

Kevin M. Brown
Executive Director
Juvenile Justice Commission
P.O. Box 107
Trenton, NJ 08625-0107

Administrative Practice Officer
Office of the Attorney General
Hughes Justice Complex
25 W. Market Street
P.O. Box 081
Trenton, NJ 08625-0081

July 15, 2013

Dear Director Brown:

As organizations concerned with the treatment of juveniles in detention, we write to urge changes in the Juvenile Justice Commission's reliance on solitary confinement. As described in greater detail below, solitary confinement is an extreme and inhumane form of punishment that is not evidence-based, wastes taxpayer money, and jeopardizes public safety; this is especially so when the people being subjected to the punishment are children.

For the purpose of this petition we use the phrase solitary confinement to mean "the physical isolation of individuals who are confined in their cells/rooms for twenty-two to twenty-four hours a day."¹ Solitary confinement takes several names: room restriction, segregation, isolation, lockdown, seclusion, behavior modification unit, and others. Regardless of the nomenclature, the use of solitary confinement for juveniles must be eliminated.

Accordingly, please accept this letter as our Petition for Rulemaking. In accordance with *N.J.A.C. 13:1D-1.2*, below are the required elements of the Petition. Attached, as Appendices A-J, is the text of the proposed rules, pursuant to *N.J.A.C. 13:1D-1.2(b)*.

1. The full name and address of the petitioners

Please address all correspondence to Alexander Shalom, American Civil Liberties Union of New Jersey, P.O. Box 32159, Newark, NJ 07102. He can be reached by phone at 973-854-1714 or via email at ashalom@aclu-nj.org. The Petition for Rulemaking is submitted on behalf of the following organizations and individuals (collectively "Petitioners"):

¹ Interim rep. of the Special Rapporteur of the Human Rights Council on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 18, 23 U.N. Doc. A/63/175 (July 28, 2008).

- a. Advocates for Children of New Jersey
35 Halsey Street, 2nd Floor
Newark, NJ 07102
Attn: Cecilia Zalkind and Mary Coogan

- b. American Civil Liberties Union of New Jersey
P.O. Box 32159
Newark, NJ 07102
Attn: Alexander Shalom

- c. American Friends Service Committee
89 Market Street
6th Floor
Newark, NJ 07102
Attn: Bonnie Kerness

- d. National Religious Campaign Against Torture
110 Maryland Ave. NE, Suite 502
Washington, DC 20002
Attn: Laura Markle Downton

- e. New Jersey Association on Correction
986 South Broad Street
Trenton, New Jersey 08611
Attn: Ed Martone

- f. New Jersey Institute for Social Justice
60 Park Place, Suite 511
Newark, NJ 07102-5504
Attn: Craig Levine

- g. People's Organization for Progress
P.O. Box 22505
Newark, NJ 07101-2505
Attn: Jean Ross

- h. Rutgers Children's Justice Clinic
217 North Fifth Street
Camden, NJ 08102
Attn: Sandra Simkins

- i. Rutgers Criminal and Youth Justice Clinic
123 Washington Street
Newark, NJ 07102
Attn: Laura Cohen

2. The substance or nature of the rulemaking which is requested

For reasons discussed in more detail in questions 3 and 6, Petitioners seek changes in Juvenile Justice Commission (JJC) regulations that allow the unlimited and poorly regulated solitary confinement of juveniles without sufficient due process protections.

Specifically, Petitioners first seek to amend *N.J.A.C. 13:101-6.16* and *N.J.A.C. 13:101-6.17*, which currently allow the punitive imposition of room restriction (solitary confinement) for children under 18. Petitioners also make clear that the disciplinary measures, including corporal punishment and isolation, that are prohibited under in detention centers are also prohibited in secure facilities.

Second, Petitioners seek to amend *N.J.A.C. 13:101-8.1* and *N.J.A.C. 13:101-6.6*, which allow the use of pre-hearing room restriction (solitary confinement) in certain circumstances.

Third, Petitioners seek to amend *N.J.A.C. 13:92-7.3* to make clear that solitary confinement, like corporal punishment, is a prohibited form of behavior management.

Fourth, Petitioners seek to amend *N.J.A.C. 13:92-6.5* and *N.J.A.C. 13:92-7.4*, which allow for lengthy “temporary restriction” and indefinite “special daily schedule[s].” When temporary restriction is used correctly – and for brief, limited periods of time – it can serve as a useful cooling-off period; when it is misused, or not limited, it amounts to solitary confinement.

Fifth, Petitioners seek to amend *N.J.A.C. 13:101-1.3* and *N.J.A.C. 13:92-1.2*, which codify definitions, to reflect changes proposed elsewhere herein. *N.J.A.C. 13:101-5.3*, also requires slight modification to be consistent with other changes proposed herein.

More detailed changes to the regulations listed above are provided in Appendices A-J.

3. The problem or purpose which is the subject of the request

There is an emerging body of social scientific literature that concludes that the negative effects of solitary confinement are devastating and that the effects are particularly acute for young people. The development of this literature, along with the immensely successful reductions in the use of solitary confinement in some jurisdictions, has led policymakers to question the continued, widespread use of solitary confinement as a disciplinary sanction. In addressing the first-ever briefing to the Inter-American Commission on Human Rights on solitary confinement in the Americas, the United Nations Special Rapporteur on Torture, Juan E. Méndez noted that “The use of solitary confinement can only be accepted under exceptional circumstances, and should only be applied as a last resort measure in which its length must be as short as possible”² Indeed, he went even further, noting that solitary confinement “always constitutes cruel,

²United Nations Special Rapporteur on Torture Warns About Abuse of Solitary Confinement in the Americas, 3/13/2013), available at: http://www.unog.ch/unog/website/news_media.nsf/%28httpNewsByYear_en%29/5B5F637424BFED7AC1257B2D0060155F?OpenDocument.

inhuman, or degrading treatment and even torture when applied to” juveniles and people with mental disabilities.³

Solitary Confinement Generally

Critiques of solitary confinement are not new. More than a century ago, the United States Supreme Court noted that those people subjected to solitary confinement:

fell, after even a short confinement, into a semi-fatuous condition, from which it was next to impossible to arouse them, and others became violently insane; others still, committed suicide; while those who stood the ordeal better were not generally reformed, and in most cases did not recover sufficient mental activity to be of any subsequent service to the community.⁴

Today, these intuitive and anecdotal appraisals are supported by well-researched, authoritative analyses conducted by some of the nation’s leading experts. A review of that literature indicates that people subject to solitary confinement exhibit a variety of negative physiological and psychological reactions, including: hypersensitivity to external stimuli;⁵ perceptual distortions and hallucinations;⁶ increased anxiety and nervousness;⁷ revenge fantasies, rage, and irrational anger;⁸ fear of persecution;⁹ lack of impulse control;¹⁰ severe and chronic depression;¹¹ appetite and weight loss;¹² heart palpitations;¹³ withdrawal;¹⁴ blunting of affect and apathy;¹⁵ talking to oneself;¹⁶ headaches;¹⁷ problems sleeping;¹⁸ confusing thought processes;¹⁹ nightmares;²⁰

³ *Id.*

⁴ *In re Medley*, 134 U.S. 160, 168 (1890).

