
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: SB 759 **Hearing Date:** April 28, 2015
Author: Anderson
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Urgency: No **Fiscal:** Yes
Consultant: JRD

Subject: *Prisoners: Secured Housing Units*

HISTORY

Source: Friends Committee on Legislation of California

Prior Legislation: SB 892 (Hancock)—2014, died on Assembly Floor

Support: American Friends Service Committee; California Attorneys for Criminal Justice; California Public Defenders Association; Californians United for a Responsible Budget; Ella Baker Center for Human Rights; Legal Services for Prisoners with Children; National Religious Campaign Against Torture; Youth Justice Coalition

Opposition: None known

PURPOSE

The purpose of this legislation is to ensure accountability and transparency in the use of solitary confinement in California, as specified.

Current law creates in state government the California Department of Corrections and Rehabilitation (CDCR), to be headed by a secretary, who shall be appointed by the Governor, subject to Senate confirmation, and shall serve at the pleasure of the Governor. (Government Code § 12838.) CDCR shall consist of Adult Operations, Adult Programs, Health Care Services, Juvenile Justice, the Board of Parole Hearings, the State Commission on Juvenile Justice, the Prison Industry Authority, and the Prison Industry Board. (*Id.*) As explained in the Legislative Analyst's Office Analysis of the Governor's 2015-16 Proposed Budget:

The CDCR is responsible for the incarceration of adult felons, including the provision of training, education, and health care services. As of February 4, 2015, CDCR housed about 132,000 adult inmates in the state's prison system. Most of these inmates are housed in the state's 34 prisons and 43 conservation camps. About 15,000 inmates are housed in either in-state or out-of-state contracted prisons. The department also supervises and treats about 44,000 adult parolees and is responsible for the apprehension of those parolees who commit new offenses or parole violations. In addition, about 700 juvenile offenders are housed in facilities operated by CDCR's Division of Juvenile Justice, which includes three facilities and one conservation camp.

The Governor's budget proposes total expenditures of \$10.3 billion (\$10 billion General Fund) for CDCR operations in 2015–16.

Current regulations allow CDCR to place an inmate in the SHU if the inmate has been deemed a threat to the safety of others or the security of the institution. (15 CCR 3341.5.) Under existing regulations, inmates can be assigned to the Security Housing Unit (SHU) for a determinate or indeterminate term. (*Id.*) An inmate who has been validated as a gang member can be placed in the SHU for an indeterminate term. (*Id.*)

Data Collection

Current law creates the independent Office of the Inspector General (OIG). (Penal Code § 6125.) The Inspector General is responsible for contemporaneous oversight of internal affairs investigations and the disciplinary process of the Department of Corrections and Rehabilitation. (Penal Code § 6126.)

This bill would require CDCR to collect a variety of data relating to the security threat group validation process and the SHU, as specified.

This bill would require, beginning January 1, 2018, the OIG to prepare a biennial report utilizing the information collected by CDCR, as specified.

Credit Earning

Under existing law a person who is placed in a Security Housing Unit, Psychiatric Services Unit, Behavioral Management Unit, or an Administrative Segregation Unit for misconduct described in subdivision (b) or upon validation as a prison gang member or associate is ineligible to earn credits pursuant to Section 2933 or 2933.05 during the time he or she is in the Security Housing Unit, Psychiatric Services Unit, Behavioral Management Unit, or the Administrative Segregation Unit for that misconduct, as specified. (Penal Code § 2933.6.)

This bill would repeal those provisions and instead authorize CDCR to establish regulations to allow specified inmates placed in a Security Housing Unit, Psychiatric Services Unit, Behavioral Management Unit, or an Administrative Segregation Unit to earn credits during the time he or she is in the Security Housing Unit, Psychiatric Services Unit, Behavioral Management Unit, or the Administrative Segregation Unit.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past eight years, this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state's ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its "ROCA" policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In February of this year the administration reported that as “of February 11, 2015, 112,993 inmates were housed in the State’s 34 adult institutions, which amounts to 136.6% of design bed capacity, and 8,828 inmates were housed in out-of-state facilities. This current population is now below the court-ordered reduction to 137.5% of design bed capacity.”(Defendants’ February 2015 Status Report In Response To February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).

