SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair
2023 - 2024 Regular

Bill No:	SB 733	**Hearing Date:**	April 18, 2023
Author:	Glazer		
Version:	February 17, 2023		
Urgency:	No	**Fiscal:**	Yes
Consultant:	SJ		

Subject: ***Solitary confinement***

HISTORY

Source: Author

Prior Legislation: 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: 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; Disability Rights California; Ella Baker Center for Human Right; Fair Chance Project; Freedom for Immigrants; Friends Committee on Legislation of California; Immigrant Defense Advocates; Indivisible CA: StateStrong; Law Foundation of Silicon Valley; Legal Services for Prisoners With Children; National Religious Campaign Against Torture; NextGen California; 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 develop standards for placement and conditions in solitary confinement consistent with the* Ashker *settlement, 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 pursing 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 states that it is the intent of the Legislature to end indeterminate solitary confinement and ensure that the conditions and treatment or 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 ultimately released.

This bill requires CDCR to develop standards for placement and conditions in solitary confinement consistent with the settlement in *Ashker v. Governor of the State of California* (N.D.Cal., No. 4:09-CV-05796) to utilize a behavior-based system for solitary confinement.

This bill requires that the standards developed by the department include, but are not limited to, all of the following:

- Prohibiting the use of "gang-affiliation" as a justification for placing incarcerated persons in isolation.
- Creation of a "step-down" program to encourage and incentivize incarcerated persons to take steps to be released from solitary confinement.
- Expansion of programming and privileges for incarcerated persons in solitary confinement.
- Standards that alleviate the conditions of segregated confinement, including, but not limited to, all of the following: providing regular and meaningful social contact;

providing adequate healthcare; providing access to sunlight; and, providing adequate food.

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, 2025, and annually thereafter, report to the Legislature the data collected by the department.

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

- Name.
- Race.
- Sex.
- Age disaggregated by those placed in solitary confinement that are under 25 years of age.
- Specific description of the types of restrictions for solitary confinement in the institution.
- The types of placement similar to solitary confinement, including, but not limited to, lockdown and quarantine.
- Staffing ratios for solitary confinement units.
- The number of solitary confinement units within the previous calendar year.
- 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.
- 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.

COMMENTS

1. Need For This Bill

According to the author:

> The intent of this legislation is to end indeterminate (long-term) solitary confinement; but also 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.
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> The proposed bill changes solitary confinement from a status-based system to a behavioral-based system, as ordered by U.S. District Court for the Northern District of California in the 2018 Ashker v Brown settlement. Among other

things, it prohibits the use "gang-affiliation" as a justification for putting prisoners in isolation; and creates a "step-down" program, which provides incentives to inmates to work/take certain steps to be released from solitary confinement; and it alleviates conditions in segregation by requiring the provision of regular and meaningful social contact, adequate health care, access to sunlight and adequate food.

In addition, the 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 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 was continuing to systematically violate the due process rights of incarcerated individuals despite the *Ashker* agreement. The court found that CDCR was 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*.)

4. Effect of This Bill

This bill contains two primary components. The first requires CDCR to develop standards for placement and conditions in solitary confinement consistent with the *Ashker* settlement to utilize a behavior-based system for solitary confinement. Specifically, this bill requires the standards developed by the department, at a minimum: prohibit the use of gang-affiliation as a justification for placing incarcerated individuals in isolation; create of a "step-down" program to encourage and incentivize incarcerated individuals to take steps to be released from solitary confinement; expand programming and privileges for incarcerated individuals in solitary confinement; and alleviate the conditions of segregated confinement, including, but not limited to, providing regular and meaningful social contact, providing adequate healthcare, providing access to sunlight, and, providing adequate food.

The second component of the 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 others.

The bill also declares that it is the intent of the Legislature "to end indeterminate solitary confinement and ensure that the conditions and treatment or 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 ultimately released."

Opponents of the bill largely represent a coalition supportive of AB 280 (Holden) which would make a number of significant changes to the use of solitary confinement in the state's prisons, county jails, and private detention facilities. AB 280 is a reintroduction of AB 2632 (Holden), a bill that was vetoed by Governor Newsom during the 2021-2022 legislative session. In his veto message, 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. … 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.
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> 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.

The opposition coalition asserts that SB 733 undermines the reform efforts put forth in AB 280 by codifying the status quo.

5. Argument in Opposition

A coalition of organizations, including Immigrant Defense Advocates, California Families Against Solitary Confinement, Prison Law Office, Legal Services for Prisoners with Children, and the Ella Baker Center for Human Rights, opposes the bill writing:

> SB 733 seeks to codify the terms of the *Ashker* Settlement, a legal settlement of a class action first filed in 2007. However, the *Ashker* settlement agreement has already been codified into law through regulations which control CDCR's ability to place people in solitary confinement. Legislation implementing the settlement thus serves no purpose, and changes nothing.
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> The *Ashker* settlement worked a major change in California's approach to solitary confinement as it existed in the early aughts. However, since that time, momentum has grown around reducing all uses of solitary confinement, not just solitary based on gang affiliation or the prolonged placement in solitary that were the issues in the *Ashker* case.
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> In the fall of 2022 Governor Newsom noted that the issue of solitary confinement is "ripe for reform." We agree. SB 733 would not advance reform, but instead seeks to re-codify the status quo. We do not believe the status quo is satisfactory, nor appropriate for a state as progressive as California. Passing legislation to re-

codify the status quo would not only fall short of reform, but it would close the door on efforts to progress in our state.

Instead, we believe comprehensive reform on the issue of solitary confinement is both possible and necessary. Such reforms would go beyond simply shifting the basis through which CDCR makes custodial decisions, to truly finding alternatives to isolation that aid rehabilitation and are being used in other progressive states.

There is a bill before this legislature, AB 280, the California Mandela Act, that provides comprehensive solutions to the issue of solitary confinement in jails, prisons and private detention facilities. This bill recognizes the need not only to regulate the basis for solitary confinement, but to reimagine the entire concept of safe separation that allows individuals to continue to receive programming, counseling and rehabilitation.

Recent data obtained from CDCR demonstrates that while the *Ashker* settlement has reduced the number of individuals in specific types of secure housing, CDCR continues to overuse administrative segregation in its facilities.

…

There is an established consensus among experts, advocates, and those who have firsthand experience on the issue: solitary confinement is torture and can have permanent deleterious effects on the health of an individual. Many states have passed laws to limit the use of solitary confinement, and it is important that California joins them, as well as the international community, in regulating this practice.

California must join the international community, and states like New York, New Jersey, Washington, and Colorado 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.

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