



SJ 25 STUDY: SOLITARY CONFINEMENT AND JUVENILES

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Law and Justice Interim Committee

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SOLITARY CONFINEMENT AND JUVENILES

INTRODUCTION AND BACKGROUND

As requested by the 2017 Legislature in Senate Joint Resolution No. 25 (SJ 25), the Law and Justice Interim Committee (LJIC) is studying the extent of solitary confinement in Montana. The study language requests the LJIC study existing practices and policies related to solitary confinement in juvenile detention facilities. This paper will provide general background about existing Montana statutes and rules related to juvenile offenders and detention facilities, as well as a brief review of existing national standards related to housing of young offenders.

Defining Terms

The Montana Youth Court Act governs most interactions that individuals who are under the age of 18 would have with the criminal justice system in general. It is located in Title 41, chapter 5, and section 41-5-102 of the act delineates the legislative purposes for the act, which are to:

- preserve family unity when possible;
- provide for the protection and care of youth who are under the jurisdiction of the act;
- prevent and reduce youth delinquency; and
- provide structure and court processes to achieve the purposes of the act.¹

The act “does not seek retribution,” but “immediate, consistent, enforceable, and avoidable consequences” and “a program of supervision, care, rehabilitation, detention, competency development, and community protection for youth before they become adult offenders.”

Several terms related to the SJ 25 study are defined in the act including “youth,” “detention facility,” and “correctional facility”:

- A youth is “an individual who is less than 18 years of age without regard to sex or emancipation.”
- A detention facility is “a physically restricting facility designed to prevent a youth from departing at will. The term includes a youth detention facility, short-term detention center, and regional detention facility.” Further definitions are provided in the act for those three types of facilities.
- A correctional facility is “a public or private, physically secure residential facility under contract with the department and operated solely for the purpose of housing adjudicated delinquent youth.” The law further defines a “state youth correctional facility” as the Pine Hills Youth Correctional Facility in Miles City and the Riverside facility in Boulder.

Detention facilities are limited to providing temporary housing of certain youth who are alleged to have committed specified acts that would be considered a crime if committed by an adult but before a court has adjudicated the matter under the Youth Court Act. Youth may also be held in a detention facility in other several other cases as long as criteria set out in Montana law is met. Those other criteria include that a delinquent youth who has escaped from a correctional facility or a detention facility,

¹ The full text of section 41-5-102, MCA, is provided in Appendix A on page 9.

poses a threat to people or property, or might not appear for a future court hearing or as a sanction for a violation of a parole agreement, court order, or for contempt of court.²

Youth correctional facilities are for longer term placements postadjudication as a delinquent youth.³ Delinquent youth is the term for a youth that has been adjudicated by a court as provided in the Youth Court Act for an offense that if the youth had committed it as an adult, would have been considered a criminal offense or for a delinquent youth that has violated a probation condition.⁴

Detention Facilities and Correctional Facilities for Youth in Montana

Detention Facilities

Counties are responsible for providing youth detention services, including detention facilities, but the statute offers a county many options to fulfill the requirement including establishing its own detention center, operating one in cooperation with other counties, or contracting for those services with another county, a private party, another state or political subdivision of a state, or an Indian tribe. The Department of Corrections (DOC) is required to adopt administrative rules and to license detention facilities operated by counties, whether the facility is operated by a single county or a group of counties as a regional detention facility. Although the Youth Court Act authorizes or refers to other types of facilities that may house youth (for example a foster home, a youth assessment center, or a shelter care facility), the DOC is only responsible for licensing detention centers and the operation of state correctional facilities.⁵

Currently, there are three licensed detention facilities for youth in Montana:⁶

- the Missoula County Juvenile Detention Facility;
- the Cascade County Juvenile Detention Facility, which also houses youth from 11 other counties;⁷ and
- the Ted Lechner Youth Services Center in Yellowstone County, which also offers other services for youth, such as shelter care.

² Section 41-5-341, MCA, available at www.leg.mt.gov/bills/mca/title_0410/chapter_0050/part_0030/section_0410/0410-0050-0030-0410.html, last accessed Oct. 17, 2017.

