

AMENDMENT TO HOUSE BILL 4494

AMENDMENT NO. \_\_\_\_\_. Amend House Bill 4494 by replacing everything after the enacting clause with the following:

“Section 1. Short title. This act may be cited as the “Isolated Confinement Restriction Act.”

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

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

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

(3) The standards established in this act should apply to all persons confined in correctional facilities under the jurisdiction of this State or any subdivision, regardless of the civil or criminal nature of the charges against them.

Section 10. Definitions. In this Act

“Clinician” means any of the following:

- (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;
- (2) a licensed clinical psychologist.

“Committed person” means a person confined in a correctional facility.

“Correctional facility” means any State correctional facility or county correctional facility, and any State, county, or private facility detaining persons under any intergovernmental service agreement or

other contract with any State, county, or federal agency, including, but not limited to, United States Immigration and Customs Enforcement.

“Director” means the Director of the Illinois Department of Corrections.

“Emergency confinement” means the isolated confinement of a committed person in a correctional facility when there is reasonable cause to believe that this confinement is necessary to reduce a substantial risk of imminent serious harm to the committed person or others.

“Facility administrator” or “administrator” means the chief operating officer or senior administrative designee or warden of a correctional facility.

“Isolated confinement” means confinement of an inmate in a correctional facility, pursuant to disciplinary, administrative, protective, investigative, medical, or other classification, in a cell or similarly confined holding or living space, alone or with other inmates, for approximately 20 hours or more per day, with severely restricted activity, movement, and social interaction.

“Less restrictive intervention” means a placement or conditions of confinement, or both, in the current or an alternative correctional facility, under less restrictive conditions on a committed person’s movement, privileges, activities, and social interactions.

“Medical isolation” means isolated confinement of a committed person for medical reasons, including a mental health emergency or when necessary for preventing the spread of a communicable disease.

“Member of a vulnerable population” means any committed person who:

- (1) Is 21 years of age or younger;
- (2) Is 55 years of age or older;
- (3) Has a disability based on a mental illness, a history of psychiatric hospitalization, or has recently exhibited conduct, including but not limited to, serious self mutilation, indicating the need for further observation or evaluation to determine the presence of mental illness;
- (4) Has a developmental disability;

(5) Has a serious medical condition, which cannot effectively be treated in isolated confinement;

(6) Is pregnant;

(7) Has a significant auditory or visual impairment; or

(8) Is Lesbian, Gay, Bisexual, or Transgender.

“Protective custody” means confinement of an inmate in a cell or similarly confined holding or living space, under conditions necessary to protect the inmate or others.

"State correctional facility," means a State prison or other penal institution or an institution or facility designated by the director as a place of confinement.

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

(a) The use of isolated confinement in correctional facilities in this State shall be restricted as follows:

(1) Except as defined below, a committed person shall not be involuntarily 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 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.

(2) Except as listed below, an inmate shall not involuntarily be placed in isolated confinement for non-disciplinary reasons.

(3) Except as listed below, an inmate shall not be placed in isolated confinement before receiving a personal and comprehensive medical and mental health examination conducted by a clinician.

(4) Except as listed below, an inmate shall only be held in isolated confinement pursuant to initial procedures and reviews which provide timely, fair and meaningful opportunities for the inmate to contest the confinement. These procedures shall include the right to an initial hearing within 72 hours of placement and a review by the facility administrator or his/her specifically designated employee, will occur every 4 days thereafter, exceptional circumstances, unavoidable delays, or reasonable postponements exist;

the right to appear at the hearing, the right to be represented at the hearing, an independent hearing officer, and a written statement of reasons for the decision made at the hearing.

(5) except as listed below, the final decision to place a committed person in isolated confinement shall be made by the facility administrator;

(6) except as listed below, a committed person shall not be placed or retained in isolated confinement if the facility administrator determines that the committed person no longer meets the standard for isolated confinement;

(7) except as listed below, a committed person who is a member of a vulnerable population shall not be placed in isolated confinement and any committed person who is a member of a vulnerable population shall not be subject to discipline for refusing treatment or medication, or for self-harming or related conduct or threats of this conduct, and shall be placed in a specialized unit, as designated by the Director, or be civilly admitted or committed to an appropriate facility designated by the Department of Human Services;

(8) except as listed below, a committed person shall not be placed in isolated confinement or in any other cell or holding space or living space, in any facility, with one or more committed persons if there is reasonable cause to believe that there is a risk of harm or harassment, intimidation, extortion, or other physical or emotional abuse to that committed person or another committed person in that placement; and

(9) except during a facility-wide lock down, an inmate shall not be placed in isolated confinement for more than 5 days during any 150-day period.

