



**FINAL REPORT OF THE
VIRGINIA COMMISSION ON YOUTH**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**

**The Use of Segregation in Virginia's
Juvenile Detention Homes and
Correctional Centers**

REPORT DOCUMENT 568

**COMMONWEALTH OF VIRGINIA
RICHMOND
2016**



COMMONWEALTH of VIRGINIA
Commission on Youth

Senator Barbara A. Favola, *Chair*
Delegate Richard P. Bell, *Vice Chair*

General Assembly Building
201 N. 9th Street, Suite 269
Richmond, Virginia 23219-0406

Executive Director
Amy M. Atkinson

804-371-2481
FAX 804-371-0574
<http://vcoy.virginia.gov>

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TO: The Honorable Terry McAuliffe, Governor of Virginia

and

Members of the Virginia General Assembly

During the 2016 General Assembly Session, I introduced Senate Bill 215. The substitute version of SB 215 required the Board of Juvenile Justice to promulgate regulations on the use of room segregation in juvenile detention homes and juvenile correctional facilities. Members of the House Courts of Justice Committee reviewed the bill and it was laid on the table. The Commission on Youth received a letter from the Chair of the House Courts of Justice Committee requesting a review of the bill and the concept it addresses and to make recommendations prior to the 2017 General Assembly Session. On May 3, 2016, the Commission adopted a study plan for this request. At its October 20, 2016 meeting, the Commission approved the recommendations for this study. These recommendations are included in this report.

This report represents the work of many government and private agencies and individuals who provided input to the study. The Commission on Youth gratefully acknowledges their support to this effort.

Respectfully submitted,

A handwritten signature in cursive script that reads "Barbara Favola".

Barbara A. Favola

MEMBERS OF THE VIRGINIA COMMISSION ON YOUTH

From the Virginia House of Delegates

Richard P. Bell, Vice Chair
Richard L. Anderson
Peter F. Farrell
Mark L. Keam
Daun S. Hester
Christopher K. Peace

From the Senate of Virginia

Barbara A. Favola, Chair
Charles W. Carrico, Sr.
David W. Marsden

**Gubernatorial Appointments
from the Commonwealth at Large**

Karrie Delaney
Deirdre S. Goldsmith
Chris Rehak, Esq.

Commission on Youth Staff

Amy M. Atkinson, Executive Director
Will Egen, Legal Policy Analyst
Leah Mills, Senior Policy Analyst

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I. Authority for Study

Section 30-174 of the *Code of Virginia* establishes the Commission on Youth and directs it to "...study and provide recommendations addressing the needs of and services to the Commonwealth's youth and their families." This section also directs the Commission to "...encourage the development of uniform policies and services to youth across the Commonwealth and provide a forum for continuing review and study of such services."

Section 30-175 of the *Code of Virginia* outlines the powers and duties of the Commission on Youth and directs it to "[u]ndertake studies and to gather information and data...and to formulate and report its recommendations to the General Assembly and the Governor."

During the 2016 General Assembly Session, Senator Favola introduced Senate Bill 215. The substitute version of SB 215 required the Board of Juvenile Justice to promulgate regulations on the use of room segregation in juvenile detention homes and juvenile correctional facilities. Members of the House Courts of Justice Committee reviewed the bill and it was laid on the table. The Commission on Youth received a letter from the Chair of the House Courts of Justice Committee requesting a review of the bill and the concept it addresses and to make recommendations prior to the 2017 General Assembly Session. The Commission on Youth designed a study plan to consider the implications of various policy options regarding segregation of juveniles in Virginia's detention homes and correctional facilities.

II. Members Appointed to Serve

The Commission on Youth is a standing legislative commission of the Virginia General Assembly. It is comprised of twelve members: six Delegates, three Senators and three citizens appointed by the Governor.

Members of the Virginia Commission on Youth are:

- Delegate Richard P. "Dickie" Bell, Staunton, Vice Chair
- Delegate Richard L. Anderson, Woodbridge
- Delegate Peter F. Farrell, Richmond
- Delegate Mark L. Keam, Vienna
- Delegate Daun S. Hester, Norfolk
- Delegate Christopher K. Peace, Mechanicsville
- Senator Barbara A. Favola, Arlington, Chair
- Senator Charles W. "Bill" Carrico, Sr., Galax
- Senator David W. Marsden, Burke
- Karrie Delaney, Chantilly
- Deirdre S. Goldsmith, Abingdon
- Chris Rehak, Esq., Radford

III. Executive Summary

During the 2016 General Assembly Session, Senator Favola introduced Senate Bill 215. The substitute version of SB 215 required the Board of Juvenile Justice to promulgate regulations on the use of room segregation in juvenile detention homes and juvenile correctional facilities. Members of the House Courts of Justice Committee reviewed the bill and it was laid on

the table. The Commission on Youth received a letter from the Chair of the House Courts of Justice Committee requesting a review of the bill and the concept it addresses and to make recommendations prior to the 2017 General Assembly Session. The Commission on Youth designed a study plan to consider the implications of various policy options regarding segregation of youths in Virginia's juvenile detention homes and correctional facilities. Text of the substitute version of Senate Bill 215 can be found under Appendix A.

After presentations of the findings and recommendations at the Commission's September 20 and October 20, 2016 meetings, and receipt of public comment, the Commission on Youth approved the following recommendations:

Recommendation 1

Request the Board of Juvenile Justice, in consultation with experts in the fields of mental health and juvenile justice and child-rights advocates, to promulgate regulations on the use of room segregation in juvenile correctional facilities and detention homes.

Recommendation 2

Continue to monitor the Department of Juvenile Justice's comprehensive review of the residential requirements for juvenile correctional centers and secure juvenile detention centers which began in the summer of 2016, and request presentation updates from the department as needed.

IV. Study Goals and Objectives

At the Commission on Youth meeting on May 3, 2016, Commission on Youth staff was directed to assess the issues surrounding youth segregation in Virginia's juvenile detention homes and facilities and to make recommendations prior to the 2017 General Assembly Session.

A. IDENTIFIED ISSUES

- The circumstances that lead to segregation include threat or actual physical abuse of staff or peers, verbal abuse of staff or peers, failure to follow program rules, or inappropriate behavior including gang activity. Segregation may also be used to protect residents who are likely to be exploited or victimized by others.
- Recent studies have shown that segregating prisoners does not reduce violence and likely increases recidivism. Additionally, experts have increasingly stated that lack of human contact in solitary confinement causes psychological and developmental harm to juveniles.
- Room segregation is a permitted practice in Virginia's juvenile detention homes and correctional facilities. Under the Virginia Administrative Code regulations governing room confinement and isolation and administrative segregation are laid out separately for correctional centers and detention centers in 6 VAC 35-71-1140 – 1160 and 6 VAC 35-101-1100 – 1110 respectively.
- Current Virginia regulations for room confinement and isolation for juvenile correctional centers indicate that staff must visually check on a resident who is confined to a room at least every 30 minutes, and a resident must be allowed one hour of outside physical exercise each day. Also, if confinement extends more than 72 hours, then the confinement and steps being taken or planned to resolve the situation shall be immediately reported to the department staff, in a position above the level of superintendent, and room confinement during isolation shall not exceed five consecutive days.

- The regulations for room confinement and isolation for juvenile detention centers are similar to the above regulations. Staff must check on the resident visually at least every 30 minutes and at least every 15 minutes if the resident is on suicide watch, and a resident must be allowed one hour of outside physical exercise each day. Also, if confinement extends more than 72 hours, then the confinement and steps being taken or planned to resolve the situation shall be immediately reported to the director, and room confinement shall not exceed five consecutive days except when ordered by a medical provider.
- National Conference of State Legislatures (NCSL) data shows that nine states have passed laws or have regulations that limit or prohibit the use of solitary confinement for youth in detention facilities. Some of these states' rules differentiate between solitary confinement versus seclusion, while other states focus on creating ombudsman or monitoring programs to assist youth. Finally, one state has enacted legislation that requires in-depth licensing of juvenile detention facilities.¹
- The Juvenile Detention Alternatives Initiative (JDAI) released revised juvenile detention facility standards in June 2014 prohibiting "the use of room confinement for discipline, punishment, administrative convenience, retaliation, staffing shortages, or reasons other than as a temporary response to behavior that threatens immediate harm to a youth or others."
- In January 2016, the U.S. Department of Justice published a report and recommendation regarding the use of restrictive housing in the criminal justice system. The President adopted the recommendation in this report calling on the Federal Bureau of Prisons to end the practice of placing juveniles in restrictive housing.

