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New Jersey

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REPORTER

NJ Rises as National Leader on Criminal Justice Reform as Gov. Murphy Signs Isolated Confinement Restriction Act into Law

Advocates and survivors of solitary confinement have been warning of the lifelong harms of prolonged isolation for years, calling for change to address the suffering inflicted by a practice the United Nations says can amount to torture. On the afternoon of July 11, after an advocacy effort spanning the better part of a decade, Governor Phil Murphy delivered by signing the Isolated Confinement Restriction Act into law.

Once the law goes into effect on August 1, 2020, solitary confinement will be strictly limited in the Garden State.

“The agony of solitary confinement is that it doesn’t just lock up your body — it locks in your mind. For New Jersey to institute dramatic restrictions on solitary acknowledges the suffering we’ve endured, along with the scars we’ll bear for the rest of our lives. I’ve said before that solitary confinement is pure evil, incapable of resulting in anything but dehumanization and degradation. Now, I can point to one very small exception: all that I went through strengthened my voice to bring us closer to the goal of ending this diabolical practice once and for all,” said Nafeesah Goldsmith, a community organizer and a survivor of solitary confinement.

On July 10, a day before the signing, advocates with the ACLU-NJ and the New Jersey Campaign for Alternatives to Isolated Confinement delivered an open letter to Gov. Murphy urging him to make the bill law. The letter’s 682 signatories included prominent national



ACLU-NJ Staff Attorney Tess Borden and Ron Pierce, the democracy and justice fellow at the New Jersey Institute for Social Justice and a survivor of solitary confinement, immediately after the legislature passed the Isolated Confinement Restriction Act on June 20 in Trenton, New Jersey.

and local organizations — including the American Friends Service Committee, Amnesty International USA, Human Rights Watch, and the National Religious Campaign Against Torture — along with hundreds of individuals throughout the state and the country. All together, 19 national and international organizations, 76 New Jersey-based organizations, 13 organizations

from other states, 37 faith congregations, and 537 individuals joined forces through the letter to urge Gov. Murphy to sign the bill into law.

“To live in prolonged solitary confinement is to be denied your basic humanity, and to experience such extreme loneliness that it can feel as if the world has forgotten you,” said

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Gender-Segregated Pool Schedule Struck Down After ACLU-NJ Wins Appeal

When Marie Curto, Diana Lusardi, and Steve Lusardi moved to “A Country Place” condominiums in Lakewood, NJ, one of the biggest draws for them was the swimming pool. Curto looked forward to

swimming after work. After recovering from a series of strokes, Diana Lusardi, and Steve, her husband, wanted to use the pool for therapy exercises.

These seemingly simple aspirations proved almost impossible

because of a discriminatory policy that violated the Constitution and Fair Housing Act.

Under A Country Place’s strict gender-segregation policy, from Sunday through Friday, only 12 of the pool’s 78 hours were open to all residents. According to the 2016 schedule, women could swim in the early mornings, from 8 to 11 a.m., and in the afternoon, from 3 to 5 p.m. most weekdays. Only on Tuesdays and Thursdays could women like Curto, who worked a traditional 9-to-5 schedule, swim until 7 p.m. after coming home.

By 2016, over two-thirds of all swim hours were gender-segregated. Curto and the Lusardis sued. Surprisingly, given the policy’s clear violation of civil rights, the U.S. District Court for New Jersey ruled in favor of the condominium association.

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The ACLU-NJ joined the appeal on behalf of residents at A Country Place Condominium Association challenging its gender-segregated pool schedule. The Third Circuit ruled in the plaintiffs’ favor on April 22, holding that the policy discriminated against women.



The ACLU-NJ represented at the ACLU100 Experience when the tour made a stop in Brooklyn, New York, from May 31 to June 2.

ACLU-NJ Members Turn Out For National Tour 100 Years in the Making

The ACLU’s 100th anniversary kicks off in 2020, so in honor of this milestone, the organization embarked on a 17-city tour, dubbed the ACLU100 Experience, and the ACLU-NJ was there in person at the culminating stop.

