Washington State
House of Representatives
Office of Program Research

BILL ANALYSIS

Public Safety Committee

HB 1756

Brief Description: Concerning solitary confinement.

Sponsors: Representatives Peterson, Simmons, Johnson, J., Valdez, Bateman, Davis, Macri, Ramel, Santos, Senn, Thai, Pollet, Ormsby, Harris-Talley and Frame.

Brief Summary of Bill

- Defines "solitary confinement" as confinement of an incarcerated person in a cell or similarly confined holding or living space, alone or with other incarcerated persons, for 17 hours or more per day.
- Prohibits the use of solitary confinement in state correctional facilities except when necessary for emergency purposes, medical isolation, or a facility-wide lockdown, or when an incarcerated person voluntarily requests such confinement conditions.
- Establishes additional restrictions on the use of solitary confinement in state correctional facilities, including: placing limitations on its use for vulnerable persons, imposing time limits, requiring medical evaluations, requiring a review and hearing process in certain circumstances, requiring reporting on facility-wide lockdowns, and establishing standards for living conditions.
- Requires jails to collect information on the use of solitary confinement on a monthly basis from July 1, 2022 to July 1, 2023, and requires the Washington Association of Sheriffs and Police Chiefs to compile the information and report to the Legislature and Governor.

Hearing Date: 1/13/22

Staff: Kelly Leonard (786-7147).

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Background:

In 2020, the state enacted legislation prohibiting the use of solitary confinement for juveniles in detention facilities or institutions and establishing parameters for the use of total isolation and room confinement in those facilities and institutions. There are no corresponding state restrictions on the use of solitary confinement for adults in state correctional facilities or local jails. However, the Department of Corrections (DOC) has adopted and implemented administrative rules and departmental policies regarding the use of restrictive housing.

Restrictive housing is the practice of housing some incarcerated persons separately from the general prison population, resulting in restrictions on their movement, behavior, and privileges. There are two types of restrictive housing, administrative segregation and maximum custody. Administrative segregation is used to temporarily remove a person from the general population when the person presents a significant risk to the safety of staff or other incarcerated persons, until a decision can be made about appropriate housing. Maximum custody is the highest custody designation within the department; a person is classified to maximum custody when he or she poses a significant risk to the safety and security of department employees, incarcerated persons, or others. Departmental policies governing restrictive housing include requirements for the provision of medical screening and ongoing medical care, mental health assessments, and confinement conditions. There are separate policies governing administrative segregation and maximum custody placement, transfer, and release.

In 2018, the DOC created the Restrictive Housing Steering Committee (committee), an internal workgroup made up of a variety of staff from different positions and disciplines at facilities around the state. The committee meets regularly to help develop and implement reforms relating to restrictive housing in state correctional facilities. From 2018 through 2020, the DOC partnered with the Vera Institute of Justice to reduce the use of restrictive housing and implement appropriate alternatives. In 2021, the DOC officially ceased using restrictive housing for disciplinary purposes, also referred to as disciplinary segregation.

Summary of Bill:

Key Terms.
"Solitary Confinement" means the confinement of an incarcerated person in a cell or similarly confined holding or living space, alone or with other incarcerated persons, for 17 hours or more per day.

"Less Restrictive Intervention" means a placement or conditions of confinement, or both, in the current or an alternative correctional facility, under conditions less restrictive of an incarcerated person's movement, privileges, activities, or social interactions than solitary confinement.

A "vulnerable person" is any incarcerated person who:
- is 25 years of age or younger;
- is 55 years of age or older;

- has a mental disorder, or where there is evidence of a diagnosis of a serious mental illness, a history of psychiatric hospitalization, or a history of disruptive or self-injurious behavior including, but not limited to, serious and/or repeated self-harm, that may be the result of a mental disorder or condition;
- has a developmental disability;
- has a serious medical condition that cannot effectively be treated in solitary confinement;
- is pregnant, in the postpartum period, or has recently suffered a miscarriage or terminated a pregnancy;
- has needs related to a physical disability that cannot be accommodated in solitary confinement; or
- has a significant auditory or visual impairment.

