

HOUSE BILL NO. 490

INTRODUCED BY J. ECK

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4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING RESTRICTIONS FOR THE USE OF SOLITARY
5 CONFINEMENT; PROVIDING DEFINITIONS; PROHIBITING THE USE OF LONG-TERM SOLITARY
6 CONFINEMENT FOR CERTAIN INDIVIDUALS; PROVIDING LIMITATIONS ON WHEN LONG-TERM SOLITARY
7 CONFINEMENT MAY BE USED; CREATING A DETERMINATION AND HEARING PROCESS; PROVIDING
8 CONDITIONS THAT MUST BE MET WHEN AN INMATE IS PLACED IN LONG-TERM SOLITARY
9 CONFINEMENT; PROVIDING FOR DOCUMENTATION OF THE USE OF LONG-TERM SOLITARY
10 CONFINEMENT; AND REQUIRING THE DEPARTMENT OF CORRECTIONS TO REVIEW INMATES IN
11 SOLITARY CONFINEMENT AND REPORT THE RESULTS OF THE REVIEW TO THE LEGISLATURE."

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

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15 NEW SECTION. **Section 1. Short title.** [Sections 1 through 7] may be cited as the "Montana Solitary
16 Confinement Reform Act".

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18 NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 7], unless the context clearly
19 requires otherwise, the following definitions apply:

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

23 (2) "Correctional facility or program" means a state prison, as defined in 53-30-101, a correctional
24 program for adults or criminally convicted youth operated by or under contract with the department of corrections,
25 or a facility for youth established under 52-5-101.

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

28 (4) "Long-term" means a period that extends or is expected to extend for more than 14 consecutive days
29 in a 30-day period.

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



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

3 (7) "Serious mental illness" means:

4 (a) a mental disorder, as defined in 53-21-102, that has been diagnosed by a mental health professional,
5 including but not limited to bipolar disorders, major depressive disorder, depressive disorder not otherwise
6 specified, paranoid or delusional disorders, schizophrenic disorders, schizophreniform disorder, reactive
7 psychosis, and dissociative identity disorders;

8 (b) being suicidal or having attempted suicide in the past 6 months; or

9 (c) being diagnosed with an organic brain syndrome that results in a significant functional impairment
10 if not treated.

11 (8) "Solitary confinement" means any form of housing status, punitive or nonpunitive, in which an inmate
12 is separated from the general population in a correctional facility or program and that is characterized by
13 single-cell confinement and restricted out-of-cell activities, movement, and social interaction. The term includes
14 administrative segregation, disciplinary detention, prehearing confinement, or special management.

15 (9) "Special management" means a nonpunitive housing status for inmates who request removal from
16 the general population or require protection for their safety and well-being.

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18 **NEW SECTION. Section 3. Prohibitions on use of long-term solitary confinement.** (1) Long-term
19 solitary confinement may not be used for:

20 (a) protective custody or special management unless the solitary confinement is requested by the inmate;

21 (b) nonpunitive administrative purposes, such as understaffing or lack of sufficient electronic monitoring
22 equipment;

23 (c) any inmate under 18 years of age; or

24 (d) any inmate with a serious mental illness.

25 (2) An inmate who is within 1 year of the inmate's discharge date may not be classified, assigned, or
26 subject to long-term solitary confinement unless the administrator of the correctional facility or program or the
27 administrator's designee certifies in writing that the presence of the inmate in the general population would pose
28 an immediate and significant risk of harm to others or to the security of the correctional facility or program. The
29 certification must be renewed in writing every 15 days. The administrator or the administrator's designee shall
30 develop an individualized treatment plan to assist in the inmate's successful transition to the community.

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2 **NEW SECTION. Section 4. Determination process for long-term solitary confinement.** (1) Except
3 as provided in [section 3(1)(a)], an inmate may not be placed in long-term solitary confinement unless all other
4 less restrictive options have been exhausted. The administrator of the correctional facility or program shall ensure
5 that the following steps have been accomplished before an inmate is subject to long-term solitary confinement:

6 (a) A mental health professional shall conduct a mental health evaluation of the inmate using a
7 standardized instrument that assesses the inmate's current mental health status and condition, the inmate's
8 current risk of suicide or other self-harming behavior, and a review of all available mental health records to
9 determine whether the inmate has a serious mental illness. Pursuant to [section 3], if the inmate is determined
10 to have a serious mental illness, the inmate may not be subject to solitary confinement.

