

Model Act

Improving Public Safety, Protecting Vulnerable Populations & Ensuring Process in Imposing Long-Term Isolated Confinement

Things in <> may need to be changed in order to be applicable in a specific state. It will be important to study carefully the existing statutes and regulations in your state to understand what aspects of current law might need to be changed, to ensure that any proposed legislation addresses those concerns without weakening current law, and to understand the operations of the correctional system in your jurisdiction.

The <Director/Commissioner> shall ensure that prisoners are treated in accordance with the minimum standards for humane treatment established in this section.

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings:

- a. A person with “serious mental illness and other significant mental impairment” is a person with a substantial disorder of thought or mood that significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life, including individuals found to have current symptoms or who are currently receiving treatment for the following:
 - i. Types of Diagnostic and Statistical Manual IV (DSM-IV) Axis I diagnosis:
 1. Schizophrenia (all sub-types)
 2. Delusional Disorder
 3. Schizophreniform Disorder
 4. Schizoaffective Disorder
 5. Brief Psychotic Disorder
 6. Substance-Induced Psychotic Disorder (excluding intoxication and withdrawal)
 7. Psychotic Disorder Not Otherwise Specified
 8. Major Depressive Disorders
 9. Bipolar Disorder I and II
 - ii. Persons diagnosed with a mental disorder that includes being actively suicidal.

Comment [A1]: The following definition is based on two seminal federal cases: USA v. Michigan (No. G84-63CA, W.D. Mich., 1996) and Madrid v. Gomez (889 Supp. 1146, N.D. CA, 1995).

- iii. Persons diagnosed with a serious mental illness that is frequently characterized by breaks with reality, or perceptions of reality that leads the individual to significant functional impairment.
 - iv. Persons diagnosed with an organic brain syndrome which results in a significant functional impairment if not treated.
 - v. Persons diagnosed with a severe personality disorder that is manifested by frequent episodes of psychosis or depression, and results in significant functional impairment.
 - vi. Persons diagnosed with mental retardation with significant functional impairment.
- b. "Mental Health Clinician" means a psychiatrist, psychologist, social worker or nurse practitioner who is licensed by the <State Department of Mental Health>.
- c. "Isolated confinement" means prolonged cell confinement (23 hours or more per day) with very limited out-of-cell time and severely restricted activity, movement, and social interaction, whether pursuant to disciplinary, administrative, or classification action. Such housing is often referred to as "disciplinary segregation," "administrative segregation," "special housing" or "super-maximum security housing."
- d. "Long-term isolated confinement" means "isolated confinement" that is expected to extend or does extend for a period of time exceeding 30 days .
- e. "Mental health and special needs step down units" are residential, therapeutic housing units within a correctional facility that provide clinically appropriate and habilitative programming to <prisoners> with severe mental illness or other significant mental impairment in lieu of housing in administrative or disciplinary segregation units.

2. Creating a Balanced Approach to the Care, Treatment and Management of <Prisoner>s with Serious Mental Illness and <Prisoner>s with Other Significant Mental Impairments.

- a. No <prisoner> with serious mental illness or other significant mental impairment shall be housed in long-term isolated confinement, nor shall such <prisoner>s currently subject to such confinement be permitted to stay there.

