

SENATE BILL NO. 351—SENATOR SEGERBLOM

MARCH 16, 2015

Referred to Committee on Judiciary

SUMMARY—Establishes certain provisions governing the placement of offenders in isolated confinement in facilities and institutions of the Department of Corrections. (BDR 16-574)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~fornitted-material~~ is material to be omitted.

AN ACT relating to correctional institutions; establishing certain limits on and grounds for placing an offender in isolated confinement; establishing procedures governing hearings and determinations to place an offender in long-term isolated confinement; requiring periodic mental health evaluations of offenders placed in long-term isolated confinement; requiring the establishment of a program and individualized plans for offenders to earn their way out of such confinement through good behavior; requiring a program of resocialization to be offered to offenders who have been held in long-term isolated confinement; establishing certain provisions governing the evaluation, treatment, housing and discipline of offenders who have serious mental illness or other significant mental impairment; requiring the Department of Corrections to conduct certain reviews and submit certain reports to the Advisory Commission on the Administration of Justice; requiring the Division of Public and Behavioral Health of the Department of Health and Human Services to monitor the quality of care for mental health and habilitation provided to certain offenders; and providing other matters properly relating thereto.



Legislative Counsel's Digest:

Section 8 of this bill establishes certain limitations on the imposition and requirements for the placement of an offender in long-term isolated confinement by a facility or institution of the Department of Corrections. **Section 9** of this bill sets forth certain grounds for the imposition of long-term isolated confinement and requires that the purpose for such imposition be stated in writing. **Section 10** of this bill establishes procedures for a hearing by committee for, and the rights of, an offender who is subject to placement in long-term isolated confinement. **Section 11** of this bill sets forth certain grounds for which an offender may be subject to placement in long-term isolated confinement for a term longer than 1 year and requires a hearing to be conducted by the Department of Corrections.

Section 12 of this bill requires that an offender who is held in long-term isolated confinement be evaluated by a mental health clinician at least once every 30 days and removed from such confinement if the offender is determined to have a serious mental illness or other significant mental impairment. **Section 13** of this bill requires the Department of Corrections to develop a program by which an offender in long-term isolated confinement may earn his or her way out of such confinement through good behavior. **Section 14** of this bill: (1) requires the warden or officers of a facility or institution to develop an individualized plan by which an offender in long-term isolated confinement may earn his or her way out of such confinement through good behavior; and (2) sets forth the required contents of such a plan. **Section 15** of this bill requires the warden or officers to periodically evaluate the progress of an offender with regard to his or her individualized plan. **Section 16** of this bill requires a committee appointed by the warden to periodically meet with an offender to determine whether the offender's progress warrants modification of the offender's confinement. **Section 17** of this bill requires a program of resocialization to be provided to offenders who have been housed in long-term isolated confinement.

Sections 18 and 19 of this bill prohibit the housing of an offender with a serious mental illness or other significant mental impairment in long-term isolated confinement and require an offender to be evaluated for serious mental illness or other significant mental impairment before placement in long-term isolated confinement. **Section 20** of this bill requires the development, implementation and periodic update of a treatment plan for an offender who has a serious mental illness or other significant mental impairment. **Section 21** of this bill establishes certain conditions and requirements, including housing in a mental health and special needs step-down unit, for treatment of an offender who has a serious mental illness or other significant mental impairment. **Section 22** of this bill prohibits under most circumstances the imposition of disciplinary action on an offender who has a serious mental illness or other significant mental impairment. **Section 23** of this bill requires that a joint case management committee conduct a periodic review of the placement of an offender who has a serious mental illness or other significant mental impairment in a mental health and special needs step-down unit.

Sections 24 and 26 of this bill require the Department of Corrections to: (1) conduct reviews of regulations, policies and standards and the treatment of offenders as they relate to isolated confinement; (2) revise such regulations, policies and standards as necessary to comply with the provisions of this bill; and (3) prepare and submit certain reports to the Advisory Commission on the Administration of Justice.

Section 25 of this bill requires the Division of Public and Behavioral Health of the Department of Health and Human Services to monitor the quality of care for mental health and habilitation provided to offenders.

