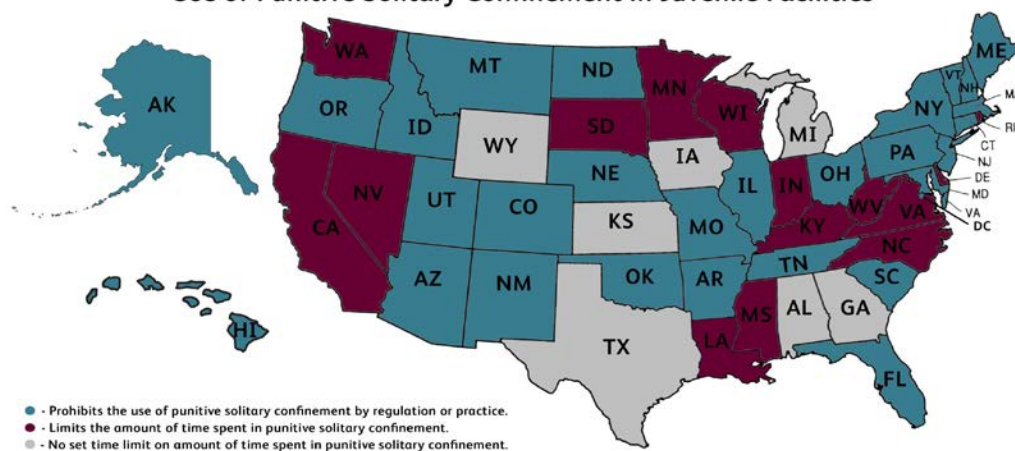


SOLITARY CONFINEMENT FOR JUVENILES

1. Map of state law with respect to solitary confinement
2. Federal law on Solitary Confinement of Juveniles (Great Model Language);
3. Summary of Federal law;
4. Summary of Washington, D.C. law on solitary confinement of juveniles;¹
5. Summary of Massachusetts law on solitary confinement of juveniles;²
6. Summary of New York law on solitary confinement of juveniles;³
7. Washington, D.C. law on Solitary Confinement of juveniles
8. Summaries of Caselaw.

Use of Punitive Solitary Confinement in Juvenile Facilities



⁴ Id.

FEDERAL LAW ON SOLITARY CONFINEMENT

18 USC CH. 403: JUVENILE DELINQUENCY, SECTION 5043.

§5043. Juvenile solitary confinement

(a) Definitions.—In this section—

(1) the term "covered juvenile" means—

(A) a juvenile who—

(i) is being proceeded against under this chapter for an alleged act of juvenile delinquency; or

(ii) has been adjudicated delinquent under this chapter; or

(B) a juvenile who is being proceeded against as an adult in a district court of the United States for an alleged criminal offense;

(2) the term "juvenile facility" means any facility where covered juveniles are—

(A) committed pursuant to an adjudication of delinquency under this chapter; or

(B) detained prior to disposition or conviction; and

(3) the term "room confinement" means the involuntary placement of a covered juvenile alone in a cell, room, or other area for any reason.

(b) Prohibition on Room Confinement in Juvenile Facilities.—

(1) In general.—The use of room confinement at a juvenile facility for discipline, punishment, retaliation, or any reason other than as a temporary response to a covered juvenile's behavior that poses a serious and immediate risk of physical harm to any individual, including the covered juvenile, is prohibited.

(2) Juveniles posing risk of harm.—

(A) Requirement to use least restrictive techniques.—

(i) In general.—Before a staff member of a juvenile facility places a covered juvenile in room confinement, the staff member shall attempt to use less restrictive techniques, including—

(I) talking with the covered juvenile in an attempt to de-escalate the situation; and

(II) permitting a qualified mental health professional to talk to the covered juvenile.

