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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

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**Bill No:** AB 280                      **Hearing Date:** July 11, 2023  
**Author:** Holden  
**Version:** June 20, 2023  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** SJ

**Subject:** *Segregated confinement*

## HISTORY

**Source:** California Collaborative for Immigrant Justice  
California Families Against Solitary Confinement  
Disability Rights California  
Immigrant Defense Advocates  
Nextgen California

**Prior Legislation:** AB 2632 (Holden), vetoed in 2022  
AB 2321 (Jones-Sawyer), Ch. 781, Stats. 2022  
AB 1225 (Waldron), died in Assembly Appropriations in 2021  
SB 132 (Wiener), Ch. 182, Stats. 2019  
SB 124 (Leno), held in Assembly Appropriations in 2015  
SB 970 (Yee), not heard in 2014  
SB 61 (Yee), ordered to Inactive File in 2013  
SB 1363 (Yee), failed passage in Senate Public Safety in 2012

**Support:** Alianza Sacramento; American College of Obstetricians and Gynecologists District IX; Amnesty International USA; Cal Voices; California Association of Social Rehabilitation Agencies; California Attorneys for Criminal Justice; California Catholic Conference; California Collaborative for Immigrant Justice; California Families Against Solitary Confinement; California Families Against Solitary Confinement (CFASC); California Immigrant Policy Center; California Public Defenders Association; California State Council on Developmental Disabilities; Center for Gender & Refugee Studies; Community Legal Services in East Palo Alto; Depression and Bipolar Support Alliance – California; Disability Rights Advocates; Disability Rights California; Ella Baker Center for Human Rights; End Solitary Santa Cruz County; Episcopal Diocese of Los Angeles; Freedom for Immigrants; Friends Committee on Legislation of California; Greater Sacramento Urban League; GRIP Training Institute; Haitian Bridge Alliance; Halt Solitary Campaign; Hoops4justice; Immigrant Defense Advocates; Immigrant Legal Resource Center; Indivisible CA: StateStrong; Lawyers' Committee for Civil Rights of The San Francisco Bay Area; League of Women Voters of California; Los Angeles County District Attorney's Office; Mujeres Unidas Y Activas; Multi-faith Action Coalition; National Association of Social Workers; California Chapter; National Lawyers Guild San Francisco Bay Area Chapter; National Religious Campaign Against Torture; Nextgen California; Oakland Privacy; Open Immigration Legal Services; Plymouth United Church of

Christ – Oakland; Prison Law Office; Public Law Center; Robert F. Kennedy Human Rights; Root & Rebound; San Francisco Public Defender; Smart Justice California; Social Workers & Allies Against Solitary Confinement; Steinberg Institute; Unlock the Box; Young Women's Freedom Center

Opposition: California State Sheriffs' Association; California Statewide Law Enforcement Association; Los Angeles County Professional Peace Officers Association; Los Angeles County Sheriff's Department; Peace Officers Research Association of California; (unless amended) Chief Probation Officers' of California

Assembly Floor Vote: 56 - 16

### PURPOSE

*The purpose of this bill is to: (1) codify a definition for “segregated confinement” that applies to the state’s prisons, county jails, detention facilities, and private detention facilities; (2) limit the use of segregated confinement to no more than 15 consecutive days and no more than 45 days total in a 180-day period; (3) prohibit the use of segregated confinement if the person belongs to a designated population, as defined; (4) establish procedures related to the use of segregated confinement; and (5) establish reporting requirements when segregated confinement is used.*

*Existing federal law* prohibits the deprivation of life, liberty, or property without due process of law or the denial of equal protection of the laws. (U.S. Const., 5th & 14th Amends.)

*Existing federal law* prohibits the infliction of cruel and unusual punishment. (U.S. Const., 8th Amend.)

*Existing law* grants all people certain inalienable rights, including pursuing and obtaining safety, happiness, and privacy. (Cal. Const., art. I, § 1.)

*Existing law* prohibits the deprivation of life, liberty, or property without due process of law or the denial of equal protection of the laws. (Cal. Const., art. I, § 7.)

*Existing law* prohibits the infliction of cruel and unusual punishment. (Cal. Const., art. I, § 17.)

