

## RESOLUTION 06-09-2014 (as amended)

### DIGEST

Juvenile Law: Elimination of Solitary Confinement in Juvenile Detention Facilities.  
Adds Welfare & Institutions Code section 208.3, and amends sections 225, 226, 229, and 230 to ban room confinement in juvenile detention facilities and sets up a commission to oversee the proper use of room confinement for the purpose of ensuring the physical and mental health of incarcerated minors.

### RESOLUTIONS COMMITTEE RECOMMENDATION

DISAPPROVE (Rescomm recommendation mooted by amendments)

#### History:

~~No similar resolutions found.~~

This is a replacement resolution to the original 06-09-2014. The original resolution dealt with solitary confinement in adult jails and prisons, and was not accompanied by any statutory language. The replacement resolution deals only with the solitary confinement of juveniles in California juvenile detention facilities and is modelled after SB 970 (Yee), which failed passage in the 2014 Legislature due to the suspension of its author. This replacement resolution is mirrored on the newly proposed federal REDEEM act and is in line with JDAI (Juvenile Detention Alternatives Initiative) standards.

#### Reasons:

~~This resolution recommends that the Legislature and Governor enact legislation to end the use of solitary confinement in California's prisons and jails. This resolution should be disapproved because it does not provide any concrete solutions or suggest any specific statute to be amended or changed and the resolution itself is vague and contains conflicting language.~~

~~While the goal of ending solitary confinement in California's prisons and jails for certain populations may have merit, the resolution does not present any specific language or even identify the California Code in which to enact the legislation. In addition, the goal of the resolution is unclear. The resolution does not address some of the following questions such as, whether solitary confinement should be eliminated in all circumstances, whether it is an issue if solitary confinement is ordered for more than 15 consecutive days, and whether the resolution removes all discretion from the officials running the facility. The resolution, as written, raises more questions than it answers and does not provide a concrete solution to the problem.~~

### TEXT OF RESOLUTION

SECTION 1. Section 208.3 is added to the Welfare and Institutions Code, to read:

208.3. (a) For purposes of this section, the following definitions shall apply:

(1) "Minor" means a person who is any of the following:

(A) A person under 18 years of age.

(B) A person under the maximum age of juvenile court jurisdiction who is confined in a juvenile facility.

(C) A person under the jurisdiction of the Department of Corrections and Rehabilitation, Division of Juvenile Facilities.

(2) "Solitary confinement" means the segregated placement of an incarcerated person, or a person detained as a result of a juvenile petition, in a locked room or cell with minimal or no contact with persons other than guards, correctional facility staff, and attorneys. Solitary

confinement does not include confinement of a ward or minor in a single-person room as part of ordinary placement, or cell for brief periods of locked-room confinement necessary for institutional operations, including, but not limited to, shift changes, showering, and unit movements.

(3) "Ward" means a person who has been declared a ward of the court pursuant to subdivision (a) of Section 602.

(b) A minor or ward who is detained in, or sentenced to, any juvenile facility or other secure state or local facility shall not be subject to solitary confinement, unless the minor or ward poses an immediate and substantial risk of harm to self, others, or to the security of the facility, and all other less-restrictive options have been exhausted or are not safe and reasonable under the circumstances. A minor or ward may be held in solitary confinement only in accordance with all of the following guidelines:

(1) The minor or ward shall be held in solitary confinement for only the minimum time required to address the safety risk and for a period that does not unduly compromise the mental and physical health of the minor or ward under the circumstances described herein.

(2) The minor or ward shall not be placed in solitary confinement for more than 24 hours in a one-week period without the written approval of the Chief of the Division of Juvenile Facilities, or his or her designee, or the chief probation officer, or his or her designee, which shall be required for each 24-hour period thereafter. In the extraordinary circumstance that a minor remains confined for more than 48 hours, a mental health professional must conduct an assessment to provide recommendations for treatment and/or other interventions that may be appropriate to allow the minor to safely reintegrate with other juveniles. Such assessments must be performed at least every 48 hours in accordance with subdivisions (b)(1), (c), and (d).

(c) Solitary confinement shall not be used for the purposes of discipline, punishment, coercion, convenience, or retaliation by staff.

(d) Each local and state juvenile facility shall document the usage of solitary confinement, including the dates and duration of each occurrence, the reason for placement in solitary confinement, and the race, age, and gender of the minor or ward placed in solitary confinement. If any health or mental health clinical evaluations were performed, these records shall affirmatively certify that the results of those evaluations were considered in any decision to place a minor or ward in solitary confinement or to continue solitary confinement. These records shall be available for public inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(e) This section is not intended to limit the use of single-person rooms or cells for the housing of minors or wards in juvenile facilities.

(f) This section does not apply to minors or wards in court holding facilities or adult facilities.

(g) Nothing in this section shall be construed to conflict with any law providing greater or additional protections to minors or wards.

**SEC. 2.** Section 225 of the Welfare and Institutions Code is amended to read:

**225.** (a) In each county there shall be a juvenile justice commission consisting of not less than 7 and no more than 15 citizens. Two or more ~~of the~~ members shall be persons who are ~~between 14 and to 21 years of age, provided inclusive, if there are available persons between 14 and to 21 years of age~~ between 14 and to 21 years of age, inclusive, who are able to carry out the duties of a commission member in a manner satisfactory to the appointing authority. Each person serving as a member of a probation committee immediately prior to September 15, 1961, shall be a member of the

juvenile justice commission and shall continue to serve as such until ~~such time as~~ his or her term of appointment as a member of the probation committee would have expired under any prior ~~provision of law~~. Upon a vacancy occurring in the membership of the ~~commission~~ commission, and upon the expiration of the term of office of any member, a successor shall be appointed by the presiding judge of the superior court with the concurrence of the judge of the juvenile court or, in a county having more than one judge of the juvenile court, with the concurrence of the presiding judge of the juvenile court for a term of four years. ~~When~~ If a vacancy occurs for any reason other than the expiration of a term of office, the appointee to fill ~~such~~ the vacancy shall hold office for the unexpired term of his or her predecessor.

