

Department of Planning and Budget 2020 Fiscal Impact Statement

1. Bill Number: HB1284 H1

House of Origin	☐ Introduced	☒ Substitute	☐ Engrossed
Second House	☐ In Committee	☐ Substitute	☐ Enrolled

2. Patron: Hope

3. Committee: Public Safety

4. Title: Correctional facilities; use of isolated confinement.

5. Summary: This bill restricts the use of isolated confinement in state correctional facilities and juvenile correctional centers. The bill defines isolated confinement as “confinement of a prisoner to a cell, alone or with another prisoner, for 20 hours or more a day” for an adult and as “confinement of a juvenile to a cell, alone or with someone else, for 17 hours or more per day.” The bill sets out specific requirements as follows:

Adult prisoners

The bill defines "isolated confinement" to mean confinement of a prisoner to a cell, alone or with another prisoner, for 20 hours or more per day. The bill prohibits state correctional staff from placing a state prisoner in isolated confinement, other than for the purpose of providing medical or mental health treatment. It provides that prisoners placed in cell confinement due to medical or mental health treatment must be done in a manner that is consistent with the signed recommendations of a medical practitioner and within a clinical area in the correctional facility or in as close proximity to a medical or mental health unit as possible. The bill provides that isolated confinement may be permitted for a prisoner in a state correctional facility only in the following circumstances:

1. If the facility administrator determines that the prisoner needs to be placed in isolated confinement to prevent an imminent threat of physical harm to the prisoner or another person, the prisoner may be placed in isolated confinement for no longer than 48 hours, then the facility administrator must:

- a. Make a written record of the facts and circumstances that necessitated the prisoner's placement in isolated confinement, to be kept in the prisoner's institutional file;
- b. Prepare a written action plan, to be kept in the prisoner's institutional file, describing how the correctional facility will transition the prisoner out of isolated confinement at the earliest opportunity;
- c. Ensure that the prisoner receives an initial medical and mental health evaluation within eight hours of placement in isolated confinement and a personal and comprehensive medical and mental health evaluation within 24 hours; and

d. Notify the Director in writing that the prisoner was placed in isolated confinement in accordance with this subdivision 1.

2. For any prisoner placed in isolated confinement under subdivision 1 or retained in isolated confinement under this subdivision, if a facility administrator finds that the prisoner continues to pose an ongoing and realistic threat of imminent physical harm to another person after 48 hours of isolated confinement, the prisoner may be retained in isolated confinement for no more than an additional 48 consecutive hours, then the facility administrator must:

a. Certify that other methods for ensuring the safety of the threatened person have been considered and determined insufficient, impracticable, or inappropriate;

b. Ensure that the prisoner is placed in isolated confinement for the shortest time period necessary and under the least restrictive conditions practicable;

c. Make a written record of the facts and circumstances that necessitated the prisoner's continued placement in isolated confinement, to be kept in the prisoner's institutional file;

d. Prepare a written action plan, to be kept in the prisoner's institutional file, describing how the correctional facility will transition the prisoner out of isolated confinement at the earliest opportunity;

e. Ensure that the prisoner receives an additional medical and mental health evaluation within eight hours of a decision to retain the prisoner in isolated confinement and additional medical and mental health evaluations as indicated; and

f. Notify the Director in writing that the prisoner was retained in isolated confinement in accordance with this subdivision 2.

3. If the facility administrator determines that a facility-wide lockdown is required to ensure the safety of the prisoners in the facility, and also requires isolated confinement of one or more prisoners, then such prisoners may be placed in isolated confinement provided that the facility administrator documents in writing specific reasons why any lockdown lasting for more than 24 hours is necessary, and why less restrictive interventions are insufficient to accomplish the facility's safety goals. The documentation must be provided to the Director and published on the Department's website.

