

**Constitution Revision Commission  
Declaration Of Rights Committee  
Proposal Analysis**

(This document is based on the provisions contained in the proposal as of the latest date listed below.)

Proposal #: P 75

Relating to: DECLARATION OF RIGHTS, Prosecution for crime; offenses committed by children;  
restrictive confinement of children

Introducer(s): Commissioner Martinez

Article/Section affected: Article I, Section 15

Date: January 24, 2018

	REFERENCE	ACTION
1.	<u>DR</u>	<u>Pre-meeting</u>
2.	<u>EX</u>	<u></u>

**I. SUMMARY:**

The proposal amends Article I, Section 15 of the Florida Constitution to prohibit the Department of Corrections, the Department of Juvenile Justice, jails, or detention facilities from holding juveniles in restrictive confinement for any reason other than to ensure the safety of the child or others. The proposal provides time-standards when the use of restrictive confinement is required and for the use of mental health evaluations and treatment.

If approved by the Constitution Revision Commission, the proposal will be placed on the ballot at the November 6, 2018, General Election. Sixty percent voter approval is required for adoption. If approved by the voters, the proposal will take effect on January 8, 2019.

**II. SUBSTANTIVE ANALYSIS:**

**A. PRESENT SITUATION:**

Solitary, or restrictive, confinement consists of the removal of an individual from the general prison population, whether voluntarily or involuntarily, placement of that individual in a single cell or with one other individual, and that individual remaining locked in that cell for most of the day, up to 22 hours or more. Solitary confinement originated from Quaker practices in the late eighteenth and early nineteenth centuries. It quickly spread in popularity throughout the United States and Europe. By 1890, the U.S. Supreme Court criticized the widespread use of solitary confinement, noting that individuals subjected to it often developed mental illness, attempted suicide, and had difficulties reintegrating back into society upon their releases. Use of solitary confinement declined at the start of the twentieth century, but saw a resurgence in the 1970s and 1980s as a tactic for controlling prison populations, which had exploded due to the “War on Drugs.”

**Jails**

Confinement policies in Florida 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 determine and review disciplinary determination and methods by which inmates can file grievances regarding their confinement.

**Department of Juvenile Justice**

Currently, “restrictive confinement” is governed by various administrative rules of the Department of Juvenile Justice (DJJ).

DJJ rules 63G-2.014(7) and 63G-2.022(4) govern “behavioral confinement” in secure detention. Behavioral confinement is defined as the “placement of a youth in a secure room during volatile situations in which a youth’s sudden or unforeseen onset of behavior imminently and substantially threatens the physical safety of others or himself.” This form of confinement is limited to 8 hours with a mandatory report to be filed within 2 hours. The facility superintendent must authorize any extension past 8 hours, and only the regional director can extend behavioral confinement past 24 hours, and with notice to the Assistant Secretary. A Juvenile Detention Officer Supervisor must evaluate the youth at least every 3 hours to determine whether continued confinement is necessary.

In residential commitment facilities, DJJ defines “controlled observation” as follows:

*An immediate, short-term crisis management strategy, not authorized for use as punishment or discipline, wherein a youth in a residential commitment program is placed in a separate, identified, safe and secure room used only for Controlled Observation. Placement in this room is in response to his or her sudden or unforeseen onset of behavior that substantially threatens the physical safety of others and compromises security. A program is authorized to use this strategy only when non-physical interventions with the youth would not be*

*effective and during emergency safety situations where there is imminent risk of the youth physically harming himself or herself, staff, or others, or when the youth is engaged in major property destruction that is likely to compromise the security of the program or jeopardize the youth's safety or the safety of others.<sup>1</sup>*

Youth cannot be placed in controlled observation if they are “demonstrating acute psychological distress behaviors, such as panic, paranoia, hallucinations, and self-harming behaviors, or if the youth is a suicide risk, meaning a youth who demonstrates behaviors that indicate that he or she is thinking about or contemplating suicide or when the youth is identified as a suicide risk in the program’s alert system. Additionally, if a youth in a controlled observation room begins demonstrating acute psychological distress or suicide risk behaviors, the youth shall immediately be removed from the room and follow-up mental health services shall be provided.”<sup>2</sup> The duration of controlled observation is limited to 2 hours, and any extensions not to exceed 24 hours must come from the program director. Checks must be made on the youth every 15 minutes.

