

The legislature finds and declares that: while imprisonment is an accepted punishment for criminal law violations, all persons in state custody are entitled to humane treatment.

Solitary confinement is an extreme administrative sanction with the potential to cause severe harm to life and health, particularly for people with mental and physical illnesses and disabilities. Therefore, prolonged solitary confinement shall only be imposed under the most extreme circumstances, when no lesser restraints on liberty are sufficient to achieve its specified limited purposes. Furthermore, its imposition shall be grounded on careful findings of fact, determined in fair proceedings, frequently reviewed and monitored.

This Act provides that no prisoner shall remain confined in a Special Management Unit (SMU) for more than 45 days unless, at a hearing, it's established that the prisoner within the previous 45 days, while incarcerated, committed or attempted to commit:

- a) an act of violence which resulted in serious injury to another or death, or
- b) an act in connection with sexual assault, or
- c) an escape or attempted escape from within a security perimeter or custody.

At such hearing the Department of Corrections (DOC) shall have the burden of proof and comply with at least the following minimum requirements:

- a) Written notice shall be delivered to the prisoner at least 72 hours before the hearing, setting forth the factual basis for the continued placement in sufficient detail to permit the prisoner to prepare a meaningful defense.
- b) The prisoner shall have the right to personally appear before the persons making the decision.
- c) The prisoner shall have the right to submit documentary evidence to the persons making the decision.
- d) The prisoner shall have the right to call witnesses.
- e) A written decision shall be delivered to the prisoner within 5 days of the hearing, setting forth the reasons for the decision in sufficient detail to allow for full review.
- f) The hearing shall be recorded by means of videotape with audio, and the tapes preserved indefinitely.
- g) The prisoner has a right to retain a lawyer to represent him/her at the hearing.

The hearing shall be conducted by a panel of at least 3 persons appointed by the Commissioner, and shall include a clinician representing the mental health staff.

The hearing panel shall maintain a record including all evidence on which it relied.

Subsequent status reviews shall be conducted every 7 days and require the hearing panel to provide a case plan to the prisoner specifying what he/she must do to gain release from SMU.

The prisoner may appeal the decision within 15 days to the Chief Administrative Officer, and within 30 days to the Commissioner of Corrections.

The Chief Administrative Officer and Commissioner shall issue a decision with 7 days of receipt of appeal. Any decision by the Commissioner to extend a prisoner's placement in solitary confinement beyond 45 days shall require a hearing before a justice of the Superior Court at which the prisoner is present.

The DOC shall maintain a current list of all prisoners in SMU, with the date and reason for placement, date of last review and, in cases where the prisoner has been in SMU over 60

days, a written statement of the objective criteria relied upon.

The DOC shall review the status of all SMU prisoners within 45 days of the effective date of this Act to determine whether they should continue to be housed in SMU. Prisoners already in SMU for longer than 45 days must be provided a hearing in accordance with this Act.

Prisoners with serious mental illness shall not be placed in SMU. A prisoner has a serious mental illness for purposes of this section when he/she meets the definition used by the President's New Freedom Commission on Mental Health, "Achieving the Promise: Transforming Mental Health Care in America" (July 22, 2003) based on the most current edition of the Diagnostic and Statistical Manual (DSM) published by the American Psychiatric Association.

All prisoners housed at SMU shall be evaluated by a licensed mental health professional at least every 7 days. Such evaluations shall be conducted in-person (not through a cell door), and shall include:

- a) assessment of current mental status and condition,
- b) assessment of current risk of suicide or self-harming behavior,
- c) review of available records of in-and-out patient treatment.

Any prisoner who is determined to be mentally ill shall be removed from SMU within 7 days. Any psychiatric treatment of said prisoner shall be voluntary, not compulsory.

If a prisoner is transferred to any psychiatric unit or hospital, he/she shall be held in conditions that do not violate this Act.

The Director of Adult Mental Health Services of the Maine Department of Health and Human Services shall designate a committee to conduct annual reviews of the mental health policy, standards, and treatment in SMU's. The reviewers shall have access to prisoners mental health records and all areas of SMU where prisoners are housed or treated, and shall issue an annual report.

Instruments of restraint such as handcuffs, chains, leg shackles, and black boxes shall never be applied as punishment.

Instruments of restraint within SMU shall not be used except, when other methods of control fail, in order to prevent a prisoner from injuring himself or others.

Use of restraint chairs and four-point restraints is prohibited.

Use of chemical agents on prisoners in SMU, and all "cell extractions" must be videotaped with audio, and preserved. Medical staff must be present at all SMU cell extractions and during use of chemical agents on prisoners.

Corporal punishment and disciplinary restrictions on diet, medical or sanitary facilities, mail or access to legal materials are prohibited.

All Maine DOC prisoners administratively transferred to an out-of-state correctional facility must be held in conditions that comply with this Act. If not held in conditions that comply with this Act, they must be returned to a Maine facility.

The Board of Visitors for each facility shall act as independent monitor to insure DOC compliance with this Act.