(ii) Explanation.—If, after attempting to use less restrictive techniques as required under clause (i), a staff member of a juvenile facility decides to place a covered juvenile in room confinement, the staff member shall first—

(I) explain to the covered juvenile the reasons for the room confinement; and

(II) inform the covered juvenile that release from room confinement will occur—

(aa) immediately when the covered juvenile regains self-control, as described in subparagraph (B)(i); or (bb) not later than after the expiration of the time period described in subclause (I) or (II) of subparagraph (B)(ii), as applicable.

(B) Maximum period of confinement.—If a covered juvenile is placed in room confinement because the covered juvenile poses a serious and immediate risk of physical harm to himself or herself, or to others, the covered juvenile shall be released—

(i) immediately when the covered juvenile has sufficiently gained control so as to no longer engage in behavior that threatens serious and immediate risk of physical harm to himself or herself, or to others; or

(ii) if a covered juvenile does not sufficiently gain control as described in clause (i), not later than—

(I) 3 hours after being placed in room confinement, in the case of a covered juvenile who poses a serious and immediate risk of physical harm to others; or

(II) 30 minutes after being placed in room confinement, in the case of a covered juvenile who poses a serious and immediate risk of physical harm only to himself or herself.

(C) Risk of harm after maximum period of confinement.—If, after the applicable maximum period of confinement under subclause (I) or (II) of subparagraph (B)(ii) has expired, a covered juvenile continues to pose a serious and immediate risk of physical harm described in that subclause—

(i) the covered juvenile shall be transferred to another juvenile facility or internal location where services can be provided to the covered juvenile without relying on room confinement; or

(ii) if a qualified mental health professional believes the level of crisis service needed is not currently available, a staff member of the juvenile facility shall initiate a referral to a location that can meet the needs of the covered juvenile.

(D) Spirit and purpose.—The use of consecutive periods of room confinement to evade the spirit and purpose of this subsection shall be prohibited.

18 USC CH. 403: JUVENILE DELINQUENCY, SECTION 5043.

SUMMARY OF SECTION 5043

(B) MAXIMUM PERIOD OF CONFINEMENT.—If a covered juvenile is placed in room confinement because the covered juvenile poses a serious and immediate risk of physical harm to himself or herself, or to others, the covered juvenile shall be released— “(i) immediately when the covered juvenile has sufficiently gained control so as to no longer engage in behavior that threatens serious and immediate risk of physical harm to himself or herself, or to others; or “(ii) if a covered juvenile does not sufficiently gain control as described in clause (i), not later than— “(I) 3 hours after being placed in room confinement, in the case of a covered juvenile who poses a serious and immediate risk of physical harm to others; or “(II) 30 minutes after being placed in room confinement, in the case of a covered juvenile who poses a serious and immediate risk of physical harm only to himself or herself. “

(C) **RISK OF HARM AFTER MAXIMUM PERIOD OF CONFINEMENT.**—If, after the applicable maximum period of confinement under subclause (I) or (II) of subparagraph (B)(ii) has expired, a covered juvenile continues to pose a serious and immediate risk of physical harm described in that subclause— “(i) the covered juvenile shall be transferred to another juvenile facility or internal location where services can be provided to the covered juvenile without relying on room confinement; or “(ii) if a qualified mental health professional believes the level of crisis service needed is not currently available, a staff member of the juvenile facility shall initiate a referral to a location that can meet the needs of the covered juvenile.

WASHINGTON, D.C. COMPREHENSIVE YOUTH JUSTICE AMENDMENT ACT - SUMMARY

The Comprehensive Youth Justice Amendment Act provides that after six hours of room confinement, a youth must be returned “to the general population, transported to a mental health facility upon the recommendation of a mental health professional, transferred to the medical unit in the facility, or provided special individualized programming” that provides “concrete goals that the juvenile understands and that he or she can work toward to be removed from special programming.” Comprehensive Youth Justice Amendment Act of 2016, D.C. 21-0238 (2016), available at <http://lims.dccouncil.us/Download/35539/B21-0683-SignedAct.pdf>.