- b. Prior to placement in long-term isolated confinement for either a disciplinary infraction or a non-punitive reason, a <prisoner> shall be evaluated by a mental health clinician to determine if he/she is seriously mentally ill or has another significant mental impairment as defined in this Act. If the mental health clinician makes such a finding, the <prisoner> shall be diverted from long-term isolated confinement to a mental health step-down unit, a prison mental hospital, or other appropriate housing that does not include long-term isolated confinement.
- c. <Prisoner>s with serious mental illness or other significant mental impairment may be subject to discipline, but the discipline shall be handled by a collaboration between mental health clinicians, other required medical staff and custody staff in a mental health or special needs step-down unit. Any punishment must work within the individual's mental health or habilitation treatment plan. The mental health or habilitation treatment plan shall be developed by a mental health clinician or other required medical staff in accordance with best practices and shall be explained to the <prisoner> by the mental health and/or medical clinicians. The mental health or habilitative treatment plan shall be updated immediately after a <prisoner> is placed in a mental health or special needs step-down unit and at least every 30 days thereafter by a mental health clinician and other pertinent mental health and/or medical staff.
- d. The mental health step-down unit and special needs step-down unit shall be physically separate from any long-term isolated confinement unit and shall not be operated as a disciplinary housing unit. Decisions about treatment and conditions of confinement shall be made based upon a clinical assessment of the therapeutic and habilitative needs of the <prisoner> and maintenance of adequate safety and security on the unit. <Prisoner>s in the mental health step-down unit and special needs step-down unit shall be offered at least four hours a day of structured out-of-cell therapeutic programming and/or mental health treatment, except on weekends or holidays, when such programming and/or treatment may be limited to two hours a day. <Prisoner>s in these units shall also be given a minimum of one-hour of out-of-cell daily exercise, including access to outdoor recreation when the weather permits, in addition to other out-of-cell activities consistent with their mental health and habilitative needs.
- e. <Prisoner>s shall also receive clinical visits by mental health clinicians and habilitative medical personnel as part of their treatment program in the mental health and special needs step-down unit. These visits shall be

conducted in a clinical environment that ensures privacy. These visits shall never be conducted at cell-front.

- f. <Prisoner>s in mental health and special needs step-down units shall not be subject to discipline reports for refusing treatment or medications or for engaging in self-harming behavior and threats of self-harming behavior, including related charges for the same behaviors, such as destruction of state property, except in exceptional circumstances where the <discipline committee> of the institution determines in writing that the safety and security of the institution was compromised by the <prisoner's> actions and the prisoner evinced malicious intent.
- g. <Prisoner>s in a mental health or special needs step-down unit shall receive property, services and privileges similar to <prisoner>s confined in the general prison population, provided, however, that the <Department> may impose limitations more restrictive than those imposed on the general population for security reasons in the following areas: (1) the quantity and type of property <prisoner>s in the mental health or special needs step-down units are permitted to have in their cells; and (2) <prisoner> access to programs. In consultation with a mental health clinician or other medical staff, the <Department> may impose restrictions on an individual <prisoner's> property, services or privileges for therapeutic and/or security reasons which are not inconsistent with the <prisoner's> mental health or rehabilitative needs. If any such restrictions are imposed on a particular <prisoner>, they shall be documented in writing and shall be reviewed by the mental health or medical clinician not less than every thirty days after a restriction is imposed or continued. The review shall be for the purpose of eliminating the restriction as soon as clinically appropriate.
- h. Within 30 days of a <prisoner's> placement in a mental health or special needs step-down unit and every 30 days thereafter or sooner if deemed necessary, a joint case management committee shall meet to review the <prisoner's> placement in the unit and his or her progress in the unit's programs and what adjustments to programming may need to be made to assist the <prisoner> in making progress, and to decide whether continued placement in the unit is warranted, whether additional privileges can be granted to the <prisoner> while in the unit, or whether the <prisoner> should be moved to less restrictive housing. If the committee decides to continue the <prisoner's> placement, it shall make specific written findings as to why the placement must be continued and what the <prisoner> needs to do in order to be granted additional privileges and movement out of the mental health or special needs step-down unit.

These findings shall be given to the <prisoner> and explained so that he/she understands them. The joint case management committee shall be composed of a mental health and/or habilitation clinician, a unit staff member, the facility's <warden, superintendent, or designee>, the <Department's Director of Mental Health>, and other staff considered appropriate.

3. Providing Necessary Training to Corrections Staff Managing the Challenges of Working Effectively with <Prisoner>s with Serious Mental Illness and <Prisoner>s with Other Significant Mental Impairments

- a. The <Department of Corrections> shall ensure that the curriculum for new corrections officers, and other new department staff who will regularly work in programs providing mental health treatment for <prisoner>s, shall include at least eight hours of training about the types and symptoms of mental illnesses and other significant mental impairments; recognition of adverse reactions to psychotropic medication; recognition of mental health emergencies and specific instructions on contacting the appropriate professional care provider and taking other appropriate action; suicide potential and prevention; precise instructions on procedures for mental health and other medical referrals; the goals of mental health and habilitation treatment; training in how to effectively and safely manage <prisoner>s with mental illness or with other mental impairments; the impacts of long-term isolation on human beings generally; and any other training determined to be appropriate. Any <Department> staff working in a mental health or special needs step-down unit shall be screened to determine the appropriateness of the placement and shall receive the basic training referenced above and a minimum of forty hours of additional training, plus twelve hours of annual training as long as they work in such a unit.

