

CONFERENCE COMMITTEE REPORT

HB 746

2022 Regular Session

Duplessis

June 6, 2022

To the Honorable Speaker and Members of the House of Representatives and the Honorable President and Members of the Senate.

Ladies and Gentlemen:

We, the conferees appointed to confer over the disagreement between the two houses concerning House Bill No. 746 by Representative Duplessis, recommend the following concerning the Reengrossed bill:

1. That the set of Senate Committee Amendments by the Senate Committee on Judiciary B (#3772) be adopted.
2. That the set of Senate Legislative Bureau Amendments (#4027) be adopted.

Respectfully submitted,

Representative Royce Duplessis

Senator Gary L. Smith Jr.

Representative Joseph A. Marino, III

Senator Patrick McMath

Representative Debbie Villio

Senator Mike Reese

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

CONFERENCE COMMITTEE REPORT DIGEST

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Keyword and oneliner of the instrument as it left the House

JUVENILES/DETENTION FAC: Provides relative to solitary confinement in juvenile facilities

Report adopts Senate amendments to:

1. Make technical changes.
2. Prohibit the placing of a juvenile in solitary confinement for general behavior management that is not a response to a serious and immediate threat of physical harm to the juvenile or others.
3. Require that a mental health practitioner make a determination that the period of solitary confinement does not compromise the juvenile's mental or physical health.
4. Add that a supervisor with the highest level of authority among the facility personnel may approve solitary confinement after consultation with a qualified mental health practitioner.

Digest of the bill as proposed by the Conference Committee

Present law provides for the rules, regulations, education, training, discipline, work opportunities, vocational training, and contracts in juvenile institutions.

Proposed law retains present law.

Proposed law provides that no juvenile in the custody of the office of juvenile justice shall be placed in any form of solitary confinement for any reason other than a temporary response to behavior that poses a serious and immediate threat of physical harm to the juvenile or others.

Proposed law defines "solitary confinement" for purposes of R.S. 15:905(F).

Proposed law provides that a juvenile shall never be placed in solitary confinement for the purposes of discipline, punishment, administrative convenience, retaliation, protective custody, suicide intervention, general behavior management that is not a response to a serious and immediate threat of physical harm to the juvenile or others, rule violations, in response to staffing shortages, or for any other reason that is not an emergency response to behavior that poses a serious and immediate threat of physical harm to the juvenile or others.

Proposed law provides that under no circumstances shall a juvenile who has expressed suicidal indications or attempted suicide be placed in solitary confinement.

Proposed law provides that a juvenile may only be held in solitary confinement in either of the following circumstances:

- (1) Progressive protocols, beginning with verbal calming and other de-escalation techniques attempted by facility staff, have proven unsuccessful at resolving the imminent threat of physical harm.
- (2) There is a need to eliminate the serious and immediate risk of physical harm to the juvenile or others.

Proposed law provides that all protocols and techniques provided in proposed law shall be documented, along with an explanation of why solitary confinement was ultimately deemed necessary.

Proposed law provides that a juvenile placed in solitary confinement pursuant to proposed law shall be released from solitary confinement as soon as the serious and immediate risk of physical harm to self or others is resolved.

Proposed law provides that a juvenile shall only be held in solitary confinement for a period that does not compromise or harm his physical health or mental health, as determined by a mental health practitioner.

Proposed law provides that except as provided by proposed law, no period of solitary confinement shall last longer than eight hours. Provides that after eight hours, the juvenile shall be returned to the general population.

Proposed law provides that if a mental health professional determines that the juvenile continues to pose a serious and immediate threat of physical harm to the juvenile or others after eight hours, the juvenile may be transported to a mental health facility upon the recommendation of a mental health professional, or the facility staff shall implement a mental health crisis plan that allows for the juvenile to return to the general population safely.

Proposed law provides that if it is determined that the options of transporting the juvenile to a mental health facility or implementing a mental health crisis plan are not practicable after an in-person evaluation by a mental health professional at the facility, the juvenile may be placed into solitary confinement for an additional period of time not to exceed eight-hour increments only upon recommendation of the mental health professional.

Proposed law provides that each additional eight-hour increment shall be preceded by an additional evaluation by a mental health professional and a recommendation by the mental health professional that the juvenile may continue to be placed into solitary confinement.

Proposed law provides that under no circumstances shall the juvenile who has been evaluated pursuant to proposed law be held in solitary confinement for longer than 24 hours.

Proposed law provides that the use of consecutive periods of room confinement to avoid the intent and purpose of proposed law is prohibited.

Proposed law provides that all instances of solitary confinement shall be approved immediately by the facility director, deputy director, or supervisor with the highest level of authority who is present at the facility at the time, and only after consultation with a qualified mental health practitioner who has spoken with the juvenile. Provides that approval shall be re-affirmed every hour thereafter.

Proposed law provides that the facility director, deputy director, or supervisor with the highest level of authority who is present at the facility at the time shall immediately notify the deputy secretary and their senior administrative team any time a juvenile is placed in solitary confinement.