⁵ Stuart Grassian, *Psychopathological Effects of Solitary Confinement*, 140 AM. J. OF PSYCHIATRY 1450, 1452 (1983).

⁶ *Id.*, Craig Haney, *Mental Health issues in Long-Term Solitary and “Supermax” Confinement*, 49 CRIME & DELINQ. 124, 130, 134 (2003); *see generally* Richard Korn, *The Effects of Confinement in the High Security Unit at Lexington*, 15 SOC. JUST. 8 (1988).

⁷ Grassian, *supra* note 5, at 1452-53; Haney, *supra* note 6, at 130, 133; Holly A. Miller, *Reexamining Psychological Distress in the Current Conditions of Segregation*, 1 J. OF CORRECTIONAL HEALTHCARE 39, 48 (1994); *see generally* Stanley L. Brodsky & Forest R. Scogin, *Inmates in Protective Custody: First Data on Emotional Effects*, 1 FORENSIC REP. 267 (1988).

⁸ Grassian, *supra* note 5, at 1453; Holly A. Miller & Glenn R. Young, *Prison Segregation: Administrative Detention Remedy or Mental Health Problem?*, 7 CRIM. BEHAV. AND MENTAL HEALTH 85, 91 (1997); Haney, *supra* note 5 at 130, 134.

⁹ Grassian, *supra* note 5, at 1453.

¹⁰ *Id.* Miller & Young, *supra* note 8 at 92.

¹¹ Grassian, *supra* note 5, at 1453; Miller & Young, *supra* note 8 at 92; Haney, *supra* note 5 at 131.

¹² Haney, *supra* note 6 at 130; *see generally* Korn, *supra* note 6.

¹³ Haney, *supra* note 6 at 131.

¹⁴ Miller & Young, *supra* note 8 at 91; *see generally* Korn, *supra* note 6.

¹⁵ Miller & Young, *supra* note 8 at 91; *see generally* Korn, *supra* note 6.

¹⁶ Haney, *supra* note 6 at 134; *see generally* Brodsky & Scogin, *supra* note 7.

¹⁷ Haney, *supra* note 6 at 133.

¹⁸ *Id.*

¹⁹ Haney, *supra* note 6 at 137; *see generally* Brodsky & Scogin, *supra* note 7.

²⁰ Haney, *supra* note 6 at 133.

dizziness;²¹ and self-mutilation.²² As discussed below, there is evidence of aggravated harm to young people who are subjected to solitary confinement, although more research is needed in this area.

There are alternatives: several states have begun to reduce and regulate the use of solitary confinement for a variety of reasons, including the human and fiscal costs of solitary confinement, concern for public safety, and the lack of empirical evidence to support the practice.

In March 2011, the State of Maine Department of Corrections recommended tighter controls on the use of special management units (SMUs). Due to subsequent reforms, the SMU population was cut by over fifty percent; expanded access to programming and social stimulation for prisoners was implemented; and personal approval of the Commissioner of Corrections is now required to place a prisoner in the SMU for longer than 72 hours.²³

Over the last few years, the State of Mississippi has also reformed its use of solitary confinement. In the process, the state reduced the segregation population of one institution from 1000 to 150 and eventually closed the entire unit.²⁴ Prison officials estimate that diverting prisoners from solitary confinement under Mississippi's new model saves about \$8 million annually.²⁵ At the same time, changes in the management of the solitary confinement population reduced violence levels by 70%.²⁶

In light of the successful reforms undertaken by Maine and Mississippi and growing concern over both the utility and the humanity of solitary confinement, several U.S. states, as well as the U.S. Federal Bureau of Prisons have recently initiated other reforms. The BOP, for example, recently announced its intention to conduct the first-ever review of the agency's use of solitary confinement.²⁷

Solitary Confinement of Juveniles

A bedrock principle of our legal and juvenile justice systems is that young people are different from adults. As the United States Supreme Court has explained:

²¹ *Id.*

²² Grassian, *supra* note 5, at 1453; Eric Lanes, *The Association of Administrative Segregation Placement and Other Risk Factors with the Self-Injury-Free Time of Male Prisoners*, 48 J. OF OFFENDER REHABILITATION 529, 532 (2009).

²³ Lance Tapley, *Reform Comes to the Supermax*, PORTLAND PHOENIX, May 25, 2011, available at: <http://portland.the phoenix.com/news/121171-reform-comes-to-the-supermax/>.

²⁴ Terry A. Kupers et al., *Beyond Supermax Administrative Segregation: Mississippi's Experience Rethinking Prison Classification and Creating Alternative Mental Health Programs*, 36 CRIM. JUST. & BEHAV. 1037, 1041 (2009); John Buntin, *Exodus: How America's Reddest State – And Its Most Notorious Prison – Became a Model of Corrections Reform*, 23 GOVERNING 20, 27 (2010).

²⁵ Transcript of Proceedings at 8, *Presley v. Epps*, No. 4:05-CV-00148-JAD (N.D. Miss. Aug. 2, 2010).

²⁶ Kupers et al., *supra* note 24, at 1043.

²⁷ Durbin Statement on Federal Bureau of Prisons Assessment of Its Solitary Confinement Practices (Feb. 4, 2013), available at: <http://durbin.senate.gov/public/index.cfm/pressreleases?ID=07260483-4972-4720-8d43-8fc82a9909ac>.

The law has historically reflected the same assumption that children characteristically lack the capacity to exercise mature judgment and possess only an incomplete ability to understand the world around them. Legal disqualifications on children as a class – e.g., limitations on their ability to marry without parental consent – exhibit the settled understanding that the differentiating characteristics of youth are universal.²⁸

Our nation’s history is “replete with laws and judicial recognition”²⁹ that indicate “that children cannot be viewed simply as miniature adults.”³⁰ In the context of the criminal justice system, the Court has acknowledged that, because children are still developing and are inherently less culpable than adults, youth are entitled to greater constitutional protections than adults.³¹ It is through that lens that the impact of solitary confinement on young people must be viewed.

Solitary confinement “has a distinct and particularly profound impact on young people, often doing serious damage to their development and psychological and physical well-being. Because of the special vulnerability and needs of adolescents, solitary confinement can be a particularly cruel and harmful practice when applied to them.”³² While there are no studies that “look specifically at the effects of prolonged solitary confinement on adolescents . . . many experts on child and adolescent psychology... [contend that solitary confinement] can cause or exacerbate mental disabilities or other serious mental health problems.”³³ It is no surprise that the American Academy of Child and Adolescent Psychiatry “opposes the use of solitary confinement in correctional facilities for juveniles.”³⁴

Given the incomplete development of adolescents’ brains, it is inescapable that the variety of negative physiological and psychological reactions associated with solitary confinement in general would have an acute impact on young people. While no court has explicitly found that holding children in solitary confinement violates the Constitution, courts have recognized that the Eighth Amendment’s prohibition on cruel and unusual punishment precludes holding other vulnerable populations in solitary confinement.³⁵

²⁸ *J.D.B. v. North Carolina*, 564 U.S. ___ at 10 (2011).

