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AMENDED IN SENATE JUNE 20, 2023

AMENDED IN ASSEMBLY MAY 18, 2023

AMENDED IN ASSEMBLY MARCH 9, 2023

CALIFORNIA LEGISLATURE—2023–24 REGULAR SESSION

ASSEMBLY BILL

No. 280

**Introduced by Assembly Members Holden, Bryan, Kalra, and
Weber**

(Principal coauthor: Senator Durazo)

**(Coauthors: Assembly Members Bonta, Juan Carrillo,
Wendy Carrillo, Gipson, Haney, Lee, *Lowenthal*, McKinnor,
Ortega, and Santiago)**

(Coauthors: Senators Becker, Skinner, Wahab, and Wiener)

January 24, 2023

An act to add Article 7 (commencing with Section 2697) to Chapter 4 of Title 1 of Part 3 of the Penal Code, relating to segregated confinement.

LEGISLATIVE COUNSEL'S DIGEST

AB 280, as amended, Holden. Segregated confinement.

Existing law establishes the state prisons under the jurisdiction of the Department of Corrections and Rehabilitation. Existing law places county jails under the jurisdiction of the sheriff for the confinement of persons sentenced to imprisonment for the conviction of a crime.

This bill would require every jail, prison, public or privately operated detention facility, and a facility in which individuals are subject to confinement or involuntary detention to develop and follow written

procedures governing the management of segregated confinement, as specified, and to make those written procedures publicly available. The bill would require those facilities to document the use of segregated confinement by, among other things, providing written orders of that confinement to the individual confined, as specified. The bill would prohibit those facilities from involuntarily placing an individual in segregated confinement if the individual belongs to a designated population, including, among others, that the individual has a mental or physical disability or that the individual is under 26 years of age or over 59 years of age. The bill would require the facility to periodically check on the individual and have a medical or mental health professional periodically assess the individual. This bill would require a facility to offer out-of-cell programming to individuals in segregated confinement for at least 4 hours per day, not including time spent on an unpaid work assignment or in paid employment. The bill would require a facility to maximize the amount of time that an incarcerated person held in segregated confinement spends outside of their cell by providing outdoor and indoor recreation, education, clinically appropriate treatment therapies, and skill-building activities, as specified, and would require facilities to develop and provide appropriate programming to individuals that pose a significant safety risk to themselves or others, as specified. The bill would also authorize a facility to use segregated confinement to help treat and protect against the spread of communicable disease, under certain circumstances.

This bill would prohibit a facility from holding an individual in segregated confinement for more than 15 consecutive days and no more than 45 days in a 180-day period, as specified. This bill would also prohibit a facility from imposing limitations on services, treatment, or basic needs; conducting out-of-cell programming opportunities in a smaller cage or therapy module; placing an individual in segregated confinement on the basis of confidential information, as specified; using specified restraints when an individual is in segregated confinement; and using segregated confinement as a means of protecting an individual. This bill would require a facility administrator or chief physician to conduct a secondary review of a person in segregated confinement's dispute regarding qualification in the designated populations category. This bill would require facilities to create and publish monthly, semiannual, and annual reports, as specified. The bill would require the Office of the Inspector General and the Board of State and Community Corrections to assess each facility's compliance with the act, as

specified. This bill would require local and state authorities to promulgate regulations or directives to implement the act, where applicable. The bill would declare these provisions to be severable. By imposing additional duties on county jails, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Article 7 (commencing with Section 2697) is
2 added to Chapter 4 of Title 1 of Part 3 of the Penal Code, to read:

3
4 Article 7. Segregated Confinement
5

6 2697. For the purposes of this article, all of the following terms
7 have the following meanings:

8 (a) "Facility" means any of the following facilities in California:

9 (1) Private detention facilities.

10 (2) Jails and prisons.

11 (3) Detention facilities.

12 (b) "Detention facility" means a facility in which persons are
13 incarcerated or otherwise involuntarily detained or confined for
14 purposes of execution of a punitive sentence imposed by a court
15 or detention pending a trial, hearing, or other judicial or
16 administrative proceeding.

17 (c) "Private detention facility" means a detention facility that
18 is operated by a private, nongovernmental, for-profit entity and is
19 operating pursuant to a contract or agreement with a local, state,
20 or federal governmental entity.

