

63rd Legislature

1 HOUSE BILL NO. 536

2 INTRODUCED BY F. WILMER

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING RESTRICTIONS FOR THE USE OF LONG-TERM
5 SOLITARY CONFINEMENT; AND PROVIDING DEFINITIONS, PROHIBITIONS, LIMITATIONS,
6 DETERMINATION AND DUE PROCESS, CONDITIONS, AND DOCUMENTATION."

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8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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10 NEW SECTION. **Section 1. Short title.** [Sections 1 through 8] may be cited as the "Montana Solitary
11 Confinement Act".

12

13 NEW SECTION. **Section 2. Applicability.** [Section 1 through 8] apply to state prison facilities as defined
14 in 53-30-101.

15

16 NEW SECTION. **Section 3. Definitions.** As used in [sections 1 through 8], unless the context clearly
17 requires otherwise, the following definitions apply:

18 (1) "Administrative segregation" means a nonpunitive housing status for inmates whose continued
19 presence in the general population may pose a serious threat to life, property, self, staff, other inmates, or to the
20 facility's security or orderly operation.

21 (2) "Correctional facility or program" means a state prison facility, as defined in 53-30-101, and
22 correctional programs for adults or criminally convicted youth operated by or under contract with the department
23 of corrections.

24 (3) "Disciplinary detention" means a punitive confinement determined by a due process impartial hearing
25 that separates offenders from the general population for serious rule violations.

26 (4) "Long-term" means a period that extends or is expected to extend for more than 3 consecutive days
27 in a 30-day period.

28 (5) "Mental health professional" has the meaning provided in 53-21-102.

29 (6) "Prehearing confinement" means a short-term, nonpunitive housing status that is used to safely and
30 securely control high-risk or at-risk offenders.



- 1 (7) "Serious mental illness" means:
- 2 (a) a mental disorder, as provided in 53-21-102, that has been diagnosed by a mental health
- 3 professional, including but not limited to bipolar disorders, major depressive disorder, depressive disorder not
- 4 otherwise specified, paranoid or delusional disorders, schizophrenic disorders, schizophreniform disorder,
- 5 reactive psychosis, and dissociative identity disorders; or
- 6 (b) being suicidal or having attempted suicide in the past 6 months.
- 7  (8) "Solitary confinement" means any form of housing status, punitive or nonpunitive, in which an
- 8 offender is separated from the general population in correctional facility or program that is characterized by
- 9 single-cell confinement and restricted out-of-cell activities, movement, and social interaction. The term includes
- 10 administrative segregation, disciplinary detention, prehearing confinement, or special management.
- 11 (9) "Special management" means a nonpunitive housing status for offenders who request removal from
- 12 the general population or require protection for their safety and well-being.

13

14 **NEW SECTION. Section 4. Prohibitions on use of long-term solitary confinement.** (1) Long-term

15 solitary confinement may not be used for:

- 16 (a) protective custody or special management unless the isolated confinement is requested by the
- 17 inmate;
- 18 (b) nonpunitive administrative purposes, such as understaffing or lack of sufficient electronic monitoring
- 19 equipment;
- 20 (c) any inmate under 18 years of age; or
- 21  (d) any inmate with a serious mental illness.

22 (2) An inmate who is within 1 year of the inmate's discharge date may not be classified, assigned, or

23 subject to long-term isolated confinement unless the director or designee certifies in writing that the presence of

24 the inmate in the general population would pose an immediate and significant risk of harm to others or the

25 security of the correctional facility or program.

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27 **NEW SECTION. Section 5. Limitations on use of long-term solitary confinement.** (1) An inmate

28 may be placed in long-term solitary confinement only if all other less restrictive options have been exhausted and

29 the inmate has been determined, pursuant to [section 6], to pose a significant risk to the:

- 30 (a) safety of the inmate or other inmates;



1 (b) safety of corrections personnel; or

2 (c) security of the facility.

3 (2) An inmate may not be placed in solitary confinement for more than 20 hours in 1 day unless security
4 or safety considerations determined through due process dictate otherwise. The inmate must be provided
5 opportunities for exercise, an opportunity to shower, and access to programming or services during the remaining
6 hours.

7
8 **NEW SECTION. Section 6. Determination process for long-term solitary confinement.** (1) The
9 administrator of the correctional facility or program shall ensure that the following steps have been accomplished
10 before an inmate is subject to long-term solitary confinement:

An independent

11 (a) A mental health professional shall conduct a mental health evaluation of the inmate using a
12 standardized instrument that assesses the current mental health status and condition, the current risk of suicide
13 or other self-harming behavior, and a review of all available mental health records to determine whether the
14 inmate has a serious mental illness. Pursuant to [section 4], if the inmate is determined to have a serious mental
15 illness, the inmate may not be subject to long-term solitary confinement.

An independent

16 (b) A management team or classification committee, which must include a mental health professional,
17 must review the inmate's disciplinary records and find that within the last 30 days the inmate:

18 (i) committed an act of violence that resulted in or could have resulted in serious injury or death to
19 another person;

20 (ii) committed or attempted to commit an act of nonconsensual sex;

21 (iii) committed two or more discrete acts that each caused serious disruption of cell block operations; or

22 (iv) escaped, attempted to escape, or conspired to escape from within a security perimeter or from
23 custody.

24 (c) The inmate must be given an opportunity for a hearing in front of the management team or
25 classification committee. The inmate has the right to:

26 (i) reasonable notice of the hearing;

27 (ii) reasonable notice of the inmate's rights;

28 (iii) appear in person;

→ *needs to include*

29 (iv) present documentary evidence;

have an attorney present to represent the person w/ a serious mental illness

30 (v) call, question, and cross-examine witnesses; and

1 (vi) appeal a determination by the management team or classification committee to the administrator of
2 the correctional program or facility.

3 (2) After the completion of the process specified in subsection (1), if a management team or classification
4 committee determines that long-term solitary confinement is appropriate, the inmate may be kept in long-term
5 solitary confinement subject to [section 7].
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7 **NEW SECTION. Section 7. Conditions of long-term solitary confinement.** (1) An inmate may not
8 be kept in long-term solitary confinement for more than 90 consecutive days.

9 (2) While in solitary confinement, an inmate may not be deprived of:

- 10 (a) light;
- 11 (b) ventilation;
- 12 (c) regular meals;
- 13 (d) medical and mental health care;
- 14 (e) the opportunity to take care of personal hygiene;
- 15 (f) a shower at least 3 times a week;
- 16 (g) mail;
- 17 (h) religious observance;
- 18 (i) reading material;
- 19 (j) out-of-cell exercise at least 1 hour a day; or
- 20 (k) visitation at least once a week.

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22 **NEW SECTION. Section 8. Documentation required.** (1) Each administrator of a correctional facility
23 or program shall document the usage of long-term solitary confinement, including the dates and duration of each
24 occurrence and the reason for the placement in isolated confinement. These records must be available for public
25 inspection upon request.

26 (2) The department shall ensure that custody and case management staff involved in the classification
27 or supervision of any inmates subject to solitary confinement receive training on recognizing signs of mental
28 illness and decompensation and on the proper management of offenders with serious mental illness or other
29 significant mental impairment.
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