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 Confinement Act”.
5 SEC. 2. FINDINGS.
6 Congress finds that—
(1) the use of solitary confinement as a carceral practice causes devastating harm and constitutes a form of torture;

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

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

(4) solitary confinement and other forms of restrictive housing and practices are disproportionately inflicted on Black, Latinx, Native, and other people of color, as well as transgender and gender nonconforming people, people with mental health needs, and young people;

(5) survivors of solitary confinement often carry significant trauma and other physical and psychological harm with them for the rest of their lives;

(6) solitary confinement has directly caused the deaths of far too many people and has increased violence and harm in prisons, detention facilities, and communities;
(7) solitary confinement derives from, and helps perpetuate, a horrific and brutal incarceration system that is rooted in racism and focuses on extreme punishment and abuse, rather than on providing opportunities for growth, healing, redemption, and transformation;

(8) the United States is an outlier among advanced democracies in the use of solitary confinement;

(9) evidence shows that out-of-cell, prosocial engagement and programming increase safety, well-being, and reentry outcomes;

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

(11) solitary confinement is costly to taxpayers, does not make communities safer, jeopardizes the safety of incarcerated people and correctional staff, constitutes inhumane and degrading treatment, and has no place in a civilized society.
SEC. 3. ENDING SOLITARY CONFINEMENT AND ESTAB-
LISHING MINIMUM STANDARDS.

(a) In General.—Chapter 301 of title 18, United
States Code, is amended by adding at the end the fol-
lowing:

“§ 4015. Ending solitary confinement and establishing
minimum standards

“(a) Prohibition on the Use of Solitary Con-
finement and Establishment of Minimum Stan-
dards.—

“(1) In general.—Except in the cir-
cumstances described in paragraph (2)(B), a person
incarcerated in a Federal facility may not be placed
in solitary confinement.

“(2) Minimum standards for out-of-cell
time and meaningful human engagement.—

“(A) Congregate interaction re-
quired.—Except as provided in subparagraphs
(B)(iii), (B)(iv), and (B)(v), all persons incar-
cerated in a Federal facility, regardless of hous-
ing unit or detention status, shall have access
to not less than 14 hours per day of out-of-cell
congregate interaction in a shared space, with-
out physical barriers, that is conducive to mean-
ingful group interaction, including access to—
“(i) not less than 7 hours per day of structured out-of-cell, congregate programming led by a staff member, incarcerated person, or community member, including access to educational, vocational, volunteer, mental health, violence prevention, alcohol and substance use treatment, financial, religious, and reentry programming;

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

“(iii) other unstructured out-of-cell congregate activities, including time in a day room or equivalent space, meals, library and law library, legal visits, social and legal telephone calls, contact social visitation without physical barriers, and personal property and commissary.

“(B) PROHIBITION ON SOLITARY CONFINEMENT.—A person incarcerated in a Federal facility may not be placed in solitary confinement unless such placement is necessary—

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

“(ii) during the day for count or required facility business that can only be
carried out while a person incarcerated in a Federal facility is placed in a cell, not to exceed 2 hours during any 24-hour period;

“(iii) for purposes of medical quarantine or medical isolation, only if done in a medical unit overseen by health care staff—

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

“(II) with comparable access granted to persons incarcerated in the general population to phone calls, emails, and programming at a physical distance determined appropriate by health care staff;

“(iv) subject to subparagraphs (C) and (D), in an emergency situation as a last resort, only if necessary to de-escalate immediate circumstances that pose a specific and significant risk of imminent serious physical injury to the person, staff, or other incarcerated persons, and for as short a time as necessary to de-escalate such circumstances, not to exceed—
“(I) 4 hours total immediately following such emergency situation;

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

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

“(v) as part of a Federal agency-wide, Federal facility-wide, or partial Federal facility-wide lockdown, and—

“(I) only if a head of a Federal facility or Federal agency has determined the lockdown is necessary to de-escalate an emergency that involves several incarcerated persons and poses a specific and significant risk of imminent serious physical injury to the staff or incarcerated persons;

“(II) only when there are no less restrictive means to address an emergency, as a last resort after exhausting less restrictive measures;