The <Department of Corrections> shall provide additional training on correctional care and custody of <prisoner>s with mental illness and/or other significant mental impairments and related topics on an ongoing basis as community standards of care change or as otherwise deemed appropriate.

4. Improving Disciplinary Outcomes and Ameliorating the Psychological Impacts of Long-Term Isolated Confinement.

Long-term isolated confinement can cause severe, lasting psychological consequences and pain, even for individuals who do not have serious mental illness or other significant mental impairments at the outset of confinement. In order to prevent such harm, the following protections and limitations shall be put in place:

- a. Long-term isolation shall not be used as a form of housing for <prisoners> who are under the age of eighteen (18) or subject to “protective custody,” “involuntary protective custody,” “administrative segregation,” or other form of non-punitive housing. If the safety and security of the <prisoner> require greater cell confinement than is typical for <prisoners> in general population housing, then the restrictions to which such <prisoners> are subject must be the least restrictive to maintain the safety of the <prisoner> and the institution. At a minimum, such <prisoners> shall be offered access to educational and programming opportunities consistent with the <prisoners> safety and security and any federal and state law requirements; at least four hours a day of out-of-cell time, including a minimum of one-hour of out-of-cell daily exercise that includes access to outdoor recreation when the weather permits; access to personal property, including TVs and radios; access to books, magazines, and other printed material; access to daily showers; and access to the same number of visits and phone calls allowed for general population <prisoners>.
- b. Any time a <prisoner> is classified, assigned or subject to long-term isolation, there must be a stated, legitimate purpose for such placement in writing. A <prisoner> may only be subject to long-term isolated confinement if he or she is determined, pursuant to the process set forth in section 4(b) of this Act, to have committed one or more of the following acts while incarcerated within the preceding five years:
 - i. An act of violence that either: (1) resulted in or was likely to result in serious injury or death to another, or (2) occurred in connection with any act of non-consensual sex;
 - ii. Two or more discrete acts which caused serious disruption of prison operations;
 - iii. An escape, attempted escape, or conspiracy to escape from within a security perimeter or custody, or both.
- c. Prior to being classified, assigned or subject to long-term isolation, a <prisoner> shall be entitled to a hearing, unless the <Director of Corrections or a Deputy Director> certifies, in writing, that providing a

hearing prior to transfer will pose an imminent threat to the safety and security of the prison where the <prisoner> is currently housed. If such a certification is made, the hearing shall be conducted within 5 business days of the commencement of isolation. At the hearing, the <Department> shall have the burden of proving that the requirements set forth in section 4(b) of this Act have been satisfied. Such burden shall be a preponderance of the evidence and these minimal procedures shall apply:

- i. The <prisoner> must receive written and effective notice at least 48 hours before the hearing that such placement is being considered, the facts upon which consideration is based, and the <prisoner>'s rights under this Act and any regulations or policies promulgated under this Act;
- ii. The <prisoner> shall have the right to personally appear before the committee making the placement decision;
- iii. The <prisoner> shall have the right to submit documentary evidence to the committee;
- iv. The <prisoner> shall have the right to call witnesses and cross-examine witnesses, unless there is a specific, written findings by the committee that calling or cross-examining a specific witness will jeopardize the safety and security of the institution, if such a finding is made, then the <prisoner> shall be able to propound questions to be relayed to the witness or witnesses;
- v. The <prisoner> shall have a right to an interpreter, if necessary for the <prisoner> to understand or participate in the proceedings;
- vi. If the committee determines that a <prisoner> is unable to prepare and present evidence and arguments effectively on his or her own behalf, or if the <prisoner> makes a request, counsel or some other appropriate advocate for the <prisoner> shall be appointed;
- vii. The <prisoner> shall have the right to retain a lawyer at his own expense to represent him or her at the hearing;
- viii. The hearing shall be recorded by means of audio, digital recording or video tape, and the tapes shall be preserved until 120 days after the release of the <prisoner> from long-term isolation;

