceptions;



1 (2) Prohibit the use of solitary confinement and require  
2 the use of appropriate alternatives for committed  
3 persons who are members of a vulnerable population;

4 (3) Require the department of corrections and  
5 rehabilitation to develop written policies and  
6 procedures regarding solitary confinement by July 1,  
7 2025;

8 (4) Require the department to develop policies and  
9 procedures to review committed persons placed in  
10 solitary confinement and develop a plan for committed  
11 persons currently in solitary confinement by April 1,  
12 2025; and

13 (5) Require a report to the legislature and Hawaii  
14 correctional system oversight commission.

15 SECTION 2. Chapter 353, Hawaii Revised Statutes, is  
16 amended by adding a new section to be appropriately designated  
17 and to read as follows:

18 "§353- Solitary confinement; restrictions on use;  
19 policies and procedures. (a) The use of solitary confinement  
20 in correctional facilities shall be restricted as follows:



- 1       (1) Except as otherwise provided in subsection (d), a  
2       committed person shall not be placed in solitary  
3       confinement unless there is reasonable cause to  
4       believe that the committed person would create a  
5       substantial risk of immediate serious harm to the  
6       committed person's self or another, as evidenced by  
7       recent threats or conduct, and that a less restrictive  
8       intervention would be insufficient to reduce this  
9       risk; provided that the correctional facility shall  
10       bear the burden of establishing the foregoing by clear  
11       and convincing evidence;
- 12       (2) Except as otherwise provided in subsection (d), a  
13       committed person shall not be placed in solitary  
14       confinement for non-disciplinary reasons;
- 15       (3) Except as otherwise provided in subsection (d), a  
16       committed person shall not be placed in solitary  
17       confinement before receiving a personal and  
18       comprehensive medical and mental health examination  
19       conducted by a clinician;
- 20       (4) Except as otherwise provided in subsection (d), a  
21       committed person shall only be held in solitary



1 confinement pursuant to initial procedures and reviews  
2 that provide timely, fair, and meaningful  
3 opportunities for the committed person to contest the  
4 confinement. These procedures and reviews shall  
5 include the right to:

6 (A) An initial hearing held within seventy-two hours  
7 of placement in solitary confinement and a review  
8 every fifteen days thereafter, in the absence of  
9 exceptional circumstances, unavoidable delays, or  
10 reasonable postponements;

11 (B) Appear at the hearing;

12 (C) Be represented at the hearing;

13 (D) An independent hearing officer; and

14 (E) Receive a written statement of reasons for the  
15 decision made at the hearing;

16 (5) Except as otherwise provided in subsection (d), the  
17 final decision to place a committed person in solitary  
18 confinement shall be made by the warden or the  
19 warden's designee;

20 (6) Except as otherwise provided in this subsection or in  
21 subsection (d), a committed person shall not be placed



1 or held in solitary confinement if the warden or the  
2 warden's designee determines that the committed person  
3 no longer meets the criteria for the confinement;

4 (7) A clinician shall evaluate on a daily basis each  
5 committed person who has been placed in solitary  
6 confinement, in a confidential setting outside of the  
7 committed person's cell whenever possible, to  
8 determine whether the committed person is a member of  
9 a vulnerable population. Except as otherwise provided  
10 in subsection (d), a committed person determined to be  
11 a member of a vulnerable population shall be  
12 immediately removed from solitary confinement and  
13 moved to an appropriate placement elsewhere;

14 (8) A disciplinary sanction of solitary confinement  
15 imposed on a committed person who is subsequently  
16 removed from solitary confinement pursuant to this  
17 subsection shall be deemed completed;

18 (9) Except as otherwise provided in subsection (d), during  
19 a facility-wide lockdown, a committed person shall not  
20 be placed in solitary confinement for more than



1 fifteen consecutive days, or for more than twenty days  
2 total during any sixty-day period;

