
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 restrictive housing on
3 individuals. Spending time in restrictive housing has been
4 found to increase the risk of premature death, even after
5 release from incarceration. Restrictive housing 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 restrictive housing 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",
12 restrictive housing serves as a response to misconduct charges
13 such as fighting or drug use. When used for correctional
14 facility management, often called "administrative custody" or
15 "administrative segregation", restrictive housing 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 restrictive housing 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 restrictive housing--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 H.C.R. No. 85, H.D. 2, S.D. 1 (2016),
12 requested the establishment of a task force to study effective
13 incarceration policies to improve Hawaii's correctional system.
14 The interim report of the task force, which was dated February
15 2017 and provided to the legislature, included an observation by
16 the Vera Institute of Justice that the prevalence of
17 incarcerated people having mental illness is at odds with the
18 design, operation, and resources of most correctional
19 facilities. Studies show that the detrimental effects of
20 restrictive housing far exceed the immediate psychological
21 consequences identified by previous research, such as anxiety,



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

6 The legislature recognizes that as of 2021, legislation to
7 ban or limit the use of restrictive housing in prison has been
8 introduced in thirty-two states and the United States Congress.
9 Further, twenty-four states have enacted statutes that limit or
10 prohibit restrictive housing while other states have limited its
11 use through administrative code, policy, or court rules. Some
12 of these new laws, such as those enacted by Connecticut and
13 Washington, reflect tentative and piecemeal approaches to
14 change. However, most of the new laws represent significant
15 reforms to existing practices and thus have the potential to
16 facilitate more humane and effective practices in prisons and
17 jails.

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



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

14 Accordingly, the purpose of this Act is to:

- 15 (1) Restrict the use of restrictive housing in state-
16 operated and state-contracted correctional facilities,
17 with certain specified exceptions;
- 18 (2) Require the department of corrections and
19 rehabilitation to develop written policies and
20 procedures regarding restrictive housing by July 1,
21 2026;



- 1 (3) Require the Hawaii correctional system oversight
- 2 commission to review certain housing placements;
- 3 (4) Require the department of corrections and
- 4 rehabilitation to develop policies and procedures to
- 5 review committed persons placed in restrictive housing
- 6 and develop a plan for committed persons currently in
- 7 restrictive housing by April 1, 2026; and
- 8 (5) Require a report to the legislature and Hawaii
- 9 correctional system oversight commission.

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

13 **"§353- Restrictive housing; restrictions on use;**
 14 **policies and procedures.** (a) The use of restrictive housing in
 15 correctional facilities shall be restricted as follows:

16 (1) Except as otherwise provided in subsection (d), a
 17 committed person shall not be placed in restrictive
 18 housing unless there is reasonable cause to believe
 19 that the committed person would create a substantial
 20 risk of immediate serious harm to the committed
 21 person's self or another, as evidenced by recent



1 threats or conduct, and that a less restrictive
2 intervention would be insufficient to reduce this
3 risk; provided that the correctional facility shall
4 bear the burden of establishing the foregoing by clear
5 and convincing evidence;

6 (2) Except as otherwise provided in subsection (d), a
7 committed person shall not be placed in restrictive
8 housing for non-disciplinary reasons;

9 (3) Except as otherwise provided in subsection (d), a
10 committed person shall not be placed in restrictive
11 housing before receiving a personal and comprehensive
12 medical and mental health examination conducted by a
13 clinician;

14 (4) Except as otherwise provided in subsection (d), a
15 committed person shall only be held in restrictive
16 housing pursuant to initial procedures and reviews
17 that provide timely, fair, and meaningful
18 opportunities for the committed person to contest the
19 confinement. These procedures and reviews shall
20 include the right to:



1 (A) An initial hearing held within twenty-four hours
2 of placement in restrictive housing, in the
3 absence of exceptional circumstances, unavoidable
4 delays, or reasonable postponements;

5 (B) Appear at the hearing;

6 (C) Be represented at the hearing;