### **Department of Corrections**

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

<sup>1</sup> 63E-7.002(20), Fla. Admin. Code.

<sup>2</sup> 63E-7.013(16)(e), Fla. Admin. Code.

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 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.
    - 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.<sup>3</sup>

### **Studies Regarding Juveniles in Solitary Confinement**

Recent studies show that solitary confinement can have a lasting effect on juveniles. An American Bar Association Juvenile Justice Center article states that the frontal lobe continues to develop until the early 20s.<sup>4</sup> The frontal lobe controls judgment, planning for the future, and foreseeing consequences of actions. Generally, studies recognize that juveniles in solitary confinement are more likely to develop mental health problems and that their existing mental problems are likely to be exacerbated. In addition, juveniles are more likely to exhibit antisocial behavior, self-harm, and attempt suicide while in solitary confinement.

Anecdotal evidence shows the lasting effects of solitary confinement on juveniles. One 16 year old girl began to cut herself after spending 4 months in solitary confinement, claiming it was “the only release of [her] pain.”<sup>5</sup> Other teens described how they would rather die than continue to feel the despair of a life with no way out. Some teens commit suicide, even after being released from all confinement.

### **Recent Developments**

In 2015, Justice Anthony Kennedy of the United States Supreme Court questioned the propriety of solitary confinement. In his concurring opinion in *Davis v. Ayala*,<sup>6</sup> he noted the toll that extended isolation may cause has been questioned by legal writers and commentators. But, he also acknowledged the use or necessity of temporary solitary confinement to impose discipline or protect other inmates or prison staff. Ultimately, he concluded that the courts should look at solitary confinement and consider other long-term confinement systems and determine whether correctional systems should be required to adopt alternatives.

On January 25, 2016, President Obama signed an executive order banning the use of solitary confinement for juveniles in the federal prison system. A multitude of states and counties have followed suit since, including New York state and Los Angeles county, both implementing severe restrictions on the use of solitary confinement on juveniles. Currently, Congress is considering the Sentencing Reform and Corrections Act, which, among other things, would permanently ban the use of solitary confinement for juveniles.

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<sup>3</sup> 33-601.210, Fla. Admin. Code

<sup>4</sup> “Adolescence, Brain Development and Legal Culpability,” American Bar Association Juvenile Justice Center, January 2004.

<sup>5</sup> Kysel, Ian, “Solitary Confinement Makes Teenagers Depressed and Suicidal. We Need to Ban the Practice,” *Washington Post*, June 17, 2015.

<sup>6</sup> 135 S.Ct. 2187 (2015).

**B. EFFECT OF PROPOSED CHANGES:**

The proposal prohibits DOC, DJJ, and jail or detention facility staff from placing a child in any restrictive confinement away from a facility's general population for any reason other than to ensure the safety of the child or others.

The proposal prohibits keeping a child in restrictive confinement more than 24 hours unless the child cannot be safely housed outside of the restrictive confinement. Keeping a child in restrictive confinement for more than 24 hours must be reviewed and approved as proscribed by law. Any child kept in restrictive confinement for more than 24 hours must receive mental health evaluations and treatment, as needed.

If approved by the voters, the proposal will take effect on January 8, 2019.<sup>7</sup>

**C. FISCAL IMPACT:**

The fiscal impact on state and local government is indeterminate.

**III. Additional Information:****A. Statement of Changes:**

(Summarizing differences between the current version and the prior version of the proposal.)

None.

**B. Amendments:**

None.

**C. Technical Deficiencies:**

None.

**D. Related Issues:**

None.

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<sup>7</sup> See Article XI, Sec. 5(e) of the Florida Constitution ("Unless otherwise specifically provided for elsewhere in this constitution, if the proposed amendment or revision is approved by vote of at least sixty percent of the electors voting on the measure, it shall be effective as an amendment to or revision of the constitution of the state on the first Tuesday after the first Monday in January following the election, or on such other date as may be specified in the amendment or revision.")