
Constitution Proposal Analysis

PROPOSAL: 75

SPONSOR: Martinez

SUBJECT: Establish restrictions regarding restrictive confinement of children

REFERENCES:

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I. SUMMARY

This proposal would amend Article I, Section 15 of the Constitution of the State of Florida, adding a new subsection (c), to establish restrictions regarding the restrictive confinement of children.

Changes made by this proposal would affect the Department of Corrections (DOC), the Department of Juvenile Justice (DJJ), any successor agencies, privately-owned correctional facilities, and all jails and county-operated youth detention facilities. This proposal would prohibit confinement of individuals aged seventeen and under in restricted areas, away from the general population of the correctional facility, (more commonly known as “solitary confinement”) for reasons other than the safety of the confined individual or others. This proposal would limit restrictive confinement to no more than twenty-four hours, unless the confined individual continues to display physical aggression. This proposal would require a review of the circumstances of the restrictive confinement and mental health evaluation and treatment for the confined individual should confinement exceed twenty-four hours.

This proposal is meant to reduce the use of restrictive confinement on children. Restrictive confinement has been found to cause grave psychological harm and this impact is especially pronounced in children, whose brains have not yet fully developed. Restrictive confinement of children is correlated with increased incidence of mental health issues and suicide, and impairs the proper development of children, mentally, physically, and psychologically.¹ Furthermore, use of restrictive confinement has been shown to impede rehabilitation and to increase recidivism rates,² negatively impacting the child, the child’s family, and the community at large.

The fiscal impact of this proposal is difficult to ascertain with certainty due to a lack of publicly available Florida-specific data. However, data from other jurisdictions consistently shows that it is more expensive to hold an individual in confinement than it is to hold him or her in the general prison population.

¹ <http://www.apa.org/advocacy/criminal-justice/solitary.pdf>

² <https://repository.law.umich.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1035&context=mjlr>

II. CURRENT SITUATION

Currently, there is no State law prohibiting or restricting the confinement of juveniles. The restrictive confinement policies applied to juveniles by DOC, DJJ, and jails are varied.

DOC's confinement policies are governed by Fla. Admin. Code R. 33-601 (2017) and Fla. Admin. Code R. 33-602 (2017). There are several types of confinement described by the rules that may be utilized by DOC: administrative confinement (AC), protective management (PM), disciplinary confinement (DC), and close management (CM). Each type of confinement is governed by a separate rule.

- Fla. Admin. Code R. 33-602.220 governs administrative confinement.
 - AC is defined as the temporary removal of an inmate from the general population in order to provide for security and safety until such time as a more permanent inmate management decision can be concluded such as disciplinary confinement, close management, protective management or transfer.
 - Allowable reasons for placement in AC:
 - Disciplinary charges are pending and the inmate needs to be temporarily removed from the general inmate population in order to provide for security or safety until such time as the disciplinary hearing is held.
 - Outside charges are pending against the inmate and the presence of the inmate in the general population would present a danger to the security or order of the institution.
 - Pending review of the inmate's request for protection from other inmates.
 - When an inmate has presented a signed written statement alleging that they are in fear of staff and provide specific information to support this claim
 - An investigation, evaluation for change of status, or transfer is pending and the presence of the inmate in the general population might interfere with that investigation or present a danger to the inmate, other inmates, or to the security and order of the institution.
 - When an inmate is received from another institution when classification staff is not available to review the inmate file and classify the inmate into general population.
 - Total length of time in AC is not limited. However, after seventy-two hours a review of the circumstances of the confinement is required.
- Rule 33-602.221 governs protective management.
 - PM is defined as a special management status for the protection of inmates from other inmates in an environment as representative of that of the general population as is safely possible. PM is not disciplinary in nature and inmates in PM are not being punished and are not in confinement. The

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treatment of inmates in protective management shall be as near that of the general population as the individual inmate's safety and security concerns permit.