²⁹ *Eddings v. Oklahoma*, 455 U.S. 104, 115-16 (1982).

³⁰ *J.D.B.*, *supra* 564 U.S. ___ at 10.

³¹ *See, e.g. id.* (age relevant to custody analysis, given children’s relative immaturity); *Miller v. Alabama*, 567 U.S. ___ (2012) (noting that, in the context of life without parole sentences, “children are constitutionally different from adults... have diminished culpability and greater prospects for reform ... [and] are less deserving of the most severe punishments); *Roper v. Simmons*, 543 U.S. 551, 572-73 (2005) (differences between juveniles and adults, including less culpability, make death penalty inappropriate for juveniles).

³² *Growing Up Locked Down: Youth in Solitary Confinement in Jails and Prisons Across the United States*, report of Human Rights Watch and the American Civil Liberties Union, 22 (2012), available at: <http://www.hrw.org/sites/default/files/reports/us1012ForUpload.pdf>.

³³ *Id.* at 24.

³⁴ *Solitary Confinement of Juvenile Offenders*, Policy Statement, Academy of Child and Adolescent Psychiatry (April 2012), available at:

http://www.aacap.org/cs/root/policy_statements/solitary_confinement_of_juvenile_offenders

³⁵ *See, e.g., Ruiz v. Johnson*, 37 F. Supp. 2d 855, 915 (S.D. Tex. 1999), *rev’d on other grounds*, 243 F.3d 941 (5th Cir. 2001), *adhered to on remand*, 154 F. Supp. 2d 975 (S.D. Tex. 2001) (“Conditions in TDCJ-ID’s administrative segregation units clearly violate constitutional standards when imposed on the subgroup of the plaintiff’s class made up of mentally-ill prisoners.”); *Coleman v. Wilson*, 912 F. Supp. 1282, 1320-21 (E.D. Cal. 1995); *Madrid v. Gomez*,

In recognition of the adverse effect solitary confinement has on all people, but particularly young people, Petitioners seek to amend JJC regulations that currently allow for the use of this form of punishment – which has appropriately been described as “cruel,” “inhuman,” “degrading,” and even “torture” – against vulnerable adolescents.

4. The petitioners’ interest in the request, including any relevant organization affiliation or economic interest

None of the Petitioners has an economic interest in the proposed rules.

a. Advocates for Children of New Jersey

For more than 30 years, ACNJ has been a trusted, independent voice putting children’s needs first. ACNJ educates the public and policymakers and equips caregivers with the information they need to be their child’s strongest ally. Their work results in better laws and policies, more effective funding and stronger services for children and families. By helping children – including those in detention – grow up safe, healthy and educated, ACNJ helps them become productive adults, contributing to New Jersey’s communities, securing our future and making the state a better place to live.

b. American Civil Liberties Union of New Jersey

The ACLU-NJ is a strong supporter and protector of the due process rights of individuals in the criminal justice system and the rights of juveniles generally. In addition to litigation on behalf of juveniles generally, the ACLU-NJ takes an active role in juvenile justice, visiting juvenile detention centers throughout the state, conducting know your rights workshops for young people, and actively challenging policies and practices in public schools that channel children out of schools and into the juvenile and criminal justice systems. The ACLU-NJ is the local affiliate of the national American Civil Liberties Union, which brought the case *In Re Gault*, 387 U.S. 1 (1967), before the U.S. Supreme Court, leading to the landmark victory which secured the right to counsel for children facing the equivalent of criminal charges.

c. American Friends Service Committee

The 1947 co-recipient of the Nobel Peace Prize, AFSC has more than nine decades of experience building peace in communities worldwide. AFSC is a Quaker organization that promotes lasting peace with justice, as a practical expression of faith in action. AFSC’s Prison Watch Project monitors human rights abuses in U.S. federal and state prisons, specifically the practice of isolation and torture: for over a decade it has promoted nationwide and international attention to these concerns.

889 F. Supp. 1146, 1265-66 (N.D. Cal. 1995); *Casey v. Lewis*, 834 F. Supp. 1477, 1549-50 (D. Ariz. 1993); *Langley v. Coughlin*, 715 F. Supp. 522, 540 (S.D.N.Y. 1988) (holding that evidence of prison officials’ failure to screen out from SHU “those individuals who, by virtue of their mental condition, are likely to be severely and adversely affected by placement there” states an Eighth Amendment claim).

d. National Religious Campaign Against Torture

NRCAT was launched in 2006 with the mission of mobilizing people of faith to end torture in U.S. policy, practice and culture. Among NRCAT's goals is to end the use of torture in U.S. prisons and detention facilities, in particular the use of prolonged solitary confinement. Working with faith communities, NRCAT seeks to dramatically reduce the use of solitary confinement throughout the United States.

e. New Jersey Association on Correction

NJAC aims to promote social justice and human dignity in the policies and institutions that govern offenders and victims of crime through educational, legislative, and rehabilitative programs. NJAC believes that, although individuals are sometimes caught in circumstances beyond their control, they are capable of making change in their lives and being re-directed to more positive behaviors when provided with the tools necessary to do so.

f. New Jersey Institute for Social Justice

NJISJ is a Newark-based urban research and advocacy organization dedicated to the advancement of New Jersey's urban areas and residents. Among the key issues upon which NJISJ focuses is ensuring equal justice by addressing unfairness in both the juvenile and criminal justice systems. NJISJ convened a roundtable to discuss improving school discipline processes in an effort to close the school-to-prison pipeline. NJISJ also serves in a facilitating role for the Integrated Justice Alliance, a solution-oriented collective of organizations who generate and support effective public policies before, during and after incarceration in New Jersey

g. People's Organization for Progress

POP is a multiracial independent grassroots community organization, whose mission is to educate, organize, and mobilize the people so that they may create, in partnership with others, a real democracy, a fair economy, and a just society. POP works to frustrate the school-to-prison pipeline, and its interest continues when children and youth are confined, both for their sakes and because POP recognizes that they will return to the community. Therefore, POP has a necessary and passionate interest in how children are treated in the facilities within the juvenile justice system and specifically in ensuring that they are not treated in ways that will exacerbate the problems they exhibit and face.

h. Rutgers Children's Justice Clinic

The Children's Justice Clinic, housed at Rutgers School of Law-Camden, is a holistic lawyering program that uses multiple strategies and interdisciplinary approaches to resolve problems for Camden youth facing juvenile delinquency charges. The Clinic recognizes that children involved in the juvenile court system are being drastically impacted by decisions made at this early stage of their lives. Also, the Clinic recognizes that the distinction between the rehabilitative nature of the juvenile court and the penal nature of the adult criminal court continues to blur as negative publicity continues to unfairly and inaccurately paint a picture of

the juvenile justice system. In its representation of juveniles subjected to solitary confinement, the Clinic has documented the impact of the current regulations on the juveniles it represents.

i. Rutgers Criminal and Youth Justice Clinic

The Criminal and Youth Justice Clinic, housed at Rutgers School of Law-Newark, and first established as a component of the Urban Legal Clinic, provides legal representation to incarcerated youths and to adults in minor criminal, parole, and actual innocence matters. Students work intensively with youth committed to New Jersey's juvenile justice system, challenging conditions of confinement, seeking parole release, appealing parole revocations, and easing the re-entry process. The Clinic represents several clients who have been subjected, under the current regulations, to solitary confinement.

