

117TH CONGRESS
2D SESSION

H. R. 8048

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

IN THE HOUSE OF REPRESENTATIVES

JUNE 13, 2022

Mr. TRONE (for himself, Mrs. BICE of Oklahoma, and Mr. MELJER) 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 2022”.

6 **SEC. 2. PURPOSES.**

7 The purposes of this Act are to—

8 (1) develop and implement national standards
9 for the use of solitary confinement to ensure that it

1 is used infrequently and only under extreme cir-
2 cumstances;

3 (2) establish a more humane and constitu-
4 tionally sound practice of segregated detention or
5 solitary confinement in correctional facilities;

6 (3) accelerate the development of best practices
7 and make reforming solitary confinement a top pri-
8 ority in each correctional facility at the Federal and
9 State levels;

10 (4) increase the available data and information
11 on the incidence of solitary confinement, con-
12 sequently improving the management and adminis-
13 tration of correctional facilities;

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

16 (6) increase the accountability of correctional
17 facility officials who fail to design and implement
18 humane and constitutionally sound solitary confine-
19 ment practices;

20 (7) protect the Eighth and Fourteenth Amend-
21 ment rights of incarcerated individuals at correc-
22 tional facilities; and

23 (8) reduce the costs that solitary confinement
24 imposes on interstate commerce.

1 **SEC. 3. NATIONAL SOLITARY CONFINEMENT STUDY AND**
2 **REFORM COMMISSION.**

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

6 (b) MEMBERS.—

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

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

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

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

21 (D) 2 shall be appointed by the majority
22 leader of the Senate, unless the majority leader
23 is of the same party as the President, in which
24 case 1 shall be appointed by the majority leader
25 of the Senate and 1 shall be appointed by the
26 minority leader of the Senate; and

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

4 (2) PERSONS ELIGIBLE.—Each member of the
5 Commission shall be an individual who has knowl-
6 edge or expertise in matters to be studied by the
7 Commission. Not less than three members of the
8 Commission shall be individuals who have been in-
9 carcerated or have had an incarcerated family mem-
10 ber.

11 (3) CONSULTATION REQUIRED.—The President,
12 the Speaker, and the minority leader of the House
13 of Representatives, and the majority leader and mi-
14 nority 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 incarcerated individuals and juvenile detainees

1 most likely to be referred to solitary confine-
2 ment and the effectiveness of various types of
3 treatment or programs to reduce such likeli-
4 hood;

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

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

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

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

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

24 (3) REPORT.—

1 (A) DISTRIBUTION.—Not later than one
2 year after the date of the initial meeting of the
3 Commission, the Commission shall submit a re-
4 port on the study carried out under this sub-
5 section to—

6 (i) the President;

7 (ii) the Congress;

8 (iii) the Attorney General of the
9 United States;

10 (iv) the Secretary of Health and
11 Human Services;

12 (v) the Director of the Federal Bu-
13 reau of Prisons;

14 (vi) the Administrator of the Office of
15 Juvenile Justice and Delinquency Preven-
16 tion;

17 (vii) the chief executive of each State;

18 and

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

21 (B) CONTENTS.—The report under sub-
22 paragraph (A) shall include—

23 (i) the findings and conclusions of the
24 Commission;

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

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

(e) RECOMMENDATIONS.—

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

(2) MATTERS INCLUDED.—The information provided under paragraph (1) shall include recommended national standards relating to—

(A) how authorities can progress toward significantly limiting the utilization of solitary confinement so that an incarcerated individual may be placed in solitary confinement only under extreme emergency circumstances, as a last resort, for as short a time as possible, subject to independent review, and pursuant to the authorization of a competent authority;

1 (B) methods that can be employed to en-
2 sure that the duration of solitary confinement
3 of an incarcerated individual at an institution
4 can be limited to hours at a time for purposes
5 of emergency de-escalation, except that if the
6 head of a correctional facility makes an individ-
7 ualized determination that the incarcerated in-
8 dividual cannot be safely returned to the gen-
9 eral population, the head of the correctional fa-
10 cility may continue to segregate the incarcer-
11 ated individual from the general population
12 without the use of solitary confinement, while
13 ensuring that the incarcerated individual has
14 access to the type and hours of out-of-cell con-
15 gregate programming, activities, and engage-
16 ment comparable to the general population, in
17 accordance with best practices and model pro-
18 grams for improving people's well-being and re-
19 ducing violence in youth and adult correctional
20 settings, non-correctional settings, and other
21 mental health settings, and in accordance with
22 the United Nations Standard Minimum Rules
23 on the Treatment of Prisoners;

