



COMMONWEALTH OF VIRGINIA

Commission on Youth

THE USE OF SEGREGATION IN VIRGINIA'S JUVENILE DETENTION HOMES AND CORRECTIONAL CENTERS

September 20, 2016

Will Egen

Study Mandate



- During the 2016 General Assembly Session, Senator Favola introduced Senate Bill 215. The substitute version of SB 215 requires the Board of Juvenile Justice to promulgate regulations on the use of room segregation in juvenile detention homes and juvenile correctional centers.
- The House Courts of Justice Committee reviewed this legislation and it was laid on the table. The Commission on Youth received a letter from the Chair of the House Courts of Justice Committee requesting a review of the bill and the concept it addresses and to make recommendations prior to the 2017 General Assembly Session.
- Commission on Youth designed a study plan to consider the implications of various policy options related to the use of segregation in Virginia's juvenile detention homes and correctional centers.

Study Activities



- Monitor regulatory process of the Board of Juvenile Justice – Virginia Department of Juvenile Justice
- Conduct background and literature reviews
- Review other states legislation/statutes
- Review Virginia laws and regulations
- Identify concerns and solicit feedback on proposed recommendations
- Prepare draft findings and recommendations

Summary From Study Activities



- COY met with Department of Juvenile Justice staff to discuss SB215 and the use of isolation and segregation in Virginia's JDC's and JCC's.
- Staff attended Board of Juvenile Justice meetings and gathered information about the ongoing comprehensive review of JDC and JCC regulations.
- Staff monitored the Secretary of Public Safety and Homeland Security's Interagency Taskforce on Juvenile Correctional Centers.
- Interviewed detention home administrators at the Virginia Juvenile Detention Association quarterly meeting.
- Discussed recent developments with the national advocacy organization, Center for Children's Law and Policy.
- Toured and visited Bon Air JCC.



When is segregation used

- The circumstances that lead to segregation include threat or actual physical abuse of staff or peers, verbal abuse of staff or peers, failure to follow program rules, or inappropriate behavior including gang activity. Segregation may also be used to protect residents who are likely to be exploited or victimized, as well as to separate co-defendants, family members, and victims from their perpetrators. Segregation may also be used until an acute mental health issue has been stabilized.

The potential impact of segregation

- Recent studies have shown that segregating prisoners does not reduce violence and likely increases recidivism. Additionally, many experts express concern that lack of human contact in solitary confinement causes psychological and developmental harm to juveniles.



National trends

- The Juvenile Detention Alternatives Initiative (JDAI) released revised juvenile detention facility standards in June 2014 prohibiting “the use of room confinement for discipline, punishment, administrative convenience, retaliation, staffing shortages, or reasons other than as a temporary response to behavior that threatens immediate harm to a youth or others.”
- In January 2016, the U.S. Department of Justice published a report and recommendation regarding the use of restrictive housing in the criminal justice system. The President adopted the recommendation in this report calling on the Federal Bureau of Prisons to end the practice of placing juveniles in restrictive housing.

Definitions – Virginia’s Juvenile Correctional Centers (JCC)



- Special Housing: The temporary placement of a resident in a segregated housing unit (e.g. Intensive behavior redirection unit) as designated by the facility or temporary assignment of a resident to a segregated status (e.g. Pre-hearing detention).
- The following placements shall be considered special housing:
 - Pre-hearing detention
 - Disciplinary segregation (Previously called: isolation)
 - Administrative hold
 - Investigative hold
 - Protective custody
 - Intensive behavior redirection unit (Previously called: administrative segregation unit)
- JCCs also have intensive services unit beds for juveniles whose mental health needs do not allow them to function effectively in the general population of the facilities.

Virginia's Current Regulations



Relevant Regulations:

- Juvenile correctional centers (JCC)
6 VAC 35-71-1140 – 1160
- Juvenile detention centers (JDC)
6 VAC 35-101-1100 – 1110

- Room confinement and isolation is a permitted practice in Virginia's juvenile detention homes and correctional facilities.
- Under the *Virginia Administrative Code* regulations governing room confinement and isolation and administrative segregation are laid out separately for correctional centers and detention centers.