Section 27 of this bill requires the Department of Corrections to review the status of offenders held in long-term isolated confinement, make certain



54 determinations and hold hearings in accordance with this bill and report the results
55 of the review to the Advisory Commission on the Administration of Justice.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** Chapter 209 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 2 to 25, inclusive, of this
3 act.

4 **Sec. 2.** *As used in sections 2 to 25, inclusive, of this act,*
5 *unless the context otherwise requires, the words and terms defined*
6 *in sections 3 to 7, inclusive, of this act have the meanings ascribed*
7 *to them in those sections.*

8 **Sec. 3.** *“Isolated confinement” means prolonged*
9 *confinement in any cell for 19 or more hours in a day with limited*
10 *time outside of the cell and restricted activity, movement and*
11 *social interaction, whether pursuant to disciplinary, administrative*
12 *or classification action.*

13 **Sec. 4.** *“Long-term isolated confinement” means isolated*
14 *confinement that is expected to extend or does extend for a period*
15 *exceeding 30 days.*

16 **Sec. 5.** *“Mental health and special needs step-down units”*
17 *means housing units within a facility or institution which provide*
18 *programs that are clinically appropriate and habilitative to*
19 *offenders with a serious mental illness or other significant mental*
20 *impairment in lieu of housing such offenders in units of*
21 *administrative segregation or disciplinary segregation.*

22 **Sec. 6.** *“Mental health clinician” means:*

23 1. *A psychiatrist who is licensed to practice medicine in this*
24 *State and certified by the American Board of Psychiatry and*
25 *Neurology, Inc.;*

26 2. *A psychologist licensed to practice in this State;*

27 3. *A social worker holding a master’s degree in social work*
28 *and licensed in this State as a clinical social worker; or*

29 4. *A registered nurse holding a master’s degree in the field of*
30 *psychiatric nursing and licensed to practice professional nursing*
31 *in this State.*

32 **Sec. 7.** *“Serious mental illness or other significant mental*
33 *impairment” means a substantial disorder of thought or mood that*
34 *significantly impairs judgment, behavior, capacity to recognize*
35 *reality or ability to cope with the ordinary demands of life. The*
36 *term includes, without limitation:*

37 1. *One or more of the following disorders for which codes are*
38 *included in the most recent edition of the Diagnostic and*



Statistical Manual of Mental Disorders, published by the American Psychiatric Association:

- (a) Schizophrenia or any subtype.
- (b) Delusional disorder.
- (c) Schizophreniform disorder.
- (d) Schizoaffective disorder.
- (e) Brief psychotic disorder.
- (f) Substance-induced psychotic disorder, except intoxication and withdrawal.
- (g) Psychotic disorder not otherwise specified.
- (h) Major depressive disorders.
- (i) Bipolar I disorder and Bipolar II disorder.
2. A mental disorder that includes being actively suicidal.
3. A serious mental illness that is frequently characterized by breaks with reality or perceptions of reality that lead the person to have significant functional impairment.
4. An organic brain syndrome which results in a significant functional impairment if not treated.
5. A severe personality disorder that is manifested by frequent episodes of psychosis or depression and results in significant functional impairment.
6. An intellectual disability, as defined in NRS 0.036, with significant functional impairment.

Sec. 8. 1. Long-term isolated confinement must not be used as a form of housing for an offender who is:

- (a) Less than 18 years of age; or
- (b) Subject to:
 - (1) Protective custody;
 - (2) Administrative segregation; or
 - (3) Any other form of housing that is not punitive in nature.

2. If the safety and security of an offender require confinement in a cell that is more restrictive than the confinement which is typical for housing of offenders in the general population in the facility or institution, the restrictions to which the offender is subjected must be the least restrictive means to maintain the safety and security of the offender and the facility or institution.

3. At a minimum, an offender who is placed in long-term isolated confinement must be offered:

- (a) Opportunities for education and other programs consistent with the safety and security of the offender and the requirements of any applicable federal and state law;
- (b) At least 4 hours a day outside of his or her cell;



(c) A minimum of 1 hour of exercise outside of his or her cell, including, without limitation, access to outdoor recreation when weather permits;

(d) Access to his or her personal property, including, without limitation, a television, radio, books, magazines and other printed material;

(e) A shower and other personal hygiene products, including, without limitation, soap, each day; and

(f) Access to the same number of visits and telephone calls allowed for offenders in the general population of the facility or institution.