³ Section 41-5-103(5), MCA, available at www.leg.mt.gov/bills/mca/title_0410/chapter_0050/part_0010/section_0030/0410-0050-0010-0030.html, and limited by section 41-5-1513, MCA, available at www.leg.mt.gov/bills/mca/title_0410/chapter_0050/part_0150/section_0130/0410-0050-0150-0130.html, both last accessed Oct. 17, 2017.

⁴ The Youth Court Act also provides a procedure for a county attorney to request that a youth be charged and tried in district court for certain serious offenses. That procedure is in section 41-5-206, MCA. A youth convicted in district court is adjudicated and sentenced according to the Criminally Convicted Youth Act, which is in Title 41, chapter 5, part 25.

⁵ See the Montana Youth Court Act at www.leg.mt.gov/bills/mca/title_0410/chapter_0050/part_0010/sections_index.html and “The Montana Youth Resources Directory,” Montana Department of Corrections, last updated Jan. 30, 2013, available from www.cor.mt.gov/Portals/104/YouthServices/YthResDir.pdf.

⁶ “Montana Youth Resources Directory,” Montana Department of Corrections, p. 33, and conversation with Youth Services Division administrator.

⁷ “Juvenile Detention Center,” Cascade County website, available at www.cascadecountymt.gov/departments/juvenile-detention-center, last accessed Oct. 17, 2017. Those 11 counties are Toole, Blaine, Hill, Pondera, Chouteau, Broadwater, Glacier, Lewis and Clark, Teton, Phillips, and Liberty.

In late 2015, the Flathead County Commission agreed with the county sheriff's plan to close its juvenile detention facility and transport the county's youth offenders to the Missoula County facility. The Flathead facility is now used to house adult female inmates who would otherwise have been held in that county's adult detention center.⁸

According to Judicial Branch statistics for calendar year 2016, the number of youth placed in detention at the time of an arrest was 778.⁹

Youth Correctional Facilities

A small number of youth involved in the juvenile system need to be placed in a secure correctional facility. A Judicial Branch report on youth courts notes that for calendar year 2016, "of the 3,711 youth referred to Youth Court, 48 were committed to the Department of Corrections for placement in a youth correctional facility." That is about 1% of the youth involved in youth court proceedings.¹⁰ The DOC operates two youth correctional facilities and contracts with a third. The Pine Hills Youth Correctional Facility in Miles City houses male youth, and female youth are placed in a facility in Idaho under a contract with the DOC.¹¹ Female youth were previously held in the Riverside facility in Boulder, which is now being used to house and treat adult female offenders.¹² In FY 2016, the average daily population at Pine Hills was 43 youth; at Riverside, it was five.¹³

The department also operates the Youth Transitional Center in Great Falls, which serves adjudicated male youth who have failed in a community placement or who need a transition from Pine Hills before reentering the community.¹⁴ The average daily population of the center in FY 2016 was six youth.¹⁵

During FY 2016, the average stay for a male youth in a secure facility was 224 days, while for a female youth it was 189 days.¹⁶

DEPARTMENT LICENSURE OF YOUTH DETENTION FACILITIES

Section 41-5-1802, MCA, requires the DOC to adopt administrative rules governing the licensure of youth detention facilities in broad terms. Again, these are facilities that are licensed by the department but not operated by it. Rather, they are operated or contracted for by a county or group of counties. The statutory delegation of rulemaking authority includes that those rules must include how a licensed facility will provide educational programs to youth. The resulting rules set out the requirements a facility must meet in order to be licensed by the department. Licensure occurs annually.¹⁷

⁸ Justin Franz, "Flathead County to Close Juvenile Detention Center," *Flathead Beacon*, Nov. 2, 2015, available at: www.flatheadbeacon.com/2015/11/02/flathead-county-to-close-juvenile-detention-center/, last accessed Oct. 17, 2017.

⁹ "Youth Court At-A-Glance," Montana Judicial Branch, p. 12, available from http://courts.mt.gov/portals/113/dcourt/yth_court/docs/2016reportcard.pdf, last accessed Oct. 24, 2017.