Room Confinement and Isolation – 6VAC35-71-1140-1150 – (Juvenile correctional centers regulation)

- Staff must visually check on a resident who is confined to a room at least every 30 minutes.
- A resident must be allowed one hour of outside physical exercise each day.
- If confinement extends to more than 72 hours, then the confinement and steps being taken or planned to resolve the situation shall be immediately reported to the department staff, in a position above the level of superintendent.
- Room confinement during isolation shall not exceed five consecutive days.



Room Confinement and Isolation – 6VAC35-101-1100 – (Juvenile detention centers regulation)

- Staff must check on the resident visually at least every 30 minutes and at least every 15 minutes if the resident is on suicide watch
- A resident must be allowed one hour of outside physical exercise each day.
- If confinement extends more than 72 hours, then the confinement and steps being taken or planned to resolve the situation shall be immediately reported to the director.
- Room confinement, including isolation or administrative confinement, shall not exceed five consecutive days except when ordered by a medical provider.

Virginia's Current Regulations (cont...)



Room Confinement and Isolation Juvenile Detention Center 6VAC35-101-1100	Room Confinement and Isolation Juvenile Correctional Center 6VAC35-71-1140-1150
<ul style="list-style-type: none"> Juvenile detention centers' regulations for room confinement and isolation are combined in one administrative code section. 	<ul style="list-style-type: none"> Juvenile correctional centers have separate regulations for room confinement and isolation. Additionally, the standard operating procedures manual now refers to isolation as disciplinary segregation.
<ul style="list-style-type: none"> Staff must check on the resident visually at least every 30 minutes and at least every 15 minutes if the resident is on suicide watch. 	<ul style="list-style-type: none"> Regulations state that staff must visually check on a resident who is confined to a room at least every 30 minutes. However, the standard operating procedures manual indicates that all juveniles in special housing shall be checked on a minimum of every 15 minutes.
<ul style="list-style-type: none"> Room confinement, including isolation or administrative confinement, shall not exceed five consecutive days except when ordered by a medical provider. 	<ul style="list-style-type: none"> Room confinement during isolation shall not exceed five consecutive days. This regulation does not include language that grants an extension when ordered by a medical provider.
<ul style="list-style-type: none"> Regulations do not include a subsection regarding how to proceed when dealing with a resident that exhibits self-injurious behaviors. 	<ul style="list-style-type: none"> A procedure for dealing with a resident who exhibits self-injurious behavior is outlined in regulations.
<ul style="list-style-type: none"> Regulations do not include a subsection regarding the number of residents permitted in a room. 	<ul style="list-style-type: none"> Regulations state that residents who are placed in isolation shall be housed no more than one to a room.

Virginia's Current Regulations (cont...)



Administrative Confinement Juvenile Detention Center 6VAC35-101-1110	Administrative Segregation Juvenile Correctional Center 6VAC35-71-1160
<ul style="list-style-type: none"> Juvenile detention center regulations use the term administrative confinement to describe the placement of a resident in a special housing unit or designated individual cell that is reserved for special management of residents. 	<ul style="list-style-type: none"> Juvenile correctional center regulations use the term administrative segregation. However, the units used for special management of residents have recently been reconfigured and renamed as intensive behavior redirection units.
<ul style="list-style-type: none"> Regulations for administrative confinement in juvenile detention centers do not spell out a due process requirement. However, the regulations require that residents shall be placed only by the facility administrator, as a last resort for the safety of residents, and that a record of such placement shall be documented. 	<ul style="list-style-type: none"> Juvenile correctional center regulations include a due process requirement in its definition of administrative segregation. Correctional center regulations, however, do not discuss who may place the residents and the use of segregation being of last resort.
<ul style="list-style-type: none"> The living conditions for residents placed in confinement are provided for in "approved or established procedures" according to regulation. 	<ul style="list-style-type: none"> The living conditions for residents placed in segregation are provided for in "written procedures" according to regulation.



