
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 685 Session of
2021

INTRODUCED BY KANE, MUTH, SAVAL, FONTANA, KEARNEY, CAPPELLETTI,
COSTA, TARTAGLIONE AND COMMITTA, JULY 26, 2021

REFERRED TO JUDICIARY, JULY 26, 2021

AN ACT

1 Amending Title 61 (Prisons and Parole) of the Pennsylvania
2 Consolidated Statutes, providing for solitary confinement.

3 The General Assembly of the Commonwealth of Pennsylvania
4 hereby enacts as follows:

5 Section 1. Title 61 of the Pennsylvania Consolidated
6 Statutes is amended by adding a chapter to read:

7 CHAPTER 51

8 SOLITARY CONFINEMENT

9 Sec.

10 5101. Definitions.

11 5102. Methods and procedures of solitary confinement.

12 5103. Members of vulnerable populations.

13 5104. Risk of harm in solitary confinement.

14 5105. Solitary confinement authorized.

15 5106. Use of solitary confinement pending investigation.

16 5107. Duties of secretary.

17 5108. Alternative disciplinary measures to solitary

18 confinement.

1 5109. Rehabilitation after release from solitary confinement.

2 5110. Independent investigator.

3 5111. Solitary confinement misconduct hearings.

4 5112. Additional relief.

5 5113. Regulations.

6 5114. Report.

7 § 5101. Definitions.

8 The following words and phrases when used in this chapter
9 shall have the meanings given to them in this section unless the
10 context clearly indicates otherwise:

11 "Chief administrator." The warden, superintendent or other
12 officer in charge of a correctional institution or facility.

13 "Correctional institution or facility." A State correctional
14 institution, county correctional institution, a facility which
15 confines a juvenile under 42 Pa.C.S. Ch. 63 (relating to
16 juvenile matters), an institution which detains inmates in
17 accordance with Chapter 71 (relating to interstate compacts) or
18 an intergovernmental service agreement or other contract with
19 any Federal, state or county agency, including United States
20 Immigration and Customs Enforcement.

21 "Department." The Department of Corrections of the
22 Commonwealth.

23 "Emergency confinement." The solitary confinement of an
24 inmate in a correctional institution or facility when there is
25 reasonable cause to believe that the confinement is necessary
26 for reducing a substantial risk of imminent serious harm to the
27 inmate or others as evidenced by recent conduct.

28 "Member of a vulnerable population." Any of the following:

29 (1) An inmate who is 21 years of age or younger.

30 (2) An inmate who is 55 years of age or older.

1 (3) An inmate who is pregnant or in the postpartum
2 period.

3 (4) An inmate who has recently suffered a miscarriage or
4 terminated a pregnancy.

5 (5) An inmate who is perceived to be lesbian, gay,
6 bisexual, transgender or intersex.

7 (6) An inmate with the mental health classification of C
8 Code or D Code.

9 (7) An inmate with intellectual or developmental
10 disabilities.

11 "Solitary confinement." The confinement of an inmate in a
12 correctional institution or facility due to disciplinary,
13 administrative, protective, investigative, medical or other
14 classification, in a cell or similarly confined holding or
15 living space, alone or with other inmates for approximately 20
16 hours or more per day, with severely restricted activity,
17 movement and social interaction.

18 § 5102. Methods and procedures of solitary confinement.

19 (a) Conditions.--An inmate may not be placed in solitary
20 confinement unless the following conditions are met:

21 (1) There is reasonable cause to believe that the inmate
22 would create a substantial risk of immediate serious harm to
23 himself or herself or another, as evidenced by recent threats
24 or conduct, and a less restrictive intervention would be
25 insufficient to reduce the risk. The correctional institution
26 or facility shall bear the burden of establishing this
27 standard by clear and convincing evidence.

28 (2) The inmate is subject to a disciplinary sanction.

29 (3) The inmate received a personal and comprehensive
30 medical and mental health examination conducted by a

1 clinician. In the case of an inmate detained at a county
2 correctional institution or facility, a preliminary
3 examination shall be conducted by a member of the medical
4 staff within 12 hours of the inmate being placed in solitary
5 confinement and a clinical examination shall be conducted
6 within 48 hours of the inmate being placed in solitary
7 confinement.

8 (4) The decision to place an inmate in solitary
9 confinement is made by the chief administrator.

