

116TH CONGRESS
1ST SESSION

S. 2870

To limit the use of solitary confinement and other forms of restrictive housing
in immigration detention, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 14, 2019

Mr. DURBIN (for himself, Mr. BOOKER, Ms. HARRIS, and Mr. SCHATZ) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To limit the use of solitary confinement and other forms
of restrictive housing in immigration detention, 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Restricting Solitary Confinement in Immigration Deten-
6 tion Act of 2019”.

7 (b) TABLE OF CONTENTS.—The table of contents for
8 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Definitions.

Sec. 3. Solitary confinement reforms.
 Sec. 4. Reassessment of detained alien mental health.
 Sec. 5. Oversight responsibilities.
 Sec. 6. Rulemaking.
 Sec. 7. Authorization of appropriations.
 Sec. 8. Effective date.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

3 (1) ADMINISTRATIVE SEGREGATION.—The term
 4 “administrative segregation” means a nonpunitive
 5 form of solitary confinement that removes a detained
 6 alien from the general population of a detention cen-
 7 ter or other facility in which the alien is being de-
 8 tained for—

9 (A) investigative, protective, or preventa-
 10 tive reasons because of a substantial and imme-
 11 diate threat to the safety or security of the de-
 12 tained alien, other detained aliens, staff, or the
 13 public; or

14 (B) temporary administrative reasons.

15 (2) APPROPRIATE LEVEL OF CARE.—The term
 16 “appropriate level of care” means the appropriate
 17 treatment setting for mental health care that a de-
 18 tained alien with mental illness requires, which may
 19 include outpatient care, emergency or crisis services,
 20 day treatment, supported residential housing, infir-
 21 mary care, or inpatient psychiatric hospitalization
 22 services.

1 (3) INTELLECTUAL DISABILITY.—The term “in-
 2 tellectual disability” means a significant mental im-
 3 pairment characterized by significant limitations in
 4 intellectual functioning and adaptive behavior.

5 (4) MULTIDISCIPLINARY STAFF COMMITTEE.—
 6 The term “multidisciplinary staff committee” means
 7 a committee—

8 (A) composed of staff at the facility at
 9 which a detained alien resides who are respon-
 10 sible for reviewing the initial placement of the
 11 alien in solitary confinement and any extensions
 12 of time in solitary confinement; and

13 (B) that includes—

14 (i) not fewer than 1 licensed mental
 15 health professional;

16 (ii) not fewer than 1 medical profes-
 17 sional; and

18 (iii) not fewer than 1 member of the
 19 leadership of the facility.

20 (5) PROTECTION CASE.—The term “protection
 21 case” means a detained alien who, by the request of
 22 the alien or through a staff determination, requires
 23 protection.

24 (6) SECRETARY.—The term “Secretary” means
 25 the Secretary of Homeland Security.

(7) SERIOUS MENTAL ILLNESS.—The term “serious mental illness” means—

(A) a finding by a qualified mental health professional that the detained alien is at serious risk of substantially deteriorating mentally or emotionally while confined in solitary confinement, or already has so deteriorated while confined in solitary confinement, such that diversion or removal is deemed to be clinically appropriate by a qualified mental health professional; or

(B) a current or recent diagnosis by a qualified mental health professional of 1 or more of the following disorders described in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders:

(i) Schizophrenia or another psychotic disorder.

(ii) Major depressive disorder.

(iii) Any type of bipolar disorder.

(iv) A neurodevelopmental disorder, dementia or other cognitive disorder.

(v) Any disorder commonly characterized by breaks with reality or perceptions of reality.

1 (vi) Any type of anxiety disorders.

2 (vii) Trauma or stressor related dis-
3 order.

4 (viii) Severe personality disorders.

5 (8) SOLITARY CONFINEMENT.—The term “solitary confinement” means confinement characterized
6 by substantial isolation in a cell, whether alone or
7 with other detained aliens, including administrative
8 segregation and disciplinary segregation.
9

10 (9) SUBSTANTIAL AND IMMEDIATE THREAT.—
11 The term “substantial and immediate threat” means
12 any set of circumstances that require immediate ac-
13 tion in order to combat a significant threat to the
14 safety of a detained alien, other detained aliens,
15 staff, or the public.