B. STUDY ACTIVITIES

At the Commission's meeting on May 3, 2016, the Commission approved the study plan which included the following activities:

- Conduct extensive background and literature reviews
 - National Conference of State Legislatures (NCSL)
 - Annie E. Casey Juvenile Detention Alternatives Initiative (JDAI)
 - Association of State Correctional Administrators (ASCA)
 - American Correctional Association (ACA)
 - National Commission on Correctional Health Care (NCCHC) standards
 - Council of Juvenile Correctional Administrators (CJCA)
 - Best practices in juvenile resident room segregation
 - Other states' statutes, regulations, studies, and activities
- Research and review federal law and policy
 - Adopted recommendations of the Department of Justice review of solitary confinement
 - *Sentencing Reform and Corrections Act of 2015* (proposed legislation)
 - Review judicial case law
- Review and analyze Virginia laws, policies, and procedures
 - Juvenile detention homes and correctional facilities policies and practices
 - Juvenile detention homes and correctional facilities regulations

¹ Teigen, Anne S. (December 2015). National Conference of State Legislatures. *States Addressing Solitary Confinement for Juveniles*. [Online]. Available: <http://www.ncsl.org/blog/2015/12/21/states-addressing-solitary-confinement-for-juveniles.aspx>. [December 2016].

- Monitor regulatory process of the Board of Juvenile Justice – Virginia Department of Juvenile Justice
 - Juvenile correctional centers
 - Secure juvenile detention centers
- Develop recommendations
 - Synthesize findings
 - Develop recommendations
- Solicit feedback to recommendations
- Refine findings and recommendations
- Present findings and recommendations to the Commission on Youth
- Prepare final report

V. Methodology and Objectives

The findings of the study are based on several distinct research activities conducted by the Commission on Youth.

A. RESEARCH AND ANALYSIS

Commission staff conducted a review of other states' laws and regulations related to segregation of juveniles in correctional centers and detention facilities. Additionally, staff looked at national organization standards and best practices for segregation in juvenile facilities.

In Virginia, the Board of Juvenile Justice is responsible for overseeing the laws and regulations governing juvenile detention centers and juvenile correctional centers. Accordingly, Virginia Board of Juvenile Justice rules and regulations were reviewed. Those laws and regulations included room confinement and isolation, administrative segregation, and administrative confinement.

B. MEETINGS ATTENDED AND INPUT ASCERTAINED

Commission on Youth staff attended Department of Juvenile Justice Board meetings throughout the study year and gathered information about the Board's work plan to review regulations for juvenile detention centers and correctional centers. Staff also met with the Department of Juvenile Justice on this study to gain additional perspective on how isolation and segregation are used in juvenile correctional centers and to discuss Virginia's current regulatory setup. Additionally, staff attended meetings of the Secretary of Public Safety and Homeland Security's Interagency Taskforce on Juvenile Correctional Centers. These taskforce meetings discussed plans for the future direction of juvenile correctional centers in the Commonwealth. Staff also collaborated with the Center on Children's Law and Policy a national organization which partners with other groups in a joint effort called Stop Solitary for Kids. Stop Solitary for Kids is a national campaign to end solitary confinement of youth in juvenile and adult facilities.

Staff was invited to attend and lead a discussion on the Commission's study at the Virginia Juvenile Detention Association's quarterly meeting. The Association discussed their thoughts on the current regulations dealing with room confinement and isolation and administrative confinement as well as potential changes. Finally, Commission on Youth staff toured the Bon Air Juvenile Correctional Center.

VI. Background

The results of the research and analysis conducted by Commission staff are summarized below.

A. BACKGROUND AND LITERATURE

A large part of this study was to gather background information and to develop an understanding of the various models for the implementation of standards related to the use of segregation in juvenile facilities.

Public discussion has increased a great deal over the past several years on the topic of juvenile segregation. Organizations such as the Center for Children’s Law and Policy, the Council of Juvenile Correctional Administrators, and the Justice Policy Institute have begun working together to form a national campaign, Stop Solitary for Kids, to end solitary confinement of youth in juvenile and adult facilities in the United States. At the same time, the issue of officer, inmate, and facility safety has come into greater focus. A prison guard’s union in New York has recently sued the Mayor of New York, the City Council and the city Board of Correction contending that the ban on punitive segregation for prisoners 21 years of age or younger has put their lives at risk.²

Published papers and literature on this subject have also continued to grow in number over the past decade. One of the most widely cited studies on segregation in prisons, not specific to juvenile facilities, is the work done by Daniel P. Mears in *Evaluating the Effectiveness of Supermax Prisons*. His research found little evidence to support the claim that use of segregation increases safety in the facility or that the elimination of its use would lead to an increase of violence in the prison setting.³ Additionally, experts have increasingly stated that lack of human contact in solitary confinement causes psychological and developmental harm to juveniles.⁴ The American Academy of Child and Adolescent Psychiatry has stated that, due to a juveniles “developmental vulnerability,” they are in particular danger of adverse reactions to prolonged isolation and solitary confinement.⁵ Meanwhile, it is important to note that there is a dearth of research on the impact of isolation or segregation on the juvenile population. A majority of the qualitative studies on this topic mainly focus on adult correctional facilities. Finally, there is no comprehensive national data on the number of juveniles in solitary confinement in the United States, and states vary on how or if they collect this data.

Models and Organizations

In the 2009, 4th Edition of the Performance-Based Standards for Juvenile Correctional Facilities, the American Correctional Association published standards for room confinement and

² Mannarino, Dan. (October 2016). WPIX. *Exclusive: Rikers officer slashed by inmate speaks out against historic change to solitary confinement*. [Online]. Available: <http://pix11.com/2016/10/19/exclusive-rikers-officer-slashed-by-inmate-speaks-out-against-change-to-solitary-confinement-rules/>. [December 2016].

³ Shames, A., Wilcox, J., Subramanian, R. (May 2015). Vera Institute of Justice. *Solitary Confinement: Common Misconceptions and Emerging Safe Alternatives*. [Online]. Available: http://archive.vera.org/sites/default/files/resources/downloads/solitary-confinement-misconceptions-safe-alternatives-report_1.pdf. [December 2016].

⁴ New York Advisory Committee to the U.S. Commission on Civil Rights. (December 2014). *The Solitary Confinement of Youth in New York: a Civil Rights Violation*. [Online]. Available: <http://www.usccr.gov/pubs/NY-SAC-Solitary-Confinement-Report-without-Cover.pdf>. [December 2016].

⁵ National Commission on Correctional Health Care. *Solitary Confinement (Isolation)*. [Online]. Available: <http://www.ncchc.org/solitary-confinement>. [December 2016].

seclusion and isolation. The American Correctional Association is a professional organization that promotes corrections and correctional effectiveness.⁶ The American Correctional Association promotes standards for room confinement that include the following components: a juvenile placed in room confinement is checked visually by staff at least every 15 minutes, visited at least once a day by administrative personnel, staff keeps a record of the confinement, and suicidal juveniles are kept under continuous observation until evaluated by a mental health professional. If a juvenile is placed in protective custody because they require protection from others the American Correctional Association standards state that after 72 hours approval is needed from the facility administrator.⁷

In addition, the American Correctional Association standards indicate that confinement in a security room for any offense should not exceed five days. Finally, when a juvenile is placed in seclusion, a qualified health care professional shall be informed immediately and complete an assessment.⁸

One prominent voice for reform on the issue of segregation in juvenile detention homes and correctional centers is the Juvenile Detention Alternatives Initiative of the Annie E. Casey Foundation. The Juvenile Detention Alternatives Initiative has worked for over 20 years with a majority of the nation's states on reducing juvenile detention populations and is known for best practices in regards to juvenile justice settings. One of the specific goals of the Juvenile Detention Alternatives Initiative is to improve conditions of confinement.⁹ In June 2014, the Juvenile Detention Alternatives Initiative (JDAI) released revised juvenile detention facility standards prohibiting "the use of room confinement for discipline, punishment, administrative convenience, retaliation, staffing shortages, or reasons other than as a temporary response to behavior that threatens immediate harm to a youth or others."¹⁰ The new standards also eliminate the use of the term isolation and instead use the term room confinement, which is defined as the "involuntary restriction of a youth alone in a cell, room, or other area for any reason."¹¹ Most significantly, these standards limit the use of room confinement to a maximum of four hours.¹² JDAI requires that if at the end of four hours the juvenile has not regained self-control, then the juvenile should be transferred to a mental health facility or the medical unit at the facility he or she is being held.