24 (C) ensuring that prior to being classified,
25 assigned, or subject to long-term segregation,

1 an incarcerated individual shall be entitled to a
2 meaningful hearing on the reason for and dura-
3 tion of the confinement and have access to legal
4 counsel for such hearings;

5 (D) ensuring that indefinite sentencing of
6 an incarcerated individual to long-term segrega-
7 tion will not be allowed and that the incarcer-
8 ated individual will be afforded a meaningful re-
9 view of the segregation at least once every 30
10 days that the incarcerated individual remains in
11 segregation and that correctional facility offi-
12 cials must record and provide a transcript of
13 the review proceedings for the incarcerated indi-
14 vidual under review to the incarcerated indi-
15 vidual or the incarcerated individual's designee;

16 (E) ensuring that correctional facility offi-
17 cials design and implement programming that
18 allows incarcerated individuals subject to long-
19 term segregation to earn placement in less re-
20 strictive housing through positive behavior;

21 (F) ensuring that protective custody and
22 other custody designations designed to protect
23 vulnerable incarcerated individuals, regardless
24 of the reason for vulnerability, are not charac-
25 terized by solitary confinement or other type of

1 isolation conditions, and that incarcerated indi-
2 viduals placed in protective custody have access
3 to programs, privileges, education, and work op-
4 portunities commensurate with general popu-
5 lation incarcerated individuals to the extent
6 possible;

7 (G) ensuring that correctional facility offi-
8 cials improve access to mental health treatment
9 for incarcerated individuals in solitary confine-
10 ment;

11 (H) ensuring that correctional facility offi-
12 cials do all that is feasible to make certain that
13 incarcerated individuals are not held in solitary
14 confinement for any duration;

15 (I) ensuring that correctional facility offi-
16 cials develop alternative methods to manage
17 issues with incarcerated individuals other than
18 solitary confinement;

19 (J) ensuring that correctional facility offi-
20 cers do all that is feasible to make certain that
21 incarcerated individuals with mental health,
22 physical, or cognitive disabilities are not held in
23 solitary confinement for any duration;

24 (K) ensuring that correctional facility offi-
25 cers do all that is feasible to make certain that

1 pregnant and post-partum women are not held
2 in solitary confinement for any duration;

3 (L) ensuring that correctional facility offi-
4 cers work towards systems that limit the cir-
5 cumstances and conditions under which juve-
6 niles are placed in solitary confinement, in com-
7 pliance with section 5043 of title 18, United
8 States Code;

9 (M) State and local governments making
10 publicly available, on a monthly basis, informa-
11 tion, disaggregated by the demographic charac-
12 teristics of incarcerated individuals, on the use
13 of solitary confinement, segregation, and any
14 other form of restrictive housing in correctional
15 facilities in the jurisdiction, including—

16 (i) the average daily number and per-
17 centage of incarcerated individuals in each
18 placement;

19 (ii) the total number of such place-
20 ments;

21 (iii) the reasons for such placements;

22 (iv) the duration incarcerated individ-
23 uals spent in each placement;

24 (v) the duration of daily out-of-cell
25 time and congregate programming for in-

1 carcerated individuals in each placement;
2 and

3 (vi) the number and percentage self-
4 harm incidents, suicide attempts, suicides,
5 and deaths broken down by cause, for in-
6 carcerated individuals in each placement;

7 (N) ensuring that correctional facilities
8 have in place an independent oversight proc-
9 esses related to the use of solitary confinement
10 and segregation; and

11 (O) such other matters as may reasonably
12 be related to the goal of reducing solitary con-
13 finement in correctional facilities.

