

115TH CONGRESS
2D SESSION

H. R. 5710

To develop and implement national standards for the use of solitary
confinement in correctional facilities, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 8, 2018

Mr. RICHMOND (for himself, Mr. DANNY K. DAVIS of Illinois, Mr. CÁRDENAS, Mr. ELLISON, Ms. KAPTUR, Ms. KELLY of Illinois, Mr. HASTINGS, Ms. MOORE, Ms. WILSON of Florida, Ms. NORTON, Mr. JOHNSON of Georgia, Ms. FUDGE, Mr. POCAN, Mr. MEEKS, Ms. DELBENE, Ms. LOFGREN, Mr. SMITH of Washington, Mr. CAPUANO, Mr. BLUMENAUER, Mr. COHEN, Mrs. BEATTY, Mr. TAKANO, Mr. MCGOVERN, Ms. MCCOLLUM, Mr. WELCH, Ms. ESHOO, Mr. BUTTERFIELD, Mr. NADLER, Mr. SCHIFF, Ms. SCHAKOWSKY, Mr. CUMMINGS, Mr. RASKIN, Ms. JAYAPAL, and Mr. PAL-
LONE) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To develop and implement national standards for the use
of solitary confinement in correctional facilities, and for
other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as “The Solitary Confinement
5 Study and Reform Act of 2018”.

1 **SEC. 2. PURPOSES.**

2 The purposes of this Act are to—

3 (1) develop and implement national standards
4 for the use of solitary confinement to ensure that it
5 is used infrequently and only under extreme cir-
6 cumstances;

7 (2) establish a more humane and constitu-
8 tionally sound practice of segregated detention or
9 solitary confinement in correctional facilities;

10 (3) accelerate the development of best practices
11 and make reforming solitary confinement a top pri-
12 ority in each correctional facility at the Federal and
13 State levels;

14 (4) increase the available data and information
15 on the incidence of solitary confinement, con-
16 sequently improving the management and adminis-
17 tration of correctional facilities;

18 (5) standardize the definitions used for col-
19 lecting data on the incidence of solitary confinement;

20 (6) increase the accountability of correctional
21 facility officials who fail to design and implement
22 humane and constitutionally sound solitary confine-
23 ment practices;

24 (7) protect the Eighth Amendment rights of in-
25 mates at correctional facilities; and

1 (8) reduce the costs that solitary confinement
2 imposes on interstate commerce.

3 **SEC. 3. NATIONAL SOLITARY CONFINEMENT STUDY AND**
4 **REFORM COMMISSION.**

5 (a) **ESTABLISHMENT.**—There is established a com-
6 mission to be known as the National Solitary Confinement
7 Study and Reform Commission.

8 (b) **MEMBERS.**—

9 (1) **IN GENERAL.**—The Commission shall be
10 composed of 9 members, of whom—

11 (A) 3 shall be appointed by the President;

12 (B) 2 shall be appointed by the Speaker of
13 the House of Representatives, unless the Speak-
14 er is of the same party as the President, in
15 which case 1 shall be appointed by the Speaker
16 of the House of Representatives and 1 shall be
17 appointed by the minority leader of the House
18 of Representatives;

19 (C) 1 shall be appointed by the minority
20 leader of the House of Representatives (in addi-
21 tion to any appointment made under subpara-
22 graph (B));

23 (D) 2 shall be appointed by the majority
24 leader of the Senate, unless the majority leader
25 is of the same party as the President, in which

1 case 1 shall be appointed by the majority leader
2 of the Senate and 1 shall be appointed by the
3 minority leader of the Senate; and

4 (E) 1 shall be appointed by the minority
5 leader of the Senate (in addition to any ap-
6 pointment made under subparagraph (D)).

7 (2) PERSONS ELIGIBLE.—Each member of the
8 Commission shall be an individual who has knowl-
9 edge or expertise in matters to be studied by the
10 Commission.