10 (b) Hearing.--An inmate shall only be held in solitary
11 confinement in accordance with a hearing which provides timely,
12 fair and meaningful opportunities for the inmate to contest the
13 confinement. The hearing shall be conducted in accordance with
14 the following:

15 (1) The inmate shall receive the hearing within 72 hours
16 of placement in solitary confinement and a review every 15
17 days after the hearing if the inmate remains in solitary
18 confinement.

19 (2) In the absence of exceptional circumstances,
20 unavoidable delays or reasonable postponements, the inmate
21 shall be permitted to appear at the hearing.

22 (3) The inmate shall be represented by legal counsel at
23 the hearing.

24 (4) The hearing shall be conducted by an independent
25 hearing officer.

26 (5) The inmate shall be provided with a written
27 statement of the reasons for the decision to place the inmate
28 in solitary confinement at the hearing.

29 (c) Prohibition.--An inmate may not be placed or retained in
30 solitary confinement under the following circumstances:

1 (1) If the chief administrator determines that the
2 inmate no longer meets the standards for solitary
3 confinement.

4 (2) For no more than 15 consecutive days.

5 (3) For no more than 20 days in a 60-day period.

6 (d) Evaluation.--A clinician shall evaluate an inmate placed
7 in solitary confinement on a daily basis, in a confidential
8 setting outside of the cell whenever possible, to determine
9 whether the inmate is a member of a vulnerable population. In
10 the case of an inmate detained at a county correctional
11 institution or facility, the inmate shall be evaluated by a
12 member of the medical staff as frequently as necessary, but not
13 less than once every seven days while the inmate is in solitary
14 confinement. An inmate determined to be a member of a vulnerable
15 population by a clinician shall be immediately removed from
16 solitary confinement and moved to an appropriate placement.

17 (e) Disciplinary sanctions.--A disciplinary sanction of
18 solitary confinement which has been imposed on an inmate who is
19 removed from solitary confinement shall be deemed to be
20 satisfied.

21 (f) Lockdown.--During a correctional institution or facility
22 lockdown, an inmate may not be placed in solitary confinement
23 for more than 15 consecutive days or for more than 20 days
24 during any 60-day period.

25 (g) Inmate treatment.--The following apply:

26 (1) Cells or other holding or living space used for
27 solitary confinement shall be properly ventilated, lit,
28 temperature-controlled, clean and equipped with properly
29 functioning sanitary fixtures.

30 (2) A correctional institution or facility shall

1 maximize the amount of time that an inmate held in solitary
2 confinement spends outside of the cell by providing, as
3 appropriate, access to recreation, education, clinically
4 appropriate treatment therapies, skill-building activities
5 and social interaction with staff and other inmates.

6 (3) An inmate held in solitary confinement may not be
7 denied access to food, water or any other basic necessity.

8 (4) An inmate held in solitary confinement may not be
9 denied access to appropriate medical care, including
10 emergency medical care.

11 (5) An inmate may not be directly released from solitary
12 confinement to the public during the last 180 days of the
13 inmate's term of incarceration, unless it is necessary for
14 the safety of the inmate, staff, other inmates or the public.

15 (6) A restraint chair, chemical agents or shackles may
16 not be used on an inmate.

17 (7) Lights in solitary confinement cells shall be
18 operated on the same schedule as lights in other housing
19 units at the correctional facility. In no case shall lights
20 in a solitary confinement cell be on for 24 hours a day
21 unless a physician or psychiatrist believes, in his or her
22 professional written opinion, that this step is necessary to
23 prevent suicide or self-harm. The physician's or
24 psychiatrist's professional written opinion that confirms a
25 risk of suicide or self-harm shall be placed and kept in the
26 inmate's medical records. If the physician or psychiatrist
27 believes that an inmate is at risk of suicide or self-harm, a
28 dimmer shall be used in the solitary confinement cell to
29 adjust the lights to protect an inmate's safety while
30 promoting sleep and mental and physical wellness.

1 § 5103. Members of vulnerable populations.

2 (a) Prohibition.--An inmate who is a member of a vulnerable
3 population may not be placed in solitary confinement.

4 (b) Younger inmates.--The following apply:

5 (1) An inmate who is a member of a vulnerable population
6 because the inmate is 21 years of age or younger may not be
7 subject to discipline for refusing treatment or medication or
8 for self-harm or threats of self-harm.

