

SJ 25: Study the Use of Solitary Confinement

DRAFT Study Plan

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for the Law and Justice Interim Committee
updated after June 2017 for the September 2017 meeting

INTRODUCTION

The 2017 Legislature recommended a study of the extent of the use of solitary confinement in state and county institutions when it enacted Senate Joint Resolution No. 25 (SJ 25). Legislators ranked the study 13th out of the 20 study resolutions in the postsession poll of interim studies. The Legislative Council met June 6 and assigned the study to the Law and Justice Interim Committee (LJIC).

During each of the past three sessions, the Montana Legislature has considered at least one bill related to the use of solitary confinement in state institutions. Some of the bills limited the practice when juveniles were in custody, while others would have limited or eliminated the practice for adults and juveniles. Typically, the bills are withdrawn by the sponsor or tabled before a fiscal note can be provided. However, when a fiscal note accompanies the bill, the projected costs of implementing it can be steep.

Senator Roger Webb introduced the most recent of these bills, Senate Bill No. 257 (SB 257), in the 2017 session. The bill would have prohibited the use of solitary confinement for inmates with serious mental illness except for in specific situations and for limited periods of time. SB 257 also required the Department of Corrections (DOC) to review the extent to which juveniles were housed in solitary confinement and develop recommendations to eliminate that housing practice. That bill was tabled in Senate Finance and Claims, and had a fiscal note describing significant long-term impacts to the corrections budget.

STUDY TASKS

The preamble to SJ 25 provides a general definition of solitary confinement, which is "to house an adult or juvenile with minimal or rare meaningful contact with other individuals." It goes on to list various terms that can also be used in place of the phrase "solitary confinement," and notes various research indicating that the practice can have negative effects on an individual's health. Finally, the preamble notes that the extent of the use of solitary confinement in Montana for juveniles and adults with mental illness is not known.

Specifically, SJ 25 asks an interim committee to review:

1. existing solitary confinement practices in Montana jails, prisons, and juvenile detention facilities;
2. the reasons that solitary confinement is utilized in each institution;

3. facility, state, or county policies in place regarding the use of solitary confinement for juveniles and individuals with mental illness;
4. changes that can be made to reduce or eliminate the use of solitary confinement for juveniles and individuals with mental illness;
5. methods used in other states that have effectively reduced or eliminated the use of solitary confinement for juveniles and individuals with mental illness; and
6. other related topics that the committee considers relevant to a better understanding of the topic.

STUDY RESOURCES

While conducting the study, the LJIC and its staff will rely heavily on the expertise provided by several stakeholder groups.

The LJIC will need to work with DOC, which can provide data on the numbers and mental health diagnoses of inmates held in housing statuses that meet the committee's definition of solitary confinement. The DOC will also be able to provide context and explanation of the department's existing policies and practices related to offender housing for adults and juveniles and also treatment of offenders with mental illness.

Depending on the direction the LJIC takes with the study, input and participation from county officials responsible for the operation and funding of local detention centers (typically county commissioners and county sheriffs) could be essential. The LJIC will need to work with both DOC and county officials to establish what facilities house juvenile offenders and what existing housing practices are for juveniles and for offenders of any age with mental illness.

Additional information and perspective could be provided by organizations that set national standards for correctional health care or other prison standards and from entities that monitor prison conditions and/or advocate for offenders.

OUTLINE OF STUDY ACTIVITIES

The outline below is a draft. It can and likely will change after the LJIC members have a chance to provide direction to staff on what the committee wants to do and accomplish with its study time.

The study could include the following basic activities during the time periods noted:

- **Stage 1: Compile background information:** July 2017 to late Fall 2017
This stage includes several steps designed to provide LJIC members information about existing offender housing practices and terms used in Montana institutions. It includes reviewing existing statutes, DOC or county policies, and any national standards or best practices related to solitary confinement. Emphasis would be placed on policies related to juveniles and to individuals with mental illness. The stage could include a

review of each state and facility and, if the facility uses solitary confinement, the reasons for it.

This stage will set the foundation for the rest of the LJIC's work in this policy area. Activities and work products could include:

- ▶ staff papers on types of and terms for solitary confinement, the numbers and locations of state institutions and county detention centers, current national standards and best practices related to solitary confinement, and options considered by other states to reduce or eliminate the use of solitary confinement;
 - ▶ panel discussions or stakeholder presentations on existing policies and practices related to inmate housing, reasons for the use of solitary confinement, mental health services provided in state and county facilities, suggestions of alternative approaches, and discussion of possible budgetary effects of the approaches.
- **Stage 2: Identify and research issues:** Winter 2017 to early Spring 2018
Study activities during this period will likely include a review of the information presented previously and papers or presentations on issues selected by the LJIC for additional analysis or study. The focus of this stage will be identification by the LJIC of problems it could address through further study, legislation, or other action.
 - **Stage 3: Develop/ finalize recommendations:** Early 2018 to Sept. 2018
After compiling background information, identifying issues, and researching options, the LJIC will discuss and act on recommendations it wants to make to the 2019 Legislature and to address through legislation or other action.

