

SENATE BILL NO. 187—SENATOR SPEARMAN

MARCH 8, 2021

Referred to Committee on Judiciary

SUMMARY—Makes various changes relating to the solitary confinement of offenders. (BDR 16-170)

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 offenders; defining certain terms relating to the housing of offenders, including the term “solitary confinement”; requiring the Director of the Department of Corrections to adopt certain regulations relating to solitary confinement; requiring the Department of Corrections to submit an annual report concerning the use of solitary confinement to the Advisory Commission on the Administration of Justice; limiting the number of days that an offender may be placed in disciplinary segregation; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law prohibits the Department of Corrections and private facilities and institutions from placing an offender in disciplinary segregation or subjecting or assigning an offender to solitary confinement unless certain procedures are followed. (NRS 209.369) **Sections 2-10** of this bill define certain terms, including “solitary confinement,” for purposes relating to the housing of offenders. **Section 12** of this bill makes a conforming change to indicate the placement of **sections 2-10** in the Nevada Revised Statutes.

Section 11 of this bill requires the Director of the Department of Corrections to adopt regulations governing the use of solitary confinement to, among other things: (1) provide that solitary confinement may only be used as a last resort, in the least restrictive manner and for the shortest period of time safely possible; (2) limit the use of disciplinary segregation to certain circumstances; (3) review and make certain evaluations relating to the use of solitary confinement; (4) provide access to programming for offenders who are subjected to or assigned to solitary confinement; (5) require certain training for staff who work in units used for solitary confinement; and (6) establish minimum requirements, reviews and various procedures relating to certain types of solitary confinement.



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Section 13 of this bill requires the Department of Corrections to submit an annual report concerning the use of solitary confinement by the Department and private facilities and institutions to the Advisory Commission on the Administration of Justice. The annual report must contain, without limitation: (1) the number of offenders subjected to or assigned to solitary confinement; (2) the periods of time, and the number of offenders for each such period, for which offenders were subjected to or assigned to solitary confinement; (3) the reasons offenders were subjected to or assigned to solitary confinement; (4) the number of offenders subjected to or assigned to solitary confinement who were found to have a mental illness; (5) certain demographic information on the offenders subjected to or assigned to solitary confinement; (6) certain information relating to disciplinary hearings for offenders subjected to or assigned to solitary confinement; (7) certain information on reviews of vulnerable offenders subjected to or assigned to solitary confinement; and (8) certain information on programming for offenders while subjected to or assigned to solitary confinement. **Section 13** also removes certain provisions on the length of stay of offenders placed in disciplinary segregation and instead limits the maximum number of days that an offender may be placed in disciplinary segregation to not more than 30 days.

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

Section 1. Chapter 209 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 11, inclusive, of this act.

Sec. 2. *“Administrative segregation” means the separation of an offender from the general population which is imposed by classification when the continued presence of the offender in the general population or protective segregation would pose a serious threat to life, property, self, staff, other offenders or to the security or orderly operation of the facility or institution.*

Sec. 3. *“Behavior modification unit” means a designated housing area within a facility or an institution which provides:*

1. An intermediate, transitional level of supervision from disciplinary segregation; or

2. A chronic level of mental health services to offenders who require higher levels of care and supervision than what is provided for in the general population but do not require in-patient care.

Sec. 4. *“Disciplinary detention” means the separation of an offender in a separate housing unit within a facility or an institution which is designed to ensure:*

1. The safety, security and orderly operation of the facility or institution; and

2. The protection of the public through the use of sanctions for offenders who commit prohibited acts.

Sec. 5. *“Disciplinary segregation” means the separation of an offender from the general population for a specified period of*



time when an offender has committed a serious violation of the rules of a facility or an institution.

Sec. 6. "General population" means the status of offenders who are incarcerated and do not have a special status, including, without limitation, a status of solitary confinement.

Sec. 7. "Protective segregation" means the separation of an offender from the general population when the offender requests or requires protection from other offenders for reasons relating to health or safety.