9 (2) An inmate who is a member of a vulnerable population
10 because the inmate is 21 years of age or younger and who
11 would otherwise be placed in solitary confinement shall be
12 screened by a correctional institution or facility clinician
13 or the appropriate screening service and, if found to meet
14 the standards of civil commitment, shall be placed in a
15 specialized unit, as designated by the secretary, or civilly
16 committed to the least restrictive appropriate short-term
17 care or psychiatric facility designated by the Department of
18 Human Services.

19 (c) Other inmates.--An inmate who is a member of a
20 vulnerable population because the inmate is 55 years of age or
21 older, pregnant, in the postpartum period or has recently
22 suffered a miscarriage or terminated a pregnancy, who would
23 otherwise be placed in isolated confinement, shall be placed in
24 a specialized unit as designated by the secretary.

25 (d) Applicability.--This subsection shall not apply to a
26 county correctional institution or facility.

27 § 5104. Risk of harm in solitary confinement.

28 An inmate shall not be placed in solitary confinement with
29 one or more inmates if there is reasonable cause to believe that
30 there is a risk of harm or harassment, intimidation or extortion

1 of other physical or emotional abuse.

2 § 5105. Solitary confinement authorized.

3 A correctional institution or facility may place an inmate in
4 solitary confinement under the following circumstances:

5 (1) The chief administrator determines that a
6 correctional institution or facility lockdown is required to
7 ensure the safety of inmates. The facility administrator
8 shall document specific reasons for the lockdown if the
9 lockdown lasts more than 24 hours and why less restrictive
10 interventions are insufficient to accomplish the safety goals
11 of the correctional institution or facility. Within six hours
12 of a decision to extend a lockdown for more than 24 hours,
13 the chief administrator shall provide the secretary with the
14 reasons specified under this paragraph for publication on the
15 publicly accessible Internet website of the department. Upon
16 request, the chief administrator shall provide the reasons
17 specified under this paragraph to the General Assembly.

18 (2) The chief administrator determines, based on a
19 personal examination by a physician or, in the case of a
20 county correctional institution or facility, a decision to
21 place an inmate in medical isolation shall be made by a
22 member of the medical staff, that an inmate should be placed
23 in emergency confinement and the emergency confinement is
24 conducted in accordance with the following:

25 (i) The inmate may not be held in emergency
26 confinement for more than 24 hours.

27 (ii) The inmate held in emergency confinement shall
28 receive an initial medical and mental health evaluation
29 within two hours and a personal and comprehensive medical
30 and mental health evaluation within 24 hours. In the case

1 of a county correctional institution or facility, a
2 preliminary examination shall be conducted by a member of
3 the medical staff within 12 hours of confinement and a
4 comprehensive medical and mental health evaluation within
5 48 hours. Reports of these evaluations shall be provided
6 to the chief administrator upon completion.

7 (iii) A clinical review shall be conducted on the
8 inmate at least every six hours and as clinically
9 indicated.

10 (iv) The inmate shall be placed in a mental health
11 unit as designated by the secretary.

12 (v) In the case of a county correctional institution
13 or facility, a decision to place an inmate in solitary
14 confinement shall be made by a member of the medical
15 staff and be based on a personal examination and a
16 clinical review shall be conducted within 48 hours of the
17 inmate being placed in solitary confinement and then as
18 clinically indicated.

19 (3) The chief administrator determines that an inmate
20 should be placed in protective custody and the inmate is
21 placed in protective custody in accordance with the
22 following:

23 (i) Except as provided under subparagraph (ii), the
24 inmate must provide informed, voluntary, written consent
25 to be placed in protective custody and there is
26 reasonable cause to believe that protective custody is
27 necessary to prevent reasonably foreseeable harm.

28 (ii) The inmate may be placed in involuntary
29 protective custody only when there is clear and
30 convincing evidence that confinement is necessary to

1 prevent reasonably foreseeable harm and that a less
2 restrictive intervention would not be sufficient to
3 prevent the harm.

4 (iii) In a safe manner, an inmate placed in
5 protective custody shall receive comparable opportunities
6 for activities, movement and social interaction as other
7 inmates in the general population of the correctional
8 institution or facility.

9 (iv) An inmate subject to removal from protective
10 custody shall be provided with a timely, fair and
11 meaningful opportunity to contest the removal.