Another organization, the Council of Juvenile Correctional Administrators, a professional association of state juvenile justice agency directors, has developed Performance-based Standards as well as a toolkit entitled "Reducing the Use of Isolation."¹³ This toolkit provides five

⁶ American Correctional Association. *The History of the American Correctional Association*. [Online]. Available: http://www.aca.org/ACA_Prod_IMIS/ACA_Member/About_Us/Our_History/ACA_Member/AboutUs/AboutUs_Home.aspx?hkey=0c9cb058-e3d5-4bb0-ba7c-be29f9b34380. [December 2016].

⁷ American Correctional Association. *Performance-Based Standards for Juvenile Correctional Facilities*. 4th Ed. (2009).

⁸ Ibid.

⁹ Virginia Department of Juvenile Justice. *Celebrating 6 Years of JDAI in Virginia*. [Online]. Available: http://www.djj.virginia.gov/pdf/community/VA_JDAI_Celebrating_6_Years_12-2009.pdf. [December 2016].

¹⁰ Annie E. Casey Foundation Juvenile Detention Alternatives Initiative. *Summary of Major Changes to the Standards*. [Online]. Available: <http://www.jdaihelpdesk.org/condtech/2%20Summary%20of%20Major%20Changes%20to%20the%20Standards.pdf>. [December 2016].

¹¹ Ibid.

¹² Ibid.

¹³ Council of Juvenile Correctional Administrators. (March 2015). *Council of Juvenile Correctional Administrators Toolkit: Reducing the Use of Isolation*. [Online]. Available: <http://cjca.net/attachments/article/751/CJCA%20Toolkit%20Reducing%20the%20Use%20of%20Isolation.pdf>. [December 2016].

steps to reducing the use of isolation:

1. Adopt a mission statement and philosophy that reflects rehabilitative goals.
2. Develop policies and procedures for use and monitoring of isolation.
3. Identify data to manage, monitor and be accountable for use of isolation.
4. Develop alternative behavior management options and responses.
5. Train and develop staff in agency mission, values, standards, goals, policies and procedures.

The Performance-based Standards provide that the isolation or confinement of youth should be used only to protect youth from harming himself or others and any use should be brief and supervised. The Performance-based Standards indicate that isolation should not be used as punishment. Also, these standards state any time when a youth is confined for more than 15 minutes it should be documented.¹⁴ The Council of Juvenile Correctional Administrators has implemented the Performance-based Standards initiative in over 150 facilities in 32 states. According to data collected by the Council of Juvenile Correctional Administrators, from 2008 to 2014, among the participating Performance-based Standards initiative correctional facilities, the average duration of isolation and room confinement decreased by almost two-thirds (32 to 12 hours) and reduced by half in detention centers (12 to 6 hours).¹⁵

Finally, the Commission on Youth also looked at the policy positions expressed by the National Commission on Correctional Health Care a national organization that gives recommendations for the management of correctional health services systems. This organization also provides accreditation, educational programs, and resources on matters of correctional health care.¹⁶ In its most recent position statement on solitary confinement in April 2016, the National Commission on Correctional Health Care voiced strong opposition to solitary confinement. The National Commission on Correctional Health Care states that the duty of correctional health professionals is to ensure the clinical care, physical safety and psychological wellness of their patients, and solitary confinement runs counter to these duties because of its effects.¹⁷ Their position statement further explains that solitary confinement should never exceed 15 days for adults or juveniles.

B. VIRGINIA'S CURRENT REGULATIONS

Virginia's regulations are written for juvenile detention centers and juvenile correctional centers. Detention is used mostly for juveniles who are awaiting court action or transfer to a juvenile correctional facility. In 2015, for pre-dispositional juveniles the average length of stay at a detention center was 23.6 days.¹⁸ Nineteen out of the 24 juvenile detention centers also have post-dispositional programs that can house juveniles for up to six months.¹⁹ Additionally, six out of the 24 juvenile detention centers have a community placement program. The goal of the community placement program is to provide residential services with community re-integration planning. Juvenile's with a length of stay of 12 months or less that are referred by their

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ National Commission on Correctional Health Care. *About Us*. [Online]. Available: <http://www.ncchc.org/about>. [December 2016].

¹⁷ National Commission on Correctional Health Care. *Solitary Confinement (Isolation)*. [Online]. Available: <http://www.ncchc.org/solitary-confinement>. [December 2016].

¹⁸ Virginia Department of Juvenile Justice. *Data Resource Guide Fiscal Year 2015*. [Online]. Available: http://www.djj.virginia.gov/pdf/about-djj/DRG/FY2015_DRG.pdf. [December 2016].

¹⁹ Ibid.

correctional center counselor are eligible for the community placement program.²⁰

Juvenile correctional centers house juveniles that have been committed to the Department of Juvenile Justice by a judge to serve a sentence for committing a felony or misdemeanor. New length of stay guidelines were implemented in late 2015 for indeterminately committed juveniles. According to these new guidelines, the length of stay at a correctional center may not exceed 15 months for an indeterminate sentence.²¹ Determinate commitments are set by a judge and can be for up to seven years.²² Virginia has two juvenile correctional centers. Currently, juvenile correctional centers are going through a transformation process that is being led by the Secretary of Public Safety and Homeland Security Task Force on Juvenile Correctional Centers. Taking place during this transformation is the impending closure of the Beaumont Juvenile Correctional Center by June 30, 2017 and the consolidation with Bon Air.

Juvenile correctional center regulations are found in chapter 71 under the regulations for the Department of Juvenile Justice. Juvenile detention center regulations are found in chapter 101 under the same agency. Current Virginia regulations for room confinement and isolation and administrative segregation for juvenile correctional centers indicate that staff must visually check on a resident who is confined to a room at least every 30 minutes, and a resident must be allowed one hour of outside physical exercise each day. Also, if confinement extends more than 72 hours, then the confinement and steps being taken or planned to resolve the situation shall be immediately reported to the department staff, in a position above the level of superintendent, and room confinement during isolation shall not exceed five consecutive days.²³

Regulations for juvenile correctional centers are implemented via a number of special housing categories used by the Department of Juvenile Justice. Special housing is defined as “the temporary placement of a resident in a segregated housing unit (e.g. Intensive Behavior Redirection Unit) as designated by the facility or temporary assignment of a resident to a segregated status (e.g. Pre-hearing detention).”²⁴ The categories of special housing are pre-hearing detention, disciplinary segregation, administrative hold, investigative hold, protective custody, and Intensive Behavioral Redirection (IBR) Unit. The juvenile correctional centers also have a unit called the intensive services unit, which is used for residents with mental health needs. Pre-hearing detention is for a cooling off period, and the use of this housing can be based on a sanction. Disciplinary segregation, formally referred to as isolation, is used as a sanction and can be for up to 5 days. An administrative hold is a type of special housing used to convene an emergency treatment team to address a resident’s pattern of aggressive or disruptive behavior. An investigative hold is a type of special housing where a juvenile is placed on hold pending an investigation into a serious incident, sexual abuse allegation, a disciplinary charge, or a criminal charge. Protective custody is a special housing type used to ensure the safety of the resident, and is often the choice of the resident. Finally, the IBR Unit is a program that “allows residents with significant behavioral problems an opportunity to receive skill building, training, treatment, education, and behavior modification to help them learn appropriate

²⁰ Virginia Department of Juvenile Justice. *Community Placement Program (CPP)*. [Online]. Available: <http://www.djj.virginia.gov/pages/residential/cpp.htm>. [December 2016].

²¹ Virginia Department of Juvenile Justice. *Frequently Asked Questions*. [Online]. Available: <http://www.djj.virginia.gov/pages/about-djj/djj-faq.htm>. [December 2016].

²² Virginia Department of Juvenile Justice. *Data Resource Guide Fiscal Year 2015*. [Online]. Available: http://www.djj.virginia.gov/pdf/about-djj/DRG/FY2015_DRG.pdf. [December 2016].