- Allowable reasons for placement in PM:
 - Only for the protection of inmates from other inmates.
- Total length of time in PM is not limited. However, the inmate's status must be reviewed once per week for the first sixty days of PM, beyond that, requires a monthly written report regarding the confinement and reviews every six months.
- Rule 33-602.222 governs disciplinary confinement.
 - DC is defined as a form of punishment in which inmates found guilty of committing violations of the department rules are confined for specified periods of time to individual cells based upon authorized penalties for prohibited conduct.
 - Allowable reasons for placement in DC:
 - An inmate can be placed in dc for violating one of many rules. The broad categories of rule violations include: (1) assault, battery, threats, and disrespect, (2) riots, strikes, mutinous acts and disturbances, (3) possession of contraband, (4) being in an unauthorized area, (5) count procedure violations, (6) disobeying orders, (7) destruction, misuse, or waste of property, (8) failure to maintain hygiene, (9) supervised community release program violations, and (10) other miscellaneous infractions.
 - Total length of time in DC is not limited and depends on the nature of the infraction for which the inmate was placed in DC. However, the inmate's status must be reviewed weekly and written reports regarding the confinement must be completed every sixty days.
- Rule 601.800 governs close management.
 - CM is defined as the confinement of an inmate apart from the general population, for reasons of security or the order and effective management of the institution, where the inmate, through his or her behavior, has demonstrated an inability to live in the general population without abusing the rights and privileges of others. There are three levels of CM, CM I being the most restrictive and CM III being the least restrictive.
 - Allowable reasons for placement in CM:
 - CM I: incidents involving a death, assault or battery, physical injury, taking hostages, instigation of a riot, property damage over \$1,000, possession of weapons, sexual assaults, gang leadership, and various escape attempts.
 - CM II: violation of rules or acts that threaten safety, predatory actions against other inmates, causing injury to another inmate, escape attempts, participation in riots, threats of violence, trafficking contraband.

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- CM III: refusing to follow orders of staff, minor escape attempts involving no weapons or arrests for other felonies while escaped, helping another escape, behavior that is disruptive to the institution, predatory or aggressive acts, possession of contraband, gang membership.
- Total length of time in CM is not limited. However, the inmate's status must be reviewed weekly for the first sixty days and every thirty days thereafter and written reports regarding the confinement must be completed every sixty days.

The rules for all types of confinement allow for mental health evaluations and services for the confined individual. None of these rules differentiate between juveniles and adults regarding allowable reasons for confinement, regarding length of confinement, or in any other way. An individual's age is considered when they initially enter DOC custody under Fla. Admin. Code R. 33-601.210, Custody Classification.

DJJ's confinement policies are governed by Fla. Admin. Code R. 63G-2.022(4). To address discipline, the rule requires DJJ to implement a behavior management plan that promotes safety, respect, fairness, and protection of rights within the facility for juveniles in their custody. In DJJ custody, restrictive confinement cannot be used to harass, embarrass, demean, or otherwise abuse a youth. The total length of confinement is limited to no more than eight hours unless an extension is granted. Extensions are only allowed if release of the youth would imminently threaten his or her safety or the safety of others. Additionally, after twenty-four hours, a series of reviews must begin. Fla. Admin. Code Ch. 63N-1 provides for mental health evaluations and services for youth, including those in confinement.

Confinement policies in jails are governed by the Model Jail Standards ("the Standards"). Chapter 18 of the Standards governs admission classification and release of juveniles; it requires that juveniles be housed separately from adults unless they have been charged or convicted as an adult. Chapter 13 governs discipline in jails and allow for administrative confinement (AC) and disciplinary confinement (DC).

- Administrative Confinement:
 - AC is defined as the segregation of an inmate for investigation, protection, or some cause other than disciplinary action.
 - Inmates may be placed in AC for the purpose of ensuring immediate control and supervision when it is determined they constitute a threat to themselves, to others, or to the safety and security of the detention facility.
 - There is no time limit specified for administrative confinement in the Standards.
- Disciplinary Confinement:
 - DC is defined as the segregation of an inmate for disciplinary reasons.
 - Inmates may be placed in DC as discipline for violation for one of many rules.
 - The length of time in DC should be proportionate to the offense and is limited to thirty days per incident. The Standards include hearings to

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determine and review disciplinary determination and methods by which inmates can grieve their confinement.

III. EFFECT OF PROPOSED CHANGES

The effect of the proposed changes would vary among the entities it affects. However, all affected entities would have to review and revise their policies in accordance with the requirements of the proposal language.

The proposal language sets broad standards such as allowing confinement “to ensure the safety of the child or others” and allowing exceptions to the twenty-four-hour limit on confinement “if reviewed and approved as prescribed by law,” allowing for considerable discretion by the affected entities in implementation. The impact of the proposal will depend on how each affected entity chooses to comply with the standards described by the proposal.

