



New IDJJ policies that prohibit juvenile solitary confinement

ACLU of Illinois summary of April 2015

On April 24, 2015, the U.S. District Court in Chicago approved new policies of the Illinois Department of Juvenile Justice that prohibit solitary confinement of juveniles, and tightly limit and regulate any separation of youths from the general population for safety reasons. This order is part of a civil rights class action lawsuit brought by the ACLU of Illinois regarding IDJJ conditions and services. *See R.J. v. Jones*, No. 12-cv-7289 (N.D. Ill.), at Dkt. #135 (order of 4/24/15). The new rules are principally set forth in the section of the IDJJ administrative code regarding “confinement procedures.” Dkt. #133-2, at Sections 2504.210 through -.290, on pp. 12-23 (new policies filed 4/20/15). Additional rules are provided in the IDJJ’s administrative directive on “emergency mental health services.” Dkt. #133-5, at Part II(F)(4) on pp. 7-11.

Specifically, the new IDJJ policies (a) closely limit and regulate six forms of authorized confinement, (b) prohibit all other forms of confinement, (c) require enumerated safeguards for all confined youths, and (d) require supervisory oversight of all confinement. Moreover, the IDJJ has agreed, by the end of May 2015, to seek the Court’s approval of an additional policy that expressly requires IDJJ staff to make every effort to avoid any kind of confinement, and when possible to first attempt less restrictive techniques.

A. Limits on six authorized forms of confinement.

1. Confinement status.

Standard to initiate. When a youth “[i] exhibits or threatens violent, aggressive, or uncontrolled behavior and [ii] poses a serious threat to his or her own safety, the safety of others, or the security of the facility.” Dkt. #133-2 at § 240(a).

Time limit. Twenty-four hours, or when the youth “regains self-control,” whichever is sooner. *Id.* at § 240(b).

Location. The facility’s confinement unit, or another area designated by the facility’s superintendent. *Id.* at § 240(a).

Oversight. Every hour, a supervisor must meet the youth to assess whether they have regained self-control. *Id.* at § 240(c) on p. 8. At the fourth hour, and every two hours after that, a mental health professional (if one is present) or other staff trained in crisis response (if one is not) must meet the youth, to assist them in regaining self-control and to assess whether they immediately need additional mental health services. *Id.* at § 240(d).

Mental health follow-up. Within 24 hours after confinement began, the youth must be referred to a mental health professional (“MHP”) to determine whether additional treatment services are needed. *Id.* at § 240(e).

2. Crisis confinement.

Standard to initiate. A youth may be placed on “crisis status” when they “exhibit behavior suggestive of acute mental or emotional disorder or suicidal ideation.” Dkt. #133-2 at § 210 on p. 4. A youth on crisis status may be removed from their regular housing only when doing so is “required” for “mental health treatment or observation,” as determined by an MHP or other staff trained in crisis response. *Id.* at § 280(a) on p. 10. If there is “no present risk” of harm, only an MHP may restrict “movement and access to programs and services,” based on a finding of “mental health need.” *Id.* at § 280(d).

Initial review by a licensed MHP. A licensed MHP must promptly and personally assess youths in crisis confinement, and decide “whether to continue the confinement,” and also whether to provide more treatment services. If a licensed MHP is on grounds, this assessment must occur within one hour. If a licensed MHP is not on grounds, then (i) the on-call licensed MHP must be notified within one hour, and (ii) the licensed MHP must conduct this assessment within one hour of their arrival on site, and no more than 24 hours after confinement began. Youth must be removed from confinement if a licensed MHP decides it should not continue. *Id.* at § 280(a).

Three-day review by a licensed MHP. If a youth is in crisis confinement for three days, the facility’s Treatment Unit Administrator (“TUA”) must evaluate them and decide whether to seek community psychiatric hospitalization. The TUA must do so in consultation with a licensed psychiatrist and the IDJJ’s Chief of Mental Health. (Under the remedial plan, the TUA must have a Ph.D. or Psy.D., plus appropriate licensure. Dkt. #73 at § II-3.) These decisions must be documented. The IDJJ’s mental health leadership must be immediately notified, and must on a quarterly basis conduct a quality assurance review of these decisions. If hospitalization is not sought, then within 24 hours a multi-disciplinary team, including a psychiatrist, must create a specific treatment plan likely to end the crisis, and that plan must be implemented immediately. Dkt. #133-5 (draft IDJJ policy on mental health crisis services) at § II(F)(4).