21 (d) (1) "Segregated confinement" means the confinement of
22 an individual, in a cell or similarly confined holding or living
23 space, alone or with other individuals, with severely restricted

1 activity, movement, or minimal or no contact with persons other
2 than custodial staff for more than 17 hours per day.

3 (2) Segregated confinement is determined by time spent in a
4 cell and contact with persons other than custodial staff.

5 (3) Segregated confinement does not apply to extraordinary,
6 emergency circumstances that require a significant departure from
7 normal institutional operations, including a natural disaster or
8 facilitywide threat that poses an imminent and substantial risk of
9 harm. This exception applies for the shortest amount of time needed
10 to address the imminent and substantial risk of harm.

11 (e) “Designated populations” means any person who is 25 years
12 of age or younger, not including persons protected by Section
13 208.3 of the Welfare and Institutions Code; is 60 years of age or
14 older; is with a mental or physical disability as defined in Section
15 12926 of the Government Code; is pregnant; is in the first eight
16 weeks of the postpartum recovery period after giving birth; or has
17 recently suffered a miscarriage or terminated a pregnancy.

18 (f) “Medical professional” means a licensed physician, physician
19 assistant, or nurse practitioner.

20 (g) “Mental health professional” means someone who makes
21 mental health evaluations and is a licensed psychiatrist,
22 psychologist, licensed clinical social worker, licensed marriage
23 and family therapist, *licensed professional clinical counselor*, or
24 an advanced practice nurse or clinical nurse specialist with a
25 specialty in psychiatric nursing.

26 2697.2. (a) Every facility shall develop and follow written
27 procedures governing the management of segregated confinement
28 that also meet the standards of care of the type of facility, and shall
29 make those written procedures publicly available.

30 (b) Every facility shall document the use of segregated
31 confinement, including, but not limited to, through all of the
32 following procedures:

33 (1) A written order shall be completed and approved by the
34 facility administrator or designee within 24 hours of a person being
35 placed in segregated confinement.

36 (2) The order shall be provided to the individual within 24 hours
37 of placement in segregated confinement and its contents
38 communicated to them in a language or manner the individual can
39 understand.

1 (3) A clear and consistent log shall be kept, detailing the time
2 spent in segregated confinement and the necessary compliance
3 with the standards required for that confinement.

4 (4) The written records required by this subdivision shall be
5 maintained by the facility and updated daily.

6 (c) When an individual is placed in segregated confinement,
7 the facility shall do all of the following:

8 (1) Document the facts and circumstances that led to placing
9 the individual into segregated confinement.

10 (2) Document the date and time that the individual was placed
11 into segregated confinement.

12 (3) Notify its medical or mental health professionals in writing
13 within 12 hours of placing an individual in segregated confinement.

14 (4) At least twice per hour, check on the individual involuntarily
15 placed in segregated confinement. If the individual is demonstrating
16 unusual behavior or has indicated suicidality or self-harm, the
17 facility shall monitor the individual every 15 minutes, or more
18 frequently, unless a medical or mental health professional
19 recommends more frequent checks.

20 (5) Every 24 hours, have a medical or mental health professional
21 assess the individual involuntarily placed in segregated
22 confinement and have a mental health professional assess the
23 individual every 48 hours for ongoing placement in segregated
24 confinement.

25 (6) Provide the individual a clear explanation of the reason they
26 have been placed in segregated confinement, the monitoring
27 procedures that the facility will employ to check the individual,
28 and the date and time of the individual's next court date, if
29 applicable. This explanation shall be provided to the individual in
30 writing, in a language or manner the individual can understand,
31 within 24 hours of placement in segregated confinement.

32 (7) A facility shall impose no limitation on services, treatment,
33 or basic needs, such as clothing, food, and bedding. The facility
34 shall not impose restricted diets or any other change in diet as a
35 form of punishment. An individual shall not be denied access to
36 their legal counsel or representative while in segregated
37 confinement.

