

23 HOURS IN 23 THE BOX



**Solitary Confinement in New Jersey
Immigration Detention**



**New Jersey Advocates for Immigrant Detainees
June 2015**

ABOUT THE NEW JERSEY ADVOCATES FOR IMMIGRANT DETAINEES

New Jersey Advocates for Immigrant Detainees is an alliance of civic and religious organizations (individual participation is also welcome). Its goals include bringing attention to the plight of immigrant detainees in New Jersey jails, working to improve the conditions in those institutions, and advocating for the reduction and elimination of the use of detention of immigrants.

Coalition Members include American Friends Service Committee (AFSC) Immigrant Rights Program; Casa de Esperanza; Casa Freehold; the Episcopal Immigration Network; First Friends of NJ & NY; the Latin American Legal Defense and Education Fund, Lutheran Office of Governmental Ministry in NJ; Middlesex County Coalition for Immigrant Rights; NJ Forum for Human Rights; Pax Christi NJ; People's Organization for Progress- Bergen County Branch; the Reformed Church of Highland Park; Sisters of St. Joseph of Chestnut Hill ESL; and the Unitarian Universalist Congregation at Montclair.

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Andrew Lyubarsky and Juan Caballero are J.D. Candidates at New York University School of Law and are the primary authors of this report. They conducted this work as student advocates in the Law School's Immigrant Rights Clinic.

About the NYU School of Law Immigrant Rights Clinic

The Immigrant Rights Clinic is a leading institution in both local and national struggles for immigrant rights. Students engage in direct legal representation of immigrants and community organizations as well as in immigrant rights campaigns at the local, state, and national level. Students have direct responsibility for all aspects of their cases and projects and the opportunity to build their understanding of legal practice in the field of immigrant rights law and organizing.

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Executive Summary

Immigration detention has always been characterized as civil and non-punitive, and the Obama Administration has consistently emphasized a reform of the immigration detention system to better reflect this fact. Nevertheless, immigrant detainees today are routinely housed in county jails and private prisons across the country, where they are subject to a dehumanizing penal regime and face the harshest of disciplinary sanctions for breaking facility rules—solitary confinement. Although these individuals—who often have lived in the United States for years and have significant ties to families and communities here—are merely being detained while awaiting their immigration proceedings, both ICE regulations and local New Jersey laws allow them to be locked in dank, solitary cells with no human contact for up to 23 hours a day, in some cases for up to 30 consecutive days. This is not only inhumane, but violates the current interpretation of the Convention against Torture and International Covenant on Civil and Political Rights.

Solitary confinement is serious punishment that can have severe psychological, and physical consequences even for healthy individuals, and it can be even more damaging for an immigrant population with members who have suffered trauma at the hands of authorities in their home countries.

The report examines how solitary confinement (or “disciplinary detention”, as it is officially termed) is applied for immigrant detainees in New Jersey, particularly at the Bergen County Jail and Hudson County Correctional Facility. Through an analysis of over a hundred disciplinary reports and hearing decisions from 2013 and 2014 acquired through Open Public Records Act (OPRA) requests, it provides a glimpse behind the detention centers’ prison walls, revealing an unnecessarily harsh system that applies solitary confinement too often and for too long.

Moreover, the current system raises serious due process concerns—while individuals are entitled to a hearing to adjudicate their guilt or innocence, an overwhelming percentage of them are found guilty, usually without requesting a witness be present, and without any recorded appeals of the length of their sentence.

Findings

Based on the data collected, five specific areas of concern were identified. These include:

1. Overuse and Inappropriate Use of Solitary Confinement

Solitary confinement is not being used as a last resort for only those acts, which threaten the safety of the facility. A significant percentage of cases where solitary confinement was imposed in Bergen County (43.2%) did not involve either violence or threats of violence against any other person. Less restrictive alternatives are never considered when there has been any type of physical conflict.

Furthermore, numerous reports suggested that truly individualized assessments were not being made in all cases. There was no evidence of a thorough mental health clearance being conducted before the decision is made to place a detainee in solitary confinement.

2. Excessive Time Spent in Prehearing Lockup

Pre-hearing detention often exceeds the legal limit of 72 hours. The average Bergen detainee spent 3.28 days in solitary confinement before receiving a hearing to adjudicate their guilt or innocence, while the average Hudson detainee spent 1.86 days. However, in Bergen, there were extreme incidents of individuals serving up to 12 days (for damaging property) or 9 days (for fighting) before receiving a hearing and a sentence of “time served”.

3. Excessive Length and Stacking of Solitary Confinement Sentences

Facilities regularly stack charges in order to enhance the time that immigrant detainees spend in solitary confinement beyond 15 days. Both facilities engaged in a troubling practice of “double charging” individuals by adding a charge of “conduct which disrupts or interferes with the security or orderly running of the correctional facility” (coded as infraction 306) to all violations. 12% of solitary confinement sentences in Bergen County and 19% in Hudson County exceeded 15 days

4. Violations of individual due process

A number of factors suggest that the due process to which immigrant detainees are entitled is being provided only in form, not in substance.