DJJ will likely be least affected as their current rules already generally comport with the proposal requirements. However, any changes they do make will apply to the entire population of individuals in DJJ custody as they are all juveniles. 3,222 juveniles were admitted to residential DJJ facilities in fiscal year 2015-2016.³ However, a total of 69,749 juveniles were arrested in Florida during the same period.⁴ Many of these juveniles will have spent at least a short time in a short-term DJJ detention facility after their arrest, even if they were not ultimately committed to a residential program. The changes in this proposal would apply to juveniles in DJJ’s residential facilities as well as those in short-term detention facilities.

DOC will likely be most affected as their current rules are dissimilar to the proposal requirements. However, the impact will still be relatively small since the population of juveniles in DOC custody is low. In fiscal year 2015-2016, only 217 children were admitted to DOC custody.⁵ A data snapshot compiled by FSU’s Public Interest Law Center in March of 2017 showed a total of 159 juveniles (male and female) in DOC custody at that time, 53 of whom were listed as being placed in some type of restrictive confinement. Data provided to FSU’s Public Interest Law Center by DOC in April of 2016 showed 122 juveniles (male only) in DOC custody at that time, 32 of whom were listed as being placed in either administrative or disciplinary confinement; none were listed in protective management or close confinement. Of the April 2016 group, the average length of time in administrative confinement was fourteen days and the average length of time in disciplinary confinement was twenty-four days.

The effect on jails will vary as the Model Jail Standards set the floor for treatment of inmates but each jail’s policies can vary so long as they meet the basic requirements of the Standards. The number of children in jails across Florida at any given time can be

³ <http://www.djj.state.fl.us/research/reports/reports-and-data/interactive-data-reports/delinquency-profile/delinquency-profile-dashboard>

⁴ <http://www.djj.state.fl.us/research/reports/reports-and-data/interactive-data-reports/delinquency-profile/delinquency-profile-dashboard>

⁵ http://www.dc.state.fl.us/pub/annual/1516/FDC_AR2015-16.pdf

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difficult to ascertain due to the number of jails and differences in data tracking. However, according to DJJ, 1,592 juveniles were arrested and then transferred to the adult criminal system in fiscal year 2015-2016.⁶ These children would be subject to placement in a county jail when adult charges were filed, though some may not have entered jail due to being allowed to remain free on conditional bond while charges were pending.

More broadly, less restrictive confinement is correlated with reduced recidivism. According to DOC, the more restrictive the level of confinement that an inmate is held in, the more likely that inmate is to reoffend within three years. Of inmates released from major correctional institutions in Florida between 2004 and 2011, recidivism rates were as follows:

- Close Custody: 39.6%
- Medium Custody: 33.7%
- Minimum Custody: 30.3%
- Community Custody: 22.5%⁷

Lower recidivism rates should, with fewer released inmates returning to the system, reduce inmate populations over time. Reduced inmate populations will save the State money on corrections costs and will improve conditions generally by reducing crime by repeat offenders.

IV. FISCAL IMPACT

The fiscal impact of this proposal is difficult to ascertain with certainty due to a lack of publicly available Florida-specific data. Exact figures calculating the difference in cost between holding an individual in restrictive confinement versus holding that individual in the general population are not available for Florida. However, in jurisdictions that do track this data such as Illinois, Ohio, California, Colorado, and in the Federal correctional system, it has been consistently shown to be less expensive to house an individual in the general population than to house them in restrictive confinement.

At one state prison in California, in 2010-2011 it cost \$12,317 more to house one inmate in a Security Housing Unit for one year and \$19,416 more to house one inmate in an Administrative Segregation Unit for one year than in the general population. In Illinois in 2009, it cost two to three times more to house an individual in solitary confinement at one state prison than to house the individual at the state's other maximum security prisons. In Colorado in 2010, it cost \$14,933 to \$21,485 more to house an individual in administrative segregation in supermax prisons than in regular maximum security per year. In Ohio in 2003, it cost \$149 per day to house an inmate in maximum security administrative segregation, more than double the cost of housing an inmate in the general population, which was just \$63 per day. Recently, Mississippi reduced the number of

⁶ <http://www.djj.state.fl.us/research/reports/reports-and-data/interactive-data-reports/delinquency-profile/delinquency-profile-dashboard>

⁷ <http://www.dc.state.fl.us/pub/recidivism/recidivism-by-custody-summary.pdf>

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individuals it holds in confinement and closed one of its supermax prisons; these reforms have saved Mississippi an estimated \$8 million per year.⁸

However, these cost savings may be at least partially offset by potential implementation of additional programs or staff training to reduce the use of restrictive confinement for reasons other than safety, such as for disciplinary reasons.