“(III) if the lockdown is confined to as narrow an area as possible and to as limited number of people as possible; and
“(IV) if the lockdown is reviewed every hour by the head of the Federal facility or Federal agency, with notification provided to the Federal agency regional or field office, or equivalent office responsible for oversight of the Federal facility, beginning at the time the lockdown has lasted 2 hours, and is lifted as quickly as possible, provided that such lockdown shall not exceed—

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

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

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

“(C) DE-ESCALATION.—

“(i) IN GENERAL.—With respect to any placement pursuant to subparagraph (B)(iv), Federal facility staff shall meet with the incarcerated person not less frequently than once per hour to attempt de-escalation, work toward the release of the
person from such confinement, and determine whether it is necessary to continue to hold the person in such confinement, and with respect to any placement pursuant to subparagraph (B)(iv) or (B)(v), health care staff must conduct a thorough medical, mental health, social, and behavioral assessment upon admission to such placement, conduct meaningful check-ins every 15 minutes to engage with the person in custody, evaluate and treat any urgent health needs, and attempt any de-escalation.

“(ii) Removal by health care staff.—If health care staff determines an incarcerated person should be removed from solitary confinement for assessment or treatment purposes, or because of a negative impact of such confinement, the person shall be removed to an appropriate setting as determined by health care staff.

“(D) Prohibition on involuntary confinement.—No person may be involuntarily confined in a cell under subparagraph (B)(iv) who—
“(i) is 25 years of age or younger;
“(ii) is 55 years of age or older;
“(iii) has a disability, as defined in section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102);
“(iv) has any diagnosed mental health need;
“(v) is pregnant, in the first 8 weeks of the postpartum recovery period, or caring for a child in a facility program; or
“(vi) has identified as, or is known or perceived by any facility staff to be, lesbian, gay, bisexual, transgender, intersex, or gender nonconforming.

“(E) REQUIREMENTS FOR SEPARATION.—If a Federal facility determines that a person must be separated from the general facility population, including any placement in protective custody, for any reasons other than, or in a manner other than as provided under subparagraph (B)(iii), (B)(iv), or (B)(v), such separation in an alternative unit must—
“(i) comply with—
“(I) subparagraphs (A) and (F); and
“(II) paragraphs (3), (4), and (5); and

“(ii) provide access to out-of-cell, congregate, trauma-informed, therapeutic programming aimed at promoting personal development, addressing underlying causes of problematic behavior resulting in the alternative unit placement, and helping prepare for discharge from the unit to the general population and to the community.

“(F) PROHIBITION ON LIMITATION OF SERVICES.—In all Federal facilities, the following may not be imposed as a form of punishment, discipline, or for any other reason:

“(i) Limitation on services, programming, treatment, contact visitation, phone calls, email, mail, or basic needs such as clothing, food, or bedding.

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

“(iii) Confiscation of approved personal property.

“(3) DUE PROCESS REQUIREMENTS.—

“(A) HEARING REGULATIONS.—
“(i) IN GENERAL.—The reasons and procedures for placement in protective custody shall be subject to the regulations, rules, standards, and procedures (or any successors thereof) applicable to each Federal agency.

“(ii) REQUIREMENTS.—All hearings under regulations described in clause (i) shall comply with paragraph (4), and the conditions for all people in protective custody shall comply with—

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

“(II) paragraph (5).

“(B) REVIEW OF PLACEMENT.—

“(i) IN GENERAL.—The placement of an incarcerated person in an alternative unit shall be meaningfully reviewed not less than the first 15 days after placement in solitary confinement, and not less frequently than every 15 days thereafter, by a multidisciplinary team, including program and health care staff, to determine whether the release of the incarcerared person to the general facility population
continues to present a specific and significant risk of imminent serious physical injury to the person, staff, or other incarcerated persons.

“(ii) NOTICE OF REASONS FOR TERMINATION.—If an incarcerated person is not discharged from an alternative unit at a review described under clause (i), the incarcerated person shall promptly receive in writing the reasons for the determination and the program, treatment, service, or corrective action required before discharge.