While significant gains have been made in reducing the prison population, the state now must stabilize these advances and demonstrate to the federal court that California has in place the “durable solution” to prison overcrowding “consistently demanded” by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants’ Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee’s consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

COMMENTS

1. Need for This Legislation

According to the Author:

Good government starts with good information. Governor Brown is requesting over \$10 billion for corrections in 2015-2016. Lawmakers can only make prudent budget decisions when they have the necessary information. SB 759 is a modest step toward accountability and transparency that will give the Legislature the data it needs to exercise sound oversight over CDCR.

2. Solitary Confinement: The National Discussion

In recent years, solitary confinement practices in the United States have come under increased scrutiny, which has resulted in a movement to significantly limit its use.

On June 19, 2012, Senator Dick Durbin chaired the first Congressional hearing on solitary confinement. (*First Congressional Hearing on Solitary Confinement to Be Held June 19*, James

Ridgeway and Jean Casella, June 8, 2012. <http://solitarywatch.com/2012/06/08/first-congressional-hearing-on-solitary-confinement-to-be-held-june-19/>) The hearing focused on the human rights, fiscal and public safety consequences of solitary confinement in U.S. prisons, jails, and detention centers. (*Id.*) The hearing also explored the psychological and psychiatric impact on inmates during and after their imprisonment, the higher costs of running solitary housing units, the human rights issues surrounding the use of isolation, and successful state reforms in this area. (*Id.*)

In February of last year, these psychological effects were experienced firsthand by the Executive Director of Colorado's Department of Corrections, Rick Raemisch. Raemisch recounts:

I was delivered to a Colorado state penitentiary, where I was issued an inmate uniform and a mesh bag with my toiletries and bedding. My arms were handcuffed behind my back, my legs were shackled and I was deposited in Administrative Segregation — solitary confinement.

I hadn't committed a crime. Instead, as the new head of the state's corrections department, I wanted to learn more about what we call Ad Seg.

Most states now agree that solitary confinement is overused, and many — like New York, which just agreed to a powerful set of reforms this week — are beginning to act. When I was appointed, Gov. John Hickenlooper charged me with three goals: limiting or eliminating the use of solitary confinement for mentally ill inmates; addressing the needs of those who have been in solitary for long periods; and reducing the number of offenders released directly from solitary back into their communities. If I was going to accomplish these, I needed a better sense of what solitary confinement was like, and what it did to the prisoners who were housed there, sometimes for years.

My cell, No. 22, was on the second floor, at the end of what seemed like a very long walk. At the cell, the officers removed my shackles. The door closed and the feed tray door opened. I was told to put my hands through it so the cuffs could be removed. And then I was alone — classified as an R.F.P., or "Removed From Population."

In regular Ad Seg, inmates can have books or TVs. But in R.F.P. Ad Seg, no personal property is allowed. The room is about 7 by 13 feet. What little there is inside — bed, toilet, sink — is steel and screwed to the floor.

First thing you notice is that it's anything but quiet. You're immersed in a drone of garbled noise — other inmates' blaring TVs, distant conversations, shouted arguments. I couldn't make sense of any of it, and was left feeling twitchy and paranoid. I kept waiting for the lights to turn off, to signal the end of the day. But the lights did not shut off. I began to count the small holes carved in the walls. Tiny grooves made by inmates who'd chipped away at the cell as the cell chipped away at them.

For a sound mind, those are daunting circumstances. But every prison in America has become a dumping ground for the mentally ill, and often the "worst of the worst" — some of society's most unsound minds — are dumped in Ad Seg.

If an inmate acts up, we slam a steel door on him. Ad Seg allows a prison to run more efficiently for a period of time, but by placing a difficult offender in isolation you have not solved the problem — only delayed or more likely exacerbated it, not only for the prison, but ultimately for the public. Our job in corrections is to protect the community, not to release people who are worse than they were when they came in.

(*My Night in Solitary*, Rick Raemisch, New York Times, February 20, 2014.
<http://www.nytimes.com/2014/02/21/opinion/my-night-in-solitary.html>)

David Brooks, New York Times Op-Ed columnist, echoed the notion that the use of solitary confinement should be reduced. He wrote, in part:

We don't flog people in our prison system, or put them in thumbscrews or stretch them on the rack. We do, however, lock prisoners away in social isolation for 23 hours a day, often for months, years or decades at a time.