16 (10) U.S. IMMIGRATION AND CUSTOMS EN-
17 FORCEMENT FACILITY.—The term “U.S. Immigra-
18 tion and Customs Enforcement facility” means—

19 (A) a detention facility owned and adminis-
20 tered by U.S. Immigration and Customs En-
21 forcement; or

22 (B) a Federal, State, local, or private facil-
23 ity that has contracted (directly or indirectly)
24 with U.S. Immigration and Customs Enforce-
25 ment to detain aliens in Federal custody, in-

cluding a U.S. Marshals facility that houses alien detainees, and regardless of any time limits that exist for the duration of the detention in such a facility.

SEC. 3. SOLITARY CONFINEMENT REFORMS.

(a) USE OF SOLITARY CONFINEMENT.—

(1) IN GENERAL.—A detained alien may not be placed in solitary confinement within a U.S. Immigration and Customs Enforcement facility unless such confinement—

(A) is limited to the briefest term and the least restrictive conditions practicable, including not fewer than 4 hours of out-of-cell time every day;

(B) is consistent with the rationale for placement and with the progress achieved by the detained alien;

(C) allows the detained alien to participate in meaningful programming opportunities and privileges that are similar to those available in the general population as practicable, either individually or in a classroom setting;

(D) allows the detained alien to have as much meaningful interaction with others, such as other detained aliens, counsel, visitors, cler-

gy, or licensed mental health professionals, as practicable; and

(E) complies with the provisions of this section.

(2) SPECIFIC LIMITATIONS ON ADMINISTRATIVE SEGREGATION AND DISCIPLINARY SEGREGATION.—

The Secretary—

(A) shall limit administrative segregation in U.S. Immigration and Customs Enforcement facilities—

(i) to situations in which such segregation is necessary to control a substantial and immediate threat that cannot be addressed through alternative housing; and

(ii) to a duration of not more than 14 consecutive days, and not more than 14 days in a 21-day period, unless—

(I) the detained alien is considered a protection case and requests to remain in administrative segregation under paragraph (3)(B)(i); or

(II) to address the continued existence of a substantial and immediate threat, a multidisciplinary staff com-

mittee approves a temporary extension, which—

(aa) shall be in writing and include a thorough explanation of the reasons for which the extension is warranted, including any factors weighing against the extension;

(bb) shall be reviewed—

(AA) by the multidisciplinary staff committee every 3 days during the period of the extension, in order to confirm the continued existence of the substantial and immediate threat;

(BB) by the appropriate Enforcement and Removal Operations Field Office Director within U.S. Immigration and Customs Enforcement after the initial extension and every 7 days thereafter during the period of the extension, in order to

1 review the findings of the
2 multidisciplinary staff com-
3 mittee and determine wheth-
4 er such extensions are per-
5 missible; and

6 (CC) by a sub-
7 committee of the Detention
8 Monitoring Council within
9 U.S. Immigration and Cus-
10 toms Enforcement, which
11 shall be chaired by the Cus-
12 tody Management Division
13 and shall include representa-
14 tives from Enforcement and
15 Removal Operations Field
16 Operations, the Health Serv-
17 ice Corps, the Office of the
18 Principal Legal Advisor, the
19 Office of Professional Re-
20 sponsibility, the Office of
21 Acquisition Management,
22 and the Department of
23 Homeland Security's Office
24 for Civil Rights and Civil
25 Liberties, after any exten-

1 sion is approved by an En-
2 forcement and Removal Op-
3 erations Field Office Direc-
4 tor; and

5 (cc) shall include additional
6 out of cell time, socialization, and
7 programming opportunities for
8 the detained alien, so that each
9 detained alien placed in solitary
10 confinement for more than 14
11 days is given not fewer than 4
12 hours of out of cell time each
13 day; and

14 (B) may not permit the use of solitary con-
15 finement as a form of discipline.