“(iii) ACCESS TO SERVICES; DISCHARGE.—Each incarcerated person shall be given access to the programs, treatment, and services specified under subparagraph (A), and shall be permitted to be discharged from an alternative unit if the person so chooses and does not engage in behavior that presents a specific and significant risk of imminent serious physical injury to the person, staff, or other incarcerated persons during the subsequent 15 days.
“(iv) Duration.—Other than for purposes of protective custody, or upon written request by the person, no person may be held in an alternative unit for more than 60 days during any 6-month period.

“(C) No Placement Based on Previous Incident.—No person may be placed in an alternative unit for an act or incident for which the person was previously placed in such unit.

“(4) Placement Hearings.—

“(A) Placement in Alternative Unit.—Other than separation of persons in protective custody or for purposes of confinement under paragraphs (2)(B)(iii), (2)(B)(iv), and (2)(B)(v), no person incarcerated in a Federal facility may be placed in an alternative unit unless and until it is determined in writing following a placement hearing that clear and convincing evidence shows that the person committed 1 of the following acts at the time placement is sought, and the specific circumstances of the acts were so heinous or destructive that placement of the person in general facility housing creates a specific and significant risk of im-
minent serious physical injury to staff or other incarcerated persons:

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

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

“(iii) Leading, organizing, inciting, or attempting to cause a riot, or other similarly serious disturbance that results in the taking of a hostage, major property damage, or serious physical harm to another person.

“(iv) Escaping, attempting to escape or facilitating an escape from a Federal facility or escaping, attempting to escape, or facilitating an escape while under supervision outside the Federal facility.

“(B) NEUTRAL DECISION MAKER REQUIRED.—Each placement hearing shall be conducted by a neutral decision maker.

“(C) DEPARTMENT OF JUSTICE.—For all placement hearings involving placement in facilities operated by the Federal Bureau of Pris-
ons or facilities contracting with the Federal
Bureau of Prisons or United States Marshals
Service for incarcerating people in the care or
custody of those facilities or entities, the neu-
tral decision maker shall be—

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

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

“(iii) independent of—

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

“(II) any other Federal agency;
and

“(III) any prosecuting entity.

“(D) Department of Homeland Secu-

rity.—For all placement hearings involving
placement in facilities operated by or con-
tracting with U.S. Immigration and Customs
Enforcement, the Department of Homeland Se-
curity, or U.S. Customs and Border Protection
for incarcerating people in the care or custody
of those facilities or entities, the neutral decision maker shall be—

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

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

“(iii) independent of—

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

“(II) any division or unit within the Department of Homeland Security that has people in its care or custody or engages in any prosecuting activities;

“(III) any other Federal agency; and

“(IV) any prosecuting entity.

“(E) DEPARTMENT OF HEALTH AND HUMAN SERVICES.—For all placement hearings involving placement in facilities operated by or contracting with the Department of Health and Human Services for incarcerating people in the care or custody of those facilities or entities, the neutral decision maker shall be—
“(i) appointed by the Director of the Office for Civil Rights;
“(ii) employed by the Department of Health and Human Services; and
“(iii) independent of—
“(I) the Office for Civil Rights;
“(II) any division or unit within the Department of Health and Human Services that has people in its care or custody;
“(III) any other Federal agency; and
“(IV) any prosecuting entity.
“(F) EVIDENCE PRESENTED.—At any placement hearing, the incarcerated person shall be permitted to offer documentary and testimonial evidence, cross-examine witnesses, and present any mitigating evidence, justification evidence, or other relevant evidence helpful in aiding the defense of the incarcerated person.
“(G) REPRESENTATION.—
“(i) IN GENERAL.—At such a hearing, the incarcerated person shall be permitted to—
“(I) engage in self-representation; or

“(II) be represented by any attorney, law student permitted to practice law, paralegal, community advocate, or other incarcerated person chosen by the person being represented.

“(ii) Assistance for Representation.—If a person does not have a representative, the person shall be offered the assistance of a representative as follows:

“(I) Department of Justice Placement Hearings.—For all placement hearings described in subparagraph (C), if an incarcerated person does not select a representative, an appointed representative shall be—

“(aa) selected by the Assistant Attorney General for Civil Rights;

“(bb) employed by the Department of Justice; and

“(cc) independent of—

“(AA) any division or unit within the Department
of Justice that has people in
its care or custody or en-
gages in any prosecuting ac-
tivities;

“(BB) any other Fed-
eral agency; and

“(CC) any prosecuting
entity.

