



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB2633

Introduced 2/20/2009, by Rep. Julie Hamos, Naomi D. Jakobsson, Annazette Collins, Greg Harris, Constance A. Howard, et al.

SYNOPSIS AS INTRODUCED:

730 ILCS 5/3-8-7

from Ch. 38, par. 1003-8-7

Amends the Unified Code of Corrections. Provides that a prisoner may be transferred to a super-maximum security institution only when, within one year of the date of the proposed transfer: (1) while incarcerated, the prisoner committed or attempted to commit acts of violence either: (i) which resulted in serious injury or death or (ii) in connection with any act of non-consensual sex; (2) the prisoner has engaged in 2 or more acts which caused serious disruption of prison operations; or (3) the prisoner has escaped or attempted to escape from within a security perimeter or custody, or both, or direct supervision. Provides that prisoners with serious mental illnesses shall not be transferred to a super-maximum security facility. Provides that the Department of Corrections shall review the status of all prisoners currently housed at a super-maximum security institution within 90 days of the effective date of the amendatory Act to determine whether they should continue to be housed at that facility. Prisoners already incarcerated for longer than one year may continue to be held at a super-maximum institution only on the basis of specified criteria and must be provided a hearing within 6 months of the effective date of the amendatory Act.

LRB096 09845 RLC 21818 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Unified Code of Corrections is amended by
5 changing Section 3-8-7 as follows:

6 (730 ILCS 5/3-8-7) (from Ch. 38, par. 1003-8-7)
7 Sec. 3-8-7. Disciplinary Procedures.)

8 (a) All disciplinary action shall be consistent with this
9 Chapter. Rules of behavior and conduct, the penalties for
10 violation thereof, and the disciplinary procedure by which such
11 penalties may be imposed shall be available to committed
12 persons.

13 (b) (1) Corporal punishment and disciplinary restrictions
14 on diet, medical or sanitary facilities, mail or access to
15 legal materials are prohibited.

16 (2) (Blank).

17 (3) (Blank).

18 (b-5) Transfers to super-maximum security institution.

19 (1) A prisoner may be transferred to a super-maximum
20 security institution (as designated in paragraph (s) of
21 subsection (1) of Section 3-2-2 of this Code) only when,
22 within one year of the date of the proposed transfer:

23 (A) while incarcerated, the prisoner committed an

1 act of violence either: (i) which resulted in or was
2 likely to result in serious injury or death to another,
3 or (ii) in connection with any act of non-consensual
4 sex;

5 (B) the prisoner has engaged in 2 or more acts
6 which caused serious disruption of prison operations;
7 or

8 (C) the prisoner has escaped or attempted to escape
9 from within a security perimeter or custody, or both,
10 or direct supervision.

11 (2) Prisoners with a serious mental illness shall not
12 be transferred to a super-maximum security facility.

13 All prisoners who are housed at a super-maximum
14 security institution shall be evaluated by a mental health
15 professional at least every 30 days. Such evaluations shall
16 be conducted in-person (not through a cell door), and shall
17 include: (A) assessment of current mental status and
18 condition; (B) assessment of current risk of suicide or
19 other self-harming behavior; and (C) review of available
20 records of in-and out-patient treatment. Any prisoner who
21 is determined to be seriously mentally ill must be removed
22 from the institution within 15 days.

23 A prisoner has a serious mental illness for purposes of
24 this Section when he meets the definition used by the
25 President's New Freedom Commission on Mental Health,
26 "Achieving Promise: Transforming Mental Health Care in

1 America," (July 23, 2003), based on the most current
2 edition of the Diagnostic and Statistical Manual (DSM)
3 published by the American Psychiatric Association.

4 The Director of the Mental Health Division of the
5 Illinois Department of Human Services shall designate a
6 Committee to conduct annual reviews of the mental health
7 policy, standards and treatment at the supermax. The
8 reviewers shall have access to prisoner mental health
9 records and all areas of the supermax where prisoners are
10 housed or treated, and issue an annual report.

11 (3) Prior to any transfer to a super-maximum security
12 facility, a prisoner shall be entitled to a transfer
13 hearing which complies with at least the following minimum
14 requirements, unless the Director or a Deputy Director
15 certifies, in writing, that providing a hearing prior to
16 transfer will pose an imminent threat to the safety and
17 security of the prison where the prisoner is currently
18 housed (herein known as a "Certificate"). At such hearing,
19 the Department shall have the burden of proof. These
20 minimal procedures shall apply:

21 (A) written notice shall be delivered to the
22 prisoner at least 48 hours before the hearing, setting
23 forth the factual basis for the proposed transfer in
24 sufficient detail to permit the prisoner to prepare a
25 meaningful defense;

26 (B) the prisoner shall have the right to personally

1 appear before the persons making the determination;

2 (C) the prisoner shall have the right to submit
3 documentary evidence to the persons making the
4 decision;

5 (D) the prisoner shall have the right to call
6 witnesses, unless there is a specific written finding
7 that calling a specific witness will jeopardize the
8 safety and security of the institution;

9 (E) a written decision shall be delivered to the
10 prisoner within 5 business days of the hearing setting
11 forth the reasons for the decision in sufficient detail
12 to allow for review;

13 (F) the hearing shall be recorded by means of audio
14 or video tape, and the tapes preserved until 120 days
15 after the release of the prisoner from incarceration at
16 the super-maximum facility; and

17 (G) the prisoner has a right to retain a lawyer to
18 represent him or her at the hearing, but there shall be
19 no right to have a lawyer appointed to represent the
20 prisoner.

