



COUNCIL OF THE DISTRICT OF COLUMBIA  
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WASHINGTON, D.C. 20004

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July 14, 2022

Nyasha Smith, Secretary  
Council of the District of Columbia  
1350 Pennsylvania Avenue, N.W.  
Washington, DC 20004

Dear Secretary Smith,

Today, I, along with Councilmembers Janeese Lewis George, Brianne Nadeau, Kenyan McDuffie, Elissa Silverman, and Robert White, am introducing the “Eliminating Restrictive and Segregated Enclosures (“ERASE”) Solitary Confinement Act of 2022.” Please find enclosed a signed copy of the legislation.

This legislation prohibits nearly all forms of segregated confinement for individuals incarcerated at penal institutions owned, operated, and controlled by the Department of Corrections and the Department of Youth Rehabilitation Services. This legislation also limits the use of safe cells, and, in certain circumstances, requires that people with mental health emergencies be treated at local hospitals and institutions if they cannot receive the care they need in a secured setting. Lastly, this legislation requires the Department of Corrections and the Department of Youth Rehabilitation Services to create a plan to eliminate segregated confinement and to report to the Council the effects of this legislation.

In general, solitary confinement is a cruel, inhumane, and degrading mode of punishment that has been equated to torture.<sup>1</sup> Studies have consistently proven that solitary confinement can create or exacerbate both short- and long-term psychological and physical health issues for people placed in solitary confinement, including self-harm and suicide, anxiety and depression, and gastrointestinal and cardiovascular problems.<sup>2</sup> Moreover, solitary confinement does not properly remedy

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<sup>1</sup> See G.A. Res. 70/175, at 8, 15–17, The United Nations Standard Minimum Rules for the Treatment of Prisoners, the Nelson Mandela Rules (Dec. 17, 2015).

<sup>2</sup> See Sharon Shalev, *A Sourcebook on Solitary Confinement* 15–17 (2008).

the root problems that lead to a person’s placement in solitary,<sup>3</sup> and the economic costs of solitary far exceed any perceived benefits.<sup>4</sup>

Similarly, the profound stress caused by spending time in solitary confinement can lead to permanent changes to a person’s identity, including changes in the brain and personality of the people subjected to it. “Depriving humans—who are naturally social beings—of the ability to interact with others can cause social pain” which affects the brain in the same way as physical pain.<sup>5</sup> This is just one reason among many why we must erase virtually all forms of segregated confinement for individuals incarcerated at penal institutions in the District.

The deplorable conditions at the District’s jails and restrictive housing units—including flooding, lack of grievance procedures, lack of mattresses, and more<sup>6</sup>—only exacerbate the harmful effects of solitary confinement. The conditions of safe cells in the District’s jails are likewise troubling and, thus, similarly exacerbate the harms of solitary confinement for those on suicide watch.<sup>7</sup>

Abolishing most forms of solitary confinement in the District’s jails and amending safe cell procedures would produce a fairer and more humane criminal justice system in the District. This legislation presents a unique opportunity for the

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<sup>3</sup> Kayla James & Elena Vanko, *The Impacts of Solitary Confinement*, Vera Institute of Justice 5 (Apr. 2021) (“In short, solitary confinement does not improve safety and may actually lead to an increase in violence and recidivism. This is not surprising, given that people in solitary are typically denied the opportunity to participate in education, mental health or drug treatment, and other rehabilitative programs or to otherwise prepare for reentering the community.”).

<sup>4</sup> *Id.* at 5-6 (“The Federal Bureau of Prisons estimated in 2013 that it cost **\$216 per person, per day**, to hold people in solitary in the Administrative Maximum Facility at the Federal Correctional Complex in Florence, Colorado. In comparison, the estimated cost of housing people in the complex’s general population was \$86 per person, per day.”) (emphasis in original); see also Alison Shames et al., *Solitary Confinement: Common Misconceptions and Emerging Safe Alternatives*, Vera Institute of Justice 24 (May 2015) (“The significant fiscal costs associated with building and operating segregated housing units and facilities are due to the reliance on single-cell confinement, enhanced surveillance and security technology, and the need for more corrections staff (to handle escorts, increased searches, and individualized services).”).

<sup>5</sup> Katie Rose Quandt & Alexi Jones, *Research Roundup: Incarceration can cause lasting damage to mental health*, Prison Policy Initiative (May 13, 2021), <https://www.prisonpolicy.org/blog/2021/05/13/mentalhealthimpacts/>.

<sup>6</sup> See District of Columbia Corrections Information Council, *DC Department of Corrections Inspection Report 6* (Sept. 30, 2021), [https://cic.dc.gov/sites/default/files/dc/sites/cic/page\\_content/attachments/CIC%20Inspection%20Report%20DOC%20FY%202021%20site%20visit%20May%202021.pdf](https://cic.dc.gov/sites/default/files/dc/sites/cic/page_content/attachments/CIC%20Inspection%20Report%20DOC%20FY%202021%20site%20visit%20May%202021.pdf); Press Release, U.S. Marshals Service, Statement by the U.S. Marshals Service Re: Recent Inspection of DC Jail Facilities (Nov. 2, 2021), <https://www.usmarshals.gov/news/chron/2021/110221b.htm>.