4. If the facility administrator determines that the prisoner needs to be placed in isolated confinement for his own protection, but only as follows:

a. A prisoner may be placed in isolated confinement with informed, voluntary consent when there is reasonable cause to believe that such confinement is necessary to prevent reasonably foreseeable harm to the prisoner, provided that:

(1) When a prisoner makes an informed voluntary request to be placed in an isolated confinement setting for his own protection, the facility must bear the burden of establishing a basis for refusing the request; and

(2) A prisoner who is in isolated confinement for his own protection based on his informed voluntary request may opt out of that status by providing informed voluntary refusal of that status.

b. A prisoner may be placed in isolated confinement for his own protection without his informed, voluntary consent when there is clear and convincing evidence that such confinement is necessary to prevent reasonably foreseeable harm to the prisoner.

c. Before placing the prisoner in isolated confinement for his own protection, the facility administrator must place a prisoner in a less-restrictive setting, including by transfer to the general population of another institution or to a special-purpose housing unit for prisoners who face similar threats, unless the prisoner faces a security risk so great that no less-restrictive setting would be sufficient or practicable to ensure the prisoner's safety.

d. A prisoner placed in isolated confinement for his own protection must receive similar opportunities for activities, movement, and social interaction, taking into account his safety and the safety of others, as are provided to prisoners in the general population of the facility.

e. A prisoner who has been placed in isolated confinement for his own protection and is subject to removal from such confinement must be provided with a timely and meaningful opportunity to contest the removal.

f. All voluntary and involuntary placements in isolated confinement under this subdivision 4 must be reviewed every 48 hours and the reason why a less-restrictive setting could not be utilized must be recorded in writing by the facility administrator and placed in the prisoner's institutional file.

Additionally, the legislation provides that all prisoners who are neither in isolated confinement nor in full privilege general population must be offered a minimum of three hours of out-of-cell programmatic interventions or other congregate activities per day, including classes, work assignments, or therapeutic treatment aimed at promoting personal development or addressing underlying causes of problematic behavior, in addition to a minimum of one hour of recreation per day. Such recreation must take place in a congregate setting unless exceptional circumstances mean doing so would create a significant and unreasonable risk to the safety and security of other prisoners, staff, or the facility.

The bill does not prevent staff from placing prisoners in protective custody settings that do not constitute isolated confinement. In any event of a prisoner's placement in isolated confinement, then the facility administrator must document the date and duration of such placement, as well as the statutory basis under this section for such placement. The documentation must be included in the prisoner's institutional file.

The bill requires the Director to develop policies and procedures, and submit proposed regulations, to effectuate the provisions of this section.

Juvenile

The legislation also prohibits isolation of a juvenile to a cell, alone or with someone else, for 17 hours or more per day in a juvenile correctional facility. Cell confinement is permitted due to medical or mental health treatment but must be done in a manner that is consistent with the signed recommendations of a medical practitioner and within a clinical area in the correctional facility or in as close proximity to a medical or mental health unit as possible. Isolated confinement may be permitted for a juvenile in a juvenile correctional facility in the following circumstances:

1. If the facility administrator determines that the juvenile needs to be placed in isolated confinement to prevent an imminent threat of physical harm to the juvenile or another person, the juvenile may be placed in isolated confinement for no longer than 24 hours, then the facility administrator must:
 - a. Make a written record of the facts and circumstances that necessitated the juvenile's placement in isolated confinement, to be kept in the juvenile's institutional file;
 - b. Prepare a written action plan, to be kept in the juvenile's institutional file, describing how the correctional facility will transition the juvenile out of isolated confinement at the earliest opportunity;
 - c. Ensure that the juvenile receives an initial medical and mental health evaluation within four hours of placement in isolated confinement and follow-up evaluations at least every hour; and
 - d. Notify the Director in writing that the juvenile was placed in isolated confinement in accordance with this subdivision 1.
2. For any juvenile placed in isolated confinement under subdivision 1 or retained in isolated confinement under this subdivision, if a facility administrator finds that the juvenile continues to pose an ongoing and realistic threat of imminent physical harm to another person after 24 hours of isolated confinement, the juvenile may be retained in isolated confinement for no more than an additional 24 consecutive hours, then facility administrator must:
 - a. Certify that other methods for ensuring the safety of the threatened person have been considered and determined insufficient, impracticable, or inappropriate;
 - b. Ensure that the juvenile is placed in isolated confinement for the shortest time period necessary and under the least restrictive conditions practicable;
 - c. Make a written record of the facts and circumstances that necessitated the juvenile's continued placement in isolated confinement, to be kept in the juvenile's institutional file;