MASSACHUSETTS - ROOM CONFINEMENT OF JUVENILES DETAINED BY OR COMMITTED TO THE DEPARTMENT OF YOUTH SERVICES - SUMMARY

No punitive confinement allowed. Room confinement permitted to calm a youth exhibiting seriously disruptive or dangerous behavior, population management, safety and security of a youth, and for the investigation of an incident. Per DYS Policy, tiered approval is needed for various lengths of confinement up to 12 hours; after 12 hours, the DYS Central Office On-Call Manager must be consulted.

A juvenile may not be confined for punitive reasons. The Department of Youth Services (DYS) under the Executive Office of Health and Human Services is charged with the detention, custody, diagnosis, care, and training of delinquent juvenile offenders. Title 109, Chapter 5 of the Code of Massachusetts Regulations (“Room Confinement of Juveniles Detained by or Committed to the Department of Youth Services”) establishes rules and procedures for room confinement of juveniles detained by or committed to the Department of Youth Services, while placed at hardware secure programs. 109 MASS. CODE REGS. 5.01-.02 (current through May 8, 2015).

- Involuntary room confinement cannot be used as a sanction for non-compliance or punishment. Id. at 5.01(3).
- Youth may be kept involuntarily in a room during non-sleeping hours for the following reasons: to calm a youth exhibiting seriously disruptive or dangerous behavior, population management, safety and security of a youth, and for the investigation of an incident. Id. At 5.01(1).
- Involuntary room confinement to calm a youth or for safety and security of a youth can only be used when less restrictive interventions have failed and for the least amount of time required for youth to regain self-control. Id. at 5.01(2).

No punitive confinement allowed. Room confinement permitted to calm a youth exhibiting seriously disruptive or dangerous behavior, population management, safety and security of a youth, and for the investigation of an incident. Per DYS Policy, tiered approval is needed for various lengths of confinement up to 12 hours; after 12 hours, the DYS Central Office On-Call Manager must be consulted.

Involuntary room confinement for population management or for the investigation of an incident can only be used when less restrictive alternatives are not available and for only the amount of time reasonably necessary to resolve the issue or investigation. *Id.* at 5.01(4).

Each use of involuntary room confinement must be authorized, documented and reported in accordance with policy approved by the Commissioner which is reviewed annually in light of best practices. *Id.* at 5.03.

Staff must monitor all youth in involuntary confinement at “regular intervals” in accordance with policy. The policy must set the time frames within which a youth must be viewed, but must be at least every 15 minutes. *Id.* at 5.04. DYS Policy 03.03.01(a) similarly provides that youth may be kept involuntarily in a room for the following reasons: to calm a youth who is exhibiting seriously disruptive or dangerous behavior; for population management; for the safety and security of a youth; and for investigation of an incident. DEP’T OF YOUTH SERVS. POLICY 03.03.01(a) (Mar. 15, 2013), *available at* <http://www.mass.gov/eohhs/gov/lawsregs/dys/policies/chapter-03-daily-livingpolicies.html> (last visited July 7, 2016).

If a youth is confined for exhibiting seriously disruptive or dangerous behavior, the facility must also show that: a. less restrictive crisis intervention techniques have failed; and b. staff obtains proper authorization, as described in Section F of this policy. *Id.* However, a youth may not be confined in a room for the following reasons: as a consequence for noncompliance; punishment; harassment; or in retaliation for any youth conduct. *Id.*

Conditions of Confinement

Authorization required before placing youth in individual room confinement. Tiered approval is required for varying periods of confinement up to 12 hours. If a youth exhibits dangerous and disruptive behavior after 12 hours of room confinement, the Regional Director or Regional On-Call Manager must consult with the DYS Central Office On-Call Manager as to how to proceed. *Id.* Staff must conduct 4 minute room checks during the first hour of room confinement. *Id.* After the first hour of room confinement, staff shall monitor youths every 10-15 minutes. *Id.* For individual room confinement, staff must attempt to engage the youth in a release strategy at least once every 30 minutes. *Id.*

NEW YORK - SUMMARY

No punitive confinement allowed. Confinement is permitted when juvenile presents danger to himself or others; must be authorized in writing by head of institution/designee. Although the need for continued confinement is reviewed once every 24 hours, there is no limit on the total time in confinement.

