



ISOLATED IN ESSEX

PUNISHING IMMIGRANTS THROUGH SOLITARY CONFINEMENT

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*A report of the New Jersey Advocates for Immigrant Detainees, the American Friends Service Committee,
and the New York University School of Law Immigrant Rights Clinic*

EXECUTIVE SUMMARY

Immigration detention is intended to ensure the appearance of immigrants at removal proceedings and is meant to be civil and non-punitive, yet immigrant detainees are held in penal facilities and subjected to the same conditions as individuals accused or convicted of crimes, including solitary confinement. The troublesome use of solitary confinement in state and federal penal institutions and its severe mental health consequences are often the focus of national discourse, but the specific impact of solitary confinement on immigrant detainee populations has received less attention. In 2015, the New Jersey Advocates for Immigrant Detainees (NJAID) and the New York University School of Law Immigrant Rights Clinic (IRC) published a report describing the use of solitary confinement as a disciplinary measure in two of the three New Jersey county jails that house immigrant detainees. This report completes the picture by presenting an analysis of previously unavailable data regarding the use of disciplinary solitary confinement (“disciplinary segregation”) against immigrant detainees in Essex County Correctional Facility (Essex), the third and largest immigration detention facility in New Jersey.

Essex produced 446 incident reports for the period covering 2013, 2014, and 2015. An analysis of these reports reveals that the use of solitary confinement in Essex is excessive and disproportionate, implemented in an arbitrary fashion, and lacking in adequate due process and transparency. Essex

routinely “stacks” charges, meaning it charges a detainee with multiple offenses for a single charge, intended to be for clearly separate discrete acts, thus circumventing New Jersey’s 15-day limit on a solitary confinement sentence for a single incident. Furthermore, detainees regularly face solitary confinement during pre-hearing detention before there has been any finding of guilt. The data also demonstrates that many of the incidents leading to solitary confinement in Essex are related to frustration over the jail’s conditions. The conditions in a detention center are inherently stressful for detainees and staff alike, and the data shows that allowing officers the authority to mete out solitary confinement as a disciplinary measure in that context results in excessive and arbitrary punishments.

FINDINGS

1. The imposition of solitary confinement in Essex is excessive and disproportionate.

Out of the incidents charged that resulted in punishment, 96% led to solitary confinement and only 4% were deemed to merit a less punitive response, such as restricting commissary access. Furthermore, 42.1% of the incidents resulting in a punishment of solitary confinement were for nonviolent conduct. The high rate of imposition of solitary confinement demonstrates that it is being used as an all-purpose punishment, rather than as a last resort. Qualitative data also shows that the solitary sentences imposed are often disproportionate to the conduct of the detainee. For example, one detainee received 12 days in solitary for damaging a recently issued identification wristband, while another detainee received a sentence of 15 days in solitary confinement for refusing to close his food port after he found worms in his food.

2. Essex employs solitary confinement in an arbitrary fashion.

The enormous discretion placed in the hands of jail staff leads to arbitrary results in the imposition solitary confinement. Officers have the discretion to upgrade “minor” infractions to “major,” thus authorizing the use of solitary as a punishment, and also have the ability to “stack” additional charges to result in sentences exceeding 15 days. Detainees engaged in the exact same conduct – and charged with identical violations – often receive drastically different lengths of time in solitary confinement.

3. The disciplinary process for imposing solitary confinement in Essex lacks transparency and due process.

Even though New Jersey law and the Essex ICE Detainee Handbook mandate certain procedures that must be followed when punishing a detainee for an infraction, the appeals records we reviewed demonstrate that in practice, detainees are often deprived of basic due process. For

example, despite the explicit provision that guarantees detainees' right to call witnesses, several detainees complained that they were never given the opportunity to call witnesses at their disciplinary hearings. Moreover, Essex overuses pre-hearing detention, subjecting individuals to solitary confinement before they are found guilty of any violation. New Jersey law allows for an individual to be placed in pre-hearing detention, which in effect is the same as solitary confinement, if the individual poses a threat to himself, others, or the facility. However, the Essex data reveals that that a staggering 95% of cases involved pre-hearing detention, ranging from hours to fifteen days. Over 23% of these incidents ultimately resulted in dismissal of the charges or not guilty findings. In fact, Essex places individuals in pre-hearing detention for offenses that do not suggest the detainee poses any risk. Pre-hearing detention is overused and misused, casting doubt on whether detainees are given a fair process in these pre-hearing detention determinations.

RECOMMENDATIONS

1. The use of solitary confinement as a disciplinary measure should be abolished. In the interim, solitary confinement must be significantly reformed and used only as a tool of last resort.
2. Detention facilities should improve their conditions and implement effective procedures to address detainee concerns by expanding the role for the Office of the Corrections Ombudsman and creating a civilian review board.
3. Pre-hearing detention should be abolished or, in the interim, used only in a less restrictive setting and where necessary to protect the detainee or others from harm.
4. Stacking charges for a single incident and upgrading conduct from "minor" to "major" should be entirely prohibited.
5. The proposed solitary confinement restriction bill S.51 in New Jersey should be adopted as an important step in the right direction.
6. End mass immigration detention.

American Friends Service Committee (AFSC)
Immigrant Rights Program
&
NJ Advocates for Immigrant Detainees (NJAID)
89 Market Street, 6th Floor
Newark, New Jersey 07102
973-643-1924

Immigrant Rights Clinic
Washington Square Legal Services, Inc.
New York University School of Law*
245 Sullivan Street, 5th Floor
New York, NY 10012
212-998-6430

* listed for identification purposes only