



**Our Title:** Negative Effects of Isolating Juveniles in Correctional Facilities

**Author's Title:** The Harmful Use of Isolation in Juvenile Facilities: The Need for Post-Disposition Representation

**Author:** Sandra Simkins, Marty Beyer, and Lisa M. Geis

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**Design Issue:**

**Purpose:** This study examined the negative effects of isolating juveniles in correctional facilities and the need to institute national standards for treatment of these juveniles while incarcerated as well as ensuring their rights to post-disposition (post-sentencing) representation. Through a pilot project, the effect of greater access to post-disposition legal counsel by juveniles in two New Jersey counties was evaluated.

**Rationale:**

- Considerable case law and the United Nations General Assembly as well as other international bodies call for the prohibition of the use of isolation with juveniles and the mentally ill.
- Regarding juveniles, the courts have found that isolation is detrimental and counter to rehabilitation, but allowed if safety requires it though the duration must be short and frequently monitored. Cases have found isolation of juveniles to be a violation of rights provided by the Eighth and Fourteenth Constitutional Amendments.
- The conditions of isolation (i.e., solitary confinement) include minimal sensory stimulation or human interaction and no educational services. These conditions would not be tolerated by society should they be perpetrated by a parent or caregiver. Access to education (a key element of rehabilitation) is legally prescribed by law, but does not occur if the juvenile is in isolation, especially a hardship for those who have learning disabilities (approximately 50%).
- Juvenile isolation and suicide are believed to be correlated. Findings show that 50% of the suicide rate relates to those in isolation and 62% of suicides are by those who have been in isolation.
- There is little research about the use of isolation on juveniles in comparison to extensive research about the psychological effects of isolation on adult prisoners.

**Design Criteria:**

*InformeDesign identified the following design criteria:*

- Be aware that the design of isolation cells require special attention to environmental accommodations (temperature, acoustics, and lighting), layout, and building materials for occupancy by juveniles who might spend long periods of time in them.
- Consider how the design of the cell can help ensure the juvenile's safety when in isolation.
- Work with facility administration to determine juvenile behavior management and identify the anticipated balance of rehabilitation program spaces for education, recreation, mental health therapy, and exercise in context with the facility's anticipated use of isolation.



### Key Concepts:

- The ongoing practice of placing a prisoner in solitary confinement is the subject of much debate. It was ruled unconstitutional in 1890 by the Supreme Court and was evaluated for possible classification as torture by the United Nations Human Rights Committee in 2008.
- Isolation and solitary confinement are used interchangeably as legal terms and both are referred to by juveniles as “lockdown,” or being “put in the box” or “the hole,” among others. The action of putting someone in isolation is referred to as “segregation,” “pre-hearing confinement” (while waiting for a hearing after an incident), “protective custody,” “seclusion,” “behavior modification unit,” etc.
- The juvenile placed in isolation (up to 23 hours/day) can be either the perpetrator or victim of aggressive behavior, or both. The isolation cell is intentionally harsh, e.g., extra surveillance, no social interaction, some exposure to loud noise and little climate control, and/or little or no programming (exercise, educational, vocational).
- The wide-spread and excessive use of isolation and lack of post-disposition case review, education, exercise, and mental health counseling in juvenile detention facilities has not been curbed as demonstrated in California, Louisiana, Indiana, Florida, and Ohio Department of Justice investigations and lawsuits.
- The severity of physical (self-mutilation, suicide attempts, and acting out) and psychological effects (anxiety, depression, anger, psychosis, etc.) is generally determined by the combination of a person’s nature and the duration and conditions encountered during isolation. Furthermore, isolation has been found to re-ignite pre-existing mental illness in addition to causing mental illness, which does not necessarily dissipate when the prisoner is reintroduced to the general prisoner population or released into society (Grassian, 2006).
- Post-disposition representation for juveniles varies by state. In some states, timing, purpose, and reporting are mandated by law (e.g., Pennsylvania). In other states (e.g., New Jersey), legal advocacy has typically ended at sentencing, leaving the sentencing judge with no legal jurisdiction to step-in on behalf of the juvenile.
- In New Jersey, though post-disposition representation was not the practice, a review of the New Jersey Code of Juvenile Justice, court rules, and case law indicated that post-disposition legal representation was possible by allowing the judge to modify the disposition, even after the juvenile has been incarcerated.
- Isolation in New Jersey can be nearly unlimited based on wording of the NJ Administrative Code regarding juveniles.
- National standards have established that “room confinement” (typically 4 hours but to not exceed 24 hours) is differentiated from “isolation” (maximum of 4 hours) and is to be used if serious harm is suspected or imminent. In both cases, mental health services must be provided (Juvenile Detention Alternatives Initiative of the Annie E. Casey Foundation, 2006). Other entities (American Bar Association, Council of Juvenile Correctional Administrators, and the American Correctional Association) have established guidelines for strict limits for time spent in isolation, increasing staff monitoring, and provision of mental health services. Standards and guidelines need to be adopted and enforced nationally.



