

118TH CONGRESS
1ST SESSION

S. 3409

To end the use of solitary confinement and other forms of restrictive housing in all Federal agencies and entities with which Federal agencies contract.

IN THE SENATE OF THE UNITED STATES

DECEMBER 5, 2023

Mr. MARKEY (for himself, Ms. WARREN, Mr. SANDERS, and Mr. WELCH) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To end the use of solitary confinement and other forms of restrictive housing in all Federal agencies and entities with which Federal agencies contract.

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 “End Solitary Confine-
5 ment Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

1 (1) the use of solitary confinement as a carceral
2 practice causes devastating harm and constitutes a
3 form of torture;

4 (2) solitary confinement of any length of time,
5 measured in days or even hours, can cause self-muti-
6 lation, suicide, heart disease, anxiety, depression,
7 psychosis, mental and physical deterioration, and a
8 significantly heightened risk of death;

9 (3) over 120,000 people are estimated to be in
10 solitary confinement on any given day in Federal,
11 State, local, and immigration detention facilities;

12 (4) solitary confinement and other forms of re-
13 strictive housing and practices are disproportionately
14 inflicted on Black, Latinx, Native, and other people
15 of color, as well as transgender and gender noncon-
16 forming people, people with mental health needs,
17 and young people;

18 (5) survivors of solitary confinement often carry
19 significant trauma and other physical and psycho-
20 logical harm with them for the rest of their lives;

21 (6) solitary confinement has directly caused the
22 deaths of far too many people and has increased vio-
23 lence and harm in prisons, detention facilities, and
24 communities;

1 (7) solitary confinement derives from, and helps
2 perpetuate, a horrific and brutal incarceration sys-
3 tem that is rooted in racism and focuses on extreme
4 punishment and abuse, rather than on providing op-
5 portunities for growth, healing, redemption, and
6 transformation;

7 (8) the United States is an outlier among ad-
8 vanced democracies in the use of solitary confine-
9 ment;

10 (9) evidence shows that out-of-cell, prosocial en-
11 gagement and programming increase safety, well-
12 being, and reentry outcomes;

13 (10) solitary confinement is expensive, and cost
14 analyses at the Federal and State levels indicate
15 that the elimination of solitary confinement would
16 save taxpayers billions of dollars; and

17 (11) solitary confinement is costly to taxpayers,
18 does not make communities safer, jeopardizes the
19 safety of incarcerated people and correctional staff,
20 constitutes inhumane and degrading treatment, and
21 has no place in a civilized society.

1 **SEC. 3. ENDING SOLITARY CONFINEMENT AND ESTAB-**
 2 **LISHING MINIMUM STANDARDS.**

3 (a) IN GENERAL.—Chapter 301 of title 18, United
 4 States Code, is amended by adding at the end the fol-
 5 lowing:

6 **“§ 4015. Ending solitary confinement and establishing**
 7 **minimum standards**

8 “(a) PROHIBITION ON THE USE OF SOLITARY CON-
 9 FINEMENT AND ESTABLISHMENT OF MINIMUM STAND-
 10 ARDS.—

11 “(1) IN GENERAL.—Except in the cir-
 12 cumstances described in paragraph (2)(B), a person
 13 incarcerated in a Federal facility may not be placed
 14 in solitary confinement.

15 “(2) MINIMUM STANDARDS FOR OUT-OF-CELL
 16 TIME AND MEANINGFUL HUMAN ENGAGEMENT.—

17 “(A) CONGREGATE INTERACTION RE-
 18 QUIRED.—Except as provided in subparagraphs
 19 (B)(iii), (B)(iv), and (B)(v), all persons incar-
 20 cerated in a Federal facility, regardless of hous-
 21 ing unit or detention status, shall have access
 22 to not less than 14 hours per day of out-of-cell
 23 congregate interaction in a shared space, with-
 24 out physical barriers, that is conducive to mean-
 25 ingful group interaction, including access to—

1 “(i) not less than 7 hours per day of
2 structured out-of-cell, congregate program-
3 ming led by a staff member, incarcerated
4 person, or community member, including
5 access to educational, vocational, volunteer,
6 mental health, violence prevention, alcohol
7 and substance use treatment, financial, re-
8 ligious, and reentry programming;

9 “(ii) not less than 1 hour per day of
10 out-of-cell congregate recreation; and

11 “(iii) other unstructured out-of-cell
12 congregate activities, including time in a
13 day room or equivalent space, meals, li-
14 brary and law library, legal visits, social
15 and legal telephone calls, contact social vis-
16 itation without physical barriers, and per-
17 sonal property and commissary.

18 “(B) PROHIBITION ON SOLITARY CONFINEMENT.—A person incarcerated in a Federal fa-
19 cility may not be placed in solitary confinement
20 unless such placement is necessary—

21 “(i) at night for count or sleep, not to
22 exceed 8 hours in any 24-hour period;

23 “(ii) during the day for count or re-
24 quired facility business that can only be
25

1 carried out while a person incarcerated in
2 a Federal facility is placed in a cell, not to
3 exceed 2 hours during any 24-hour period;

4 “(iii) for purposes of medical quar-
5 antine or medical isolation, only if done in
6 a medical unit overseen by health care
7 staff—

8 “(I) for as limited a time as
9 medically necessary as determined by
10 health care staff; and

11 “(II) with comparable access
12 granted to persons incarcerated in the
13 general population to phone calls,
14 emails, and programming at a phys-
15 ical distance determined appropriate
16 by health care staff;

17 “(iv) subject to subparagraphs (C)
18 and (D), in an emergency situation as a
19 last resort, only if necessary to de-escalate
20 immediate circumstances that pose a spe-
21 cific and significant risk of imminent seri-
22 ous physical injury to the person, staff, or
23 other incarcerated persons, and for as
24 short a time as necessary to de-escalate
25 such circumstances, not to exceed—

1 “(I) 4 hours total immediately
2 following such emergency situation;

3 “(II) 4 hours total during any
4 24-hour period; or

5 “(III) 12 hours total during any
6 7-day period; or

7 “(v) as part of a Federal agency-wide,
8 Federal facility-wide, or partial Federal fa-
9 cility-wide lockdown, and—

