A BILL FOR AN ACT

CONCERNING APPROPRIATE USE OF RESTRICTIVE CONFINEMENT.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at http://www.leg.state.co.us/billsummaries.)

The bill sets forth the requirements to be met before a state inmate, including an offender with a serious mental illness or other significant mental impairment, may be placed in administrative segregation and the requirements for release, including mental health evaluations.

Classification committees are created in each correctional facility and tasked with overseeing classification hearings within the facility. An inmate housed in administrative segregation is ensured time to reintegrate
into the general correctional population prior to his or her release into the community. Cost savings from the bill are directed to alternatives to administrative segregation.

The warden of each correctional facility in the state is given authority to take such measures as are necessary to restrict the confinement of any person who is a confirmed leader or active member of any security threat group.

An inmate housed in administrative segregation is provided with the opportunity to accrue earned time to be deducted from his or her sentence.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) According to the 2008 department of corrections report, "Administrative Segregation for Mentally Ill Inmates", over the past twelve years, placement into administrative segregation has nearly tripled for state inmates with developmental disabilities or mental health issues. Currently, thirty-seven percent of state inmates in administrative segregation have developmental disabilities or mental health needs. In contrast, in 1999, fifteen percent of state inmates in administrative segregation had developmental disabilities or mental health needs. This drastic growth is largely attributed to significant budget cuts targeting prison services, leaving administrative segregation as the default placement for many state inmates with developmental disabilities or mental health needs.

(b) According to the department of corrections report, "Analysis of Colorado's Administrative Segregation", nearly forty-one percent of all state inmates released from administrative segregation are released directly into the community either on discretionary parole, mandatory parole, or as a result of discharging their sentence, in which they are
released without any parole supervision. These state inmates are not given the ability or time to readjust to human interaction through a transition to the general prison population and thus have very limited success reintegrating into their communities outside of the prison.

(c) According to the department of corrections report, "Analysis of Colorado's Administrative Segregation", two-thirds of state inmates who were released directly from administrative segregation to the streets returned to prison within three years, while state inmates who made a transition from administrative segregation into the general prison populations before reentry into the community experienced a six-percent reduction in their comparative recidivism rate for the same time period.

SECTION 2. Part 1 of article 1 of title 17, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

17-1-113.9. Use of administrative segregation for state inmates, including offenders with serious mental illness or other significant mental impairment - classification committee - definitions.

(1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "ADMINISTRATIVE SEGREGATION" MEANS A CUSTODY LEVEL ASSIGNED TO A STATE INMATE WHEREIN THE STATE INMATE IS ISOLATED FROM THE GENERAL CORRECTIONAL POPULATION AND HOUSED IN AN ENVIRONMENT CHARACTERIZED BY SINGLE-CELL CONFINEMENT AND SEVERELY RESTRICTED OUT-OF-CELL ACTIVITIES.

(b) "COMMITTEE" MEANS A CLASSIFICATION COMMITTEE ESTABLISHED PURSUANT TO SUBSECTION (8) OF THIS SECTION.

(c) "OFFENDER WITH SERIOUS MENTAL ILLNESS OR OTHER
SIGNIFICANT MENTAL IMPAIRMENT" MEANS A STATE INMATE UNDER THE
JURISDICTION OF THE DEPARTMENT WHO:

(I) HAS BEEN DIAGNOSED USING VALIDATED ASSESSMENT
INSTRUMENTS OR DIAGNOSTIC TESTS AS A PERSON AS HAVING A
DEVELOPMENTAL DISABILITY OR ORGANIC BRAIN DISORDER AND WHO HAS
BEEN ASSESSED TO BE IN NEED OF SERVICES RELATED TO HIS OR HER
DEVELOPMENTAL DISABILITY OR DISORDER; OR

(II) HAS BEEN DIAGNOSED USING VALIDATED MENTAL HEALTH
ASSESSMENT INSTRUMENTS OR DIAGNOSTIC TESTS OR THROUGH AN
INTERVIEW WITH A LICENSED MENTAL HEALTH CLINICIAN AS BEING IN
MODERATE TO SEVERE NEED OF MENTAL HEALTH SERVICES AS A RESULT
OF A SERIOUS MENTAL ILLNESS, INCLUDING BUT NOT LIMITED TO BIPOLAR
MOOD DISORDERS, MAJOR DEPRESSIVE DISORDER, DEPRESSIVE DISORDER
NOT OTHERWISE SPECIFIED, PARANOID OR DELUSIONAL DISORDERS,
SCHIZOPHRENIC DISORDERS, SCHIZOPHRENIFORM DISORDER, REACTIVE
PSYCHOSIS, AND DISSOCIATIVE IDENTITY DISORDERS. A STATE INMATE
WHO IS FOUND THROUGH AN INTERVIEW WITH A LICENSED MENTAL
HEALTH CLINICIAN TO BE ACTIVELY SUICIDAL OR HAS ENGAGED IN A
RECENT SERIOUS SUICIDE ATTEMPT IS CONSIDERED AN OFFENDER WITH
SERIOUS MENTAL ILLNESS OR OTHER SIGNIFICANT MENTAL IMPAIRMENT
FOR THE PURPOSES OF THIS SECTION.