- d. Prepare a written action plan, to be kept in the juvenile's institutional file, describing how the correctional facility will transition the juvenile out of isolated confinement at the earliest opportunity;
- e. Ensure that the juvenile receives an additional medical and mental health evaluation within four hours of a decision to retain the prisoner in isolated confinement and additional medical and mental health evaluations as indicated; and
- f. Notify the Director in writing that the juvenile was retained in isolated confinement in accordance with this subdivision 2.

3. If the facility administrator determines that the juvenile needs to be placed in isolated confinement for his own protection, but only when such confinement is necessary to prevent reasonably foreseeable harm to the juvenile, provided that:

- a. Before placing the juvenile in isolated confinement for his own protection, the facility administrator must place the juvenile in a less restrictive setting, including transfer to another institution, unless the juvenile faces a security risk so great that no less-restrictive setting would be sufficient or practicable to ensure the juvenile's safety.
- b. A juvenile placed in isolated confinement for his own protection must receive similar opportunities for activities, programming, movement, and social interaction, taking into account his safety and the safety of others, as are provided to other juveniles in the facility who are not in isolated confinement.
- c. A juvenile who has been placed in isolated confinement for his own protection and is subject to removal from such confinement must be provided with a timely and meaningful opportunity to contest the removal.
- d. All placements in isolated confinement under this subdivision 3 must be reviewed every 48 hours and the reason why a less-restrictive setting could not be utilized must be recorded in writing by the facility administrator and placed in the juvenile's institutional file.

Juveniles who are neither in isolated confinement nor in full privilege general population must be offered a minimum of four hours of out-of-cell programmatic interventions or other congregate activities per day, including classes, work assignments, or therapeutic treatment aimed at promoting personal development or addressing underlying causes of problematic behavior, in addition to a minimum of two hours of recreation per day. Such recreation must take place in a congregate setting unless exceptional circumstances mean doing so would create a significant and unreasonable risk to the safety and security of other juveniles, staff, or the facility.

Juveniles may be placed in protective custody settings that do not constitute isolated confinement. In cases where a juvenile is placed in isolated confinement, then facility administrator must document the date and duration of such placement, as well as the statutory basis under this section for such placement. The documentation must be

included in the juvenile's institutional file. Finally, the Director of the Juvenile Correctional facility must develop policies and procedures, and submit proposed regulations, to effectuate the provisions of this section.

That the provisions of this act must become effective on July 1, 2021.

The substitute bill requires the Board of Corrections (the Board) to review the standards and requirements governing, and the application and use of, isolated confinement in local jails. In completing its work, the Board must form a stakeholder work group for the purpose of gathering input. The stakeholder work group must be composed of interested parties as well as sheriffs and regional jail superintendents. The Board is required to provide a report of its findings and recommendations to the Secretary of Public Safety and Homeland Security and the Chairs of the House Committee for Courts of Justice, the House Committee on Public Safety, the Senate Committee on the Judiciary, and the Senate Committee on Rehabilitation and Social Services no later than November 1, 2020.

- 6. Budget Amendment Necessary:** Yes, Items 400 and 404.
- 7. Fiscal Impact Estimates:** Preliminary. See Item 8 below.
- 8. Fiscal Implications:** Currently, the Department of Corrections (DOC) utilizes Restrictive Housing defined as, “a placement that requires an inmate to be confined to a cell at least 22 hours per day for the safe and secure operation of the facility.” Restrictive housing is used for personal protection or custodial management of offenders. The American Correctional Association (ACA) audits the Department’s facilities every three years. Each of those DOC’s facilities has been accredited as fully compliant with the definition and standards imposed by the American Correctional Association for restrictive housing. For the purposes of this bill, it is assumed that “isolated confinement” is the same as the DOC’s definition of “restrictive housing.”