16 (3) PROTECTIVE CUSTODY.—The Secretary—

17 (A) shall establish policies to ensure that
18 an alien who is considered a protection case,
19 upon the request of the alien, is transferred to
20 a safer alternative, such as—

21 (i) an alternative general population
22 unit in the U.S. Immigration and Customs
23 Enforcement facility;

24 (ii) an alternative U.S. Immigration
25 and Customs Enforcement facility; or

1 (iii) an alternative to detention; and

2 (B) may not place a detained alien who is
3 considered to be a protection case in solitary
4 confinement due to the status of the alien as a
5 protection case unless—

6 (i) the alien requests to be placed in
7 solitary confinement, in which case, at the
8 request of the alien to be released from sol-
9 itary confinement, the alien shall be trans-
10 ferred to a safer alternative, such as—

11 (I) an alternative general popu-
12 lation unit;

13 (II) an alternative U.S. Immigra-
14 tion and Customs Enforcement facil-
15 ity; or

16 (III) an alternative to detention;
17 or

18 (ii) such confinement is limited to—

19 (I) not more than 5 days of ad-
20 ministrative segregation; and

21 (II) is necessary to protect the
22 alien during preparation for transfer
23 to a safer alternative, such as 1 of the
24 alternatives described in subclauses
25 (I) through (III) of clause (i).

1 (4) VULNERABLE POPULATIONS.—A U.S. Im-
2 migration and Customs Enforcement facility may
3 not place a detained alien in solitary confinement
4 if—

5 (A) the detained alien is younger than 18
6 years of age, unless—

7 (i) such confinement is a temporary
8 response to the behavior of the detained
9 alien, which poses a substantial and imme-
10 diate threat;

11 (ii) all other options to de-escalate the
12 situation have been exhausted, including
13 less restrictive techniques such as—

14 (I) penalizing the detained alien
15 through loss of privileges;

16 (II) speaking with the detained
17 alien in an attempt to de-escalate the
18 situation; and

19 (III) providing an appropriate
20 level of care through a licensed mental
21 health professional;

22 (iii) such confinement is limited to—

23 (I) 3 hours after the detained
24 alien is placed in solitary confinement,

1 if the alien poses a substantial and
2 immediate threat to others; or

3 (II) 30 minutes after the de-
4 tained alien is placed in solitary con-
5 finement, if the alien poses a substan-
6 tial and immediate threat only to his
7 self or her self; and

8 (iv) if, after the applicable maximum
9 period of confinement under subclause (I)
10 or (II) of clause (iii) has expired, the de-
11 tained alien continues to pose a substantial
12 and immediate threat described in that
13 subclause—

14 (I) the detained alien shall be
15 transferred to another facility or in-
16 ternal location where services can be
17 provided to the alien without relying
18 on solitary confinement; or

19 (II) if a qualified mental health
20 professional believes the level of crisis
21 service needed is not currently avail-
22 able, a staff member of the facility
23 shall initiate a referral to a location
24 that can meet the needs of the de-
25 tained alien;

1 (B) the detained alien has a serious mental
2 illness, has an intellectual disability, has a phys-
3 ical disability that a licensed medical profes-
4 sional determines is likely to be exacerbated by
5 placement in solitary confinement or that soli-
6 tary confinement is clinically contraindicated, is
7 pregnant, or is in the first 8 weeks of the post-
8 partum recovery period after giving birth, or
9 has been determined by a licensed mental
10 health professional to likely be significantly ad-
11 versely affected by placement in solitary con-
12 finement, unless—

13 (i) the detained alien poses a substan-
14 tial and immediate threat;

15 (ii) all other options to de-escalate the
16 situation have been exhausted, including
17 less restrictive techniques such as—

18 (I) penalizing the detained alien
19 through loss of privileges;

20 (II) speaking with the detained
21 alien in an attempt to de-escalate the
22 situation; and

23 (III) providing an appropriate
24 level of care through a licensed mental
25 health professional;