3 (10) Cells or other holding or living space used for  
4 solitary confinement shall be properly ventilated,  
5 lit, temperature-controlled, clean, and equipped with  
6 properly functioning sanitary fixtures;

7 (11) A correctional facility shall maximize the amount of  
8 time spent outside of the cell by a committed person  
9 held in solitary confinement by providing the  
10 committed person with access to recreation, education,  
11 clinically appropriate treatment therapies, skill-  
12 building activities, and social interaction with staff  
13 and other committed persons, as appropriate;

14 (12) A committed person held in solitary confinement shall  
15 not be denied access to:

16 (A) Food, water, or any other necessity; and

17 (B) Appropriate medical care, including emergency  
18 medical care;

19 (13) Each committed person held in solitary confinement  
20 shall be given a written copy of the committed  
21 person's sanction and the criteria for a pathway back



1 into the general population. The department shall  
2 ensure that the committed person understands the  
3 reason for the sanction and the criteria for the  
4 pathway back into the general population. The  
5 committed person's case manager shall work with the  
6 committed person in solitary confinement to develop a  
7 plan of action to reduce the committed person's  
8 violations, return to the general population, and work  
9 on the committed person's rehabilitation; and

10 (14) A committed person shall not be released directly from  
11 solitary confinement to the community during the final  
12 one hundred eighty days of the committed person's term  
13 of incarceration, unless necessary for the safety of  
14 the committed person, staff, other committed persons,  
15 or the public.

16 (b) Except as otherwise provided in subsection (d), a  
17 committed person who is a member of a vulnerable population  
18 shall not be placed in solitary confinement; provided that a  
19 committed person who is a member of a vulnerable population  
20 because:



1       (1) The committed person is twenty-one years of age or  
2       younger, has a disability based on mental illness, or  
3       has a developmental disability:

4       (A) Shall not be subject to discipline for refusing  
5       treatment or medication, or for engaging in  
6       self-harm or related conduct or threatening to do  
7       so; and

8       (B) Shall be screened by a correctional facility  
9       clinician or the appropriate screening service  
10       pursuant to rules and, if found to meet the  
11       criteria for civil commitment, shall be placed in  
12       a specialized unit designated by the director or  
13       deputy director of the department, or civilly  
14       committed to the least restrictive appropriate  
15       short-term care or psychiatric facility  
16       designated by the department of health, but only  
17       if the committed person would otherwise have been  
18       placed in solitary confinement; and

19       (2) The committed person is sixty years of age or older;  
20       has a serious medical condition that cannot be  
21       effectively treated while the committed person is in



1 solitary confinement; or is pregnant, in the  
2 postpartum period, or recently suffered a miscarriage  
3 or terminated a pregnancy, shall alternately be placed  
4 in an appropriate medical or other unit designated by  
5 the director or deputy director of the department, but  
6 only if the committed person would otherwise have been  
7 placed in solitary confinement.

8 (c) A committed person shall not be placed in solitary  
9 confinement or in any other cell or other holding or living  
10 space, in any facility, whether alone or with one or more other  
11 committed persons, if there is reasonable cause to believe that  
12 there exists a risk of harm, harassment, intimidation,  
13 extortion, or other physical or emotional abuse to the committed  
14 person or to another committed person in that placement.

15 (d) The use of solitary confinement in correctional  
16 facilities shall be permitted only under the following limited  
17 circumstances:

18 (1) The warden or the warden's designee determines that a  
19 facility-wide lockdown is necessary to ensure the  
20 safety of committed persons in the facility, until the  
21 warden or the warden's designee determines that the



1 threat to committed person safety no longer exists.