Sec. 8. "Restrictive housing" means the housing of offenders with the intent to:

1. Manage offenders who have committed violence or a violation of a rule;

2. Manage challenging populations of offenders; or

3. House offenders considered vulnerable.

Sec. 9. "Segregated housing" means the housing of offenders in a location that is separate and apart from the housing provided for offenders in the general population.

Sec. 10. "Solitary confinement" means the housing of an offender in a location where the offender is restricted to a cell for 22 hours or more a day. The term includes, without limitation, placement in protective segregation, disciplinary segregation, administrative segregation, disciplinary detention, segregated housing, a behavior modification unit or restrictive housing.

Sec. 11. The Director shall adopt, with the approval of the Board, such regulations as are necessary to:

1. Ensure that solitary confinement may only be used:

(a) As a last resort, when an offender must be separated from the general population in a secure environment;

(b) In the least restrictive manner; and

(c) For the shortest period of time safely possible.

2. Limit the use of disciplinary segregation to class A offenses as defined in Nevada Department of Corrections Administrative Regulation 707.

3. Prescribe the use of effective alternative responses for offenses other than class A offenses by creating additional sanctions as alternatives to disciplinary segregation. Such sanctions must not include the loss of visitation or telephone privileges.

4. Create an individualized plan for each offender placed in administrative segregation. Pursuant to such a plan, staff shall develop, as soon as possible after an offender is placed in administrative segregation and in consultation with the offender, a clear behavioral and programming strategy with the goal of returning the offender to a less restrictive housing unit as



promptly as possible. The plan must take into account the individualized treatment of the offender, the programming needs of the offender and any history of repeated placements in or refusal to leave administrative segregation and the contributing factors to any such history.

5. Avoid releasing an offender from solitary confinement directly into the community by, without limitation:

(a) Requiring offenders to be placed in the general population for a period of not less than 30 days before the release of the offender.

(b) Requiring offenders subjected to or assigned to solitary confinement for a period of 30 days or more to be given priority for step-down programming. Such offenders must receive the same types of reentry programming and preparation as any other offenders, with such programming starting not less than 1 year before the scheduled date of release of the offender.

6. Ensure that offenders who have been released from solitary confinement do not spend more time in solitary confinement than is reasonably necessary. This must include the consolidation of offenders who have been approved for release from solitary confinement but who are waiting for appropriate housing in the general population.

7. Evaluate the conditions and use of disciplinary segregation for vulnerable populations, including, without limitation, offenders with disabilities or mental illness, youth and women. The evaluation must include, without limitation:

(a) An analysis of efforts to eliminate the use of solitary confinement for offenders with severe mental illness.

(b) An analysis of efforts to prioritize the placement of offenders in behavior modification units and other less restrictive housing units for vulnerable offenders.

(c) A review of vulnerable offenders subjected to or assigned to solitary confinement, which must be conducted at least once every 7 days to assess whether such offenders may return to housing in the general population.

8. Review all offenders subjected to or assigned to solitary confinement by, without limitation:

(a) Evaluating the mental health of an offender not more than 24 hours after the offender is subjected to or assigned to solitary confinement.

(b) Completing an evaluation by the multidisciplinary classification committee for each offender at least once every 7 days for the first 60 days in solitary confinement and at least once every 30 days thereafter.



9. Provide access to programming for offenders subjected to or assigned to solitary confinement, including, without limitation, access to:

(a) Behavioral health programming for offenders with identified behavioral health issues.

(b) Transitional programming for offenders that have been in solitary confinement for more than 15 days.

(c) Educational programming, when such programming does not place the safety of the offender, staff or facility or institution at risk.

(d) Group programming, when such programming is permitted and does not place the safety of the offenders, staff or facility or institution at risk.

10. Require all staff who work in units used for solitary confinement to complete additional training on topics including, without limitation:

(a) Effective communication.

(b) Crisis intervention.

(c) De-escalation.

11. Improve the overall conditions in solitary confinement by, without limitation:

(a) Providing out-of-cell recreation for not less than 2 hours a day, including structured activity.