1 (iii) such confinement is limited to the
2 briefest term and the least restrictive con-
3 ditions practicable, including access to
4 medical and mental health treatment;

5 (iv) such confinement is reviewed by a
6 multidisciplinary staff committee for ap-
7 propriateness every 24 hours; and

8 (v) as soon as practicable, but not
9 later than 5 days after such confinement
10 begins, the detained alien is diverted, upon
11 release from solitary confinement, to a
12 general population unit, a mental health
13 treatment program described in subsection
14 (b)(2), or an alternative to detention;

15 (C) the detained alien is lesbian, gay, bi-
16 sexual, transgender (as defined in section 115.5
17 of title 28, Code of Federal Regulations, or any
18 successor regulation), intersex (as defined in
19 section 115.5 of title 28, Code of Federal Regu-
20 lations, or any successor regulation), or gender
21 nonconforming (as defined in section 115.5 of
22 title 28, Code of Federal Regulations, or any
23 successor regulation), if such placement is
24 based (in whole or in part) on such identifica-
25 tion or status;

1 (D) the alien is HIV positive, if the place-
2 ment is based (in whole or in part) on the HIV
3 positive status of the alien;

4 (E) the placement is based (in whole or in
5 part) on the alien's race, religion, or nation-
6 ality; or

7 (F) the placement is based (in whole or in
8 part) on a detained alien's report of an incident
9 of abuse or misconduct, a detained alien's deci-
10 sion to engage in a hunger strike, or any other
11 form of retaliation against a detained alien, un-
12 less the alien has been classified as a protection
13 case under paragraph (3).

14 (5) ACCESS TO COUNSEL.—Aliens placed in sol-
15 itary confinement shall be offered access to counsel
16 to the same extent that detained aliens in the gen-
17 eral population are offered access to counsel.

18 (6) RIGHT TO REVIEW PLACEMENT IN SOLI-
19 TARY CONFINEMENT.—The Secretary shall ensure
20 that each alien placed in solitary confinement has
21 access to—

22 (A) written and verbal notice provided in a
23 language that the alien understands that thor-
24 oughly details the basis for placement or contin-
25 ued placement in solitary confinement not later

1 than 6 hours after the beginning of such place-
2 ment, including—

3 (i) thorough documentation explaining
4 why such confinement is permissible and
5 necessary under this subsection; and

6 (ii) if an exception under paragraph
7 (2)(A)(ii), (3)(B), (4)(A), or (4)(B) is used
8 to justify placement in solitary confine-
9 ment, thorough documentation explaining
10 why such an exception applies;

11 (B) a timely, thorough, and continuous re-
12 view process that—

13 (i) occurs not fewer than 3 days after
14 placement in solitary confinement, and
15 thereafter at least on a weekly basis, un-
16 less required more frequently under this
17 section;

18 (ii) includes private, face-to-face inter-
19 views with a multidisciplinary staff com-
20 mittee; and

21 (iii) examines whether—

22 (I) placement in solitary confine-
23 ment was and remains necessary;

24 (II) the conditions of confinement
25 comply with this section; and

1 (III) any exception under para-
 2 graph (2)(A)(ii), (3)(B), (4)(A), or
 3 (4)(B) used to justify placement in
 4 solitary confinement was and remains
 5 warranted;

6 (C) a process to appeal the initial place-
 7 ment or continued placement of the detained
 8 alien in solitary confinement;

9 (D) prompt and timely written notice of
 10 the appeal procedures; and

11 (E) copies of all documents, files, and
 12 records relating to the detained alien's place-
 13 ment in solitary confinement, unless such docu-
 14 ments contain contraband, classified informa-
 15 tion, or sensitive security-related information.

16 (b) MENTAL HEALTH CARE FOR ALIENS IN SOLI-
 17 TARY CONFINEMENT.—

18 (1) MENTAL HEALTH SCREENING.—Not later
 19 than 6 hours after a detained alien is placed in soli-
 20 tary confinement in a U.S. Immigration and Cus-
 21 toms Enforcement facility, the alien shall receive a
 22 comprehensive, face-to-face mental health evaluation
 23 by a licensed mental health professional in a con-
 24 fidential setting.