²³ 6VAC35-71-1140 to 1160. [Online]. Available: <http://law.lis.virginia.gov/admincodeexpand/title6/agency35/chapter71>. [December 2016].

²⁴ Virginia Department of Juvenile Justice. Division of Operations. (April 2014). *Standard Operating Procedure for Institutions: SOP VOL IV-4.1-2.28*.

behavior. IBR is necessary for residents who are unable to function effectively in the general population and require placement in a special housing unit for behavior redirection.”²⁵

The regulations for room confinement and isolation and administrative confinement for juvenile detention centers are similar to the above regulations. Staff must check on the resident visually at least every 30 minutes and at least every 15 minutes if the resident is on suicide watch, and a resident must be allowed one hour of outside physical exercise each day. Also, if confinement extends more than 72 hours, then the confinement and steps being taken or planned to resolve the situation shall be immediately reported to the director, and room confinement, including isolation or administrative confinement, shall not exceed five consecutive days except when ordered by a medical provider.²⁶

The limit of five consecutive days for disciplinary segregation or isolation is in keeping with the American Correctional Association standards.²⁷ Virginia uses the American Correctional Association standards as the model for their regulations. Additionally, juvenile correctional centers follow standard operating procedures, developed by the Virginia Department of Juvenile Justice, Division of Operations, which further limits the use of disciplinary segregation. A punishment for a moderate offense is limited to 12 hours of disciplinary segregation and many major offenses are limited to 72 hours in segregation.²⁸

In both juvenile detention centers and juvenile correctional centers, confinement for a rule violation is when the regulations for room confinement and isolation apply. On the other hand, the placement of a resident in a special housing unit for purposes of protective custody or special management is when the regulations for administrative confinement or administrative segregation apply. Table one and two below looks at the distinguishing characteristics between juvenile detention center and juvenile correctional center regulations.

Table 1

Room Confinement and Isolation Regulations

Room Confinement and Isolation Juvenile Detention Center 6VAC35-101-1100	Room Confinement and Isolation Juvenile Correctional Center 6VAC35-71-1140–1150
<ul style="list-style-type: none"> • Juvenile detention centers’ regulations for room confinement and isolation are combined in one administrative code section. 	<ul style="list-style-type: none"> • Juvenile correctional centers have separate regulations for room confinement and isolation. Additionally, the standard operating procedures manual now refers to isolation as disciplinary segregation.
<ul style="list-style-type: none"> • Staff must check on the resident visually at least every 30 minutes and at least every 15 minutes if the resident is on suicide watch. 	<ul style="list-style-type: none"> • Regulations state that staff must visually check on a resident who is confined to a room at least every 30 minutes. However, the standard operating procedures manual

²⁵ Virginia Department of Juvenile Justice. (July 2013). *Intensive Behavior Redirection Unit (IBR) Program Manual*.

²⁶ 6VAC35-101-1100 to 1110. [Online]. Available: <http://law.lis.virginia.gov/admincodeexpand/title6/agency35/chapter101>. [December 2016].

²⁷ American Correctional Association. *Performance-Based Standards for Juvenile Correctional Facilities*. 4th Ed. (2009).

²⁸ Virginia Department of Juvenile Justice. Division of Operations. (April 2016). *Standard Operating Procedure for Institutions: SOP VOL IV – 4.1-1.16*.

	indicates that all juveniles in special housing shall be checked on a minimum of every 15 minutes.
<ul style="list-style-type: none"> • Room confinement, including isolation or administrative confinement, shall not exceed five consecutive days except when ordered by a medical provider. 	<ul style="list-style-type: none"> • Room confinement during isolation shall not exceed five consecutive days. This regulation does not include language that grants an extension when ordered by a medical provider.
<ul style="list-style-type: none"> • Regulations do not include a subsection regarding how to proceed when dealing with a resident that exhibits self-injurious behaviors. 	<ul style="list-style-type: none"> • A procedure for dealing with a resident who exhibits self-injurious behavior is outlined in regulations.
<ul style="list-style-type: none"> • Regulations do not include a subsection regarding the number of residents permitted in a room. 	<ul style="list-style-type: none"> • Regulations state that residents who are placed in isolation shall be housed no more than one to a room.

Table 2

Administrative Confinement/Segregation Regulations

Administrative Confinement Juvenile Detention Center 6VAC35-101-1110	Administrative Segregation Juvenile Correctional Center 6VAC35-71-1160
<ul style="list-style-type: none"> • Juvenile detention center regulations use the term administrative confinement to describe the placement of a resident in a special housing unit or designated individual cell that is reserved for special management of residents. 	<ul style="list-style-type: none"> • Juvenile correctional center regulations use the term administrative segregation. However, the units used for special management of residents have recently been reconfigured and renamed as intensive behavior redirection units.
<ul style="list-style-type: none"> • Regulations for administrative confinement in juvenile detention centers do not spell out a due process requirement. However, the regulations require that residents shall be placed only by the facility administrator, as a last resort for the safety of residents, and that a record of such placement shall be documented. 	<ul style="list-style-type: none"> • Juvenile correctional center regulations include a due process requirement in its definition of administrative confinement. The regulations, however, do not discuss who may place the residents and the use of segregation being of last resort.
<ul style="list-style-type: none"> • The living conditions for residents placed in confinement are provided for in “approved or established” procedures according to regulation. 	<ul style="list-style-type: none"> • The living conditions for residents placed in segregation are provided for in “written procedures” according to regulation.

Variations between juvenile detention centers and juvenile correctional centers are reflective of the fact that juvenile detention centers are operated by local governments or multi-jurisdictional commissions while juvenile correctional centers are operated by the Virginia Department of Juvenile Justice. As referenced above, the juvenile correctional centers utilize standard operating procedures across both juvenile correctional centers while the detention centers have procedures that vary by facility. Both juvenile detention centers and juvenile correctional centers are monitored for compliance of regulations under *Regulation Governing*

*the Monitoring, Approval, and Certification of Juvenile Justice Programs and Facilities.*²⁹

During this study, detention center administrators shared their thoughts about room confinement and isolation with Commission on Youth staff. Detention center administrators explained that room confinement is used as one of a number of options as part of a continuum of behavior management techniques. Virginia regulations require the development of a behavior management program at juvenile detention centers.³⁰ Such a program must include, “the definition and listing of a system of privileges and sanctions that is used and available for use. Sanctions (i) shall be listed in the order of their relative degree of restrictiveness; (ii) may include a “cooling off” period where a resident is placed in a room for no more than 60 minutes; and (iii) shall contain alternatives to room confinement.”³¹ According to the administrators, it is useful to have room confinement and isolation as a deterrent in situations involving gang members or residents who would otherwise behave aggressively without room confinement and isolation as a consequence. Detention administrators also explained how room confinement is sometimes used by a juvenile to save face in front of other residents. Finally, detention administrators expressed their desire to minimize the use of room confinement, but added that its elimination as a tool would lead to more charges against residents.³²

C. FEDERAL LAW AND OTHER STATES’ LAWS AND REGULATIONS

Federal Law

The federal government and a number of jurisdictions have laws or regulations that limit or prohibit the solitary confinement of juveniles. In January 2016, the U.S. Department of Justice published a report and recommendation regarding the use of restrictive housing in the criminal justice system.³³ The President adopted the recommendation in this report calling on the Federal Bureau of Prisons to end the practice of placing juveniles in restrictive housing.³⁴ This decision by the Justice Department does not impact states’ juvenile facilities.

One way in which Federal law directly impacts states’ juvenile facilities however is through the Prison Rape Elimination Act. In secure juvenile facilities the Prison Rape Elimination Act requires staffing ratios of one guard to eight juveniles during waking hours and a ratio of one to sixteen during overnight hours.³⁵ States have until October 1, 2017 to achieve compliance with these ratios. Estimates that have been completed by the Department of Justice show that many states will need to improve their ratios to fully comply with this law.³⁶ As states work towards implementing the Prison Rape Elimination Act, its various implications on staffing levels, the need for the creation of new position descriptions, and limited resources will continue to be felt by juvenile detention facilities across the United States.

²⁹ 6VAC35-20. [Online]. Available: <http://law.lis.virginia.gov/admincodeexpand/title6/agency35/chapter20/>. [December 2016].