12 (v) An inmate who is eligible to be placed or
13 currently is in voluntary protective custody may opt out
14 of that eligibility by providing an informed, voluntary
15 written refusal.

16 (vi) The chief administrator shall place an inmate
17 in a less restrictive intervention, including transfer to
18 the general population of another institution or to a
19 special-purpose housing unit for inmates who face similar
20 threats, before placing the inmate in protective custody
21 unless the inmate poses an extraordinary security risk so
22 that transferring the inmate would be insufficient to
23 ensure the inmate's safety.

24 (4) A member of a vulnerable population may not be
25 placed in solitary confinement with one or more inmates,
26 except with the inmate's informed, voluntary, written
27 consent.

28 § 5106. Use of solitary confinement pending investigation.

29 (a) Authorized use.--An inmate may not be placed in solitary
30 confinement pending investigation of a disciplinary violation

1 unless any of the following occur:

2 (1) The inmate's presence in the general population
3 poses a danger to the inmate, staff, other inmates or the
4 public. In making the determination, the chief administrator
5 shall consider the seriousness of the alleged offense,
6 including whether the offense involved violence or escape or
7 posed a threat to institutional safety by encouraging other
8 inmates to engage in misconduct.

9 (2) The chief administrator has granted approval in an
10 emergency situation.

11 (b) Review.--An inmate's placement in solitary confinement
12 pending investigation of a disciplinary violation shall be
13 reviewed within 24 hours by a supervisory employee who was not
14 involved in the initial placement decision.

15 (c) Release.--An inmate who has been placed in solitary
16 confinement pending investigation of a disciplinary offense
17 shall be considered for release to the general population if the
18 inmate demonstrates good behavior while confined. If the inmate
19 is found guilty of the disciplinary violation, the inmate's good
20 behavior shall be considered in determining the appropriate
21 penalty.

22 § 5107. Duties of secretary.

23 The secretary shall have the following duties:

24 (1) Developing policies and implementing procedures for
25 the review of inmates placed in solitary confinement and
26 promulgating regulations as specified under section 5113
27 (relating to regulations).

28 (2) Initiating a review of each inmate placed in
29 solitary confinement under the policies and procedures
30 developed and implemented under paragraph (1).

1 (3) Developing a plan for providing step-down and
2 transitional units, programs and staffing patterns to
3 accommodate inmates currently placed in solitary confinement,
4 inmates who will be placed in solitary confinement and
5 inmates who receive an intermediate sanction in lieu of being
6 placed in isolated confinement. Staffing patterns for
7 correctional and program staff shall be set at levels
8 necessary to ensure the safety of staff and inmates in
9 accordance with the provisions of this chapter.

10 § 5108. Alternative disciplinary measures to solitary
11 confinement.

12 A correctional institution or facility shall implement
13 alternative disciplinary measures to solitary confinement. The
14 alternative disciplinary measures may include the following:

15 (1) Limiting contact visits.

16 (2) Restricting visitors to only the inmate's immediate
17 family.

18 (3) The loss of work opportunities.

19 (4) Assigning additional unpaid work duties for no more
20 than 14 days.

21 (5) No more than 14 days of the loss of telephone,
22 entertainment or yard time privileges.

23 (6) No more than 14 days of the loss of commissary
24 privileges.

25 (7) Confining an inmate to the inmate's own cell in the
26 general population area.

27 (8) A reprimand or warning.

28 § 5109. Rehabilitation after release from solitary confinement.

29 An inmate released from solitary confinement shall be
30 rehabilitated in accordance with the following:

1 (1) The inmate shall be gradually acclimated into the
2 general population by temporarily being transferred into a
3 single cell.

4 (2) The inmate shall receive weekly meetings with a
5 licensed mental health professional and a certified peer
6 specialist.

7 (3) The inmate shall have access to classes and
8 educational materials.

9 (4) The inmate shall have access to familial and outside
10 contact.

11 § 5110. Independent investigator.

12 (a) Independent investigator.--The department shall
13 designate an independent investigator to monitor each
14 correctional institution or facility to ensure compliance with
15 the provisions of this chapter. The independent investigator
16 shall have the following duties:

17 (1) Conducting interviews with inmates in solitary
18 confinement and reporting any abuse to the department.

19 (2) Reviewing any documents regarding inmates necessary
20 to determine the implementation of solitary confinement.