Timeout – 6VAC35-71-1120(A) – (JCC regulation)

Facilities that use a systematic behavior management technique program component designed to reduce or eliminate inappropriate or problematic behavior by having a staff require a resident to move to a specific location that is away from a source of reinforcement for a specific period of time or until the problem behavior has subsided (timeout) shall implement procedures governing the following:

1. The conditions, based on the resident's chronological and developmental level, under which a resident may be placed in timeout;
2. The maximum period of timeout based on the resident's chronological and developmental level; and
3. The area in which a resident is placed.

Other States' Laws and Regulations



- According to a recently published national survey, 29 states prohibit the use of juvenile solitary confinement as a form of punishment. Under this survey, 4 hours or less counts as ban on use. This survey looked at correctional facilities not detention centers.
- Safety related confinement is permitted in a majority of the states (25) that ban punitive confinement. Twelve of these states provide, in their regulations or policies, that a juvenile should be released when he regains self-control.

Other States' Laws and Regulations

(cont...)



- **Colorado** – Legislation enacted in 2016 includes a requirement that the director of the Division of Youth Corrections approves the holding of a youth in isolation longer than 4 hours, and requires a court order to hold a young person in solitary for more than 8 hours in a two-day period. Seclusion as punishment is banned.
- **New Jersey** – Current law states that a juvenile “shall not be subject to room restriction unless he poses an immediate and substantial risk of harm to others or to the security of the facility, and all other less-restrictive options have been exhausted.”
 - Juveniles 15 or younger: No more than 2 consecutive days in room restriction
 - Juveniles 16 to 18 : No more than 3 consecutive days
 - Juveniles 18 years or older: No more than 5 consecutive daysData on the use of room confinement must be documented and made available to the public.

Other States' Laws and Regulations

(cont...)



- **Massachusetts** – Room confinement is not permitted for punitive reasons, but it is for safety and security reasons. For room confinement over 9 hours a parent or legal guardian shall be notified.
- **Texas** – Has a variety of regulations for the various placement types, including disciplinary seclusion, safety-based seclusion, room restriction, resident-initiated separation, protective isolation, medical isolation, and assessment isolation. Disciplinary seclusion is limited to 48 hours.
- **Missouri** – State regulations allow for administrative segregation for a juvenile charged with an offense in a facility. However, use of the “Missouri Model” approach makes use of segregation virtually unnecessary.
- **States with a five day maximum** – For disciplinary segregation: Indiana, Louisiana, Minnesota, Kentucky, and South Dakota.

Source: <http://www.mass.gov/eohhs/docs/dys/policies/030301-involuntary-room-confine.doc>.

Source: [https://texreg.sos.state.tx.us/public/readtac\\$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=37&pt=11&ch=343&rl=285](https://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=37&pt=11&ch=343&rl=285).

Source: 13 CSR 110-2.120.

Source: The Annie E. Casey Foundation, *The Missouri Model: Reinventing the Practice of Rehabilitating Youthful Offenders*, 2010.

Source: <http://www.stopsolitaryforkids.org/wp-content/uploads/2016/08/51-Jurisdiction-Survey-of-Juvenile-Solitary-Confinement-Rules.pdf>.



- American Correctional Association – (Virginia model)
 - Checked visually by staff at least every 15 minutes,
 - Visited at least once a day by administrative personnel,
 - Staff keeps a record of the confinement, and
 - Suicidal juveniles are kept under continuous observation until evaluated by a mental health professional.
 - Confinement in a security room for any offense should not exceed five days.
 - Approval after 72 hours by facility administrator required for juveniles placed in protective custody.
- Juvenile Detention Alternatives Initiative (JDAI) – Annie E. Casey Foundation
 - These standards call for a limit on the use of room confinement to a maximum of four hours.



- Council of Juvenile Correctional Administrators (CJCA)
 - CJCA is a professional association of state juvenile justice agency directors, has also developed Performance-based Standards (PbS) as well as a toolkit entitled “Reducing the Use of Isolation.”
 - Standards espoused by CJCA state that isolation or confinement of youth should be used only to protect youth from harming himself or others and any use should be brief and supervised.
 - CJCA has implemented their PbS initiative in over 150 facilities in 32 states.
 - Among participating correctional facilities, from 2008 to 2014, the average duration of isolation and room confinement decreased by almost two-thirds (32 to 12 hours) and reduced by half in detention centers (12 to 6 hours).