11 (3) CONSULTATION REQUIRED.—The President,
12 the Speaker and minority leader of the House of
13 Representatives, and the majority leader and minor-
14 ity leader of the Senate shall consult with one an-
15 other prior to the appointment of the members of
16 the Commission to achieve, to the maximum extent
17 possible, fair and equitable representation of various
18 points of view with respect to the matters to be
19 studied by the Commission.

20 (4) TERM.—Each member shall be appointed
21 for the life of the Commission.

22 (5) TIME FOR INITIAL APPOINTMENTS.—The
23 appointment of the members shall be made not later
24 than 180 days after the date of enactment of this
25 Act.

1 (6) VACANCIES.—A vacancy in the Commission
2 shall be filled in the manner in which the original
3 appointment was made, and shall be made not later
4 than 60 days after the date on which the vacancy
5 occurred.

6 (c) OPERATION.—

7 (1) CHAIRPERSON.—Not later than 15 days
8 after appointments of all the members are made, the
9 President shall appoint a chairperson for the Com-
10 mission from among its members.

11 (2) MEETINGS.—The Commission shall meet at
12 the call of the chairperson. The initial meeting of the
13 Commission shall take place not later than 30 days
14 after the initial appointment of the members is com-
15 pleted.

16 (3) QUORUM.—A majority of the members of
17 the Commission shall constitute a quorum to con-
18 duct business, but the Commission may establish a
19 lesser quorum for conducting hearings scheduled by
20 the Commission.

21 (4) RULES.—The Commission may establish by
22 majority vote any other rules for the conduct of
23 Commission business, if such rules are not incon-
24 sistent with this Act or other applicable law.

1 (d) COMPREHENSIVE STUDY OF THE IMPACTS OF
2 SOLITARY CONFINEMENT.—

3 (1) IN GENERAL.—The Commission shall carry
4 out a comprehensive legal and factual study of the
5 penological, physical, mental, medical, social, fiscal,
6 and economic impacts of solitary confinement in the
7 United States on—

8 (A) Federal, State, and local governments;
9 and

10 (B) communities and social institutions
11 generally, including individuals, families, and
12 businesses within such communities and social
13 institutions.

14 (2) MATTERS INCLUDED.—The study under
15 paragraph (1) shall include—

16 (A) a review of existing Federal, State,
17 and local government policies and practices with
18 respect to the extent and duration of the use of
19 solitary confinement;

20 (B) an assessment of the relationship be-
21 tween solitary confinement and correctional fa-
22 cility conditions, and existing monitoring, regu-
23 latory, and enforcement practices;

24 (C) an assessment of the characteristics of
25 prisoners and juvenile detainees most likely to

1 be referred to solitary confinement and the ef-
2 fectiveness of various types of treatment or pro-
3 grams to reduce such likelihood;

4 (D) an assessment of the impacts of soli-
5 tary confinement on individuals, families, social
6 institutions, and the economy generally;

7 (E) an identification of additional scientific
8 and social science research needed on the preva-
9 lence of solitary confinement in correctional fa-
10 cilities as well as a full assessment of existing
11 literature;

12 (F) an assessment of the general relation-
13 ship between solitary confinement and mental
14 illness;

15 (G) an assessment of the relationship be-
16 tween solitary confinement and levels of train-
17 ing, supervision, and discipline of the staff of
18 correctional facilities; and

19 (H) an assessment of existing Federal and
20 State systems for collecting and reporting the
21 number and duration of solitary confinement
22 incidents in correctional facilities nationwide.

23 (3) REPORT.—

24 (A) DISTRIBUTION.—Not later than two
25 years after the date of the initial meeting of the

Commission, the Commission shall submit a report on the study carried out under this subsection to—

(i) the President;

(ii) the Congress;

(iii) the Attorney General of the United States;

(iv) the Secretary of Health and Human Services;

(v) the Director of the Federal Bureau of Prisons;

(vi) the Administrator of the Office of Juvenile Justice and Delinquency Prevention;

(vii) the chief executive of each State; and

(viii) the head of the department of corrections of each State.