*Existing law* establishes rights for persons sentenced to imprisonment in a state prison, and provides that a person may, during that period of confinement be deprived of such rights, and only such rights, as is reasonably related to legitimate penological interests. (Pen. Code, § 2600.)

*Existing law* prohibits the use of any cruel, corporal or unusual punishment or to inflict any treatment or allow any lack of care whatever which would injure or impair the health of the prisoner, inmate or person confined. (Pen. Code, § 2652.)

*Existing law* authorizes CDCR to prescribe and amend rules and regulations for the administration of the prisons. (Pen. Code, § 5058.)

*Existing law* requires the Director of CDCR to classify and assign an incarcerated person to the institution of the appropriate security level and gender population nearest the person's home, unless other classification factors make such a placement unreasonable. (Pen. Code, § 5068.)

*Existing law* requires the Board of State and Community Corrections (BSCC) to establish minimum standards for local correctional facilities. (Pen. Code, § 6030.)

*Existing law* requires the sheriff to receive all persons committed to jail by competent authority and the board of supervisors to provide the sheriff with necessary food, clothing, and bedding, for those individuals, which shall be of a quality and quantity at least equal to the minimum standards and requirements prescribed by the BSCC for the feeding, clothing, and care of incarcerated individuals in all county, city and other local jails and detention facilities. (Pen. Code, § 4015.)

*Existing law* requires privately operated local detention facilities to operate pursuant to a contract with the city, county or city and county. (Pen. Code, § 6031.6.)

*Existing law* requires private local detention facilities to follow the minimum standards for local correctional facilities established by the BSCC. (Pen. Code, § 6031.6, subd. (b).)

*Existing law* limits the confinement of a minor in a locked room or cell with minimal or no contact with persons, as specified, and sets forth the guidelines for the use of room confinement of a minor in a juvenile facility. (Welf. & Inst. Code, § 208.3.)

*Existing law* requires the Attorney General to conduct reviews of county, local, or private locked detention facilities in which noncitizens are being housed or detained for purposes of civil immigration proceedings until July 1, 2027. (Gov. Code § 12532, subd. (a).)

*Existing law* prohibits a city, county or public agency from contracting with a private facility for the purpose of civil immigration facilities, except as specified. (Civ. Code, § 1670.9.)

*Existing law* prohibits private detention facilities in California, as specified. (Pen. Code, §§ 5003.1 & 9501.)

*This bill* defines "facility" to mean any of the following facilities in California: private detention facilities; jails and prisons; and detention facilities.

*This bill* defines "detention facility" to mean a facility in which persons are incarcerated or otherwise involuntarily 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.

*This bill* defines "private detention facility" to mean 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.

*This bill* defines "segregated confinement" as 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.

*This bill* provides that segregated confinement is determined by time spent in a cell and contact with persons other than custodial staff.

*This bill* provides that segregated confinement does not apply to extraordinary, emergency circumstances that require a significant departure from normal institutional operations, including a natural disaster or facility-wide threat that poses an imminent and substantial risk of harm. Provides that this exception applies for the shortest amount of time needed to address the imminent and substantial risk of harm.

*This bill* defines “medical professional” to mean a licensed physician, physician assistant, or nurse practitioner.

*This bill* defines “mental health professional” to mean someone who makes mental health evaluations and is a licensed psychiatrist, psychologist, licensed clinical social worker, or an advanced practice nurse or clinical nurse specialist with a specialty in psychiatric nursing.

*This bill* prohibits a facility from holding an individual in segregated confinement for more than 15 consecutive days and no more than 45 days total in a 180-day period. Requires a facility to transfer the individual out of segregated confinement to an appropriate congregate or individual setting on or before the 15th consecutive day in segregated confinement. Requires the facility to 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, whether held in a congregate or individual setting.

*This bill* prohibits a facility from involuntarily placing an individual in segregated confinement, including for disciplinary reasons, if the individual belongs to a designated population.

*This bill* defines “designated population” to mean a person who is:

- 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;
- Has a developmental disability or a serious mental disorder, as defined; or,
- Is pregnant or in the first eight weeks of the postpartum recovery period, or has recently suffered a miscarriage or terminated a pregnancy.