We prohibit the former and permit the latter because we make a distinction between physical and social pain. But, at the level of the brain where pain really resides, this is a distinction without a difference. Matthew Lieberman of the University of California, Los Angeles, compared the brain activities of people suffering physical pain with people suffering from social pain. As he writes in his book, "Social," "Looking at the screens side by side ... you wouldn't have been able to tell the difference."

The brain processes both kinds of pain in similar ways. Moreover, at the level of human experience, social pain is, if anything, more traumatic, more destabilizing and inflicts more cruel and long-lasting effects than physical pain. What we're doing to prisoners in extreme isolation, in other words, is arguably more inhumane than flogging.

Yet inflicting extreme social pain is more or less standard procedure in America's prisons. Something like 80,000 prisoners are put in solitary confinement every year. Prisoners isolated in super maximum facilities are often locked away in a 6-by-9-foot or 8-by-10-foot barren room. They may be completely isolated in that room for two days a week. For the remaining five, they may be locked away for 23 hours a day and permitted an hour of solitary exercise in a fenced-in area.

(*The Archipelago of Pain*, David Brooks, New York Times, March 6, 2014.
http://www.nytimes.com/2014/03/07/opinion/brooks-the-archipelago-of-pain.html?_r=0)

On March 23, 2015, Supreme Court Justice Anthony Kennedy stated during a budget hearing:

California, my home state, had 187,000 people in jail at a cost of over \$30,000 a prisoner. Compare the amount they gave to school children; it was about 3500 a year. Now, this is 24-hour care and so this is apples and oranges in a way. And this idea of total incarceration just isn't working. And it's not humane. The federal government built -- what do they call them -- super max prisons with isolation cells. Prisoners, we had a case come before our court a few weeks ago. The

prisoner had been in an isolation cell, according to the attorney. I haven't checked it out. For 25 years. Solitary confinement literally drives men mad. Even Dr. Minett had his cobbler's tools and he lost his mind. We have to simply look at the system we have. The Europeans have systems for difficult rekal strant prisoners in which they have them in a group of three or four. And they can stay together for three and four. And they have human contact. And it seems to work -- it seems to work much better.

(<http://www.c-span.org/video/?324970-1/supreme-court-budget-fiscal-year-2016>; the transcript for this program was compiled from uncorrected Closed Captioning.)

3. California Legislature's Joint Informational Hearings on Solitary Confinement

On October 9, 2013, the Assembly and Senate Public Safety Committees held an informational hearing on California's prison segregation policies. The committees heard from representatives from CDCR and the OIG, experts, advocates and even individuals who had been housed in the SHU. Among the experts was Margaret Winter, the head of the ACLU prison project, she:

[T]old lawmakers the tide is turning nationally when it comes to use of isolation in prisons.

"Every reputable study has found negative effects," Winter said, noting that when she helped the Mississippi Department of Corrections reduce its use of isolation, prison violence actually went down.

Asked for alternative methods for dealing with inmates who pose a danger to other inmates or staff, Winter said segregation can be an effective short-term tool, if paired with incentives to change behavior. Most prison systems simply let inmates languish in isolation without even determining if they're still a threat, Winter said.

(*Legislators Hear Testimony on California Prison Conditions in Isolation*, Rina Palta, Southern California Public Radio, October 9, 2013. <http://www.scpr.org/news/2013/10/09/39735/ca-legislature-to-hold-hearing-on-conditions-in-pr/>.)

On February 11, 2014, another joint informational hearing was held to discuss CDCR's new Security Threat Group Policy (discussed below) and the impact that the policy has had on the SHU population. Committee members heard from CDCR representatives, experts and attorneys who represent SHU inmates. Hope Metcalf, Associate Research Scholar in Law, Director of Arthur Liman Program, and Lecturer in Law, Yale Law School, stated in the hearing:

[T]he basic bottom line is that staff and inmates must feel safe and prisons do need tools to shape behavior. I don't think that there's much dispute about that. And in fact, some forms of short-term segregation may be necessary and there may indeed be some portions of the population for whom placement in the general population is not appropriate. However, that does not translate in any sense to the fact that long-term isolation of the ilk that we see at Pelican Bay is in fact serving sound, public policy.

So given the overreliance on isolation, many prisons are at best delaying problems, and, in fact, may be aggravating them. So I do not wish to say that most people released from long-term isolation are dangerous. I have many, many clients who have left isolation and they have gone on to do well. However, I do think that if we're talking about public safety, thinking about outcomes, including recidivism is important. Equally important of course in terms of outcomes is not just whether or not someone is violent, but whether they are able to flourish and become independent once they leave. So the fear is—one fear I've had—is even where outcomes don't show for example violence, is that person able to hold a job or are they now so debilitated that they are reduced to relying on state support once they leave prison?

