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AB-280 Segregated confinement. (2023-2024)

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CALIFORNIA LEGISLATURE— 2023–2024 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 Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

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

Article 7. Segregated Confinement

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

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

- (1) Private detention facilities.
- (2) Jails and prisons.
- (3) Detention facilities.

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

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

(d) (1) "Segregated confinement" means the confinement of an individual, in a cell or similarly confined holding or living space, alone or with other individuals, with severely restricted activity, movement, or minimal or no contact with persons other than custodial staff for more than 17 hours per day.

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

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

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

(f) "Medical professional" means a licensed physician, physician assistant, or nurse practitioner.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) A facility shall 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. Cells or other holding or living spaces used for segregated confinement shall be properly ventilated, appropriately lit according to the time of day, temperature-monitored, clean, and equipped with properly functioning sanitary fixtures.

(e) A facility shall develop and provide appropriate programming to individuals that pose a significant safety risk to themselves or others and shall provide opportunities for individuals to transition to less restrictive housing that are not segregated confinement, as defined in paragraph (1) of subdivision (d) of Section 2697, including, but not limited to, evidence-based transition programs and models found to be effective and successful in other carceral facilities. This can include, but is not limited to, all of the following:

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

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

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

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

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

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

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

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

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

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

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

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

(m) The Office of the Inspector General shall assess each correctional facility within the Department of Corrections and Rehabilitation, including private detention facilities, for compliance with this article, relating to segregated confinement, and shall issue a public report, no less than annually, with recommendations to the Legislature regarding all aspects of segregated confinement in correctional facilities, including, but not limited to, policies and practices concerning placement of persons in segregated confinement; designated populations; length of time spent in segregated confinement; hearings and procedures; programs, treatment, and conditions of confinement in segregated confinement; and assessments and rehabilitation plans, procedures, and discharge determinations. The office shall have full access to all records of facilities in their jurisdiction pertaining to segregated confinement and may conduct site inspections as appropriate.

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

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

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

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

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

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

(d) No provision of this article shall be construed as requiring a facility to place an individual in the general population or congregate housing once they reach the 15-day limit on segregated confinement in subdivision (g) of Section 2697.2. The facility shall seek to place the individual in appropriate housing, including, but not limited to, individual housing with adequate programming and support in order to ensure the safety and well-being of the individual, as well as other individuals in the facility and staff.

SEC. 2. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.