*This bill* provides that a person who disputes a decision made by facility staff or facility medical professionals regarding qualification in the designated populations category may request and receive a secondary review of the determination. Requires the facility administrator or chief physician to conduct the secondary review, as appropriate.

*This bill* requires every facility to develop and follow written procedures governing the management of segregated confinement that also meet the standards of care of the type of facility, and make those written procedures publicly available.

*This bill* requires every facility to document the use of segregated confinement through all of the following procedures:

- Requires a written order to be completed and approved by the facility administrator or designee within 24 hours of a person being placed in segregated confinement.
- Requires the order to 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.
- Requires a clear and consistent log to be kept, detailing the time spent in segregated confinement and the necessary compliance with the standards required for that confinement.
- Requires the written records be maintained by the facility and updated daily.

*This bill* requires the facility to do all of the following when an individual is placed in segregated confinement:

- Document the facts and circumstances that led to placing the individual into segregated confinement.
- Document the date and time that the individual was placed into segregated confinement.
- Notify its medical or mental health professionals in writing within 12 hours of placing an individual in segregated confinement.
- Check on the individual involuntarily placed in segregated confinement at least twice per hour. Requires the facility to monitor the person every 15 minutes or more frequently if the individual is demonstrating unusual behavior or has indicated suicidality or self-harm, unless a medical or mental health professional recommends more frequent checks.
- Assess the individual involuntarily placed in segregated confinement every 24 hours by a medical or mental health professional and every 48 hours by a mental health professional for ongoing placement in segregated confinement.
- 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. Requires the explanation be provided to the individual in writing, in a language or manner the individual can understand, within 24 hours of placement in segregated confinement.
- Prohibits a facility from imposing limitation on services, treatment, or basic needs, such as clothing, food, and bedding. Prohibits a facility from imposing restricted diets or any other change in diet as a form of punishment. Prohibits an individual from being denied access to their legal counsel or representative while in segregated confinement.
- Offer out-of-cell programming to a person in segregated confinement at least four hours per day, including at least one hour for recreation. Requires that a person in segregated confinement be offered programming led by program or therapeutic staff that is comparable to the programming offered to a person in the general population. Provides that 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 determine that a person poses an extraordinary and unacceptable risk of imminent physical harm to the safety or security of other detained people or staff. Requires the facility, in those cases, to 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. Requires a facility to 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. Prohibits a facility from conducting out-of-cell programming opportunities in a smaller cage or therapy module. Provides that time spent on an unpaid work assignment or in paid employment is not considered out-of-cell programming.

- 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.

*This bill* requires 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. Requires cells or other holding or living spaces used for segregated confinement to be properly ventilated, appropriately lit according to the time of day, temperature-monitored, clean, and equipped with properly functioning sanitary fixtures.

*This bill* requires a facility to develop and provide appropriate programming to individuals that pose a significant safety risk to themselves or others. Requires a facility to provide opportunities for individuals to transition to less restrictive housing that are not segregated confinement, including, but not limited to, evidence-based transition programs and models found to be effective and successful in other carceral facilities. Specifies that this can include, but is not limited to, all of the following:

- Transition pods, which provide participants with the opportunity to interact with other incarcerated individuals while out of restraints.
- Transition groups, which are a revolving group that assists individuals who are preparing to be promoted to lower custody levels.
- 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. Requires these units to be therapeutic and trauma informed, and aim to address individual treatment and rehabilitation needs and underlying causes of problematic behaviors.

*This bill* prohibits a facility from sending 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. Requires the facility to transfer a person who fears for their safety 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. Requires placement in these alternative forms of custody to give full access to out-of-cell time, programming, and other services available to the rest of the detained population.

*This bill* prohibits a facility from placing 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.

*This bill* prohibits a facility from placing a person in segregated confinement solely on the basis of the person identifying as lesbian, gay, bisexual, transgender, or gender nonconforming.

*This bill* allows a facility to 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.

*This bill* requires each facility to create a monthly report, on the first day of each month, as well as semiannual and annual cumulative reports. Requires each facility to make the reports available to the public by posting them to the facility's website, and requires the reports to 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.

*This bill* requires the Office of the Inspector General (OIG) to assess each correctional facility within CDCR, including private detention facilities, for compliance, relating to segregated confinement, and to 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. Provides that the OIG has full access to all records of facilities in their jurisdiction pertaining to segregated confinement and may conduct site inspections as appropriate.

