

115TH CONGRESS
1ST SESSION

S. 329

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

IN THE SENATE OF THE UNITED STATES

FEBRUARY 7 (legislative day, FEBRUARY 6), 2017

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

A BILL

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

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 “Maintaining dignity
5 and Eliminating unnecessary Restrictive Confinement of
6 Youths Act of 2017” or the “MERCY Act”.

7 **SEC. 2. JUVENILE SOLITARY CONFINEMENT.**

8 (a) IN GENERAL.—Chapter 403 of title 18, United
9 States Code, is amended by adding at the end the fol-
10 lowing:

1 **“§ 5043. Juvenile solitary confinement**

2 “(a) DEFINITIONS.—In this section—

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

4 “(A) a juvenile who—

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

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

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

13 “(2) the term ‘juvenile facility’ means any facil-
14 ity where covered juveniles are—

15 “(A) committed pursuant to an adjudica-
16 tion of delinquency under this chapter; or

17 “(B) detained prior to disposition or con-
18 viction; and

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

22 “(b) PROHIBITION ON ROOM CONFINEMENT IN JU-
23 VENILE FACILITIES.—

24 “(1) IN GENERAL.—The use of room confine-
25 ment at a juvenile facility for discipline, punishment,
26 retaliation, or any reason other than as a temporary

1 response to a covered juvenile’s behavior that poses
2 a serious and immediate risk of physical harm to
3 any individual, including the covered juvenile, is pro-
4 hibited.

5 “(2) JUVENILES POSING RISK OF HARM.—

6 “(A) REQUIREMENT TO USE LEAST RE-
7 STRICTIVE TECHNIQUES.—

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

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

16 “(II) permitting a qualified men-
17 tal health professional, or a staff
18 member who has received training in
19 de-escalation techniques and trauma-
20 informed care, to talk to the covered
21 juvenile.

22 “(ii) EXPLANATION.—If, after at-
23 tempting to use less restrictive techniques
24 as required under clause (i), a staff mem-
25 ber of a juvenile facility decides to place a

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

3 “(I) explain to the covered juve-
4 nile the reasons for the room confine-
5 ment; and

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

9 “(aa) immediately when the
10 covered juvenile regains self-con-
11 trol, as described in subpara-
12 graph (B)(i); or

13 “(bb) not later than after
14 the expiration of the time period
15 described in subclause (I) or (II)
16 of subparagraph (B)(ii), as appli-
17 cable.

18 “(B) MAXIMUM PERIOD OF CONFINE-
19 MENT.—If a covered juvenile is placed in room
20 confinement because the covered juvenile poses
21 a serious and immediate risk of physical harm
22 to himself or herself, or to others, the covered
23 juvenile shall be released—

24 “(i) immediately when the covered ju-
25 venile has sufficiently gained control so as

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

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

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

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

18 “(C) RISK OF HARM AFTER MAXIMUM PE-
 19 RIOD OF CONFINEMENT.—If, after the applica-
 20 ble maximum period of confinement under sub-
 21 clause (I) or (II) of subparagraph (B)(ii) has
 22 expired, a covered juvenile continues to pose a
 23 serious and immediate risk of physical harm de-
 24 scribed in that subclause—

1 “(i) the covered juvenile shall be
 2 transferred immediately to another juvenile
 3 facility or internal location where services
 4 can be provided to the covered juvenile
 5 without relying on room confinement; or

6 “(ii) if a qualified mental health pro-
 7 fessional believes the level of crisis service
 8 needed is not currently available, a staff
 9 member of the juvenile facility shall imme-
 10 diately transport the juvenile to—

11 “(I) an emergency medical facil-
 12 ity; or

13 “(II) an equivalent location that
 14 can meet the needs of the covered ju-
 15 venile.

16 “(D) ACTION BEFORE EXPIRATION OF
 17 TIME LIMIT.—Nothing in subparagraph (C)
 18 shall be construed to prohibit an action de-
 19 scribed in clause (i) or (ii) of that subparagraph
 20 from being taken before the applicable max-
 21 imum period of confinement under subclause (I)
 22 or (II) of subparagraph (B)(ii) has expired.

23 “(E) CONDITIONS.—A room used for room
 24 confinement for a juvenile shall—

1 “(i) have not less than 80 square feet
2 of floor space;

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

6 “(iii) be suicide-resistant and protru-
7 sion-free; and

8 “(iv) have access to clean potable
9 water, toilet facilities, and hygiene sup-
10 plies.

11 “(F) NOTICE.—

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

18 “(ii) TRANSFER.—Not later than 24
19 hours after a covered juvenile is trans-
20 ferred from a juvenile facility to another
21 location, the juvenile facility shall provide
22 notice to—

23 “(I) the attorney of record for
24 the juvenile; and

1 “(II) an authorized parent or
2 guardian of the juvenile.

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

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

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

14 “(2) describes the number of instances in which
15 physical force, restraints, or room confinement are
16 used at juvenile facilities, disaggregated by race, eth-
17 nicity, and gender; and

18 “(3) contains a detailed description of steps
19 taken, in each instance in which room confinement
20 is used at a juvenile facility, to address and remedy
21 the underlying issue that led to behavioral interven-
22 tion resulting in the use of room confinement, in-
23 cluding any positive or negative outcomes.”.

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

1 States Code, is amended by adding at the end the fol-
2 lowing:

“5043. Juvenile solitary confinement.”

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