³⁰ 6VAC35-101-1070. [Online]. Available: <http://law.lis.virginia.gov/admincode/title6/agency35/chapter101/section1070/>. [December 2016].

³¹ Ibid.

³² Interview: Virginia Juvenile Detention Administrators. (June 10, 2016).

³³ U.S. Department of Justice. (January 2016). *Report and Recommendations Concerning the Use of Restrictive Housing*. [Online]. Available: <https://www.justice.gov/dag/file/815551/download>. [December 2016].

³⁴ The White House (January 2016). *Department of Justice Review of Solitary Confinement*. [Online]. Available: <https://www.whitehouse.gov/the-press-office/2016/01/25/fact-sheet-department-justice-review-solitary-confinement>. [December 2016].

³⁵ PREA Standard 115.313 (c). [Online]. Available: <https://www.gpo.gov/fdsys/pkg/CFR-2014-title28-vol2/pdf/CFR-2014-title28-vol2-sec115-313.pdf>. [December 2016].

³⁶ U.S. Department of Justice. (May 2012). *Prison Rape Elimination Act Regulatory Impact Assessment*. [Online]. Available: http://ojp.gov/programs/pdfs/prea_ria.pdf. (pages 103-04). [December 2016].

Furthermore, under the Prison Rape Elimination Act, “residents may be isolated from others only as a last resort when less restrictive measures are inadequate to keep them and other residents safe, and then only until an alternative means of keeping residents safe can be arranged.”³⁷ Additionally, 28 CFR § 115.342, which applies generally to all residents of juvenile facilities, spells out the minimum requirements for placement of residents in housing, bed, program, education, and work assignments. During any period of isolation:

- Agencies shall not deny residents daily large-muscle exercise and any legally required educational programming or special education services.
- Residents in isolation shall receive daily visits from a medical or mental health care clinician.
- Residents shall also have access to other programs and work opportunities to the extent possible.³⁸

A separate Prison Rape Elimination Act regulation section also permits disciplinary isolation for a resident who has engaged in resident-on-resident sexual abuse.³⁹ It is important to note that both preceding rules do not limit the amount of time a resident can be placed in protective or disciplinary isolation.

State Laws and Regulations

In addition to the federal government, many states and jurisdictions have laws that address juvenile segregation. The Lowenstein Center for Public Interest recently updated their analysis on the use of punitive solitary confinement and non-punitive solitary confinement in juvenile correctional centers in the 50 states and the District of Columbia. This survey did not look at detention centers. Their survey found that 29 states prohibit the use of solitary confinement as a form of punishment. Under their standards, 4 hours or less is considered a ban. Fifteen states, including Virginia, limit the amount of time a juvenile may spend in punitive solitary confinement. The Lowenstein survey also found that of the 29 that ban punitive solitary confinement, 25 of those states permit non-punitive or safety based confinement. Out of these 25 states 12 provide that the juvenile should be released when he regains self-control.⁴⁰

The following states serves as specific examples of options that jurisdictions have pursued to define and set the parameters for the use of segregation in juvenile correctional facilities. The terms used for isolation and segregation vary across the jurisdictions listed. The terms used include solitary confinement, secure confinement, seclusion, and room restriction. The terms often vary depending on whether the segregation is for safety reasons or for a rule violation or behavior modification.

Alaska

Alaska follows a common pattern seen in a number of other states, and described above, of banning punitive solitary confinement but permitting safety-based confinement. Under the Alaska Rules of Court, Rule 13, a juvenile may not be confined in solitary confinement for

³⁷ PREA Standard 28 CFR § 115.342. [Online]. Available: <https://www.gpo.gov/fdsys/pkg/CFR-2012-title28-vol2/pdf/CFR-2012-title28-vol2-sec115-342.pdf>. [December 2016].

³⁸ Ibid.

³⁹ PREA Standard 28 CFR § 115.378. [Online]. Available: <https://www.gpo.gov/fdsys/pkg/CFR-2012-title28-vol2/pdf/CFR-2012-title28-vol2-sec115-378.pdf>. [December 2016].

⁴⁰ Lowenstein Center for Public Interest. (July 2016). *51 – Jurisdiction Survey of Juvenile Solitary Confinement Rules in Juvenile Justice Systems*.

punitive reasons during delinquency proceedings.⁴¹ Additionally, in Alaska's juvenile correctional centers, juveniles can be placed in secure confinement for security reasons. According to regulation, "when a juvenile's behavior necessitates placement in secure confinement for the safety of the juvenile or others, or to ensure the security of the facility, the juvenile may be so confined for a period of up to 24 hours."⁴² Secure confinement for non-punitive reasons must be reviewed every 24 hours and may not exceed 5 days.

Colorado

Colorado recently enacted legislation in 2016 which creates short time limits around the use of solitary confinement. By statute, seclusion is not permitted as a punishment or disciplinary sanction. This law includes a requirement that the director of the Division of Youth Corrections approves the holding of a youth in isolation longer than four hours, and every hour thereafter, and requires a court order to hold a young person in solitary for more than eight hours in a two-day period.⁴³ Colorado's new law codifies the procedures described above and adds additional reporting and review requirements. One new requirement is for the creation of a working group which is charged with advising the Division of Youth Corrections on policies, procedures, and best practices regarding seclusion. It stems from a news investigation that found that juveniles were being put in solitary for long stretches of time as a form of punishment.⁴⁴

Connecticut

Connecticut has separate statutes for pre-adjudication and post-adjudication juveniles. Punitive solitary confinement is banned in both types of facilities. In Connecticut, for juveniles who have been arrested but not adjudicated the statute says that no child shall at any time be held in solitary confinement.⁴⁵ Under Connecticut's post-adjudication statute the Commissioner of Children and Families shall adopt regulations to specify when a child or youth may be placed in restraint or seclusion.⁴⁶ These regulations limit the period of seclusion to 24 hours. However, if use of seclusion in excess of 24 hours is necessary, authorization must be obtained from the head of the institution or facility.⁴⁷ Connecticut law allows for indefinite extension of this time limit with the proper approval.

Los Angeles County

Los Angeles County, which represents the largest juvenile justice system in the United States, banned the use of solitary confinement for juveniles in May 2016.⁴⁸

⁴¹ Alaska Rules of Court 2016-2017 Edition. *Rule 13*. [Online]. Available: <http://www.courtrecords.alaska.gov/webdocs/rules/docs/del.pdf>. [December 2016].

⁴² Alaska Administrative Code. 7 AAC § 52.310. [Online]. Available: <http://www.legis.state.ak.us/basis/aac.asp#7.52.310>. [December 2016].

⁴³ Colorado House Bill 16-1328. [Online]. Available: [http://www.leg.state.co.us/clics/clics2016a/csl.nsf/fsbillcont2/4BEB10D6836F19E287257F2400644E19/\\$FILE/1328_enr.pdf](http://www.leg.state.co.us/clics/clics2016a/csl.nsf/fsbillcont2/4BEB10D6836F19E287257F2400644E19/$FILE/1328_enr.pdf). [December 2016].

⁴⁴ Schrader, Megan. (May 2016). *The Gazette*. *Juvenile solitary confinement bill, partly inspired by Gazette reporting, headed to governor's desk*. [Online]. Available: <http://gazette.com/juvenile-solitary-confinement-bill-partly-inspired-by-gazette-reporting-headed-to-governors-desk/article/1575730>. [December 2016].

⁴⁵ CT Gen Stat § 46b-133. [Online]. Available: https://www.cga.ct.gov/current/pub/chap_815t.htm#sec_46b-133. [December 2016].

⁴⁶ CT Gen Stat § 17a-16. [Online]. Available: https://www.cga.ct.gov/current/pub/chap_319.htm#sec_17a-16. [December 2016].

⁴⁷ Conn. Agencies Regs. § 17a-16. [Online]. Available: http://ct.gov/sots/lib/sots/regulations/title_17a/016.pdf. [December 2016].

⁴⁸ Sewell, A. & Therolf G. (May 2016). *Los Angeles Times*. *L.A. County severely restricts solitary confinement for juveniles*. [Online]. Available: <http://www.latimes.com/local/lanow/la-me-ln-juvenile-solitary-20160503-story.html>. [December 2016].