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

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

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

“(cc) independent of—

“(AA) the Office for
Civil Rights and Civil Lib-
erties;
“(BB) any division or unit within the Department of Homeland Security that has people in its care or custody or engages in any prosecuting activities;

“(CC) any other Federal agency; and

“(DD) any prosecuting entity.

“(III) DEPARTMENT OF HEALTH AND HUMAN SERVICES HEARINGS.— For all placement hearings described in subparagraph (E), if an incarcerated person does not select a representative, any appointed representative shall be—

“(aa) selected by the Director of the Office for Civil Rights;

“(bb) employed by the Department of Health and Human Services; and

“(cc) independent of—

“(AA) the Office for Civil Rights;
“(BB) any division or unit within the Department of Health and Human Services that has people in its care or custody;

“(CC) any other Federal agency; and

“(DD) any prosecuting entity.

“(H) NOTICE.—

“(i) IN GENERAL.—Not less than 2 days prior to any placement hearing under this paragraph, both the incarcerated person and the chosen representative of the incarcerated person shall be provided detailed written notice of the reason for proposed placement in an alternative unit, including all relevant evidence, during which time the person may not, other than for purposes of protective custody, be placed in such alternative unit.

“(ii) TIME TO PREPARE.—The incarcerated person and the chosen representative shall be provided adequate time to pre-
pare for such hearings and afforded adjournments as appropriate.

“(iii) REFUSAL TO ATTEND.—Any refusal by an incarcerated person to attend such hearings shall be videotaped and made part of the evidentiary record that shall be maintained by the relevant Federal agency.

“(iv) FAILURE TO COMPLY.—Failure to provide the notice described in clause (i) or to enter into the record videotaped evidence of an alleged refusal to attend by an incarcerated person shall constitute a basis for resolving the hearing in the favor of the incarcerated person.

“(I) WRITTEN DETERMINATION.—

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

“(ii) CLEAR AND CONVINCING EVIDENCE.—Any finding that an incarcerated person meets the criteria of placement in an alternative unit under subparagraph
(A) shall be supported by clear and convincing evidence.

“(iii) CONTENTS.—The determination shall specify the finding, a summary of the testimony of each witness and an explanation of whether the testimony was credited or rejected, the evidence relied upon in reaching the finding, and the placement imposed, if any.

“(iv) NOTICE OF DETERMINATION.—Not later than 24 hours after issuance of the determination, a copy of the determination shall be provided to the incarcerated person and the chosen representative of the incarcerated person.

“(5) USE OF RESTRAINTS.—

“(A) IN GENERAL.—Except as provided in subparagraphs (B) through (E), no person incarcerated in a Federal facility shall be placed in restraints.

“(B) EXCEPTIONS.—Subparagraph (A) shall not apply if facility staff make an individualized determination at the time of, or immediately following, an incident precipitating placement in restraints that such restraints are
necessary to prevent a specific and significant
risk of imminent serious physical injury to the
person, other incarcerated persons, or staff
based on concrete evidence of such risk.

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

“(D) PLACEMENT HEARING REQUIRED.—

“(i) IN GENERAL.—Restraints shall
not be used on the same person on con-
secutive days unless a placement hearing
with protections established under para-
graphs (3) and (4) establishes such re-
straints are necessary to prevent a specific
and significant risk of imminent serious
physical injury to the incarcerated person,
other incarcerated persons, or staff based
on concrete evidence of such risk, and sub-
ject to the same limitations each day as set forth in this paragraph.

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

“(E) SUBSEQUENT USE OF RESTRAINTS.—Once an approved use of restraints has been discontinued, any subsequent use of restraints on that person shall only be permitted to address a new incident and upon the same requirements under this paragraph.

“(6) SPECIAL ADMINISTRATIVE MEASURES.—No Federal facility may use special administrative measures.