Sec. 9. 1. If an offender is classified for, or assigned or subject to, placement in long-term isolated confinement, a legitimate purpose for the placement must be stated in writing.

2. An offender must only be subject to long-term isolated confinement if the offender is determined, pursuant to the process set forth in section 10 of this act:

(a) To have committed one or more of the following while incarcerated within the immediately preceding 5 years:

(1) An act of violence that:

(I) Resulted in or was likely to result in serious injury or death to another; or

(II) Occurred in connection with any act of nonconsensual sexual conduct;

(2) Two or more discrete acts which caused serious disruption of the operations of the facility or institution; or

(3) An escape, attempted escape or conspiracy to escape from within a secure perimeter or custody, or both.

(b) To have committed an act as described in paragraph (a) which was so heinous or destructive that the housing of the offender in the general population of the facility or institution creates a significant risk of imminent, serious physical injury to correctional staff or other offenders.

3. As used in this section, "nonconsensual" means:

(a) Using force against the other person before consent or to gain consent;

(b) Causing grievous bodily harm to a person;

(c) Threatening or placing a person in fear to gain consent;

(d) Rendering a person unconscious;

(e) Administering to a person by force or threat of force, or without the knowledge or permission of that person, a drug, intoxicant or other similar substance which substantially impairs the ability of that other person to appraise or control his or her conduct;

(f) Receiving verbal nonconsent before the act; or



(g) Lack of permission given.

Sec. 10. 1. Before an offender is classified for, or assigned or subject to, placement in long-term isolated confinement, the offender is entitled to a hearing, unless the Director or a deputy director certifies in writing that providing a hearing before the transfer of the offender will pose a substantial and imminent threat to the safety and security of the correctional staff or other offenders in the facility or institution where the offender is housed.

2. If a certification is made pursuant to subsection 1, the hearing must be conducted within 5 business days after the date the offender is placed in long-term isolated confinement.

3. The Director shall appoint three persons to conduct a hearing pursuant to this section.

4. At least 48 hours before the hearing, the offender must receive written notice:

(a) That placement of the offender in long-term isolated confinement is being considered;

(b) Which sets forth the facts upon which such consideration is based; and

(c) Advising the offender of his or her rights pursuant to sections 2 to 25, inclusive, of this act and any regulations and policies adopted pursuant thereto.

5. At the hearing:

(a) The Department has the burden of proving by a preponderance of the evidence that the requirements set forth in section 9 of this act have been satisfied.

(b) The offender has the right to personally appear before the committee appointed pursuant to subsection 3.

(c) The offender has the right to submit documentary evidence to the committee.

(d) The offender has the right to call witnesses and cross-examine witnesses, unless the committee has made a specific, written finding that calling or cross-examining a specific witness will jeopardize the safety and security of the facility or institution. If the committee makes such a finding, the offender has the right to submit questions to be relayed to the witness.

(e) The offender has a right to an interpreter if necessary for the offender to understand or participate in the hearing.

(f) Except as otherwise provided in paragraph (g), the offender has the right to retain, at his or her own expense, an attorney to represent the offender at the hearing.

(g) The offender has the right to have an attorney or other appropriate advocate appointed for the offender if he or she cannot afford such attorney or advocate and:



(1) The committee determines that the offender is unable to prepare and present evidence and arguments effectively on his or her own behalf; or

(2) The offender requests the appointment of such attorney or advocate.

6. A hearing conducted pursuant to this section must be recorded by means of audiotape, digital or videotape recording and such recording must be preserved until 120 days after the offender is released from the long-term isolated confinement considered at the hearing.

7. Within 5 business days after the hearing, the committee shall issue a written decision setting forth the evidence relied upon and the reasons for the decision. A copy of such decision must be provided to the offender.

8. If the offender is dissatisfied with the decision of the committee, the offender may, within 14 business days after receiving the decision of the committee, submit an appeal, in writing, to the warden of the facility or institution. Not later than 14 business days after an offender submits an appeal to the warden, the warden shall respond, in writing, with a decision on the appeal. A copy of such decision must be provided to the offender.