- ix. The committee shall issue a written decision setting forth the evidence relied on and the reasons for its decision within five business days of the hearing;
 - x. The <prisoner> shall have the right to prompt review of the committee's decision by the <Warden of the receiving facility>, who shall respond to any appeal of a committee decision in writing within 14 business days of the date the appeal is submitted by the <prisoner>;
 - xi. If the <prisoner> is unsatisfied with the decision by the <Warden of the receiving facility>, he may submit an appeal in writing within 14 business days of the date he receives the <Warden's decision> to the <Director of Corrections>. The <Director> shall respond to any appeal of a <Warden's> decision in writing within 14 business days of the date the appeal is submitted by the <prisoner>;
 - xii. The committee will be appointed by the <Director>, and shall include at least three persons.
- d. Determinate sentencing to long-term isolation shall not be allowed. The <Department> shall institute a program that allows a <prisoner> subject to long-term isolation to earn his/her way out of such housing through positive behavior. The trajectory for <prisoner>s to earn their way out of such housing shall be graduated and must be less than <one year/six months>.
- i. Within 30 days of a <prisoner>'s placement in long-term isolation pursuant to the requirements of this Act, correctional authorities shall develop an individualized plan for the <prisoner>;
 - ii. The plan shall include an assessment of the <prisoner>'s needs, a strategy for correctional authorities to assist the <prisoner> in meeting those needs, and a statement of the expectations for the <prisoner> to progress toward fewer restrictions and eventually back to general population housing based on the <prisoner>'s behavior, including specific privileges which will be allowed the <prisoner> once he/she meets certain benchmarks in his/her program;
 - iii. Correctional authorities shall provide the plan or a summary of it to the <prisoner>, and explain it, so that the <prisoner> can understand such expectations; at intervals not to exceed 30 days,

correctional authorities should conduct and document an evaluation of each <prisoner>'s progress under the individualized plan required in this sub-section. The evaluation shall consider the state of the <prisoner>'s mental health; address the extent to which the individual's behavior, measured against the plan, justifies the need to maintain, increase, or decrease the level of controls and restrictions in place at the time of the evaluation; and recommend whether the <prisoner> should be returned to a lower-level custody and/or removed from long-term isolation.

- e. At intervals not to exceed 90 days, a full classification review involving a meeting of the <prisoner> and a <classification review committee> shall occur to determine whether the <prisoner>'s progress toward compliance with the individual plan required by this Act, or other circumstances, warrants a reduction of restrictions, increased programming, removal from long-term isolation and/or return to lower level custody. If a <prisoner> has met the terms of the individual plan, the <prisoner> shall be released from long-term isolation. A decision to retain a <prisoner> in long-term isolation following consideration by the <classification review committee> shall be set forth in writing and shall be reviewed by a <correctional administrator>, and approved, rejected, or modified as appropriate.
- f. In no instance shall a <prisoner> be subjected to long-term isolation for more than one year unless the <Department> conducts a hearing in which it establishes (1) by a preponderance of evidence that the <prisoner>, within the previous year, has committed an act which resulted in or was likely to result in serious injury or death to another; or (2) by clear and convincing evidence that there is a significant risk that the <prisoner> will cause physical injury to prison staff, other <prisoner>s, or members of the public, if removed from long-term isolation. Association with an inmate gang or security threat group alone shall not be sufficient to meet this burden. <Prisoner>s who are or may be subject to retention in long-term isolated confinement over one year will be provided with the same process and protections set forth in Section 4(c) of this Act. If a decision is made to house a <prisoner> in long-term isolation for longer than one year pursuant to this section, the <Director of the Department> shall set forth in writing all other alternatives that have been considered and why those alternatives have been rejected, and shall set forth a plan for transitioning the prisoner out of long-term isolation. Any <prisoner> subject to long-term isolation longer than one year shall be entitled to another hearing at least every six months with the same protections set forth herein.