1 (2) MENTAL HEALTH TREATMENT PROGRAM.—

2 A detained alien diagnosed with a serious mental ill-
3 ness after an evaluation under paragraph (1)—

4 (A) may not be placed in solitary confine-
5 ment under subsection (a)(4)(B); and

6 (B) shall receive an appropriate level of
7 care to address the detained alien’s mental
8 health needs.

9 (3) CONTINUING EVALUATIONS.—After each 7-
10 day period during which a detained alien is held in
11 continuous placement in solitary confinement—

12 (A) a licensed mental health professional
13 shall conduct a comprehensive, face-to-face, out-
14 of-cell mental health evaluation of the alien in
15 a confidential setting; and

16 (B) the Secretary shall adjust the place-
17 ment of the alien in accordance with this sub-
18 section.

19 (c) TRAINING FOR DETENTION CENTER STAFF.—

20 (1) TRAINING.—All employees of a U.S. Immi-
21 gration and Customs Enforcement facility who inter-
22 act with aliens on a regular basis shall be required
23 to complete training in—

24 (A) recognizing the symptoms of mental
25 illness;

1 (B) the potential risks and side effects of
2 psychiatric medications;

3 (C) de-escalation techniques for safely
4 managing individuals with mental illness;

5 (D) the consequences of untreated mental
6 illness;

7 (E) the long- and short-term psychological
8 effects of solitary confinement; and

9 (F) de-escalation and communication tech-
10 niques to divert detained aliens from situations
11 that may lead to the alien being placed in soli-
12 tary confinement.

13 (2) NOTIFICATION TO MEDICAL STAFF.—An
14 employee of a U.S. Immigration and Customs En-
15 forcement facility shall immediately notify a member
16 of the facility’s medical or mental health staff if the
17 employee—

18 (A) observes a detained alien with signs of
19 mental illness, unless such employee has knowl-
20 edge that the alien’s signs of mental illness
21 have previously been reported; or

22 (B) observes a detained alien with signs of
23 a mental health crisis;

24 (d) REPORTING REQUIREMENTS.—

1 (1) DAILY TRACKING OF USE OF SOLITARY
2 CONFINEMENT.—Each U.S. Immigration and Cus-
3 toms Enforcement facility shall submit a daily report
4 to the Director of U.S. Immigration and Customs
5 Enforcement that identifies, for the applicable day—

6 (A) any detained aliens who were placed in
7 solitary confinement, including—

8 (i) the rationale behind each such
9 placement; and

10 (ii) whether any exception under sub-
11 section (a) used to justify placement in sol-
12 itary confinement or increased restrictive
13 conditions in solitary confinement was ap-
14 plied;

15 (B) the continued detention of any aliens
16 in solitary confinement, including—

17 (i) the number of days such aliens
18 have been detained in solitary confinement;
19 and

20 (ii) an explanation of the application
21 of any exception under subsection (a) used
22 to justify an adjustment to the alien's time
23 or conditions in solitary confinement; and

24 (C) the release of any detained aliens from
25 solitary confinement.

1 (2) PUBLICATION OF USE OF SOLITARY CON-
2 FINEMENT.—Without revealing personally identifi-
3 able information, the Secretary shall publish online
4 weekly updates regarding—

5 (A) the number of aliens in solitary con-
6 finement at each U.S. Immigration and Cus-
7 toms Enforcement facility; and

8 (B) any instances in which a facility has
9 placed a detained alien in solitary confinement
10 for more than 15 days.

