

Amendment No. 993

Senate Amendment to Senate Bill No. 402 First Reprint (BDR 16-1087)

Proposed by: Senate Committee on Finance

Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

DP/BAW



Date: 5/29/2017

S.B. No. 402—Restricts the use of certain disciplinary action on persons in confinement. (BDR 16-1087)



SENATE BILL NO. 402—SENATORS SPEARMAN, SEGERBLOM, MANENDO; CANCELA,
DENIS, RATTI AND WOODHOUSE

MARCH 20, 2017

JOINT SPONSORS: ASSEMBLYMEN NEAL; ARAUJO,
FRIERSON AND THOMPSON

Referred to Committee on Judiciary

SUMMARY—Restricts the use of certain disciplinary action on persons in
confinement. (BDR 16-1087)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 ~~omitted material~~ is material to be omitted.

AN ACT relating to the administration of justice; ~~restricting the use of solitary confinement on persons who are in confinement;~~ establishing certain restrictions and procedures for the use of disciplinary segregation and solitary confinement by the Department of Corrections or a private facility or institution; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 3 of this bill prohibits the Department of Corrections or a private facility or institution from imposing solitary confinement on ~~to a person~~ an offender confined in a prison: (1) as part of a disciplinary sanction unless the Department or private facility or institution provides written notice, ~~and~~ a hearing and, if applicable, a psychological evaluation for the offender; and (2) solely on the basis of the mental illness or impairment of the ~~person~~ offender, but may, if necessary for the safety of the offender, staff or any other person, subject the offender to solitary confinement in conjunction with daily evaluations by a provider of health care. **Section 3** establishes the procedure for a hearing for the purpose of addressing a disciplinary sanction and imposing a disciplinary segregation. **Section 3** requires the Department or private facility or institution to take certain actions if it is known or suspected that a mental health or medical condition caused the alleged violation which is the basis for the hearing. **Section 3** also authorizes an offender to request placement in solitary confinement under certain circumstances. If the Department or private facility or institution imposes disciplinary segregation on the offender, **section 3** requires that the period of disciplinary segregation: (1) be the minimum time required to address the disciplinary sanction or threat of harm; and (2) not exceed certain periods based on the seriousness of the offense. **Section 3** requires the Department or private facility or institution to provide certain provisions and accommodations to an offender who is subject to disciplinary segregation. Under certain circumstances, an offender who is subject to disciplinary segregation is authorized to petition the warden of the institution or facility for early release from disciplinary segregation.

~~Section 4 of this bill prohibits the use of solitary confinement on a prisoner who is detained in a county, city or town jail or other detention facility unless: (1) the prisoner is not a person with serious mental illness or other significant mental impairment; (2) the prisoner presents a serious and immediate risk of harm to himself or herself, staff or others or to the security of the facility; and (3) all other less restrictive options have been exhausted. Section 4 further prohibits the use of solitary confinement for the purpose of disciplining or punishing a prisoner and provides that if a prisoner is held in solitary confinement, the period of solitary confinement must be the minimum time required to address the threat and must end if the mental or physical health of the prisoner is compromised.~~

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

Section 1. (Deleted by amendment.)

Sec. 2. (Deleted by amendment.)

Sec. 3. Chapter 209 of NRS is hereby amended by adding thereto a new section to read as follows:

1. ~~Except as otherwise provided in this section, the~~ The Department or a private facility or institution shall not:

(a) Place an offender in disciplinary segregation ~~if~~ unless the offender is found guilty of an infraction after ~~notice~~ ;

(1) Notice and a hearing pursuant to subsection 3 ~~if~~ ; and

(2) If applicable, a psychological evaluation pursuant to subsection 4.

(b) Subject an offender with a serious mental illness or other significant mental impairment to solitary confinement solely on the basis of such mental illness or impairment ~~if~~ , but may subject such an offender to solitary confinement if it is necessary for the safety of the offender, staff or any other person. If such an offender is subjected to solitary confinement, the offender must receive a health and welfare check at his or her cell by a provider of health care at least once each day.