- Immigrant detainees are overwhelmingly found guilty of their charged offenses.
- Immigrant detainees are not being offered the opportunity to call witnesses.
- Immigrant detainees never appealed the imposition of solitary confinement against them.

5. Insufficient ICE oversight

Both of these facilities are also subject to ICE standards, which create federal reporting requirements and auditing requirements in addition to those imposed by the state and local governments. One such federal requirement is that segregation placements are reviewed after the first 15 days by a representative of the ICE Field Office to guarantee that the original segregation justifications remains valid. In practice, these Disciplinary Segregation Reviews (provided only by Hudson) often function as rubber stamps for the continued segregation of the detainee. In no instance did a Disciplinary Segregation Review form indicate that the continued segregation of the detainee was no longer necessary.

Recommendations

1. Strengthen New Jersey Law Governing Solitary Confinement

The report concludes that many of the problems identified would be remedied by the passage of the Isolated Confinement Restriction Act (“NJ S 2588”), a forward-thinking piece of legislation which would restrict the use of solitary confinement in state and county correctional facilities.

The passage of this legislation would remedy many of the problems identified in this report’s findings in the following ways:

- By imposing a rigorous legal standard which indicates that solitary confinement can only be applied when the detainee would create a serious risk of imminent harm to himself or others and mandating the use of less restrictive alternatives, the legislation would significantly reduce the frequency that solitary confinement is imposed.
- By mandating that the Department of Corrections research and implement less restrictive alternatives to solitary confinement, the legislation would lead to a less punitive disciplinary regime and give facilities other options to maintain order while respecting detainees’ rights.
- By limiting the maximum time that an individual can spend in solitary confinement to 15 consecutive days, or 20 days over any 60 day period, the legislation would bring New Jersey in line with international law and human rights standards and decrease the chances of individuals suffering lasting physical or psychological damage.
- By limiting the presumptive maximum sentence to 15 consecutive days, the legislation would eliminate incentives for institutions to “double charge” detainees with multiple disciplinary offenses.
- By prohibiting the use of solitary confinement for the youngest and oldest detainees, as well as for those with mental health or serious medical issues, the legislation would protect vulnerable populations.
- By requiring the Department of Corrections to publish quarterly reports regarding the use of solitary confinement in each facility, the legislation would promote transparency and accountability in the disciplinary process.

However, strengthening New Jersey law regarding solitary confinement is not the only solution to the problems that all individuals—immigration detainees and inmates alike—face in the state’s correctional institutions. Whether advocates’ efforts to reform the law are successful or not, the report also issues the following recommendations:

2. Establish Effective Mental Health Screening Procedures

- Facilities should implement comprehensive mental health screening by qualified, independent mental health professionals who are accountable to an outside body.

3. Guarantee Due Process and Promote Facility Accountability Under the Current Law

- Facilities should refrain from “double-charging” detainees with “conduct which disrupts or interferes with the security or orderly running of the correctional facility” (charge 306) unless their alleged offense is not covered by any other disciplinary charge. Facilities should only use charge 306 if it pertains to an allegation which is not covered by any other disciplinary charge, and not as an automatic “sentence-enhancer.”
- The State Department of Corrections should play a more robust role in monitoring both the conditions of confinement and the due process afforded detainees by engaging in unscheduled site inspections and audits of disciplinary hearing documents to ensure compliance with existing standards and proper due process.
- The Corrections Ombudsman’s office should offer services to all those detained in county facilities.
- A civilian review board, which could respond to detainee and inmate complaints about their due process rights, sentence lengths, or conditions in solitary confinement, should be formed. This board should have the power to conduct site visits and examine all documents relating to the imposition of solitary confinement, as well as make recommendations to corrections officials regarding excessive or inappropriate disciplinary measures. This would promote transparency and the participation of a wide range of civil society stakeholders.

4. End Mass Immigration Detention

While this report is narrowly focused on a particularly extreme form of disciplinary sanction faced by certain immigration detainees, it should be noted that these individuals, who are not being held because they have committed any crime, should not be held in detention in the first place. Immigrants should have the right to prepare their case with their families and in the communities, without passing through the ordeal of months (or sometimes years) of traumatic detention.

New Jersey Advocates for Immigrant Detainees believes that mass immigration detention is unjustified by public safety concerns and inhumane. We call on Congress to repeal the bed quota mandating some 34,000 immigration beds per night, modify the mandatory detention law to permit every immigrant to have his or her bond equities considered by an immigration judge, and end the mass immigration detention system as we know it.¹

¹ This demand has now been made by, among others, the Editorial Board of the New York Times. See Op-Ed, *End Immigration Detention*, N.Y. TIMES (May 15, 2015), available at <http://www.nytimes.com/2015/05/15/opinion/end-immigration-detention.html>.