“(b) REPORT REQUIRED.—Not later than 15 days after the end of each quarter of the fiscal year, each Fed-
eral agency shall report on the website of the Federal agency the following:

“(1) The total number of incidents at each facility operated by the Federal agency during the preceding quarter of self-harm, suicide attempts, and suicide, disaggregated by race, age, gender identity, documented mental health status, documented disability, pregnancy or postpartum status, identification as lesbian, gay, bisexual, transgender, intersex, or gender nonconforming, type of housing unit including confinement under subsections (a)(2)(B)(iii), (a)(2)(B)(iv), (a)(2)(B)(v), any alternative units, and length of time in such housing unit.

“(2) The total number of placements at each facility during the preceding quarter, separately listed, in confinement under subsections (a)(2)(B)(iii), (a)(2)(B)(iv), and (a)(2)(B)(v), in protective custody under subsection (a)(2)(E), and in any other alternative units under subsection (a)(2)(E) during that quarter.

“(3) The total number of people at each facility on the last day of each quarter, separately listed, in confinement under subsections (a)(2)(B)(iii), (a)(2)(B)(iv), and (a)(2)(B)(v), in protective custody under subsection (a)(2)(E), and in any other alter-
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native units under (a)(2)(E), disaggregated by race, age, gender identity, documented mental health status, documented disability, pregnancy or postpartum status, identification as lesbian, gay, bisexual, transgender, intersex, or gender nonconforming, and reason for placement.

“(4) The total number of placements at each facility during the preceding quarter, separately listed, for which confinement under subsections (a)(2)(B)(iv) and (a)(2)(B)(v) lasted for less than 1 hour, between 1 and 2 hours, between 2 and 3 hours, between 3 and 4 hours, and for longer than 4 hours, with a listing of the length of time of each placement that exceeded 4 hours.

“(5) The total number of people at each facility who had reached a total period of time during the preceding quarter, separately listed, in confinement under subsection (a)(2)(B)(iii), in protective custody under subsection (a)(2)(E), and in any other alternative units under subsection (a)(2)(E) of less than 7 days, between 8 days and 15 days, between 16 days and 30 days, between 31 days and 45 days, between 46 days and 60 days, and for longer than 60 days, with a listing of the length of time of each person who had reached a period of time during the
preceding quarter that exceeded a total of 60 days in such confinement or housing.

“(c) PRIVATE CAUSE OF ACTION.—

“(1) IN GENERAL.—

“(A) CIVIL ACTION FOR INJURY.—Any person who is injured by a violation of subsection (a) may bring a civil action in the appropriate United States district court against any person, entity, or any other relevant party who violated such subsection for declaratory and injunctive relief, including directing the closure of the facility, building, or unit where the violation took place if that facility, building, or unit is in repeated and systemic noncompliance with this Act, and for such money damages as the court determines appropriate, including for emotional pain and suffering.

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

“(2) NO LIABILITY FOR CERTAIN LOCKDOWNS.—
“(A) In general.—No Federal agency shall be liable for a Federal agency-wide, facility-wide, or partial facility-wide lockdown that exceeded the 4-hour limit under subsection (a)(2)(B)(v) if the agency can demonstrate that—

“(i) the lockdown, and the length of the time of the lockdown, was necessary to address unexpected, extraordinary circumstances involving the detonation of an explosive device, an acute mass contamination or contagion situation, a violent riot, revolt, or insurrection involving a large number of people that resulted in the taking of a hostage, major property damage, or serious physical harm to a person, or other similar emergency of the same magnitude involving a large group of people;

“(ii) the head of facility who authorized the lockdown complied with all notification requirements, and received approval from the agency regional or field office, or equivalent office responsible for oversight of the facility, at the time the lockdown lasted longer than 4 hours;
“(iii) the head of the applicable Federal agency approved of the lockdown if the lockdown exceeded 8 hours and the approval occurred at that time;

“(iv) the lockdown was ended as quickly as possible, did not last longer than necessary to address the unexpected, extraordinary circumstances, and did not exceed 24 hours; and

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

“(B) CIVIL ACTION FOR CONSTITUTIONAL VIOLATION.—

“(i) IN GENERAL.—Any person who is injured by a violation of the Constitution of the United States by a Federal official or person contracting with a Federal agency in a Federal facility may bring a civil action in the appropriate United States district court against any person, entity, or
relevant party who violated such constitu-
tional provision for declaratory and injunc-
tive relief, including directing the closure
of the facility, building, or unit where the
violation took place, and for such money
damages as the court determines appro-
priate, including for emotional pain and
suffering.