¹⁰ "Youth Court At-A-Glance," Montana Judicial Branch, p. 12.

¹¹ Contract between the Youth Services Division of the Montana Department of Corrections and 5-C Juvenile Detention Center, signed August 2017, available at www.cor.mt.gov/Portals/104/Resources/Contracts/a/5-C%20Juvenile%20Detention%20%2817-003-YSD%29%20FY18.pdf, last accessed Oct. 17, 2017.

¹² "Riverside Recovery and Reentry Program," Montana Department of Corrections website, available at www.cor.mt.gov/ProbationParole/Riverside, last accessed Oct. 17, 2017.

¹³ "2017 Biennial Report," Montana Department of Corrections, p. D-2, available from <http://cor.mt.gov/Portals/104/Resources/Reports/2017BiennialReport.pdf>, last accessed Oct. 24, 2017.

¹⁴ "Youth Transition Center," Montana Department of Corrections website, available at www.cor.mt.gov/Youth/YTC, last accessed Oct 17, 2017.

¹⁵ "2017 Biennial Report," Montana Department of Corrections, p. D-2.

¹⁶ "2017 Biennial Report," Montana Department of Corrections, p. D-3.

¹⁷ ARM 20.9.603: Facility License, available at www.mtrules.org/gateWay/Print_RV.Asp?RV=3983, last accessed Oct. 17, 2017.

The rules govern a wide range of topics including license or renewal applications, required staffing and training, adherence to the Prison Rape Elimination Act (or PREA) requirements, education, recordkeeping and required reports, and visitation or telephone privileges. Safety and security policies and procedures must be written and comply with standards set by the American Correctional Association.¹⁸

The rules require a facility to have written policies and procedures covering how youth are admitted to the facility, treated during their stay, and provided services such as medical care. Minimum staffing ratios are also set in rule: at least 1 staff for every 8 youth from 7 a.m. to 11 p.m., with at least two staff on duty, and at least one staff for every 12 youth from 11 p.m. to 7 a.m., with additional staff on call.

Under admission rules, the detention facility is allowed to segregate a youth from other youths for not more than 24 hours to assess and evaluate the youth. If a youth is segregated for this reason, the rule requires certain things to be provided to the youth including clothing or a uniform, a fire-retardant mattress, a pillow, a pillow case, sheets and blankets, and a towel.

Administrative Segregation and Disciplinary Detention

The rules require that if a facility uses administrative segregation or disciplinary detention the facility must have written policies that comply with ACA standards. Administrative segregation is defined in the rule as “a method of housing and managing youth whose continued presence in the general population poses a serious threat to life, property, self, staff, or other youth.”¹⁹ Administrative segregation may be used when a youth is “a serious threat to life, property, self, staff, or other youth.”²⁰

A youth may be placed in disciplinary detention as a sanction for a “serious rule violation,” which must be described in facility policy, and then only for a maximum of 23 hours a day for a maximum of 4 consecutive days.²¹ While in detention the youth must be given the opportunity to exercise at least 1 hour a day. The facility staff must provide the youth with a due process hearing within 48 hours of the placement in detention. The facility’s written policies must also include the criteria it uses for this type of detention and the processes used to conduct the due process hearing and to provide the youth an appeal of any decision.

PINE HILLS POLICY RELATED TO CONFINEMENT

A policy that outlines disciplinary procedures at the Pine Hills Youth Correctional Facility defines confinement as “placement of a youth in his own sleeping room for 15 minutes or more to control behavior that is a clear and present danger to the youth, other youth, or staff.”²² The policy states that “confinement will not be used as a punitive sanction or consequence for negative behavior.”

¹⁸ The American Correctional Association produces multiple standards related to juveniles. The standard collections are for juvenile community residential facilities, juvenile correctional facilities, juvenile detention facilities, juvenile correctional boot camp programs, juvenile day treatment programs, and small juvenile detention facilities. See www.aca.org/ACA_Prod_IMIS/ACA_Member/Standards_and_Accreditation/StandardsInfo_Home.aspx?WebsiteKey=139f6b09-e150-4c56-9c66-284b92f21e51&hkey=7c1b31e5-95cf-4bde-b400-8b5bb32a2bad&New_ContentCollectionOrganizerCommon=2#New_ContentCollectionOrganizerCommon, last accessed Oct. 17, 2017.