The ACLU100 Experience featured events across the country that used immersive experiences, performances, discussions, and other means to tell the story of the organization’s past, present, and future.

ACLU-NJ members and supporters came to the two events adjacent to New Jersey: the first in Philadelphia on May 22 and 23 and the culminating event in Brooklyn from May 31 to June 2.

At the New York City event in Brooklyn, ACLU-NJ staff members and partners spoke at a moving panel about criminal justice reform, moderated by ACLU-NJ Policy Director Sarah Fajardo.

ACLU-NJ Senior Supervising Attorney Alexander Shalom spoke about New Jersey’s groundbreaking bail reform, and representatives from two coalitions of which ACLU-NJ is a founding member — the New Jersey Campaign for Alternatives to Isolated Confinement (NJ-CAIC) and Newark Communities for Accountable Policing (N-CAP) — joined him.

During the panel, NJ-CAIC Organizer Justice Rountree talked about his efforts to end solitary confinement, rooted in his own struggle as a survivor. Newark organizer Zayid Muhammad — who works in partnership with the ACLU-NJ and N-CAP advocating for reform of the Newark Police Department — talked about efforts to preserve Newark’s civilian complaint review board.

Throughout the event, ACLU-NJ staff members interacted with the public at tables to talk about key civil rights battles, like the continuing effort to legalize marijuana in the Garden State. Met by an eager crowd, ACLU-NJ staffers distributed hundreds of items of merchandise, and were heartened by groups of middle-schoolers who couldn’t wait to wear their new ACLU-NJ t-shirts. **ACLU**

ACLU-NJ Honors Coalition Partners, Advocates, at 2019 Lights of Liberty Awards Dinner

On May 2, the ACLU-NJ had the opportunity to honor some of the most influential civil rights leaders in the Garden State at the organization's annual Lights of Liberty awards dinner — including one person who has had an outsize influence on the ACLU-NJ itself, former Legal Director Ed Barocas.

It was a night for ACLU-NJ members to join together and celebrate the advocates and attorneys who have worked hand in hand over the past year.

Ed Barocas, who retired in 2018 after 17 years as ACLU-NJ legal director, received the highest honor, the Roger N. Baldwin Award, named for the founder of the national ACLU.

"I will forever treasure this as a testimonial to a work life well-lived with an organization that I love," said Barocas. "For 17 years, the work was never dull, and, as a guardian of liberty, the work was never complete. Now, of course, the need to stand up to bullies, for fairness and justice, is greater than ever. I am so proud that the ACLU is at the forefront of that battle."

Mike Noriega, a partner at Bramnick, Rodriguez, Grabas, Arnold & Mangan, LLC, received the Legal Leadership Award for his expertise on the intersection between immigration law and criminal law.

"I first met Mike as a public defender in Essex County," said ACLU-NJ Senior Supervising Attorney Alexander Shalom in presenting the award. "I didn't only learn from Mike in our hours-long meetings in his office in which we discussed trial strategy and our growing families, but every time I watched Mike treat clients with the dignity they deserve and earn the respect of his adversaries, I learned important lessons that I carry with me still."



ACLU-NJ Executive Director Amol Sinha (right) and ACLU-NJ Board Member Ron Chen (left) present the Roger N. Baldwin Award to former ACLU-NJ Legal Director Ed Barocas at the 2019 Lights of Liberty awards dinner on May 2.

Johanna Calle, director of the New Jersey Alliance for Immigrant Justice (NJAIJ), received the Torchbearer Award for community advocacy and grassroots activism. The ACLU-NJ is a member of the NJAIJ executive committee.

"Johanna has built the Alliance from the ground up," said ACLU-NJ Senior Staff Attorney Farrin Anello in presenting the award. "It is now a formidable coalition of nearly 40 faith-based, community, civil rights, and labor groups, and it has become a major voice for immigrants' rights in New Jersey."