Massachusetts

In Massachusetts, room confinement is not permitted for punitive reasons but is permitted for safety and security reasons. What makes Massachusetts policy noteworthy is the requirement to gather permissions from higher level administrators as the duration of room confinement continues to 12 hours. For juveniles confined more than nine hours a caseworker must contact a parent or guardian.⁴⁹ Massachusetts has used approaches from the Council of Juvenile Correctional Administrators to reduce the use of isolation in their facilities.

Nevada

The language in Nevada's statutes on corrective room restriction focuses on ensuring that room restriction is only utilized when all other less-restrictive options have been exhausted. Nevada has separate statutes for state and local or regional facilities that closely mirror one another and these statutes permit the use of room restriction for a rule violation.⁵⁰ The law in Nevada calls for frequent safety and well-being checks on the juvenile of at least every ten minutes. A review of a room restriction must occur at least once every 24 hours and include an explanation regarding why no less restrictive option is available. Additionally, juveniles in Nevada may not be placed in room restriction for more than 72 consecutive hours.⁵¹ However, by statute, it is possible that a juvenile in a state facility spend more than 72 hours in a corrective room restriction setting. Nevada's statute uses language which allows this possibility, which states, "[a]ny incident that resulted in the use of corrective room restriction for more than 72 consecutive hours must be addressed in the monthly report." Finally, the number of juveniles placed in room restriction must be reported to the Juvenile Justice Programs Office of the Division of Child and Family Services every month.⁵²

New Jersey

New Jersey passed a law in 2015 which addresses room restriction in state juvenile correctional facilities and county juvenile detention centers. This law states that a juvenile "shall not be subject to room restriction unless he poses an immediate and substantial risk of harm to others or to the security of the facility, and all other less-restrictive options have been exhausted."⁵³ Punitive room restriction is not permitted in New Jersey. For room restriction imposed for safety of others or the security of facility, this law places limits based on the age of the juvenile. Juveniles 15 years or younger shall not be subject to room restriction for more than two consecutive days, juveniles ages 16 to 18 for not more than three consecutive days, and juveniles 18 years or older for not more than five consecutive days. For all these age groups, a juvenile shall not be subject to room restriction for more than eight consecutive waking hours without being released for at least two hours for recreation and exercise, and no juvenile shall be subject to room restriction for more than ten total days in a calendar month. Finally, this law requires that the data on the use of room confinement be documented by each facility and made available to the public.⁵⁴

Ohio

Ohio has developed a model to decrease segregation in juvenile facilities called Path to Safer Facilities. This model focuses on the concept that good programming in facilities equals

⁴⁹ Massachusetts Department of Youth Services. Involuntary Room Confinement Policy # 03.03.01(a). [Online]. Available: <http://www.mass.gov/eohhs/docs/dys/policies/030301-involuntary-room-confine.doc>. [December 2016].

⁵⁰ NRS 63.505 & NRS 62B.215. [Online]. Available: <https://www.leg.state.nv.us/NRS/NRS-063.html#NRS063Sec505> and <https://www.leg.state.nv.us/nrs/NRS-062B.html#NRS062BSec215>. [December 2016].

⁵¹ Ibid.

⁵² Ibid.

⁵³ P.L. 2015, c.89. [Online]. Available: http://www.njleg.state.nj.us/2014/Bills/PL15/89_.PDF. [December 2016].

⁵⁴ Ibid.

good security, and the state's Department of Youth Services is working on phasing out what they term intervention seclusion.⁵⁵ According to information from Ohio's Department of Youth Services, this new approach which is being used to manage juveniles with mental health and emotional problems has resulted in an 89 percent decrease in seclusion hours and a 22 percent decrease in violent acts from 2014 to 2015.⁵⁶

Oklahoma

Oklahoma's regulations state that solitary confinement must not be used for punishment at any secure facility. It may be imposed however when a juvenile is out of control and poses a serious and immediate physical danger to himself or others, and only when the use of less restrictive methods have failed to resolve the situation. Oklahoma limits solitary confinement for juveniles to three hours in a 24 hour period. A juvenile may be kept in solitary confinement in excess of three hours though if he continues to pose a serious and immediate physical danger to himself or others and is examined by a licensed mental health professional at the conclusion of the three hour solitary confinement period.⁵⁷ Regulations also state "As soon as the juvenile is sufficiently under control so as to no longer pose a serious and immediate danger to him or herself or others, the juvenile shall be released from solitary confinement."⁵⁸

Texas

The Texas approach is to separate by regulation section various placement types, including disciplinary seclusion, safety-based seclusion, room restriction, resident-initiated separation, protective isolation, medical isolation, and assessment isolation.⁵⁹ Disciplinary seclusion is for major rule violations proved during a formal disciplinary review process and is limited to 48 hours.⁶⁰ Safety based seclusion is utilized when a reasonable belief exists that the juvenile poses an escape risk, is a danger to others, is likely to cause substantial damage to property, is being disruptive, or is likely to interfere with an investigation.⁶¹ The regulations also indicate that for safety based seclusion a juvenile must not be secluded beyond five consecutive days unless it is approved by the chief administrative officer at the facility.⁶² For all the types of seclusion a facility officer must personally observe the juvenile's behavior at least every 15 minutes. These regulations were revised in 2015 and took effect on June 1, 2016.

⁵⁵ Ohio Department of Youth Services. Power Point Presentation: *The Path to Safer Families*. [Online]. Available: <http://www.dys.ohio.gov/DNN/LinkClick.aspx?fileticket=axByXyuj08A=&tabid=225>. [December 2016].

⁵⁶ American Civil Liberties Union of Ohio. (May 2016) *Shining a Light on Solitary Confinement: Why Ohio Needs Reform*. [Online]. Available: <http://www.acluohio.org/wp-content/uploads/2016/05/ShiningALight-Report2016.pdf>. [December 2016].

⁵⁷ OAR 377:3-13-144. [Online]. Available: http://www.oar.state.ok.us/viewhtml/377_3-13-144.htm. [December 2016].

⁵⁸ Ibid.

⁵⁹ Texas Administrative Code §343.294. [Online]. Available: [https://texreg.sos.state.tx.us/public/readtac\\$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=37&pt=11&ch=343&rl=294](https://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=37&pt=11&ch=343&rl=294). [December 2016].

⁶⁰ Texas Administrative Code §343.285. [Online]. Available: [https://texreg.sos.state.tx.us/public/readtac\\$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=37&pt=11&ch=343&rl=285](https://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=37&pt=11&ch=343&rl=285). [December 2016].

⁶¹ Texas Administrative Code §343.288.

[https://texreg.sos.state.tx.us/public/readtac\\$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=37&pt=11&ch=343&rl=288](https://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=37&pt=11&ch=343&rl=288). [December 2016].

⁶² Texas Administrative Code 343.289.

[https://texreg.sos.state.tx.us/public/readtac\\$ext.TacPage?sl=T&app=9&p_dir=N&p_rloc=176135&p_tloc=&p_ploc=1&pg=3&p_tac=&ti=37&pt=11&ch=343&rl=289](https://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=T&app=9&p_dir=N&p_rloc=176135&p_tloc=&p_ploc=1&pg=3&p_tac=&ti=37&pt=11&ch=343&rl=289). [December 2016].

D. PROPOSED LEGISLATION AND REGULATIONS IN VIRGINIA

Senate Bill 215

During the 2016 General Assembly Session, Senator Favola introduced Senate Bill 215. The substitute version of SB 215 required the Board of Juvenile Justice to promulgate regulations on the use of room segregation in juvenile detention homes and juvenile correctional facilities. Members of the House Courts of Justice Committee reviewed the bill and it was laid on the table. Text of the substitute version of Senate Bill 215 can be found under Appendix A. Table three below details a comparison of the SB 215 requirements and the current juvenile correctional center (JCC) and juvenile detention center (JDC) regulations.

