

SENATE BILL NO. 307—SENATOR SPEARMAN

MARCH 16, 2023

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to human rights.  
(BDR 16-881)

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; requiring the Director of the Department of Corrections to adopt certain regulations relating to solitary confinement; requiring the Department to submit a biennial report concerning the use of solitary confinement to the Joint Interim Standing Committee on the Judiciary; 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 2-11** of this bill define certain terms, including "solitary confinement," for purposes relating to the housing of offenders. **Section 13** of this bill makes a conforming change to indicate the proper placement of **sections 2-11** in the Nevada Revised Statutes.

**Section 12** of this bill requires the Director of the Department 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 placed in 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.

**Section 14** of this bill requires the Department to submit a biennial report concerning the use of solitary confinement by the Department and private facilities



and institutions to the Joint Interim Standing Committee on the Judiciary. The biennial report must contain, without limitation: (1) the number of offenders placed in solitary confinement; (2) the periods of time, and the number of offenders for each such period, for which offenders were placed in solitary confinement; (3) the reasons offenders were placed in solitary confinement; (4) the number of offenders placed in solitary confinement who were found to have mental illness; (5) certain demographic information on the offenders placed in solitary confinement; (6) certain information relating to disciplinary hearings for offenders placed in solitary confinement; (7) certain information on reviews of vulnerable offenders placed in solitary confinement; and (8) certain information on programming for offenders while placed in solitary confinement. **Section 14** also removes certain provisions relating to 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 15 consecutive days.

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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 12, 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 who 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 institution.*



1     **Sec. 6.** *“General population” means the status of offenders*  
2 *who are incarcerated and do not have a special status, including,*  
3 *without limitation, a status of solitary confinement.*

4     **Sec. 7.** *“Protective segregation” means the separation of an*  
5 *offender from the general population when the offender requests*  
6 *or requires protection from other offenders for reasons relating to*  
7 *health or safety.*

8     **Sec. 8.** *“Restrictive housing” means the housing of offenders*  
9 *with the intent to:*

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

12     2. *Manage challenging populations of offenders; or*

13     3. *House vulnerable offenders.*

14     **Sec. 9.** *“Segregated housing” means the housing of*  
15 *offenders in a location that is separate and apart from the housing*  
16 *provided for offenders in the general population.*

17     **Sec. 10.** *“Solitary confinement” means the housing of an*  
18 *offender in a location where the offender is restricted to a cell for*  
19 *approximately 22 hours per day. The term includes, without*  
20 *limitation, placement in protective segregation, disciplinary*  
21 *segregation, administrative segregation, disciplinary detention,*  
22 *segregated housing, a behavior modification unit or restrictive*  
23 *housing.*

24     **Sec. 11.** *“Vulnerable offender” means an offender with*  
25 *serious mental illness or other significant mental impairment, as*  
26 *defined in NRS 209.369, or an offender who:*

27     1. *Is less than 21 years of age;*

28     2. *Is 55 years of age or older;*

29     3. *Has a physical disability;*

30     4. *Is pregnant; or*

31     5. *Gave birth during the 8 weeks immediately preceding a*  
32 *hearing held pursuant to NRS 209.369.*

33     **Sec. 12.** *The Director shall adopt, with the approval of the*  
34 *Board, such regulations as are necessary to:*

35     1. *Ensure that solitary confinement may only be used:*

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

38     (b) *In the least restrictive manner; and*

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

40     2. *Limit the use of disciplinary segregation to:*

41     (a) *Class A offenses as described in Nevada Department of*  
42 *Corrections Administrative Regulation 707; and*

43     (b) *Offenders who are not vulnerable offenders.*

44     3. *Prescribe the use of effective alternative responses for*  
45 *violations other than class A offenses and violations committed by*



vulnerable offenders 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 placed in 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 solitary confinement for vulnerable offenders. The evaluation must include, without limitation:

(a) An analysis of efforts to eliminate the use of solitary confinement for offenders with serious 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 offenders who are vulnerable offenders placed in 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 placed in solitary confinement by, without limitation:



(a) Evaluating the mental health of an offender not more than 24 hours after the offender is placed in solitary confinement.

(b) Completing an evaluation by a 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 placed in solitary confinement, including, without limitation, access to:

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

(b) Transitional programming for offenders placed 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 including, without limitation, by:

(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. 13.** NRS 209.011 is hereby amended to read as follows:

209.011 As used in this chapter, unless the context otherwise requires, the *words and* terms defined in NRS 209.021 to 209.085, inclusive, *and sections 2 to 11, inclusive, of this act* have the meanings ascribed to them in those sections.