A. Tax/Fee Issues

No tax or fee is imposed or modified by the proposal.

B. Private Sector Impact

Some correctional facilities in Florida are privately owned and operated. As stated above, Florida-specific data on difference in cost between holding an individual in restrictive confinement versus holding that individual in the general population are not available but data from other jurisdictions shows it is less expensive to house an individual in the general population than to house them in restrictive confinement. Potential implementation of additional programs or staff training to reduce the use of restrictive confinement for reasons other than safety may somewhat offset these savings.

C. Government Sector Impact

As stated above, Florida-specific data on difference in cost between holding an individual in restrictive confinement versus holding that individual in the general population are not available but data from other jurisdictions shows it is less expensive to house an individual in the general population than to house them in restrictive confinement. Potential implementation of additional programs or staff training to reduce the use of restrictive confinement for reasons other than safety may somewhat offset these savings.

More broadly, reduction of use of confinement has been shown to reduce recidivism which should reduce inmate populations over time thus reducing the overall costs to the State of housing inmates.

V. PRIOR EFFORTS IN FLORIDA

In 2013, Senator Audrey Gibson introduced SB 812, An act relating to youth in solitary confinement. This bill defined solitary confinement as involuntary confinement in a cell for more than twenty hours a day, in isolation from persons other than a cellmate, guards, facility staff, and attorneys and included a twenty-four-hour limit on restrictive confinement. The bill also included specified intervals at which showers, exercise, and other out-of-cell time must be provided. This bill died at its first committee stop.

Additionally, in late 2015 and early 2016, FSU's Public Interest Law Center participated in the rulemaking process, cooperating with DOC to try to change its

⁸ Comparative fiscal data from <http://solitarywatch.com/wp-content/uploads/2011/06/fact-sheet-the-high-cost-of-solitary-confinement.pdf>.

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administrative rules to limit restrictive confinement of juveniles; that effort failed. During the 2017 legislative session, FSU's Public Interest Law Center floated legislation that would limit restrictive confinement of juveniles but ultimately no bills were submitted.

VI. RESTRICTIVE CONFINEMENT IN OTHER STATES

In California, the law prohibits juveniles from being placed in long-term isolation in juvenile facilities and jails. Room confinement is limited to four hours (during non-sleeping hours) and can only be used if all less restrictive alternatives have been exhausted.⁹

Colorado allows individuals in confinement to earn time off their confinement for good behavior. By returning individuals to the general population sooner, the state saves money on corrections costs which has been diverted to mental health services which are used as alternatives to restrictive confinement.¹⁰

In Nevada, a child who is detained in a local or regional facility for the detention of children may be subjected to "corrective room restriction" only if all other less-restrictive options have been exhausted and only for the following listed purposes: (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. Further, no child may be locked alone in a room for longer than seventy-two hours (though the law also requires thorough reporting of any incident that does exceed seventy-two hours).¹¹

Oklahoma has very comprehensive restrictions on solitary confinement, reserving it as a "serious and extreme measure to be imposed only in emergency situations." The State's administrative code lists situations which constitute the limited emergencies during which solitary confinement of juveniles may be used.¹²

Missouri's model does not allow for restrictive confinement of juveniles. Under Missouri's model, corrections services for juveniles are less punitive and more therapeutic and rehabilitation-focused; this system has been extremely effective. A 2010 study examining results of Missouri's reforms found that not a single juvenile had committed suicide in juvenile justice custody since reforms were instituted more than twenty-five years prior. Additionally, "steering just one high-risk delinquent teen away from a life of crime saves society \$3 million to \$6 million in reduced victim costs and criminal justice expenses, plus increased wages and tax payments over the young person's lifetime."¹³

⁹ https://leginfo.legislature.ca.gov/faces/billCompareClient.xhtml?bill_id=201520160SB124

¹⁰ <http://www.safealternativestosegregation.org/resources/view/colorado-sb-11-176>

¹¹ https://www.leg.state.nv.us/Session/77th2013/Bills/SB/SB107_EN.pdf

¹² Okla. Admin. Code § 377:35-11-4

¹³ <http://www.aecf.org/m/resourcedoc/aecf-MissouriModelFullreport-2010.pdf>

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