HOUSE BILL REPORT
HB 1756

As Reported by House Committee On:
Public Safety
Appropriations

Title: An act relating to solitary confinement.

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 History:
Committee Activity:
Public Safety: 1/13/22, 1/20/22 [DPS];
Appropriations: 2/1/22, 2/3/22 [DP2S(w/o sub PS)].

Brief Summary of Second Substitute Bill

- Defines "solitary confinement" as confinement of an incarcerated person alone in a cell or similarly confined holding or living space 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 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, 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

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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.

information and report to the Legislature and Governor.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Goodman, Chair; Johnson, J., Vice Chair; Davis, Hackney, Orwall, Ramos, Simmons and Thai.

Minority Report: Do not pass. Signed by 3 members: Representatives Mosbrucker, Ranking Minority Member; Klippert, Assistant Ranking Minority Member; Graham.

Minority Report: Without recommendation. Signed by 2 members: Representatives Griffey and Young.

Staff: Omeara Harrington (786-7136).

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 Substitute Bill:

Key Terms.
"Solitary Confinement" means the confinement of an incarcerated person alone in a cell or similarly confined holding or living space 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:
- 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;
- has a significant auditory or visual impairment; or
- has a record of dementia, traumatic brain injury, or other cognitive condition that makes the person more vulnerable to the harms of isolation.

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 when the incarcerated person voluntarily requests such confinement conditions, subject to additional 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 and whether the person's age or circumstance makes them particularly vulnerable to the harm of isolation, such that the person should be considered 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.

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, Procedures, and Reporting.
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.

The DOC must report to the Governor and the appropriate committees of the Legislature with the following information by January 9, 2023:

- a staffing needs assessment, detailing the number of personnel that will be need to provide adequate security for all incarcerated persons, staff, and visitors, when the restrictions on solitary confinement are imposed;
- a corrections capital facilities master plan that outlines needed capital investments to bring about the changes to solitary confinement while providing for the health and safety of all incarcerated persons, staff, and visitors;
- a profile of currently incarcerated persons who are or have been housed in restrictive housing during the 2021-2023 fiscal biennium, including information regarding their underlying offenses and any sanctions imposed during incarceration, and the amount of time they have remaining in total confinement;
- an inventory of currently incarcerated persons who are or have been housed in restrictive housing and who have been transferred or have been considered for transfer to an out-of-state correctional facility; and
- documentation of any attempted suicides by individuals in restrictive housing over the past 10 years and the reason, if known.

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.

Substitute Bill Compared to Original Bill:

Definitions are revised. The definition of "solitary confinement" is modified to exclude circumstances in which a person is confined with other incarcerated persons and confinement during a facility-wide lockdown. The definition of "vulnerable person" is changed by removing age-related categories and adding persons with a record of dementia, traumatic brain injury, or other cognitive condition that makes the person more vulnerable to the harms of isolation. Licensed psychologists are added to the list of "qualified medical providers" who may conduct required mental health evaluations of persons who are or may be placed in solitary confinement. Examinations performed by qualified medical providers of persons placed in solitary confinement for emergency purposes must include an assessment of whether the person's age or circumstance makes them particularly vulnerable to the harms of isolation such that they should be considered a vulnerable person.

Certain provisions are removed, including the requirement that the DOC publish on its website the reasons for any facility-wide lockdown lasting more than 24 hours and provide notice of the lockdown to specified entities, and the provision that prohibits placement of an incarcerated person who has been transferred to an out-of-state facility in solitary confinement unless such confinement complies with the restrictions in the bill.

The DOC must report to the Governor and the Legislature by January 9, 2023, with specified information regarding security staffing and capital investment needs related to the restrictions on solitary confinement and specified information pertaining to currently incarcerated persons who are or have been housed in restrictive housing. Legislative findings relating to the number of adults held in solitary confinement in adult correctional facilities are modified to state that almost 600 adults are held in solitary confinement, rather than more than 700. A technical change is made to correct a cross reference.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: Sections 1-8, relating to the restrictions on the use of solitary confinement in state correctional facilities, take effect on July 1, 2023; and sections 9-13, relating to the requirements for developing policies and rules and reporting by the Department of Corrections and the tracking and reporting of information by local jails, take effect July 1, 2022.

Staff Summary of Public Testimony:

(In support) Policymakers have to make a statement regarding the care and welfare of those in their charge. The DOC is moving in the right direction, and the proposed changes in the bill will benefit not only incarcerated persons, but the whole department. This is an effort that has been underway for 10 years. Studies show the detrimental effects of isolation on recidivism, reentry, and mental health. The DOC and the Department of Health have both published reports on solitary confinement affirming that it is harmful. There is ample research on solitary confinement demonstrating that there is no benefit to this practice, rates of violence do not decrease, and suicide rates and mental illness are made worse. Jurisdictions that have eliminated solitary confinement have not seen increases in violence. The DOC has had years to end this practice and has consulted with organizations with expertise in this area, yet people remain in solitary confinement. The bill does not call for immediate changes, as the DOC will be given a year to implement the bill.