*This bill* requires the BSCC to assess each local correctional facility, including private detention facilities, for compliance with this article, relating to segregated confinement, and to 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. Provides that the BSCC has full access to all records of facilities in their jurisdiction pertaining to segregated confinement and may conduct site inspections as appropriate.

*This bill* requires local and state authorities to promulgate regulations or directives implementing the provisions of this bill.

*This bill* provides that its provisions do not remove or reduce the requirements on health care facilities, as specified.

*This bill* includes a severability provision.

*This bill* provides that nothing in its provisions shall be construed as mandating construction. Provides that 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. Provides that a facility may redesignate existing facilities and cells to comply with the provisions of the bill.

*This bill* provides that nothing in its provisions 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.

*This bill* provides that nothing in its provisions 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. Requires the facility to 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.

## COMMENTS

### 1. Need For This Bill

According to the author:

The practice of confining an individual alone in a concrete cell for months, years, and even decades on end grossly undermines the eighth amendment, protecting us all from cruel and unusual punishment. This is a human rights issue. Aside from the fact that solitary confinement only diminishes the prospects of successful rehabilitation, there are large bodies of research linking solitary confinement to self-harm, the deterioration of one's mental health and even suicide. We have even seen instances of pregnant women giving birth in solitary confinement. This is simply not right. California must discard this tortuous and counterproductive practice.

### 2. Existing Rules Governing Segregated Confinement in County Jails and State Prisons

There are no clear standards or limits on the use of segregated confinement in detention facilities operated by state or local governments which are codified in statute. The use of segregated confinement varies depending on the type of facility in which a person is detained. This bill provides a definition of segregated confinement that applies to the state's prisons, jails, detention facilities, and private detention facilities, establishes limitations on its use, and requires documentation of its use.

#### *County Jails*

County jails have broad discretion to use segregated confinement. Regulations require each county jail facility administrator to develop written policies and procedures for administrative segregation. (Cal. Code Regs., tit. 15, § 1053.) Administrative segregation consists of separate and secure housing but is prohibited from involving any other deprivation of privileges than is necessary to obtain the objective of protecting the inmates and staff.

Regulations allow county jails to take punitive action for a rule infraction, including disciplinary separation. (Cal. Code Regs., tit. 15, § 1082.) If an individual is on disciplinary separation status for 30 consecutive days there must be a review by the facility manager before the disciplinary separation status is continued, and the review must include a consultation with health care staff. (Cal. Code Regs., tit. 15, § 1083.)



*State Prisons*

Under the current system, CDCR possesses broad discretion regarding the use of solitary confinement, administrative segregated housing, or other forms of isolated placement. According to CDCR's Department Operations Manual (DOM), some individuals are in "controlled housing" because they present "too great management problem for housing in general population settings." (DOM § 33010.30.) These housing units include but are not limited to the Security Housing Unit (SHU), Administrative Segregation Unit (Ad-Seg), Psychiatric Services Unit (PSU), and the Protective Housing Unit (PHU). SHU terms are calculated using a matrix which allows for SHU terms from two to 60 months based on offense type. (Cal. Code Regs, tit. 15, § 3341.9.)

Individuals who violate criminal or administrative statutes "shall be dealt with in the strictest possible legal manner," including among other things, segregation from the inmate general population. (DOM § 52070.5.4.) When an individual's presence in an institution's general population presents an immediate threat to the safety of the inmate or others, endangers institution security or jeopardizes the integrity of an investigation of an alleged serious misconduct or criminal activity, the inmate is required to be immediately removed from general population and placed in Ad-Seg. (DOM § 52080.24.)

CDCR also utilizes disciplinary detention units or "DDs." DD is a temporary housing status which confines individuals assigned to designated rooms or cells for prescribed periods of time as punishment for serious acts of misbehavior. (DOM § 52080.20.) Placement in DD is excluded from the regulations governing segregated housing. (Cal. Code Regs, tit. 15, § 3335.5.)