5. The statutory authority under which the Attorney General, or agency within the Department of Law and Public Safety which is petitioned, may take the requested action

Under *N.J.S.A. 52:17B–176*, the Legislature placed in the Juvenile Justice Commission tremendous powers and responsibilities. The Legislature empowered the JJC to establish standards for the “care, treatment, government and discipline of juveniles” adjudicated delinquent. *N.J.S.A. 52:17B–170e(6)*. The Legislature granted the JJC the authority to assume the custody and care of juveniles committed to it by law. *N.J.S.A. 52:17B–170e(7)*. To those ends, the JJC has been authorized to formulate and adopt standards and rules for the efficient running of the commission and its facilities, *N.J.S.A. 52:17B–170e(14)*, and to promulgate rules and regulations necessary to effectuate the purposes for which it was established, *N.J.S.A. 52:17B–170e(22)*.

6. Existing Federal or State statutes and rules which the petitioner believes may be pertinent to the request

There is a growing movement to eliminate or limit the use of solitary confinement – particularly punitive isolation – of juveniles. Currently, five states have outright bans, either by statute or by regulation, on the use of isolation as a form of punishment for juveniles. Three other states place stringent limitations on the use of punitive isolation. Additionally, at least six state legislatures are currently considering bans.

Outright bans (on, at least, punitive solitary confinement)

Alaska has a blanket prohibition on solitary confinement as a disciplinary sanction.³⁶ “A juvenile may not be confined in solitary confinement for punitive reasons.”³⁷

By statute, **Connecticut** prohibits the solitary confinement of juveniles.³⁸

³⁶ AK R DELINQ RULES Rule 13.

³⁷ *Id.*

³⁸ C.G.S.A. § 46b-133(e) (“no child shall at any time be held in solitary confinement”).

Maine authorizes isolation and solitary confinement as a form of punishment for adults, subject to certain conditions.³⁹ In juvenile facilities those punishments are not authorized.⁴⁰

Oklahoma prohibits punitive solitary confinement and places tight limits on other forms of isolation.⁴¹ “Solitary confinement shall not be used for punishment at any OJA institution. No juvenile shall remain in solitary confinement in excess of three hours.... The use of consecutive periods of solitary confinement to evade the spirit and purpose of this Section shall be prohibited.”⁴²

In **West Virginia**, Division of Juvenile Services Director Dale Humphreys ordered an end to the use of punitive solitary confinement of juveniles in 2012.⁴³

Serious limitations (on, at least, punitive solitary confinement)

As a result of a consent decree in **Mississippi**, juveniles cannot be held in “disciplinary cell confinement” for periods longer than 72 hours.⁴⁴ Those held in such confinement are entitled to protections to reduce its harms and reporting is required whenever a child is placed in cell confinement.⁴⁵

In **Missouri**, juveniles may not be subjected to room restrictions (solitary confinement) for more than 24 hours, without the approval of the facility superintendent.⁴⁶ Whenever solitary confinement exceeds one day, the juvenile has an automatic right to appeal.⁴⁷

Montana placed limitations on juvenile solitary confinement as a result of litigation.⁴⁸ As noted below, the Legislature there is currently considering more comprehensive limitations and broad reporting requirements.

Pending legislation

In **California**, SB 61 would prohibit the use of punitive solitary confinement for juveniles and place limits on other uses of solitary confinement of young people.⁴⁹

In **Florida**, the State Senate is considering SB 812, the “Youth in Solitary Confinement Reduction Act,” which seeks to reduce the detrimental impact of solitary confinement on young

³⁹ 34-A M.R.S.A. § 3032-5A

⁴⁰ 34-A M.R.S.A. § 3032-5B

⁴¹ Oklahoma Administrative Code § 377:35-11-4.

⁴² *Id.*

⁴³ West Virginia State ends solitary confinement for juveniles, *Detroit Legal News*, April 27, 2012, available at: <http://www.legalnews.com/detroit/1297088>.

⁴⁴ *C.B., et al. v. Walnut Grove Correctional Authority, et al.*, Docket No. 3:10-cv-663, Consent Decree, (S.D.MS, 2012) available at: http://www.aclu.org/files/assets/68-1_ex_1_consent_decree.pdf.

⁴⁵ *Id.*

⁴⁶ MO R RCP Appendix A, 9.5.

⁴⁷ *Id.* at 9.6.

⁴⁸ <http://solitarywatch.com/2012/04/18/montana-settlement-limits-solitary-confinement-for-juveniles-and-prisoners-with-mental-illness/>.

⁴⁹ <http://legiscan.com/CA/text/SB61>.

people by prohibiting the use of the practice except under specific circumstances.⁵⁰ The proposed legislation requires that the confinement be “the least restrictive to maintain the safety of the youth prisoner and the institution.” The bill also restricts punitive solitary confinement to 72 hours and requires that juveniles be given time out of solitary – for instance to exercise and shower – to minimize the negative psychological effects of such confinement.⁵¹

The **Montana** Legislature is currently considering House Bill 536, known as the “Montana Solitary Confinement Act,” which, among other things limits the amount of time a juvenile may be held in solitary confinement to three consecutive days.⁵² The Montana bill also includes reporting requirements whenever a prisoner is subjected to long-term solitary confinement.⁵³

The **Nevada** Legislature is currently considering a bill that would ban punitive solitary confinement of juveniles and would limit solitary confinement for reasons other than punishment.⁵⁴

In **New Hampshire**, the House of Representatives is considering HB 480-FN, which regulates solitary confinement within the state.⁵⁵ Among the limitations required in the bill is an absolute prohibition on “Solitary confinement ... as a form of housing for inmates under the age of 18 years.”⁵⁶

The **Texas** Senate passed S.B. 1517, which requires the Texas Juvenile Justice Department to record and disclose data regarding how long juveniles are subjected to disciplinary seclusion.⁵⁷ The bill is pending in the House Committee on Corrections.⁵⁸

Conclusion

For all the above reasons, we urge the Juvenile Justice Commission to adopt new regulations consistent with these recommendations. Draft regulations are provided below, in Appendices A-J.

⁵⁰ <http://www.flsenate.gov/Session/Bill/2013/0812>.