10 “(I) only if a head of a Federal
11 facility or Federal agency has deter-
12 mined the lockdown is necessary to
13 de-escalate an emergency that involves
14 several incarcerated persons and poses
15 a specific and significant risk of immi-
16 nent serious physical injury to the
17 staff or incarcerated persons;

18 “(II) only when there are no less
19 restrictive means to address an emer-
20 gency, as a last resort after exhaust-
21 ing less restrictive measures;

22 “(III) if the lockdown is confined
23 to as narrow an area as possible and
24 to as limited number of people as pos-
25 sible; and

1 “(IV) if the lockdown is reviewed
2 every hour by the head of the Federal
3 facility or Federal agency, with notifi-
4 cation provided to the Federal agency
5 regional or field office, or equivalent
6 office responsible for oversight of the
7 Federal facility, beginning at the time
8 the lockdown has lasted 2 hours, and
9 is lifted as quickly as possible, pro-
10 vided that such lockdown shall not ex-
11 ceed—

12 “(aa) 4 hours total from the
13 time at which the lockdown
14 starts;

15 “(bb) 4 hours total during
16 any 24-hour period; or

17 “(cc) 12 hours total during
18 any 7-day period.

19 “(C) DE-ESCALATION.—

20 “(i) IN GENERAL.—With respect to
21 any placement pursuant to subparagraph
22 (B)(iv), Federal facility staff shall meet
23 with the incarcerated person not less fre-
24 quently than once per hour to attempt de-
25 escalation, work toward the release of the

1 person from such confinement, and deter-
2 mine whether it is necessary to continue to
3 hold the person in such confinement, and
4 with respect to any placement pursuant to
5 subparagraph (B)(iv) or (B)(v), health
6 care staff must conduct a thorough med-
7 ical, mental health, social, and behavioral
8 assessment upon admission to such place-
9 ment, conduct meaningful check-ins every
10 15 minutes to engage with the person in
11 custody, evaluate and treat any urgent
12 health needs, and attempt any de-escala-
13 tion.

14 “(ii) REMOVAL BY HEALTH CARE
15 STAFF.—If health care staff determines an
16 incarcerated person should be removed
17 from solitary confinement for assessment
18 or treatment purposes, or because of a
19 negative impact of such confinement, the
20 person shall be removed to an appropriate
21 setting as determined by health care staff.

22 “(D) PROHIBITION ON INVOLUNTARY CON-
23 FINEMENT.—No person may be involuntarily
24 confined in a cell under subparagraph (B)(iv)
25 who—

1 “(i) is 25 years of age or younger;

2 “(ii) is 55 years of age or older;

3 “(iii) has a disability, as defined in
4 section 3 of the Americans with Disabil-
5 ities Act of 1990 (42 U.S.C. 12102);

6 “(iv) has any diagnosed mental health
7 need;

8 “(v) is pregnant, in the first 8 weeks
9 of the postpartum recovery period, or car-
10 ing for a child in a facility program; or

11 “(vi) has identified as, or is known or
12 perceived by any facility staff to be, les-
13 bian, gay, bisexual, transgender, intersex,
14 or gender nonconforming.

15 “(E) REQUIREMENTS FOR SEPARATION.—

16 If a Federal facility determines that a person
17 must be separated from the general facility pop-
18 ulation, including any placement in protective
19 custody, for any reasons other than, or in a
20 manner other than as provided under subpara-
21 graph (B)(iii), (B)(iv), or (B)(v), such separa-
22 tion in an alternative unit must—

23 “(i) comply with—

24 “(I) subparagraphs (A) and (F);

25 and

1 “(II) paragraphs (3), (4), and
2 (5); and

3 “(ii) provide access to out-of-cell, con-
4 gregate, trauma-informed, therapeutic pro-
5 gramming aimed at promoting personal de-
6 velopment, addressing underlying causes of
7 problematic behavior resulting in the alter-
8 native unit placement, and helping prepare
9 for discharge from the unit to the general
10 population and to the community.

11 “(F) PROHIBITION ON LIMITATION OF
12 SERVICES.—In all Federal facilities, the fol-
13 lowing may not be imposed as a form of punish-
14 ment, discipline, or for any other reason:

15 “(i) Limitation on services, program-
16 ming, treatment, contact visitation, phone
17 calls, email, mail, or basic needs such as
18 clothing, food, or bedding.

19 “(ii) Involuntary restricted diets or
20 any other involuntary change in diet.

21 “(iii) Confiscation of approved per-
22 sonal property.

23 “(3) DUE PROCESS REQUIREMENTS.—

24 “(A) HEARING REGULATIONS.—

1 “(i) IN GENERAL.—The reasons and
2 procedures for placement in protective cus-
3 tody shall be subject to the regulations,
4 rules, standards, and procedures (or any
5 successors thereof) applicable to each Fed-
6 eral agency.

7 “(ii) REQUIREMENTS.—All hearings
8 under regulations described in clause (i)
9 shall comply with paragraph (4), and the
10 conditions for all people in protective cus-
11 tody shall comply with—

12 “(I) subparagraphs (A), (E), and
13 (F) of paragraph (2); and

14 “(II) paragraph (5).

15 “(B) REVIEW OF PLACEMENT.—

16 “(i) IN GENERAL.—The placement of
17 an incarcerated person in an alternative
18 unit shall be meaningfully reviewed not
19 less than the first 15 days after placement
20 in solitary confinement, and not less fre-
21 quently than every 15 days thereafter, by
22 a multidisciplinary team, including pro-
23 gram and health care staff, to determine
24 whether the release of the incarcerated
25 person to the general facility population

1 continues to present a specific and signifi-
2 cant risk of imminent serious physical in-
3 jury to the person, staff, or other incarcer-
4 ated persons.

5 “(ii) NOTICE OF REASONS FOR DE-
6 TERMINATION.—If an incarcerated person
7 is not discharged from an alternative unit
8 at a review described under clause (i), the
9 incarcerated person shall promptly receive
10 in writing the reasons for the determina-
11 tion and the program, treatment, service,
12 or corrective action required before dis-
13 charge.

14 “(iii) ACCESS TO SERVICES; DIS-
15 CHARGE.—Each incarcerated person shall
16 be given access to the programs, treat-
17 ment, and services specified under sub-
18 paragraph (A), and shall be permitted to
19 be discharged from an alternative unit if
20 the person so chooses and does not engage
21 in behavior that presents a specific and
22 significant risk of imminent serious phys-
23 ical injury to the person, staff, or other in-
24 carcerated persons during the subsequent
25 15 days.

