



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB0259

by Rep. La Shawn K. Ford

SYNOPSIS AS INTRODUCED:

New Act
730 ILCS 5/3-8-7

from Ch. 38, par. 1003-8-7

Creates the Isolated Confinement Restriction Act. Restricts the use of isolated confinement in correctional facilities in the State. Provides that a committed person shall not be placed in isolated confinement unless there is reasonable cause to believe that the committed person would create a substantial risk of immediate serious harm to himself, herself, or another, and a less restrictive intervention would be insufficient to reduce this risk and the correctional facility shall bear the burden of establishing this standard. Provides that a committed person shall not be placed in isolated confinement before receiving a personal and comprehensive medical and mental health examination conducted by a clinician. Defines "clinician" as: (1) a physician who is licensed to practice medicine in all of its branches and is certified in psychiatry by the American Board of Psychiatry and Neurology or the American Osteopathic Board of Neurology and Psychiatry, or has completed 4 years of an accredited post-graduate training program in psychiatry; or (2) a licensed clinical psychologist. Provides that a committed person held in emergency confinement shall receive an initial medical and mental health evaluation within 2 hours. Establishes conditions in which a committed person may be placed in protective custody. Amends the Unified Code of Corrections to make conforming changes. Effective January 1, 2018, except that the Department of Corrections rules provisions are effective immediately.

LRB100 05199 RLC 15209 b

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Isolated Confinement Restriction Act.

6 Section 5. Findings. The General Assembly finds and
7 declares that:

8 (1) The use of isolated confinement in this State's
9 correctional facilities shall be restricted to ensure the safe
10 and humane operation of these facilities, consistent with the
11 Illinois Constitution, the laws and public policies of this
12 State, the mission of the correctional system, evolving medical
13 knowledge, and human rights standards of decency.

14 (2) Isolated confinement shall only be used when absolutely
15 necessary, and shall not be used against vulnerable populations
16 or under conditions or for time periods that are in excess of 5
17 days which can foster psychological trauma, psychiatric
18 disorders, or serious, long-term damage to an isolated person's
19 brain.

20 (3) The standards established in this Act shall apply to
21 all persons confined in correctional facilities under the
22 jurisdiction of this State regardless of the civil or criminal
23 nature of the charges against them.

1 Section 10. Definitions. In this Act:

2 "Clinician" means any of the following:

3 (1) a physician who is licensed to practice medicine in
4 all of its branches and is certified in psychiatry by the
5 American Board of Psychiatry and Neurology or the American
6 Osteopathic Board of Neurology and Psychiatry, or has
7 completed 4 years of an accredited post-graduate training
8 program in psychiatry; or

9 (2) a licensed clinical psychologist.

10 "Committed person" means a person confined in a
11 correctional facility.

12 "Correctional facility" means any State correctional
13 facility or county correctional facility, and any State,
14 county, or private facility detaining persons under any
15 intergovernmental service agreement or other contract with any
16 State, county, or federal agency, including, but not limited
17 to, United States Immigration and Customs Enforcement.

18 "Director" means the Director of Corrections.

19 "Emergency confinement" means the isolated confinement of
20 a committed person in a correctional facility when there is
21 reasonable cause to believe that this confinement is necessary
22 to reduce a substantial risk of imminent serious harm to the
23 committed person or others.

24 "Facility administrator" or "administrator" means the
25 chief operating officer, senior administrative designee, or

1 warden of a correctional facility.

2 "Isolated confinement" means confinement of a committed
3 person in a correctional facility, under disciplinary,
4 administrative, protective, investigative, medical, or other
5 classification, in a cell or similarly confined holding or
6 living space, alone or with other inmates, for approximately 20
7 hours or more per day, with severely restricted activity,
8 movement, and social interaction.

9 "Less restrictive intervention" means a placement or
10 conditions of confinement, or both, in the current or an
11 alternative correctional facility, under less restrictive
12 conditions on a committed person's movement, privileges,
13 activities, and social interactions.

14 "Medical isolation" means isolated confinement of a
15 committed person for medical reasons, including a mental health
16 emergency or when necessary to prevent the spread of a
17 communicable disease.