(California Department of Corrections and Rehabilitation's Proposed New Policies on Inmate Segregation: *The Promise and Imperative of Real Reform*, Hearing Transcript, Assembly and Senate Public Safety Committees Joint Informational Hearing, February 11, 2014. <http://spsf.senate.ca.gov/sites/spsf.senate.ca.gov/files/Jt.%20Hearing%20Transcript%202-11-14.pdf>.)

These hearings highlighted the fact that, while short term segregation is an important tool, long term segregation can have a detrimental impact on not only the inmates but also on public safety.

4. CDCR Security Threat Group Policies

On July 1, 2011, inmates in the Pelican Bay State Prison's Security Housing Unit initiated a hunger strike. (*Background: Hunger Strike in California Prisons*, California Department of Corrections and Rehabilitation, October 2013. <http://cdcr.ca.gov/stg/docs/Fact%20Sheet-hunger%20strikes%20in%20CA%20prisons.pdf>). Approximately 5,300 inmates began refusing state-issued meals. The number of inmates peaked at more than 6,500 two days later and then gradually decreased until the strike concluded on July 20, 2011. (*Id.*)

In September 2011, a second hunger strike began. After three days, 4,252 inmates had missed nine consecutive meals.¹ By October 13, 2011, the number of inmates participating had dropped to 580. CDCR officials in Sacramento were contacted by Pelican Bay State Prison inmates by letter and agreed to meet with inmate representatives to discuss CDCR's ongoing review of and revisions to its SHU policies. All inmates had resumed eating by Sunday, October 16, 2011. (*Id.*)

A third hunger strike began on July 8, 2013, when more than 30,000 inmates refused to eat state-issued food until the SHU policies were changed. By July 11, 2013, 12,421 inmates had missed nine consecutive meals. By September 4, 2013, there were 100 inmates on a hunger strike; 40 of them had been on a hunger strike continuously since July 8. All inmates resumed eating on September 5, 2013. (*Id.*)

Last year CDCR updated its Security Threat Group policies. (http://www.cdcr.ca.gov/Regulations/Adult_Operations/Pending_Rules_Page.html#STG.) These policies include, in part:

¹ CDCR considers an inmate to be on hunger strike if he or she misses nine consecutive meals.

Security Threat Groups

- The new policy replaces the word “gang” with the more nationally accepted term “security threat group.” The Security Threat Group (STG) program does not take a “one size fits all approach,” but better identifies, assesses and prioritizes security threat groups (prison gangs, street gangs, disruptive groups) based on behavior and on the level of threat the group and its affiliates present to the safety and security of prisons and the public.
- CDCR categorizes criminal gangs into STGs based on a threat assessment conducted by the department’s Office of Correctional Safety. STG behavior is defined as documented behavior that promotes, furthers or assists a security threat group.
- An STG-I designation is used for criminal gangs that pose a greater threat. It includes traditional prison gangs and disruptive groups with a history of violence or influence over subservient groups. These STG groups include, but may not be limited to, traditional prison gangs like the Aryan Brotherhood, the Black Guerilla Family, the Mexican Mafia, the Nazi Low Riders, the Northern Structure, and the Nuestra Familia. An STG-I designation may also include a gang with a history and propensity for violence and/or influence over subservient STGs. CDCR will review STG-I designations at least every two years.
- An STG-II designation may be used for traditional disruptive groups and street gangs. These can include the Crips, the Bloods, the 2-5s, the Northern Riders, MS 13, the Norteños, the Sureños, Florencia 13 and white supremacist groups.

Validation

- The validation process is a strategy for identifying and documenting criminal gang member, associates and suspects.
- STG associates – the majority of inmates housed in SHUs – are no longer placed in a SHU based solely upon their validation to an STG unless there is a nexus to confirmed gang activity.
- CDCR added an objective point-based component in the offender validation process and enhanced considerations of due process. Each source item is now given a weighted point value between two and seven points, and individual validation must include three independent sources with a cumulative total of 10 points or more.
- Unsubstantiated confidential information from a single source will not establish a foundation for confirming the existence of STG-related behavior.