**Sec. 14.** 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}~~ *Place* an offender with a serious mental illness or other significant mental impairment ~~{to}~~ *in* solitary confinement solely on the basis of such mental illness or impairment, but may ~~{subject}~~ *place* such an offender ~~{to}~~ *in* solitary confinement if it is necessary for the safety of the offender, staff or any other person. If such an offender is ~~{subjected to}~~ *placed in* 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}~~ *place such an* offender ~~{to}~~ *in* solitary confinement unless ~~{the}~~ :

(a) *The* Department or private facility or institution performs an independent assessment of the threat to the offender ~~{,}~~ *and* determines that the placement in solitary confinement is necessary to protect the safety of the offender ; and ~~{the}~~

(b) *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



1 against the offender and a notice that the offender may appeal any  
2 discipline or punishment imposed on the offender as a result of a  
3 hearing unless the offender has agreed to a bargained plea.

4 (b) Hold a hearing concerning the charges against the offender  
5 not later than 15 days after the alleged violation or not later than 15  
6 days after the completion of the investigation of the alleged  
7 violation, whichever is later. A hearing held pursuant to this  
8 paragraph must be presided over by an officer or employee of the  
9 Department or private facility or institution who has no direct  
10 involvement in the incident constituting an alleged violation. At the  
11 hearing, the offender must be allowed to present documentary  
12 evidence germane to the alleged violation and to call one or more  
13 witnesses with substantive, relevant knowledge of the issues  
14 involved in the alleged violation except for a witness who has been  
15 discharged, who is not located at the facility or institution where the  
16 hearing is being conducted or who poses a threat to safety or  
17 security at the hearing. The presiding officer or employee may find  
18 that the offender committed an infraction of the rules of the  
19 institution or facility only if he or she finds, based on the evidence  
20 presented at the hearing, that there is evidence that the infraction  
21 occurred and that the offender more likely than not committed  
22 the infraction. The presiding officer or employee must provide to the  
23 offender a written statement of the evidence supporting the  
24 determination of the presiding officer or employee unless providing  
25 such a written statement would jeopardize the safety or security of  
26 the institution or facility or the safety of the staff or offenders in the  
27 institution or facility.

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

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

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

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

38 ➤ If, during the psychological evaluation, the staff of the  
39 Department or private facility or institution has reason to believe  
40 that the alleged violation by the offender may have been the result  
41 of a medical condition of the offender, including, without limitation,  
42 dementia, Alzheimer's disease, post-traumatic stress disorder or  
43 traumatic brain injury, the staff of the Department or private facility  
44 or institution must refer the offender to the medical staff of the



1 institution or facility for a medical review and recommendation  
2 before holding a hearing pursuant to subsection 3.

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

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

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

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

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

17 (3) Allowed visitation;

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

20 (5) *Allowed access to a telephone;*

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

24 ~~[(6)]~~ (7) Given access to reading materials; and

25 ~~[(7)]~~ (8) Given access to materials from the law library in  
26 the institution or facility.

27 6. The period for which an offender may be held in disciplinary  
28 segregation must be the minimum time required to address the  
29 disciplinary sanction or threat of harm to the offender, staff or any  
30 other person or to the security of the institution or facility, as  
31 defined by the regulations adopted by the Board. Such a period must  
32 not exceed ~~1~~:

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

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

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

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



~~—(e) If the offender, while in the custody of the Department or private facility or institution, commits murder, 365] 15 consecutive days.~~

7. *On or before July 1 of each even-numbered year, the Department shall submit a report concerning the use of solitary confinement by the Department and private facilities and institutions during the immediately preceding biennium to the Director of the Legislative Counsel Bureau for transmittal to the Joint Interim Standing Committee on the Judiciary. The report must include, without limitation, the following information, provided in the aggregate and without any personally identifiable information:*

(a) *The number of offenders placed in solitary confinement, in total and disaggregated by race, ethnicity, sexual orientation, age and gender identity or expression.*

(b) *The periods of time, and the number of offenders for each such period, for which offenders were placed in solitary confinement.*

(c) *The reasons offenders were placed in solitary confinement.*

(d) *The number of offenders placed in solitary confinement who were found to have mental illness.*

(e) *The amount of time between a disciplinary infraction, which may result in an offender being placed in solitary confinement, and any disciplinary hearing, including the results of the hearing.*

(f) *The dates of any reviews conducted for offenders placed in solitary confinement, including, without limitation, reviews of any vulnerable offenders.*

(g) *The number of offenders who participated in programming, including the type of programming, while placed in solitary confinement.*

8. 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. 15.** Notwithstanding any other provision of this act, the initial report submitted by the Department of Corrections pursuant



1 to NRS 209.369, as amended by section 14 of this act, must be  
2 submitted on or before July 1, 2024.

3 **Sec. 16.** The provisions of subsection 1 of NRS 218D.380 do  
4 not apply to any provision of this act which adds or revises a  
5 requirement to submit a report to the Legislature.

6 **Sec. 17.** 1. This section becomes effective upon passage and  
7 approval.

8 2. Sections 1 to 16, inclusive, of this act become effective:

9 (a) Upon passage and approval for the purpose of adopting any  
10 regulations or performing any other preparatory administrative tasks  
11 that are necessary to carry out the provisions of this act; and

12 (b) On July 1, 2023, for all other purposes.