7 (D) An independent hearing officer; and

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

10 (5) Except as otherwise provided in subsection (d), the
11 final decision to place a committed person in
12 restrictive housing shall be made by the warden or the
13 warden's designee;

14 (6) Except as otherwise provided in this subsection or in
15 subsection (d), a committed person shall not be placed
16 or held in restrictive housing if the warden or the
17 warden's designee determines that the committed person
18 no longer meets the criteria for the confinement;

19 (7) A clinician shall evaluate on a daily basis each
20 committed person who has been placed in restrictive
21 housing, in a confidential setting outside of the



1 committed person's cell whenever possible, to
2 determine whether the committed person is a member of
3 a vulnerable population. Except as otherwise provided
4 in subsection (d), a committed person determined to be
5 a member of a vulnerable population shall be
6 immediately removed from restrictive housing and moved
7 to an appropriate placement elsewhere;

8 (8) A disciplinary sanction of restrictive housing imposed
9 on a committed person who is subsequently removed from
10 restrictive housing pursuant to this subsection shall
11 be deemed completed;

12 (9) Except as otherwise provided in subsection (d), during
13 a facility-wide lockdown, a committed person shall not
14 be placed in restrictive housing for more than fifteen
15 consecutive days, or for more than twenty days total
16 during any sixty-day period;

17 (10) Cells or other holding or living space used for
18 restrictive housing shall be properly ventilated, lit,
19 temperature-controlled, clean, and equipped with
20 properly functioning sanitary fixtures;



- 1 (11) A correctional facility shall maximize the amount of
2 time spent outside of the cell by a committed person
3 held in restrictive housing by providing the committed
4 person with access to recreation, education,
5 clinically appropriate treatment therapies,
6 skill-building activities, and social interaction with
7 staff and other committed persons, as appropriate;
- 8 (12) A committed person held in restrictive housing shall
9 not be denied access to:
- 10 (A) Food, water, or any other necessity;
11 (B) Appropriate medical care, including emergency
12 medical care; and
13 (C) Access to their legal counsel;
- 14 (13) Each committed person held in restrictive housing
15 shall receive a written copy of the committed person's
16 sanction and the criteria for a pathway back into the
17 general population. The department shall ensure that
18 the committed person understands the reason for the
19 sanction and the criteria for the pathway back into
20 the general population. The committed person's case
21 manager shall work with the committed person in



1 restrictive housing to develop a plan of action to
2 reduce the committed person's violations, return to
3 the general population, and work on the committed
4 person's rehabilitation; and

5 (14) A committed person shall not be released directly from
6 restrictive housing to the community during the final
7 one hundred eighty days of the committed person's term
8 of incarceration, unless necessary for the safety of
9 the committed person, staff, other committed persons,
10 or the public.

11 (b) Except as otherwise provided in subsection (d), a
12 committed person who is a member of a vulnerable population
13 shall not be placed in restrictive housing; provided that a
14 committed person who is a member of a vulnerable population
15 because the committed person is:

16 (1) Twenty-one years of age or younger, has a disability
17 based on mental illness, or has a developmental
18 disability shall:

19 (A) Not be subject to discipline for refusing
20 treatment or medication, or for engaging in



1 self-harm or related conduct or threatening to do
2 so; and

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

14 (2) Sixty years of age or older; has a serious medical
15 condition that cannot be effectively treated while the
16 committed person is in restrictive housing; or is
17 pregnant, in the postpartum period, or recently
18 suffered a miscarriage or terminated a pregnancy,
19 shall alternately be placed in an appropriate medical
20 or other unit designated by the director or deputy
21 director of the department, but only if the committed



1 person would otherwise have been placed in restrictive
2 housing.

3 (c) A committed person shall not be placed in restrictive
4 housing or in any other cell or other holding or living space,
5 in any facility, whether alone or with one or more other
6 committed persons, if there is reasonable cause to believe that
7 there exists a risk of harm, harassment, intimidation,
8 extortion, or other physical or emotional abuse to the committed
9 person or to another committed person in that placement.