Restrictions on Solitary Confinement.
Effective July 1, 2023, an incarcerated person may not be placed in solitary confinement except when necessary for emergency purposes, medical isolation, or a facility-wide lockdown, or when the incarcerated person voluntarily requests such confinement conditions, subject to additional restrictions. Furthermore, an incarcerated person transferred to an out-of-state correctional facility may not be placed in solitary confinement unless such confinement also complies with these restrictions.

Emergency purposes. An incarcerated person may be placed in solitary confinement for emergency purposes if:

- The incarcerated person has not been determined to be a vulnerable person;
- The superintendent of the correctional facility finds that there is reasonable cause to believe that the solitary confinement is necessary to reduce or protect against a substantial risk of immediate serious harm to the incarcerated person or another person, as evidenced by recent threats or conduct; and
- The superintendent of the correctional facility finds that a less restrictive intervention would insufficiently reduce this risk.

A qualified medical provider must conduct a personal and comprehensive medical and mental health examination of an incarcerated person prior to him or her being placed in solitary confinement for emergency purposes, unless there is reasonable cause to believe that such advance evaluation would create a substantial threat to security or safety, in which case the qualified medical provider must conduct the evaluation within one hour of the person being placed in solitary confinement. The examination must include an assessment as to whether the incarcerated person is a vulnerable person.

An incarcerated person may not be placed in solitary confinement for emergency purposes for more than 24 consecutive hours and more than 72 cumulative hours in any 30-day period. However, this period may be extended to no more than 15 consecutive days and 45 cumulative days in a single fiscal year if: a qualified medical provider conducts daily status examinations; and the DOC provides the incarcerated person with a timely, fair, and meaningful opportunity to contest the confinement, including a hearing, right to request assistance, independent hearing

officer, written statement of reasons for the confinement, and a process for appealing the decision.

Medical Isolation. An incarcerated person may be placed in solitary confinement for medical isolation if a qualified medical provider determines, based on a personal examination, that such confinement is necessary for certain medical reasons. An incarcerated person in solitary confinement for medical isolation must be placed in a residential treatment unit, a close observation unit, or a medical unit, and must receive an in-person clinical review at least every six hours. An incarcerated person may not be placed in solitary confinement for medical isolation for more than 15 consecutive days and for more than 45 cumulative days during a single fiscal year, unless a qualified medical provider determines that additional time is necessary: to prevent the spread of a communicable disease; facilitate the provision of medical treatment to the incarcerated person; or for some other clearly stated medical purpose. If additional time is deemed necessary, the medical provider must document specific reasons why the isolation is required and why less restrictive interventions are insufficient to accomplish the safety of incarcerated persons in the facility.

Facility-wide lockdown. An incarcerated person may be placed in solitary confinement during a facility-wide lockdown if the superintendent determines that a facility-wide lockdown is required to ensure the safety of incarcerated persons in the facility. If a facility-wide lockdown exceeds 24 hours, the superintendent must document specific reasons for the lockdown and why less restrictive interventions are insufficient to accomplish the safety of incarcerated persons. Within seven days of initiating any facility-wide lockdown that exceeds 24 hours, the DOC must publish the reasons for the lockdown on the DOC website and provide written notice of the lockdown to the Office of the Corrections Ombuds, the Governor, and the appropriate committees of the Legislature.

Voluntary solitary confinement. An incarcerated person may be placed in solitary confinement if:

- The person is not a vulnerable person;
- The person has capacity to make an informed decision about placement in solitary confinement;
- There is reasonable cause to believe that solitary confinement is necessary to prevent reasonably foreseeable harm; and
- The incarcerated person voluntarily requests such confinement conditions.