(2) (a) ADMINISTRATIVE SEGREGATION IS THE MOST RESTRICTIVE
CUSTODY LEVEL IMPOSED UPON A STATE INMATE, AND THE IMPOSITION OF
ADMINISTRATIVE SEGREGATION SHALL REQUIRE A SPECIFIC
CLASSIFICATION HEARING AND A WRITTEN DECISION BY THE COMMITTEE.

(b) PRIOR TO BEING PLACED OR HOUSED IN ADMINISTRATIVE
SEGREGATION, AN OFFENDER WITH SERIOUS MENTAL ILLNESS OR OTHER
SIGNIFICANT MENTAL IMPAIRMENT SHALL BE EVALUATED BY A LICENSED MENTAL HEALTH CLINICIAN AND BE REVIEWED BY THE CLINICIAN’S SUPERVISOR. AN OFFENDER WITH SERIOUS MENTAL ILLNESS OR OTHER SIGNIFICANT MENTAL IMPAIRMENT SHALL BE PLACED IN ADMINISTRATIVE SEGREGATION ONLY IF THE CRITERIA OUTLINED IN THIS SUBSECTION (2) AND SUBSECTION (3) OF THIS SECTION ARE MET.

(c) Mental health evaluations shall be conducted in person in a private and safe environment and shall not be conducted at cell-front.

(d) Confinement of a state inmate in administrative segregation shall be permissible only if the state inmate poses an immediate and significant risk of harm to others or the security of the institution and all other less-restrictive options have been exhausted.

(3) (a) Prior to placement of an offender with serious mental illness or other significant mental impairment in administrative segregation, a licensed mental health clinician shall independently evaluate said offender and review his or her mental health records to determine whether:

(I) Placement in administrative segregation would exacerbate his or her mental illness or impairment;

(II) Placement in administrative segregation would negatively affect his or her emotional or mental stability or functionality; and

(III) Therapeutic options are being fully utilized to treat the offender with serious mental illness or other significant mental impairment or that treatments have been declined by the
OFFENDER.

(b) (I) For each offender with serious mental illness or other significant mental impairment evaluated pursuant to paragraph (a) of this subsection (3), the licensed mental health clinician shall produce a written report detailing the factual findings relating to paragraph (a) of this subsection (3).

(II) If the licensed mental health clinician determines that placement in administrative segregation would exacerbate the offender's mental illness or impairment, or would negatively affect his or her emotional or mental stability or functionality, or that therapeutic options have not been fully utilized to treat the offender with serious mental illness or other significant mental impairment, he or she shall not be placed in administrative segregation.

(III) If the licensed mental health clinician determines that placement in administrative segregation would not exacerbate the offender's mental illness or impairment, and would not negatively affect his or her emotional or mental stability or functionality and recommends placement in administrative segregation, the licensed mental health clinician's supervisor shall review the report and shall have the authority to overrule the recommendation for placement in administrative segregation.

(c) (I) The department shall not place a state inmate in administrative segregation for a period longer than thirty continuous days, and all state inmates placed in administrative segregation shall receive a mental health evaluation within
THIRTY DAYS AFTER INITIAL PLACEMENT IN ADMINISTRATIVE SEGREGATION.

(II) THE DEPARTMENT MAY RETAIN A STATE INMATE IN ADMINISTRATIVE SEGREGATION FOR ONE OR MORE SUCCESSIVE THIRTY-DAY PERIODS, BUT THE DEPARTMENT MAY ONLY RETAIN A STATE INMATE IN ADMINISTRATIVE SEGREGATION FOR SUCCESSIVE THIRTY-DAY PERIODS IF:

(A) FOR A STATE INMATE WHO IS AN OFFENDER WITH A SERIOUS MENTAL ILLNESS OR OTHER SIGNIFICANT MENTAL IMPAIRMENT, A LICENSED MENTAL HEALTH CLINICIAN AND THE DEPARTMENT’S CHIEF OF MENTAL HEALTH CONDUCT ANOTHER EVALUATION AND MAKE THE DETERMINATIONS REQUIRED IN PARAGRAPH (a) OF THIS SUBSECTION (3) AT THE END OF EACH THIRTY-DAY PERIOD, UNLESS SIGNS OF DECOMPENSATION ARISE SOONER; OR

(B) FOR ALL OTHER STATE INMATES, A LICENSED MENTAL HEALTH CLINICIAN CONDUCTS ANOTHER EVALUATION REQUIRED PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH (c) AT THE END OF EACH THIRTY-DAY PERIOD.