SB215 as Amended



- Introduced in 2016, Senate Bill 215* as amended defined room segregation as, “the involuntary restriction of a resident alone in a room or other area, including the resident’s own room, except during normal sleeping hours.”
- Additionally, the bill proposal called for the Board of Juvenile Justice to work with experts in the fields of mental health and juvenile justice and child-rights advocates on promulgating regulations on the use of room segregation in juvenile detention homes and juvenile correctional facilities.

* The House Courts of Justice Committee reviewed this legislation and it was laid on the table.



Senate Bill 215 as amended proposed that such regulations shall:

1. Include relevant definitions, criteria for use of room segregation, frequency of required room checks, training requirements for staff, and follow-up requirements after using room segregation to ensure positive resident outcomes, as applicable;
2. Allow the use of room segregation only when other less restrictive options have been exhausted and only for the purpose of (i) modifying the resident's negative behavior; (ii) holding the resident accountable for a violation of a rule of the facility; (iii) ensuring the safety of the resident, staff, or others; or (iv) ensuring the security of the facility;
3. Allow the use of room segregation only for the minimum amount of time required to address the resident's negative behavior, rule violation, or threat and require that the resident be returned to the general population as soon as reasonably possible;
4. Provide to the resident a means of communication with staff during room segregation;
5. Specify, if a resident in room segregation exhibits self-injurious behavior, when and under what conditions staff shall consult with a mental health professional and monitor the resident as directed by the mental health professional; and
6. Detail the circumstances under which the director of the juvenile detention home or his designee shall develop a plan for improved behavioral outcomes for the resident.

Current Status of Regulations in Virginia



- The regulations governing juvenile correctional centers and detention centers received a comprehensive overhaul and became effective on January 1, 2014.
- At its April 2016 meeting, the Board of Juvenile Justice began to discuss a new work plan to conduct a comprehensive review of the residential regulatory requirements for juvenile correctional centers and detention centers.
- In June 2016, the Board voted on and approved the first stage of the regulatory process for this review.
- Workgroup meetings for each regulation – JDC's and JCC's – are currently underway.



Policy Considerations & Recommendations



There are a number of ongoing efforts related to improving Juvenile correctional centers and detention centers:

- The Department of Juvenile Justice is currently in the process of transforming juvenile correctional center operations, such as by moving to increased use of a community treatment model instead of a correctional model and by redesigning administrative segregation units to intensive behavior redirection units/program.
- The Task Force on Juvenile Correctional Centers has met throughout the year and continues to discuss the need to focus on smaller facilities and efforts such as Community Placement Programs.
- The Board of Juvenile Justice is doing a scheduled review of JDC and JCC regulations.



Advocacy organizations recommendations on confinement and isolation:

- American Correctional Association: 5 day maximum – allowable for disciplinary confinement.
- Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative: 4 hour maximum – not for punishment.
- Council of Juvenile Correctional Administrators: Developed Performance-based Standards program as well as a toolkit on reducing isolation. CJCA definition states that isolation should be used only to protect the youth from harming himself or others and if used, should be brief and supervised. Any time a youth is alone for 15 minutes or more it is a reportable event.

Proposed Recommendations



Recommendation 1:

Request the Board of Juvenile Justice, in consultation with experts in the fields of mental health and juvenile justice and child-rights advocates, to promulgate regulations on the use of room segregation in juvenile correctional facilities and detention homes.

- or -

Recommendation 2:

Introduce a § 1 bill to direct the Board of Juvenile Justice, in consultation with experts in the fields of mental health and juvenile justice and child-rights advocates, to promulgate regulations on the use of room segregation in juvenile correctional facilities and detention homes.

- or -

Proposed Recommendations



Recommendation 3:

Continue to monitor the Department of Juvenile Justice's comprehensive review of the residential requirements for juvenile correctional centers and secure juvenile detention centers which began in the summer of 2016, and request presentation updates from the department as needed.



COMMONWEALTH OF VIRGINIA

Commission on Youth

Public Comment:

Written public comment must be received
by 5:00 p.m. Friday, October 14, 2016.

Submission instructions available online at
(vcoy.virginia.gov) after the meeting and in
the back of the room.