(b) Providing congregate recreation, when the risk is mitigated through the identification of offenders who may participate in out-of-cell time together.

(c) Allowing access to a telephone not less than once a day between the hours of 8 a.m. and 11 p.m.

(d) Providing access to weekly contact visits, absent an individualized determination that allowing an offender a contact visit would jeopardize the safety of others.

12. Establish minimum protocols relating to conditions in a behavior modification unit, which must include, without limitation:

(a) The collection of data on offenders, including without limitation, the demographics, lengths of stay and any instances of reentry to solitary confinement from a behavior modification unit.

(b) The authorization of not less than 5 hours a day for time to be spent outside of a behavior modification unit.

(c) The provision of both structured and unstructured recreation during time spent outside of a behavior modification unit.

(d) The provision of programming in a behavior modification unit that promotes socialization and prepares offenders for reintegration into the general population.



(e) The allowance of unrestricted movement in a behavior modification unit.

Sec. 12. NRS 209.011 is hereby amended to read as follows:

209.011 As used in this chapter, unless the context otherwise requires, the terms defined in NRS 209.021 to 209.085, inclusive, *and sections 2 to 10, inclusive, of this act* have the meanings ascribed to them in those sections.

Sec. 13. NRS 209.369 is hereby amended to read as follows:

209.369 1. The Department or a private facility or institution shall not:

(a) Place an offender in disciplinary segregation unless the offender is found guilty of an infraction after:

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

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

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

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

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

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

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

(a) May, after serving one-half of the period for which the offender is sanctioned to disciplinary segregation, petition the warden of the institution or facility for release from disciplinary segregation if the offender has demonstrated good behavior. The



offender must be advised that he or she may petition the warden pursuant to this paragraph.

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

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

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

(3) Allowed visitation;

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

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

(6) Given access to reading materials; and

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

6. 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 ~~1~~:

~~—(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.] 30 days.~~

7. On or before July 1 of each year, the Department shall submit a report concerning the use of solitary confinement by the Department and private facilities and institutions in the immediately preceding calendar year to the Director of the Legislative Counsel Bureau for transmittal to the Advisory Commission on the Administration of Justice. The report must



1 *include, without limitation, the following information provided in*
2 *the aggregate and without any personally identifiable information:*

3 *(a) The number of offenders subjected to or assigned to*
4 *solitary confinement.*

5 *(b) The periods of time, and the number of offenders for each*
6 *such period, for which offenders were subjected to or assigned to*
7 *solitary confinement.*

8 *(c) The reasons offenders were subjected to or assigned to*
9 *solitary confinement.*

10 *(d) The number of offenders subjected to or assigned to*
11 *solitary confinement who were found to have a mental illness.*

12 *(e) The number of offenders subjected to or assigned to*
13 *solitary confinement by race, ethnicity, sexual orientation, age and*
14 *gender identity or expression.*

15 *(f) The amount of time between a disciplinary infraction,*
16 *which may result in an offender being subjected to or assigned to*
17 *solitary confinement, and any disciplinary hearing, including the*
18 *results of the hearing.*

19 *(g) The dates of any reviews conducted for offenders subjected*
20 *to or assigned to solitary confinement, including, without*
21 *limitation, reviews of any vulnerable populations, such as*
22 *offenders with disabilities or mental illness, youth and women.*

23 *(h) The number of offenders who participated in*
24 *programming, including the type of programming, while subjected*
25 *to or assigned to solitary confinement.*

26 **8.** As used in this section, “offender with serious mental illness
27 or other significant mental impairment” means an offender:

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

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

37 **Sec. 14.** Notwithstanding any other provision of this act, the
38 initial report submitted by the Department of Corrections pursuant
39 to NRS 209.369, as amended by section 13 of this act, must be
40 submitted on or before July 1, 2022.

41 **Sec. 15.** The provisions of subsection 1 of NRS 218D.380 do
42 not apply to any provision of this act which adds or revises a
43 requirement to submit a report to the Legislature.



1 **Sec. 16.** This act becomes effective on July 1, 2021.