1 “(iv) DURATION.—Other than for
2 purposes of protective custody, or upon
3 written request by the person, no person
4 may be held in an alternative unit for more
5 than 60 days during any 6-month period.

6 “(C) NO PLACEMENT BASED ON PREVIOUS
7 INCIDENT.—No person may be placed in an al-
8 ternative unit for an act or incident for which
9 the person was previously placed in such unit.

10 “(4) PLACEMENT HEARINGS.—

11 “(A) PLACEMENT IN ALTERNATIVE
12 UNIT.—Other than separation of persons in
13 protective custody or for purposes of confine-
14 ment under paragraphs (2)(B)(iii), (2)(B)(iv),
15 and (2)(B)(v), no person incarcerated in a Fed-
16 eral facility may be placed in an alternative unit
17 unless and until it is determined in writing fol-
18 lowing a placement hearing that clear and con-
19 vincing evidence shows that the person com-
20 mitted 1 of the following acts at the time place-
21 ment is sought, and the specific circumstances
22 of the acts were so heinous or destructive that
23 placement of the person in general facility hous-
24 ing creates a specific and significant risk of im-

1 minent serious physical injury to staff or other
2 incarcerated persons:

3 “(i) Causing or attempting to cause
4 serious physical injury or death to another
5 person.

6 “(ii) Compelling or attempting to
7 compel another person, by force or threat
8 of force, to engage in a sexual act.

9 “(iii) Leading, organizing, inciting, or
10 attempting to cause a riot, or other simi-
11 larly serious disturbance that results in the
12 taking of a hostage, major property dam-
13 age, or serious physical harm to another
14 person.

15 “(iv) Escaping, attempting to escape
16 or facilitating an escape from a Federal fa-
17 cility or escaping, attempting to escape, or
18 facilitating an escape while under super-
19 vision outside the Federal facility.

20 “(B) NEUTRAL DECISION MAKER RE-
21 QUIRED.—Each placement hearing shall be con-
22 ducted by a neutral decision maker.

23 “(C) DEPARTMENT OF JUSTICE.—For all
24 placement hearings involving placement in fa-
25 cilities operated by the Federal Bureau of Pris-

1 ons or facilities contracting with the Federal
2 Bureau of Prisons or United States Marshals
3 Service for incarcerating people in the care or
4 custody of those facilities or entities, the neu-
5 tral decision maker shall be—

6 “(i) appointed by the Assistant Attor-
7 ney General for Civil Rights;

8 “(ii) employed by the Department of
9 Justice; and

10 “(iii) independent of—

11 “(I) any division or unit within
12 the Department of Justice that has
13 people in its care or custody or en-
14 gages in any prosecuting activities;

15 “(II) any other Federal agency;

16 and

17 “(III) any prosecuting entity.

18 “(D) DEPARTMENT OF HOMELAND SECUR-
19 RITY.—For all placement hearings involving
20 placement in facilities operated by or con-
21 tracting with U.S. Immigration and Customs
22 Enforcement, the Department of Homeland Se-
23 curity, or U.S. Customs and Border Protection
24 for incarcerating people in the care or custody

1 of those facilities or entities, the neutral deci-
2 sion maker shall be—

3 “(i) appointed by the Officer for Civil
4 Rights and Civil Liberties;

5 “(ii) employed by the Department of
6 Homeland Security; and

7 “(iii) independent of—

8 “(I) the Office for Civil Rights
9 and Civil Liberties;

10 “(II) any division or unit within
11 the Department of Homeland Security
12 that has people in its care or custody
13 or engages in any prosecuting activi-
14 ties;

15 “(III) any other Federal agency;
16 and

17 “(IV) any prosecuting entity.

18 “(E) DEPARTMENT OF HEALTH AND
19 HUMAN SERVICES.—For all placement hearings
20 involving placement in facilities operated by or
21 contracting with the Department of Health and
22 Human Services for incarcerating people in the
23 care or custody of those facilities or entities, the
24 neutral decision maker shall be—

1 “(i) appointed by the Director of the
2 Office for Civil Rights;

3 “(ii) employed by the Department of
4 Health and Human Services; and

5 “(iii) independent of—

6 “(I) the Office for Civil Rights;

7 “(II) any division or unit within
8 the Department of Health and
9 Human Services that has people in its
10 care or custody;

11 “(III) any other Federal agency;

12 and

13 “(IV) any prosecuting entity.

14 “(F) EVIDENCE PRESENTED.—At any
15 placement hearing, the incarcerated person
16 shall be permitted to offer documentary and
17 testimonial evidence, cross-examine witnesses,
18 and present any mitigating evidence, justifica-
19 tion evidence, or other relevant evidence helpful
20 in aiding the defense of the incarcerated person.

21 “(G) REPRESENTATION.—

22 “(i) IN GENERAL.—At such a hearing,
23 the incarcerated person shall be permitted
24 to—

1 “(I) engage in self-representa-
2 tion; or

3 “(II) be represented by any at-
4 torney, law student permitted to prac-
5 tice law, paralegal, community advo-
6 cate, or other incarcerated person cho-
7 sen by the person being represented.

8 “(ii) ASSISTANCE FOR REPRESENTA-
9 TION.—If a person does not have a rep-
10 resentative, the person shall be offered the
11 assistance of a representative as follows:

12 “(I) DEPARTMENT OF JUSTICE
13 PLACEMENT HEARINGS.—For all
14 placement hearings described in sub-
15 paragraph (C), if an incarcerated per-
16 son does not select a representative,
17 an appointed representative shall be—

18 “(aa) selected by the Assist-
19 ant Attorney General for Civil
20 Rights;

21 “(bb) employed by the De-
22 partment of Justice; and

23 “(cc) independent of—

24 “(AA) any division or
25 unit within the Department

1 of Justice that has people in
2 its care or custody or en-
3 gages in any prosecuting ac-
4 tivities;

5 “(BB) any other Fed-
6 eral agency; and

7 “(CC) any prosecuting
8 entity.