Other mental health safeguards. As set forth below, enumerated safeguards apply to all forms of confinement, including crisis confinement. These include: safety checks every five to fifteen minutes, depending on the level of risk; a daily interview by an MHP, in consultation with a licensed MHP; and continuation of a youth’s ordinary mental health services. *See generally infra* Part I(C)(1), discussing: Dkt. #133-2 at § 230(d) & (k); and Dkt. #133-5 at § II(E), § II(F)(3)(b)(2)(c), § II(F)(3)(c)(2)(a), & § II(F)(3)(d)(4)(a).

Location. Placement in the confinement unit is allowed only if an MHP determines that doing so is “necessary to prevent physical harm to self or others and a less restrictive area is not available or sufficient.” Dkt. #133-2 at § 220(a)(5). Crisis status youths in the confinement unit must be sight and sound separated from other youths, when feasible given the physical layout and youths present. *Id.* at § 220(a)(5)(C). An MHP shall review the necessity of such placement every 24 hours. *Id.* at § 220(a)(5)(A). Such placement must end when the risk ends or when a less restrictive area becomes available. *Id.* at § 220(a)(5)(A). Alternatively, the location for crisis confinement may be another area designated by the facility’s superintendent. *Id.* at § 280(a).

3. Behavioral hold.

Standard to initiate. Violation of a rule, disobedience of staff, or other disruptive behavior. Dkt. #133-2 at § 270(a). Youths must be informed of what behaviors may result in behavioral hold. *Id.* at § 270(c).

Time limit. Four hours, or when a supervisor determines the youth is ready to return to program participation, whichever is sooner. *Id.* at §§ 270(f) & (g).

Location. The youth’s own room, or another area designated by the facility’s superintendent, but not the confinement unit. *Id.* at § 270(d).

Oversight. “Immediately” after the hold begins, the shift supervisor must be notified. *Id.* at § 270(b). Within 30 minutes, a staff member not involved in the incident must meet the youth to provide counsel and de-escalate the behavior. *Id.* at § 270(e). Within one hour, and every hour after that, a supervisor must meet the youth to determine whether they are ready to return to program participation. *Id.* at § 270(f).

4. Medical hold.

Who may initiate. Only a physician. Dkt. #133-2 at § 290(a) & (c).

Standard to initiate. For “medical quarantine, recovery, or observation.” *Id.* at § 290(a). Any limits on “movement and access to programs and services” must be based on a physician’s finding of “medical need.” *Id.* at § 290(c).

Location. Placement in the confinement unit is allowed only if a physician determines “a less restrictive area is not available or sufficient to meet the youths’ medical needs.” *Id.* at § 220(a)(6). Medical hold youths in the confinement unit must be sight and sound separated from other youths, when feasible given the physical layout and youth present. *Id.* at § 220(a)(6)(B). A physician shall review the need for such placement every 24 hours. *Id.* at § 220(a)(6)(A). Alternatively, the place of medical hold may be the youth’s own room, or another area designated by the facility’s superintendent. *Id.* at § 290(b).

5. Administrative hold.

Who may initiate. Only the facility's superintendent. Dkt. #133-2 at § 260(a).

Standard to initiate. "Administrative or security purposes" to "separate" a youth who is "temporarily" housed at a facility from other youths. *Id.* at § 260(a).

Location. Every administrative hold may be located in the facility's confinement unit for up to 24 hours. *Id.* at § 220(a)(4). The confinement unit also may be used for a total of three business days if the youth is awaiting transfer to the IDOC, or if the facility's superintendent documents "other safety or security reason why a less restrictive form of housing is not appropriate." *Id.* at § 220(a)(3). Alternatively, youth on administrative hold may be "separated" from other youths in other locations. *Id.* at § 260(a).

Programs and services. The IDJJ must make "every reasonable effort" to provide "access to the same programs and services" provided to the general population. *Id.* at § 260(c). Youths in the confinement unit for safety reasons do not enjoy this benefit. *Id.*

6. Investigative status.

Who may initiate. Only the IDJJ's Deputy Director of Operations. Dkt. #133-2 at § 250(a).

Standard for initiate. When (1) a youth "is alleged to have committed a major offense," and (2) "temporary confinement is necessary for the efficient and effective investigation of the offence." *Id.* at § 250(a).