An innovative collaboration of law firms and lawyers were also honored with the Legal Leadership Award. Last year, as part of the federal government's aggressive immigration enforcement efforts, a community of Indonesian Christians in Central Jersey suddenly found themselves

at risk of deportation, even though they would be likely targets of persecution in Indonesia. The group had entered into a decades-long agreement with Immigration and Customs Enforcement that had allowed the community to go about their lives without fear of imminent deportation, but now needed defenders to guard their constitutional rights.

"It wasn't a regular request for pro bono assistance. With several longtime community members at risk of imminent deportation, we needed legal help urgently — and we needed it for an entire community of people," said ACLU-NJ Legal Director Jeanne LoCicero in presenting the award.

The legal efforts involved three complex projects. The first, led by the law firm of Paul Weiss, was the filing of a federal class action petition, which

attorneys completed in just eight days. The case — *Pangemanan v. Tsoukaris* — argued that the deportation of these community members violated due process and deprived them of their opportunity to argue their cases for asylum. Shortly thereafter, a federal judge agreed and granted a temporary order halting their deportations.

Then, the law firm Lowenstein Sandler created model filings as a resource for other attorneys to ensure that each person could put their best foot forward in their individual immigration cases.

Third, Paul Weiss attorneys embarked on recruiting volunteer lawyers to represent each client in their individual cases. This network of firms and lawyers comprises:

- Sidley Austin LLP
- Law Offices of Jason Scott Camilo LLC
- Davis Polk & Wardwell LLP
- Gibbons PC
- Kirkland & Ellis LLP
- Lowenstein Sandler LLP
- Morgan, Lewis & Bockills LLP
- Paul, Weiss, Rifkind, Wharton & Garrison LLP
- Riker, Danzig, Scherer, Hyland & Perretti LLP
- Seton Hall Law School's Center for Social Justice

So far, the deportations have been halted, and every class member has filed a motion to reopen their asylum case. In April, the class members received their first decision, granting the motion to reopen.

"It's a promising step that we hope to be just the beginning," said LoCicero. **ACLU**

Following Years-Long Push from ACLU-NJ, Advocates, NJ Enacts Medical Aid in Dying for the Terminally Ill

Every New Jerseyan has the right to autonomy, privacy, and self-determination. On March 25, the state legislature reaffirmed those rights by passing the Medical Aid in Dying for the Terminally Ill Act.

The new law will allow patients suffering through terminal illnesses to self-administer medication to end their life, while including safeguards to ensure that their decision is voluntary, informed, and free from coercion.

The law goes into effect on August 1.

"End-of-life medical decisions are fundamental and deeply personal, and everyone should have the right to make informed decisions about their own body and their own life in consultation with their doctor," said ACLU-NJ Legal Director Jeanne LoCicero, who testified in support of the bill. "This law empowers New Jerseyans to do just that."

New Jersey becomes the eighth state to enact a law protecting the rights of patients who are terminally ill to make their own end-of-life decisions free from government intrusion, following California, Colorado, Hawaii, Montana, Oregon, Vermont, and Washington.

The ACLU-NJ has advocated for the bill's passage since the first version's introduction in 2012, although it failed to leave committee in that session. The bill passed in the Assembly during the 2014 and 2016 sessions, but it never came up for a



The Medical Aid in Dying for the Terminally Ill Act will allow patients suffering through terminal illnesses to self-administer medication to end their life. The law goes into effect in New Jersey on August 1, following nearly eight years of advocacy from the ACLU-NJ and partners.

vote in the Senate. The ACLU-NJ partnered with Compassion & Choices in the advocacy campaign, which spanned nearly eight years.

"At its core, the Medical Aid in Dying for the Terminally Ill Act is about compassion and self-determination, and it sets an example for the rest of the nation," said ACLU-NJ Executive Director Amol Sinha. "By providing legal protections for this deeply personal decision, this law makes the Garden State a fairer, more just place for all." **ACLU**

Gender-Segregated Pool

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After learning of the District Court's troubling decision, the ACLU-NJ joined the case at the United States Court of Appeals for the Third Circuit. Together with co-counsel Powell & Román LLC, the ACLU Women's Rights Project, and the ACLU Program on Freedom of Religion and Belief, the ACLU-NJ challenged the discriminatory pool policy under the Fair Housing Act.

