

September 16, 2005

By overnight mail & facsimile to 609-943-4611

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P.O. Box 107
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Re: Re-proposed New Rules: N.J.A.C. 13:101
Proposal Number: PRN 2005-255

Dear Ms. Egar:

On behalf of a broad range of New Jersey and national organizations including faith-based organizations and groups committed to youth, minority communities, effective law enforcement, and rebuilding our urban areas, we are writing in support of the regulations proposed by the Juvenile Justice Commission (“JJC” or “Commission”) referenced above. In particular, we support JJC’s proposal to reduce from 30 to 5 days the maximum period that a youth may be placed in “room restriction” (previously referred to as isolation or seclusion). While we believe that the proposed regulations should go even further, this is an important step in the right direction and we are speaking collectively to express our strong endorsement.

In the following comments, we explain that our support of the direction proposed by the Commission is backed by an overwhelming consensus reflected in national correctional standards and among juvenile justice experts and social scientists, and is reinforced by practitioners from leading jurisdictions. Simply put, this consensus provides that the use of isolation with juveniles should be severely limited. Numerous studies and experts emphasize that isolation is an ineffective therapeutic tool that is harmful to youth and normally unnecessary for the effective management of juvenile justice facilities. The importance of this issue is further highlighted in New Jersey, where youth in the juvenile justice system are disproportionately, indeed overwhelmingly, minority

BACKGROUND

In May 2004, the JJC proposed comprehensive disciplinary rules that would govern juveniles committed to Commission facilities. Prior to that time, the disciplinary rules in use were those promulgated by the Department of Corrections, which had jurisdiction over juveniles until the JJC was established in 1996. In establishing the JJC, the Legislature recognized the critical importance of focusing attention and resources on the care, custody and rehabilitation of juveniles in a manner that differed from the Department of Corrections' approach with adults.

Following the receipt of comments on its May 2004 proposal, most notably by the Association for Children of New Jersey (ACNJ), the JJC withdrew the proposed regulations and made a series of revisions reflected in the version now under consideration. The current proposal holds, among other elements, that the maximum time a juvenile may be placed in isolation as a disciplinary sanction is reduced from 30¹ to 5 consecutive days, 13:101-6.17(a); that any two terms of isolation must be separated by at least two full days, 13:101-6.17(b); that a juvenile may not spend more than 10 days in room restriction in any 30-day period, 13:101-6.17(c); and that time spent in pre-hearing room restriction counts toward the 5-day maximum. 13:101-6.17(d).

Finally, the proposed rules would change the terminology used to describe a juvenile being held in seclusion from "isolation" to "room restriction," to better reflect the intent and nature of the sanction. As the JJC explains, "the traditional sanction of 'isolation' has changed materially. Traditionally, correctional institutions have utilized isolation from others as a disciplinary sanction. The use of extended periods of isolation in the context of juveniles, however, is counterproductive to efforts to help the juvenile to model appropriate behavior; worse, it can be lethal."

In 2004, 85.4% of the youth admitted to JJC facilities were minority: 66.4% African-American, 18.6% Hispanic, and 0.4% other minority. These figures are virtually unchanged from 2000, when minority youth accounted for 85.7% of JJC admissions. By way of contrast, the racial composition of New Jersey's population is 13.6% African-American, 13.3% Hispanic, and 66% white.

DISCUSSION

The proposed regulations limiting the disciplinary use of isolation for juveniles are amply supported by national correctional standards, juvenile justice experts and social scientists, and are reinforced by practitioners from leading jurisdictions. The clear consensus, which we believe should be reflected in JJC practice, is that isolation or "room restriction" should be limited to only the most rare and dangerous situations in which no

¹ While isolation has since 2004 been limited as a matter of JJC practice to 15 days, the regulatory limit remains 30 days.

other measure could possibly protect the safety of the youth, and then for the most limited period possible.

A. National correctional standards and best practice support the proposed limitations.

It is worth noting at the outset that the American Correctional Association (ACA), which establishes professional standards for adult correctional and juvenile justice facilities, limits isolation of juveniles to a maximum of 5 days.² The ACA is a leading national association and its standard amply supports the proposed regulations. New Jersey's current practice is widely out of sync with standard juvenile justice practice, which either comports with the ACA standard or is more restrictive. As of 1991, fourteen years ago, 85 percent of youth in juvenile justice facilities nationally were in facilities that limited isolation to 5 days or less.³ It is also noteworthy that international law prohibits the use of isolation as a disciplinary tool, holding that "all disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned."⁴

The rationale behind such standards and rules is well illustrated by one of the nation's leading juvenile justice systems, which virtually never uses isolation. Mark Steward recently retired as director of Missouri's juvenile justice system, the Division of Youth Services, having led that agency, which has received substantial national acclaim, for 17 years. According to Mr. Steward, the Missouri system virtually never uses isolation, retaining only 7 individual isolation rooms in a system with more than 700 beds. Mr. Steward states that over the past 10 years none of the state's 5 regions has used an isolation room more than 5 times and some have never used theirs. The success of Missouri's system, which encompasses the large urban populations of St. Louis and Kansas City, is reflected in its extremely low recidivism rate (as well as its low cost per juvenile). According to a recent study, only 8 percent of the youth who passed through

² American Correctional Association, *Standards for Juvenile Detention Facilities*, 3d ed. (Latham, Maryland: ACA, 1991), p. 67.