⁵¹ *Id.*

⁵² <http://leg.mt.gov/bills/2013/billpdf/HB0536.pdf>

⁵³ *Id.*

⁵⁴ <http://www.leg.state.nv.us/Session/77th2013/Bills/SB/SB107.pdf>

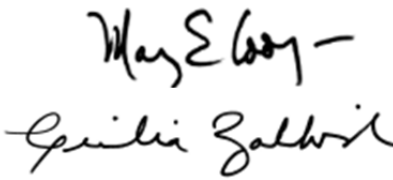

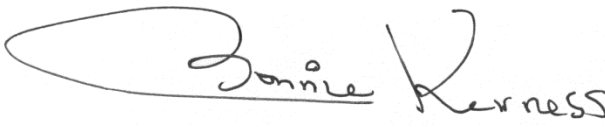






⁵⁵ <http://www.gencourt.state.nh.us/house/committees/billtext.aspx?billnumber=HB0480.html>.

⁵⁶ *Id.* at 2, III(c).

⁵⁷ <http://openstates.org/tx/bills/83/SB1517/>

⁵⁸ <http://openstates.org/tx/bills/83/SB1517/#billtext>

Signature Blocks

 <p>Advocates for Children of New Jersey Cecilia Zalkind and Mary Coogan</p>	 <p>American Civil Liberties Union of New Jersey Alexander Shalom</p>
 <p>American Friends Service Committee Bonnie Kerness</p>	 <p>National Religious Campaign Against Torture Laura Markle Downton</p>
 <p>New Jersey Association on Correction Ed Martone</p>	 <p>New Jersey Institute for Social Justice Craig Levine</p>
 <p>People's Organization for Progress Jean Ross</p>	 <p>Rutgers Children's Justice Clinic Sandra Simkins</p>
 <p>Rutgers Criminal and Youth Justice Clinic Laura Cohen</p>	

Appendix A
N.J.A.C. 13:101-6.16 Disciplinary sanctions

(a) The sanction may be individualized by considering such factors as the:

1. Juvenile's history of adjustment in the Commission;
2. Setting and circumstances of the prohibited behavior;
3. Involved juvenile's account;
4. Rehabilitative goals set for the juvenile; and
5. Juvenile's history of or the presence of special needs.

(b) Sustaining charges for any violation, other than a violation handled by immediate corrective action, shall render the offender subject to one or more of the following sanctions:

1. Any sanction prescribed for an immediate corrective action (see N.J.A.C. 13:101-5.3);
- ~~2. Up to five days room restriction, subject to the provisions of N.J.A.C. 13:101-6.17;~~
- [2]3. Loss of telephone, radio, television, and contact visit privileges for up to 30 days;
- [3]4. Loss of one or more additional facility privileges up to 15 days;
- [4]5. Confiscation;
- [5]6. Up to 14 hours extra work duty, to be performed within a maximum of two weeks;
- [6]7. Restitution for damage, alteration or destruction of State property or the property of another person which results in undue expenditure of State funds; or
- [7]8. Referral to Mental Health Services or to another program or treatment regimen for appropriate care and/or treatment.

(c) In addition to the sanctions in (b) above, administrative action may be taken by the Institutional Classification Committee upon a recommendation by the Disciplinary Hearing Officer. Such action may include, but not be limited to, the following:

1. Recommending transfer to a more appropriate facility or unit;
2. Increasing custody status;
3. Changing work or housing assignments; and/or
4. Assigning to a treatment program.

[(d) The following disciplinary measures shall be prohibited:

1. The use of corporal punishment by any members of the staff. If any staff member is found to have utilized corporal punishment, this action can constitute grounds for dismissal. In addition, in accordance with N.J.S.A. 9:6-8.10, the incident shall be reported immediately to DYFS.

i. Corporal punishment does not include the right of staff to protect themselves or others from attack, nor does it include the exercise of appropriate physical restraint as may be necessary to protect a juvenile from harming himself, herself, or others;

ii. Physical contact between staff and detained juveniles, either through acts of self-defense or the use of force to protect a juvenile from harming himself, herself or others, shall be immediately reported in writing to the administrator of the facility. A copy of the written report shall be maintained in the juvenile's file;

2. Placement in a dark cell-like environment or forcing a juvenile to perform any cruel or degrading acts;

3. Any act or lack of care that injures or significantly impairs the health of any juvenile, or is degrading or humiliating in any way;

4. Delegation of the staff's authority for administering discipline and privileges to the juveniles;

5. The deprivation of a juvenile's meals, regular evening snacks, mail privileges, court appearances or regular family visits;

6. The use of any mechanical restraint as a punishment, and

7. The physical isolation of a juvenile who is confined in his cell, or another cell, for twenty-two to twenty-four hours a day.]

[bold text in brackets is new] ~~stuck-through text is to be excised~~

Appendix B

N.J.A.C. 13:101-6.17 Limitations on room restriction as a disciplinary sanction

~~(a) A juvenile may receive up to five days in room restriction as a sanction for each violation charged, whether arising out of a single or separate incidents. However, no juvenile may spend more than five consecutive days in room restriction, whether because of separate sanctions imposed for distinct charges or for any other reason, except as set forth in (e) below.~~

~~(b) At least two consecutive days out of room restriction must follow a period of five consecutive days served in room restriction before any succeeding term of room restriction may be imposed.~~

~~(c) A juvenile shall not serve an aggregate time in room restriction in excess of 10 days in any 30-day period.~~

~~(d) Time spent by a juvenile in prehearing room restriction, as provided for in N.J.A.C. 13:101-8.1, shall be counted as days spent in room restriction for purposes of determining compliance with the time limitations set forth in this section.~~

~~(e) Nothing in this section shall prevent the placement of a juvenile in room restriction for the minimum time necessary to eliminate an immediate threat to the safety of either the juvenile, staff or other juveniles, or to the orderly operation of the facility.~~

[bold text in brackets is new] ~~stuck through text is to be excised~~

Appendix C

N.J.A.C. 13:101-8.1 Confinement in room restriction pending disciplinary hearing

~~(a) A juvenile may be placed in room restriction pending the hearing of disciplinary charges by a Disciplinary Hearing Officer, provided, however, that such prehearing room restriction shall be served only in a secure facility with an assigned Disciplinary Hearing Officer, and, shall be limited to, instances where the Superintendent or designee determines that prehearing room restriction is necessary for the safety of the juvenile, staff or other juveniles, or for the orderly operation of the facility.~~

~~1. A Room Restriction/Separation Form must be completed for each juvenile placed in prehearing room restriction, if possible prior to the placement of the juvenile in prehearing room restriction. After all necessary parties have signed the Room Restriction/Separation Form it shall be placed in the juvenile's folder~~

~~(b) A juvenile in either a non-secure facility, or in any other facility without an assigned Disciplinary Hearing Officer, shall be transferred to a secure facility with an assigned Disciplinary Hearing Officer when assigned to prehearing room restriction.~~

~~(c) Factors that may be considered by the Superintendent or designee in determining whether confinement in prehearing room restriction is warranted include whether:~~

~~1. The juvenile has been charged with an assault upon another person and, in the opinion of the staff, there is a substantial possibility that the juvenile may assault another juvenile or staff member;~~

~~2. The juvenile has been charged with threatening another person and, in the opinion of the staff, there is a substantial possibility that the juvenile will act on his or her threat;~~