Incarcerated individuals can also be "confined to quarters" (CTQ). CTQ refers to an authorized disciplinary hearing action whereby the person is restricted to their assigned quarters for a period not to exceed five days for administrative rule violations or ten days for serious rule violations. (DOM § 52080.23.) A person charged with a serious rule violation may be subject to immediate segregation from the general population, and can be placed in CTQ for up to 10 days, or longer with director approval. (DOM §§ 52080.5.6, 52080.19.)

In 2015, California settled *Ashker v. Governor of California*, a class-action lawsuit brought on behalf of a group of individuals incarcerated at Pelican Bay State Prison who had each spent at least a decade in isolation. (CCR, *Summary of Ashker v. Governor of California Settlement Terms* <<https://ccrjustice.org/sites/default/files/attach/2015/08/2015-09-01-Ashker-settlement-summary.pdf>>.) The settlement was intended to end the practice of isolating incarcerated individuals who have not violated prison rules, cap the length of time a prisoner can spend in solitary confinement, and provide a restrictive but not isolating alternative for the minority of prisoners who continue to violate prison rules on behalf of a gang. (*Ibid.*)

The *Ashker* agreement was first extended in 2019 by the federal court, based on a finding that CDCR was "effectively frustrating the purpose" of the settlement agreement by systemically violating due process rights. (CCR, *Court Finds Continued Systemic Constitutional Violations in California Prisons* (Feb. 3, 2022) <<https://ccrjustice.org/home/press-center/press-releases/court-finds-continued-systemic-constitutional-violations-california>>.) In February 2022, the court determined that CDCR was continuing to systematically violate the due process rights of inmates despite the *Ashker* agreement. The court found that CDCR is relying on inaccurate and fabricated confidential information to place individuals in solitary confinement, using dubious gang

affiliations to deny them a fair opportunity for parole, and holding them in a restricted unit in the general population without adequate procedural safeguards. (*Ibid.*) Citing these violations, the court extended the *Ashker* agreement for a second one-year term. (*Ibid.*)

### 3. Applicability to Private Detention Facilities

This bill defines “private detention facility” as 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. All of the rules governing segregated confinement in this bill would apply to private detention facilities that are operated by private, nongovernmental entities pursuant to contracts with the federal government, including but not limited to, the Bureau of Prisons (which primarily houses individuals convicted of federal criminal offenses), the U.S. Marshalls Service (USMS) (which typically houses detainees during the course of their federal criminal proceedings) and U.S. Immigrations Customs Enforcement (ICE) (immigration detention). California is permitted to regulate private facilities that are not under the control of the federal government, and can regulate federal detention facilities to the extent that the regulation does not disturb federal arrest or detention decisions. (*United States v. California* (2019) 921 F.3d 865, 885.)

This bill tests the limits of California’s authority to legislate regarding private detention facilities located within the state and contracted by the federal government. In *Geo Grp. Inc. v. Newsom* (2021) 15 F.4th 919, the federal government and a private company contracted by the federal government to operate some of its detention facilities challenged AB 32 (Bonta), Chapter 739, Statutes of 2019, which would have phased out all private detention facilities within California, including those contracted with the federal government. California argued that AB 32 was a valid exercise of its police powers because the well-being of detainees falls within a state’s traditional police powers. (*Ibid.*) The Ninth Circuit rejected that argument, explaining that California was not simply exercising its traditional police powers, but rather impeding federal immigration policy:

If we accepted California’s argument, then a state could essentially dictate the policies of the federal prison system. For example, suppose hypothetically that Colorado enacts a law mandating eight hours of open space time for all inmates within the state to ensure their mental wellbeing. That would mean that the federal “supermax” prison in Colorado housing the most dangerous terrorists and criminals would have to provide those eight hours of open space time to them. The dissent points out that there are federal rules governing prisoners that would preempt state law. So, too, here: as explained, Congress gave the Secretary power to detain immigrants in any “appropriate places of detention.”

(*GEO Grp. Inc., v. Newsom* (2021) 15 F.4th 919, fn 2.) The State cannot dictate the policies of the federal prison system. (*Ibid.*) State law cannot intrude on federal detention decisions; the State cannot regulate “whether or where” an immigration detainee may be confined. (*Ibid.*) Laws regulating where an immigration detainee may be confined are within the purview of the federal government, and the State cannot make laws that constitute an obstacle to the federal government’s enforcement of its detention scheme. (*Ibid.*; see also, *United States v. California* (2019) 921 F.3d 865, 8856 [upholding a state law that does not regulate “whether or where an immigration detainee may be confined” or “require that federal detention decisions” conform to state law].)