2. An offender who is confined in an institution or facility of the Department or a private facility or institution may request placement in solitary confinement to protect his or her safety. The Department or private facility or institution may not assign the offender to solitary confinement unless the Department or private facility or institution performs an independent assessment of the threat to the offender, determines that the placement in solitary confinement is necessary to protect the safety of the offender and the offender is placed in solitary confinement only for the duration of the threat.

3. Upon the filing of a disciplinary action against an offender that may result in the sanction of disciplinary segregation of the offender, the Department or private facility or institution shall:

(a) Serve written notice of the charges against the offender which sets forth the reasons for the filing of the disciplinary action against the offender and a notice that the offender may appeal any discipline or punishment imposed on the offender as a result of a hearing unless the offender has agreed to a bargained plea.

(b) Hold a hearing concerning the charges against the offender not later than 15 days after the alleged violation or not later than 15 days after the completion of the investigation of the alleged violation, whichever is later. A hearing held pursuant to this paragraph must be presided over by an officer or employee of the Department or private facility or institution who has no direct

1 involvement in the incident constituting an alleged violation. At the hearing, the
2 offender must be allowed ~~to call witnesses with substantive knowledge of the~~
3 ~~issues involved in the alleged violation and~~ to present documentary evidence
4 germane to the alleged violation ~~and to call one or more witnesses with~~
5 ~~substantive, relevant knowledge of the issues involved in the alleged violation~~
6 ~~except for a witness who has been discharged, who is not located at the facility or~~
7 ~~institution where the hearing is being conducted or who poses a threat to safety~~
8 ~~or security at the hearing. The presiding officer or employee may find that the~~
9 offender committed an infraction of the rules of the institution or facility only if
10 he or she finds, based on the evidence presented at the hearing, that there is
11 evidence that the infraction occurred and that the offender more likely than not
12 committed the infraction. The presiding officer or employee must provide to the
13 offender a written statement of the evidence supporting the determination of the
14 presiding officer or employee unless providing such a written statement would
15 jeopardize the safety or security of the institution or facility or the safety of the
16 staff or offenders in the institution or facility.

17 4. The Department or private facility or institution must refer the offender
18 for a psychological evaluation before holding a hearing pursuant to subsection 3
19 if, at any stage of the disciplinary process set forth in subsection 3:

20 (a) It is known or suspected that a mental health condition or medical
21 condition of the offender was a substantial cause of the alleged violation;

22 (b) The offender is assigned to a mental health program of the Department
23 or private facility or institution; or

24 (c) The offender has been diagnosed as seriously mentally ill.

25 ➤ If, during the psychological evaluation, the staff of the Department or private
26 facility or institution has reason to believe that the alleged violation by the
27 offender may have been the result of a medical condition of the offender,
28 including, without limitation, dementia, Alzheimer's disease, post-traumatic
29 stress disorder or traumatic brain injury, the staff of the Department or private
30 facility or institution must refer the offender to the medical staff of the institution
31 or facility for a medical review and recommendation before holding a hearing
32 pursuant to subsection 3.

33 5. If the sanction of disciplinary segregation is imposed on an offender, the
34 offender:

35 (a) May, after serving one-half of the period for which the offender is
36 sanctioned to disciplinary segregation, petition the warden of the institution or
37 facility for release from disciplinary segregation if the offender has demonstrated
38 good behavior. The offender must be advised that he or she may petition the
39 warden pursuant to this paragraph.

40 (b) Must, while subject to disciplinary segregation, be:

41 (1) Allowed to wear his or her personal clothing ~~and~~ issued by the
42 Department;

43 (2) Served the same meal and ration as is provided to offenders in
44 general population unless the offender is placed on a special diet for health or
45 religious reasons;

46 (3) Allowed visitation;

47 (4) Allowed all first-class and legal mail addressed to the offender;

48 (5) Permitted a minimum of at least 5 hours of exercise per week, unless
49 doing so would present a threat to the safety or security of the institution or
50 facility;

51 (6) Given access to reading materials; and

52 (7) Given access to materials from the law library in the institution or
53 facility.

