

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; 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:

1 **Section 3** of this bill prohibits the Department of Corrections or a private
2 facility or institution from imposing solitary confinement on an offender confined
3 in a prison: (1) as part of a disciplinary sanction unless the Department or private
4 facility or institution provides written notice, a hearing and, if applicable, a
5 psychological evaluation for the offender; and (2) solely on the basis of the mental
6 illness or impairment of the offender, but may, if necessary for the safety of the
7 offender, staff or any other person, subject the offender to solitary confinement in
8 conjunction with daily evaluations by a provider of health care. **Section 3**
9 establishes the procedure for a hearing for the purpose of addressing a disciplinary
10 sanction and imposing a disciplinary segregation. **Section 3** requires the
11 Department or private facility or institution to take certain actions if it is known or
12 suspected that a mental health or medical condition caused the alleged violation
13 which is the basis for the hearing. **Section 3** also authorizes an offender to request
14 placement in solitary confinement under certain circumstances. If the Department
15 or private facility or institution imposes disciplinary segregation on the offender,
16 **section 3** requires that the period of disciplinary segregation: (1) be the minimum
17 time required to address the disciplinary sanction or threat of harm; and (2) not



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18 exceed certain periods based on the seriousness of the offense. **Section 3** requires
19 the Department or private facility or institution to provide certain provisions and
20 accommodations to an offender who is subject to disciplinary segregation. Under
21 certain circumstances, an offender who is subject to disciplinary segregation is
22 authorized to petition the warden of the institution or facility for early release from
23 disciplinary segregation.

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. The Department or a private facility or institution shall*
6 *not:*

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

9 *(1) Notice and a hearing pursuant to subsection 3; and*

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

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

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

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

33 *(a) Serve written notice of the charges against the offender*
34 *which sets forth the reasons for the filing of the disciplinary action*
35 *against the offender and a notice that the offender may appeal any*



1 *discipline or punishment imposed on the offender as a result of a*
2 *hearing unless the offender has agreed to a bargained plea.*

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

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

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

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

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

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



1 and recommendation before holding a hearing pursuant to
2 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) Permitted a minimum of at least 5 hours of exercise per
21 week, unless doing so would present a threat to the safety or
22 security of the institution or facility;

23 (6) Given access to reading materials; and

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

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

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

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

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

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



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

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. (Deleted by amendment.)

Sec. 5. (Deleted by amendment.)

Sec. 6. (Deleted by amendment.)

Sec. 7. (Deleted by amendment.)

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