38 (8) Offer out-of-cell programming to a person in segregated
39 confinement at least four hours per day, including at least one hour
40 for recreation. A person in segregated confinement shall be offered

1 programming led by program or therapeutic staff that is comparable
2 to the programming offered to a person in the general population.
3 All other out-of-cell time may include peer-led programs, time in
4 a day room or out-of-cell recreation area with other people,
5 congregate meals, volunteer programs, or other congregate
6 activities unless the facility administrator or medical or mental
7 health professional determines that the person poses an
8 extraordinary and unacceptable risk of imminent physical harm to
9 the safety or security of other detained people or staff. In those
10 cases, the facility shall provide the individual with the required
11 out-of-cell time in an appropriate manner that provides access to
12 staff-based programming and contact with persons other than
13 custodial staff. A facility shall document any program restrictions
14 it imposes and articulate, in writing, the basis for limiting access
15 to congregate programming with a copy provided to the detained
16 person that contains the specific reason why the person currently
17 poses an extraordinary and unacceptable risk of imminent physical
18 harm to the safety or security of detained persons or staff. A facility
19 shall not conduct out-of-cell programming opportunities in a
20 smaller cage or therapy module. Time spent on an unpaid work
21 assignment or in paid employment shall not be considered
22 out-of-cell programming.

23 (9) Not use additional shackles, legcuffs, double lock leg irons,
24 or other restrictive means when an individual is in segregated
25 confinement, including, but not limited to, transportation to
26 recreation, programs, and other services, unless an individual
27 assessment is documented that restraints are required because of
28 an imminent, significant, and unreasonable risk to the safety and
29 security of other detained persons or staff.

30 (d) A facility shall maximize the amount of time that an
31 incarcerated person held in segregated confinement spends outside
32 of their cell by providing outdoor and indoor recreation, education,
33 clinically appropriate treatment therapies, and skill-building
34 activities. Cells or other holding or living spaces used for
35 segregated confinement shall be properly ventilated, appropriately
36 lit according to the time of day, temperature-monitored, clean, and
37 equipped with properly functioning sanitary fixtures.

38 (e) A facility shall develop and provide appropriate
39 programming to individuals that pose a significant safety risk to
40 themselves or others and shall provide opportunities for individuals

1 to transition to less restrictive housing that are not segregated
2 confinement, as defined in paragraph (1) of subdivision (d) of
3 Section 2697, including, but not limited to, evidence-based
4 transition programs and models found to be effective and successful
5 in other carceral facilities. This can include, but is not limited to,
6 all of the following:

7 (1) Transition pods, which provide participants with the
8 opportunity to interact with other incarcerated individuals while
9 out of restraints.

10 (2) Transition groups, which are a revolving group that assists
11 individuals who are preparing to be promoted to lower custody
12 levels.

13 (3) Residential rehabilitation units that are designed to provide
14 access to therapy, treatment, and rehabilitative programming for
15 individuals who have been determined to require more than 15
16 days of segregated confinement. These units shall be therapeutic
17 and trauma informed, and aim to address individual treatment and
18 rehabilitation needs and underlying causes of problematic
19 behaviors.

20 (f) A facility shall not send a detained person to segregated
21 confinement as a means of protection from the rest of the detained
22 population or alternative means of separation from a likely abuser.
23 If an individual fears for their safety, the facility shall transfer them
24 to a more appropriate custody, including, but not limited to, a
25 single cell with sufficient programming and out-of-cell time such
26 that it is not segregated confinement, a different section of the
27 facility, or a sensitive needs yard or individual housing. Placement
28 in these alternative forms of custody shall give full access to
29 out-of-cell time, programming, and other services available to the
30 rest of the detained population.

31 (g) A facility shall not hold an individual in segregated
32 confinement for more than 15 consecutive days and no more than
33 45 days total in a 180-day period. On or before the 15th consecutive
34 day in segregated confinement, a facility shall transfer the
35 individual out of segregated confinement to an appropriate
36 congregate or individual setting. In either case, whether held in a
37 congregate or individual setting, the facility shall allow the
38 individual at least six hours of daily out-of-cell congregate
39 programming, services, treatment, and meals with an additional
40 minimum of one hour of congregate recreation.

1 (h) (1) A facility shall not involuntarily place an individual in
2 segregated confinement, including for disciplinary reasons, if the
3 individual belongs to a designated population.

4 (2) If a person in segregated confinement disputes a decision
5 made by facility staff or facility medical professionals regarding
6 qualification in the designated populations category, the person
7 may request and receive a secondary review of the determination.

8 (3) The facility administrator or chief physician shall conduct
9 the secondary review, as appropriate.

