



ACLU of Florida Foundation
4500 Biscayne Blvd., Suite 340
Miami, FL 33139
(786)363-2700



Florida Institutional Legal Services
14260 W. Newberry Rd., #412
Newberry, FL 32669
(352) 375-2494

March 8, 2013

Mr. Emilio Álvarez Icaza
Executive Secretary
Inter-American Commission on Human Rights
Organization of American States
1889 F Street, NW
Washington, DC 20006

Re: Thematic Hearing on Human Rights and Solitary Confinement in the Americas

I. Introduction

Hundreds of youth and seriously mentally ill inmates are currently being subjected to solitary confinement in prisons, jails and juvenile facilities in the United States State of Florida.

Florida holds more young people under age 18 in adult state prisons than any other state in the nation. Once detained in adult prisons, youth are treated as adults, despite the growing consensus that youth are different and require different interventions. In fiscal year 2010-2011, the Florida Department of Corrections (“FL DOC”) reported holding 276 young people under age 18 (although 398 young people under age 18 were admitted to FL DOC custody); the youngest was 14 years old.¹ Florida is similarly out-of-step with a growing national recognition that housing seriously mentally ill inmates in extended solitary confinement is cruel and unusual punishment.² Over 30% of the inmates housed in Florida’s extended solitary confinement units are seriously mentally ill.³

Florida law and practice does not prohibit the use of solitary confinement in prisons, jails or juvenile facilities. Inmates are placed in solitary confinement regardless of age and regardless of whether they have a mental illness or developmental disability.

II. Florida Department of Corrections

Florida’s state prison system is one of the largest in the United States.⁴ Florida incarcerates 100,272 people in its 60 state prisons and supervises almost 115,000 offenders on community supervision.⁵ Neither Florida law nor its correctional regulations applies solitary confinement any differently to children or those who are seriously mentally ill, as compared to other inmates, demonstrating a willful blindness to the particular vulnerability of these populations.

In Florida, most prisoners are held in open population, where they spend their days out of their cells, participating in programming or outside activity with other prisoners. However, Florida law allows prisoners to be held in extended solitary confinement if they are classified as

requiring disciplinary confinement,⁶ administrative confinement, including close and maximum management,⁷ or, in some cases, protective management,⁸ or these statuses in combination. Prisoners in some of these classifications are held together with a cell mate but physically and socially isolated from others, in a form of extreme isolated confinement. Many of these prisoners are held alone, in physical and social isolation for more than 22 hours, in other words, in solitary confinement.

Disciplinary Confinement (“DC”): An inmate is subject to DC if he commits a rule violation and is sentenced to a period of time in which he is confined to his cell alone or with another inmate. Inmates are confined to a small cell for 22-24 hours per day, with only very limited time spent outside alone in a cage. They are allowed extremely limited property, including only a Bible or other religious reading material. Children placed in DC are not allowed to participate in educational programming unless they are identified as needing special-education services. Many inmates are placed in DC for months and even years at a time because of multiple infractions. There are no limits on how long an inmate can spend in DC.

Administrative Confinement (“AC”): AC is a catch-all classification for any inmate that FL DOC determines should be confined to a cell rather than being housed in open population. Inmates are placed in general AC when they are pending classification determinations and often when they first arrive at a new institution. Inmates in AC have limited out-of-cell time and property. There is no limit on how long an inmate can spend in AC.

Close Management (“CM”): CM is a form of *indefinite* administrative confinement. Thousands of inmates are housed in CM in Florida. A tri-level system, the most restrictive classification is CM I, which restricts an inmate to a small cell alone for 22 to 24 hours a day with severely restricted property and little interaction with other inmates or staff. Inmates can be classified as CM and DC, which means that they are subject to the restrictions of both classifications. This dual classification is perhaps the most troubling of the solitary confinement classifications in the Florida state system, as it can result in inmates having nothing to do and no one to interact with for years at a time. This is particularly troubling for children and those mentally ill inmates, who are sometimes unable to survive in confinement for years without breaking additional rules, which leads to additional disciplinary sanctions.

Also, the FL DOC uses force, particularly chemical agents, against inmates in solitary and other confinement. The use of chemical agents against an inmate confined alone in his cell who is yelling or banging on his door is common. Yelling and banging in a cell is often a sign that the inmate is decompensating and experiencing severe mental health problems, often because of the stress of solitary confinement. The Eleventh Circuit Court of Appeals, a U.S. Federal Court, condemned Florida’s practice of using chemical agents to compel a known mentally ill inmate to comply with a command that he cannot understand or follow due to incapacity in *Thomas v. Bryant*.⁹ However, FL DOC has not changed its policy to reflect the Court’s decision. Severely mentally ill inmates and other inmates in confinement remain subject to the use of chemical agents.