- g. <Prisoner>s who are housed in long-term isolation shall be evaluated by a mental health clinician at least every 30 days. Such evaluations shall be confidential and conducted in-person (not through a cell door or through a glass wall), and shall include: (1) assessment of current mental status and condition; (2) assessment of current risk of suicide or other self-harming behavior; and (3) review of all available mental health records at the initial assessment and any new records thereafter. Any <prisoner> who is determined at such an evaluation to have a serious mental illness or to suffer from another significant mental impairment shall be removed from long-term isolation as directed by the mental health clinician, but in any case, within 48 hours of such determination.

5. Improving Public Safety and Minimizing the Negative Effects of Long-Term Isolated Confinement.

- a. <Prisoner>s subject to isolated confinement will require a re-socialization process before they are released back into the community. Such a re-socialization program shall take place in phases, starting at least six months before the end of a <prisoner>'s criminal sentence.
- b. All <prisoner>s held in isolated confinement shall be included in this re-socialization program without exception.
- c. The re-socialization program shall include medical and mental health staff, including but not limited to mental health clinicians, social workers, education and rehabilitative staff to provide counseling and life skills to prepare <prisoner>s for safe release to the community.

6. Reporting and Oversight

- a. The <state oversight body> for correctional facilities shall conduct an ongoing and comprehensive review of the policies and standards and treatment of <prisoner>s held in long-term isolated confinement, as well as the individual disciplinary records, to determine the effectiveness of those policies and standards and the degree to which the treatment of <prisoner>s held in such confinement complies with this Act. The <oversight body> shall make findings and shall issue an annual report to the <committees of the Legislature having jurisdiction over criminal justice and public safety matters>.
- b. The <state mental health department> shall have the responsibility for monitoring the quality of mental health and rehabilitative care provided to <prisoner>s pursuant to this Act. Inspectors designated by the

Comment [2]: This section will need to be adjusted for various state set ups. Many states do not have a specific oversight body or may have another body that can be used to perform this function.

For example, in NY it is the state mental health department that provides mental health treatment in the prisons. In many states it is the department of corrections that provides the mental health treatment.

<department> shall have direct, unannounced and immediate access to all areas where <prisoner>s are housed in the mental health step-down units or in any long-term isolated confinement housing, and shall have access to the <department of correction's> records relating to such <prisoner>s, including but not limited to medical and mental health records, disciplinary records, and other institutional files. The <department> and its inspectors shall maintain the confidentiality of all patient-specific information.

- c. The <state mental health department> shall appoint an advisory committee on correctional mental health care, which shall be composed of independent mental health experts and mental health advocates, and may include family members of former inmates with serious mental illness or other significant mental impairments. Such committee shall advise the <department> on its oversight responsibilities pursuant to this section and shall have access commensurate with the <state mental health department>. The committee may also make recommendations to the <department> regarding improvements to prison-based mental health care, the mental health and special needs step-down units, the mental health monitoring of <prisoner>s held in long-term isolated confinement, and any policies related to ensuring that prisoners with serious mental illness or other significant mental impairments are not subject to long-term isolated confinement.

7. Review of the Current Status of <Prisoner>s Held in Isolated Confinement.

The <Director of Corrections> shall review the status of all <prisoner>s held in long-term isolated confinement in the State within 90 days after the effective date of this Act to determine whether <prisoner>s currently housed in long-term isolated confinement should remain in those units under the terms of this Act and to ensure that <prisoner>s held in isolated confinement more than 30 days receive a hearing as provided in this Act. The <Director> shall report the results of this evaluation to the <committees of the Legislature having jurisdiction over criminal justice and public safety matters> no later than 180 days after the effective date of this Act.

8. Review of Existing Policies and Promulgation of Regulations to Implement this Act.

The <Director of Corrections> shall review all policies of the <Department of Corrections> in effect on the effective date of this Act relating to <prisoner>s held

in long-term isolated confinement and update those policies as necessary to conform to this Act within <180 days> of the effective date of this Act. The <Department of Corrections> shall promulgate such regulations as are necessary to implement this Act.