Table 3

Comparison of Senate Bill 215 (Substitute) With Virginia Regulations⁶³

<u>Senate Bill 215 Requirement</u>	<u>JCC Current Regulation (6VAC35-71)</u>	<u>JDC Current Regulation (6VAC35-101)</u>
Relevant Definitions: Statute requires the inclusion of relevant definitions and provides the following definition for 'room segregation' in <i>lines 13-14, 35-36</i> : "The involuntary restriction of a resident alone in a room or other area, including the resident's own room, except during normal sleeping hours."	No general definition for room segregation. However, <i>Section 1160(D)</i> defines <u>administrative segregation</u> as the placement of a resident, after due process, in a special housing unit or designated individual cell reserved for special management of residents for purposes of protective custody or the special management of residents whose behavior presents a serious threat to the safety and security of the facility, staff, general population, or themselves. <i>Section 1150</i> defines <u>isolation</u> as when a resident is confined to a locked room for a specified period of time as a disciplinary sanction for a rule violation.	No general definition for room segregation. However, <i>Section 1110(D)</i> defines <u>administrative confinement</u> as the placement of a resident in a special housing unit or designated individual cell that is reserved for special management of residents for purposes of protective custody or the special management of residents whose behavior presents a serious threat to the safety and security of the facility, staff, general population, or themselves. Regulation does not define 'isolation.'
Criteria: <i>Lines 18, 40</i> : Regulation must include criteria for use of room segregation.	<i>Section 1140(A)</i> . JCCs must establish written procedures that set out the criteria for use of room segregation.	<i>Section 1100(A)</i> . JDCs must establish written procedures that set out the criteria for use of room segregation.
Frequency of Room Checks: <i>Lines 18-19, 40-41</i> : Regulation must include frequency of required room checks.	<i>Section 1140 (B)</i> . JCC staff must perform visual checks every 30 minutes.	<i>Section 1100(B)</i> . JDC staff must perform visual checks every 30 minutes, and every 15 minutes for residents on suicide watch.
Staff Training Requirements: <i>Lines 19, 41</i> : Regulation must	<i>Sections 150, 160, 170</i> . JCC staff must receive basic orientation, initial training, and annual refresher	<i>Section 180, 190</i> . JDC staff must receive basic orientation, initial training, and annual

⁶³ Provided to the Commission on Youth by the Virginia Department of Juvenile Justice.

include training requirements for staff.	training in behavior management and intervention procedures and techniques, but room confinement is not a specifically mandated topic.	refresher training in behavior management and intervention procedures and techniques, but room confinement is not a specifically mandated topic.
Follow-up Requirements: <i>Lines 19-20, 41-42:</i> Regulation must specify follow-up requirements after room segregation to ensure positive resident outcomes.	Current regulation does not address.	Current regulation does not address.
Rationale for confinement: <i>Lines 21–24, 43-46:</i> Regulation must allow room segregation only when less restrictive options are exhausted and only to: 1) modify negative behavior; 2) hold resident accountable for rule violation; and 3) ensure safety and security.	Current regulation does not address.	Current regulation does not address.
Duration of Confinement: <i>Lines 25-27, 47-49:</i> Regulation must limit room segregation to the minimum time needed to address the issue with return to general population as soon as possible.	<i>Section 1150(B).</i> Room confinement during isolation shall not exceed five consecutive days.	<i>Section 1100(F).</i> Room confinement, including isolation or administrative confinement shall not exceed five consecutive days, except when ordered by a medical provider.
Communication: <i>Lines 28, 50:</i> Regulation must provide the resident with a means of communicating with staff during room segregation.”	<i>Section 1140(G).</i> When confined to a room, the resident shall have a means of communication with staff, either verbally or electronically.	<i>Section 1100(G).</i> When confined to a room, the resident shall have a means of communication with staff, either verbally or electronically.
Self-Injurious Behavior: <i>Line 29-30; 51-53:</i> Regulation must specify when and under what condition staff must consult with mental health professionals	<i>Section 1140(H).</i> Staff must immediately consult with and document consultation with mental health professional and monitor the resident in accordance with established protocols if the resident exhibits self-injurious behavior after	Current regulation does not address.

when resident exhibiting self-injurious behavior.	room confinement.	
Plan for Improved Outcomes: <i>Lines 32-33, 54-55:</i> Regulations must detail when the director must develop a plan for improved behavioral outcomes for resident.	Current regulation does not address.	Current regulation does not address.

Senate Bill 215 as amended defined room segregation as, “the involuntary restriction of a resident alone in a room or other area, including the resident’s own room, except during normal sleeping hours.”⁶⁴ Furthermore, the bill proposal called for the Board of Juvenile Justice to work with experts in the fields of mental health and juvenile justice and child-rights advocates on promulgating regulations on the use of room segregation in juvenile detention homes and juvenile correctional facilities. Senate Bill 215 as amended proposed that such regulations shall:

1. Include relevant definitions, criteria for use of room segregation, frequency of required room checks, training requirements for staff, and follow-up requirements after using room segregation to ensure positive resident outcomes, as applicable;
2. Allow the use of room segregation only when other less restrictive options have been exhausted and only for the purpose of (i) modifying the resident's negative behavior; (ii) holding the resident accountable for a violation of a rule of the facility; (iii) ensuring the safety of the resident, staff, or others; or (iv) ensuring the security of the facility;
3. Allow the use of room segregation only for the minimum amount of time required to address the resident's negative behavior, rule violation, or threat and require that the resident be returned to the general population as soon as reasonably possible;
4. Provide to the resident a means of communication with staff during room segregation;
5. Specify, if a resident in room segregation exhibits self-injurious behavior, when and under what conditions staff shall consult with a mental health professional and monitor the resident as directed by the mental health professional; and
6. Detail the circumstances under which the director of the juvenile detention home or his designee shall develop a plan for improved behavioral outcomes for the resident.

A number of elements included in the amended version of SB 215 resemble Nevada’s statutes discussed above. Nevada’s statutes on the conditions and limitations on use of corrective room restriction by facility; reporting requirement, include the following provisions⁶⁵:

1. A child who is detained in a facility may be subjected to corrective room restriction only if all other less-restrictive options have been exhausted and only for the purpose of:
 - (a) Modifying the negative behavior of the child;
 - (b) Holding the child accountable for a violation of a rule of the facility; or
 - (c) Ensuring the safety of the child, staff or others or ensuring the security of the facility.
4. A child may be subjected to corrective room restriction only for the minimum time required to address the negative behavior, rule violation or threat to the safety of the child, staff or others or to the security of the facility, and the child must be returned to the general

⁶⁴ SB 215 Juvenile detention homes and correctional facilities; room segregation. [Online]. Available: <http://lis.virginia.gov/cgi-bin/legp604.exe?161+ful+SB215S1+pdf>. [December 2016].

⁶⁵ NRS 63.505 [Online]. Available: <https://www.leg.state.nv.us/NRS/NRS-063.html#NRS063Sec505> [December 2016].

population of the facility as soon as reasonably possible.

Nevada's statute and SB 215 as amended make for an interesting comparison because they are quite similar. First, neither Nevada nor the proposed SB 215 legislation ban punitive segregation; however, both place limits on its use. Nevada limits punitive segregation to 3 days and Virginia limits it to 5 days. Under the current regulations, Virginia does not list the permissible rationales for confinement or state that less-restrictive options must be exhausted. Additionally, Virginia's current regulations do not require that a resident in room segregation be returned to the general population as soon as reasonably possible. SB 215 borrows some of Nevada's statutory language, which is detailed above, to address these two issues. As mentioned earlier, SB 215 was laid on the table, but the issues surrounding ways to improve the regulations for juvenile detention centers and juvenile correctional centers has continued to receive attention by the Department and Board of Juvenile Justice. This progress is further outlined in the next sub-section.

Regulatory Work Groups

Prior to the introduction of proposed legislation during the 2016 General Assembly session, the regulations governing juvenile correctional centers and detention centers received a comprehensive overhaul and became effective on January 1, 2014.⁶⁶ ⁶⁷ During the regulatory process no comments were received requesting a change to the provisions governing isolation and segregation. At its April 18, 2016 board meeting the Department of Juvenile Justice began to discuss a new work plan to conduct a comprehensive review of the residential regulatory requirements for juvenile correctional centers and secure juvenile detention centers. The Department and Board are required to review residential regulations every five years.⁶⁸ At its June 15, 2016 meeting the board voted on and approved the first stage of the regulatory process for this review. The board announced at this meeting that a separate work group will be created for each regulation chapter, and appropriate representation will be sought from the community and by available Board members.