Location. The facility's confinement unit, or another area designated by the facility's superintendent. *Id.* at § 250(a).

Time limit. Four days. *Id.* at § 250(c). The confinement must end earlier if it is no longer necessary, as determined by the investigator, the facility superintendent, or the Deputy Director. *Id.* at § 250(b). The Deputy Director may grant a four-day extension in the event of an institutional emergency such as a riot. *Id.* at § 250(c)(2). If the investigation is conducted by "an outside agency," additional time for investigative confinement is allowed if the agency provides the Deputy Director with documentation showing this is "necessary." *Id.* at § 250(c)(1).

B. Prohibition of all other forms of confinement.

Other than these six forms of confinement, the IDJJ's proposed confinement policy prohibits all other forms of confinement. This is shown by the policy's definition of "confinement." Dkt. #133-2 at § 210. It begins by broadly defining that term as "intentionally keeping a youth separate from all other youth, removing a youth from the general population, restricting the movement of a youth, or confining a youth to a room or area for any period of time for the reasons defined herein regardless of whether the youth is placed on a confinement unit." *Id.* This section then critically states: "Confinement of a youth for any reason not defined in this rule is not permitted." *Id.*

C. Safeguards for all confined youths.

The IDJJ’s confinement policy provides enumerated safeguards to youths in “all confinement, regardless of basis or location.” Dkt. #133-2 at § 230. Most of these safeguards apply without regard to the duration of confinement, and a few apply only to confinements that last 24 hours or longer.

1. Safeguards for confinements of all durations.

Out-of-room time must be provided for “daily showers, personal grooming, and recreation.” Dkt. #133-2 at § 230(f).

Mental health services ordinarily provided must continue. *Id.* at § 230(k).

Education services ordinarily provided must continue. The facility’s superintendent may withhold education services if they determine that providing such services poses a safety threat. Such determinations must be justified in writing. The services must resume when the threat ends. *Id.* at § 230(L).

Safety checks are required at least every 15 minutes, including a verbal check if the youth is awake. *Id.* at § 230(d). Ten-minute checks are required for youths on “observation status” (meaning they are undergoing emotional crisis), or on “close supervision” (meaning they are potentially suicidal). Five-minute checks are required for youths on “suicide watch” (meaning they are acutely suicidal). Dkt. 133-5 (draft IDJJ policy on mental health crisis services) at § II(E), § II(F)(3)(b)(2)(c), § II(F)(3)(c)(2)(a), & § II(F)(3)(d)(4)(a).

Visits from family, attorneys, and clergy must be allowed. Dkt. #133-2 at § 230(m).

Reading materials must be provided in the confinement room, and writing materials must be daily provided outside the room. *Id.* at § 230(n).

Medical care. Any medical complaints by youths or medical concerns by staff must be reported immediately to medical staff. *Id.* at § 230(c).

2. Additional safeguards for confinements of 24 hours or longer.

Eight daily out-of-room hours. This must include at least one hour of large-muscle exercise, outdoors if weather permits. During such out-of-room time, the youth shall be in the physical presence of, and have the opportunity to speak with, facility staff. The facility superintendent may restrict this out-of-room time if it poses a safety threat, and must justify such restrictions in writing. Dkt. #133-2 at § 230(g).

Daily MHP interview. If the MHP does not have a license, they must review the substance of the interview with a licensed MHP. *Id.* at § 230(h).

Notice to parents, if the youth is under 18 years of age. *Id.* at § 230(j).

D. Supervisory oversight of all confinement.

Documentation. All confinement decisions must be justified in writing as soon as practical by the staff making the decision. Dkt. #133-2 at § 230(a). This includes decisions to begin, continue, modify, or end confinement, and decisions to begin or end restrictions on services for confined youths. *Id.* at § 210.

Oversight by the facility superintendent. The superintendent must be notified as soon as possible of all decisions to confine a youth, and shall review all documentation justifying confinement. *Id.* at § 230(b).

Oversight by the IDJJ Deputy Director of Operations. Anytime a youth is confined for 18 consecutive hours or longer, or confined on more than 10 occasions in any 30-day period, the Deputy Director must be immediately notified, and provided all documentation justifying the confinement. *Id.* at § 230(i).

Cumulative data. The IDJJ must maintain cumulative data on all confinement decisions. *Id.* at § 230(o).