A juvenile may not be confined for punitive reasons. Room confinement is non-punitive.

- Room confinement is defined as confinement of a child in a room when the room is locked or when the child is authoritatively told not to leave.

- Room confinement shall not be used as punishment; it may be used only when child constitutes a “serious and evident” danger to himself/others.
- Confinement must be authorized in writing by head of institution or designee.
- Child must be visited once every 24 hours by staff.
- Review of necessity for continued confinement of child must be conducted every 24 hours.
- Reporting of confinement is required.

Requirements for room conditions are listed in § 180.9(c)(11)(iv)-(v). N.Y. COMP. CODES R. & REGS. tit. 9, § 180.9(c)(11) (current through May 27, 2015). The administrative code references “solitary confinement” of youth only to say that it is a prohibited form of discipline. *Id.* at § 180.9(c)(10). Non-punitive room confinement is also permitted in “state schools or centers.” These non-secure facilities also receive committed juveniles. Confinement exceeding 24 hours must be approved by the deputy director for rehabilitation services or designee. The superintendent or director of the facility must review the necessity for confinement every 24 hours. *Id.* at § 168.2(a), (b), (f), (l).

WASHINGTON, D.C. COMPREHENSIVE YOUTH JUSTICE AMENDMENT ACT –

TITLE II

TITLE II. IMPROVING CONDITIONS OF CONFINEMENT.

Sec. 201. Short title.

This title may be cited as the "Improving the Conditions of Confinement of Juveniles Act of 2016".

New [subchapter I-A of Chapter 9 of Title 24](#)

New [§ 24-911](#)

Sec. 202. Definitions.

For the purposes of this title, the term:

(1) "Juvenile" means any individual under 18 years of age and any child, as defined in D.C. Official Code § 16-2301(3).

(2) "Penal institution" shall have the same meaning as provided in section 2(6) of An Act To prohibit the introduction of contraband into the District of Columbia penal institutions, approved December 15, 1941 (55 Stat. 800; D.C. Official Code § 22-2603.01(6)).

(3) "Room confinement" means the involuntary restriction of a juvenile alone, other than during normal sleeping hours or facility-wide lockdowns, in a cell, room, or other area.

(4) "Secure juvenile facility" means a secure juvenile residential facility, as defined in section 2(7) of An Act To prohibit the introduction of contraband into the District of Columbia penal institutions, approved December 15, 1941 (55 Stat. 800; D.C. Official Code § 22-2603.01(7)), or a secure residential treatment facility for juveniles that is owned, operated, or under the control of the Department of Youth Rehabilitation Services.

New [§ 24-912](#)

Sec. 203. Limitations on the use of room confinement.

(a) Penal institutions and secure juvenile facilities shall not use room confinement on a juvenile for the purposes of discipline, punishment, administrative convenience, retaliation, or staffing shortages.

(b)(1) Except as provided in subsection (c) of this section, a penal institution or secure juvenile facility may use room confinement on a juvenile as a temporary response to behavior that threatens:

(A) Imminent harm to the juvenile or others; or

(B) Imminent danger to the safe or secure operation of the penal institution or secure juvenile facility.

(2) A penal institution or secure juvenile facility may use room confinement pursuant to paragraph (1) of this section if there is no other reasonable means to eliminate the condition; provided, that:

(A) Room confinement is used only to the extent necessary to eliminate the condition identified;

(B) Facility staff promptly notifies the juvenile of the specific conditions that resulted in the use of room confinement;

(C) Room confinement takes place under the least restrictive conditions practicable and consistent with the individualized rationale for placement; and

(D) Facility staff develops a plan that will allow the youth to leave room confinement and return to the general population as soon as possible.