~~6. If a medical professional diagnoses an offender as an offender with a serious mental illness or other significant impairment, the offender must be placed in solitary confinement for the safety of the offender, staff or any other person and the offender must be evaluated at his or her cell by a provider of health care at least once each day.~~

~~7. The period for which an offender may be held in disciplinary segregation must be the minimum time required to address the disciplinary sanction or threat of harm to the offender, staff or any other person or to the security of the institution or facility, as defined by the regulations adopted by the Board. Such a period must not exceed:~~

~~(a) If the offender, while in the custody of the Department or private facility or institution, commits an offense categorized as a category C felony by the laws of this State, 10 days.~~

~~(b) If the offender, while in the custody of the Department or private facility or institution, commits an offense categorized as a category B felony by the laws of this State, 30 days.~~

~~(c) If the offender, while in the custody of the Department or private facility or institution, commits an offense categorized as a category A felony by the laws of this State, 60 days.~~

~~(d) If the offender, while in the custody of the Department or private facility or institution, commits an assault or battery against an employee or contractor of the Department or a private facility or institution, 180 days.~~

~~(e) If the offender, while in the custody of the Department or private facility or institution, commits murder, 365 days.~~

~~8. 7. As used in this section, "offender with serious mental illness or other significant mental impairment" means an offender:~~

~~(a) With a substantial disorder of thought or mood that significantly impairs judgment, behavior or capacity to recognize reality, which may include, without limitation, a person who is found to have current symptoms of, or who is currently receiving treatment based on a type of diagnosis found in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders, published by the American Psychiatric Association; or~~

~~(b) Who is diagnosed with an intellectual disability, as defined in NRS 435.007.~~

~~Sec. 4. Chapter 211 of NRS is hereby amended by adding thereto a new section to read as follows:~~

~~1. A sheriff, chief of police or town marshal shall not:~~

~~(a) Use solitary confinement for the purpose of disciplining or punishing a prisoner; or~~

~~(b) Subject a prisoner with serious mental illness or other significant mental impairment to solitary confinement.~~

~~2. A prisoner who is confined in a county, city or town jail or detention facility must not be subjected to solitary confinement unless:~~

~~(a) There are compelling reasons to believe that the prisoner presents a serious and immediate threat of harm to himself or herself, staff or others or to the security of the jail or detention facility; and~~

~~(b) All other less restrictive options have been exhausted.~~

~~3. A prisoner who is held in solitary confinement may be held in solitary confinement only for the minimum time required to address the threat of harm to the prisoner, staff or others or to the security of the jail or detention facility, but only if the mental and physical health of the prisoner is not compromised.~~

~~4. As used in this section, "offender with a serious mental illness or other significant mental impairment" has the meaning ascribed to it in section 3 of this act.~~ **(Deleted by amendment.)**

Sec. 5. [NRS 211.118 is hereby amended to read as follows:

~~211.118 As used in NRS 211.118 to 211.200, inclusive, and section 4 of this act, "public works" means the renovation, repair or cleaning of any street, drainage facility, road, sidewalk, public square, park or building, or cutting away hills, grading, putting in sewers or other work, which is authorized to be done by and for the use of any of the counties, cities or towns, and the expense of which is not to be borne exclusively by persons or property particularly benefited thereby. The term does not include any project to which the provisions of NRS 338.020 apply.]~~ **(Deleted by amendment.)**

Sec. 6. [NRS 211.150 is hereby amended to read as follows:

~~211.150 1. [If] Except as otherwise provided in section 4 of this act, if a prisoner is disobedient or disorderly, or does not faithfully perform his or her tasks, the officers having charge of the prisoner may take action to discipline and punish the prisoner. The action may include confinement to an individual cell separate from other prisoners for the protection of the staff of the jail and other prisoners. An officer who confines a prisoner to an individual cell for any reason shall report his or her action as soon as possible to the person in charge of the jail.~~

~~2. A report of the number of prisoners who are performing work and the amount and type of work performed must be submitted to the person in charge of the jail on the last day of each month.]~~ **(Deleted by amendment.)**

Sec. 7. (Deleted by amendment.)

Sec. 8. This act becomes effective on July 1, 2017.