10 (d) The use of restrictive housing in correctional
11 facilities shall be permitted only under the following limited
12 circumstances:

13 (1) The warden or the warden's designee determines that a
14 facility-wide lockdown is necessary to ensure the
15 safety of committed persons in the facility, until the
16 warden or the warden's designee determines that the
17 threat to a committed person's safety no longer
18 exists. The warden or the warden's designee shall
19 document the specific reasons that any facility-wide
20 lockdown was necessary for more than twenty-four
21 hours, and the specific reasons why less restrictive



1 interventions were insufficient to accomplish the
2 facility's safety goals. Within six hours of a
3 decision to extend a facility-wide lockdown beyond
4 twenty-four hours, the director or deputy director of
5 the department shall publish the foregoing reasons on
6 the department's website and shall provide meaningful
7 notice to the legislature of the reasons for the
8 lockdown;

9 (2) The warden or the warden's designee determines that a
10 committed person should be placed in emergency
11 confinement; provided that:

12 (A) A committed person shall not be held in emergency
13 confinement for more than twenty-four hours; and

14 (B) A committed person placed in emergency
15 confinement shall receive an initial medical and
16 mental health evaluation within six hours and a
17 personal and comprehensive medical and mental
18 health examination conducted by a clinician
19 within twenty-four hours. Reports of these
20 evaluations shall be immediately provided to the
21 warden or the warden's designee;



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

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

19 (A) A committed person may be placed in voluntary
20 protective custody only when the committed person
21 has provided voluntary, informed, and written



1 consent and there is reasonable cause to believe
2 that protective custody is necessary to prevent
3 reasonably foreseeable harm. When a committed
4 person makes a voluntary, informed, and written
5 request to be placed in protective custody and
6 the request is denied, the correctional facility
7 shall bear the burden of establishing a basis for
8 denying the request;

9 (B) A committed person may be placed in involuntary
10 protective custody only when the correctional
11 facility is able to establish by clear and
12 convincing evidence that protective custody is
13 necessary to prevent reasonably foreseeable harm
14 and that a less restrictive intervention would be
15 insufficient to prevent the harm;

16 (C) A committed person placed in protective custody
17 shall be provided opportunities for activities,
18 movement, and social interaction, in a manner
19 consistent with ensuring the committed person's
20 safety and the safety of other persons, that are
21 comparable to the opportunities provided to



1 committed persons in the facility's general
2 population;

3 (D) A committed person subject to removal from
4 protective custody shall be provided with a
5 timely, fair, and meaningful opportunity to
6 contest the removal;

7 (E) A committed person who is currently or may be
8 placed in voluntary protective custody may opt
9 out of that status by providing voluntary,
10 informed, and written refusal of that status; and

11 (F) Before placing a committed person in protective
12 custody, the warden or the warden's designee
13 shall use a less restrictive intervention,
14 including transfer to the general population of
15 another facility or to a special-purpose housing
16 unit for committed persons who face similar
17 threats, unless the committed person poses an
18 extraordinary security risk so great that
19 transferring the committed person would be
20 insufficient to ensure the committed person's
21 safety; and



1 (5) The warden or the warden's designee determines that a
2 committed person should be placed in restrictive
3 housing pending investigation of an alleged
4 disciplinary offense; provided that:

5 (A) The committed person's placement in restrictive
6 housing is pursuant to approval granted by the
7 warden or the warden's designee in an emergency
8 situation, or is because the committed person's
9 presence in the facility's general population
10 while the investigation is ongoing poses a danger
11 to the committed person, staff, other committed
12 persons, or the public; provided further that the
13 determination of danger shall be based upon a
14 consideration of the seriousness of the committed
15 person's alleged offense, including whether the
16 offense involved violence or escape, or posed a
17 threat to institutional safety by encouraging
18 other persons to engage in misconduct;

19 (B) The committed person's placement in restrictive,
20 disciplinary, or administrative segregation shall



