S. 1965

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

IN THE SENATE OF THE UNITED STATES

AUGUST 5, 2015

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

A BILL

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

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Maintaining dignity and Eliminating unnecessary Restrictive Confinement of Youths Act of 2015” or the “MERCY Act”.

SEC. 2. JUVENILE SOLITARY CONFINEMENT.

(a) IN GENERAL.—Chapter 403 of title 18, United States Code, is amended by adding at the end the following:
§ 5043. Juvenile solitary confinement

“(a) DEFINITIONS.—In this section—

“(1) the term ‘covered juvenile’ means—

“(A) a juvenile who—

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

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

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

“(2) the term ‘juvenile facility’ means any facility where covered juveniles are—

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

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

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

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

“(1) IN GENERAL.—The use of room confinement at a juvenile facility for discipline, punishment, retaliation, or any reason other than as a temporary
response to a covered juvenile’s behavior that poses
a serious and immediate risk of physical harm to
any individual, including the covered juvenile, is pro-
hibited.

“(2) JUVENILES POSING RISK OF HARM.—

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

“(i) IN GENERAL.—Before a staff
member of a juvenile facility places a cov-
ered juvenile in room confinement, the
staff member shall attempt to use less re-
strictive techniques, including—

“(I) talking with the covered ju-
venile in an attempt to de-escalate the
situation; and

“(II) permitting a qualified men-
tal health professional to talk to the
covered juvenile.

“(ii) EXPLANATION.—If, after at-
temparing to use less restrictive techniques
as required under clause (i), a staff mem-
ber of a juvenile facility decides to place a
covered juvenile in room confinement, the
staff member shall first—
“(I) explain to the covered juvenile the reasons for the room confinement; and

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

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

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

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

“(i) immediately when the covered juvenile has sufficiently gained control so as to no longer engage in behavior that threatens serious and immediate risk of
physical harm to himself or herself, or to
others; or

“(ii) if a covered juvenile does not suf-
ficiently gain control as described in clause
(i), not later than—

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

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

“(C) Risk of harm after maximum pe-
riod of confinement.—If, after the applica-
ble maximum period of confinement under sub-
clause (I) or (II) of subparagraph (B)(ii) has
expired, a covered juvenile continues to pose a
serious and immediate risk of physical harm de-
scribed in that subclause—

“(i) the covered juvenile shall be
transferred to another juvenile facility or
internal location where services can be pro-
vided to the covered juvenile without relying on room confinement; or

“(ii) if a qualified mental health professional believes the level of crisis service needed is not currently available, a staff member of the juvenile facility shall initiate a referral to a location that can meet the needs of the covered juvenile.

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

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 403 of title 18, United States Code, is amended by adding at the end the following:

“5043. Juvenile solitary confinement.”.