(c) Facility staff at a penal institution or secure juvenile facility may grant a juvenile's request for room confinement; provided, that the juvenile is free at any time to revoke his or her request for confinement and be immediately returned to the general population.

(d) Except for room confinement occurring under subsection (c) of this section, a health or mental health professional shall conduct a mental health screening on a juvenile placed in room confinement within one hour after placement. After a screening, the penal institution or secure juvenile facility shall provide mental health services to the juvenile, if necessary.

(e) Except for room confinement occurring under subsection (c) of this section, room confinement shall be used for the briefest period of time possible and not for a time to exceed 6 hours. After 6 hours, the youth shall be returned to the general population, transported to a mental health facility upon the recommendation of a mental health professional, transferred to the medical unit in the facility, or provided special individualized programming that may include:

(1) Development of an individualized plan to improve the juvenile's behavior, created in consultation with the juvenile, mental health or health staff, and the juvenile's family members that identifies the causes and purposes of the negative behavior as well as concrete goals that the juvenile understands and that he or she can work toward to be removed from special programming.

(2) In-person supervision by and interaction with staff members;

- (3) In-person provision of educational services;
- (4) Involvement of the juvenile in other aspects of the facility's programming, unless the involvement threatens the safety of the juvenile or staff or the security of the facility; and
- (5) Daily review with the juvenile of his or her progress toward the goals outlined in his or her plan.
- (f) For each use of room confinement, facility staff shall document the following, if applicable:
 - (1) The name of the juvenile;
 - (2) The date and time the juvenile was placed in room confinement;
 - (3) The name and position of the person authorizing placement of the juvenile in room confinement;
 - (4) The staff involved in the conditions leading to the use of room confinement;
 - (5) The date and time the juvenile was released from room confinement;
 - (6) A description of the conditions leading to the use of room confinement or if room confinement was upon request by the juvenile;
 - (7) The alternative actions to room confinement that were attempted and found unsuccessful or the reason that alternatives were not possible;
 - (8) Any incident reports describing the condition that led to the period of room confinement; and
 - (9) Any referrals and contacts with qualified medical and mental health professionals, including the date, time, and person contacted.
- (g) On March 1, 2018, and annually thereafter, the Department of Youth Rehabilitation Services and the Department of Corrections shall submit a report to the Mayor and the Council that includes steps each agency has taken to reduce the unnecessary use of room confinement for juveniles and a summary of any information collected pursuant to subsection (f) of this section, including, for each penal institution or secure juvenile facility:
 - (1) The total number of incidents in which room confinement was utilized in the prior year;
 - (2) The average length of time juveniles spent in room confinements in the prior year;
 - (3) The longest period of time that any juvenile was in room confinement; and
 - (4) The greatest number of times that any juvenile was in room confinement.

New [§ 24-913](#)

Sec. 204. Age-appropriate housing for youth.

(a) On October 1, 2017, and on a quarterly basis thereafter, the Mayor shall provide a report to the Council that includes:

(1) The greatest number of juveniles housed in the Correctional Treatment Facility or the Central Detention Facility at any one time during the preceding quarter;

(2) The lowest number of unused beds for juveniles at secure juvenile facilities at any one time during the preceding quarter; and

(3) The number of consecutive quarters that the lowest number of unused beds at secure juvenile facilities, as determined in paragraph (2) of this subsection, has exceeded the greatest number of juveniles housed in the Correctional Treatment Facility or the Central Detention Facility, as determined in paragraph (1) of this subsection, if any.

(b) All juveniles housed at the Correctional Treatment Facility or the Central Detention Facility shall be transferred to available space in secure juvenile facilities within 6 months after a determination that there have been 4 consecutive quarters of excess capacity, as determined under subsection (a)(3) of this section.