III. Florida County Jails

In addition to the 100,272 inmates detained in Florida state prisons, Florida incarcerates 53,059 people in its county detention facilities.¹⁰ The Florida Model Jail Standards (“FMJS”) provide

minimum standards of confinement which jails must meet.¹¹ Prior to 1996, the FL DOC was responsible for the standards and inspection process for local county jails. Legislation was passed in 1996 that gave the authority for inspections to officials at the local level.¹² In practice, the application of these standards varies from jurisdiction to jurisdiction.

By statute, young people under 18 charged as adults (with “adult” criminal offenses) must be held in adult jails.¹³ In January 2013, county jails reported an average daily detention population of 478 young people under age 18 statewide, 365 – or 76% - of whom were detained pre-trial.¹⁴ In January 2012, Florida jails reported holding 579 young people under age 18 statewide. While they are in jail, children must be housed separately from adult inmates.¹⁵ Jails are also charged with housing children of a range of ages together in a safe manner; for example, the Duval County Jail in Jacksonville housed an 11 year old with 17 year olds. These requirements and concerns often result in the consignment of young and vulnerable inmates to solitary confinement cells. Even when held separately, these children are generally subjected to the same disciplinary rules as adults. These practices often result in the imposition of solitary confinement as a form of punishment.

The FLMS do not prohibit or regulate the solitary confinement of seriously mentally ill inmates. Seriously mentally ill inmates are often unable to conform their behavior to institutional rules and subjected to extended solitary confinement as a disciplinary measure. There are widespread issues of severely mentally ill inmates placed in solitary confinement in Florida jails who inflict self harm.

In 2011, Florida passed a law allowing counties to detain pre-adjudicated juveniles (e.g. children accused in the juvenile justice system who are awaiting trial) in adult county jails under local standards.¹⁶ Prior to 2011, the Department of Juvenile Justice (“DJJ”), which operates under its own, child-specific standards (*see infra*) ran each facility for juveniles. While the FMJS committee has developed proposed standards for juveniles held in adult jails, the standard regarding isolation of youth does not specifically limit the amount of time and the circumstances under which a youth can be held in solitary confinement.¹⁷

The lack of adequate standards for children in adult jails (regardless of whether they are accused of juvenile or adult offenses) is of significant concern.

IV. Department of Juvenile Justice

In the juvenile justice system, secure detention of youth takes place between arrest and adjudication. Youth under age 18 taken into custody are screened by DJJ to determine if they should be detained in a secure detention facility awaiting adjudication. Generally there is a 21-day limit to secure detention, but those charged with serious offenses can be held up to 30 days. DJJ operates 21 secure detention centers with a total of 1342 beds. During FY 2009-10 there were a total of 25,008 individual youth in secure detention.

The DJJ’s standards and requirements for the statewide system of secure detention for juveniles do not adequately protect youth from the harms of solitary confinement. DJJ is required to “adopt rules prescribing standards and requirements with reference to [. . .] the disciplinary treatment administered in detention facilities.”¹⁸ The current administrative rules fail to meet national best practices for the use of solitary confinement in terms of (1) inadequate due process

before placement in confinement,¹⁹ (2) mandatory confinement in six circumstances,²⁰ and (3) permitting solitary confinement far exceeding 72 hours.²¹ Furthermore, the DJJ standards fail to prohibit room confinement for children with mental illness and do not require a mental health assessment of a child until they have been in room confinement for five days and DJJ seeks to extend their confinement beyond the five day period.²²

V. Conclusion

The Florida agencies that are charged with safely detaining children and adults accused or convicted of crimes or juvenile delinquency offenses employ a range of solitary confinement practices to manage those in their care. None of these practices adequately protect children or those with mental disabilities from solitary confinement. Indeed, some of these practices permit indefinite solitary confinement for children, those with mental disabilities, and children with mental disabilities.

VI. Recommendations

Florida is out of step with international law and standards. However, there are reasons to be hopeful that Florida may become the first state in the United States to ban the solitary confinement of children and to protect the most vulnerable from this harmful practice:

In February 2013, Florida state Senator Gibson introduced SB 812, a proposed law to reduce the solitary confinement of young people in adult jails and prisons. SB 812 limits the use of emergency confinement to 24 hours, and requires mental health assessments and regular checks by corrections officers; limits disciplinary confinement to 72 hours, and requires 2 hours a day of out-of-cell recreation and access to educational services; and requires that conditions in protective custody must be the least restrictive necessary for safety, and that youth in protective custody receive 5 hours a day of out-of cell time. This legislation should be passed and implemented to protect children in facilities statewide.