(B) CONTENTS.—The report under subparagraph (A) shall include—

(i) the findings and conclusions of the Commission;

(ii) the recommended national standards for reducing the use of solitary confinement described in subsection (e); and

1 (iii) a summary of the materials relied
2 on by the Commission in the preparation
3 of the report.

4 (e) RECOMMENDATIONS.—

5 (1) IN GENERAL.—As part of the report sub-
6 mitted under subsection (d)(3), the Commission
7 shall provide the Attorney General and the Secretary
8 of Health and Human Services with recommended
9 national standards for significantly reducing the use
10 of solitary confinement in correctional facilities.

11 (2) MATTERS INCLUDED.—The information
12 provided under paragraph (1) shall include rec-
13 ommended national standards relating to—

14 (A) how authorities can progress toward
15 significantly limiting the utilization of solitary
16 confinement so that a prisoner or juvenile de-
17 tainee may be placed in solitary confinement
18 only when the safety or security of the facility
19 or another person is at imminent risk, during
20 an ongoing disciplinary investigation concerning
21 an adult prisoner, or to punish an adult pris-
22 oner for an extremely serious disciplinary in-
23 fraction;

24 (B) methods that can be employed to en-
25 sure that the duration of solitary confinement

1 of a prisoner or juvenile detainee at an institu-
2 tion can be limited to fewer than 30 days in
3 any 45-day period, except in a case in which the
4 head of a correctional facility makes an individ-
5 ualized determination that prolonged solitary
6 confinement of the prisoner or detainee for a
7 serious disciplinary infraction is necessary for
8 the order or security of the institution, or a
9 prisoner or detainee requests such placement;

10 (C) ensuring that prior to being classified,
11 assigned, or subject to long-term solitary con-
12 finement, an adult prisoner shall be entitled to
13 a meaningful hearing on the reason for and du-
14 ration of the confinement and have access to
15 legal counsel for such hearings;

16 (D) ensuring that indefinite sentencing of
17 an adult prisoner to long-term solitary confine-
18 ment will not be allowed and that the prisoner
19 will be afforded a meaningful review of the con-
20 finement at least once every 30 days that the
21 prisoner remains in solitary confinement and
22 that correctional facility officials must record
23 and provide a transcript of the review pro-
24 ceedings for the prisoner under review to the
25 prisoner or the prisoner's designee;

1 (E) ensuring that correctional facility offi-
2 cials design and implement programming that
3 allows adult prisoners subject to long-term soli-
4 tary confinement to earn placement in less re-
5 strictive housing through positive behavior;

6 (F) limiting the use of involuntary solitary
7 confinement for the purpose of protective cus-
8 tody solely because of a personal characteristic
9 that makes the prisoner or juvenile detainee
10 particularly vulnerable to harm, including age,
11 gender identity, race, or religion;

12 (G) ensuring that correctional facility offi-
13 cials improve access to mental health treatment
14 for prisoners and juvenile detainees in solitary
15 confinement;

16 (H) ensuring that correctional facility offi-
17 cials work toward systems wherein prisoners
18 and juvenile detainees diagnosed by a qualified
19 mental health professional with a serious men-
20 tal illness are not held in long-term solitary
21 confinement;

22 (I) ensuring that correctional facility offi-
23 cials do all that is feasible to make certain that
24 prisoners and juvenile detainees are not held in

1 solitary confinement for any duration, except
2 under extreme emergency circumstances;

3 (J) ensuring that correctional facility offi-
4 cials develop alternative methods to manage
5 issues with prisoners and juvenile detainees
6 other than solitary confinement; and

7 (K) such other matters as may reasonably
8 be related to the goal of reducing solitary con-
9 finement in correctional facilities.

10 (3) LIMITATION.—The Commission shall not
11 propose a recommended standard that would impose
12 substantial additional costs compared to the costs
13 presently expended by correctional facilities, and
14 shall seek to propose standards that reduce the costs
15 of incarceration at such facilities.