9. If the offender is dissatisfied with the decision of the warden, the offender may, within 14 business days after receiving the decision of the warden, submit an appeal, in writing, to the Director. Not later than 14 business days after an offender submits an appeal to the Director, the Director shall respond, in writing, with a decision on the appeal. A copy of such decision must be provided to the offender.

Sec. 11. 1. An offender must not be classified for, or assigned or subject to, placement in long-term isolated confinement for a period longer than 1 year unless the Department conducts a hearing in which it establishes:

(a) By a preponderance of the evidence that the offender, within the immediately preceding year, committed an act of violence which resulted in or was likely to result in serious injury or death to another; or

(b) By clear and convincing evidence that there is a significant risk that the offender will cause physical injury to the staff of the facility or institution, other offenders or members of the public if the offender is removed from long-term isolated confinement. The association of the offender with a criminal gang or security threat group is not sufficient alone to meet this burden. As used in this paragraph:



(1) "Criminal gang" has the meaning ascribed to it in NRS 193.168.

(2) "Security threat group" means an organization of offenders that has a corporate entity, exists into perpetuity and whose membership is restrictive, mutually exclusive and may require a lifetime commitment.

2. In a hearing conducted pursuant to this section, an offender is entitled to the same process, rights and protections set forth in subsections 4 to 7, inclusive, of section 10 of this act, except that all references to a committee shall be deemed to refer to the Department.

3. If a decision is made to place an offender in long-term isolated confinement for a period longer than 1 year, the Director shall set forth in writing:

(a) All other alternatives that were considered;

(b) The reasons why those alternatives were rejected; and

(c) A plan for transitioning the offender out of long-term isolated confinement.

4. An offender who is housed in long-term isolated confinement for a period longer than 1 year is entitled to a hearing pursuant to this section, with the same process, rights and protections, at least once every 6 months.

Sec. 12. 1. An offender who is housed in long-term isolated confinement must be evaluated by a mental health clinician at least once every 30 days.

2. An evaluation conducted pursuant to subsection 1 must:

(a) Be confidential;

(b) Be conducted in-person and not, without limitation, through the door of a cell or a glass wall; and

(c) Include, without limitation:

(1) An assessment of the mental status of the offender;

(2) An assessment of the offender's risk of suicide or other behavior that presents a danger of harm to himself or herself; and

(3) A review of all available mental health records at the first assessment, and of any new records thereafter.

3. An offender who is determined at such an evaluation to have a serious mental illness or other significant mental impairment must be removed from long-term isolated confinement as directed by the mental health clinician, but in no case later than 48 hours after such determination.

Sec. 13. The Department shall institute a program that affords an offender who is placed in long-term isolated confinement the opportunity to earn his or her way out of such confinement through good behavior. The program for offenders to



1 *earn their way out of long-term isolated confinement must include*
2 *a graduated schedule and last less than 6 months.*

3 **Sec. 14.** 1. *Not later than 30 days after an offender is*
4 *placed in long-term isolated confinement, the warden or officers*
5 *of the facility or institution shall develop an individualized plan*
6 *for the offender, in accordance with the program developed by the*
7 *Department pursuant to subsection 2 of section 17 of this act.*

8 2. *An individualized plan developed pursuant to subsection 1*
9 *must include, without limitation:*

10 (a) *An assessment of the needs of the offender;*

11 (b) *A strategy for correctional staff to assist the offender in*
12 *meeting those needs; and*

13 (c) *A statement of the expectations, based on the offender's*
14 *good behavior and achievement of certain benchmarks in his or*
15 *her individualized plan, for the offender to progress toward:*

16 (1) *Fewer restrictions;*

17 (2) *Specific privileges which will be allowed to the offender;*
18 *and*

19 (3) *A return to housing for the general population of the*
20 *facility or institution.*

21 3. *The warden or officers shall provide a copy or summary of*
22 *the individualized plan to the offender and explain the plan to the*
23 *offender so that the offender can understand the plan.*

24 **Sec. 15.** 1. *At intervals of not longer than 30 days, the*
25 *warden or officers of the facility or institution shall conduct and*
26 *document an evaluation of the progress of each offender placed in*
27 *long-term isolated confinement under the offender's*
28 *individualized plan developed pursuant to section 14 of this act.*