The DOC operates restrictive housing units at security level 2 through 5 facilities; security level 1 facilities and Deerfield Correctional Center do not have restrictive housing units. The DOC estimates that there are approximately 400 offenders in restrictive housing units system-wide at any given time.

The proposed bill restricts the use of isolated confinement of a prisoner in a DOC facility who poses an imminent threat of physical harm to himself or another person to no longer than 48 hours. Each prisoner kept in isolated confinement must receive an initial medical and mental health evaluation within eight hours of placement in isolated confinement and a personal and comprehensive medical and mental health evaluation within 24 hours. The bill provides that if a facility administrator finds that the prisoner continues to pose an ongoing and realistic threat of imminent physical harm to another person after 48 hours of isolated confinement, the prisoner may be retained in isolated confinement for no more than an additional 48 consecutive hours. In these cases, the bill requires that the prisoner receives an additional medical and mental health evaluation within eight hours of a decision to retain the prisoner in isolated confinement and additional medical and mental health evaluations as indicated.

Currently, DOC requires an initial evaluation by medical staff before placing an offender in restrictive housing to determine if such placement is contraindicated. This initial evaluation includes checking the prisoner's vital signs and reviewing the prisoner's medical chart to determine if there are any medical conditions that would prevent the offender's placement into restrictive housing. After the offender's initial screening, weight and vital signs are reviewed periodically, including during daily rounds conducted by medical staff. In order to meet the more comprehensive requirements of this legislation, which likely would be conducted by a medical provider (defined in the bill as a licensed physician, physician's assistant, or nurse practitioner), DOC reports that it would need additional medical staff including 44 Registered Nurses and 44 physicians (one each for all 44 DOC facilities). The DOC estimates the cost for the additional medical staff at \$18.3 million annually.

Currently, at facilities with restrictive housing, mental health services uses a graduated approach with level of monitoring and intervention based on clinical assessment of offender's current needs and risks. At institutions without a Psychology Associate assigned on site, health care personnel or health-trained staff interview the offender within one working day after placement in a restrictive housing unit. In order to provide the required comprehensive mental health evaluations required in the bill, DOC reports that it would need 27 additional psychologists and six psychiatrists at an estimated cost of \$4.7 million annually.

Under DOC's current policy, offenders in a restrictive housing unit who are classified as requiring separation from other offenders as a result of their personal security needs would be reviewed for transfer to a Protective Custody Unit. These units are currently housed at Red Onion and Sussex II state prisons. The bill allows an offender to request to be placed in isolated confinement for his own protection, however, the facility must bear the burden of establishing a basis for refusing the request. In addition, before placing a prisoner in isolated confinement for his own protection, the bill requires the facility administrator to place a prisoner in a less-restrictive setting, including by transfer to the general population of another institution or to a special-purpose housing unit for prisoners who face similar threats. According to DOC, the option to transfer any prisoners (including those in general population) for their own protection instead of placing them in restrictive housing in their current facilities is expected to increase the number of offender transports conducted each year. DOC reports that each transport requires an average of 2.5 FTE correctional officers per trip. The number of additional correctional officers that may be required is dependent upon the actual number of transfers requested.

The bill requires prisoners who are neither in isolated confinement nor in full privilege general population to be offered a minimum of three hours of out-of-cell programmatic interventions or other congregate activities per day, including classes, work assignments, or therapeutic treatment aimed at promoting personal development or addressing underlying causes of problematic behavior. This is in addition to the bill's requirement of one hour of recreation per day. Because of the difference between terminology used in the bill and that used by DOC, it is not entirely clear which offenders are included in this category. The DOC's current policy requires, within the resources available to the institution and unless

security or safety considerations dictate otherwise, that offenders in restrictive housing units have access to educational services, commissary services, library services, social services, treatment services, religious guidance, and recreational programs (current policy requires a minimum of three hours of supervised, out-of-cell exercise seven days per week). The bill requires out-of-cell programming and out-of-cell programmatic interventions for offenders placed in restrictive housing that exceed what is currently offered. According to DOC, the agency may need up to 200 additional security staff, at an estimated cost of \$12.5 million annually, and up to 211 cognitive counselors, at an estimate of \$15 million annually to provide the services required by this bill.