<sup>7</sup> *District of Columbia Corrections Information Council, District of Columbia Department of Corrections 2018 Inspection Report 17* (May 21, 2019), [https://cic.dc.gov/sites/default/files/dc/sites/cic/page\\_content/attachments/DOC%20FY%202018%20Report%205.21.19%20FINAL.pdf](https://cic.dc.gov/sites/default/files/dc/sites/cic/page_content/attachments/DOC%20FY%202018%20Report%205.21.19%20FINAL.pdf).

District to be in the vanguard of criminal justice reform and would encourage other states and localities to follow suit.

Should you have any questions, please contact my Legislative Director Michael Porcello at [mporcello@dccouncil.us](mailto:mporcello@dccouncil.us) or (202) 724-8062.

Thank you.

Best,

A handwritten signature in black ink, appearing to read "Mary M. Cheh". The signature is fluid and cursive, with a large initial "M" and a stylized "C".

Mary M. Cheh

1 Janeese Lewis George

2 Councilmember Janeese Lewis George

3 Mary M. Cheh

4 Councilmember Mary M. Cheh

5 Brianne K. Nadeau

6 Councilmember Brianne K. Nadeau

7 Kenyan McDuffie

8 Councilmember Kenyan McDuffie

9 Elissa Silverman

10 Councilmember Elissa Silverman

11 Robert C. White, Jr.

12 Councilmember Robert C. White, Jr.

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17 A BILL

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22 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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26 To prohibit all forms of segregated confinement in jails and youth detention facilities; to strictly  
27 limit the use of safe cells and require that incarcerated people with mental health emergencies  
28 receive the care to which they are entitled; to require the Department of Corrections and the  
29 Department of Youth Rehabilitation Services to create a plan to eliminate segregated  
30 confinement and report to the Council the impacts of doing so.

31  
32 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this  
33 act may be cited as the “Eliminating Restrictive and Segregated Enclosures (“ERASE”) Solitary  
34 Confinement Act of 2022.”

35 Sec. 2. Definitions.

36 For purposes of this act, the term:

37 (a) “Appropriate medical and mental healthcare” includes the rights:

38 (1) To courtesy, respect, dignity, and timely, responsive attention to a patient’s  
39 needs;

1                   (2) To receive information from physicians and to have opportunity to discuss the  
2 benefits, risks, and costs of appropriate treatment alternatives, including the risks, benefits and  
3 costs of forgoing treatment and guidance about the optimal course of action for the patient based  
4 on a physician’s objective professional judgment;

5                   (3) To ask questions about health status or recommended treatment when a patient  
6 does not fully understand what has been described and to have those questions answered;

7                   (4) To make decisions about the care the physician recommends and to have those  
8 decisions respected, including for any patient who has decision-making capacity to accept or  
9 refuse any recommended medical intervention;

10                  (5) To have the physician and other staff respect a patient's privacy and  
11 confidentiality;

12                  (6) To obtain copies or summaries of a patient’s own medical records;

13                  (7) To obtain a second opinion;

14                  (8) To be advised of any conflicts of interest a physician may have in respect to a  
15 patient’s care; and

16                  (9) To continuity of care, including coordinating medically indicated care with  
17 other health care professionals and sufficient notice and reasonable assistance in making  
18 alternative arrangements for care.

19                  (b) “Departments” mean, collectively, unless otherwise noted, the Department of  
20 Corrections, as defined in D.C. Code § 24–211.01, and the Department of Youth Rehabilitation  
21 Services, as defined in D.C. Code § 2-1515.02(a).

22                  (c) “Incarcerated person” means any individual housed at a penal institution.

23                  (d) “Penal institution” means any penitentiary, prison, jail, correctional facility, or secure

1 youth detention facility owned, operated, and controlled by the Department of Corrections or the  
2 Department of Youth Rehabilitation Services, as defined in D.C. Code §§ 22–2603.01(6) and 24-  
3 911(2).

4 (e) “Prolonged confinement” means the restriction of an incarcerated person to a housing  
5 cell or other space smaller than 70 square feet, for more than 18 hours within a 24-hour period,  
6 without the person’s informed written consent or a finding by a licensed health professional that  
7 it is medically necessary to do so.

8 (f) “Prolonged isolation” means the separation of an incarcerated person from general  
9 population for more than 18 hours within a 24-hour period, without the person’s informed  
10 written consent or a finding by a licensed health professional that it is medically necessary to do  
11 so.