18 "Member of a vulnerable population" means any committed
19 person who:

20 (1) is 21 years of age or younger;

21 (2) is 55 years of age or older;

22 (3) has a disability based on a mental illness, a
23 history of psychiatric hospitalization, or has recently
24 exhibited conduct, including, but not limited to, serious
25 self mutilation, indicating the need for further
26 observation or evaluation to determine the presence of

1 mental illness;

2 (4) has a developmental disability;

3 (5) has a serious medical condition which cannot
4 effectively be treated in isolated confinement;

5 (6) is pregnant;

6 (7) has a significant auditory or visual impairment; or

7 (8) is lesbian, gay, bisexual, or transgender.

8 "Protective custody" means confinement of a committed
9 person in a cell or similarly confined holding or living space,
10 under conditions necessary to protect the committed person or
11 others.

12 "State correctional facility" means a State prison or other
13 penal institution or an institution or facility designated by
14 the Director as a place of confinement.

15 Section 15. Restrictions on the use of isolated
16 confinement.

17 (a) Except as provided in subsection (b), the use of
18 isolated confinement in correctional facilities in this State
19 shall be restricted as follows:

20 (1) a committed person shall not be placed in isolated
21 confinement unless there is reasonable cause to believe
22 that the committed person would create a substantial risk
23 of immediate serious harm to himself, herself, or another,
24 and a less restrictive intervention would be insufficient
25 to reduce this risk and the correctional facility shall

1 bear the burden of establishing this standard;

2 (2) a committed person shall not be placed in isolated
3 confinement before receiving a personal and comprehensive
4 medical and mental health examination conducted by a
5 clinician;

6 (3) the final decision to place a committed person in
7 isolated confinement shall be made by the facility
8 administrator;

9 (4) a committed person shall not be placed or retained
10 in isolated confinement if the facility administrator
11 determines that the committed person no longer meets the
12 standard for isolated confinement;

13 (5) a committed person who is a member of a vulnerable
14 population shall not be placed in isolated confinement and
15 any committed person who is a member of a vulnerable
16 population shall not be subject to discipline for refusing
17 treatment or medication, or for self-harming or related
18 conduct or threats of this conduct, and shall be placed in
19 a specialized unit, as designated by the Director, or be
20 civilly admitted or committed to an appropriate facility
21 designated by the Department of Human Services;

22 (6) a committed person shall not be placed in isolated
23 confinement or in any other cell or holding space or living
24 space, in any facility, with one or more committed persons
25 if there is reasonable cause to believe that there is a
26 risk of harm or harassment, intimidation, extortion, or

1 other physical or emotional abuse to that committed person
2 or another committed person in that placement; and

3 (7) except during a facility-wide lockdown, a
4 committed person may not be placed in isolated confinement
5 for more than 5 consecutive days or more than 5 days during
6 any 150-day period;

7 (8) a committed person shall not involuntarily be
8 placed in isolated confinement for non-disciplinary
9 reasons;

10 (9) a committed person shall only be held in isolated
11 confinement under initial procedures and reviews which
12 provide timely, fair, and meaningful opportunities for the
13 committed person to contest the confinement, including the
14 right to an initial hearing within 72 hours of placement
15 and a review by the facility administrator or his or her
16 specifically designated employee each 4 days thereafter,
17 unless exceptional circumstances, unavoidable delays, or
18 reasonable postponements exist; the right to appear at the
19 hearing, the right to be represented at the hearing, an
20 independent hearing officer, and a written statement of
21 reasons for the decision made at the hearing; and

22 (10) cells or other holding or living spaces used for
23 isolated confinement shall be ventilated, lit,
24 temperature-controlled, clean, and equipped with properly
25 functioning sanitary fixtures.