Step-Down Program

- The Step-Down Program enables an inmate serving an indeterminate SHU term to ultimately earn his way back to a general population or sensitive needs yard. The revised policy reduces the six-year inactive review policy for release to a general population to a four-year program. Additionally, inmates demonstrating positive behavior and participation may have their length of participation further reduced to three years.
- The Step-Down Program is an incentive-based, multi-step process for STG offenders who choose to discontinue criminal and/or gang activity. Offenders can always choose to drop out of a gang; however, in the Step-Down Program, inmates are not required to drop out of their gang.
- The five-step program supports, educates and increases privileges for SHU inmates who refrain from gang behavior and are disciplinary-free. Each step is progressive and requires the willingness of the inmate to participate. Each offender is responsible for demonstrating he can be released to a less restrictive environment while abstaining from criminal behavior.
- In the fifth step, inmates are observed and monitored in a general population facility.

(*Security Threat Group Prevention, Identification and Management Strategy*, California Department of Corrections and Rehabilitation, October 2013. <http://www.cdcr.ca.gov/stg/docs/Fact-Sheet-STG-reforms.pdf>)

The Office of the Inspector General recently reviewed CDCR's Step-Down Program:

The new gang management policy requires an offender in step 1 through 4 to participate in inmate programming or journaling before progressing to the next step. Inmates placed in steps 1 and 2 are to have program assessments initiated, such as TABE (Test of Adult Basic Education) and COMPAS assessments. Inmates placed in step 3 can participate in self-directed journals that are intended to develop a system of values and strategies leading to responsible thinking and behavior. Step 4 inmates may have programming that includes education, violence prevention programs, and gang diversion programs. If an inmate refuses to participate in the SDP, including inmate programming or journaling, the inmate will return to a previous step or regress further.

The OIG's fieldwork reviewed the current status of 65 inmates who were assigned to the SDP (steps 1 through 4) for at least 12 months to identify the result of the ICC review.^{20,21} As summarized on the next page, the OIG found that 31 of the 65 inmates (48 percent) successfully progressed to the next step; 27 inmates (41 percent) were retained in their current step; and 7 inmates (11 percent) had regressed to a prior step.

The percentage of inmates who progressed (48 percent) based on active participation in the SDP remained stable; it decreased by only 1 percent since the

last OIG report. The inmates retained in their current step increased by 14 percent, while the inmates who regressed decreased by 11 percent from the last OIG report. As shown in the preceding diagram, the OIG found that 27 of the 34 inmates (79 percent) from the “retain” and “regress” categories refused to participate in the SDP. For the inmates who were unable to progress, it was due to “refusing to participate” (27 inmates), “other reasons” (four inmates), and “will not participate in journaling” (three inmates, one each from steps 1, 2, and 3). The “other reasons” typically involved inmates who were indecisive on choosing to participate, which caused more assessment time before an ICC decision was made. . .

. . . [T]he OIG’s fieldwork noted an increasing percentage of inmates progressing (or transitioning) to the next step as they move closer to being released to general population (step 5). The OIG found seven of the eight inmates reviewed were initially assigned to step 4 at California Correctional Institution and all progressed to the next step. Also, over half (54 percent) of the inmates assigned to step 3 were able to progress to step 4. Each inmate in the SDP is assigned ratings in various categories during the annual program review or ICC reviews (at 90 or 180 days). Most inmates who progressed received the highest rating of “exceptional” in the following categories: “attitude toward staff,” “attitude toward fellow inmates and workers,” and “teamwork and participation.” This confirms that inmates demonstrating a willingness and commitment to discontinue gang activity may progress through the SDP to their eventual release from the SHU.

(Fifth Report on the California Department of Corrections and Rehabilitation’s Progress Implementing its Future of California Corrections Blueprint, Office of the Inspector General, March 2015; http://oig.ca.gov/media/reports/BPMR/Fifth_Report_on_the_CDRCRs_Progress_Implementing_its_Future_of_California_Corrections_Blueprint.pdf)

5. Effect of This Legislation

According to the author, transparency is a key feature of Senate Bill 759. Specifically, the legislation would increase accountability by requiring CDCR to collect a variety of data and the OIG to utilize that data to prepare a biennial report to the legislature. This legislation, additionally, would allow CDCR to promulgate regulations to provide inmates in segregated housing the opportunity to earn credits.

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