12 (g) “Segregated confinement” means any form of prolonged confinement or prolonged  
13 isolation, including disciplinary restrictive housing, all forms of administrative restrictive  
14 housing, room confinement, room restriction, administrative hold, protective custody,  
15 confinement to a safe cell, and any other practice or policy by the Department of Corrections and  
16 the Department of Youth Rehabilitation Services that results in an incarcerated person being  
17 separated from general population of the penal institution.

18 (h) “Safe cell” means a housing cell designed to be suicide resistant and  
19 designed to prevent self-injurious behavior by being free of physical structures that could be used  
20 in a suicide attempt.

21 (i) “Secure youth detention facility” means any building or building grounds, whether  
22 located in the District of Columbia or elsewhere, operated by the Department of Youth  
23 Rehabilitation Services for the secure confinement of persons committed to the Department of

1 Youth Rehabilitation Services.

2 (j) “Suicide precaution” means a measure used for an incarcerated person who, though  
3 suicidal, is not thought to require continuous observation.

4 (k) “Suicide watch” means a measure used for an incarcerated person who is actively  
5 suicidal.

6 Sec. 3. Scope.

7 This act shall apply to all incarcerated persons detained or incarcerated at the Central  
8 Detention Facility, the Correctional Treatment Facility, the Youth Services Center, the New  
9 Beginnings Youth Development Center, the Central Cell Block, and any other penal institution  
10 owned, operated, and controlled by the Department of Corrections and the Department of Youth  
11 Rehabilitation Services.

12 Sec. 4. Limitations on the use of segregated confinement.

13 (a) Except as provided in subsection (b) of this section, penal institutions shall not use or  
14 impose any form of segregated confinement on any incarcerated person for any purpose,  
15 including discipline, safety, security, and administrative convenience.

16 (b) Penal institutions may use non-punitive medical isolation when an incarcerated  
17 person is diagnosed with or is suspected of having an infectious disease that is transmissible  
18 from person to person via droplets or the air (e.g., SARS-CoV-2, influenza, tuberculosis, or  
19 measles), in order to protect staff and other incarcerated people from becoming infected,  
20 provided that time in non-punitive medical isolation is limited to the extent medically necessary  
21 to prevent disease spread.

1 (c) Penal institutions shall follow any federal and local disease control guidelines when  
2 using non-punitive medical isolation, including testing, social distancing, masking, vaccination,  
3 and sanitation guidelines.

4 Sec. 5. Limitations on the use of safe cells.

5 (a) An incarcerated person placed on suicide precaution or suicide watch shall be entitled  
6 to all rights set forth in the American College of Emergency Physician’s proposed Medical Bill  
7 of Rights for Detained and Incarcerated Persons While Receiving Emergency Medical Care.

8 (b) An incarcerated person who is placed on suicide precaution or suicide watch may be  
9 placed in a safe cell only if:

10 (1) It is immediately necessary to prevent death or serious bodily injury; and

11 (2) The penal institution provides the incarcerated person appropriate medical and  
12 mental healthcare.

13 (c) If a penal institution cannot provide an incarcerated person with the appropriate  
14 standard of medical care, then the Department in control of the penal institution shall transfer the  
15 incarcerated person to a local hospital or mental health facility as soon as practicable.

16 Sec. 6. Plan and report on the elimination of segregated confinement.

17 (a) Within 180 days of the effective date of this act, each Department shall transmit to the  
18 Mayor and Council a report that includes steps each agency has taken to eliminate the use of  
19 segregated confinement for incarcerated persons in all penal institutions.

20 (b) Within one year of the effective date of this act, each Department shall report the  
21 following information to the Mayor and Council:

22 (1) The number of adult incarcerated persons removed from segregated



1 confinement;

2 (2) The number of juvenile incarcerated persons removed from segregated

3 confinement; and

4 (3) The updated locations of each incarcerated person who was previously

5 confined in segregated confinement in his respective penal institution.

6 (c) Within one year of the effective date of this act, each Department shall make publicly

7 available monthly reports of the conditions of the penal institution.

8 Sec. 7. Private right of action.

9 An incarcerated person may bring in an appropriate court of the District of Columbia:

10 (a) an action based on a violation of this legislation or any laws, regulations, or agency

11 guidance promulgated under this Section to enjoin such violation; or

12 (b) an action to recover compensatory and/or punitive damages.

13 Sec. 8. Fiscal impact statement.

14 The Council adopts the fiscal impact statement in the committee report as the fiscal

15 impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act,

16 approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

17 Sec. 9. Effective date.

18 This act shall take effect following the Mayor's approval, or, in the event of a veto by the

19 Mayor, a two-thirds vote of the Council present and voting to override the veto; a 60-day period

20 of congressional review, as provided in section of the District of Columbia Home Rule Act (87

21 Stat. 813; D.C. Code § 1-206.02(c)(2)); and publication in the District of Columbia Register.