11 (3) INTERNAL REVIEW OF DATA.—

12 (A) WEEKLY REVIEWS.—The appropriate
13 Enforcement and Removal Operations Field Of-
14 fice Director within U.S. Immigration and Cus-
15 toms Enforcement shall—

16 (i) on a weekly basis, review the daily
17 reports from each U.S. Immigration and
18 Customs Enforcement facility under his or
19 her jurisdiction to ensure that each facility
20 is in compliance with this Act;

21 (ii) report any instances in which a
22 U.S. Immigration and Customs Enforce-
23 ment facility failed to comply, or is sus-
24 pected of failing to comply, with this Act
25 to the subcommittee established under sub-

1 section (a)(2)(A)(ii)(II)(bb)(CC) for re-
2 view; and

3 (iii) direct a U.S. Immigration and
4 Customs Enforcement facility that failed to
5 comply, or is suspected of failing to com-
6 ply, with this Act to immediately address
7 any such failures to comply, including by
8 immediately removing a detained alien
9 from solitary confinement if the alien's
10 placement or continued detention in soli-
11 tary confinement was not in compliance
12 with this Act.

13 (B) MONTHLY REPORTS.—The sub-
14 committee established under subsection
15 (a)(2)(A)(ii)(II)(bb)(CC) shall—

16 (i) promptly review any reports re-
17 ceived pursuant to subparagraph (A)(ii);
18 and

19 (ii) submit monthly reports to the full
20 Detention Monitoring Council and the Di-
21 rector of U.S. Immigration and Customs
22 Enforcement that identify areas of concern
23 regarding particular cases or facilities that
24 warrant further examination.

1 **SEC. 4. REASSESSMENT OF DETAINED ALIEN MENTAL**
 2 **HEALTH.**

3 Not later than 180 days after the date of the enact-
 4 ment of this Act, the Secretary shall—

5 (1) assemble a team of licensed mental health
 6 professionals, which may include licensed mental
 7 health professionals who are not employed by the
 8 Department of Homeland Security, to conduct a
 9 comprehensive mental health reevaluation for each
 10 alien held in solitary confinement for more than 14
 11 days (as of the date of enactment of this Act), in-
 12 cluding a confidential, face-to-face, out-of-cell inter-
 13 view by a licensed mental health professional; and

14 (2) adjust the placement of each alien in ac-
 15 cordance with this Act.

16 **SEC. 5. OVERSIGHT RESPONSIBILITIES.**

17 (a) IN GENERAL.—Section 705 of the Homeland Se-
 18 curity Act of 2002 (6 U.S.C. 345) is amended by adding
 19 at the end the following:

20 “(c) IMMIGRATION DETENTION.—

21 “(1) DEFINED TERM.—In this subsection, the
 22 term ‘U.S. Immigration and Customs Enforcement
 23 facility’ has the meaning given the term in section
 24 2 of the Restricting Solitary Confinement in Immi-
 25 gration Detention Act of 2019.

1 “(2) INTERNAL REPORTING.—The Secretary
2 shall ensure that each U.S. Immigration and Cus-
3 toms Enforcement facility provides multiple internal
4 ways for aliens and others to promptly report viola-
5 tions of section 3 of the Restricting Solitary Con-
6 finement in Immigration Detention Act of 2019 to
7 the Officer for Civil Rights and Civil Liberties, in-
8 cluding—

9 “(A) not less than 2 procedures for aliens
10 and others to report violations of section 3 of
11 such Act to an entity or office that is not part
12 of the facility, and that is able to receive and
13 immediately forward reports to the Officer for
14 Civil Rights and Civil Liberties, allowing the
15 alien to remain anonymous upon request; and

16 “(B) not less than 2 procedures for aliens
17 and others to report violations of section 3 of
18 such Act to the Officer for Civil Rights and
19 Civil Liberties in a confidential manner, allow-
20 ing the alien to remain anonymous upon re-
21 quest.