(d) THE MENTAL HEALTH EVALUATION DESCRIBED IN SUBPARAGRAPH (I) OF PARAGRAPH (c) OF THIS SUBSECTION (3) SHALL BE CONFIDENTIAL AND CONDUCTED IN PERSON BY A LICENSED MENTAL HEALTH CLINICIAN AND SHALL INCLUDE:

(I) AN ASSESSMENT OF THE STATE INMATE'S CURRENT MENTAL STATUS AND CONDITION;

(II) AN ASSESSMENT OF THE STATE INMATE'S CURRENT RISK OF SUICIDE OR OTHER SELF-HARMING BEHAVIOR; AND

(III) A REVIEW OF ALL AVAILABLE MENTAL HEALTH RECORDS
PERTAINING TO THE STATE INMATE.

(e) A STATE INMATE WHO IS DETERMINED, THROUGH A LICENSED
MENTAL HEALTH CLINICIAN’S EVALUATION CONDUCTED PURSUANT TO
PARAGRAPH (c) OF THIS SUBSECTION (3), TO HAVE EXPERIENCED MENTAL
HEALTH DECOMPENSATION DURING PLACEMENT IN ADMINISTRATIVE
SEGREGATION SHALL BE REMOVED FROM ADMINISTRATIVE SEGREGATION
NO LATER THAN FORTY-EIGHT HOURS AFTER SUCH DETERMINATION.

(f) THE DEPARTMENT SHALL ENSURE THAT CUSTODY AND CASE
MANAGEMENT STAFF EMPLOYED IN ADMINISTRATIVE SEGREGATION
RECEIVE TRAINING ON RECOGNIZING SIGNS OF MENTAL ILLNESS OR
DECOMPENSATION AND ON THE PROPER MANAGEMENT OF OFFENDERS
WITH SERIOUS MENTAL ILLNESS OR OTHER SIGNIFICANT MENTAL
IMPAIRMENT.

(g) A STATE INMATE PLACED OR HOUSED IN ADMINISTRATIVE
SEGREGATION SHALL NOT BE DEPRIVED OF LIGHT, VENTILATION, REGULAR
MEALS, MEDICAL AND MENTAL HEALTH CARE, PERSONAL HYGIENE,
SHOWERS, MAIL, RELIGIOUS OBSERVANCE, READING MATERIALS, REGULAR
EXERCISE, OR VISITATION.

(4) (a) THE DEPARTMENT SHALL NOT PLACE OR HOUSE IN
ADMINISTRATIVE SEGREGATION A STATE INMATE WHO IS WITHIN SIX
MONTHS OF HIS OR HER MANDATORY RELEASE DATE, PAROLE RELEASE
DATE, OR STATUTORY RELEASE DATE UNLESS THE EXECUTIVE DIRECTOR,
OR HIS OR HER DESIGNEE, CERTIFIES IN WRITING, BASED ON A
PREPONDERANCE OF THE EVIDENCE, THAT THE PRESENCE OF THE STATE
INMATE IN THE GENERAL CORRECTIONAL POPULATION WOULD POSE A
GRAVE RISK OF HARM TO OTHERS OR THE SECURITY OF THE INSTITUTION
AND ALL OTHER LESS-RESTRICTIVE OPTIONS HAVE BEEN EXHAUSTED. THE
DEPARTMENT SHALL REPORT ANNUALLY TO THE JUDICIARY COMMITTEES OF THE HOUSE OF REPRESENTATIVES AND THE SENATE, OR ANY SUCCESSOR COMMITTEES, ON THE CERTIFICATIONS MADE PURSUANT TO THIS SUBSECTION (4).

(b) If the Executive Director, or his or her designee, determines, pursuant to the procedure set forth in paragraph (a) of this subsection (4), that a state inmate, within six months of his or her mandatory release date, parole release date, or statutory release date shall be placed or housed in administrative segregation, the Executive Director, or his or her designee, shall provide, within seventy-two hours after making the determination, the reasons for his or her determination in writing to the state inmate.

(5) (a) Except as provided for in paragraph (b) of this subsection (5), the Department shall not place or house a state inmate in administrative segregation solely because he or she needs protective custody. A state inmate needing protection shall be housed and accorded privileges consistent with his or her custody level.

(b) A state inmate may request placement in administrative segregation. The request may be granted only by the Executive Director, or his or her designee, under exceptional circumstances, and the Executive Director, or his or her designee, shall explain in writing the reasons for granting or denying the request. A state inmate who is housed in administrative segregation based solely on his or her request may request, and shall be granted, release from administrative
SEGREGATION AT ANY TIME. THE DEPARTMENT SHALL REPORT ANNUALLY TO THE JUDICIARY COMMITTEES OF THE HOUSE OF REPRESENTATIVES AND THE SENATE, OR ANY SUCCESSOR COMMITTEES, ON THE REQUESTS MADE PURSUANT TO THIS PARAGRAPH (b).