~~3. The juvenile has been charged with being under the influence of drugs or intoxicants and, in the opinion of the staff, the juvenile's behavioral controls appear to be impaired;~~

~~4. The juvenile has been charged with inciting others to engage in an assault upon another person, causing serious destruction of property or participating in a group demonstration or work stoppage and, in the opinion of the staff, there is a substantial possibility the juvenile will continue such incitement;~~

~~5. The juvenile has been charged with arson or serious destruction of property and, in the opinion of the staff, there is a substantial likelihood that the juvenile may engage in additional arson or destruction of property;~~

~~6. The juvenile has received a disciplinary charge and, in the opinion of the staff, there is a substantial possibility that the juvenile will attempt to harm, threaten or intimidate potential witnesses or will attempt to organize or encourage others to harm, threaten or intimidate potential witnesses;~~

~~7. The juvenile has been charged with participating in an unauthorized gathering or group demonstration and the juvenile refuses to abandon his or her participation; and~~

~~8. The juvenile has been charged with escape or attempted escape and evidence has been produced which indicates that the juvenile presents a serious escape risk if permitted to remain in the general population.~~

~~(d) Time spent in prehearing room restriction shall be credited against any sanction of room restriction imposed by the Disciplinary Hearing Officer.~~

[bold text in brackets is new] ~~stuck through text is to be excised~~

Appendix D
N.J.A.C 13:101-6.6 Scheduling disciplinary hearings

- (a) Meetings with a Disciplinary Hearing Officer shall be convened at such times as are appropriate to carry out the work of the Disciplinary Hearing Officer.
- (b) The juvenile shall be entitled to a hearing within three days of the alleged violation, including weekends and holidays, unless the hearing is prevented by exceptional circumstances, unavoidable delays or reasonable postponements. Should the third day fall on a Saturday, Sunday or holiday, the last day for the hearing shall be the weekday immediately following the weekend or holiday.
- ~~(c) Juveniles held in prehearing room restriction, as provided for in N.J.A.C. 13:101-8, shall receive a hearing within three days, including weekends and holidays, unless there are exceptional circumstances, unavoidable delays or reasonable postponements. Should the third day fall on a Saturday, Sunday or holiday, the hearing shall be held on the weekday immediately following the weekend or holiday.~~
- ~~(d) Juveniles held in prehearing room restriction shall be given priority in scheduling their appearance before the Disciplinary Hearing Officer.~~
- ~~(e)~~**[(c)]** No delays in hearing a case shall be permitted for the purpose of punishment or discipline.

[bold text in brackets is new] ~~stuck through text is to be excised~~

Appendix E
N.J.A.C. 13:101-5.3 Authorized immediate corrective actions

(a) The following are authorized immediate corrective actions:

1. Withdrawing a privilege or an individual or group activity, for example, recreation, television or radio privileges, for no more than five days; meals and snacks provided by the facility are not permitted to be used as a sanction;

2. Requiring a juvenile to pay for repair of damaged property; to repair the damage, or to complete a work task;

3. Room restriction not to exceed four hours;

i. Room restriction in other than a secure facility may take place only in an unlocked room; in a secure facility room restriction may take place either in an unlocked or a locked room;

ii. Staff shall visually make contact every 30 minutes with a juvenile on room restriction unless the circumstances require more frequent contact. Juveniles shall be within sight or sound at all times;

iii. Juveniles who receive room restrictions shall discuss their behavior and the results of their behavior with a staff member prior to rejoining the general population; and

iv. Room restriction **[issued under this section]**~~not issued as a sanction under N.J.A.C. 13:101-6.16~~ shall be entered in the housing unit log book;

4. Facility restriction;

i. Facility restriction shall not exceed 48 hours without approval of the Superintendent;

ii. Juveniles who receive facility restrictions shall discuss their behavior and the results of their behavior with a staff member prior to rejoining the general population; and

iii. Facility restrictions shall be entered in the facility or housing unit log book;

4. Formal reprimand communicated to a juvenile by a Sergeant, or above; and

5. Up to four hours of extra work duty.

[bold text in brackets is new] ~~stuck through text is to be excised~~

Appendix F
N.J.A.C. 13:92-7.3 Behavior management

(a) Each detention facility shall establish a system of behavior management for the purpose of helping the juvenile conform to established standards of behavior and the rules and regulations of the facility.

(b) The behavior management system shall be designed to provide incentives for positive behavior and afford proportional measures of accountability for negative behavior.

1. Incentives for positive behavior may include, but not be limited to, such privileges as:

i. Special visits;

ii. Extra phone calls;

iii. Movies;

iv. Music; or

v. Special events.

2. Incentives shall not include any program, service, or physical amenity required by these rules or Federal, State, or local laws, rules, regulations or ordinances.

(c) The behavior management system shall provide written guidelines and parameters that are readily definable and easily understood by residents and staff.

(d) A verbal and written explanation of the behavior management system shall be provided to all residents as part of the formal orientation conducted by facility staff in accordance with N.J.A.C. 13:92-5.3(a)5.

(e) Disciplinary sanctions shall be objectively administered and proportionate to the gravity of the rule and the severity of the violation.

(f) The following disciplinary measures shall be prohibited:

1. The use of corporal punishment by any members of the staff. If any staff member is found to have utilized corporal punishment, this action can constitute grounds for dismissal. In addition, in accordance with N.J.S.A. 9:6-8.10, the incident shall be reported immediately to DYFS.

i. Corporal punishment does not include the right of staff to protect themselves or others from attack, nor does it include the exercise of appropriate physical restraint as may be necessary to protect a juvenile from harming himself, herself, or others;

ii. Physical contact between staff and detained juveniles, either through acts of self-defense or the use of force to protect a juvenile from harming himself, herself or others, shall be immediately reported in writing to the administrator of the detention facility. A copy of the written report shall be maintained in the juvenile's file;

2. Placement in a dark cell-like environment or forcing a juvenile to perform any cruel or degrading acts;

3. Any act or lack of care that injures or significantly impairs the health of any juvenile, or is degrading or humiliating in any way;

4. Delegation of the staff's authority for administering discipline and privileges to the juveniles;

5. The deprivation of a juvenile's meals, regular evening snacks, mail privileges, court appearances or regular family visits; ~~and~~

6. The use of any mechanical restraint as a punishment-~~;~~ **and**

[7. The physical isolation of a juvenile who is confined in his cell, or another cell, for twenty-two to twenty-four hours a day.]