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

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

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

SEC. 4. OVERSIGHT.

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

“§ 4016. Oversight

“(a) COMMUNITY MONITORING BODY.—Not later
than 90 days after the date of enactment of this Act, the
Attorney General, in consultation with the Assistant Attorney General for Civil Rights of the Department of Justice, Officer for Civil Rights and Civil Liberties of the Department of Homeland Security, and Director of the Office for Civil Rights of the Department of Health and Human Services, shall establish a community monitoring body that shall operate independently of the Attorney General and of any other unit or division within the Department of Justice or any other Federal agency.

"(b) APPOINTMENT.—The Attorney General, in consultation with the Assistant Attorney General for Civil Rights of the Department of Justice, Officer for Civil Rights and Civil Liberties of the Department of Homeland Security, and Director of the Office for Civil Rights of the Department of Health and Human Services, and after obtaining input and recommendations from community organizations that provide educational services and legal support to incarcerated persons or otherwise advocate for the rights of incarcerated people and an end to solitary confinement, shall appoint not less than 15 people to serve as members of the community monitoring body.

"(c) MEMBERSHIP.—

"(1) IN GENERAL.—Each member of the community monitoring body shall be an individual who—
“(A) has survived solitary confinement—

“(B) has had loved ones who have experienced solitary confinement or lost loved ones because of solitary confinement;

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

“(D) is a civil rights or human rights advocate.

“(2) Prior Experience.—Each member of the community monitoring body shall have experience engaging in advocacy, service provision, or program operation aimed at enhancing the rights and treatment of incarcerated persons.

“(3) Requirement Relating to Incarceration.—Not less than half of the members of the community monitoring body shall be individuals who were incarcerated or have had family members incarcerated.

“(d) Membership Term.—Each member of the community monitoring body shall be appointed for a term of 5 years, with the possibility of 1 reappointment by the Attorney General for a total of 10 years.

“(e) Reimbursement.—Each member shall be reimbursed by the Department of Justice for any per diem ex-
penses of the member in connection with service on the
community monitoring body.

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

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

“(h) IN-PERSON INTERVIEWS.—The community monitoring body and its designees shall have the ability to conduct in-person interviews and correspond and communicate with incarcerated persons and Federal agency and Federal facility staff freely, privately, and confidentially, upon consent of the incarcerated person or staff.

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

“(j) COMMUNICATIONS.—

“(1) IN GENERAL.—All persons incarcerated in Federal facilities shall have the right and access to confidentially communicate with the community monitoring body and its designees, including while...
the community monitoring body or its designees are
at a Federal facility and through free phone calls,
free mail correspondence, and free email correspond-
ence.

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

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

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

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

“(l) ACCESS TO CERTAIN INFORMATION.—
“(1) IN GENERAL.—The community monitoring body and its designees shall have the right to receive, access, inspect, and copy all relevant non-classified, non-privileged information, records, and documents in the possession or control of any Federal facility, Federal agency, or employee of any Federal facility or Federal agency.

“(2) REQUIRED DELIVERY DATE.—

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

“(B) EXPEDITED DELIVERY.—In a situation in which the records requested under paragraph (1) by the community monitoring body or its designees pertain to a death of an incarcerated person, threats of bodily harm including sexual or physical assaults, or the denial of necessary medical treatment, the records shall be provided not later than 48 hours after the date of the request unless members of the community monitoring body or their designees consent to an extension of the deadline.
“(m) Recommendations.—

“(1) In general.—The community monitoring body may make periodic recommendations to any Federal agency or Federal facility, as well as to the President, Attorney General, Secretary of Homeland Security, Secretary of Health and Human Services, Committee on the Judiciary of the House of Representatives, Committee on Oversight and Accountability of the House of Representatives, Committee on the Judiciary of the Senate, Committee on Homeland Security and Governmental Affairs of the Senate, and other Government entities.