- 1 not revert to another form of segregation after
2 the initial sanction has been served;
- 3 (C) A committed person's placement in restrictive
4 housing pending investigation of an alleged
5 disciplinary offense shall be reviewed within
6 twenty-four hours by a supervisory-level employee
7 who was not involved in the initial placement
8 decision; and
- 9 (D) A committed person who has been placed in
10 restrictive housing pending investigation of an
11 alleged disciplinary offense shall be considered
12 for release to the facility's general population
13 if the committed person demonstrates good
14 behavior while in restrictive housing. If the
15 committed person is found guilty of the
16 disciplinary offense, the committed person's good
17 behavior shall be considered when determining the
18 appropriate penalty for the offense.
- 19 (e) No later than July 1, 2026, the department shall
20 develop written policies and implement procedures, as necessary
21 and appropriate, to effectuate this section, including:



- 1 (1) Establishing less restrictive interventions as
2 alternatives to restrictive housing, including
3 separation from other committed persons, transfer to
4 other correctional facilities, and any other sanction
5 not involving restrictive housing that is authorized
6 by the department's policies and procedures; provided
7 that any temporary restrictions on a committed
8 person's privileges or access to resources, including
9 religious services, mail and telephone privileges,
10 visitation by contacts, and outdoor or recreation
11 access, shall be imposed only when necessary to ensure
12 the safety of the committed person or other persons,
13 and shall not restrict the committed person's access
14 to food, basic necessities, or legal assistance;
- 15 (2) Requiring periodic training of disciplinary staff and
16 all other staff who interact with committed persons
17 held in restrictive housing; provided that the
18 training:
- 19 (A) Is developed and conducted with assistance from
20 appropriately trained and qualified
21 professionals;



1 (B) Clearly communicates the applicable standards for
2 restrictive housing, including the standards set
3 forth in this section; and

4 (C) Provides information on the identification of
5 developmental disabilities; symptoms of mental
6 illness, including trauma disorders; and methods
7 for responding safely to persons in distress;

8 (3) Requiring documentation of all decisions, procedures,
9 and reviews of committed persons placed in restrictive
10 housing;

11 (4) Requiring monitoring of compliance with all rules
12 governing cells, units, and other spaces used for
13 restrictive housing;

14 (5) Requiring the posting of quarterly reports on the
15 department's official website that:

16 (A) Describe the nature and extent of each
17 correctional facility's use of restrictive
18 housing and include data on the age, sex, gender
19 identity, ethnicity, incidence of mental illness,
20 and type of confinement status for committed
21 persons placed in restrictive housing;



- 1 (B) Include the population of committed persons as of
2 the last day of each quarter and a
3 non-duplicative, cumulative count of the number
4 of committed persons placed in restrictive
5 housing during the fiscal year;
- 6 (C) Include the incidence of emergency confinement,
7 self-harm, suicide, and assault in any
8 restrictive housing unit, as well as explanations
9 for each instance of facility-wide lockdown; and
- 10 (D) Exclude personally identifiable information
11 regarding any committed person; and
- 12 (6) Updating the department's corrections administration
13 policy and procedures manual, as necessary and
14 appropriate, to comply with the provisions of this
15 section, including the requirement to use appropriate
16 alternatives to restrictive housing for committed
17 persons who are members of a vulnerable population.
- 18 (f) Following the initial hearing for the placement of an
19 individual into restrictive housing, the department shall
20 immediately notify and transmit all relevant documentation and
21 evidence to the Hawaii correctional system oversight commission.



1 The Hawaii correctional system oversight commission shall
2 thoroughly review all determinations regarding the imposition of
3 restrictive housing for fairness, impartiality, alignment with
4 best practices, and other factors the Hawaii correctional system
5 oversight commission finds relevant, and shall issue quarterly
6 reports on the utilization thereof.