9 “(II) DEPARTMENT OF HOME-
10 LAND SECURITY HEARINGS.—For all
11 placement hearings described in sub-
12 paragraph (D), if an incarcerated per-
13 son does not select a representative,
14 an appointed representative shall be—

15 “(aa) selected by the Officer
16 for Civil Rights and Civil Lib-
17 erties;

18 “(bb) employed by the De-
19 partment of Homeland Security;
20 and

21 “(cc) independent of—

22 “(AA) the Office for
23 Civil Rights and Civil Lib-
24 erties;

1 “(BB) any division or
2 unit within the Department
3 of Homeland Security that
4 has people in its care or cus-
5 tody or engages in any pros-
6 ecuting activities;

7 “(CC) any other Fed-
8 eral agency; and

9 “(DD) any prosecuting
10 entity.

11 “(III) DEPARTMENT OF HEALTH
12 AND HUMAN SERVICES HEARINGS.—
13 For all placement hearings described
14 in subparagraph (E), if an incarcer-
15 ated person does not select a rep-
16 resentative, any appointed representa-
17 tive shall be—

18 “(aa) selected by the Direc-
19 tor of the Office for Civil Rights;

20 “(bb) employed by the De-
21 partment of Health and Human
22 Services; and

23 “(cc) independent of—

24 “(AA) the Office for
25 Civil Rights;

1 “(BB) any division or
2 unit within the Department
3 of Health and Human Serv-
4 ices that has people in its
5 care or custody;

6 “(CC) any other Fed-
7 eral agency; and

8 “(DD) any prosecuting
9 entity.

10 “(H) NOTICE.—

11 “(i) IN GENERAL.—Not less than 2
12 days prior to any placement hearing under
13 this paragraph, both the incarcerated per-
14 son and the chosen representative of the
15 incarcerated person shall be provided de-
16 tailed written notice of the reason for pro-
17 posed placement in an alternative unit, in-
18 cluding all relevant evidence, during which
19 time the person may not, other than for
20 purposes of protective custody, be placed in
21 such alternative unit.

22 “(ii) TIME TO PREPARE.—The incar-
23 cerated person and the chosen representa-
24 tive shall be provided adequate time to pre-

1 pare for such hearings and afforded ad-
2 jourments as appropriate.

3 “(iii) REFUSAL TO ATTEND.—Any re-
4 fusal by an incarcerated person to attend
5 such hearings shall be videotaped and
6 made part of the evidentiary record that
7 shall be maintained by the relevant Federal
8 agency.

9 “(iv) FAILURE TO COMPLY.—Failure
10 to provide the notice described in clause (i)
11 or to enter into the record videotaped evi-
12 dence of an alleged refusal to attend by an
13 incarcerated person shall constitute a basis
14 for resolving the hearing in the favor of
15 the incarcerated person.

16 “(I) WRITTEN DETERMINATION.—

17 “(i) IN GENERAL.—Not later than 5
18 business days after the conclusion of the
19 placement hearing, the neutral decision
20 maker shall issue a written determination.

21 “(ii) CLEAR AND CONVINCING EVI-
22 DENCE.—Any finding that an incarcerated
23 person meets the criteria of placement in
24 an alternative unit under subparagraph

1 (A) shall be supported by clear and con-
2 vincing evidence.

3 “(iii) CONTENTS.—The determination
4 shall specify the finding, a summary of the
5 testimony of each witness and an expla-
6 nation of whether the testimony was cred-
7 ited or rejected, the evidence relied upon in
8 reaching the finding, and the placement
9 imposed, if any.

10 “(iv) NOTICE OF DETERMINATION.—
11 Not later than 24 hours after issuance of
12 the determination, a copy of the deter-
13 mination shall be provided to the incarcer-
14 ated person and the chosen representative
15 of the incarcerated person.

16 “(5) USE OF RESTRAINTS.—

17 “(A) IN GENERAL.—Except as provided in
18 subparagraphs (B) through (E), no person in-
19 carcerated in a Federal facility shall be placed
20 in restraints.

21 “(B) EXCEPTIONS.—Subparagraph (A)
22 shall not apply if facility staff make an individ-
23 ualized determination at the time of, or imme-
24 diately following, an incident precipitating
25 placement in restraints that such restraints are

1 necessary to prevent a specific and significant
2 risk of imminent serious physical injury to the
3 person, other incarcerated persons, or staff
4 based on concrete evidence of such risk.

5 “(C) LEAST RESTRICTIVE FORM.—If re-
6 straints are used pursuant to subsection (B),
7 the least restrictive form of restraints shall be
8 used for no longer than necessary to abate such
9 specific and significant risk of imminent serious
10 physical injury, and in no circumstances shall
11 continue beyond 4 hours unless a supervisory
12 medical provider determines that such re-
13 straints are necessary to prevent such risk.

14 “(D) PLACEMENT HEARING REQUIRED.—

15 “(i) IN GENERAL.—Restraints shall
16 not be used on the same person on con-
17 secutive days unless a placement hearing
18 with protections established under para-
19 graphs (3) and (4) establishes such re-
20 straints are necessary to prevent a specific
21 and significant risk of imminent serious
22 physical injury to the incarcerated person,
23 other incarcerated persons, or staff based
24 on concrete evidence of such risk, and sub-

1 ject to the same limitations each day as set
2 forth in this paragraph.

3 “(ii) LIMITATIONS.—Any repeated use
4 of restraints approved at such a due proce-
5 ss hearing shall be no longer than 3 days,
6 subject to the same limitations each day as
7 set forth in this paragraph, meaningfully
8 reviewed by a supervisory medical provider
9 at least daily, and discontinued once re-
10 straints are no longer necessary to prevent
11 a specific and significant risk of imminent
12 serious physical injury to the person, other
13 incarcerated persons, or staff.

14 “(E) SUBSEQUENT USE OF RESTRAINTS.—

15 Once an approved use of restraints has been
16 discontinued, any subsequent use of restraints
17 on that person shall only be permitted to ad-
18 dress a new incident and upon the same re-
19 quirements under this paragraph.