Incarcerated persons have had terrible experiences in solitary confinement. One person spent 26 days in a dark cell with a broken light, and previously spent 14 days in the same place for a minor infraction. During this time, medical care and access to counselors, lawyers, and the Office of the Corrections Ombuds was denied. Another incarcerated person has authored numerous publications on solitary confinement, detailing the ways in which it dehumanizes and desensitizes those forced to experience it. Another person spent eight and a half years in solitary confinement and experienced being chained to walls and tables. Solitary confinement is bad for reentry, and there have been instances of people being released directly to the community from solitary confinement. Solitary confinement denies incarcerated persons the opportunity for healthy reintegration, causes collateral trauma, exacerbates familial fracturing, and removes incarcerated persons from their communities where they are undergoing rehabilitation and practicing accountability. It also causes people to lose hope and builds anger and frustration, and disproportionately affects people of color. There are better ways to address undesirable behavior, and the focus should be on restorative justice. This is a human rights issue that the international community has defined as torture.

(Opposed) With respect to the provisions requiring jails to report solitary confinement data, there is no problem with the requirement to report such data, but there is an issue with the definition of solitary confinement. As currently defined, solitary confinement would include basically anyone in jail.

(Other) The DOC is in support of the spirit of the bill in eliminating restrictive housing as it exists today, but there are technical issues with the bill. The DOC has responsibility with respect to individuals who have committed very serious crimes while incarcerated, and care needs to be taken in transitioning these people to the general population to avoid dangerous situations. Safety of staff and incarcerated persons should come first. The DOC is currently at an all-time low with its maximum custody population, and is implementing innovative programs, including those associated with the DOC's work with the Vera

Institute of Justice. The Governor's budget provides for alternatives for restrictive housing. Changes to restrictive housing require significant resources and time. This is not a situation where a quick fix is appropriate.

Persons Testifying: (In support) Representative Strom Peterson, prime sponsor; Sterling Jarnagin; Daniel Perez; Rachael Seevers, Disability Rights Washington; Noreen Light; Vincent Sherrill; Kurtis Robinson; Neaners Garcia, Hope For Homies; Dolphy Jordan; Victor Sauceda; Terry Kupers, The Wright Institute; Vincent Sherrill; Mario Villanueva, Washington State Catholic Conference; Jojo Ejonga; and Christopher Blackwell.

(Opposed) James McMahan, Washington Association of Sheriffs and Police Chiefs.

(Other) Cheryl Strange, Melena Thompson, and Sean Murphy, Department of Corrections.

Persons Signed In To Testify But Not Testifying: Cara Michalak; Davina Kerrelola; Audrey Covner, Multifaith Coalition for Criminal Justice Reform; Gregory Christopher, Tacoma Ministerial Association; Tom Ewell, Quaker Voice; Matthew Perry, Jewish Prisoner Services International; Kari Reardon, Washington Association of Criminal Defense Lawyers and Washington Defender Association; Patrick Spurlock; Kurtis Robinson; and Angee Schrader and Sonja Hallum, Office of the Corrections Ombuds.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Public Safety. Signed by 19 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Chopp, Cody, Dolan, Fitzgibbon, Frame, Hansen, Johnson, J., Lekanoff, Pollet, Ryu, Senn, Springer, Stonier, Sullivan and Tharinger.

Minority Report: Do not pass. Signed by 13 members: Representatives Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Boehnke, Chandler, Dye, Harris, Hoff, Jacobsen, Rude, Schmick and Steele.

Staff: Yvonne Walker (786-7841).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Public Safety:

The amendment adds a null and void clause, making the bill null and void unless funded in the budget.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Second Substitute Bill: Sections 1-8, relating to the restrictions on the use of solitary confinement in state correctional facilities, take effect on July 1, 2023; and sections 9-13, relating to the requirements for developing policies and rules and reporting by the Department of Corrections and the tracking and reporting of information by local jails, take effect July 1, 2022. However, the bill is null and void unless funded in the budget.

Staff Summary of Public Testimony:

(In support) There are currently more than 600 people living in solitary confinement. Long periods of solitary confinement can cause damage such as anxiety, paranoia, lack of concentration, and high rates of suicide. If individuals in solitary confinement were given mental health treatment instead of solitary confinement, then incarceration costs and the recidivism rates would both decrease. In addition, the rate of violence in the prison system would go down if the Legislature were to end or reduce the amount of time individuals spend in solitary confinement. Solitary confinement is also very expensive. This bill would eliminate the use of long-term solitary confinement thereby allowing the DOC to close most of its solitary units. As a result, there would be no reason needed to retrofit prison units since the solitary confinement units would no longer be used or needed.

(Opposed) None.

(Other) A more specific definition of solitary confinement should be used for jails. Under the current definition, jails will be over-reporting and numerous incarcerated persons who are technically not in solitary confinement will be included in the jails' monthly reports. It is not unusual for individuals to be housed in single-person cells when the jails cells are filled to capacity.

In addition, the DOC is concerned with how and when they will be able to implement this solitary confinement legislation. The requirements in this bill would take multiple years to implement. Currently, the department does not have the physical capacity, adequate staff, or sufficient housing and resources to safely accommodate the individuals described in the bill.

Persons Testifying: (In support) Robert Wardell; Rachael Seevers, Disability Rights Washington; and Dr. Terry Kupers, The Wright Institute.

(Other) John McGrath, Washington Association of Sheriffs and Police Chiefs; and Melena Thompson and Sean Murphy, Department of Corrections.

Persons Signed In To Testify But Not Testifying: None.