21 (b) Use of information.--Information gathered under
22 subsection (a) may be used in a misconduct hearing conducted
23 under section 5111 (relating to solitary confinement misconduct
24 hearings).

25 § 5111. Solitary confinement misconduct hearings.

26 (a) Hearing review board.--The department shall establish a
27 hearing review board to conduct hearings on solitary confinement
28 misconduct by correctional institutions or facilities. The
29 hearing review board shall consist of the following:

30 (1) A licensed psychologist or psychiatrist.

1 (2) A licensed mental health professional with a
2 counseling background.

3 (3) A licensed social worker.

4 (b) Guidelines.--A hearing on solitary confinement by a
5 correctional institution or facility shall be initiated and
6 governed by guidelines specified in regulations promulgated
7 under section 5113 (relating to regulations).

8 (c) Misconduct hearings.--A hearing on solitary confinement
9 misconduct by a correctional institution or facility shall be
10 administered in accordance with the following:

11 (1) Unless prohibited by the hearing review board for
12 cause shown, a witness may be called at the misconduct
13 hearing by the inmate or correctional institution or
14 facility.

15 (2) An inmate may call on an inmate advocate or legal
16 counsel to be present during the misconduct hearing.

17 (3) The inmate and correctional institution or facility
18 may present evidence, including video evidence, at the
19 misconduct hearing. An inmate shall be given access to video
20 evidence from the correctional institution or facility no
21 later than 24 hours before the commencement of the misconduct
22 hearing.

23 (d) Relief.--If the hearing review board finds solitary
24 confinement misconduct by the correctional institution or
25 facility, the correctional institution or facility shall release
26 the inmate from solitary confinement.

27 § 5112. Additional relief.

28 In addition to the relief provided by the hearing review
29 board under section 5111 (relating to solitary confinement
30 misconduct hearings), an individual adversely affected by any

1 manner of law, rule, regulation or other action promulgated or
2 enforced by a correctional institution or facility as it relates
3 to the use of isolated confinement in violation of this chapter
4 may seek declarative and injunctive relief and the actual
5 damages attributable to the violation in an appropriate court of
6 jurisdiction. The court shall award reasonable expenses to an
7 individual adversely affected if the action results in a final
8 determination by a court in favor of the individual adversely
9 affected.

10 § 5113. Regulations.

11 The secretary shall promulgate regulations necessary to
12 administer the provisions of this chapter. The regulations shall
13 include, but not be limited to, the following:

14 (1) Reducing separation from other inmates.

15 (2) Reducing the burden of transferring inmates to a
16 different correctional institution or facility.

17 (3) Establishing any nonisolated confinement sanction
18 authorized by the department's regulations.

19 (4) Easing restrictions on religious, mail and telephone
20 privileges, visit contacts and outdoor and recreation access.
21 A correctional institution or facility may not restrict basic
22 necessities from an inmate in solitary confinement.

23 (5) Requiring training of disciplinary staff and all
24 staff working with inmates in solitary confinement. The
25 training shall include the following:

26 (i) Standards for solitary confinement, including
27 that solitary confinement shall only be imposed when an
28 inmate commits an offense involving violence, escapes or
29 attempts to escape or poses a threat to institutional
30 safety.

1 (ii) The maximum amount of time an inmate may be in
2 solitary confinement and the available less restrictive
3 interventions.

4 (iii) The identification of developmental
5 disabilities, the symptoms of mental illness, including
6 trauma disorders, and methods of safe responses to
7 inmates in distress.

8 (6) Requiring documentation of all decisions, procedures
9 and reviews of inmates placed in solitary confinement.

10 (7) Monitoring of compliance with the provisions of this
11 chapter.

12 (8) Fair and equitable guidelines for the administration
13 of misconduct hearings under section 5111 (relating to
14 solitary confinement misconduct hearings).

15 § 5114. Report.

16 The commission shall post quarterly reports on the
17 department's publicly accessible Internet website on the use of
18 solitary confinement, including all of the following:

19 (1) The age, sex, gender identity, ethnicity and type of
20 confinement status for each inmate. No identifiable
21 information shall be included in the report.

22 (2) The total number of inmates in solitary confinement.

23 (3) The total number of incidences of emergency
24 confinement, solitary confinement as a result of a lockdown,
25 inmate self-harm or suicide and assault in solitary
26 confinement units.

27 Section 2. This act shall take effect in 60 days.