20 “(6) SPECIAL ADMINISTRATIVE MEASURES.—

21 No Federal facility may use special administrative
22 measures.

23 “(b) REPORT REQUIRED.—Not later than 15 days

24 after the end of each quarter of the fiscal year, each Fed-

1 eral agency shall report on the website of the Federal
2 agency the following:

3 “(1) The total number of incidents at each fa-
4 cility operated by the Federal agency during the pre-
5 ceding quarter of self-harm, suicide attempts, and
6 suicide, disaggregated by race, age, gender identity,
7 documented mental health status, documented dis-
8 ability, pregnancy or postpartum status, identifica-
9 tion as lesbian, gay, bisexual, transgender, intersex,
10 or gender nonconforming, type of housing unit in-
11 cluding confinement under subsections (a)(2)(B)(iii),
12 (a)(2)(B)(iv), (a)(2)(B)(v), any alternative units,
13 and length of time in such housing unit.

14 “(2) The total number of placements at each
15 facility during the preceding quarter, separately list-
16 ed, in confinement under subsections (a)(2)(B)(iii),
17 (a)(2)(B)(iv), and (a)(2)(B)(v), in protective custody
18 under subsection (a)(2)(E), and in any other alter-
19 native units under subsection (a)(2)(E) during that
20 quarter.

21 “(3) The total number of people at each facility
22 on the last day of each quarter, separately listed, in
23 confinement under subsections (a)(2)(B)(iii),
24 (a)(2)(B)(iv), and (a)(2)(B)(v), in protective custody
25 under subsection (a)(2)(E), and in any other alter-

1 native units under (a)(2)(E), disaggregated by race,
2 age, gender identity, documented mental health sta-
3 tus, documented disability, pregnancy or postpartum
4 status, identification as lesbian, gay, bisexual,
5 transgender, intersex, or gender nonconforming, and
6 reason for placement.

7 “(4) The total number of placements at each
8 facility during the preceding quarter, separately list-
9 ed, for which confinement under subsections
10 (a)(2)(B)(iv) and (a)(2)(B)(v) lasted for less than 1
11 hour, between 1 and 2 hours, between 2 and 3
12 hours, between 3 and 4 hours, and for longer than
13 4 hours, with a listing of the length of time of each
14 placement that exceeded 4 hours.

15 “(5) The total number of people at each facility
16 who had reached a total period of time during the
17 preceding quarter, separately listed, in confinement
18 under subsection (a)(2)(B)(iii), in protective custody
19 under subsection (a)(2)(E), and in any other alter-
20 native units under subsection (a)(2)(E) of less than
21 7 days, between 8 days and 15 days, between 16
22 days and 30 days, between 31 days and 45 days, be-
23 tween 46 days and 60 days, and for longer than 60
24 days, with a listing of the length of time of each per-
25 son who had reached a period of time during the

1 preceding quarter that exceeded a total of 60 days
2 in such confinement or housing.

3 “(c) PRIVATE CAUSE OF ACTION.—

4 “(1) IN GENERAL.—

5 “(A) CIVIL ACTION FOR INJURY.—Any
6 person who is injured by a violation of sub-
7 section (a) may bring a civil action in the ap-
8 propriate United States district court against
9 any person, entity, or any other relevant party
10 who violated such subsection for declaratory
11 and injunctive relief, including directing the clo-
12 sure of the facility, building, or unit where the
13 violation took place if that facility, building, or
14 unit is in repeated and systemic noncompliance
15 with this Act, and for such money damages as
16 the court determines appropriate, including for
17 emotional pain and suffering.

18 “(B) ADDITIONAL AWARDS.—In an action
19 filed under subparagraph (A), the court may, in
20 addition to any other relief awarded under that
21 subparagraph, award reasonable attorney’s fees
22 and costs of the action to a prevailing plaintiff.

23 “(2) NO LIABILITY FOR CERTAIN
24 LOCKDOWNS.—

1 “(A) IN GENERAL.—No Federal agency
2 shall be liable for a Federal agency-wide, facil-
3 ity-wide, or partial facility-wide lockdown that
4 exceeded the 4-hour limit under subsection
5 (a)(2)(B)(v) if the agency can demonstrate
6 that—

7 “(i) the lockdown, and the length of
8 the time of the lockdown, was necessary to
9 address unexpected, extraordinary cir-
10 cumstances involving the detonation of an
11 explosive device, an acute mass contamina-
12 tion or contagion situation, a violent riot,
13 revolt, or insurrection involving a large
14 number of people that resulted in the tak-
15 ing of a hostage, major property damage,
16 or serious physical harm to a person, or
17 other similar emergency of the same mag-
18 nitude involving a large group of people;

19 “(ii) the head of facility who author-
20 ized the lockdown complied with all notifi-
21 cation requirements, and received approval
22 from the agency regional or field office, or
23 equivalent office responsible for oversight
24 of the facility, at the time the lockdown
25 lasted longer than 4 hours;

1 “(iii) the head of the applicable Fed-
2 eral agency approved of the lockdown if
3 the lockdown exceeded 8 hours and the ap-
4 proval occurred at that time;

5 “(iv) the lockdown was ended as
6 quickly as possible, did not last longer than
7 necessary to address the unexpected, ex-
8 traordinary circumstances, and did not ex-
9 ceed 24 hours; and

10 “(v) the lockdown was not used as a
11 substitute for medical isolation or quar-
12 antine nor individual lock-ins pursuant to
13 subsections (a)(2)(B)(iii) and
14 (a)(2)(B)(iv), nor as a way to circumvent
15 the time limits or protections for people
16 held under those subsections.

17 “(B) CIVIL ACTION FOR CONSTITUTIONAL
18 VIOLATION.—

19 “(i) IN GENERAL.—Any person who is
20 injured by a violation of the Constitution
21 of the United States by a Federal official
22 or person contracting with a Federal agen-
23 cy in a Federal facility may bring a civil
24 action in the appropriate United States
25 district court against any person, entity, or

1 relevant party who violated such constitu-
 2 tional provision for declaratory and injunc-
 3 tive relief, including directing the closure
 4 of the facility, building, or unit where the
 5 violation took place, and for such money
 6 damages as the court determines appro-
 7 priate, including for emotional pain and
 8 suffering.

9 “(ii) **ADDITIONAL AWARDS.**—In an
 10 action filed under subparagraph (A), the
 11 court may, in addition to any other relief
 12 awarded under that subparagraph, award
 13 reasonable attorney’s fees and costs of the
 14 action to a prevailing plaintiff.”.