2 The warden or the warden's designee shall document the

3 specific reasons that any facility-wide lockdown was

4 necessary for more than twenty-four hours, and the

5 specific reasons that less restrictive interventions

6 were insufficient to accomplish the facility's safety

7 goals. Within six hours of a decision to extend a

8 facility-wide lockdown beyond twenty-four hours, the

9 director or deputy director of the department shall

10 publish the foregoing reasons on the department's

11 website and shall provide meaningful notice to the

12 legislature of the reasons for the lockdown;

13 (2) The warden or the warden's designee determines that a

14 committed person should be placed in emergency

15 confinement; provided that:

16 (A) A committed person shall not be held in emergency

17 confinement for more than twenty-four hours; and

18 (B) A committed person placed in emergency

19 confinement shall receive an initial medical and

20 mental health evaluation within six hours and a

21 personal and comprehensive medical and mental



1 health examination conducted by a clinician  
2 within twenty-four hours. Reports of these  
3 evaluations shall be immediately provided to the  
4 warden or the warden's designee;

5 (3) A physician, based upon the physician's personal  
6 examination of a committed person, determines that the  
7 committed person should be placed or held in medical  
8 isolation; provided that any decision to place or hold  
9 a committed person in medical isolation due to a  
10 mental health emergency shall be made by a clinician  
11 and based upon the clinician's personal examination of  
12 the committed person. In any case of medical  
13 isolation occurring under this paragraph, a clinical  
14 review shall be conducted at least every six hours and  
15 as clinically indicated. A committed person in  
16 medical isolation due to a mental health emergency  
17 pursuant to this paragraph shall be placed in a mental  
18 health unit designated by the director or deputy  
19 director of the department;



1       (4) The warden or the warden's designee determines that a  
2       committed person should be placed in protective  
3       custody; provided that:

4       (A) A committed person may be placed in voluntary  
5       protective custody only when the committed person  
6       has provided voluntary, informed, and written  
7       consent and there is reasonable cause to believe  
8       that confinement is necessary to prevent  
9       reasonably foreseeable harm. When a committed  
10      person makes a voluntary, informed, and written  
11      request to be placed in protective custody and  
12      the request is denied, the correctional facility  
13      shall bear the burden of establishing a basis for  
14      denying the request;

15      (B) A committed person may be placed in involuntary  
16      protective custody only when the correctional  
17      facility is able to establish by clear and  
18      convincing evidence that confinement is necessary  
19      to prevent reasonably foreseeable harm and that a  
20      less restrictive intervention would be  
21      insufficient to prevent the harm;



1           (C) A committed person placed in protective custody  
2           shall be provided opportunities for activities,  
3           movement, and social interaction, in a manner  
4           consistent with ensuring the committed person's  
5           safety and the safety of other persons, that are  
6           comparable to the opportunities provided to  
7           committed persons in the facility's general  
8           population;

9           (D) A committed person subject to removal from  
10           protective custody shall be provided with a  
11           timely, fair, and meaningful opportunity to  
12           contest the removal;

13           (E) A committed person who is currently or may be  
14           placed in voluntary protective custody may opt  
15           out of that status by providing voluntary,  
16           informed, and written refusal of that status; and

17           (F) Before placing a committed person in protective  
18           custody, the warden or the warden's designee  
19           shall use a less restrictive intervention,  
20           including transfer to the general population of  
21           another facility or to a special-purpose housing



1           unit for committed persons who face similar  
2           threats, unless the committed person poses an  
3           extraordinary security risk so great that  
4           transferring the committed person would be  
5           insufficient to ensure the committed person's  
6           safety; and

7       (5) The warden or the warden's designee determines that a  
8       committed person should be placed in solitary  
9       confinement pending investigation of an alleged  
10      disciplinary offense; provided that:

11      (A) The committed person's placement in solitary  
12      confinement is pursuant to approval granted by  
13      the warden or the warden's designee in an  
14      emergency situation, or is because the committed  
15      person's presence in the facility's general  
16      population while the investigation is ongoing  
17      poses a danger to the committed person, staff,  
18      other committed persons, or the public; provided  
19      further that the determination of danger shall be  
20      based upon a consideration of the seriousness of  
21      the committed person's alleged offense, including