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

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

15 (ii) committed or attempt to commit an act of nonconsensual sex;

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

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

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

21 (i) be provided with reasonable notice of the hearing;

22 (ii) be provided with reasonable notice of the inmate's rights;

23 (iii) appear in person;

24 (iv) present documentary evidence;

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

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

28 (2) After the completion of the process described in subsection (1), if a management team or
29 classification committee determines that long-term solitary confinement is appropriate, the inmate may be kept
30 in long-term solitary confinement subject to [sections 5 and 6].

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2 **NEW SECTION. Section 5. Mental health evaluation.** (1) A mental health professional shall evaluate
3 an inmate housed in long-term solitary confinement at least every 7 days. The evaluation is confidential and must
4 be conducted in person. The evaluation may not be conducted through a cell door or a glass wall. The evaluation
5 must include:

- 6 (a) an assessment of the inmate's current mental health status and condition;
7 (b) an assessment of the inmate's current risk of suicide or other self-harming behavior; and
8 (c) a review of all available mental health records, including records from an initial assessment conducted
9 pursuant to [section 4] and any subsequent records.

10 (2) If the mental health professional determines that the inmate suffers from a serious mental illness or
11 from another significant mental impairment, the department of corrections shall within 48 hours of the
12 determination move the inmate from long-term solitary confinement to a mental health or special needs unit or
13 other appropriate housing, as determined by the mental health professional, that does not include long-term
14 solitary confinement.

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16 **NEW SECTION. Section 6. Conditions of long-term solitary confinement.** (1) An inmate may not
17 be kept in long-term solitary confinement for more than 90 consecutive days.

18 (2) While in long-term solitary confinement, an inmate may not be deprived of:

- 19 (a) light;
20 (b) ventilation;
21 (c) regular meals;
22 (d) medical and mental health treatment;
23 (e) the opportunity to take care of personal hygiene;
24 (f) a shower at least three times a week;
25 (g) mail;
26 (h) religious observance;
27 (i) reading material;
28 (j) out-of-cell exercise at least 1 hour a day; or
29 (k) visitation at least once a week.

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1 **NEW SECTION. Section 7. Documentation required -- training required.** (1) The administrator of
2 a correctional facility or program shall document the use of long-term solitary confinement, including but not
3 limited to:

4 (a) the number of inmates in long-term solitary confinement over the course of the previous year,
5 including the age, race, and gender of the inmates and the dates and duration of each occurrence of long-term
6 solitary confinement;

7 (b) the reason for the inmate's placement in solitary confinement;

8 (c) whether any inmates in solitary confinement have been diagnosed with a mental illness or mental
9 disability and the type of mental illness or mental disability; and

10 (d) the number of inmates who were released from long-term solitary confinement directly to the general
11 public on parole, probation, or without additional supervision.

12 (2) The documentation generated pursuant to subsection (1) must be provided to the director of the
13 department of corrections each year and be available for public inspection upon request.

14 (3) The department of corrections shall ensure that custody and case management staff involved in the
15 classification or supervision of inmates subject to solitary confinement receive training on recognizing the signs
16 of mental illness and decompensation and on the proper management of inmates with serious mental illness or
17 other significant mental impairment.

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19 **NEW SECTION. Section 8. Review of inmates held in long-term solitary confinement -- report to**
20 **legislature.** Within 90 days of [the effective date of this act], the department of corrections shall review the status
21 of all inmates held in long-term solitary confinement in the state to determine whether those inmates should
22 remain in those units under the terms of [sections 1 through 7] and to ensure that inmates held in solitary
23 confinement for more than 30 days receive a hearing as provided in [section 4]. The department shall report the
24 results of this review to the law and justice interim committee provided for in 5-5-226 no later than 180 days after
25 [the effective date of this act].

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27 **NEW SECTION. Section 9. Codification instruction.** [Sections 1 through 7] are intended to be codified
28 as an integral part of Title 53, chapter 30, and the provisions of Title 53, chapter 30, apply to [sections 1 through
29 7].

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