“(2) Remedial action plans.—For any recommendations made by the community monitoring body to each Federal agency or Federal facility, such agency or facility shall—

“(A) report to the community monitoring body not later than 90 days after receipt of the recommendations as to whether the agency or facility has designed and implemented a remedial action plan to address the recommendations; and

“(B) transmit any such remedial action plan to the community monitoring body.
“(3) Publication.—The community monitoring body may publish its findings and recommendations on its website that the community monitoring body shall establish.

“(n) Access for Certain Persons.—Representatives of the news media, public defenders, representatives of the Legal Orientation Program of the Department of Justice, elected Federal, State, and local representatives, and their designees, shall have the ability to—

“(1) make unannounced visits to Federal agencies and Federal facilities and access every area of every Federal facility, except that—

“(A) access to enter the cell of a person incarcerated in the Federal facility shall only be granted with the consent of the person housed in that cell; and

“(B) access to enter a bathroom or shower area shall only be allowed when such area is unoccupied by persons incarcerated in the Federal facility;

“(2) receive in a timely manner, pursuant to section 552 of title 5, or any successor thereto, all requested data from every Federal agency that has persons in its care or custody; and
“(3) correspond with and interview, with the
ability to take notes and use electronic and other re-
cording devices, incarcerated persons freely, pri-
vately, and confidentially upon the consent of the in-
carcerated persons.

“(o) INSPECTORS GENERAL.—Nothing in this section
shall be construed to modify, supersede, or otherwise af-
flect the authority of any Inspector General to access all
records, reports, audits, reviews, documents, papers, re-
ommendations, or other materials, as authorized by law.”.

(b) CLERICAL AMENDMENT.—The table of contents
for chapter 301 of title 18, United States Code, is amend-
ed by inserting after the item relating to section 4015,
as added by section 3 of this Act, the following:

“4016. Oversight.”.

SEC. 5. CREATING STATE INCENTIVES TO END SOLITARY
CONFINEMENT.

(a) IN GENERAL.—Chapter 301 of title 18, United
States Code, as amended by sections 3 and 4 of this Act,
is further amended by inserting after section 4016, as
added by section 4 of this Act, the following:

“§ 4017. Creating State incentives to end solitary con-
finement

“(a) IN GENERAL.—Each State or local entity that
receives any Federal funds under subpart 1 of part E of
title I of the Omnibus Crime Control and Safe Streets Act
of 1968 (34 U.S.C. 10151 et seq.) (commonly known as the ‘Edward Byrne Memorial Justice Assistance Grant Program’) shall annually certify to the Attorney General with comprehensive documentation that the State or local entity has in effect (or shall have in effect, not later than 180 days after the date of enactment of this Act) laws, policies, and programs that substantially comply with section 4015 to fully and meaningfully end solitary confinement and ensure all people in the prisons, jails, and detention centers of the State or locality have access to not less than 14 hours of out-of-cell congregate interaction in a shared space, without physical barriers, that is conducive to meaningful group interaction.

“(b) PENALTY.—Beginning in the first fiscal year that begins after the date of enactment of this section, in the case of a State or local entity that is not in substantial compliance with section 4015, or an amendment made by the End Solitary Confinement Act, the Attorney General shall reduce by not less than 10 percent the total amount that such State or unit of local government would otherwise receive under subpart 1 of part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10151 et seq.) (commonly known as the ‘Edward Byrne Memorial Justice Assistance Grant Program’), except that funding for public defenders, commu-
(b) CLERICAL AMENDMENT.—The table of contents for chapter 301 of title 18, United States Code, as amended by sections 3 and 4 of this Act, is amended by inserting after the item relating to section 4016, as added by section 4 of this Act, the following:

"4017. Creating State incentives to end solitary confinement."

SEC. 6. DEFINITIONS.

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

"§ 4018. Certain definitions.

“In sections 4015, 4016, and 4017:

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

“(2) ATTEMPTING.—

“(A) IN GENERAL.—The term ‘attempting’ means having the intent to carry out a par-
ticular act and completing significant steps in
the advancement of the attempt.