(6) THE PROVISIONS OF THIS SECTION APPLY TO A STATE INMATE PLACED OR HOUSED IN ADMINISTRATIVE SEGREGATION ON OR AFTER THE EFFECTIVE DATE OF THIS SECTION OR A STATE INMATE WHO IS HOUSED IN ADMINISTRATIVE SEGREGATION AT THE TIME THIS SECTION TAKES EFFECT.

(7) ANY COST SAVINGS ACHIEVED AS A RESULT OF THE IMPLEMENTATION OF THIS SECTION AND SECTION 17-1-109 (2) SHALL BE REDIRECTED TO THE DEPARTMENT TO SUPPORT BEHAVIOR-MODIFICATION PROGRAMS, INCENTIVE PROGRAMS, MENTAL HEALTH SERVICES OR PROGRAMS, OR SIMILAR EFFORTS DESIGNED AS Viable ALTERNATIVES TO ADMINISTRATIVE SEGREGATION.


(9) (a) ON OR BEFORE NOVEMBER 1, 2011, THE EXECUTIVE
DIRECTOR, OR HIS OR HER DESIGNEE, SHALL REVIEW THE STATUS OF EACH
STATE INMATE HOUSED IN ADMINISTRATIVE SEGREGATION TO DETERMINE
WHETHER A STATE INMATE CURRENTLY HOUSED IN ADMINISTRATIVE
SEGREGATION SHOULD REMAIN IN THAT UNIT UNDER THE TERMS OF THIS
SECTION AND TO ENSURE THAT A STATE INMATE HOUSED IN
ADMINISTRATIVE SEGREGATION FOR MORE THAN THIRTY DAYS RECEIVES
A MENTAL HEALTH EVALUATION AS PROVIDED FOR IN SUBSECTION (3) OF
THIS SECTION.

(b) ON OR BEFORE JANUARY 1, 2012, THE EXECUTIVE DIRECTOR
SHALL PROVIDE A WRITTEN REPORT OF THE RESULTS OF THE REVIEW
CONDUCTED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (9) TO THE
JUDICIARY COMMITTEES OF THE SENATE AND HOUSE OF REPRESENTATIVES,
OR ANY SUCCESSOR COMMITTEES.

SECTION 3. 17-1-109 (2), Colorado Revised Statutes, is
amended to read:

17-1-109. Duties and functions of the warden. (2) (a) The
warden of each correctional facility should, wherever possible, take such
measures as are reasonably necessary to restrict the confinement of any
person with known past or current affiliations or associations with any
security threat group WHO FUNCTIONS AS AN ACTIVE MEMBER INVOLVED
IN DISRUPTIVE SECURITY THREAT GROUP BEHAVIOR, as defined in
paragraph (b) of this subsection (2), so as to prevent contact with other
inmates at such facility. The warden should, wherever possible, also take
such measures as are reasonably necessary to prevent recruitment of new
security threat group members from among the general inmate population.
ASSOCIATION WITH AN INMATE GANG OR SECURITY THREAT GROUP ALONE
SHALL NOT BE SUFFICIENT TO MEET THE REQUIREMENTS OF THIS
(b) For the purposes of this subsection (2), unless the context otherwise requires, "security threat group" means a group of three or more individuals with a common interest, bond, or activity characterized by criminal or delinquent conduct engaged in either collectively or individually acting in concert in an activity that is characterized by criminal conduct or conduct that violates the department's code of penal discipline for the purpose of disrupting prison operations, recruiting new members, damaging property, or inflicting or threatening to inflict harm to employees, contract workers, volunteers, or other state inmates.

SECTION 4. 17-22.5-302, Colorado Revised Statutes, is amended by the addition of a new subsection to read:

17-22.5-302. Earned time. (1.3) Notwithstanding the provisions of subsection (1) of this section to the contrary, after the first thirty days in administrative segregation, a state inmate in administrative segregation shall receive earned time if he or she meets the criteria required by this section and section 17-22.5-405.

SECTION 5. 17-22.5-405, Colorado Revised Statutes, is amended by the addition of a new subsection to read:

17-22.5-405. Earned time - earned release time. (8) Notwithstanding any provision of this section to the contrary, after the first thirty days in administrative segregation, a state inmate in administrative segregation shall receive earned time if he or she meets the criteria required by this section and section 17-22.5-302.
SECTION 6. Effective date - applicability. This act shall take effect July 1, 2011, and shall apply to an offender placed or housed in administrative segregation on or after July 1, 2011, or an offender who is housed in administrative segregation at the time this act takes effect.

SECTION 7. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.