Possible Study Process	Source	Actions	Meeting Date(s)
(1) Stage 1: Revise/adopt study plan	LJIC members and staff	Committee discussion; public comment	June and Sept. 2017
(2) Stage 1: Gather information on housing practices and terms, review existing statutes and policies, review national standards and best practices. Review nature and extent of the use in state and county facilities	LJIC members, LJIC staff, DOC, county officials, stakeholders	Staff materials; other reports and possible presentations	Fall 2017 to early 2018
(3) Stages 1 and 2: Study other states' practices and approaches to reducing or eliminating the use of solitary confinement	LJIC members, LJIC staff, DOC, county officials, stakeholders	Panel presentations; LJIC staff materials; public comment	Late 2017 to Spring 2018
(4) Stage 2: Identify possible gaps in existing laws, policies, processes; identify areas of interest to LJIC members for further research, information gathering	Stakeholder input, DOC, LJIC members	Panel presentations; LJIC staff materials; public comment	Ongoing but especially late Winter and Spring 2018
(5) Stage 2 and 3: Examine implications of possible policy changes or alternatives, including budgetary implications	Stakeholder input, DOC, LJIC members and staff	Presentations; public comments; staff materials; discussion during meetings	Spring 2018
(6) Stage 3: Develop recommendations and, if requested, bill drafts for the 2019 Legislature	Committee members, staff	Committee work sessions; public comment	Spring 2018 to September 2018

SENATE JOINT RESOLUTION NO. 25

INTRODUCED BY R. WEBB, K. ABBOTT, D. BARRETT, M. BLASDEL, C. BOLAND, R. BRODEHL, E. BUTTREY, M. CAFERRO, J. COHENOUR, K. DUDIK, J. ECK, R. EHLI, T. FACEY, T. GAUTHIER, E. GREEF, J. GROSS, M. HOPKINS, G. KIPP, D. LENZ, M. MACDONALD, T. MANZELLA, K. MCCARTHY, W. MCKAMEY, M. MCNALLY, S. MORIGEAU, D. MORTENSEN, A. OLSZEWSKI, R. OSMUNDSON, M. PHILLIPS, G. PIERSON, J. POMNICHOWSKI, J. PRICE, V. RICCI, T. RICHMOND, M. RYAN, D. SANDS, D. SKEES, C. SMITH, F. SMITH, S. STEWART-PEREGOY, N. SWANDAL, F. THOMAS, G. VUCKOVICH, C. WOLKEN, T. WOODS

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING A STUDY ON THE EXTENT OF THE USE OF SOLITARY CONFINEMENT IN STATE AND COUNTY INSTITUTIONS IN MONTANA.

WHEREAS, solitary confinement means to house an adult or juvenile with minimal or rare meaningful contact with other individuals; and

WHEREAS, solitary confinement is referred to in a variety of ways, including administrative, protective, or disciplinary segregation, lockdown, and secure housing; and

WHEREAS, there has been increased controversy about the use of solitary confinement in the nation's jails, prisons, and juvenile detention centers; and

WHEREAS, the National Commission on Correctional Health Care found that "it is well established that persons with mental illness are particularly vulnerable to the harms of solitary confinement"; and

WHEREAS, a task force appointed by the U.S. Attorney General found in 2012 that solitary confinement of juveniles produces symptoms of "paranoia, anxiety and depression even after very short periods of isolation" and that these youth who spend extended time in isolation are most likely to attempt or actually commit suicide; and

WHEREAS, the National Commission on Correctional Health Care has found that solitary confinement that lasts more than 15 days is cruel, inhuman, and degrading treatment and harmful to an individual's health and recommends that solitary confinement be eliminated for juveniles and the mentally ill; and

WHEREAS, solitary confinement is a practice that is currently used in Montana with individuals who are detained by the state for various offenses; and

WHEREAS, the extent of the use of this practice in Montana with juveniles and adults with mental health diagnoses is not fully known.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to examine the extent of the use of solitary confinement in state and county institutions in Montana.

BE IT FURTHER RESOLVED, that the study review:

- (1) existing solitary confinement practices in Montana jails, prisons, and juvenile detention facilities;
- (2) the reasons that solitary confinement is utilized in each institution;
- (3) facility, state, or county policies in place regarding the use of solitary confinement for juveniles and individuals with mental illness;
- (4) changes that can be made to reduce or eliminate the use of solitary confinement for juveniles and individuals with mental illness;
- (5) methods used in other states that have effectively reduced or eliminated the use of solitary confinement for juveniles and individuals with mental illness; and
- (6) other related topics that the committee considers relevant to a better understanding of the topic.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2018.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 66th Legislature.