29 2. *The evaluation conducted pursuant to subsection 1 must:*

30 (a) *Consider the state of the mental health of the offender;*

31 (b) *Address the extent to which the behavior of the offender,*
32 *measured against the plan, justifies the need to maintain, increase*
33 *or decrease the level of controls and restrictions in place at the*
34 *time of the evaluation; and*

35 (c) *Recommend whether the offender should be returned to a*
36 *less restrictive level of confinement or removed from long-term*
37 *isolated confinement.*

38 **Sec. 16.** 1. *At intervals of not longer than 90 days, a*
39 *committee appointed by the warden of the facility or institution*
40 *shall meet with each offender placed in long-term isolated*
41 *confinement to determine whether the progress of the offender*
42 *toward compliance with the individualized plan developed for the*
43 *offender pursuant to section 14 of this act, or other circumstances,*
44 *warrants:*

45 (a) *A reduction of restrictions;*



(b) Increased access to programs;

(c) A return to a less restrictive level of confinement; or

(d) Removal from long-term isolated confinement.

2. The committee shall set forth its decision in writing and provide the written decision to the warden of the facility or institution.

3. The warden of the facility or institution shall review the written decision of the committee and approve, reject or modify the decision, as appropriate.

Sec. 17. 1. Every offender who has been housed in long-term isolated confinement must be provided and required to participate in a program of resocialization before the offender is released back into the community. The program must occur in phases, starting at least 6 months before the end of his or her sentence.

2. A program of resocialization must include medical and mental health staff, including, without limitation, mental health clinicians, social workers, staff for education and habilitation to provide counseling and training in life skills to prepare offenders for safe release into the community. As used in this subsection, "training in life skills" has the meaning ascribed to it in NRS 209.4889.

Sec. 18. An offender with a serious mental illness or other significant mental impairment must not be housed in long-term isolated confinement.

Sec. 19. 1. Before an offender is placed in long-term isolated confinement, the offender must be evaluated by a mental health clinician to determine if the offender has a serious mental illness or other significant mental impairment.

2. If a mental health clinician determines that the offender has a serious mental illness or other significant mental impairment, the offender must be diverted from long-term isolated confinement to a mental health and special needs step-down unit.

Sec. 20. If an offender has a serious mental illness or other significant mental impairment:

1. A treatment plan for the offender's mental health or habilitation must be:

(a) Developed by a mental health clinician or other medical staff person, if required, in accordance with best practices; and

(b) Explained to the offender by the mental health clinician or other medical staff person who participated in the development of the treatment plan.

2. The offender may be subject to discipline, but the discipline must be handled by a collaboration between mental health clinicians, other medical staff, if required, and other officers and



employees of the Department in a mental health and special needs step-down unit.

3. Any disciplinary action imposed on the offender must not conflict with the treatment plan for the offender developed pursuant to subsection 1.

4. The treatment plan for the offender developed pursuant to subsection 1 must be updated by a mental health clinician and other pertinent mental health and medical staff:

(a) Immediately after the offender is placed in a mental health and special needs step-down unit; and

(b) At least every 30 days after the offender is placed in a mental health and special needs step-down unit.

Sec. 21. 1. A mental health and special needs step-down unit:

(a) Must be physically separate from any unit for long-term isolated confinement; and

(b) Must not be operated as a unit of housing in disciplinary segregation.

2. Decisions about treatment and conditions of confinement must be made based upon:

(a) A clinical assessment of the therapeutic and rehabilitative needs of an offender; and

(b) Maintenance of adequate safety and security.

3. An offender in a mental health and special needs step-down unit must be offered:

(a) At least 4 hours each day of therapeutic programs and mental health treatment outside of his or her cell, except on weekends and holidays when such programs and treatment may be limited to not less than 2 hours each day;

(b) A minimum of 1 hour per day of exercise outside of his or her cell, including access to outdoor recreation when weather permits; and

(c) Other activities outside of his or her cell that are consistent with the mental health and rehabilitative needs of the offender.