16 (f) CONSULTATION WITH ACCREDITATION ORGANI-
17 ZATIONS.—In developing recommended national standards
18 for the reduction of solitary confinement under subsection
19 (e), the Commission shall consider any standards that
20 have already been developed, or are being developed simul-
21 taneously to the deliberations of the Commission. The
22 Commission shall consult with accreditation organizations
23 responsible for the accreditation of correctional facilities
24 that have developed or are developing standards related
25 to solitary confinement. The Commission shall also consult

1 with national associations representing the corrections
2 profession, the legal profession, the medical profession, or
3 any other pertinent professional body that has developed
4 or is developing standards related to solitary confinement.

5 (g) HEARINGS.—

6 (1) IN GENERAL.—The Commission shall hold
7 public hearings. The Commission may hold such
8 hearings, sit and act at such times and places, take
9 such testimony, and receive such evidence as the
10 Commission considers advisable to carry out its du-
11 ties under this section.

12 (2) WITNESS EXPENSES.—Witnesses requested
13 to appear before the Commission shall be paid the
14 same fees as are paid to witnesses under section
15 1821 of title 28, United States Code. The per diem
16 and mileage allowances for witnesses shall be paid
17 from funds appropriated to the Commission.

18 (h) INFORMATION FROM FEDERAL OR STATE AGEN-
19 CIES.—The Commission may secure directly from any
20 Federal department or agency such information as the
21 Commission considers necessary to carry out its duties
22 under this section. The Commission may request the head
23 of any State or local department or agency to furnish such
24 information to the Commission.

25 (i) PERSONNEL MATTERS.—

1 (1) TRAVEL EXPENSES.—The members of the
2 Commission shall be allowed travel expenses, includ-
3 ing per diem in lieu of subsistence, at rates author-
4 ized for employees of agencies under subchapter I of
5 chapter 57 of title 5, United States Code, while
6 away from their homes or regular places of business
7 in the performance of service for the Commission.

8 (2) DETAIL OF FEDERAL EMPLOYEES.—With
9 the affirmative vote of $\frac{2}{3}$ of the Commission, any
10 Federal Government employee, with the approval of
11 the head of the appropriate Federal agency, may be
12 detailed to the Commission without reimbursement,
13 and such detail shall be without interruption or loss
14 of civil service status, benefits, or privileges.

15 (3) PROCUREMENT OF TEMPORARY AND INTER-
16 MITTENT SERVICES.—Upon the request of the Com-
17 mission, the Attorney General shall provide reason-
18 able and appropriate office space, supplies, and ad-
19 ministrative assistance.

20 (j) CONTRACTS FOR RESEARCH.—

21 (1) NATIONAL INSTITUTE OF JUSTICE.—With a
22 $\frac{2}{3}$ affirmative vote, the Commission may select non-
23 governmental researchers and experts to assist the
24 Commission in carrying out its duties under this
25 Act. The National Institute of Justice shall contract

1 with the researchers and experts selected by the
2 Commission to provide funding in exchange for their
3 services.

4 (2) OTHER ORGANIZATIONS.—Nothing in this
5 subsection shall be construed to limit the ability of
6 the Commission to enter into contracts with other
7 entities or organizations for research necessary to
8 carry out the duties of the Commission under this
9 section.

10 (k) TERMINATION.—The Commission shall terminate
11 on the date that is 60 days after the date on which the
12 Commission submits the reports required by this section.

13 (l) EXEMPTION.—The Commission shall be exempt
14 from the Federal Advisory Committee Act.

15 **SEC. 4. ADOPTION AND EFFECT OF NATIONAL STANDARDS.**

16 (a) PUBLICATION OF STANDARDS.—

17 (1) FINAL RULE.—Not later than two years
18 after receiving the report specified in section
19 (3)(d)(3), the Attorney General shall publish a final
20 rule adopting national standards for the reduction of
21 solitary confinement in correctional facilities.

22 (2) INDEPENDENT JUDGMENT.—The standards
23 referred to in paragraph (1) shall be based upon the
24 independent judgment of the Attorney General, after
25 giving consideration to the recommended national

1 standards provided by the Commission under section
2 3(e), and being informed by such data, opinions, and
3 proposals that the Attorney General determines to
4 be appropriate to consider.