7 The Hawaii correctional system oversight commission shall
8 actively monitor and review all housing placements involving
9 individuals subjected to twenty or more hours of cell
10 confinement, irrespective of whether the placements are
11 designated as restrictive housing by the department or
12 state-contracted facilities, to ensure that the department and
13 its contracted entities do not implement cell confinement
14 exceeding twenty hours without proper adherence to the
15 procedures outlined in this section.

16 (g) For the purposes of this section:

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

20 "Correctional facility" includes community correctional centers,
21 high-security correctional facilities, temporary correctional



1 facilities, in-state correctional facilities, state-contracted
2 correctional facilities operated by private entities, and jails
3 maintained by county police departments.

4 "Member of a vulnerable population" means any committed
5 person who:

- 6 (1) Is twenty-one years of age or younger;
- 7 (2) Is sixty years of age or older;
- 8 (3) Has a physical or mental disability, a history of
9 psychiatric hospitalization, or recently exhibited
10 conduct, including serious self-mutilation, that
11 indicates the need for further observation or
12 evaluation to determine the presence of mental
13 illness;
- 14 (4) Has a developmental disability, as defined in section
15 333F-1;
- 16 (5) Has a serious medical condition that cannot be
17 effectively treated while the committed person is in
18 restrictive housing;
- 19 (6) Is pregnant, in the postpartum period, or recently
20 suffered a miscarriage or terminated a pregnancy;
- 21 (7) Has a significant auditory or visual impairment; or



1 (8) Is perceived to be lesbian, gay, bisexual,
2 transgender, or intersex.

3 "Restrictive housing" is defined as occurring when all of
4 the following conditions are present:

5 (1) A committed person is confined in a correctional
6 facility pursuant to disciplinary, administrative,
7 protective, investigative, medical, or other purposes;

8 (2) The confinement occurs in a cell or similarly
9 physically restrictive holding or living space,
10 whether alone or with one or more other committed
11 persons, for twenty hours or more per day; and

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

14 SECTION 3. No later than April 1, 2026, the department of
15 corrections and rehabilitation shall:

16 (1) Develop written policies and implement procedures, as
17 necessary and appropriate, for the review of committed
18 persons placed in restrictive housing;

19 (2) Initiate a review of each committed person placed in
20 restrictive housing during the immediately preceding
21 fiscal year to determine whether the placement would



1 be appropriate in light of the requirements of
2 section 353- , Hawaii Revised Statutes; and
3 (3) Develop a plan for providing step-down and
4 transitional units, programs, and staffing patterns to
5 accommodate committed persons currently placed in
6 restrictive housing, committed persons who may
7 prospectively be placed in restrictive housing, and
8 committed persons who receive an intermediate sanction
9 in lieu of being placed in restrictive housing;
10 provided that staffing patterns for correctional and
11 program staff are set at levels necessary to ensure
12 the safety of staff and committed persons pursuant to
13 the requirements of this Act.

14 SECTION 4. No later than forty days prior to the convening
15 of the regular session of 2027, the department of corrections
16 and rehabilitation shall submit to the legislature and Hawaii
17 correctional system oversight commission a status report of the
18 department's progress toward full compliance with this Act,
19 along with draft copies of written policies and procedures
20 undertaken pursuant to this Act.

21 SECTION 5. New statutory material is underscored.



1 SECTION 6. This Act shall take effect on July 1, 2077.



Report Title:

DCR; Hawaii Correctional System Oversight Commission;
Correctional Facilities; Committed Persons; Restrictive Housing;
Restrictions; Report

Description:

Restricts the use of restrictive housing in state-operated and state-contracted correctional facilities, with certain specified exceptions. Requires the Department of Corrections and Rehabilitation to develop written policies and procedures regarding restrictive housing by 7/1/2026. Requires the Hawaii Correctional System Oversight Commission to review certain housing placements. Requires the Department to develop policies and procedures to review committed persons placed in restrictive housing and develop a plan for committed persons currently in restrictive housing by 4/1/2026. Requires a report to the Legislature and Hawaii Correctional System Oversight Commission. Effective 7/1/2077. (SD2)

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