15 (b) **CLERICAL AMENDMENT.**—The table of contents
 16 for chapter 301 of title 18, United States Code, is amend-
 17 ed by inserting after the item relating to section 4014 the
 18 following:

“4015. Ending solitary confinement and establishing minimum standards.”.

19 **SEC. 4. OVERSIGHT.**

20 (a) **IN GENERAL.**—Chapter 301 of title 18, United
 21 States Code, as amended by section 3 of this Act, is fur-
 22 ther amended by adding at the end the following:

23 **“§ 4016. Oversight**

24 “(a) **COMMUNITY MONITORING BODY.**—Not later
 25 than 90 days after the date of enactment of this Act, the

1 Attorney General, in consultation with the Assistant At-
2 torney General for Civil Rights of the Department of Jus-
3 tice, Officer for Civil Rights and Civil Liberties of the De-
4 partment of Homeland Security, and Director of the Of-
5 fice for Civil Rights of the Department of Health and
6 Human Services, shall establish a community monitoring
7 body that shall operate independently of the Attorney Gen-
8 eral and of any other unit or division within the Depart-
9 ment of Justice or any other Federal agency.

10 “(b) APPOINTMENT.—The Attorney General, in con-
11 sultation with the Assistant Attorney General for Civil
12 Rights of the Department of Justice, Officer for Civil
13 Rights and Civil Liberties of the Department of Homeland
14 Security, and Director of the Office for Civil Rights of
15 the Department of Health and Human Services, and after
16 obtaining input and recommendations from community or-
17 ganizations that provide educational services and legal
18 support to incarcerated persons or otherwise advocate for
19 the rights of incarcerated people and an end to solitary
20 confinement, shall appoint not less than 15 people to serve
21 as members of the community monitoring body.

22 “(c) MEMBERSHIP.—

23 “(1) IN GENERAL.—Each member of the com-
24 munity monitoring body shall be an individual
25 who—

1 “(A) has survived solitary confinement—

2 “(B) has had loved ones who have experi-
3 enced solitary confinement or lost loved ones
4 because of solitary confinement;

5 “(C) is a faith leader, medical or mental
6 health professional; or

7 “(D) is a civil rights or human rights ad-
8 vocate.

9 “(2) PRIOR EXPERIENCE.—Each member of the
10 community monitoring body shall have experience
11 engaging in advocacy, service provision, or program
12 operation aimed at enhancing the rights and treat-
13 ment of incarcerated persons.

14 “(3) REQUIREMENT RELATING TO INCARCER-
15 ATION.—Not less than half of the members of the
16 community monitoring body shall be individuals who
17 were incarcerated or have had family members in-
18 carcerated.

19 “(d) MEMBERSHIP TERM.—Each member of the
20 community monitoring body shall be appointed for a term
21 of 5 years, with the possibility of 1 reappointment by the
22 Attorney General for a total of 10 years.

23 “(e) REIMBURSEMENT.—Each member shall be reim-
24 bursed by the Department of Justice for any per diem ex-

1 penses of the member in connection with service on the
2 community monitoring body.

3 “(f) ASSISTANCE.—The community monitoring body
4 shall have the ability to designate any person to assist the
5 work of the community monitoring body.

6 “(g) ACCESS.—Notwithstanding any other provision
7 of law, the community monitoring body and its designees
8 shall have the ability to make unannounced visits to Fed-
9 eral agencies and Federal facilities, and have access to
10 every area of every Federal facility and all nonclassified,
11 nonprivileged data from every Federal agency.

12 “(h) IN-PERSON INTERVIEWS.—The community
13 monitoring body and its designees shall have the ability
14 to conduct in-person interviews and correspond and com-
15 municate with incarcerated persons and Federal agency
16 and Federal facility staff freely, privately, and confiden-
17 tially, upon consent of the incarcerated person or staff.

18 “(i) MEETINGS.—Administrators of each Federal
19 agency and Federal facility shall meet privately with the
20 community monitoring body or its designees upon request.

21 “(j) COMMUNICATIONS.—

22 “(1) IN GENERAL.—All persons incarcerated in
23 Federal facilities shall have the right and access to
24 confidentially communicate with the community
25 monitoring body and its designees, including while

1 the community monitoring body or its designees are
2 at a Federal facility and through free phone calls,
3 free mail correspondence, and free email correspond-
4 ence.

5 “(2) CONFIDENTIALITY.—Communications de-
6 scribed in paragraph (1) shall be afforded the same
7 levels of protection, confidentiality, and privilege as
8 attorney-client correspondence.

9 “(3) RETALIATION.—No person shall face any
10 form of retaliation or adverse impact for having con-
11 tact with, or being perceived to have had contact
12 with, the community monitoring body or its des-
13 ignees.

14 “(4) COMPLAINTS.—An incarcerated person
15 shall not be required to raise a complaint with the
16 community monitoring body before seeking other
17 remedies in connection with that complaint.

18 “(k) ELECTRONIC EQUIPMENT.—The community
19 monitoring body and its designees shall have the right to
20 bring and use electronic equipment in any Federal facility,
21 including video cameras, photographic cameras, audio re-
22 cording devices, mobile telephones, computers, and tablets,
23 for the purposes of recording, documentation, administra-
24 tion of surveys, and other related purposes.

25 “(l) ACCESS TO CERTAIN INFORMATION.—

1 “(1) IN GENERAL.—The community monitoring
2 body and its designees shall have the right to re-
3 ceive, access, inspect, and copy all relevant non-clas-
4 sified, non-privileged information, records, and docu-
5 ments in the possession or control of any Federal fa-
6 cility, Federal agency, or employee of any Federal
7 facility or Federal agency.

8 “(2) REQUIRED DELIVERY DATE.—

9 “(A) GENERAL DELIVERY DATE.—The
10 community monitoring body and its designees
11 shall receive any records requested under para-
12 graph (1) not later than 7 days after the date
13 of request to the head of a Federal facility or
14 Federal agency.

15 “(B) EXPEDITED DELIVERY.—In a situa-
16 tion in which the records requested under para-
17 graph (1) by the community monitoring body or
18 its designees pertain to a death of an incarcer-
19 ated person, threats of bodily harm including
20 sexual or physical assaults, or the denial of nec-
21 essary medical treatment, the records shall be
22 provided not later than 48 hours after the date
23 of the request unless members of the commu-
24 nity monitoring body or their designees consent
25 to an extension of the deadline.