¹⁹ ARM 20.9.602: Definitions, available at www.mtrules.org/gateWay/Print_RV.Aspx?RV=3983, last accessed Oct. 17, 2017.

²⁰ ARM 20.9.629: Administrative Segregation and Disciplinary Detention, available at www.mtrules.org/gateWay/Print_RV.Aspx?RV=14861, last accessed Oct. 17, 2017.

²¹ ARM 20.9.629: Administrative Segregation and Disciplinary Detention.

²² “Disciplinary Procedures for Major Rule Violations and Discipline Review Committee,” PHYCF 3.4.1.002, Pine Hills Youth Correctional Facility, Montana Department of Corrections, last revised Dec. 5, 2014.

The policy also sets out the process used when a youth requires immediate confinement following a possible major rule violation. Those violations are behaviors that would “pose a threat to the safety and security of the facility” or others or is a criminal violation in Title 45 of the Montana Code Annotated. According to the policy, a youth may be confined immediately “only when he becomes physically violent or assaultive” to other youth, staff, or self or is destroying or damaging property and “cannot be handled by alternative methods.” The confinement may not last past the time it takes for the youth to gain control of himself and when he can be safely returned to the regular activities and areas.

In addition, the policy requires review of the confinement decision, regular, frequent checks on the youth while in confinement, and documentation of the confinement decision and visits. While in confinement, the youth is allowed to do schoolwork, is allowed regular, specific clothing, may have bedding if the confinement lasts overnight, and must shower and change clothing each day. The youth is also allowed the opportunity for at least 1 hour of exercise each day.

Other parts of the policy set out how a disciplinary process is conducted and how a youth may participate in that process and appeal any rulings.

NATIONAL STANDARDS AND GUIDELINES

There are several organizations that have adopted standards, guidelines, or best practices related to housing youth in confinement. Those standards are discussed below.

Performance-Based Standards

Performance-based Standards (or PbS) “is a data-driven improvement model grounded in research that holds juvenile justice agencies, facilities and residential care providers to the highest standards for operations, programs and services.”²³ The standards model was developed in the mid-1990s by the Council of Juvenile Correctional Administrators (CJCA), which is a membership organization of “juvenile justice system administrators and directors.”²⁴ The standards are voluntary and are designed to help “improve conditions, services and overall operations” of youth facilities and programs. As of 2014, at least 200 facilities and programs in 32 states use the standards.²⁵

The standards cover multiple facets of operating a youth facility or program, including safety, security, order, health and mental health services, justice and legal rights, programming, and reintegration planning.²⁶ Part of the standards includes routine facility reports of data and surveys of youths, staff, and families to provide accountability and data to make cross-state and facility comparisons and so facilities can measure progress in meeting standards and providing services.²⁷

The standards are specific to the use of isolation or room confinement: “isolating or confining a youth to his/her room should be used only to protect the youth from harming himself or others and, if used, should be brief and supervised.”²⁸ The definition of “isolation” is “any instance a youth is confined alone for cause or punishment for 15 minutes or more in his or

²³ “About Us,” Performance-based Standards,” available at www.pbstandards.org/about-us, last accessed Oct. 24, 2017.

²⁴ “About Us,” Performance-based Standards, and “CJCA Toolkit: Reducing the Use of Isolation,” Council of Juvenile Correctional Administrators, p. 1, available from www.cjca.net/index.php/resources/cjca-publications/107-toolkit/751-cjca-toolkit-for-reducing-the-use-of-isolation, last accessed Oct. 24, 2017.

²⁵ “Performance-based Standards Brochure” PbS Learning Institute, 2014, available from www.pbstandards.org/cjcaresources/219/PbS-Brochure-2014.pdf, last accessed Oct. 24, 2017.

²⁶ “Performance-based Standards Brochure” PbS Learning Institute, 2014.

²⁷ “Performance-based Standards Brochure” PbS Learning Institute, 2014.