SUMMARIES OF CASE LAW – SOLITARY CONFINEMENT

■ **J.J. v. Litscher, Western District of Wisconsin (case filed 2017, oral ruling on June 23, 2017):** This class action, brought by the ACLU of Wisconsin and Juvenile Law Center, raises Eighth and Fourteenth Amendment challenges to the widespread use of punitive solitary confinement, pepper spray, and mechanical restraints at two juvenile facilities in Wisconsin. In an oral ruling finding that plaintiffs are entitled to preliminary injunctive relief on all claims, the court held that the facilities' use of solitary confinement violates the Fourteenth Amendment right to rehabilitative treatment. The court further held that defendants' policies and practices reflect deliberate indifference to a substantial risk of serious harm under the Eighth Amendment, concluding that defendants had "demonstrated a callous indifference to the acute and permanent harm that residents [of the facilities] are suffering." You can find the settlement eliminating punitive solitary and setting restrictions on all other solitary here: <https://jlc.org/sites/default/files/attachments/2018-11/2018.10.31%20Stip%20%26%20Conset%20Decree%20%26%20Perm%20Injunction.pdf>.

■ **Doe v. Hommrich, No. 3-16-0799, 2017 WL 1091864, at*2 (M.D. Tenn. March 22, 2017):** This class action brought Eighth and Fourteenth Amendment conditions of confinement claims against the Rutherford County Detention Facility. Plaintiffs emphasized the developmental vulnerabilities of adolescents and the international condemnation of solitary confinement of children. Relying on the Supreme Court's recent decisions in this area, the district court agreed that plaintiffs had shown they were likely to succeed on their claims that youth "being detained in solitary confinement or isolation for punitive or disciplinary purposes constitutes ... inhumane treatment," in violation of the Eighth Amendment. The preliminary injunction barred all solitary confinement of youth as punishment or discipline.

■ **V.W. v. Conway, No. 9:16-CV-1150, 2017 WL 696808, at *19 (N.D.N.Y. Feb. 22, 2017):** This case involved Eighth and Fourteenth Amendment challenges to the Onondaga County Justice Center's use of solitary confinement on 16- and 17-year-old inmates and detainees in adult facilities,

and it included a subclass of youth with disabilities bringing IDEA claims. In addition to emphasizing

the harms of solitary on all youth, plaintiffs highlighted the lack of specific educational services available to youth with disabilities while they were held in solitary confinement. The court found that the local school district had failed to provide educational services in accordance with the youths' specific IEPs and that youth with disabilities were held in isolation "in violation of the 'manifestation hearing' requirement of the IDEA." Additionally, the court explicitly noted the disproportionate use of disciplinary isolation against youth of color in the facility. The court concluded that punitive solitary confinement of youth violates the Eighth Amendment, citing the "broad consensus among the scientific and professional community that juveniles are psychologically more vulnerable than adults." *Unlocking Youth: Legal Strategies to End Solitary Confinement in Juvenile Facilities*

■ **G.F. et al. v. Contra Costa County et al.**, <http://dralegal.org/case/g-f-et-alv-contra-costa-county-et-al/#files>, This case challenged the use of solitary confinement and corresponding educational deprivations on behalf of a class consisting of all youth with disabilities detained at the facility. Plaintiffs brought claims under the IDEA, the ADA, Section 504, and California state education law. There were no federal constitutional claims. The case resulted in two settlement agreements—one with the county administering the facility and one with the local education department—that require broad reforms to the practices and services provided to youth with disabilities. Under the terms of the settlement, the county agreed not to "use room confinement for discipline, punishment, administrative convenience, retaliation, staffing shortages or reasons other than a temporary response to behavior that threatens immediate harm to the youth or others." Where confinement is used, in accordance with the settlement agreement, youth cannot remain in isolation for more "than four hours."