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

20 (f) CONSULTATION WITH ACCREDITATION ORGANI-
21 ZATIONS.—In developing recommended national standards
22 for the reduction of solitary confinement under subsection
23 (e), the Commission shall consider any standards, laws,
24 and policies that have already been developed, or are being
25 developed simultaneously to the deliberations of the Com-

1 mission. The Commission shall consult with accreditation
2 organizations responsible for the accreditation of correc-
3 tional facilities that have developed or are developing
4 standards related to solitary confinement. The Commis-
5 sion shall also consult with national associations rep-
6 resenting the corrections profession, the legal profession,
7 the medical profession, people who are incarcerated, or
8 any other pertinent professional body that has developed
9 or is developing standards related to solitary confinement.

10 (g) HEARINGS.—

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

17 (2) WITNESS EXPENSES.—Witnesses requested
18 to appear before the Commission shall be paid the
19 same fees as are paid to witnesses under section
20 1821 of title 28, United States Code. The per diem
21 and mileage allowances for witnesses shall be paid
22 from funds appropriated to the Commission.

23 (3) VIRTUAL HEARINGS PERMITTED.—Hearings
24 held under this subsection may be held virtually.

1 (h) INFORMATION FROM FEDERAL OR STATE AGEN-
2 CIES.—The Commission may secure directly from any
3 Federal department or agency such information as the
4 Commission considers necessary to carry out its duties
5 under this section. The Commission may request the head
6 of any State or local department or agency to furnish such
7 information to the Commission.

8 (i) PERSONNEL MATTERS.—

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

16 (2) DETAIL OF FEDERAL EMPLOYEES.—With
17 the affirmative vote of $\frac{2}{3}$ of the Commission, any
18 Federal Government employee, with the approval of
19 the head of the appropriate Federal agency, may be
20 detailed to the Commission without reimbursement,
21 and such detail shall be without interruption or loss
22 of civil service status, benefits, or privileges.

23 (3) PROCUREMENT OF TEMPORARY AND INTER-
24 MITTENT SERVICES.—Upon the request of the Com-
25 mission, the Attorney General shall provide reason-

1 able and appropriate office space, supplies, and ad-
2 ministrative assistance.

3 (j) CONTRACTS FOR RESEARCH.—

4 (1) NATIONAL INSTITUTE OF JUSTICE.—With a
5 $\frac{2}{3}$ affirmative vote, the Commission may select non-
6 governmental researchers and experts to assist the
7 Commission in carrying out its duties under this
8 Act. The National Institute of Justice shall contract
9 with the researchers and experts selected by the
10 Commission to provide funding in exchange for their
11 services.

12 (2) OTHER ORGANIZATIONS.—Nothing in this
13 subsection shall be construed to limit the ability of
14 the Commission to enter into contracts with other
15 entities or organizations for research necessary to
16 carry out the duties of the Commission under this
17 section.

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

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

23 (m) AUTHORIZATION OF APPROPRIATIONS.—There is
24 authorized to be appropriated \$500,000 for each of fiscal
25 years 2023 and 2024.

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

2 (a) PUBLICATION OF STANDARDS.—

3 (1) FINAL RULE.—Not later than one year
4 after receiving the report specified in section
5 (3)(d)(3), the Attorney General shall publish a final
6 rule adopting national standards for the reduction of
7 solitary confinement in correctional facilities.

8 (2) INDEPENDENT JUDGMENT.—The standards
9 referred to in paragraph (1) shall be based upon the
10 independent judgment of the Attorney General, after
11 giving consideration to the recommended national
12 standards provided by the Commission under section
13 3(e), and being informed by such data, opinions, and
14 proposals that the Attorney General determines to
15 be appropriate to consider.

16 (3) LIMITATION.—The Attorney General shall
17 not establish a national standard under this section
18 that would impose substantial additional costs com-
19 pared to the costs presently expended by Federal
20 and State correctional systems. The Attorney Gen-
21 eral may, however, provide a list of improvements
22 for consideration by correctional facilities.

23 (4) TRANSMISSION TO STATES.—Not later than
24 60 days after publishing the final rule under para-
25 graph (1), the Attorney General shall transmit the
26 national standards adopted under that paragraph to

1 the chief executive of each State, the head of the de-
2 partment of corrections of each State, the head of
3 the department of juvenile justice of each State, and
4 to the appropriate authorities in those units of local
5 government who oversee operations in one or more
6 correctional facilities.