On April 22, the Third Circuit ruled in the plaintiffs' favor, holding that the gender-segregated pool policy discriminated against women and reversing the District Court's opinion, invalidating the pool schedule.

In its opinion in *Curto v. A Country Place Condominium Association, Inc.*, the Court emphasized that the pool schedule left "women with regular-hour jobs ... little access to the pool during the work week" and thus "appeared to reflect particular assumptions about the roles of men and women."

"Our clients began this challenge three years ago, and for that entire time, have been subjected to a discriminatory pool schedule," said José Román, co-counsel with the ACLU-NJ in this case. "This decision is a comprehensive vindication of their civil rights."

"With this clear victory, other homeowners associations should take note that making rules based on outmoded gender stereotypes puts them at risk of liability under the Fair Housing Act," said ACLU-NJ Legal Director Jeanne LoCicero. **ACLU**



PROFILE IN LIBERTY

Sarah Fajardo
ACLU-NJ POLICY DIRECTOR

Sarah Fajardo remembers hearing her mother talk about being barred from studying psychology as an undergraduate student simply because she was a woman. It remains one of Fajardo's earliest memories of the personal toll when the system fails.

Fajardo carried that knowledge of inequality with her throughout her life, and that awareness ultimately led her to the role of policy director at the ACLU-NJ. She stepped into that position in April 2019, combining her strengths in building community and skills in fostering inclusive, forward-thinking policy.

Fajardo hopes to advance the kind of change that makes New Jersey a more inclusive, more just state. Her expertise in policymaking has already played an integral part as the legislature passed the Isolated Confinement Restriction Act on June 20.

As someone who values community above all, Fajardo points to a range of people who drew her toward grassroots advocacy, but it always begins with her parents.

"I remember my parents as driven, principled people who cared deeply about developing in their professions, helping people around them, and creating a good life for my younger sister and me," said Fajardo. "They instilled the values in me that guide my work every day."

Growing up in a small town in western Massachusetts, Fajardo spent her summers visiting family members — her Filipinx/Cajun cousins in California and her Irish/Lithuanian relatives in Albany — all the while supplementing what she'd learned from the struggles her parents faced as academics navigating a system that wasn't designed to include them.

"Those trips exposed me to new ways of seeing the world and showed me how to build community," said Fajardo. "I didn't realize it until I was much older, but I always sought out opportunities to understand my intersectional identity more fully, even if that process was daunting, challenging, or tugging at my heartstrings."

Despite their struggles in an unjust academic system, Fajardo's parents continued to provide psychological and speech therapy services in their town after university hours. It was important to them to build community, a mission Fajardo now considers her life's work.

But when her father passed away of lung cancer when she was 12, Fajardo's understanding of life changed.

"I began taking on a lot of responsibility at home while helping to look after my younger sister. A new understanding of mortality showed me the value of relationships in life — and it also meant seeking out connections to my father's heritage, history, and homeland," said Fajardo. "My father was a brilliant artist, and I think his absence fostered that drive in me, too."

Fajardo studied visual art in high school, where she developed a love for photography. But, heading into college, she questioned whether pursuing an artistic education was the path meant for her. Ultimately, she opted for a different route.

"In college I took classes from several brilliant young faculty members of color who changed my life. They provided me with the intellectual tools to understand structural power, and got me started in social justice work by exposing me to student groups on campus who modeled change with action," said Fajardo, who earned a degree from Wesleyan University in Anthropology. "I've been pushing for equality and justice ever since."

Fajardo comes to the ACLU-NJ after working most recently at FPWA (formerly the Federation for Protestant Welfare Agencies). Previously, she guided program work at the Coalition for Asian American Children and Families and analyzed policy at the New York City Office of Management and Budget. Fajardo's new role as ACLU-NJ policy director calls on her experience as an adviser and advocate to protect, defend, and affirm all New Jerseyans' most essential civil rights and civil liberties.

