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115TH CONGRESS
1ST SESSION

S. 329

To place restrictions on the use of solitary confinement for juveniles in Federal custody.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 7 (legislative day, FEBRUARY 6), 2017

Mr. BOOKER (for himself, Mr. PAUL, Mr. DURBIN, Mr. LEE, Mr. LANKFORD, and Mr. CASEY) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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A BILL

To place restrictions on the use of solitary confinement for juveniles in Federal custody.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Maintaining dignity and Eliminating unnecessary Restrictive Confinement of Youths Act of 2017'' or the ''MERCY Act''.

SEC. 2. JUVENILE SOLITARY CONFINEMENT.

(a) IN GENERAL.—Chapter 403 of title 18, United States Code, is amended by adding at the end the following:

"§ 5043. Juvenile solitary confinement

''(a) DEFINITIONS.—In this section—

''(1) the term 'covered juvenile' means—

''(A) a juvenile who—

''(i) is being proceeded against under this chapter for an alleged act of juvenile delinquency; or

''(ii) has been adjudicated delinquent under this chapter; or

''(B) a juvenile who is being proceeded against as an adult in a district court of the United States for an alleged criminal offense;

''(2) the term 'juvenile facility' means any facility where covered juveniles are—

''(A) committed pursuant to an adjudication of delinquency under this chapter; or

''(B) detained prior to disposition or conviction; and

''(3) the term 'room confinement' means the involuntary placement of a covered juvenile alone in a cell, room, or other area for any reason.

''(b) PROHIBITION ON ROOM CONFINEMENT IN JUVENILE FACILITIES.—

''(1) IN GENERAL.—The use of room confinement at a juvenile facility for discipline, punishment, retaliation, or any reason other than as a temporary

response to a covered juvenile's behavior that poses a serious and immediate risk of physical harm to any individual, including the covered juvenile, is prohibited.

''(2) JUVENILES POSING RISK OF HARM.—

''(A) REQUIREMENT TO USE LEAST RESTRICTIVE TECHNIQUES.—

''(i) IN GENERAL.—Before a staff member of a juvenile facility places a covered juvenile in room confinement, the staff member shall attempt to use less restrictive techniques, including—

''(I) talking with the covered juvenile in an attempt to de-escalate the situation; and

''(II) permitting a qualified mental health professional, or a staff member who has received training in de-escalation techniques and trauma-informed care, to talk to the covered juvenile.

''(ii) EXPLANATION.—If, after attempting to use less restrictive techniques as required under clause (i), a staff member of a juvenile facility decides to place a

covered juvenile in room confinement, the staff member shall first—

"(I) explain to the covered juvenile the reasons for the room confinement; and

"(II) inform the covered juvenile that release from room confinement will occur—

"(aa) immediately when the covered juvenile regains self-control, as described in subparagraph (B)(i); or

"(bb) not later than after the expiration of the time period described in subclause (I) or (II) of subparagraph (B)(ii), as applicable.

"(B) MAXIMUM PERIOD OF CONFINEMENT.—If a covered juvenile is placed in room confinement because the covered juvenile poses a serious and immediate risk of physical harm to himself or herself, or to others, the covered juvenile shall be released—

"(i) immediately when the covered juvenile has sufficiently gained control so as

to no longer engage in behavior that threatens serious and immediate risk of physical harm to himself or herself, or to others; or

"(ii) if a covered juvenile does not sufficiently gain control as described in clause (i), not later than—

"(I) 3 hours after being placed in room confinement, in the case of a covered juvenile who poses a serious and immediate risk of physical harm to others; or

"(II) 30 minutes after being placed in room confinement, in the case of a covered juvenile who poses a serious and immediate risk of physical harm only to himself or herself.

"(C) RISK OF HARM AFTER MAXIMUM PERIOD OF CONFINEMENT.—If, after the applicable maximum period of confinement under subclause (I) or (II) of subparagraph (B)(ii) has expired, a covered juvenile continues to pose a serious and immediate risk of physical harm described in that subclause—

"(i) the covered juvenile shall be transferred immediately to another juvenile facility or internal location where services can be provided to the covered juvenile without relying on room confinement; or

"(ii) if a qualified mental health professional believes the level of crisis service needed is not currently available, a staff member of the juvenile facility shall immediately transport the juvenile to—

"(I) an emergency medical facility; or

"(II) an equivalent location that can meet the needs of the covered juvenile.

"(D) ACTION BEFORE EXPIRATION OF TIME LIMIT.—Nothing in subparagraph (C) shall be construed to prohibit an action described in clause (i) or (ii) of that subparagraph from being taken before the applicable maximum period of confinement under subclause (I) or (II) of subparagraph (B)(ii) has expired.

"(E) CONDITIONS.—A room used for room confinement for a juvenile shall—

''(i) have not less than 80 square feet of floor space;

''(ii) have adequate lighting, heating or cooling (as applicable), and ventilation for the comfort of the juvenile;

''(iii) be suicide-resistant and protrusion-free; and

''(iv) have access to clean potable water, toilet facilities, and hygiene supplies.

''(F) NOTICE.—

''(i) USE OF ROOM CONFINEMENT.—Not later than 1 business day after the date on which a juvenile facility places a covered juvenile in room confinement, the juvenile facility shall provide notice to the attorney of record for the juvenile.

''(ii) TRANSFER.—Not later than 24 hours after a covered juvenile is transferred from a juvenile facility to another location, the juvenile facility shall provide notice to—

''(I) the attorney of record for the juvenile; and

''(II) an authorized parent or guardian of the juvenile.

''(G) SPIRIT AND PURPOSE.—The use of consecutive periods of room confinement to evade the spirit and purpose of this subsection shall be prohibited.

''(c) STUDY AND REPORT.—Not later than 2 years after the date of enactment of this section, and each year thereafter, the Attorney General shall submit to Congress a report that—

''(1) contains a detailed description of the type of physical force, restraints, and room confinement used at juvenile facilities;

''(2) describes the number of instances in which physical force, restraints, or room confinement are used at juvenile facilities, disaggregated by race, ethnicity, and gender; and

''(3) contains a detailed description of steps taken, in each instance in which room confinement is used at a juvenile facility, to address and remedy the underlying issue that led to behavioral intervention resulting in the use of room confinement, including any positive or negative outcomes.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 403 of title 18, United

States Code, is amended by adding at the end the following:

"5043. Juvenile solitary confinement.".

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