1 “(m) RECOMMENDATIONS.—

2 “(1) IN GENERAL.—The community monitoring
3 body may make periodic recommendations to any
4 Federal agency or Federal facility, as well as to the
5 President, Attorney General, Secretary of Homeland
6 Security, Secretary of Health and Human Services,
7 Committee on the Judiciary of the House of Rep-
8 resentatives, Committee on Oversight and Account-
9 ability of the House of Representatives, Committee
10 on the Judiciary of the Senate, Committee on
11 Homeland Security and Governmental Affairs of the
12 Senate, and other Government entities.

13 “(2) REMEDIAL ACTION PLANS.—For any rec-
14 ommendations made by the community monitoring
15 body to each Federal agency or Federal facility, such
16 agency or facility shall—

17 “(A) report to the community monitoring
18 body not later than 90 days after receipt of the
19 recommendations as to whether the agency or
20 facility has designed and implemented a reme-
21 dial action plan to address the recommenda-
22 tions; and

23 “(B) transmit any such remedial action
24 plan to the community monitoring body.

1 “(3) PUBLICATION.—The community moni-
2 toring body may publish its findings and rec-
3 ommendations on its website that the community
4 monitoring body shall establish.

5 “(n) ACCESS FOR CERTAIN PERSONS.—Representa-
6 tives of the news media, public defenders, representatives
7 of the Legal Orientation Program of the Department of
8 Justice, elected Federal, State, and local representatives,
9 and their designees, shall have the ability to—

10 “(1) make unannounced visits to Federal agen-
11 cies and Federal facilities and access every area of
12 every Federal facility, except that—

13 “(A) access to enter the cell of a person in-
14 carcerated in the Federal facility shall only be
15 granted with the consent of the person housed
16 in that cell; and

17 “(B) access to enter a bathroom or shower
18 area shall only be allowed when such area is un-
19 occupied by persons incarcerated in the Federal
20 facility;

21 “(2) receive in a timely manner, pursuant to
22 section 552 of title 5, or any successor thereto, all
23 requested data from every Federal agency that has
24 persons in its care or custody; and

1 of 1968 (34 U.S.C. 10151 et seq.) (commonly known as
2 the ‘Edward Byrne Memorial Justice Assistance Grant
3 Program’) shall annually certify to the Attorney General
4 with comprehensive documentation that the State or local
5 entity has in effect (or shall have in effect, not later than
6 180 days after the date of enactment of this Act) laws,
7 policies, and programs that substantially comply with sec-
8 tion 4015 to fully and meaningfully end solitary confine-
9 ment and ensure all people in the prisons, jails, and deten-
10 tion centers of the State or locality have access to not less
11 than 14 hours of out-of-cell congregate interaction in a
12 shared space, without physical barriers, that is conducive
13 to meaningful group interaction.

14 “(b) PENALTY.—Beginning in the first fiscal year
15 that begins after the date of enactment of this section,
16 in the case of a State or local entity that is not in substan-
17 tial compliance with section 4015, or an amendment made
18 by the End Solitary Confinement Act, the Attorney Gen-
19 eral shall reduce by not less than 10 percent the total
20 amount that such State or unit of local government would
21 otherwise receive under subpart 1 of part E of title I of
22 the Omnibus Crime Control and Safe Streets Act of 1968
23 (34 U.S.C. 10151 et seq.) (commonly known as the ‘Ed-
24 ward Byrne Memorial Justice Assistance Grant Pro-
25 gram’), except that funding for public defenders, commu-

1 nity-based mental health care, community-based drug
 2 treatment, community-based violence interruption, and
 3 other similar community-based non-carceral and non-po-
 4 licing services shall be exempted from any reductions.”.

5 (b) CLERICAL AMENDMENT.—The table of contents
 6 for chapter 301 of title 18, United States Code, as amend-
 7 ed by sections 3 and 4 of this Act, is amended by inserting
 8 after the item relating to section 4016, as added by section
 9 4 of this Act, the following:

“4017. Creating State incentives to end solitary confinement.”.

10 **SEC. 6. DEFINITIONS.**

11 (a) IN GENERAL.—Chapter 301 of title 18, United
 12 States Code, as amended by sections 3, 4, and 5 of this
 13 Act, is further amended by inserting after section 4017,
 14 as added by section 5 of this Act, the following:

15 **“§ 4018. Certain definitions.**

16 “In sections 4015, 4016, and 4017:

17 “(1) ALTERNATIVE UNIT.—The term ‘alter-
 18 native unit’ means any unit that is separate from
 19 the general facility population or is in any way more
 20 restrictive than the general facility population in
 21 terms of access to programming, services, or other
 22 aspects of daily life.

23 “(2) ATTEMPTING.—

24 “(A) IN GENERAL.—The term ‘attempting’
 25 means having the intent to carry out a par-

1 ticular act and completing significant steps in
2 the advancement of the attempt.

3 “(B) WITHDRAWAL OR ABANDONMENT.—
4 Evidence of withdrawal or abandonment of a
5 plan to carry out a particular act shall negate
6 a finding of intent.

7 “(3) COMMUNITY MONITORING BODY.—The
8 term ‘community monitoring body’ means the com-
9 munity monitoring body established under section
10 4016(a).

11 “(4) FEDERAL AGENCY.—The term ‘Federal
12 agency’ means—

13 “(A) the Federal Bureau of Prisons;

14 “(B) U.S. Immigration and Customs En-
15 forcement;

16 “(C) the Department of Homeland Secu-
17 rity;

18 “(D) U.S. Customs and Border Protection;

19 “(E) the Office of Refugee Resettlement;

20 “(F) the United States Marshals Service;

21 “(G) the Department of Health and
22 Human Services;

23 “(H) any other Federal agency that has
24 persons in its care or custody; and

1 “(I) any Federal, State, local, or private
2 entity that has contracted with any of the enti-
3 ties listed in subparagraphs (A) through (H) or
4 with any other Federal agency for holding or
5 providing services to people in their care or cus-
6 tody.