²⁸ “Reducing Isolation and Room Confinement,” PbS Learning Institute, Sept. 2012, p. 2, available from www.pbstandards.org/uploads/documents/PbS_Reducing_Isolation_Room_Confinement_201209.pdf, last accessed Oct. 24, 2017.

her sleeping room or another room or separation unit. Exceptions are made for protective isolation, medical isolation, or when requested by a youth. The time measured begins when the youth is placed in the room and continues until when he or she leaves, including sleeping time when extending over night.”²⁹

A facility must document times when a youth is confined for 15 minutes or more and report the event in PbS statistics that are tracked over times and between facilities. Other statistics relating to isolation or confinement that the standards track are:

- Number of uses of isolation, confinement, or segregation/special management units;
- Average duration of those uses;
- The percent of cases terminated in 4 hours or less; and
- The percent of cases terminated in 8 hours or less.³⁰

The Pine Hills Youth Correctional Facility is a member of the PbS and uses the standards in the facility.³¹

Council of Juvenile Correctional Administrators’ Position on the Use of Isolation

The CJCA also has a position statement that describes the organization’s views on confining juveniles. That statement is included in this section, and the CJCA’s toolkit, from which the statement is taken, is included in the LJIC materials for the November 2017 meeting.³²

“CJCA POSITION ON THE USE OF ISOLATION

The Council of Juvenile Correctional Administrators believes that isolating or confining a youth in his/her room should be used only to protect the youth from harming him/herself or others and if used, should be for a short period and supervised.

CJCA believes that all jurisdictions should have a written policy that limits the use of isolation to situations involving a serious threat by a youth to harm oneself or others, the authority that must approve its use, for what duration of time, appropriate and adequate staff to monitor the youth with appropriate follow up and review. CJCA supports the following guidelines for the use of isolation:

1. The use of isolation should be a last resort only after verbal de-escalation techniques are employed to defuse a situation;
2. All staff should be trained in use of Isolation policy;
3. Isolation may not be used as punishment;
4. Staff must request permission to use room confinement from higher managers in a facility;
5. Residents on ‘suicide watch’ may never be placed in isolation;
6. Any use of isolation beyond 15-minutes must be recorded in incident reports;
7. Duration of isolation must be recorded;

²⁹ “Reducing Isolation and Room Confinement,” PbS Learning Institute, p. 3.

³⁰ “Reducing Isolation and Room Confinement,” PbS Learning Institute, p. 2.

³¹ “2017 Biennial Report,” Montana Department of Corrections,” p. 38.

³² CJCA Toolkit: Reducing the Use of Isolation,” Council of Juvenile Correctional Administrators, pgs. 5-6.

8. Medical and Mental Health staff should be included in the intervention; and

9. Use of isolation report should be completed and reviewed at program and higher administrative levels.”

Standards from the Juvenile Detention Alternatives Initiative

The Juvenile Detention Alternatives Initiative is a project of the Annie E. Casey Foundation, whose mission is “to foster public policies, human-service reforms and community supports that more effectively meet the needs of today’s vulnerable children and families.”³³ The standards were created in 2004 and revised in 2014. Applying broadly to practices and standards in juvenile detention facilities, the standards also include specific ones related to housing and room confinement. The definition of “room confinement” in the standards is “the involuntary restriction of a youth alone in a cell, room, or other area.”

The room confinement standards require a facility to have written policies and procedures covering aspects of the practice including that confinement is a temporary response to threatening or destructive behavior not for discipline, punishment, convenience, or staffing shortages. The written policies also must include how staff can avoid using confinement and when a youth may return from confinement, as well as incorporating various requirements for how often a youth must be observed by staff while in confinement, the conditions of the room, and the resources and supplies that must be provided to the youth. The standards require medical and mental health visits from qualified professionals. Data collection is also part of the standards and includes recording of specific information related to an incident of confinement, ranging in time from before, during, and after confinement is used.