5 (3) LIMITATION.—The Attorney General shall
6 not establish a national standard under this section
7 that would impose substantial additional costs com-
8 pared to the costs presently expended by Federal
9 and State correctional systems. The Attorney Gen-
10 eral may, however, provide a list of improvements
11 for consideration by correctional facilities.

12 (4) TRANSMISSION TO STATES.—Not later than
13 90 days after publishing the final rule under para-
14 graph (1), the Attorney General shall transmit the
15 national standards adopted under that paragraph to
16 the chief executive of each State, the head of the de-
17 partment of corrections of each State, the head of
18 the department of juvenile justice of each State, and
19 to the appropriate authorities in those units of local
20 government who oversee operations in one or more
21 correctional facilities.

22 (b) APPLICABILITY TO FEDERAL BUREAU OF PRIS-
23 ONS.—The national standards referred to in subsection
24 (a) shall apply to the Federal Bureau of Prisons imme-

1 diately upon adoption of the final rule under subsection
2 (a)(1).

3 (c) ELIGIBILITY FOR FEDERAL FUNDS.—

4 (1) IN GENERAL.—Beginning in the second fis-
5 cal year that begins after the date on which the At-
6 torney General issues the final rule under subsection
7 (a)(1), in order to be eligible to receive a grant
8 under a program identified by the Attorney General
9 under paragraph (2), the chief executive of a State
10 or unit of local government seeking such a grant
11 shall submit to the Attorney general a certification
12 that the State or local government has adopted, and
13 is in full compliance with the national standards de-
14 scribed in subsection (a)(1).

15 (2) COVERED GRANT PROGRAMS.—The Attor-
16 ney General shall identify grant programs carried
17 out by the Department of Justice which provide
18 funding to States and units of local government for
19 the construction, maintenance, or operation of cor-
20 rectional facilities, and make a list of such programs
21 publicly available.

22 **SEC. 5. DEFINITIONS.**

23 For purposes of this Act, the following definitions
24 shall apply:

1 (1) ATTORNEY GENERAL.—The term “Attorney
2 General” means the Attorney General of the United
3 States.

4 (2) COMMISSION.—The term “Commission”
5 means the National Solitary Confinement Study and
6 Reform Commission established under section 3 of
7 this Act.

8 (3) LONG-TERM.—The term “long-term” means
9 any period lasting more than 30 days, consecutive or
10 nonconsecutive, in any 45-day period.

11 (4) QUALIFIED MENTAL HEALTH PROFES-
12 SIONAL.—The term “qualified mental health profes-
13 sional” means a psychiatrist, psychologist, psy-
14 chiatric social worker, licensed professional coun-
15 selor, psychiatric nurse, or another individual who,
16 by virtue of education, credentials, and experience, is
17 permitted by law to evaluate and provide mental
18 health care.

19 (5) SERIOUS MENTAL ILLNESS.—The term “se-
20 rious mental illness” means a substantial disorder
21 that—

22 (A) significantly impairs judgment, behav-
23 ior, or capacity to recognize reality or cope with
24 the ordinary demands of life; and

1 (B) is manifested by substantial pain or
2 disability, the status of being actively suicidal,
3 a severe cognitive disorder that results in sig-
4 nificant functional impairment, or a severe per-
5 sonality disorder that results in significant
6 functional impairment.

7 (6) SOLITARY CONFINEMENT.—The term “sol-
8 itary confinement” means confinement of a prisoner
9 or juvenile detainee in a cell or other place, alone or
10 with other persons, for approximately 22 hours or
11 more per day with severely restricted activity, move-
12 ment, and social interaction, which is separate from
13 the general population of that correctional facility.

14 (7) CORRECTIONAL FACILITY.—The term “cor-
15 rectional facility” means a Federal, State, local, or
16 privately run prison, jail, or juvenile detention facil-
17 ity.

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