If an incarcerated person initiates an informed, written request for solitary confinement, the correctional facility has the burden of establishing a basis for refusing the request. Prior to declining a request or removing an incarcerated person who previously requested solitary confinement, the DOC must provide the incarcerated person with a timely, fair, and meaningful opportunity to contest the decision. The DOC must make a less restrictive intervention available to any incarcerated person requesting solitary confinement who meets the criteria, which may include provision of accommodations in the general population, a transfer to the general population of another institution or to a unit designated for incarcerated persons who face similar

threats, or other specialized housing. An incarcerated person who has requested solitary confinement must be assessed by a qualified medical provider every 90 days. If the qualified medical provider finds that continued placement in solitary would be detrimental to the health or wellbeing of the incarcerated person, the incarcerated person must be transferred to a less restrictive intervention.

Conditions of Solitary Confinement.
The DOC must maximize the amount of time that an incarcerated person held in solitary confinement spends outside of the cell by providing outdoor and indoor recreation, education, clinically appropriate treatment therapies, and skill-building activities. Cells or other holding or living spaces used for solitary confinement must be properly ventilated, appropriately lit according to the time of day, temperature-monitored, clean, and equipped with properly functioning sanitary fixtures. The DOC may not deny an incarcerated person held in solitary confinement access to food, water, or any other basic necessity, appropriate medical care and emergency medical care. The DOC may also not deny access to the telephone, personal communication or media devices, reading materials, or personal hygiene items, unless an individualized assessment determines that limitation of such items is directly necessary for the safety of the incarcerated person or others. An incarcerated person may not be directly released from solitary confinement to the community, unless it is necessary for the safety of the incarcerated person, staff, other incarcerated persons, or the public.

The DOC may not place an incarcerated person in solitary confinement based on the incarcerated person's race, creed, color, national origin, nationality, ancestry, age, marital status, domestic partnership or civil union status, affectional or sexual orientation, genetic information, pregnancy or breastfeeding status, sex, gender identity or expression, disability, or atypical hereditary cellular or blood trait.

Policies and Procedures.
By January 1, 2023, the DOC must review the status of each incarcerated person in solitary confinement. The DOC must develop a plan to transition those incarcerated persons to less restrictive interventions or other appropriate settings. Any incarcerated person who has been in solitary confinement for longer than 45 days as of July 1, 2023, must have a trauma-informed, culturally appropriate individualized intervention plan to facilitate a transition to a less restrictive intervention, which may include an evaluation for possible single cell placement, access to and treatment by medical and mental health providers, peer supports, substance abuse programming, restorative justice programming, behavioral programming, or other individualized interventions or accommodations.

By January 1, 2023, the DOC must adopt any rules or policies necessary to implement the requirements relating to solitary confinement, including for establishing specified elements on less restrictive interventions, confinement conditions and restrictions, staff training, documentation and data tracking, and monitoring compliance.

Data Collection Regarding Use of Solitary Confinement in Jails.

Local governments operating jails must compile on a monthly basis, from July 1, 2022, through July 1, 2023, the following information:

- the number of times solitary confinement was used;
- the circumstances leading to the use of solitary confinement; and
- for each instance of solitary confinement, the length of time the individual remained in solitary confinement, whether a supervisory review of the solitary confinement occurred and was documented, whether a medical assessment or review and a mental health assessment or review were conducted and documented, and whether the affected person was afforded full access to education, programming, and ordinary necessities such as medication, meals, and reading material during the term of solitary confinement.

Information must be compiled into a monthly report and submitted to Washington Association of Sheriffs and Police Chiefs (WASPC). Subject to an appropriation, WASPC must collect the information and compile it into reports. An initial report must be submitted to the Governor and appropriate committees of the Legislature by December 1, 2022. A final report must be submitted to the Governor and the appropriate committees of the Legislature by December 1, 2023.

Appropriation: None.

Fiscal Note: Requested on January 5, 2022.

Effective Date: The restrictions on the use of solitary confinement in state correctional facilities take effect on July 1, 2023. The requirements relating to developing policies and rules by the Department of Corrections and the tracking and reporting of information by local jails take effect July 1, 2022.