(10) Cells or other holding or living space used for isolated confinement are to be properly ventilated, lit, temperature-controlled, clean, and equipped with properly functioning sanitary fixtures.

(11) Except as listed below, an inmate who is a member of a vulnerable population shall not be placed in isolated confinement.

(b) Isolated confinement shall be permitted under limited circumstances as follows:

(1) The facility administrator determines that a lock down is to be implemented in the limited area of the prison where an outbreak or violence has occurred or is required to ensure the safety of committed persons in the facility until the administrator determines that these circumstances no longer exist. The facility administrator shall document specific reasons why any lockdown is necessary for more than 24 hours, and why less restrictive interventions are insufficient to accomplish the facility's safety goals. Within six hours of a decision to extend a lockdown beyond 24 hours, the director shall publish the reasons on the

Department of Corrections website and provide meaningful notice of the reasons for the lockdown to the General Assembly.

(2) The facility administrator determines that an inmate should be placed in emergency confinement.

(A) A committed person shall not be held in emergency confinement for more than 24 hours; and

(b) a committed person held in emergency confinement shall receive an initial medical and mental health evaluation within two hours, and a personal and comprehensive medical and mental health evaluation within 24 hours. Reports of these evaluations shall be immediately provided to the facility administrator.

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

(4) The facility administrator determines that an inmate should be placed in protective custody as follows:

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

(b) The committed person may be placed in involuntary protective custody only when there is clear and convincing evidence that confinement is necessary to prevent reasonably foreseeable harm and that no less restrictive intervention would be sufficient to prevent such harm.

(c) A committed person placed in protective custody shall receive comparable opportunities for activities, movement, and social interaction, consistent with their safety and the safety of others, as do committed persons in the general population of the facility.

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

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

(5) A member of a vulnerable population shall not be placed in isolated confinement with one or more inmates, except with the inmate's informed, voluntary, and written consent.

Section 20. Department rules.

(a) Within 90 days of the effective date of this act, the Director shall:

(1) develop policies and implement procedures for the review of committed persons placed in isolated confinement and submit proposed regulations for promulgation as required by this act;

(2) initiate a review of each committed person placed in isolated confinement pursuant to the policies and procedures developed and implemented this act; and

(3) develop a plan for providing step-down and transitional units, programs, and staffing patterns to accommodate inmates currently placed in isolated confinement.

(b) The Department of Corrections shall promulgate regulations to effectuate the provisions of this act. The regulations shall include but not be limited to:

(1) establishing less restrictive housing to isolated confinement, which could include separation from other committed persons; transfer to other correctional facilities; and any non-isolated confinement sanction authorized by Department of Corrections regulations; remove restrictions on religious, mail, and telephone privileges, visit contacts; or outdoor and recreation access shall only be imposed as is necessary for the safety of the inmate or others, and in no case will access to food, basic necessities, legal research be limited.

(2) requiring training of disciplinary staff and all staff working with inmates in isolated confinement and require that this training include:

(A) assistance from appropriate professionals in the Department of Human Services to periodically train all staff working with inmates in isolated confinement; and

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

(3) requiring documentation of all decisions, procedures, and reviews of inmates placed in isolated confinement;

(4) requiring compliance monitoring with all rules governing cells, units, and other places where inmates are placed in isolated confinement; and

(5) requiring posting on the official website of the Department of Corrections of quarterly reports on the use of isolated confinement, by age, sex, gender identity, ethnicity, incidence of mental illness, and type of confinement status, at each facility; these reports shall include the population on the last day of each quarter and a non-duplicative cumulative count of people held in isolated confinement for each fiscal year. These reports also shall include the incidence of emergency confinement, self-harm, suicide, and assault in any isolated confinement unit, as well as explanations for each instance of facility-wide lockdown. These reports shall not include personally identifiable information regarding any committed person.

(6) This act shall take effect within one year of its enactment, except the Director may take any anticipatory administrative action in advance as shall be necessary for the implementation of this act.