Sec. 22. An offender in a mental health and special needs step-down unit must not be subject to discipline for refusing treatment or medications or for engaging in behavior, or threats thereof, that presents a danger of harm to himself or herself, or related charges for the same behaviors, such as destruction of state property, except in exceptional circumstances in which officers and employees of the facility or institution determine in writing that:

1. The safety and security of the facility or institution was compromised by the actions of the offender; and

2. The offender evinced malicious intent.



Sec. 23. 1. *Within 30 days after an offender is placed in a mental health and special needs step-down unit and every 30 days thereafter, or sooner if deemed necessary, a joint case management committee shall meet to:*

(a) Review the placement of the offender in the unit;

(b) Review the progress of the offender in the programs of the unit;

(c) Review what adjustments, if any, in the participation of the offender in programs of the unit are necessary to assist the offender to make progress;

(d) Determine whether continued placement of the offender in the unit is warranted;

(e) Determine whether additional privileges may be granted to the offender while he or she is in the unit; and

(f) Determine whether the offender should be moved to less restrictive housing.

2. *If the joint case management committee determines that the placement of the offender in the unit should be continued, the committee shall make specific written findings as to:*

(a) The reasons the placement of the offender in the unit must continue; and

(b) The actions the prisoner must take in order to be:

(1) Granted additional privileges; and

(2) Moved out of the mental health and special needs step-down unit.

3. *A copy of the written findings made pursuant to subsection 3 must be given and explained to the offender so that the offender understands the findings.*

4. *As used in this section, a "joint case management committee" means a committee composed of:*

(a) A mental health clinician;

(b) A clinician who is knowledgeable in habilitation;

(c) A member of the staff of the mental health and special needs step-down unit;

(d) The warden or a manager of the facility or institution; and

(e) Other members of the staff of the facility or institution, as appropriate.

Sec. 24. 1. *The Department shall conduct an ongoing and comprehensive review of the regulations, policies, standards and treatment relating to offenders held in long-term isolated confinement, as well as the disciplinary records of offenders, to determine the effectiveness of those regulations, policies and standards and the degree to which the treatment of offenders held in long-term isolated confinement complies with sections 2 to 25, inclusive, of this act.*



2. The Department shall, on or before October 1 of each year, prepare and submit to the Advisory Commission on the Administration of Justice an annual report containing the findings of the Department based on the review conducted pursuant to subsection 1.

Sec. 25. 1. The Division of Public and Behavioral Health of the Department of Health and Human Services shall monitor the quality of care for mental health and habilitation provided to offenders pursuant to sections 2 to 25, inclusive, of this act.

2. Inspectors designated by the Division of Public and Behavioral Health must have:

(a) Direct, unannounced and immediate access to all areas where offenders are housed in the mental health and special needs step-down units and in any units for housing of long-term isolated confinement; and

(b) Access to the records of the Department relating to offenders who are held in units described in paragraph (a), including, without limitation:

(1) Medical and mental health records;

(2) Disciplinary records; and

(3) Other relevant files of the facility or institution.

3. The Division of Public and Behavioral Health shall maintain the confidentiality of all information related to the medical and mental health of an offender.

Sec. 26. 1. The Director of the Department of Corrections shall review all regulations and policies of the Department of Corrections that are in effect on January 1, 2016, as they relate to offenders held in long-term isolated confinement, as defined in section 4 of this act, and update those policies as necessary to conform to the provisions of sections 2 to 25, inclusive, of this act not later than June 30, 2016.

2. The Director of the Department of Corrections shall adopt such regulations as are necessary to implement sections 2 to 25, inclusive, of this act.

Sec. 27. The Director of the Department of Corrections shall:

1. Review the status of all offenders held in long-term isolated confinement, as defined in section 4 of this act, in this State not later than April 1, 2016, to:

(a) Determine whether those offenders should remain in those units under the terms of sections 2 to 25, inclusive, of this act; and

(b) Ensure that offenders held in isolated confinement, as defined in section 3 of this act, for a period longer than 30 days receive a hearing pursuant to section 10 of this act.



1 2. Report the results of the review conducted pursuant to
2 subsection 1 to the Advisory Commission on the Administration of
3 Justice not later than July 1, 2016.

4 **Sec. 28.** This act becomes effective:

5 1. Upon passage and approval for the purposes of adopting any
6 regulations and performing any preparatory administrative tasks
7 necessary to carry out the provisions of this act; and

8 2. On January 1, 2016, for all other purposes.