7 “(5) FEDERAL FACILITY.—The term ‘Federal
8 facility’ means—

9 “(A) a Federal Bureau of Prisons facility;

10 “(B) a U.S. Immigration and Customs En-
11 forcement facility;

12 “(C) a Department of Homeland Security
13 facility;

14 “(D) a U.S. Customs and Border Protec-
15 tion facility;

16 “(E) an Office of Refugee Resettlement fa-
17 cility;

18 “(F) a United States Marshals Service fa-
19 cility;

20 “(G) a Department of Health and Human
21 Services facility;

22 “(H) any other facility operated by a Fed-
23 eral agency that has persons in its care or cus-
24 tody; and

1 “(I) any Federal, State, local, or private
2 facility that has contracted with any Federal
3 agency for incarcerating people in their care or
4 custody or providing services to incarcerated
5 people in their care or custody.

6 “(6) HEALTH CARE STAFF.—The term ‘health
7 care staff’ means individuals who are employed, con-
8 tracted, or volunteer to provide medical, mental, and
9 behavioral health care services at a Federal facility.

10 “(7) INCARCERATED.—The term ‘incarcerated’
11 means being held in a Federal facility for any rea-
12 son.

13 “(8) MENTAL HEALTH NEED.—The term ‘men-
14 tal health need’ means having any current mental
15 health diagnosis by any medical or mental health
16 professional, or having had any such mental health
17 diagnosis during the previous 2 years.

18 “(9) MULTIDISCIPLINARY TEAM.—The term
19 ‘multidisciplinary team’—

20 “(A) means a group of staff or other peo-
21 ple working or operating in a Federal facility
22 who have different professional backgrounds
23 and roles in the facility; and

24 “(B) includes program and health care
25 staff.

1 “(10) PLACEMENT HEARING.—The term ‘place-
2 ment hearing’ means an administrative hearing to
3 determine whether a person may be placed in an al-
4 ternative unit in a Federal facility.

5 “(11) PROTECTIVE CUSTODY.—The term ‘pro-
6 tective custody’ means any housing of a person for
7 their own protection.

8 “(12) REPRESENTATIVE OF THE NEWS
9 MEDIA.—The term ‘representative of the news
10 media’ means any individual or entity that—

11 “(A) gathers information of potential inter-
12 est to a segment of the public;

13 “(B) uses its editorial skills to turn the
14 raw materials into a distinct work; and

15 “(C) distributes that work to an audience.

16 “(13) SOLITARY CONFINEMENT.—The term
17 ‘solitary confinement’ means being confined in a cell
18 or other space without access to meaningful group
19 interaction in a shared space.

20 “(14) SPECIAL ADMINISTRATIVE MEASURES.—
21 The term ‘special administrative measures’ means
22 the special administrative measures under section
23 501.3 of title 28, Code of Federal Regulations, or
24 any successor thereto.

1 “(15) SUPERVISORY MEDICAL PROVIDER.—The
2 term ‘supervisory medical provider’ means a prac-
3 ticing doctor, nurse practitioner, or physician assist-
4 ant who has supervisory responsibilities over other
5 medical staff in a Federal facility.”.

6 (b) CLERICAL AMENDMENT.—The table of contents
7 for chapter 301 of title 18, United States Code, as amend-
8 ed by sections 3, 4, and 5 of this Act, is amended by in-
9 serting after the item relating to section 4017, as added
10 by section 5 of this Act, the following:

 “4018. Certain definitions.”.

11 **SEC. 7. REMOVAL OF LIMITATION ON RECOVERY ON CER-**
12 **TAIN SUITS BY INCARCERATED PEOPLE.**

13 Section 7(e) of the Civil Rights of Institutionalized
14 Persons Act (42 U.S.C. 1997e(e)) is amended to read as
15 follows:

16 “(e) LIMITATION ON RECOVERY.—No Federal civil
17 action may be brought by a prisoner confined in a jail,
18 prison, or other correctional facility, for mental or emo-
19 tional injury suffered while in custody without a prior
20 showing of physical injury, the commission of a sexual act
21 (as defined in section 2246 of title 18, United States
22 Code), or placement in solitary confinement or an alter-
23 native unit (as defined in section 4018 of title 18, United
24 States Code).”.

1 **SEC. 8. REVISIONS TO STANDARD OPERATING PROCE-**
2 **DURES AND STANDARDS.**

3 Each Federal agency, as defined in section 4018 of
4 title 18, United States Code, as added by this Act, shall—

5 (1) incorporate the requirements of this Act
6 and the amendments made by this Act into the rel-
7 evant standards and procedures governing confine-
8 ment; and

9 (2) monitor compliance with the requirements
10 of this Act and the amendments made by this Act.

11 **SEC. 9. APPROPRIATIONS AND PROHIBITION ON USE OF**
12 **FUNDS.**

13 No sums appropriated to carry out the provisions of
14 this Act may be used for any—

15 (1) buildings and facilities appropriations for
16 the Bureau of Prisons;

17 (2) procurement, construction, and improve-
18 ments appropriations for the Department of Home-
19 land Security, including Immigration and Customs
20 Enforcement and Customs and Border Protection;

21 (3) constructions appropriations for the United
22 States Marshals Service;

23 (4) buildings and facilities appropriations for
24 the Department of Health and Human Services, in-
25 cluding the Administration for Children and Fami-
26 lies and the Office of Refugee Resettlement;

1 (5) Federal agency to—

2 (A) construct facilities where persons will
3 be incarcerated; or

4 (B) to construct or renovate buildings or
5 spaces within facilities where persons are or will
6 be incarcerated; or

7 (6) Federal agency to construct, install, or in-
8 troduce any weapons, any objects or devices or
9 mechanisms restricting the movement of a person or
10 persons in any way, or any other objects or mecha-
11 nisms that limit movement or create more restrictive
12 environments.

13 **SEC. 10. SEVERABILITY.**

14 If any provision of this Act, or an amendment made
15 by this Act, or the application thereof to any person or
16 circumstance is held invalid, the remainder of this Act,
17 and other amendments made by this Act, or the applica-
18 tion of that provision to persons or circumstances other
19 than those as to which it is held invalid, is not affected
20 thereby.

21 **SEC. 11. EFFECTIVE DATE.**

22 This Act and the amendments made by this Act shall
23 take effect not later than 60 days after the date of enact-
24 ment of this Act.

○