21 (4) In the event the Director or a Deputy Director has
22 issued a Certificate, a hearing shall be held within 5
23 business days of the prisoner's transfer.

24 (5) The transfer hearing shall be conducted by a panel
25 of at least 3 persons, appointed by the Director, and shall
26 include a person representing the counseling staff.

1 (6) The Transfer Hearing Panel shall maintain a record
2 including all evidence it relied on, and all evidence
3 supporting any finding of danger to the safety and security
4 of the institution. The decision of the panel shall be
5 reviewed and approved by the Director or a Deputy Director
6 within 5 business days of the decision. The decision of the
7 Director or Deputy Director shall be final, and shall not
8 be reviewable through the grievance process.

9 (7) All prisoners who are transferred to a
10 super-maximum security facility shall be reviewed at least
11 every 90 days to determine whether they should continue to
12 be housed at that facility.

13 (8) No prisoner shall remain confined at a
14 super-maximum security institution for more than one year,
15 unless, at a hearing pursuant to clauses (3), (5), and (6)
16 of this subsection (b-5), the Department (A) establishes
17 that the prisoner, within the previous one year, has
18 committed an act which resulted in or was likely to result
19 in serious injury or death to another; or (B) presents
20 clear and convincing evidence, applying specific objective
21 criteria set forth in writing by the Director or a Deputy
22 Director that there is a significant risk that the prisoner
23 will cause physical injury to prison staff, other
24 prisoners, or members of the public if he or she is housed
25 in any other facility operated by the Department, including
26 segregation units at Level I facilities. Association with

1 an inmate gang or security threat group, alone, shall not
2 be sufficient to meet this burden. Such prisoners shall be
3 provided with such a hearing pursuant to clauses (3), (5),
4 and (6) of this subsection (b-5) at least every year.

5 (9) The Department shall review the status of all
6 prisoners currently housed at a super-maximum security
7 institution within 90 days of the effective date of this
8 amendatory Act of the 96th General Assembly to determine
9 whether they should continue to be housed at that facility.

10 Prisoners already incarcerated for longer than one year may
11 continue to be held at a super-maximum institution only on
12 the basis of the criteria listed in clause (8) of this
13 subsection (b-5). Such prisoners must be provided a
14 hearing, pursuant to clauses (3), (5), and (6) of this
15 subsection (b-5), within 6 months of the effective date of
16 this amendatory Act of the 96th General Assembly.

17 (10) The Department shall maintain a current list of
18 all prisoners in the super-maximum security facility, with
19 the date of and reason for placement, date of last review,
20 and, in cases where the prisoner has been housed in such
21 facility for over one year, the written statement of the
22 objective criteria relied upon.

23 (c) Review of disciplinary action imposed under this
24 Section shall be provided by means of the grievance procedure
25 under Section 3-8-8. The Department shall provide a disciplined
26 person with a review of his or her disciplinary action in a

1 timely manner as required by law.

2 (d) All institutions and facilities of the Adult Division
3 shall establish, subject to the approval of the Director,
4 procedures for hearing disciplinary cases except those that may
5 involve the imposition of disciplinary segregation and
6 isolation; the loss of good time credit under Section 3-6-3 or
7 eligibility to earn good time credit.

8 (e) In disciplinary cases which may involve the imposition
9 of disciplinary segregation and isolation, the loss of good
10 time credit or eligibility to earn good time credit, the
11 Director shall establish disciplinary procedures consistent
12 with the following principles:

13 (1) Any person or persons who initiate a disciplinary
14 charge against a person shall not determine the disposition
15 of the charge. The Director may establish one or more
16 disciplinary boards to hear and determine charges.

17 (2) Any committed person charged with a violation of
18 Department rules of behavior shall be given notice of the
19 charge including a statement of the misconduct alleged and
20 of the rules this conduct is alleged to violate.

21 (3) Any person charged with a violation of rules is
22 entitled to a hearing on that charge at which time he shall
23 have an opportunity to appear before and address the person
24 or persons deciding the charge.

25 (4) The person or persons determining the disposition
26 of the charge may also summon to testify any witnesses or

1 other persons with relevant knowledge of the incident.

2 (5) If the charge is sustained, the person charged is
3 entitled to a written statement of the decision by the
4 persons determining the disposition of the charge which
5 shall include the basis for the decision and the
6 disciplinary action, if any, to be imposed.

7 (6) (Blank).

8 (Source: P.A. 93-272, eff. 7-22-03.)