7 (b) APPLICABILITY TO FEDERAL AGENCIES.—Imme-
8 diately upon adoption of the final rule under subsection
9 (a)(1), the national standards referred to in subsection (a)
10 shall apply to each Federal agency that detains or incar-
11 cerates individuals (including aliens), and to any entity
12 with which a Federal agency has a contract for the detain-
13 ment or incarceration of individuals.

14 **SEC. 5. GRANT PROGRAM FOR MENTAL HEALTH IN COR-**
15 **RECTIONAL FACILITIES.**

16 (a) AUTHORIZATION.—Beginning in the first fiscal
17 year that begins after the date on which the Attorney Gen-
18 eral issues the final rule under subsection (a)(1), the At-
19 torney General is authorized to make grants to States for
20 the purposes described in subsection (b).

21 (b) USES OF FUNDS.—Grants under this section
22 shall be used solely for purposes of community-based pre-
23 vention and education programs, community-based mental
24 health care, or community-based drug treatment or harm

1 reduction, including for purposes of diversion from incar-
2 ceration or release from incarceration.

3 (c) APPLICATION.—The chief executive of a State
4 seeking a grant under this section shall submit to the At-
5 torney General an application at such time, in such man-
6 ner, and containing such information as the Attorney Gen-
7 eral may reasonably require.

8 (d) ELIGIBILITY.—In order to be eligible for a grant
9 under this section, a State shall be in compliance with the
10 national standards for the reduction of solitary confine-
11 ment in correctional facilities described in section 4(a)(1).

12 (e) ALLOCATION.—Of the total amount appropriated
13 under this part in any fiscal year—

14 (1) 0.4 percent shall be allocated to each of the
15 participating States;

16 (2) 7 percent shall be reserved to provide tech-
17 nical assistance to States in complying with the na-
18 tional standards for the reduction of solitary con-
19 finement in correctional facilities described in section
20 4(a)(1); and

21 (3) of the total funds remaining after the allo-
22 cation under paragraph (1), there shall be allocated
23 to each of the participating States an amount which
24 bears the same ratio to the amount of remaining
25 funds described in this paragraph as the State cor-

1 rectional facility population of such State bears to
2 the total correctional facility population of all the
3 participating States.

4 (f) LIMITATION.—Not more than 5 percent of grant
5 funds received by a State may be used for administrative
6 purposes.

7 (g) AUTHORIZATION OF APPROPRIATIONS.—There is
8 authorized to be appropriated \$20,000,000 for each of fis-
9 cal years 2023 and 2024 to carry out this section.

10 **SEC. 6. DEFINITIONS.**

11 For purposes of this Act, the following definitions
12 shall apply:

13 (1) ATTORNEY GENERAL.—The term “Attorney
14 General” means the Attorney General of the United
15 States.

16 (2) COMMISSION.—The term “Commission”
17 means the National Solitary Confinement Study and
18 Reform Commission established under section 3 of
19 this Act.

20 (3) LONG-TERM.—The term “long-term” means
21 any period lasting more than 15 days in a 60-day
22 period.

23 (4) SOLITARY CONFINEMENT.—The term “solitary
24 confinement” means confinement of an incar-
25 cerated individual or juvenile detainee in a cell or

1 other place, alone or with other persons, with se-
2 verely restricted activity, movement, and social inter-
3 action.

4 (5) SEGREGATION.—The term “segregation”
5 means housing of an incarcerated individual sepa-
6 rate from the general population of a correctional fa-
7 cility.

8 (6) CORRECTIONAL FACILITY.—The term “cor-
9 rectional facility” means a Federal, State, local, or
10 privately run prison, jail, or juvenile detention facil-
11 ity.

12 (7) STATE.—The term “State” means any
13 State of the United States, the District of Columbia,
14 the Commonwealth of Puerto Rico, the Virgin Is-
15 lands, American Samoa, Guam, and the Northern
16 Mariana Islands.

17 **SEC. 7. RULE OF CONSTRUCTION RELATED TO BIVENS**
18 **REMEDIES.**

19 Consistent with the Supreme Court’s decisions in
20 Carlson v. Green, 446 U.S. 14 (1980) and Farmer v.
21 Brennan, 511 U.S. 825 (1994), Congress recognizes that
22 people in prison and detention may bring a Bivens action
23 to seek damages for violations of their Constitutional

- 1 rights in prison, and nothing in this Act may be construed
- 2 to limit that remedy.