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

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

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

“(A) the Federal Bureau of Prisons;

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

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

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

“(E) the Office of Refugee Resettlement;

“(F) the United States Marshals Service;

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

“(H) any other Federal agency that has
persons in its care or custody; and
“(I) any Federal, State, local, or private entity that has contracted with any of the entities listed in subparagraphs (A) through (H) or with any other Federal agency for holding or providing services to people in their care or custody.

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

“(A) a Federal Bureau of Prisons facility;

“(B) a U.S. Immigration and Customs Enforcement facility;

“(C) a Department of Homeland Security facility;

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

“(E) an Office of Refugee Resettlement facility;

“(F) a United States Marshals Service facility;

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

“(H) any other facility operated by a Federal agency that has persons in its care or custody; and
“(I) any Federal, State, local, or private facility that has contracted with any Federal agency for incarcerating people in their care or custody or providing services to incarcerated people in their care or custody.

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

“(7) INCARCERATED.—The term ‘incarcerated’ means being held in a Federal facility for any reason.

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

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

“(A) means a group of staff or other people working or operating in a Federal facility who have different professional backgrounds and roles in the facility; and

“(B) includes program and health care staff.
“(10) Placement hearing.—The term ‘placement hearing’ means an administrative hearing to determine whether a person may be placed in an alternative unit in a Federal facility.

“(11) Protective custody.—The term ‘protective custody’ means any housing of a person for their own protection.

“(12) Representative of the news media.—The term ‘representative of the news media’ means any individual or entity that—

“(A) gathers information of potential interest to a segment of the public;

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

“(C) distributes that work to an audience.

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

“(14) Special administrative measures.—The term ‘special administrative measures’ means the special administrative measures under section 501.3 of title 28, Code of Federal Regulations, or any successor thereto.
“(15) SUPERVISORY MEDICAL PROVIDER.—The term ‘supervisory medical provider’ means a practicing doctor, nurse practitioner, or physician assistant who has supervisory responsibilities over other medical staff in a Federal facility.”.

(b) CLERICAL AMENDMENT.—The table of contents for chapter 301 of title 18, United States Code, as amended by sections 3, 4, and 5 of this Act, is amended by inserting after the item relating to section 4017, as added by section 5 of this Act, the following:

“4018. Certain definitions.”.

SEC. 7. REMOVAL OF LIMITATION ON RECOVERY ON CERTAIN SUITS BY INCARCERATED PEOPLE.

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

“(e) LIMITATION ON RECOVERY.—No Federal civil action may be brought by a prisoner confined in a jail, prison, or other correctional facility, for mental or emotional injury suffered while in custody without a prior showing of physical injury, the commission of a sexual act (as defined in section 2246 of title 18, United States Code), or placement in solitary confinement or an alternative unit (as defined in section 4018 of title 18, United States Code).”.
SEC. 8. REVISIONS TO STANDARD OPERATING PROCEDURES AND STANDARDS.

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

(1) incorporate the requirements of this Act and the amendments made by this Act into the relevant standards and procedures governing confinement; and

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

SEC. 9. APPROPRIATIONS AND PROHIBITION ON USE OF FUNDS.

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

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

(2) procurement, construction, and improvements appropriations for the Department of Homeland Security, including Immigration and Customs Enforcement and Customs and Border Protection;

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

(4) buildings and facilities appropriations for the Department of Health and Human Services, including the Administration for Children and Families and the Office of Refugee Resettlement;
(5) Federal agency to—

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

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

(6) Federal agency to construct, install, or introduce any weapons, any objects or devices or mechanisms restricting the movement of a person or persons in any way, or any other objects or mechanisms that limit movement or create more restrictive environments.

SEC. 10. SEVERABILITY.

If any provision of this Act, or an amendment made by this Act, or the application thereof to any person or circumstance is held invalid, the remainder of this Act, and other amendments made by this Act, or the application of that provision to persons or circumstances other than those as to which it is held invalid, is not affected thereby.

SEC. 11. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect not later than 60 days after the date of enactment of this Act.