22 “(3) NOTICE TO DETAINEES.—The Secretary
23 shall ensure that each U.S. Immigration and Cus-
24 toms Enforcement facility provides aliens with—

1 “(A) notice of how to report violations of
2 section 4 of the Restricting Solitary Confinement in Immigration Detention Act of 2019 in
3 accordance with paragraph (2), including—
4

5 “(i) notice prominently posted in the
6 living and common areas of each such facility;
7

8 “(ii) individual notice to aliens at initial intake into a U.S. Immigration and
9 Customs Enforcement facility, when transferred to a new facility, and when placed
10 in solitary confinement;
11

12 “(iii) notice to aliens with disabilities in accessible formats; and
13

14 “(iv) written or verbal notice in a language the alien understands; and
15

16 “(B) notice of permissible practices related
17 to solitary confinement in U.S. Immigration and Customs Enforcement facilities, including
18 the requirements under section 3 of such Act.
19

20 “(4) ACCESS.—The Officer for Civil Rights and
21 Civil Liberties—
22

23 “(A) shall have unrestricted access to U.S.
24 Immigration and Customs Enforcement facilities; and
25

“(B) shall be able to review documents, request and review information, and speak privately with aliens, contractors, volunteers, and U.S. Immigration and Customs Enforcement facility staff.

“(5) ANNUAL ASSESSMENT OF SOLITARY CONFINEMENT USE IN IMMIGRATION DETENTION.—

“(A) OBJECTIVES.—Not later than 90 days after the last day of each fiscal year, the Officer for Civil Rights and Civil Liberties shall submit an assessment to the Committee on Homeland Security and Governmental Affairs of the Senate, the Committee on the Judiciary of the Senate, the Committee on Homeland Security of the House of Representatives, and the Committee on the Judiciary of the House of Representatives that analyzes the use of solitary confinement in U.S. Immigration and Customs Enforcement facilities during such fiscal year.

“(B) DATA.—Each assessment submitted under subparagraph (A) shall include aggregated and disaggregated data reported by U.S. Immigration and Customs Enforcement facilities, to be provided by U.S. Immigration and Customs Enforcement to the Officer for Civil

1 Rights and Civil Liberties not later than 30
2 days after the last day of each fiscal year, in-
3 cluding—

4 “(i) the policies and regulations of
5 U.S. Immigration and Customs Enforce-
6 ment, including—

7 “(I) any changes in policies and
8 regulations, for determining which
9 aliens are placed in solitary confine-
10 ment; and

11 “(II) a detailed description of the
12 conditions and restrictions of solitary
13 confinement;

14 “(ii) the number of aliens in U.S. Im-
15 migration and Customs Enforcement facili-
16 ties who were housed in solitary confine-
17 ment for any period and the percentage of
18 all aliens who spent at least some time in
19 solitary confinement during the reporting
20 period;

21 “(iii) the demographics of all aliens
22 housed in solitary confinement, including
23 race, ethnicity, religion, age, and gender;

24 “(iv) the policies and regulations of
25 U.S. Immigration and Customs Enforce-

1 ment facilities, including any updates in
2 policies and regulations, for subsequent re-
3 views or appeals of the placement of a de-
4 tained alien into or out of solitary confine-
5 ment;

6 “(v) the number of reviews of and
7 challenges to the placement of a detained
8 alien in solitary confinement during the re-
9 porting period and the number of reviews
10 or appeals that directly resulted in a
11 change of placement;

12 “(vi) a detailed description of the con-
13 ditions and restrictions for solitary confine-
14 ment, including the number of hours spent
15 in isolation and the percentage of time
16 these conditions involve 2 aliens celled to-
17 gether in solitary confinement;

18 “(vii) the mean and median length of
19 stay in solitary confinement, based on all
20 individuals released from solitary confine-
21 ment during the reporting period, and any
22 maximum length of stay during the report-
23 ing period;

24 “(viii) the cost for each form of soli-
25 tary confinement described in subpara-

1 graph (A) in use during the reporting pe-
2 riod, including as compared with the aver-
3 age daily cost of housing a detained alien
4 in the general population;

5 “(ix) the policies for mental health
6 screening, mental health treatment, and
7 subsequent mental health reviews for all
8 detained aliens, including any update to
9 the policies, and any additional screening,
10 treatment, and monitoring for detained
11 aliens in solitary confinement;