The bill also restricts the use of isolated confinement of a juvenile who poses an imminent threat of physical harm to himself or another person to no longer than 24 hours. Each juvenile kept in isolated confinement must receive an initial medical and mental health evaluation within four hours of placement in isolated confinement with follow-up evaluations at least every hour. The bill provides that if a facility administrator finds that the juvenile continues to pose an ongoing and realistic threat of imminent physical harm to another person after 24 hours of isolated confinement, the juvenile may be retained in isolated confinement for no more than an additional 24 consecutive hours. In these cases, the bill requires that the juvenile receives an additional medical and mental health evaluation within four hours of a decision to retain the juvenile in isolated confinement and additional medical and mental health evaluations as indicated.

According to the Department of Juvenile Justice (DJJ), in order to meet the standards for medical and mental health evaluations required by the bill, the agency would need additional staff including: five registered nurses; one registered nurse supervisor; five psychologists; one psychologist supervisor; and one psychiatrist. The DJJ estimates the costs for new staff at \$1.6 million annually.

The bill requires juveniles who are neither in isolated confinement nor in full privilege general population to be offered a minimum of four hours of out-of-cell programmatic interventions or other congregate activities per day, including classes, work assignments, or therapeutic treatment aimed at promoting personal development or addressing underlying causes of problematic behavior, in addition to a minimum of two hours of recreation per day. Such recreation shall take place in a congregate setting unless exceptional circumstances mean doing so would create a significant and unreasonable risk to the safety and security of other juveniles, staff, or the facility. The DJJ estimates that it would need 15 additional residential specialists to supervise juveniles who fall in this category and estimates the costs for these positions at \$1.1 million annually. In addition to these costs, DJJ estimates that it would need \$418,000 to cover costs for uniforms, supplies, and equipment associated with the new positions.

This bill also requires the Board of Corrections to promulgate and establish standards placing limits on the use of isolated confinement, as provided in the bill, in local correctional facilities. According to the Compensation Board, The Board of Correction (Board) also is required to develop minimum standards for the use of isolated confinement for local correctional facilities consistent with those restrictions and standards applicable to state

correctional facilities. Unlike state prisons, generally, local jails hold offenders for short terms. If the minimum standards to be developed by the Board are similar to requirement in this legislation, the Compensation Board believes there would be a significant cost to the state and localities as facilities would need modification or redesign to address isolation, protective custody, and programmatic requirements. State law provides for Commonwealth to reimburse localities or regional jail authorities up to 25 percent of the cost of constructing, enlarging, or renovating local or regional jails. The minimum standards approved by the Board also may require local or regional jails to hire additional correctional staff and/or medical and mental health staff. The operating cost of which would be funded by the state. Until the minimum standards are developed by the Board, the actual (operating and capital) cost to each local correctional facility cannot be determined at this time.

The substitute version of this bill requires the Board of Corrections to review the standards and requirements governing, and the application and use of, isolated confinement in local correctional facilities. The Board believes it needs \$55,000 to hire consultant services to provide technical assistance. The consultant is expected to coordinate and facilitate four regional meetings to gather information and input for purposes of developing finds and recommendations. . Currently, the DOC provides technical support to the Board, including reviewing jail standards and assisting the Board with publishing reports that are publicly available. According to DOC, the estimated cost of \$55,000 to hire an independent consultant can be absorbed within DOC's current appropriation.

9. Specific Agency or Political Subdivisions Affected: Department of Corrections, Department of Juvenile Justice, Compensation Board, Board of Corrections, and local and regional jails.

10. Technical Amendment Necessary: None

11. Other Comments: None