"I know there are structural shortcomings in our legal and legislative systems that prevent them from working for all of us, and I know the ACLU-NJ has always provided rigorous and unwavering support on these vital issues that move us forward," said Fajardo. "It's a privilege to be here doing this work — a moving and motivating responsibility to bring about change — fueled by a sense of urgency within me, requiring me every single day to try."

Fajardo is most looking forward to advancing policies that rectify identity-based disparities in our laws and partnering across communities to build a more just and more equitable future for all New Jerseyans.

"The ACLU-NJ has defended the rights of so many and will continue to advance justice in partnership with coalitions of communities and advocates," said Fajardo. "I'm heartened by the bravery and success of those bringing critical issues to the forefront of our country's consciousness. I'm here because of them. I'm here for the fight." **ACLU**

Gov. Murphy Signs Isolated Confinement Restriction Act into Law

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Mark Hopkins, Nafeesah Goldsmith, Lydia Thornton, and Ron Pierce, all survivors of solitary confinement, sharing their stories at an event co-hosted by the ACLU-NJ and WNYC on January 23 in Manhattan, New York.

Justice Rountree, an organizer with NJ-CAIC and a survivor of prolonged solitary confinement in New Jersey. "Now, because of Gov. Murphy's signature, those who have ever been in solitary, and those who are held in isolated confinement now, know they are not forgotten. Survivors of solitary know that because of their collective efforts, New Jersey will no longer maintain the status quo of their suffering."

The law prohibits prisons and jails from keeping anyone in solitary confinement for more than 20 consecutive days or longer than 30 days during a 60-day period. It prohibits any use of solitary confinement for certain vulnerable populations, such as people living with mental illness, people who are pregnant, and people who are LGBTQ. And it demands mental health

evaluations before and during placement in solitary confinement, requires data collection and reporting, and requires both state prisons and county jails — including those that have immigration detention units — to ensure these important protections.

"Governor Murphy's decision to enact the Isolated Confinement Restriction Act into law is one that goes far beyond signing a bill — it will be felt by every person living with the lifelong pain of prolonged isolation. With this monumental step toward justice, I'm hopeful for the day when the suffering of solitary confinement, past and present, will be a distant memory," said Ron Pierce, the democracy and justice fellow at the New Jersey Institute for Social Justice and a survivor of solitary confinement who spent four years in isolation.

According to the United Nations, prolonged isolation can amount to torture, and survivors of solitary confinement have continued to echo that same warning.

"This law is a testament to its driving force: the voices of survivors of solitary confinement who led this movement to stop the suffering they were forced to endure. No law can make up for the lives that have been lost — no policy can reclaim the futures that have been sacrificed to the torment of prolonged solitary confinement — but this law acknowledges that no one deserves to forfeit their humanity in long-term isolation. This turning point for New Jersey is a milestone in a powerful, unyielding national movement. We know New Jersey's historic step forward will inspire advocates and lawmakers throughout the country to make prolonged solitary confinement a thing of the past," said ACLU-NJ Executive Director Amol Sinha.

When a similar bill passed the state Legislature in 2016, Governor Chris Christie vetoed the legislation, falsely claiming that solitary confinement was "a problem that does not exist in New Jersey." Governor Murphy's decision to sign the Isolated Confinement Restriction Act recognizes what survivors have said all along: solitary confinement is immoral, inhuman, and must become a practice of the past.

"I'm immensely proud to be a New Jerseyan today," said Lydia Thornton, a survivor of solitary confinement who

spent over nine months in isolation. "Governor Murphy has heard our collective call for change, and he has answered by signing a bill that begins placing restrictions on this unjust practice and places the Garden State as a national leader on criminal justice reform."

As the Garden State begins to implement these necessary restrictions and important protections, the ACLU-NJ and its partners will work to keep protections as strong as possible during implementation, along with advocating to ensure that county jails and state prisons follow the law.