26 (b) Isolated confinement shall be permitted under limited

1 circumstances as follows:

2 (1) The facility administrator determines that a lock
3 down is to be implemented in the limited area of the
4 correctional facility where an outbreak or violence has
5 occurred, or when a facility-wide lockdown is required to
6 ensure the safety of committed persons in the facility
7 until the administrator determines that these
8 circumstances no longer exist. The facility administrator
9 shall document specific reasons why any lockdown is
10 necessary for more than 24 hours, and why less restrictive
11 interventions are insufficient to accomplish the safety
12 goals. Within 6 hours of a decision to extend a lockdown
13 beyond 24 hours, the Director shall publish the reasons on
14 the Department of Corrections website and provide
15 meaningful notice of the reasons for the lockdown to the
16 General Assembly.

17 (2) The facility administrator determines that a
18 committed person shall be placed in emergency confinement.

19 (A) A committed person shall not be held in
20 emergency confinement for more than 24 hours.

21 (B) A committed person held in emergency
22 confinement shall receive an initial medical and
23 mental health evaluation within 2 hours, and a personal
24 and comprehensive medical and mental health evaluation
25 within 24 hours. Reports of these evaluations shall be
26 immediately provided to the facility administrator.

1 (3) A physician, based on a personal examination,
2 determines that a committed person shall be placed or
3 retained in medical isolation. The decision to place and
4 retain a committed person in medical isolation due to a
5 mental health emergency shall be made by a clinician based
6 on a personal examination. In any case of isolation under
7 this paragraph (3), a clinical review shall be conducted at
8 least every 6 hours and as indicated. A committed person in
9 medical isolation under this paragraph (3) shall be placed
10 in a mental health unit as designated by the Director.

11 (4) The facility administrator determines that a
12 committed person should be placed in protective custody as
13 follows:

14 (A) The committed person may be placed in voluntary
15 protective custody only with informed, voluntary,
16 written consent and when there is reasonable cause to
17 believe that confinement is necessary to prevent
18 reasonably foreseeable harm and if a committed person
19 makes an informed voluntary written request for
20 protective custody, the correctional facility shall
21 bear the burden of establishing a basis for refusing
22 the request.

23 (B) The committed person may be placed in
24 involuntary protective custody only if there is clear
25 and convincing evidence that confinement is necessary
26 to prevent reasonably foreseeable harm and that no less

1 restrictive intervention would be sufficient to
2 prevent that harm.

3 (C) A committed person placed in protective
4 custody shall receive comparable opportunities for
5 activities, movement, and social interaction,
6 consistent with his or her safety and the safety of
7 others, as do committed persons in the general
8 population of the facility.

9 (D) A committed person subject to removal from
10 protective custody shall be provided with a timely,
11 fair, and meaningful opportunity to contest the
12 removal.

13 (E) A committed person who may be placed or
14 currently is in voluntary protective custody may opt
15 out of that status by providing informed, voluntary,
16 written refusal of that status.

17 (5) A member of a vulnerable population shall not be
18 placed in isolated confinement with one or more committed
19 persons, except with the committed person's informed,
20 voluntary, and written consent.

21 Section 20. Department rules.

22 (a) Within 90 days after the effective date of this Act,
23 the Director shall:

24 (1) develop policies and implement procedures for the
25 review of committed persons placed in isolated confinement

1 and submit proposed rules for adoption as required by this
2 Act;

3 (2) initiate a review of each committed person placed
4 in isolated confinement under the policies and procedures
5 developed and implemented under this Act; and

6 (3) develop a plan for providing step-down and
7 transitional units, programs, and staffing patterns to
8 accommodate committed persons currently placed in isolated
9 confinement.

10 (b) The Department of Corrections shall adopt rules to
11 carry out the provisions of this Act. The rules shall include,
12 but not be limited to:

13 (1) establishing less restrictive housing to isolated
14 confinement, including: separation from other committed
15 persons; transfer to other correctional facilities; any
16 non-isolated confinement sanction authorized by Department
17 of Corrections rules; removing restrictions on religious
18 practices, mail, telephone privileges, and visit contacts;
19 and restrictions on outdoor and recreation access shall
20 only be imposed as is necessary for the safety of the
21 committed person or others, and in no case shall restrict
22 access to food, basic necessities, or legal access;

23 (2) requiring training of disciplinary staff and all
24 staff working with committed persons in isolated
25 confinement and requiring that this training include:

26 (A) assistance from appropriate professionals in

1 the Department of Human Services to periodically train
2 all staff working with committed persons in isolated
3 confinement; and

4 (B) standards for isolated confinement, the
5 identification of developmental disabilities, and the
6 symptoms of mental illness, including trauma
7 disorders, and methods of safe responses to people in
8 distress;

9 (3) requiring documentation of all decisions,
10 procedures, and reviews of committed persons placed in
11 isolated confinement;

12 (4) requiring monitoring of compliance with all rules
13 governing cells, units, and other places where committed
14 persons are placed in isolated confinement; and

15 (5) requiring posting on the official website of the
16 Department of Corrections of quarterly reports on the use
17 of isolated confinement, by age, sex, gender identity,
18 ethnicity, incidence of mental illness, and type of
19 confinement status, at each facility; these reports shall
20 include the population on the last day of each quarter and
21 a non-duplicative cumulative count of persons exposed to
22 isolated confinement for each fiscal year. These reports
23 shall include the incidence of emergency confinement,
24 self-harm, suicide, and assault in any isolated
25 confinement unit, as well as explanations for each instance
26 of facility-wide lockdown. These reports shall not include

1 personally identifiable information regarding any
2 committed person.

3 Section 105. The Unified Code of Corrections is amended by
4 changing Section 3-8-7 as follows:

5 (730 ILCS 5/3-8-7) (from Ch. 38, par. 1003-8-7)

6 Sec. 3-8-7. Disciplinary Procedures.→

7 (a) All disciplinary action shall be consistent with this
8 Chapter. Rules of behavior and conduct, the penalties for
9 violation thereof, and the disciplinary procedure by which such
10 penalties may be imposed shall be available to committed
11 persons.

12 (b) (1) Corporal punishment and disciplinary restrictions
13 on diet, medical or sanitary facilities, mail or access to
14 legal materials are prohibited.

15 (2) (Blank).

16 (3) (Blank).

17 (c) Review of disciplinary action imposed under this
18 Section shall be provided by means of the grievance procedure
19 under Section 3-8-8. The Department shall provide a disciplined
20 person with a review of his or her disciplinary action in a
21 timely manner as required by law.

22 (d) All institutions and facilities of the Department of
23 Corrections shall establish, subject to the approval of the
24 Director, procedures for hearing disciplinary cases except

1 those that may involve the imposition of disciplinary
2 segregation and isolation; the loss of good time credit under
3 Section 3-6-3 or eligibility to earn good time credit.

4 (e) In disciplinary cases which may involve the imposition
5 of ~~disciplinary segregation and isolation,~~ the loss of good
6 time credit or eligibility to earn good time credit, the
7 Director shall establish disciplinary procedures consistent
8 with the following principles:

9 (1) Any person or persons who initiate a disciplinary
10 charge against a person shall not determine the disposition
11 of the charge. The Director may establish one or more
12 disciplinary boards to hear and determine charges.

13 (2) Any committed person charged with a violation of
14 Department rules of behavior shall be given notice of the
15 charge including a statement of the misconduct alleged and
16 of the rules this conduct is alleged to violate.

17 (3) Any person charged with a violation of rules is
18 entitled to a hearing on that charge at which time he shall
19 have an opportunity to appear before and address the person
20 or persons deciding the charge.

21 (4) The person or persons determining the disposition
22 of the charge may also summon to testify any witnesses or
23 other persons with relevant knowledge of the incident.

24 (5) If the charge is sustained, the person charged is
25 entitled to a written statement of the decision by the
26 persons determining the disposition of the charge which

1 shall include the basis for the decision and the
2 disciplinary action, if any, to be imposed.

3 (6) (Blank).

4 (f) In disciplinary cases which may involve the imposition
5 of segregation and isolation, isolated confinement, or
6 restrictive housing, the Director shall establish disciplinary
7 procedures consistent with the Isolated Confinement
8 Restriction Act.

9 (Source: P.A. 97-1083, eff. 8-24-12.)

10 Section 999. Effective date. This Act takes effect January
11 1, 2018, except that this Section and Section 20 take effect
12 upon becoming law.