³ See Abt Associates, "Conditions of Confinement: Juvenile Detention and Corrections Facilities," August 1994 (national study of juvenile detention and corrections facilities commissioned by the Office of Juvenile Justice and Delinquency Prevention (OJJDP) of the United States Department of Justice, using 1991 data), available at http://www.ojjdp.ncjrs.org/publications/dc_facilities.html (table of contents and links to all chapters), Chapter 7, "Juveniles Rights," Table 7B-1, "Percent of Juveniles in Facilities that Conform to Assessment Criteria on Limiting Staff Discretion," available at <http://www.ncjrs.org/pdffiles1/ojjdp/7-Chapter7.pdf>, p. 173 (internal pagination), p. 16 (of PDF file).

⁴ United Nations Rules for the Protection of Juveniles Deprived of their Liberty, G.A. res. 45/113, annex, 45 U.N. GAOR Supp. (No. 49A) at 205, U.N. Doc. A/45/49 (1990), Article 67, available at <http://www1.umn.edu/humanrts/instree/j1unrjdl.htm>.

Missouri's system were incarcerated in the adult corrections system within five years of their release from the juvenile system – a remarkably low rate nationally.⁵

B. Leading juvenile justice experts and social scientists reinforce that isolation causes harm to youth, increases the risk of suicide, and is not supported by any evidence.

As reflected in social science literature and testimony, there is ample basis for severely limiting the use of isolation with juveniles. Simply put, isolation is not an evidence-based practice. In fact, the evidence shows that isolation causes harm to juveniles and increases the risk of suicide.

A 2001 survey of the literature concluded that “the research has found seclusion to be harmful to patients and not related to positive patient outcomes. . . . There is no research to support a theoretical foundation for the use of seclusion with children. Evidence has been building for more than 30 years that the practice of seclusion does not add to therapeutic goals and is in fact a method to control the environment instead of a therapeutic intervention.”⁶ Reinforcing this point, a leading official from the Civil Rights Division of the United States Department of Justice has stated that “[t]he use of extended isolation as a method of behavior control, for example, is an import from the adult system that has proven both harmful and counterproductive when applied to juveniles. It too often leads to increased incidents of depression and self-mutilation among isolated juveniles, while also exacerbating their behavior problems. We know that the use of prolonged isolation leads to increased, not decreased, acting out, particularly among juveniles with mental illness.”⁷

The most dramatic potential consequence of isolation is the increased risk of suicide. In 1999, the Office of Juvenile Justice and Delinquency Prevention of the United States Justice Department commissioned “the first comprehensive effort to determine the scope and distribution of suicides by youth in our public and private juvenile facilities throughout the country.” The study found that 50 percent of victims were in isolation at the time of their suicide, and 62 percent of victims had a history of isolation.⁸

⁵ For a somewhat fuller description of the Missouri system's outcomes and extremely limited use of isolation, see Letter from Mark Steward to Valerie Egar, JJC, September 14, 2005, in support of the proposed regulations addressed herein.

⁶ Finke, Linda M., RN, PhD, “Use of Seclusion is not Evidence-Based Practice,” *Journal of Child and Adolescent Psychiatric Nursing*, Oct.-Dec. 2001, available at http://www.findarticles.com/p/articles/mi_qa3892/is_200110/ai_n8993463/print. While this survey focused on children in psychiatric facilities, the use of seclusion in such settings has the same avowed goal as it does in juvenile justice facilities: addressing the needs of “out of control” youth who would otherwise constitute a danger of harm to themselves or others.

⁷ Remarks of Steven H. Rosenbaum, Chief, Special Litigation Section, before the Fourteenth Annual National Juvenile Corrections and Detention Forum, May 16, 1999, available at <http://www.usdoj.gov/crt/split/documents/juvspeech.htm>.

⁸ Hayes, Lindsay M., “Juvenile Suicide in Confinement: A National Survey,” *National Center on Institutions and Alternatives*, February 2004, at p. x, available at <http://nicic.org/Library/020131>.

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C. Isolation raises significant civil rights concerns.

Given the demographics of New Jersey youth involved in the juvenile justice system, it is critically important to ensure that there is no disproportionate sanctioning of minority youth. As noted above, the racial composition of those admitted to JJC facilities stands in stark contrast to New Jersey's overall population. Especially as organizations which have focused on the ways in which systems have disproportionately affected minorities and particularly minority youth, we believe the potential civil rights dimensions of juvenile isolation further reinforce the importance of limiting its use.

CONCLUSION

For the reasons herein stated, we support the proposed revised regulations limiting the length of time a juvenile may be placed in isolation as an appropriate and necessary step in the right direction for New Jersey's youth. We commend the JJC for reconsidering its prior proposal and promulgating this one, and further urge the Commission to continue to examine the utility of isolation. To that end, we believe it would be useful for the Commission to monitor and evaluate the use of "room restriction," assess all available alternative measures and practices, and consider further modifications.

Respectfully submitted,

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