"The far-reaching impact of our advocacy shows that not only are we



ACLU-NJ Staff Attorney Tess Borden testifies before the Assembly Law & Public Safety Committee urging lawmakers to pass the Isolated Confinement Restriction Act on May 20 in Trenton, New Jersey.

making monumental strides in criminal justice reform here in New Jersey, but other states are poised to follow closely behind," said ACLU-NJ Staff Attorney Tess Borden. "Survivors of solitary confinement have dedicated their lives to informing and educating those in power about the lifelong harms of isolation, and we're proud of our lawmakers for heeding their call in the Garden State." **ACLU**



The Limits of Our Schools’ Constitutional Reach

BY CJ GRIFFIN

“If there’s ever a zombie apocalypse, you’ll know where to go.”

That was the caption belonging to high school seniors Cody Conroy and H.S., a pseudonym, posted on a weekend to their personal Snapchat accounts with a photo of legally owned guns laid out on a table.

Because of that post, and the picture, Lacey Township High School suspended both teenagers that Monday.

Some high schoolers joke about zombies. Some like to spend their weekends at target practice, safely and legally, and share pictures of their hobby with their friends. Neither one makes a student a threat, and, in this situation, neither student should have gotten suspended.

On April 10, together with the ACLU-NJ, I filed a First Amendment lawsuit on behalf of Conroy and H.S., whose rights the Lacey school administrators violated. We all have a constitutional right to express ourselves freely. And we all have a duty — as parents and teachers to the next generation — to promote an environment in which all New Jerseyans, especially young people, live in a state that values and protects these fundamental freedoms.

In a time where we contend with technological barriers, new challenges will continue to present themselves alongside our pursuit to protect our constitutional rights — an endeavor as important now as ever before.



CJ Griffin

What happened to these two students reminds us of our need to reinforce an essential protection: Schools cannot leap from investigating a concern to prescribing punishment at the expense of students’ freedom of speech and freedom of expression.

Since filing the suit, some members of the public have wondered whether this could blur the line that distinguishes students’ off-campus speech from students’ off-campus bullying — but those concerns are misplaced.

Schools have the authority, with limits, to discipline students for behavior that could disrupt the school environment. Bullying practically embodies the reason a school has that constitutional power, as

bullying is not protected expressive speech, and, even when done off-campus, it can significantly disrupt the learning environment for those who are targeted by a bully and those who witness the bullying.

What does not fall within schools’ authority — and does not even fall nearby — are students’ rights to express themselves outside of a school setting in their own private time. Free speech is a fundamental right, and, when students are not in school, they have a right to express themselves freely without facing punishment by the school.

In the case of Conroy and H.S., they posted the photos on a Saturday after a day of target practice at a family shooting range. The posts disappeared after 24 hours, a feature of Snapchat.

After one parent reported that her child had seen the photos, Lacey school officials investigated and quickly confirmed that neither the photos themselves nor the act of sharing them posed a threat — but administrators went from being cautious and diligent to committing a constitutional violation when they decided to punish Conroy and H.S. for the post.

That failure by school officials carries constitutional implications.

After the school administrators determined that the posts did not put the school community at risk, the district could have responded in many ways, including engaging students on issues of gun safety. However, the choice to suspend both students crossed a line by punishing both students for their constitutionally protected expression.

Conroy and H.S. were a pair of high school seniors with hobbies, just like their peers. They liked passing the time with video games, playing sports with friends, and practicing their shooting accuracy on the weekend — with legally owned guns, on their own time, and shared on their personal social media accounts.

They have the right to free speech and they have the right to free expression.

Photos may disappear after 24 hours on Snapchat, but constitutional rights certainly don’t.

CJ Griffin is a partner at Pashman Stein Walder Hayden, PC, and the vice president of the ACLU-NJ Board of Trustees.

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In honor of ACLU-NJ staff and board members

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Tributes are contributions made to honor or remember special friends, family, colleagues and occasions. To have your tribute appear in the *Civil Liberties Reporter*, please contact the ACLU-NJ office at: 973-642-2086 or P.O. Box 32159, Newark, NJ 07102.

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