

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 procedures for the use of
disciplinary segregation by the Department of Corrections
or a private facility or institution; and providing other
matters properly relating thereto.

Legislative Counsel’s Digest:

1 **Section 3** of this bill prohibits the Department of Corrections or a private
2 facility or institution from imposing solitary confinement on a person confined in a
3 prison: (1) as part of a disciplinary sanction unless the Department or private
4 facility or institution provides written notice and a hearing for the offender; and (2)
5 solely on the basis of the mental illness or impairment of the person. **Section 3**
6 establishes the procedure for a hearing for the purpose of addressing a disciplinary
7 sanction and imposing a disciplinary segregation. **Section 3** requires the
8 Department or private facility or institution to take certain actions if it is known or
9 suspected that a mental health or medical condition caused the alleged violation
10 which is the basis for the hearing. **Section 3** also authorizes an offender to request
11 placement in solitary confinement under certain circumstances. If the Department
12 or private facility or institution imposes disciplinary segregation on the offender,
13 **section 3** requires that the period of disciplinary segregation: (1) be the minimum
14 time required to address the disciplinary sanction or threat of harm; and (2) not
15 exceed certain periods based on the seriousness of the offense. **Section 3** requires
16 the Department or private facility or institution to provide certain provisions and
17 accommodations to an offender who is subject to disciplinary segregation. Under



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18 certain circumstances, an offender who is subject to disciplinary segregation is
19 authorized to petition the warden of the institution or facility for early release from
20 disciplinary segregation.

21 **Section 4** of this bill prohibits the use of solitary confinement on a prisoner
22 who is detained in a county, city or town jail or other detention facility unless: (1)
23 the prisoner is not a person with serious mental illness or other significant mental
24 impairment; (2) the prisoner presents a serious and immediate risk of harm to
25 himself or herself, staff or others or to the security of the facility; and (3) all other
26 less-restrictive options have been exhausted. **Section 4** further prohibits the use of
27 solitary confinement for the purpose of disciplining or punishing a prisoner and
28 provides that if a prisoner is held in solitary confinement, the period of solitary
29 confinement must be the minimum time required to address the threat and must end
30 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:

1 **Section 1.** (Deleted by amendment.)

2 **Sec. 2.** (Deleted by amendment.)

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

5 *1. Except as otherwise provided in this section, the*
6 *Department or private facility or institution shall not:*

7 *(a) Place an offender in disciplinary segregation, unless the*
8 *offender is found guilty of an infraction after notice and a hearing*
9 *pursuant to subsection 3.*

10 *(b) Subject an offender with a serious mental illness or other*
11 *significant mental impairment to solitary confinement solely on*
12 *the basis of such mental illness or impairment.*

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

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

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



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

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

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

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

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

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

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

44 (a) May, after serving one-half of the period for which the
45 offender is sanctioned to disciplinary segregation, petition the



1 warden of the institution or facility for release from disciplinary
2 segregation if the offender has demonstrated good behavior. The
3 offender must be advised that he or she may petition the warden
4 pursuant to this paragraph.

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

6 (1) Allowed to wear his or her personal clothing;

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

10 (3) Allowed visitation;

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

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

16 (6) Given access to reading materials; and

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

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

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

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

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

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

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

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



1 8. As used in this section, “offender with serious mental
2 illness or other significant mental impairment” means an
3 offender:

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

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

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

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

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

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

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

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

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

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

33 4. As used in this section, “offender with a serious mental
34 illness or other significant mental impairment” has the meaning
35 ascribed to it in section 3 of this act.

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

37 211.118 As used in NRS 211.118 to 211.200, inclusive, *and*
38 *section 4 of this act*, “public works” means the renovation, repair or
39 cleaning of any street, drainage facility, road, sidewalk, public
40 square, park or building, or cutting away hills, grading, putting in
41 sewers or other work, which is authorized to be done by and for the
42 use of any of the counties, cities or towns, and the expense of which
43 is not to be borne exclusively by persons or property particularly
44 benefited thereby. The term does not include any project to which
45 the provisions of NRS 338.020 apply.



- 1 **Sec. 6.** NRS 211.150 is hereby amended to read as follows:
2 211.150 1. ~~##~~ *Except as otherwise provided in section 4 of*
3 *this act, if* a prisoner is disobedient or disorderly, or does not
4 faithfully perform his or her tasks, the officers having charge of the
5 prisoner may take action to discipline and punish the prisoner. The
6 action may include confinement to an individual cell separate from
7 other prisoners for the protection of the staff of the jail and other
8 prisoners. An officer who confines a prisoner to an individual cell
9 for any reason shall report his or her action as soon as possible to
10 the person in charge of the jail.
11 2. A report of the number of prisoners who are performing
12 work and the amount and type of work performed must be submitted
13 to the person in charge of the jail on the last day of each month.
14 **Sec. 7.** (Deleted by amendment.)
15 **Sec. 8.** This act becomes effective on July 1, 2017.

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