[bold text in brackets is new] ~~stuck through text is to be excised~~

Appendix G
N.J.A.C. 13:92-6.5 Log for temporary restriction and special daily schedule

(a) In accordance with the provisions of N.J.A.C. 13:92-7.4, Temporary restriction ~~and special daily schedule~~, whenever a juvenile is removed from the group or ongoing program and temporarily restricted to his or her sleeping room or an isolation room, ~~or placed on the special daily schedule~~, the following information shall be recorded in a log maintained for that purpose prior to the end of the shift on which the restriction occurred:

1. The name of the juvenile;
2. The date and time of the juvenile's temporary restriction;
3. The name of the staff member requesting temporary restriction;
4. The name of the administrator or his or her designee authorizing temporary restriction;
5. The reason for the temporary restriction; **[and]**
6. The date and time of the juvenile's release from temporary restriction; **[.]**
- ~~7. If the juvenile is placed on the special daily schedule, the name of the administrator, or his or her designee, authorizing placement is required;~~
- ~~8. The date and time the juvenile was placed on the special daily schedule; and~~
- ~~9. The date and time of the juvenile's release from the special daily schedule.~~

[bold text in brackets is new] ~~stuck through text is to be excised~~

Appendix H
N.J.A.C. 13:92-7.4 Temporary restriction and ~~special daily schedule~~

(a) Temporary restriction of a juvenile to his or her sleeping room, or isolation room, shall be used as a last resort only after other less restrictive measures have failed.

(b) A juvenile shall be placed in temporary restriction only if the juvenile's behavior poses a **[significant risk of]** substantial physical threat to himself or herself and/or others or property **[within the reasonably foreseeable future]**. Room restriction shall not be used for punitive purposes, but rather to gain control of an acting-out juvenile and ensure the security and safety of the facility, staff and other juveniles.

(c) No juvenile shall be placed on temporary restriction without the approval of the administrator of the detention facility or his or her designee.

(d) Upon temporary restriction, the juvenile's name shall be recorded in the "Log for Temporary Restriction and ~~Special Daily Schedule~~" as provided for in N.J.A.C. 13:92-6.5.

(e) A juvenile placed on temporary restriction shall be re-assessed, at a minimum, every ~~two~~ hours by the administrator of the detention facility or his or her designee, to determine whether continued restriction is necessary. If the administrator or his or her designee determines that continued restriction is necessary the reason shall be recorded in the resident's file.

(f) Temporary room restriction shall not exceed 24 **[6]** hours. ~~Juveniles who require continued restriction shall be placed on the special daily schedule as described in (g) below.~~

(g) A juvenile whose disruptive behavior warrants restriction beyond the initial 24 **[6]** hours permissible in (f) above, **may be placed in temporary room restriction for an additional 6 hours, subject to the requirements of subsection (h).** ~~shall be placed on the special daily schedule. This alternative schedule requires that the restricted juvenile be provided with daily opportunities to engage in program activities, such as education and large muscle exercise, as his or her behavior permits. These program activities may be engaged in separately or with the general population, at the discretion of the facility administrator or his or her designee. The number of opportunities to engage in daily program activities shall increase as the juvenile's behavior improves.~~

(h) No juvenile shall be placed on **[successive temporary room restrictions]** ~~the special daily schedule~~ without approval by **[both]** the facility administrator, or his or her designee, **[and the director of the Juvenile Justice Commission, or his or her designee. No juvenile shall be placed on temporary room restriction for more than eighteen consecutive hours.]**

(i) ~~For a juvenile who is placed on the special daily schedule, the social service worker shall meet with the juvenile within 48 hours of placement and develop a plan to address the behavior which led to the restriction. The social service worker shall also ensure compliance with the requirements of (g) above. If a mental health problem is suspected, the social service worker shall immediately consult a mental health professional. The special daily schedule shall be~~

~~maintained and all activities documented until the juvenile can be reintegrated into the general population.~~

(j) No juvenile shall be placed on either **[temporary]** room restriction or on the special daily schedule for a pre-determined amount of time, for example, ~~72 hours, five days, etc.~~ **[6 hours]**.

~~(k) The special daily schedule shall be designed to allow the juvenile's improved behavior to serve as the determining factor for the reintegration of the juvenile into the general population. The juvenile's behavior shall be assessed daily by the administrator of the detention facility, or his or her designee, to determine whether the juvenile's behavior warrants reintegration. If the administrator or his or her designee determines that the resident cannot be reintegrated into the general population, the reason for keeping the resident on the special daily schedule shall be recorded on the form designated for this purpose as described in (l) below.~~

~~(l)~~ **(k)** Upon placement on the special daily schedule **[room restriction]**, all pertinent information regarding the placement shall be recorded on a form designed for this purpose. The information on the form shall include the name of the juvenile, the date and time of placement on, and release from, **[room restriction]** ~~the special daily schedule~~, the name of the supervisor requesting placement, the name of the administrator or his or her designee authorizing placement, the reason for the placement, and the reason for continuing the resident on **[room restriction]** ~~the special daily schedule~~. A copy of each completed form shall be filed in a separate folder maintained for this purpose.

~~(m)~~ **(l)** When a juvenile is temporarily restricted to quarters, ~~or placed on the special daily schedule~~, the following procedures shall apply:

1. As a precaution, any potentially dangerous item on the juvenile or in the quarters shall be removed to prevent acts of self-inflicted harm.
2. During the period of temporary restriction ~~or special daily schedule~~, the juvenile shall be checked at least every 15 minutes, including during regular sleeping hours, by the staff assigned to the unit and the juvenile's condition noted. The staff is to be alert at all times for indications of destructive behavior on the part of the juvenile, either self-directed or toward the juvenile's surroundings.
3. In all situations requiring a juvenile's separation from the group and restriction to quarters, an incident report shall be processed and filed with the administration by the end of the shift. The report shall outline in detail the presenting circumstances and a copy shall be kept in the juvenile's individual case folder and a central incident report file.
4. If the juvenile is restricted to quarters through a change of shifts, the relieving supervisor shall check the juvenile and the room prior to assuming his or her post and assure that the conditions set forth in these rules are being met. Under no circumstances shall a juvenile remain in restricted quarters when there is not sufficient personnel available to provide the supervision required by ~~(m)~~ **(l)** 2 above.

5. Restriction procedures shall include a means for the juvenile to communicate with staff at all times.

6. There is to be no reduction in food or calorie intake while a juvenile is restricted to quarters.

7. The restricted juvenile shall have access to bathroom facilities, including a toilet and washbasin.

8. The room in which the juvenile is restricted shall be maintained in accordance with temperatures at N.J.A.C. 13:92-4.3(e).

[bold text in brackets is new] ~~stuck through text is to be excised~~

Appendix I
N.J.A.C. 13:101-1.3 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

“Bodily fluid” means saliva, blood, urine, feces, seminal fluid or any other fluid produced by the body.

“Bodily injury” means physical pain, illness or any impairment of physical condition.

“Chief Investigator, Office of Investigations” means the Commission staff member who heads the unit responsible for conducting investigations within the Commission at the direction of the Executive Director.

“Commission” means the New Jersey Juvenile Justice Commission.

“Committed juvenile” or “juvenile” means an individual who has been adjudicated delinquent and sentenced to a term of incarceration to be served under the custody of the Commission. For the purpose of this chapter, “committed juvenile” or “juvenile” shall only refer to those individuals residing in a Juvenile Justice Commission facility.

“Counsel substitute” means an individual, such as a juvenile paralegal, teacher or social worker, who represents and defends a juvenile at a disciplinary hearing which is conducted within a facility under the jurisdiction of the Juvenile Justice Commission.