1 whether the offense involved violence or escape,  
2 or posed a threat to institutional safety by  
3 encouraging other persons to engage in  
4 misconduct;

5 (B) The committed person's placement in solitary,  
6 disciplinary, or administrative segregation shall  
7 not revert to the other form of segregation after  
8 the initial sanction has been served;

9 (C) A committed person's placement in solitary  
10 confinement pending investigation of an alleged  
11 disciplinary offense shall be reviewed within  
12 twenty-four hours by a supervisory-level employee  
13 who was not involved in the initial placement  
14 decision; and

15 (D) A committed person who has been placed in  
16 solitary confinement pending investigation of an  
17 alleged disciplinary offense shall be considered  
18 for release to the facility's general population  
19 if the committed person demonstrates good  
20 behavior while in solitary confinement. If the  
21 committed person is found guilty of the



1 disciplinary offense, the committed person's good  
2 behavior shall be considered when determining the  
3 appropriate penalty for the offense.

4 (e) No later than July 1, 2025, the department shall have  
5 developed written policies and implemented procedures, as  
6 necessary and appropriate, to effectuate this section,  
7 including:

8 (1) Establishing less restrictive interventions as  
9 alternatives to solitary confinement, including  
10 separation from other committed persons, transfer to  
11 other correctional facilities, and any other sanction  
12 not involving solitary confinement that is authorized  
13 by the department's policies and procedures; provided  
14 that any temporary restrictions on an committed  
15 person's privileges or access to resources, including  
16 religious services, mail and telephone privileges,  
17 visitation by contacts, and outdoor or recreation  
18 access, shall be imposed only when necessary to ensure  
19 the safety of the committed person or other persons,  
20 and shall not restrict the committed person's access  
21 to food, basic necessities, or legal assistance;



- 1        (2) Requiring periodic training of disciplinary staff and  
2        all other staff who interact with committed persons  
3        held in solitary confinement; provided that the  
4        training:
- 5        (A) Is developed and conducted with assistance from  
6        appropriately trained and qualified  
7        professionals;
- 8        (B) Clearly communicates the applicable standards for  
9        solitary confinement, including the standards set  
10       forth in this section; and
- 11       (C) Provides information on the identification of  
12       developmental disabilities; symptoms of mental  
13       illness, including trauma disorders; and methods  
14       for responding safely to persons in distress;
- 15       (3) Requiring documentation of all decisions, procedures,  
16       and reviews of committed persons placed in solitary  
17       confinement;
- 18       (4) Requiring monitoring of compliance with all rules  
19       governing cells, units, and other spaces used for  
20       solitary confinement;



- 1        (5) Requiring the posting of quarterly reports on the  
2        department's official website that:
- 3        (A) Describe the nature and extent of each  
4        correctional facility's use of solitary  
5        confinement and include data on the age, sex,  
6        gender identity, ethnicity, incidence of mental  
7        illness, and type of confinement status for  
8        committed persons placed in solitary confinement;
- 9        (B) Include the committed person population as of the  
10       last day of each quarter and a non-duplicative,  
11       cumulative count of the number of committed  
12       persons placed in solitary confinement during the  
13       fiscal year;
- 14       (C) Include the incidence of emergency confinement,  
15       self-harm, suicide, and assault in any solitary  
16       confinement unit, as well as explanations for  
17       each instance of facility-wide lockdown; and
- 18       (D) Exclude personally identifiable information  
19       regarding any committed person; and
- 20       (6) Updating the department's corrections administration  
21       policy and procedures manual, as necessary and



1 appropriate, to comply with the provisions of this  
2 section, including the requirement to use appropriate  
3 alternatives to solitary confinement for committed  
4 persons who are members of a vulnerable population.

5 (f) As used in this section:

6 "Correctional facility" means a state prison, other penal  
7 institution, or an institution or facility designated by the  
8 department as a place of confinement under this chapter.