After granting *en banc* review, the Ninth Circuit found that AB 32 would “override the federal government’s decision, pursuant to discretion conferred by Congress, to use private contractors to run its immigration detention facilities” and would allow “discretion of federal officers to be exercised only if the state approves.” (*Geo Grp., Inc. v. Newsom* (9th Cir. 2022) 50 F.4th 745, 750-51.) The Ninth Circuit held that “California cannot exert this level of control over the federal government’s detention operations.” (*Id.* at 751.)

This bill contains a severability provision which provides that in the event any portion of the provisions of this bill are found invalid or unconstitutional by a court, the provisions of the bill not subject to that finding would be preserved.

#### **4. Major Provisions of the Bill**

##### Applicability

The provisions of this bill apply to the state’s prisons, county jails, detention facilities, and private detention facilities. This bill does not apply to individuals held in juvenile facilities which includes juvenile halls, camps, and ranches. Instead, laws and regulations pertaining to room confinement apply to juvenile facilities.

##### Defines segregated confinement

This bill defines “segregated confinement” as 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 correctional facility staff for more than 17 hours per day. This bill specifies that segregated confinement is determined by time spent in a cell and contact with persons other than custodial staff.

This bill includes an exception for extraordinary, emergency circumstances that require a significant departure from normal institutional operations, including a natural disaster or facility-wide threat that poses an imminent and substantial risk of harm.

##### Limits the use of segregated confinement

This bill prohibits a facility from holding an individual in segregated confinement for more than 15 consecutive days and no more than 45 days total in a 180-day period. This bill additionally prohibits a facility from sending a detained person to segregated confinement as a means of protection for that person. This bill also prohibits a facility from sending a detained person to segregated confinement solely on the basis of confidential information not provided to the individual placed in segregated confinement or included in required records, or solely on the basis of the person identifying as lesbian, gay, bisexual, transgender, or gender nonconforming.

##### Prohibits the use of segregated confinement as applied to certain populations

This bill prohibits a facility from involuntarily placing an individual in segregated confinement, including for disciplinary reasons, if the individual belongs to a designated population.

“Designated population” is defined to mean a person who is:

- 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;
- Has a developmental disability or a serious mental disorder, as defined; or
- Is pregnant or in the first eight weeks of the postpartum recovery period, or has recently suffered a miscarriage or terminated a pregnancy.

Requirements regarding policies pertaining to segregated confinement and the reporting of its use

This bill requires every facility to develop and follow written procedures governing the management of segregated confinement. This bill requires every facility to document the use of segregated confinement through all of the following procedures:

- Requires a written order to be completed and approved by the facility administrator or designee within 24 hours of a person being placed in segregated confinement.
- Requires the order to 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.
- Requires a clear and consistent log to be kept, detailing the time spent in segregated confinement and the necessary compliance with the standards required for that confinement.
- Requires the written records be maintained by the facility and updated daily.

This bill requires each facility to create a monthly report as well as semiannual and annual cumulative reports and make the reports available online. This bill also requires the reports to 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.

This bill requires the facility to do several things when an individual is placed in segregated confinement, including document the date and time the person was placed into segregated confinement as well as the facts and circumstances that led to placing the individual into segregated confinement; notify its medical or mental health professionals in writing within 12 hours of placing an individual in segregated confinement; check on the individual at least twice per hour; assess the individual involuntarily placed in segregated confinement every 24 hours by a medical or mental health professional and every 48 hours by a mental health professional for ongoing placement in segregated confinement, and offer out-of-cell programming to a person in segregated confinement at least four hours per day, including at least one hour for recreation, among others.

OIG/BSCC Assessments for Compliance

This bill requires the OIG and BSCC to assess state and local correctional facilities, respectively, for compliance with the mandates in this bill and to publish a public report on those findings at least once per year. The reports are also required to include recommendations to the Legislature regarding all aspects of segregated confinement in correctional facilities.