On April 30, 2010, the DJJ repealed the applicable disciplinary treatment rules.²³ DJJ has expressed a willingness to update the applicable administrative rules to adhere to national best practices on the treatment of juveniles in confinement. These rules should be revised to meet or exceed relevant national and international best practices.

Further, the IACHR's attention to this critical issue is crucial and will encourage Florida to come into compliance with international law and standards. We recommend that the IACHR continue to engage the topic of solitary confinement, including through (1) a mission to observe and report on the practice in the U.S.; (2) investigating and preparing a thematic report on solitary confinement practices across the Americas region; and (3) issuing international standards recommending that OAS member states strictly limit solitary practices and prohibit solitary of children and persons with disabilities.

Sincerely,

/s/
Julie Ebenstein
ACLU of Florida, Foundation

/s/
Cassandra Jae Capobianco
Florida Institutional Legal Services, Inc.

¹American Civil Liberties Union and Human Rights Watch Report Growing Up Locked Down: Youth in Solitary Confinement in Jails and Prisons Across the United States (October 2012) by Ian Kysel, *available at* <http://www.aclu.org/files/assets/us1012webwcover.pdf>

² Statement of the American Civil Liberties Union Before the United States Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights *Hearing on Reassessing Solitary Confinement: The Human Rights, Fiscal, and Public Safety Consequences*, Tuesday, June 19, 2012, at fn. 44, *available at* http://www.aclu.org/files/assets/aclu_testimony__for_solitary_confinement_hearing-_final.pdf

³ *Osterback v. Crosby*, testimony of Dr. Kathryn Burns, Case No. 3:04-cv-210-J-25MCR, (M.D. Fla. 2007).

⁴ The Pew Center on the States, *Prison Count 2010* (April 2010) *available at* http://www.pewstates.org/uploadedFiles/PCS_Assets/2010/Pew_Prison_Count_2010.pdf.

⁵ Florida Department of Corrections, *Quick Facts* (January 2013) *available at* <http://www.dc.state.fl.us/oth/Quickfacts.html>.

⁶ *See* Fla. Admin. Code R. 33-602.222.

⁷ *See* Fla. Admin. Code R. 33-6.02.220; Fla. Admin. Code R. 33-601.800.

⁸ *See* Fla. Admin. Code R. Rule 33-601.221.

⁹ 614 F.3d 1288, 1319 (11th Cir. 2010).

¹⁰ *See* Florida County Detention Facilities' Average Inmate Population, at 4 (January 2013).

¹¹ Florida Model Jail Standards Manual [hereinafter FMJS], *available at* https://www.flsheriffs.org/our_program/florida-model-jail-standards/fmjs-manual.

¹² Fla. Stat. § 951.23.

¹³ *See* Fla. Stat. § 985.265.

¹⁴ *See* FL DOC, Florida County Detention Facilities' Average Inmate Population, at 4 (January 2013).

¹⁵ *See* Fla. Stat. § 985.265; FMJS ¶ 18.01.

¹⁶ *See* Fla. Stat. § 985.686

¹⁷ *See* FMJS, ¶ 13.13

¹⁸ Fla. Stat 985.601(9)(b).

¹⁹ Fla. Admin. Code R. 63G-2.012 only requires a formal hearing if confinement lasts longer than 5 days. The length of confinement cannot exceed five days “unless the release of the youth into the general population would jeopardize the safety and security of the facility.” No youth may be held in confinement for more than 5 days without a hearing conducted by a DJJ supervisor who is not employed at the detention center.

²⁰ Fla. Admin. Code R. 63G-2.012(4)(g) requires mandatory confinement in six instances: (1) A physical attack and/or battery by a youth on anyone in the facility; (2) Possession of any contraband that could reasonably be considered a weapon; (3) An escape or an attempt to escape; (4) Any gang related activities that could jeopardize safety or security; (5) Any attempt to resist staff that elevates to “active resistance” [as defined in the department’s PAR Chapter 63H-1, F.A.C.] (6) Felony property damage.

²¹ Fla. Admin. Code R. 63G-2.012(4)(d). The length of time of confinement is dictated by three factors: (1) severity of the rule violation, (2) past disciplinary history, (3) behavior while in confinement.

²² Fla. Admin. Code R. 63G-2.012(4)(j).

²³ *See* Florida Administrative Weekly, vol. 36-17, at 1925 (April 30, 2010) *available at* http://www.dep.state.fl.us/air/rules/regulatory/hospital_waste/NORD_HMIWI_published_4-30-10.pdf