- Often negative behavior (often caused by previous trauma) by juveniles become the focus rather than the depression or anxiety that is typically the root cause. For that reason, isolation is counter-indicated at a time when mental health therapy, exercise, education, and social interaction have been shown to be beneficial. Isolation should be used only when there is the likelihood of harm.
- Training of staff about trauma will elicit more positive responses from juveniles and greater success de-escalating aggressive behaviors. New York's engagement in a treatment-focus approach versus punishment is successfully moving traumatized juveniles toward rehabilitation and re-entry into society. Massachusetts General Hospital's Collaborative Problem Solving Approach (CPS) has been used with success in a secure unit for juveniles in Maine, the Ohio Hospital for Psychiatry, and the Yale-New Haven Children's Hospital Inpatient Psychiatry Unit, eliciting substantial reductions in the need for isolation.
- Post-disposition advocacy by legal counsel is provided to safeguard the juvenile's rights relative to basic treatment while in the correctional facility and to ensure that rehabilitation occurs; access to education is a key component of rehabilitation.
- Post-disposition legal representation strategies to keep juveniles safe while held in correctional facilities include: following through with mandatory hearings and requesting hearings if there is evidence of mistreatment; contacting the facility's administrator by fax, phone, or email (in order of the most to least attention-getting); if a satisfactory resolution is not found, then contact the ombudsperson or grievance coordinator for the facility, notify the licensing/regulatory agency for the facility, make a child abuse report, involve a specialty advocate (e.g., disability, mental health), or contact the Civil Rights Division of the U.S. Department of Justice to find relief under the Civil Rights Act of Institutionalized Persons Act (CRIPA).

#### **Research Method:**

- A collaboration between the New Jersey Office of the Public Defender and law school professors from Rutgers University's Camden and Newark campuses received a grant from the MacArthur Foundation to participate in the *Models for Change* initiative via the Juvenile Indigent Defense Action Network (JIDAN).
- The goal of this collaboration was to develop and implement a pilot project intended to contribute to a national initiative to enhance legal representation for indigent children incarcerated in New Jersey's juvenile justice system and to expand the case capacity of the Office of the Public Defender in New Jersey to support these juveniles.
- This grant-funded, pilot project was grounded in a literature review of case law, including incarceration rates, correctional facility policies relevant to treatment of juveniles, and post-disposition legal assistance characteristics (including access to counsel), rates, and legal and functional challenges to receiving assistance.
- Camden (southern part of the state) and Essex (northern part of the state) counties were selected for this pilot as between the two they represent about 50% of all juveniles sent to correctional facilities in New Jersey and contain two major urban areas within them, Camden and Newark, respectively.



- Juveniles held at these secure county facilities commonly have been incarcerated previously and based on their ages if re-incarcerated will likely be tried as adults.
- Legal services to assist post-disposition juveniles were coordinated by the Office of the Public Defender and conducted by students/fellows from the law school clinics at Rutgers in Camden and Newark.
- A referral procedure was developed to streamline the process and reduce time until the juvenile could gain post-disposition legal representation and a model of legal advocacy was developed for juveniles in secure facilities beginning post-disposition through release and parole.

#### **Limitations of the Study:**

- The authors did not identify any limitations.

**Commentary:** Detailed information is provided regarding the process and procedures of the JIDAN project for post-dispositional representation and geographic maps of New Jersey indicating case filing. A model of the JIDAN protocol is included. Detailed accounting of case law is provided.

#### **Adapted From:**

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