In a letter to the Virginia Department of Justice dated April 24, 2015, the Virginia Juvenile Detention Association requested participation in the regulatory review process. The Virginia Juvenile Detention Association is an organization that represents all juvenile detention centers in Virginia. With respect to the administrative code section on room confinement and isolation the Virginia Juvenile Detention Association has requested a more relaxed interpretation of the regulation section stating that, "during isolation, the resident is not permitted to participate in activities with other residents."⁶⁹ The Virginia Juvenile Detention Association explained that there are circumstances when it is appropriate and applicable to have residents in room confinement participate in physical exercise with their unit or another unit.⁷⁰ According to the Virginia Juvenile Detention Association permitting juveniles to participate in recreational activities with their unit would also be helpful in fulfilling another part of the regulation on room

⁶⁶ Virginia Regulatory Town Hall. Comprehensive review and consolidation of regulations applicable to juvenile correctional centers. [Online]. Available: <https://townhall.virginia.gov/L/ViewAction.cfm?actionid=2976>. [December 2016].

⁶⁷ Virginia Regulatory Town Hall. Comprehensively reviews & combines all regulations governing juvenile secure detention centers. [Online]. Available: <https://townhall.virginia.gov/L/ViewAction.cfm?actionid=2973>. [December 2016].

⁶⁸ Virginia Department of Juvenile Justice. April 18, 2016 Board of Juvenile Justice Meeting Minutes. [Online]. Available: http://www.djj.virginia.gov/pdf/bjj/board_minutes_April_18_2016.pdf. [December 2016].

⁶⁹ 6VAC35-101-1100. [Online]. Available: <http://law.lis.virginia.gov/admincode/title6/agency35/chapter101/section1110/>. [December 2016].

⁷⁰ Virginia Department of Juvenile Justice. June 15, 2016. Board of Juvenile Justice Meeting Minutes. [Online]. Available: http://www.djj.virginia.gov/pdf/bjj/board_minutes_June_15_2016.pdf. [December 2016].

confinement and isolation that states juveniles must be afforded the opportunity for at least one hour of physical exercise every day. Additionally, the Virginia Juvenile Detention Association expressed concerns with a line in the regulations that permits the use of a writing utensil when a juvenile is under room confinement for disciplinary reasons. Safety concerns such as, using a pencil as a weapon, are the main objections to the current rule.⁷¹ Besides the Virginia Juvenile Detention Association, other organizations and persons will have an opportunity to provide public comment as these regulations go through the review process.

The Department and Board of Juvenile Justice are also reviewing these regulations at a time when the Department of Juvenile Justice is transforming juvenile correctional center operations. In July 2013, the administrative segregation units in juvenile correctional centers were re-designed as Intensive Behavior Redirection (IBR) Units. These new units are designed to be treatment-focused. According to the Department of Juvenile Justice's Resident Handbook, the IBR unit is formulated to give the juvenile the opportunity for more intensive services to assist the juvenile in resolving the problems that they are having in the general population.⁷² Additionally, the Department of Juvenile Justice is working on converting units at its juvenile correctional centers from that of a correctional model to a community treatment model. The community treatment model involves developing a consistent and rehabilitative community within each living unit. In order to achieve this aim, juvenile correctional officers have been reclassified as direct care staff. As of the fall of 2016, 15 of 17 units have been converted to the community treatment model, and a full conversion is anticipated by the end of 2016.⁷³ According to the Department of Juvenile Justice, with respect to minimizing room confinement and isolation, the community treatment model is consistent with the use of segregation as a last resort option.

VIII. Findings and Recommendations

After presentations of the findings and recommendations at the Commission's September 20 and October 20, 2016 meetings, and receipt of public comment, the Commission on Youth approved the following recommendations:

Findings

Segregation in Virginia's Juvenile Detention Centers and Correctional Centers is used to address resident and staff safety, facility security, resident discipline, and acute mental health issues of certain residents. Virginia's current regulations on room confinement, isolation and administrative segregation/confinement provide the rules for the use of segregation.

Recommendation 1

Request the Board of Juvenile Justice, in consultation with experts in the fields of mental health and juvenile justice and child-rights advocates, to promulgate regulations on the use of room segregation in juvenile correctional facilities and detention homes.

⁷¹ Ibid.

⁷² Virginia Department of Juvenile Justice. *Resident Handbook*. (November 2013). [Online]. Available: <http://www.djj.virginia.gov/pdf/residential/Resident-Handbook.pdf>. [December 2016].

⁷³ Virginia Department of Juvenile Justice. *About Virginia DJJ*. [Online]. Available: <http://www.djj.virginia.gov/pages/about-djj/about-djj.htm>. [December 2016].

Recommendation 2

Continue to monitor the Department of Juvenile Justice’s comprehensive review of the residential requirements for juvenile correctional centers and secure juvenile detention centers which began in the summer of 2016, and request presentation updates from the department as needed.

VIII. Acknowledgments

The Virginia Commission on Youth extends special appreciation to the following for their assistance on this study:

The Department of Juvenile Justice

Virginia Juvenile Detention Association

SENATE BILL NO. 215

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Rehabilitation and Social Services
on February 5, 2016)

(Patron Prior to Substitute--Senator Favola)

*A BILL to amend the Code of Virginia by adding in Article 13 of Chapter 11 of Title 16.1 a section numbered **16.1-322.01** and by adding a section numbered **66-13.2**, relating to juvenile facilities; room segregation; regulations.*

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Article 13 of Chapter 11 of Title 16.1 a section numbered **16.1-322.01** and by adding a section numbered **66-13.2** as follows:

§ **16.1-322.01**. *Juvenile detention homes; room segregation.*

A. As used in this section, "room segregation" means the involuntary restriction of a resident alone in a room or other area, including the resident's own room, except during normal sleeping hours.

B. The Board shall, in consultation with experts in the fields of mental health and juvenile justice and child-rights advocates, promulgate regulations on the use of room segregation in juvenile detention homes. Such regulations shall:

1. Include relevant definitions, criteria for use of room segregation, frequency of required room checks, training requirements for staff, and follow-up requirements after using room segregation to ensure positive resident outcomes, as applicable;

2. Allow the use of room segregation only when other less restrictive options have been exhausted and only for the purpose of (i) modifying the resident's negative behavior; (ii) holding the resident accountable for a violation of a rule of the facility; (iii) ensuring the safety of the resident, staff, or others; or (iv) ensuring the security of the facility;

3. Allow the use of room segregation only for the minimum amount of time required to address the resident's negative behavior, rule violation, or threat and require that the resident be returned to the general population as soon as reasonably possible;

4. Provide to the resident a means of communication with staff during room segregation;

5. Specify, if a resident in room segregation exhibits self-injurious behavior, when and under what conditions staff shall consult with a mental health professional and monitor the resident as directed by the mental health professional; and

6. Detail the circumstances under which the director of the juvenile detention home or his designee shall develop a plan for improved behavioral outcomes for the resident.

§ **66-13.2**. *Juvenile correctional facilities; room segregation.*

A. As used in this section, "room segregation" means the involuntary restriction of a resident alone in a room or other area, including the resident's own room, except during normal sleeping hours.

B. The Board shall, in consultation with experts in the fields of mental health and juvenile justice and child-rights advocates, promulgate regulations on the use of room segregation in juvenile correctional facilities. Such regulations shall:

- 1. Include relevant definitions, criteria for use of room segregation, frequency of required room checks, training requirements for staff, and follow-up requirements after using room segregation to ensure positive resident outcomes, as applicable;*
- 2. Allow the use of room segregation only when other less restrictive options have been exhausted and only for the purpose of (i) modifying the resident's negative behavior; (ii) holding the resident accountable for a violation of a rule of the facility; (iii) ensuring the safety of the resident, staff, or others; or (iv) ensuring the security of the facility;*
- 3. Allow the use of room segregation only for the minimum amount of time required to address the resident's negative behavior, rule violation, or threat and require that the resident be returned to the general population as soon as reasonably possible;*
- 4. Provide to the resident a means of communication with staff during room segregation;*
- 5. Specify, if a resident in room segregation exhibits self-injurious behavior, when and under what conditions staff shall consult with a mental health professional and monitor the resident as directed by the mental health professional; and*
- 6. Detail the circumstances under which the director of the juvenile correctional facility or his designee shall develop a plan for improved behavioral outcomes for the resident.*

2. That the Board of Juvenile Justice shall publish proposed regulations pursuant to §§ **16.1-322.01** and **66-13.2** of the Code of Virginia, as created by this act, and clarification of regulations on the use of room segregation in juvenile correctional facilities and juvenile detention homes existing prior to the effective date of this act by July 1, 2017.