U.S. Department of Justice

The U.S. Department of Justice conducted a review of its use of restricted housing and issued a final report in early 2016. That report included several recommendations on the use of restricted housing, which it defines as “any type of detention that involves three basic elements:

- Removal from the general inmate population, whether voluntary or involuntary;
- Placement in a locked room or cell, whether alone or with another inmate; and
- Inability to leave the room or cell for the vast majority of the day, typically 22 hours or more.”³⁴

Although the report focuses mainly on adult offenders who make up the bulk of the federal offender population, the report’s recommendations do include general policy recommendations and several related specifically to juveniles. Because the report’s recommendations were covered in a previous paper for the LJIC, this report only includes the juvenile-specific recommendations, which are:

- “Juveniles should not be placed in restrictive housing.

³³ Unless otherwise noted, the information in this section is from “Juvenile Detention Facility Assessment, Standards Instrument, 2014 Update,” Annie E. Casey Foundation, Dec. 2014, available from www.aecf.org/resources/juvenile-detention-facility-assessment/, pgs. 1-8 and 90-105, last accessed Oct. 24, 2017.

³⁴ “Report and Recommendations Concerning the Use of Restrictive Housing,” U.S. Department of Justice, Jan. 2016, p. 3, available from www.justice.gov/archives/dag/file/815551/download, last accessed Oct. 24, 2017

- In very rare situations, a juvenile may be separated from others as a temporary response to behavior that poses a serious and immediate risk of physical harm to any person. Even in such cases, the placement should be brief, designed as a “cool down” period, and done only in consultation with a mental health professional.”³⁵

RESOURCES

- Council of Juvenile Correctional Administrators Toolkit: Reducing the Use of Isolation: www.cjca.net/attachments/article/751/CJCA%20Toolkit%20Reducing%20the%20Use%20of%20Isolation.pdf
- Department of Corrections Youth Services Division website: www.cor.mt.gov/Youth
- Juvenile Detention Alternative Initiative website: www.aecf.org/work/juvenile-justice/jdai/
- Performance-based Standards: Reducing the Use of Isolation and Room Confinement: www.pbstandards.org/uploads/documents/PbS_Reducing_Isolation_Room_Confinement_201209.pdf
- Performance-based Standards Brochure: www.pbstandards.org/cjcaresources/219/PbS-Brochure-2014.pdf
- 51-Jurisdiction Survey of Juvenile Solitary Confinement Rules in Juvenile Justice System, Lowenstein Center for the Public Interest: www.lowenstein.com/files/upload/51-Jurisdiction%20Survey%20of%20Juvenile%20Solitary%20Confinement%20Rules.PDF (not cited in paper)

³⁵ “Report and Recommendations Concerning the Use of Restrictive Housing,” U.S. Department of Justice, p. 101.

APPENDIX A: SECTION 41-5-102, MCA – PURPOSE OF THE MONTANA YOUTH COURT ACT

41-5-102. Declaration of purpose. The Montana Youth Court Act must be interpreted and construed to effectuate the following express legislative purposes:

(1) to preserve the unity and welfare of the family whenever possible and to provide for the care, protection, and wholesome mental and physical development of a youth coming within the provisions of the Montana Youth Court Act;

(2) to prevent and reduce youth delinquency through a system that does not seek retribution but that provides:

(a) immediate, consistent, enforceable, and avoidable consequences of youths' actions;

(b) a program of supervision, care, rehabilitation, detention, competency development, and community protection for youth before they become adult offenders;

(c) in appropriate cases, restitution as ordered by the youth court; and

(d) that, whenever removal from the home is necessary, the youth is entitled to maintain ethnic, cultural, or religious heritage whenever appropriate;

(3) to achieve the purposes of subsections (1) and (2) in a family environment whenever possible, separating the youth from the parents only when necessary for the welfare of the youth or for the safety and protection of the community;

(4) to provide judicial procedures in which the parties are ensured a fair, accurate hearing and recognition and enforcement of their constitutional and statutory rights.

History: En. 10-1202 by Sec. 2, Ch. 329, L. 1974; R.C.M. 1947, 10-1202; amd. Sec. 1, Ch. 246, L. 1979; amd. Sec. 3, Ch. 528, L. 1995; amd. Sec. 1, Ch. 537, L. 1999; amd. Sec. 1, Ch. 512, L. 2005.

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