

December 1, 2017

Bridget Bayless
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RE: Youth Justice and Civil Rights Professionals, Experts, and Advocates - Comments on the American Correctional Association's *Proposed Expected Practices and Definitions for the Use of Separation With Juveniles*

Dear Ms. Bayless and Ms. Noble:

We write as a group of youth justice and civil rights advocates and professionals to offer comments on the American Correctional Association's *Proposed Expected Practices and Definitions for the Use of Separation With Juveniles*. Thank you for your work to address this important issue and the opportunity to offer our commentary.

The unnecessary and excessive use of separation, also known as isolation or room confinement, is one of the most dangerous practices in youth detention and commitment facilities. Isolation can have serious and long-lasting mental and physical effects on youth, including trauma, depression, and anxiety. Isolation can pose serious safety risks for children, including increased opportunities to engage in self-harm and suicide and re-traumatizing youth who were previously victimized. A report from the Department of Justice's Office of Juvenile Justice and Delinquency Prevention described a "strong relationship between juvenile suicide and room confinement." The study found that approximately half of the victims were in isolation at the time of their death.¹ In many facilities, youth in isolation do not receive appropriate education, mental health services, or physical activity. This is especially true when youth remain in isolation for longer periods, or when they are placed in isolation frequently. The Justice Department reiterated these concerns in its comments accompanying the Prison Rape Elimination Act standards² and the Attorney General's Task Force on Children Exposed to Violence made similar observations in a

¹ Lindsay M. Hayes, *Juvenile Suicide in Confinement: A National Survey*, Office of Juvenile Justice and Delinquency Prevention (February 2009).

² U.S. Department of Justice, *National Standards to Prevent, Detect, and Respond to Prison Rape* 96 (May 16, 2012), available at http://www.ojp.usdoj.gov/programs/pdfs/prea_final_rule.pdf.

2012 report stating, “[n]owhere is the damaging impact of incarceration on vulnerable children more obvious than when it involves solitary confinement.”³

RECOMMENDATIONS TO ADOPT PROPOSED STANDARDS

We are pleased that the *Proposed Expected Practices and Definitions* recognize that isolation should be used only in emergency circumstances and that the decision to keep a youth in isolation requires careful and ongoing attention. By adopting the *Proposed Expected Practices and Definitions*, the American Correctional Association (ACA) will encourage facilities across the country to align their policies with the evolving best practices in the youth justice field.

Many of the revisions in the proposed standards are consistent with practices in a growing number of facilities and agencies, as well as positions taken by national standards of best practice created by mental health and medical experts, juvenile facility administrators, and child advocates. We support the majority of these changes, which include: (1) prohibiting the use of isolation as sanction or punishment (4-JCF-3B-10, 3-JDF-3C-06); (2) requiring review of isolation at regular intervals (4-JCF-3C-04, 3-JDF-3C-07); (3) limitations on isolation for youth as protective custody (4-JCF-3C-02); and (4) provisions for educational, mental health, medical, and recreational services for youth in isolation (4-JCF-3C-03, 3-JDF-3C-07). Jointly, the *Proposed Expected Practices and Definitions* recognize that isolation should be used only in emergency circumstances and that the decision to keep a youth in isolation requires careful and ongoing attention from supervisors and behavioral health staff.

Proposed Standards 4-JCF-3B-10 and 3-JDF-3C-06 are particularly important to prevent harmful effects of isolation. These standards permit isolation only as an immediate response to disruptive behavior that threatens the safety and security of the youth or others – a position widely shared by national youth justice standards and practices. The Juvenile Detention Facility Assessment Standards are comprehensive national standards on conditions within juvenile detention facilities used to improve conditions in the more than 250 sites in 39 states that are part of the Annie E. Casey Foundation Juvenile Detention Alternatives Initiative (JDAI).⁴ The Council of Juvenile Correctional Administrators (CJCA), which is the leading professional association of state juvenile justice agency directors, developed Performance-based Standards (PbS)⁵ as well as a toolkit on “Reducing the Use of Isolation.”⁶ Under both the JDAI and PbS Standards, isolation should be used only to protect a youth or others and, if used, should be brief and supervised. The National Partnership for Juvenile Services (NPJS), which is the professional organization of youth detention facility superintendents, has also released a position statement that supports these limitations. Together, CJCA and NPJS represent the directors of the majority of youth detention and commitment facilities in the United States.

³ Attorney General’s National Task Force on Children Exposed to Violence, *Defending Childhood: Protect, Heal, Thrive*, 115, 125 (2012), available at <http://www.justice.gov/defendingchildhood/cev-rpt-full.pdf>.

⁴ “Juvenile Detention Facility Assessment Standards Instrument: 2014 Update,” Juvenile Detention Alternatives Initiative, a project of the Annie E. Casey Foundation, available at: <http://www.cclp.org/documents/Conditions/JDAI%20Detention%20Facility%20Assessment%20Standards.pdf>.

⁵ PbS Learning Institute, “Reducing Isolation and Room Confinement” 2 (Sept. 2012), available at: http://pbstandards.org/uploads/documents/PbS_Reducing_Isolation_Room_Confinement_201209.pdf.

⁶ “Council of Juvenile Correctional Administrators Toolkit: Reducing the Use of Isolation” (March 2015), available at: <http://cjca.net/attachments/article/751/CJCA%20Toolkit%20Reducing%20the%20Use%20of%20Isolation.pdf>.

SUGGESTED CHANGES TO THE PROPOSED PRACTICES AND DEFINITIONS

While many of the *Proposed Expected Practices and Definitions* represent significant improvements, we have feedback regarding specific proposed standards.