Proposed law provides that within two hours of placing a juvenile in solitary confinement, the facility shall contact the juvenile's parent or guardian and the juvenile's attorney of record to provide notice that the juvenile was placed in solitary confinement and the reason for the confinement.

Proposed law provides that juveniles in solitary confinement shall be continuously monitored. Provides that facility staff shall engage in continued crisis intervention and de-escalation techniques and make visual and verbal contact with each youth in solitary confinement at least every 10 minutes.

Proposed law provides that the intent and purpose of crisis intervention is to help de-escalate the juvenile's behavior so he can rejoin the general population as soon as possible. Provides that staff shall document the time and nature of the observation and interventions.

Proposed law provides that within the first hour of solitary confinement and every hour thereafter, a qualified mental health practitioner shall speak to the juvenile to help the juvenile de-escalate and exit solitary confinement as soon as possible.

Proposed law provides that staff shall return the juvenile to programming as soon as the juvenile has regained self control and is no longer engaging in behavior that threatens serious and immediate harm to himself or others. Provides that staff may return the juvenile to a separate area other than a cell or other isolated space, if necessary, where staff can help the juvenile self-regulate and become ready to return to the general population.

Proposed law provides that all rooms used for solitary confinement shall have adequate and operating lighting, heating and cooling, and ventilation for the comfort of the juvenile. Provides that rooms shall be clean and resistant to suicide and self-harm.

Proposed law provides that juveniles in solitary confinement shall have access to sunlight, drinking water, toilet facilities, working showers, hygiene supplies, mattresses, reading materials, meals, contact with parents or legal guardians, legal assistance, educational programming, and appropriate medical and mental health services, which shall be provided by mental health staff as needed.

Proposed law provides that every instance of solitary confinement shall be documented electronically and in the aggregate. Provides that unidentified data on the frequency and length of time that the juvenile spends in solitary confinement shall be available upon request as a public record.

Proposed law provides that documentation of the solitary confinement shall include all of the following:

- (1) The date of the occurrence.
- (2) The race, ethnicity, age, gender, and disability status of the juvenile.
- (3) The reason for the juvenile's placement in solitary confinement.
- (4) An explanation of why less restrictive means for placement were unsuccessful.
- (5) The ultimate duration of the juvenile's placement in solitary confinement.
- (6) Facility staffing levels at the time of the juvenile's confinement.
- (7) Any incidents of self-harm, suicide attempts, or suicide committed by the juvenile while he was confined and where the juvenile was placed after leaving solitary confinement.

Proposed law provides that the office of juvenile justice shall submit a report on the use of solitary confinement quarterly to the Juvenile Justice Reform Act Commission. Provides that the report shall include the following:

- (1) The length of time each juvenile was in solitary confinement.
- (2) The race, ethnicity, age, gender, and disability status of each juvenile placed in solitary confinement.

- (3) The facility staffing levels at the time of the juvenile's confinement.
- (4) The reason each juvenile was placed in confinement, and where the juvenile was placed after leaving solitary confinement.

Proposed law provides that all of the following shall be included in the report:

- (1) Each instance of solitary confinement exceeding eight hours, including all reasons why attempts to return the juvenile to the general population of the facility were unsuccessful.
- (2) All corrective measures taken in response to noncompliance with proposed law.
- (3) Redacted personal identifying information that provides individual, not aggregate, data.

Proposed law provides that the initial quarterly report shall be submitted within two weeks after the quarter ending on Sept. 30, 2022. Provides that subsequent reports shall be submitted for the ensuing quarters within two weeks after the end of each quarter.

Proposed law provides that the office of juvenile justice shall post a report on the use of solitary confinement on its website quarterly with deidentified aggregate data including, but not limited to all of the following:

- (1) Total number of juveniles placed in solitary confinement that quarter.
- (2) Race and ethnicity, age, and gender of juveniles placed in solitary confinement.
- (3) Disability status of juveniles placed in solitary confinement.
- (4) Number of instances of solitary confinement exceeding eight hours.
- (5) Number of instances, if any, of self-harm while in solitary confinement.
- (6) Number of instances, if any, of suicide attempts while in solitary confinement.
- (7) Number of instances, if any, of completed suicides while in solitary confinement.

Proposed law provides that data shall be disaggregated by facility.

Proposed law provides that all agency staff shall be trained on the appropriate use of solitary confinement during their initial training to work at the office of juvenile justice, and subsequently at regular intervals. Provides that staff shall be required to demonstrate proficiency with decisions regarding when and how to use solitary confinement before completing their initial training to work in office of juvenile justice facilities and ongoing during their employment.

Proposed law provides that every juvenile placed in the custody of the office of juvenile justice shall receive an explanation on the solitary confinement policy by staff promptly upon arrival to a facility, and information on this policy shall be communicated to the juvenile's parents or guardians through the most direct means possible, with in-person communication being most preferable.

(Adds R.S. 15:905(F))