10 (i) A facility shall not place a person in segregated confinement
11 solely on the basis of confidential information considered by the
12 facility staff but not provided to the individual placed in segregated
13 confinement or included in required records.

14 (j) A facility shall not place a person in segregated confinement
15 solely on the basis of the person identifying as lesbian, gay,
16 bisexual, transgender, or gender nonconforming.

17 (k) A facility may use segregated confinement for medical
18 isolation purposes, to treat and protect against the spread of a
19 communicable disease for the shortest amount of time required to
20 reduce the risk of infection, in accordance with state and federal
21 public health guidance and with the written approval of a licensed
22 physician or nurse practitioner.

23 (l) Each facility shall create a monthly report, on the first day
24 of each month, as well as semiannual and annual cumulative
25 reports. Each facility shall make the reports available to the public
26 by posting them to the facility's internet website. The reports shall
27 include the total number of individuals held in segregated
28 confinement in the prior month and data pertaining to individuals
29 in segregated confinement, including, but not limited to, age, race,
30 gender, and number of days in segregated confinement.

31 (m) The Office of the Inspector General shall assess each
32 correctional facility within the Department of Corrections and
33 Rehabilitation, including private detention facilities, for compliance
34 with this article, relating to segregated confinement, and shall issue
35 a public report, no less than annually, with recommendations to
36 the Legislature regarding all aspects of segregated confinement in
37 correctional facilities, including, but not limited to, policies and
38 practices concerning placement of persons in segregated
39 confinement; designated populations; length of time spent in
40 segregated confinement; hearings and procedures; programs,

1 treatment, and conditions of confinement in segregated
2 confinement; and assessments and rehabilitation plans, procedures,
3 and discharge determinations. The office shall have full access to
4 all records of facilities in their jurisdiction pertaining to segregated
5 confinement and may conduct site inspections as appropriate.

6 (n) The Board of State and Community Corrections shall assess
7 each local correctional facility, including private detention
8 facilities, for compliance with this article, relating to segregated
9 confinement, and shall issue a public report, no less than annually,
10 with recommendations to the Legislature regarding all aspects of
11 segregated confinement in correctional facilities, including, but
12 not limited to, policies and practices concerning placement of
13 persons in segregated confinement; designated populations; length
14 of time spent in segregated confinement; hearings and procedures;
15 programs, treatment, and conditions of confinement in segregated
16 confinement; and assessments and rehabilitation plans, procedures,
17 and discharge determinations. The board shall have full access to
18 all records of facilities in their jurisdiction pertaining to segregated
19 confinement and may conduct site inspections as appropriate.

20 (o) Local and state authorities shall promulgate regulations or
21 directives implementing this article, where applicable.

22 (p) This section does not remove or reduce the requirements on
23 health care facilities contained in Sections 70577, 71545, 72407,
24 72409, 72411, 72413, 73403, 73405, 73407, and 73409 of Title
25 22 of the California Code of Regulations.

26 2697.7. (a) The provisions of this article are severable. If any
27 part of this article is declared invalid or unconstitutional, that
28 declaration shall not affect the part which remains.

29 (b) Nothing in this article shall be construed as mandating
30 construction. A facility may repurpose existing space to
31 accommodate out-of-cell time and programming for individuals,
32 so that it can be accomplished in a safe and humane manner. A
33 facility may redesignate existing facilities and cells to comply with
34 this article.

35 (c) Nothing in this article shall be construed as eliminating the
36 use of individual housing when reasonable, appropriate, or
37 required, including when that housing is requested by an individual
38 and deemed appropriate.

39 (d) No provision of this article shall be construed as requiring
40 a facility to place an individual in the general population or

1 congregate housing once they reach the 15-day limit on segregated
2 confinement in subdivision (g) of Section 2697.2. The facility shall
3 seek to place the individual in appropriate housing, including, but
4 not limited to, individual housing with adequate programming and
5 support in order to ensure the safety and well-being of the
6 individual, as well as other individuals in the facility and staff.
7 SEC. 2. If the Commission on State Mandates determines that
8 this act contains costs mandated by the state, reimbursement to
9 local agencies and school districts for those costs shall be made
10 pursuant to Part 7 (commencing with Section 17500) of Division
11 4 of Title 2 of the Government Code.