12 “(x) a statement of the types of men-
13 tal health staff that conducted mental
14 health assessments for U.S. Immigration
15 and Customs Enforcement facilities during
16 the reporting period, a description of the
17 different positions in the mental health
18 staff of U.S. Immigration and Customs
19 Enforcement facilities, and the number of
20 part- and full-time psychologists and psy-
21 chiatrists employed by U.S. Immigration
22 and Customs Enforcement facilities during
23 the reporting period;

1 “(xi) data on mental health and med-
2 ical indicators for all detained aliens in sol-
3 itary confinement, including—

4 “(I) the number of aliens requir-
5 ing medication for mental health con-
6 ditions;

7 “(II) the number diagnosed with
8 an intellectual disability;

9 “(III) the number diagnosed with
10 serious mental illness;

11 “(IV) the number of suicides;

12 “(V) the number of attempted
13 suicides and number of aliens placed
14 on suicide watch;

15 “(VI) the number of instances of
16 self-harm committed by aliens;

17 “(VII) the number of aliens with
18 physical disabilities, including blind,
19 deaf, and mobility-impaired aliens;
20 and

21 “(VIII) the number of instances
22 of forced feeding of aliens;

23 “(xii) any instances in which an En-
24 forcement and Removal Operations Field
25 Office Director reported that a U.S. Immi-

1 gration and Customs Enforcement facility
2 in his or her jurisdiction failed to comply
3 with or was suspected of failing to comply
4 with the Restricting Solitary Confinement
5 in Immigration Detention Act of 2019; and

6 “(xiii) any other relevant data.

7 “(C) CONTENT.—Each assessment sub-
8 mitted under subparagraph (A) shall include—

9 “(i) an analysis of the data provided
10 under subparagraph (B);

11 “(ii) recommendations for reform of-
12 fered to the Director of U.S. Immigration
13 and Customs Enforcement and the Sec-
14 retary under paragraph (6); and

15 “(iii) the response from U.S. Immi-
16 gration and Customs Enforcement and the
17 Department to such recommendations for
18 reform.

19 “(D) AUTHORITY ON FINAL REPORT.—
20 Each assessment submitted under subpara-
21 graph (A) may be reviewed by U.S. Immigra-
22 tion and Customs Enforcement and the Sec-
23 retary before submission, but the Officer for
24 Civil Rights and Civil Liberties has final au-

1 thority on the text and release of the assess-
2 ment.

3 “(6) REGULAR MEETINGS WITH THE SEC-
4 RETARY AND THE DIRECTOR OF U.S. IMMIGRATION
5 AND CUSTOMS ENFORCEMENT.—The Officer for
6 Civil Rights and Civil Liberties shall meet regularly
7 with the Secretary and the Director of U.S. Immi-
8 gration and Customs Enforcement—

9 “(A) to identify problems with the solitary
10 confinement policies and practices in U.S. Im-
11 migration and Customs Enforcement facilities,
12 including overuse of solitary confinement; and

13 “(B) to present recommendations for such
14 administrative action as may be appropriate to
15 resolve problems relating to solitary confine-
16 ment policies and practices in U.S. Immigration
17 and Customs Enforcement facilities.”.

18 (b) ANNUAL REPORT.—Not later than December 31
19 of each year, the Inspector General of the Department of
20 Homeland Security shall issue a report analyzing—

21 (1) the use of solitary confinement in U.S. Im-
22 migration and Customs Enforcement facilities; and

23 (2) the Department’s compliance with this Act
24 and the amendments made by this Act.

1 **SEC. 6. RULEMAKING.**

2 The Secretary and the Director of U.S. Immigration
3 and Customs Enforcement shall prescribe rules, in accord-
4 ance with section 553 of title 5, United States Code, to
5 carry out this Act and the amendments made by this Act.

6 **SEC. 7. AUTHORIZATION OF APPROPRIATIONS.**

7 There are authorized to be appropriated to the Sec-
8 retary such sums as may be necessary to carry out this
9 Act and the amendments made by this Act.

10 **SEC. 8. EFFECTIVE DATE.**

11 Except as otherwise provided, this Act and the
12 amendments made by this Act shall take effect on the date
13 that is 18 months after the date of the enactment of this
14 Act.

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