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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

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**Bill No:** SB 733                      **Hearing Date:** January 9, 2024  
**Author:** Glazer  
**Version:** January 3, 2024  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** SJ

**Subject:** *Solitary confinement*

## HISTORY

**Source:** Author

**Prior Legislation:** AB 280 (Holden), Assembly Inactive File 2023  
AB 2632 (Holden), vetoed in 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:** Unknown

**Opposition:** Disability Rights California; Immigrant Defense Advocates; NextGen California (to prior version) ACLU California Action; Alianza Sacramento; American Friends Service Committee; Amnesty International USA; California Alliance for Youth and Community Justice; California Collaborative for Immigrant Justice; California Families Against Solitary Confinement; California United for A Responsible Budget; Ella Baker Center for Human Right; Fair Chance Project; Freedom for Immigrants; Friends Committee on Legislation of California; Indivisible CA: StateStrong; Law Foundation of Silicon Valley; Legal Services for Prisoners With Children; National Religious Campaign Against Torture; Oakland Privacy; Prison Law Office; San Francisco Public Defender's Office; Social Workers and Allies Against Solitary Confinement; Unlock the Box; Jules Lobel- lead counsel in *Ashker v Governor of California*

## PURPOSE

***The purpose of this bill is to require the California Department of Corrections and Rehabilitation (CDCR) to collect data on its progress toward improving the standards of solitary confinement and to report the data annually to the Legislature.***

*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 individual to the institution of the appropriate security level and gender population nearest the individual's home, unless other classification factors make such a placement unreasonable. (Pen. Code, § 5068.)

*This bill* requires CDCR to collect data to track the department's progress toward improving solitary confinement standards. Requires CDCR on or before January 1, 2026, and annually thereafter, to report to the Legislature the data collected by the department.

*This bill* provides that any reference to "solitary confinement" also means and includes "restricted housing."

*This bill* requires CDCR to collect all of the following data points:

- Name.
- Race.
- Sex.
- Age disaggregated by those placed in solitary confinement or restrictive housing.
- Specific description of the types of offenses for which incarcerated persons are held in solitary confinement.
- The types of placement similar to solitary confinement, including, but not limited to, lockdown and quarantine.
- The types of rehabilitative programs made available to inmates in each solitary confinement unit.
- Staffing ratios for solitary confinement.
- The number of times individuals were kept in solitary confinement for that year.

- The total time individuals placed in solitary confinement were kept in solitary for that year.
- The number of solitary confinement units within the previous calendar year.
- The number of solitary confinement units in use of an institution within the previous calendar year.
- Existing mental health diagnoses of those placed in solitary confinement.
- Whether individuals developed mental health diagnoses or required mental health treatment during or soon after placements in solitary confinement.
- Whether individuals experienced medical or psychiatric emergencies while in solitary confinement.
- Whether individuals committed or attempted to commit suicide or engaged in serious self-harm during, or soon after, placement in solitary confinement.
- Whether there were appeals of the decision to place an individual in solitary confinement and the outcome of those appeals.
- Whether the term of solitary confinement was shorter than originally ordered and the reason for the shortened placement.
- The number of individuals who received reductions in their restrictive housing terms based on successful completion of rehabilitative programs.

## COMMENTS

### 1. Need for This Bill

According to the author:

The intent of this legislation is to ... ensure that the conditions and treatment for those who are confined to segregated housing are humane and have the overall goal of rehabilitation to ensure inmates are equipped to be integrated back into the prison's general population and into the communities into which they are released.

...

...[T]he California Department of Corrections and Rehabilitation would be required to provide data that allows California to track the CDCR's progress toward improving solitary confinement standards.

### 2. Existing Rules Governing Segregated Confinement in State Prisons

There are no clear standards or limits on the use of segregated confinement in detention facilities operated by the state which are codified in statute. 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.)

### 3. *Ashker*

In 2015, California settled *Ashker v. Governor of California*, a class-action lawsuit brought on behalf of a group of incarcerated individuals housed 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* available at <<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 an incarcerated individual can spend in solitary confinement, and provide a restrictive but not isolating alternative for those incarcerated individuals 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) available at <<https://ccrjustice.org/home/press-center/press-releases/court-finds-continued-systemic-constitutional-violations-california>>.) In February 2022, the court determined that CDCR had continued to systematically violate the due process rights of incarcerated individuals despite the *Ashker* agreement. The court found that CDCR had relied on inaccurate and fabricated confidential information to place individuals in solitary confinement, used dubious gang affiliations to deny them a fair opportunity for parole, and held 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.*) CDCR appealed the orders extending the settlement agreement. The appeals were consolidated, and in August 2023, the Ninth Circuit reversed the district court’s order granting the first extension of the settlement agreement and vacated the order granting the second extension of the settlement agreement on jurisdictional grounds.

#### 4. Effect of This Bill

This bill requires CDCR to collect data on its progress toward improving the standards of solitary confinement and to report the data annually to the Legislature. The bill requires the collection of specified demographic information; a description of the types of restrictions for solitary confinement; the types of placement similar to solitary confinement; staffing ratios for solitary confinement units; the number of times individuals were kept in solitary confinement for that year; the total time individuals were kept in solitary confinement for that year; information related to mental health diagnoses of the individuals placed in solitary confinement; information related to medical and psychiatric emergencies of the individuals placed in solitary confinement; whether individuals committed or attempted to commit suicide or engaged in serious self-harm during, or soon after, placement in solitary confinement; and whether there were appeals of the decision to place an individual in solitary confinement and the outcome of those appeals, among other things.

-- END --