9 "Correctional facility" includes community correctional centers,  
10 high-security correctional facilities, temporary correctional  
11 facilities, in-state correctional facilities, state-contracted  
12 correctional facilities operated by private entities, and jails  
13 maintained by county police departments.

14 "Member of a vulnerable population" means any committed  
15 person who:

16 (1) Is twenty-one years of age or younger;

17 (2) Is sixty years of age or older;

18 (3) Has a physical or mental disability, a history of  
19 psychiatric hospitalization, or recently exhibited  
20 conduct, including serious self-mutilation, that  
21 indicates the need for further observation or



- 1           evaluation to determine the presence of mental  
2           illness;
- 3           (4) Has a developmental disability, as defined in section  
4           333F-1;
- 5           (5) Has a serious medical condition that cannot be  
6           effectively treated while the committed person is in  
7           solitary confinement;
- 8           (6) Is pregnant, in the postpartum period, or recently  
9           suffered a miscarriage or terminated a pregnancy;
- 10          (7) Has a significant auditory or visual impairment; or
- 11          (8) Is perceived to be lesbian, gay, bisexual,  
12          transgender, or intersex.
- 13          "Solitary confinement" occurs when all of the following  
14          conditions are present:
- 15          (1) A committed person is confined in a correctional  
16          facility pursuant to disciplinary, administrative,  
17          protective, investigative, medical, or other purposes;
- 18          (2) The confinement occurs in a cell or similarly  
19          physically restrictive holding or living space,  
20          whether alone or with one or more other committed  
21          persons, for twenty hours or more per day; and



1       (3) The committed person's activities, movements, and  
2       social interactions are severely restricted."

3       SECTION 3. No later than April 1, 2025, the department of  
4 corrections and rehabilitation shall:

5       (1) Develop written policies and implement procedures, as  
6       necessary and appropriate, for the review of committed  
7       persons placed in solitary confinement;

8       (2) Initiate a review of each committed person placed in  
9       solitary confinement during the immediately preceding  
10       fiscal year to determine whether the placement would  
11       be appropriate in light of the requirements of  
12       section 353- , Hawaii Revised Statutes; and

13       (3) Develop a plan for providing step-down and  
14       transitional units, programs, and staffing patterns to  
15       accommodate committed persons currently placed in  
16       solitary confinement, committed persons who may  
17       prospectively be placed in solitary confinement, and  
18       committed persons who receive an intermediate sanction  
19       in lieu of being placed in solitary confinement;  
20       provided that staffing patterns for correctional and  
21       program staff are set at levels necessary to ensure



1           the safety of staff and committed persons pursuant to  
2           the requirements of this Act.

3           SECTION 4. No later than forty days prior to the convening  
4 of the regular session of 2026, the department of corrections  
5 and rehabilitation shall submit to the legislature and Hawaii  
6 correctional system oversight commission a status report of the  
7 department's progress toward full compliance with this Act,  
8 along with draft copies of written policies and procedures  
9 undertaken pursuant to this Act.

10          SECTION 5. New statutory material is underscored.

11          SECTION 6. This Act shall take effect on July 1, 3000;  
12 provided that section 2 shall take effect on July 1, 2025.



**Report Title:**

Department of Corrections and Rehabilitation; Correctional Facilities; Inmates; Solitary Confinement; Restrictions; Vulnerable Populations; Report

**Description:**

Restricts the use of solitary confinement in state-operated and state-contracted correctional facilities, with certain specified exceptions. Prohibits the use of solitary confinement and requires the use of appropriate alternatives for committed persons who are members of a vulnerable population. Requires the Department of Corrections and Rehabilitation to develop written policies and procedures regarding solitary confinement by 7/1/2025. Requires the Department to develop policies and procedures to review committed persons placed in solitary confinement and develop a plan for committed persons currently in solitary confinement by 4/1/2025. Requires a report to the Legislature and Hawaii Correctional System Oversight Commission. Effective 7/1/3000. (HD1) /

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