“Custody status” means the degree of supervision that is assigned to a juvenile in a Commission facility.

“Director of Custody Operations” means the Commission staff member at each secure facility of the Commission responsible for supervising the custody work force.

“Director of Operations” means the Commission staff member, by whatever name or title, charged with oversight and management responsibilities for the overall operation and supervision of the Commission's secure and non-secure facilities.

“Disciplinary Hearing Officer” means a staff member of the Juvenile Justice Commission designated to hear and adjudicate juvenile violations.

“Executive Board” means the Executive Board of the Commission.

“Executive Director” means the Executive Director of the Commission.

“Extra work duty” means a task in addition to those related to a juvenile's work or program assignment to which a juvenile has been assigned as a sanction for committing a violation.

“Facility” means any facility operated by the Commission which houses juveniles.

“Facility restriction” means the restriction of the juvenile to the confines of the facility's building or grounds.

“Gang” means a group of juveniles possessing common characteristics, interests and goals which serve to distinguish these juveniles from other juveniles or groups of juveniles and which, as a discrete entity, poses a threat to the safety of staff, other juveniles, the community or to the orderly operation of the facility.

“Handbook on Discipline” means a handbook prepared by the Commission and provided to juveniles which contains a juvenile's rights and responsibilities, the acts and activities which are prohibited and the disciplinary procedures and sanctions imposed.

“Institutional Classification Committee (I.C.C.)” means a group of Commission staff members that have been designated to make decisions related to the assignment or reassignment of juveniles to programs and activities within a Commission facility and to conduct initial reviews of juvenile requests for transfer to another such facility.

“Juvenile Handbook” means a booklet prepared by the Commission and provided to juveniles which contains a facility's rules, procedures and information about a facility's services and programs.

“Office of Investigations” means the unit responsible for conducting investigations within the Commission at the direction of the Executive Director.

~~“Program Separation Unit” means an area within a secure facility designated for assigning juveniles who are removed from the general population for disciplinary or administrative reasons.~~

“Room restriction” means confining a juvenile for disciplinary or administrative reasons, either in the room in which he or she usually sleeps or in a room in a program separation unit.

“Sanction” means a prescribed penalty or remedial action that is imposed for a violation.

“Secure facility” means any Commission facility which houses juveniles and employs custody personnel (N.J.S.A. 52:17B-174) to provide security.

“Serious bodily injury” means bodily injury that creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

“Shift supervisor” means the juvenile corrections officer of supervisory rank in those facilities employing custody personnel who is responsible for the maintenance of security during a tour of duty.

“Superintendent” means the chief executive officer of any Commission facility which houses juveniles.

“Unit manager” means the person designated by the Superintendent of a facility not employing custody personnel to be in charge of the shift in that facility.

“Weapon” means anything readily capable of lethal use or inflicting serious bodily injury.

[bold text in brackets is new] ~~stuck through text is to be excised~~

Appendix J

N.J.A.C. 13:92-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

“Child care worker” means staff who provide direct supervision of juveniles during their daily activities for the purpose of ensuring their safety and security. Child care staff shall include, but is not limited to, juvenile detention officers, youth aides and youth workers.

“Commission” means the New Jersey Juvenile Justice Commission.

“Delinquency” means the commission of an act by a juvenile which, if committed by an adult, would constitute:

1. A crime;
2. A disorderly persons offense or petty disorderly persons offense; or
3. A violation of any other penal statute, ordinance, or regulation. But, the commission of: an act which constitutes a violation of chapter 3, 4, 6 or 8 of Title 39 of the Revised Statutes by a juvenile of any age; an act relating to the ownership or operation of a motorized bicycle which constitutes a violation of chapter 3 or 4 of Title 39 of the Revised Statutes by a juvenile of any age; an act which constitutes a violation of article 3 or 6 of chapter 4 of Title 39 of the Revised Statutes pertaining to pedestrians and bicycles, by a juvenile of any age; the commission of an act which constitutes a violation of P.L. 1981, c.318 (N.J.S.A. 26:3D-1 et seq.), P.L. 1981, c.319 (N.J.S.A. 26:3D-7 et seq.), P.L. 1981, c.320 (N.J.S.A. 26:3D-15 et seq.), P.L. 1985, c.185 (N.J.S.A. 26:3E-7 et seq.), P.L. 1985, c.186 (N.J.S.A. 26:3D-32 et seq.), N.J.S.A. 2C:33-13, P.L. 1985, c.318 (N.J.S.A. 26:3D-38 et seq.), P.L. 1985, c.381 (N.J.S.A. 26:3D-46 et seq.), or of any amendment or supplement thereof, by a juvenile of any age; an act which constitutes a violation of chapter 7 of Title 12 of the Revised Statutes relating to the regulation and registration of power vessels, by a juvenile of any age or section 2 of P.L. 1987, c.453 (N.J.S.A. 12:7-61); or an act which constitutes a violation of a municipal ordinance enacted pursuant to section 2 of P.L. 1992, c.132 (N.J.S.A. 40:48-2.52) pertaining to curfew ordinances shall not constitute delinquency as defined in this section.

“Detention” means the temporary care of juveniles in physically restricting facilities pending court disposition. (N.J.S.A. 2A:4A-22c).

“Detention facility” means a facility specified by the Commission, affording secure, short-term custody for delinquent juveniles, or juveniles alleged to be delinquent.

“Fire-resistant” means materials which, due to chemical treatment or inherent properties, do not ignite readily or propagate flaming under small to moderate exposure.

“Gesture” means the act of moving the limbs or body as an expression of thought or emphasis.

“Isolation” means the temporary restriction of a juvenile to his or her sleeping room or isolation room.

“Juvenile” means an individual who is under the age of 18 years. (N.J.S.A. 2A:4A-22a). For purposes of this chapter, juvenile also includes any individual who is properly detained under the law in a juvenile detention facility and has reached the age of 18 years.

“Medication assistance staff” means a senior level child care worker who works in secure detention and has successfully completed the Statewide standardized training program which utilizes the approved State Board of Nursing's Medication Assistance Curriculum, and who is supervised in tasks related to medication assistance in accordance with the provisions of the State Board of Nursing rules at N.J.A.C. 13:37-6.2.

“New detention facility” means a detention facility which is specified for operation by the Commission after May 1, 2000.

“Recommendation” means a goal which is proposed for attainment but which is not now mandatory.

~~“Special daily schedule” means an alternative schedule developed for juveniles whose disruptive behavior warrants restriction from the juvenile population beyond 24 hours. This schedule requires that the restricted juvenile be provided with daily opportunities to engage in program activities, such as education and large muscle exercise, as his or her behavior permits. These program activities may be engaged in separately or with the general population, based on the discretion of the facility administrator or his or her designee. The number of opportunities to engage in daily program activities shall increase as the juvenile's behavior improves.~~

“Suicide-resistant” means a product which has been designed to significantly reduce the risk of a juvenile using the product in a suicide attempt.

[bold text in brackets is new] ~~stuck through text is to be excised~~