SENATE RESOLUTION

REQUESTING ANNUAL REPORTS ON THE SEGREGATION AND SOLITARY CONFINEMENT OF INDIVIDUALS IN CORRECTIONAL FACILITIES AND A PLAN TO CEASE THE IMPOSITION OF SOLITARY CONFINEMENT ON MEMBERS OF VULNERABLE POPULATIONS.

WHEREAS, segregation of a correctional facility inmate means confinement in a cell that is separated from the general inmate population; and

WHEREAS, administrative segregation means the temporary segregation of an inmate, on the order of a watch commander or higher authority, when the inmate’s continued presence in the general inmate population presents an immediate threat to the safety of the inmate or others, jeopardizes the integrity of an investigation of alleged serious misconduct or criminal activity, or endangers institutional security; and

WHEREAS, disciplinary segregation means the segregation of an inmate by placement of the inmate in a designated segregation housing unit in a cell separated from the general inmate population after the inmate is found guilty of a misconduct violation and issued a sanction by a formal adjustment committee hearing; and

WHEREAS, disciplinary segregation includes the loss of certain privileges as authorized by appropriate authorities; and

WHEREAS, solitary confinement is a form of segregation that confines an inmate alone for twenty-two hours or more in any given day without meaningful human contact; and

WHEREAS, the use of solitary confinement was introduced to Hawaii by the United States, which began using it in the early nineteenth century; and

WHEREAS, a stated intention for the use of isolation at that time, as at present in Hawaii, was to rehabilitate prisoners; and
WHEREAS, in 1890, the United States Supreme Court noted that solitary confinement was ineffective for prisoner safety and caused a concerning number of prisoners to become "semi-fatuous", or somewhat demented; and

WHEREAS, in December 2015, the United Nations adopted "The Nelson Mandela Rules", which provide a set of guidelines for the proper treatment of prisoners; and

WHEREAS, the Nelson Mandela Rules are particularly critical of indefinite solitary confinement and prolonged solitary confinement, which are classified among "torture or other cruel, inhuman or degrading" treatments and punishments; and

WHEREAS, the Nelson Mandela Rules recommend prohibiting prolonged solitary confinement, which the rules consider as solitary confinement for a time period in excess of fifteen consecutive days; and

WHEREAS, the Nelson Mandela Rules also recommend prohibiting indefinite solitary confinement; and

WHEREAS, the United Nations Special Rapporteur, who helped to ensure that the aforementioned recommendations on prolonged solitary confinement and indefinite solitary confinement were included in the Nelson Mandela Rules, also noted that fifteen days of solitary confinement are more than twice the amount of time that, according to some studies, can have a "long-term psychological impact" on people; and

WHEREAS, the Nelson Mandela Rules recommend prohibiting solitary confinement for individuals having mental disabilities when their conditions would be exacerbated by that confinement; and

WHEREAS, the Nelson Mandela Rules reaffirm other United Nations standards that recommend prohibitions on the use of solitary confinement on juveniles; and

WHEREAS, since 2017, an alarming number of individuals in Hawaii correctional facilities, after spending time in solitary confinement or other types of inmate segregation, have committed
suicide shortly after their returns to the general inmate population; and

WHEREAS, in January 2016, the United States Department of Justice released a report on restrictive housing that included individuals with mental illness and juveniles among those who warranted special consideration, and included the former among vulnerable populations; and

WHEREAS, the Legislature finds that members of a vulnerable population should not be isolated from human contact for any reason, and among those vulnerable individuals are persons:

(1) Twenty-one years of age or younger;

(2) Sixty-five years of age or older;

(3) Who have a mental or physical disability, a history of psychiatric hospitalization, or have recently exhibited conduct, including serious self-mutilation, indicating the need for further observation or evaluation to determine the presence of mental illness;

(4) Who have a developmental disability;

(5) Who have significant auditory or visual impairment;

(6) Who have a serious medical condition that cannot be effectively treated in isolated confinement;

(7) Who are pregnant, are in the postpartum period, or have recently suffered a miscarriage or terminated pregnancy; or

(8) Who are perceived to be lesbian, gay, bisexual, transgender, or intersex; and

WHEREAS, the Legislature is cognizant of the State’s responsibility and liability for the care of individuals in the custody of the State; and
WHEREAS, Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which has been ratified by and is legally binding on the United States, defines "torture" in part as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as . . . punishing him for an act he or are third person has committed or is suspected of having committed"; and

WHEREAS, it is the Legislature's responsibility to prevent segregation and solitary confinement from becoming forms of torture and to understand how policies on segregation and solitary confinement are being implemented; now, therefore,

BE IT RESOLVED by the Senate of the Thirtieth Legislature of the State of Hawaii, Regular Session of 2020, that the Corrections Division of the Department of Public Safety and the Hawaii Youth Correctional Facilities of the Department of Human Services are requested to submit to the Governor and to the Legislature no later than twenty days prior to the convening of the Regular Sessions of 2021 and each year thereafter a joint report on segregation and solitary confinement; and

BE IT FURTHER RESOLVED that it is requested that each annual report submitted to the Governor and the Legislature include aggregated data from the most recently completed fiscal year on:

(1) The number of individuals who were sent to administrative or disciplinary segregation, and the number from among those individuals who were placed in solitary confinement;

(2) The number of individuals sent to administrative or disciplinary segregation who were members of vulnerable populations, and the number from among those individuals who were placed in solitary confinement;

(3) The reasons why individuals were sent to administrative or disciplinary segregation and, if applicable, placed in solitary confinement;
(4) The number of individuals who were sent to administrative or disciplinary segregation more than once, the total number of times those individuals were placed in administrative or disciplinary segregation, and corresponding statistics on their placement in solitary confinement, if applicable;

(5) The amount of time that individuals remained in administrative or disciplinary segregation or solitary confinement; and

(6) Alternatives used to avoid administrative or disciplinary segregation or solitary confinement; and

BE IT FURTHER RESOLVED that it is requested that each annual report submitted to the Governor and the Legislature also include a plan and the status of implementation of that plan to cease the imposition of solitary confinement upon members of vulnerable populations; and

BE IT FURTHER RESOLVED that certified copies of this Resolution be transmitted to the Governor; Director of Public Safety; Director of Human Services; Deputy Director of the Corrections Division, Department of Public Safety; and Executive Director of the Office of Youth Services, Department of Human Services.

OFFERED BY: ________________________________

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