Proposed Standards 4-JCF-3C-03 and 3-JDF-3C-07

We support the requirements in Proposed Standards 4-JCF-3C-03 and 3-JDF-3C-07 that supervisors must meet with youth within four hours to assess the reasons for isolation and continue to review isolation at regular intervals. Youth should be returned to the general population as soon as they have regained self-control and no longer pose an immediate risk of physical harm. One effective method to ensure that isolation is as brief as possible is to require review and approval by senior or specialized staff. However, these proposed standards permit extensions of isolation up to 24 hours before requiring further authorization from anyone other than a supervisor. Even after additional evaluation and authorization by the facility superintendent, these standards allow youth to potentially spend days, weeks, or even months in isolation. We recommend that these proposed standards require supervisors to review *and* authorize isolation every two hours. We also recommend that the facility superintendent evaluate and authorize in writing the use of isolation beyond six hours and that the agency director authorize isolation beyond 8 hours.

While the intent of *Proposed Expected Practices and Definitions* taken as a whole is to terminate isolation as soon as youth no longer pose a risk of physical harm, the current language of these standards states that a youth may be returned when he/she demonstrates emotional control *and* “is assessed as being able to reenter population.” We recommend that the standards be changed to clarify that this assessment requirement does not serve as a barrier to otherwise eligible youth being removed from isolation. We also recommend that these standards specify that youth will be removed from isolation once they no longer pose a risk of immediate physical harm, regardless of whether or not that occurs in between two-hour reviews.

Proposed Standard 4-JCF-3C-03 and 3-JDF-3C-11

Because of the serious risk of self-harm associated with isolation – especially for youth with mental illness – facilities should be extremely cautious about extending isolation beyond three to four hours. The proposed standards should prevent or create a strong presumption against isolation exceeding 24 hours. Twenty-four hours in isolation is longer than best practice standards created by experts and facility administrators. If youth cannot calm down within three to four hours, there are likely more complex mental or behavioral causes of their behavior. To effectively address this behavior, different interventions may be necessary.

Allowing indefinite extensions beyond 24 hours also raises serious concerns about the potential for abuse of this policy. Based on the language of the proposed standards, it seems that one-time approval by an administrative designee could avoid all time limitations on a youth’s placement in isolation, potentially leading to isolation lasting for days, weeks, or even months.

We recommend that the ACA include mandates, in this proposed standard or elsewhere, to require facilities to end isolation and attempt alternative interventions after no more than six hours, such as the development of specialized individual programming, referral to a mental health professional, or transfer to a different facility.

Proposed Standards JCF-New #8, JCF-New #9, 4-JCF-3C-01, and 4-JCF-4C-46

We appreciate that these standards provide for involvement by mental and behavioral health staff to prevent and monitor the use of isolation. We hope that the proposed changes will encourage facility administrators to increase collaboration between direct care staff and behavioral and mental health professionals. In our experience, frequent involvement by mental health staff is one of the key components of successfully reducing the use of isolation.

However, we suggest that these standards require behavioral health and mental health staff provide more proactive engagement rather than simply screening and monitoring youth's placement in isolation. Many facilities have been able to successfully reduce the use of isolation by allowing mental health staff to assist youth to calm down and exit isolation through ongoing crisis intervention and using individual behavioral plans for all youth in isolation. We recommend that the above listed standards require mental and behavioral health staff to use these techniques.

Proposed Standard JCF-New #6

Though the goal established in Proposed Standards JCF-New Goal, JDF-New Goal, JCF-3B-10 is to prohibit isolation unless youth pose an immediate risk of physical harm, the above listed standard creates loopholes that raise concerns. Youth identified as committing an "act of violence" which may not necessarily require isolation to prevent physical harm. For example, a youth may be able to de-escalate quickly or there may be a gap in time between the occurrence of the act and staff intervention. We recommend changing the language of this standard to make clear that isolation *may* be used in response to acts of violence, not that it must be used. Also, the term "act of violence" is an ambiguous term that could be read to include verbal threats and minor incidents. We recommend that this standard contain clearer terms such as "behaviors that threaten immediate harm to a youth or others."

Proposed Standard JDF-New Goal

Read alone, this proposed standard seems to emphasize that isolation is permitted whenever "warranted," which is a highly subjective and ambiguous term. We recommend changing the language to state that youth may be removed from the general population and placed in a separation room "as a temporary response to behavior that poses an immediate and substantial risk of great bodily harm to self or others," or other language that clarifies when isolation might be warranted.

The Need for Data Collection

One final concern is that the *Proposed Expected Practices and Definitions* do not include data collection provisions. Facility-level data on the use of isolation – including the length of time in

confinement, the reasons for the use of isolation, and youth demographics – are essential to better understanding uses of isolation and to improving practices. For example, both the JDAI and Performance-based Standards (PbS) created by the CJCA require the collection of detailed data on the use of isolation. The CJCA urges states to collect and analyze data on the current use of isolation in order to inform a comprehensive plan to eliminate its use and continue to monitor the effectiveness of that plan. In many states, greater transparency in data reporting is a key component of reducing isolation and changing institutional culture. Data provides a picture of what is happening inside facilities, including whether isolation is being used excessively for minor offenses, and whether it is being disproportionately used on certain populations such as youth of color, girls, LGBTQ youth, or youth with disabilities. We recommend that the standards require data collection and review to assist facility administrators in analyzing how they can change existing policies and practices to improve the safety and efficacy of their facilities.

The *Proposed Expected Practices and Standards for the Use of Separation With Juveniles* will help lead facilities and agencies around the county to reduce the unnecessary use of isolation and improve the safety of youth and staff. Please contact us if we may be of further assistance.

Sincerely,

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