## 5. AB 2632 Veto Message

This bill is substantially similar to AB 2632 (Holden) of the 2021-2022 legislative session which was vetoed. In vetoing the bill, Governor Newsom wrote:

I have prioritized improving the conditions within custodial settings, and I support limiting the use of segregated confinement. Segregated confinement is ripe for reform in the United States -- and the same holds true in California. AB 2632, however, establishes standards that are overly broad and exclusions that could risk the safety of both the staff and incarcerated population within these facilities. Specifically, this bill would categorically prohibit the placement of large portions of the incarcerated population in segregated housing- even if such a placement is to protect the safety of all incarcerated individuals in the institution. I am additionally concerned that the restrictions in this bill could interrupt the rehabilitation efforts of other incarcerated people and the staff at these facilities.

But in light of the deep need to reform California's use of segregated confinement, I am directing the California Department of Corrections and Rehabilitation (CDCR) to develop regulations that would restrict the use of segregated confinement except in limited situations, such as where the individual has been found to have engaged in violence in the prison. To this end, when placement in segregated confinement is necessary, these regulations must include utilization of small group yards, when feasible and available, and development of a positive behavioral model to aid in rehabilitation efforts.

## 6. Argument in Support

The National Association of Social Workers, California Chapter writes:

AB 280 is an important step in ending the use of solitary confinement in California. There is an established consensus among experts, advocates, and those who have first hand experience on the issue: solitary confinement is torture and can have permanent deleterious effects on the health of an individual. ...

AB 280 provides a clear definition of what constitutes solitary confinement across California prisons, jails, and detention centers, while also setting limits on how it can be used. Further, this bill ends the use of solitary confinement for special populations, including those with disabilities, pregnant women, youth, elderly, and other special populations.

Solitary confinement is one of the most severe and destructive practices found in carceral settings today. The World Health Organization, United Nations, and other international bodies have recognized solitary confinement as greatly harmful and potentially fatal. ...

Despite international demands to end the use of solitary confinement, the practice remains common in jails, prisons, and detention facilities in California. ...

The destructive impact of solitary confinement can have disastrous effects on those who experience it, particularly those who belong to certain populations,

including the elderly, disabled, and even pregnant women. ... Solitary confinement is often used as an alternative to treatment and accommodation for individuals with special needs or disabilities, at times exacerbating their conditions.

In addition to being a human rights issue, this is also a racial justice issue. Solitary confinement has a disproportionate impact on communities of color, and has long been used as an instrument of harm against racial minorities in jails and prisons.

...

This problem is not limited to jails and prisons alone, but also affects immigrants in private, for-profit detention facilities. In California, more than 90 percent of immigrants are held in for-profit detention facilities, run by corporations who routinely harm those that they are tasked with detaining. An investigation by the federal government into the Imperial Regional Detention Facility found that individuals were routinely placed in solitary confinement for 22 to 23 hours a day, with some being held in these conditions for more than 300 days. ...

California must join the international community, and [other] states ... in setting clear standards and limits on the use of solitary confinement. This begins by recognizing that solitary confinement is torture, and setting uniform and consistent limits on how solitary is used in all detention facilities.

## 7. Argument in Opposition

According to the California State Sheriff's Association:

As a general matter, we are very concerned about imposing these significant mandates in statute. A central role of the Board of State and Community Corrections (BSCC) is to set minimum standards for custodial facilities. Adopting and revising these minimum standards is an ongoing process that involves stakeholders from all perspectives and allows for evolution and refinement of requirements and processes without the burden of having to amend statute every time a change is needed. The BSCC and the practitioners who are responsible for supervision, housing, and rehabilitation of incarcerated persons are best situated to make decisions about best practices and facility standards.

More specifically, the restrictions in this bill will preclude many offenders from being confined in a way that meets the bill's definitions. The term "designated population," which is the trigger for many of the restrictions on the use of segregated confinement, includes persons under 26 years of age or older than 59, or who are pregnant or in the first eight weeks of the postpartum recovery period. Beyond that, the bill's additional restrictions and reporting requirements will practically eliminate any use of segregated confinement, including when such placement is necessary for the safety of the facility or individual inmates themselves.

The bill will likely result in placement that are less safe to other inmates and staff and complicates all the other classification decisions that must be made when deciding how to use custodial resources.

-- END --