(b) Appointments may be made by the presiding judge of the superior court, in the same manner designated in this section for the filling of vacancies, to increase the membership of a commission to the maximum of 15 members in any county ~~which~~ that has a commission with a membership of less than 15 members.

(c) In any county in which the membership of the commission, on the effective date of amendments to this section enacted at the 1971 Regular Session of the Legislature, exceeds the maximum number permitted by this section, no additional appointments shall be made until the number of commissioners is less than the maximum number permitted by this section. In any case, such county's commission membership shall, on or after January 1, 1974, be no greater than the maximum number permitted by this section.

(d) This section shall remain in effect only until January 1, 2017, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2017, deletes or extends that date.

SEC. 3. Section 225 is added to the Welfare and Institutions Code, to read:

225. (a) In each county there shall be a juvenile justice commission consisting of not less than 7 and no more than 15 citizens. Two or more members shall be persons who are 14 to 21 years of age, inclusive, if there are available persons 14 to 21 years of age, inclusive, who are able to carry out the duties of a commission member in a manner satisfactory to the appointing authority. Two or more members shall be parents or guardians of previously or currently incarcerated youth, if there are available persons who meet this requirement who are able to carry out the duties of a commission member in a manner satisfactory to the appointing authority. One member shall be a licensed social worker, licensed psychiatrist, or licensed psychologist with expertise in adolescent development, if there is an available person who meets this requirement who is able to carry out the duties of a commission member in a manner satisfactory to the appointing authority. Each person serving as a member of a probation committee immediately prior to September 15, 1961, shall be a member of the juvenile justice commission and shall continue to serve as such until his or her term of appointment as a member of the probation committee would have expired under any prior law. Upon a vacancy occurring in the membership of the commission, and upon the expiration of the term of office of any member, a successor shall be appointed by the presiding judge of the superior court with the concurrence of the judge of the juvenile court or, in a county having more than one judge of the juvenile court, with the concurrence of the presiding judge of the juvenile court for a term of four years. If a vacancy occurs for any reason other than the expiration of a term of office, the appointee to fill the vacancy shall hold office for the unexpired term of his or her predecessor.

(b) Appointments may be made by the presiding judge of the superior court, in the same manner designated in this section for the filling of vacancies, to increase the membership of a commission to the maximum of 15 members in any county that has a commission with a membership of less than 15 members.

(c) In any county in which the membership of the commission, on the effective date of amendments to this section enacted at the 1971 Regular Session of the Legislature, exceeds the maximum number permitted by this section, no additional appointments shall be made until the number of commissioners is less than the maximum number permitted by this section. In any

case, that county's commission membership shall, on or after January 1, 1974, be no greater than the maximum number permitted by this section.

(d) This section shall become operative on January 1, 2017.

**SEC. 4.** Section 226 of the Welfare and Institutions Code is amended to read:

**226. (a)** In lieu of county juvenile justice commissions, the boards of supervisors of two or more adjacent counties may agree to establish a regional juvenile justice commission consisting of not less than eight citizens, and having a sufficient number of members so that their appointment may be equally apportioned between the participating counties. Two or more of the members shall be persons who are ~~between 14 and to 21 years of age, provided inclusive, if there are available persons between 14 and to 21 years of age~~ age, inclusive, who are able to carry out the duties of a commission member in a manner satisfactory to the appointing authority. The presiding judge of the superior court with the concurrence of the judge of the juvenile court or, in a county having more than one judge of the juvenile court, with the concurrence of the presiding judge of the juvenile court of each of the participating counties shall appoint an equal number of members to the regional justice commission and ~~they~~ the members shall hold office for a term of four years. Of those first appointed, however, if the number of members appointed ~~be~~ is an even number, ~~half one-half~~ half one-half shall serve for a term of two years and ~~half one-half~~ half one-half shall serve for a term of four ~~years and if years.~~ years. If the number of members first appointed ~~be~~ is an odd number, the greater number nearest ~~half one-half~~ half one-half shall serve for a term of two years and the remainder shall serve for a term of four years. The respective terms of the members first appointed shall be determined by lot as soon as possible after their appointment. Upon a vacancy occurring in the membership of the ~~commission~~ commission, and upon the expiration of the term of office of any member, a successor shall be appointed by the presiding judge of the superior court with the concurrence of the judge of the juvenile court or, in a county having more than one judge of the juvenile court, with the concurrence of the presiding judge of the juvenile court of the county ~~which that originally appointed such the~~ vacating or retiring member. ~~When~~ If a vacancy occurs for any reason other than the expiration of a term of office, the appointee shall hold office for the unexpired term of his or her predecessor.

(b) This section shall remain in effect only until January 1, 2017, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2017, deletes or extends that date.

**SEC. 5.** Section 226 is added to the Welfare and Institutions Code, to read:

**226. (a)** In lieu of county juvenile justice commissions, the boards of supervisors of two or more adjacent counties may agree to establish a regional juvenile justice commission consisting of not less than 10 citizens, and having a sufficient number of members so that their appointment may be equally apportioned between the participating counties. Two or more members shall be persons who are 14 to 21 years of age, inclusive, if there are available persons 14 to 21 years of age, inclusive, who are able to carry out the duties of a commission member in a manner satisfactory to the appointing authority. Two or more members shall be parents or guardians of previously or currently incarcerated youth, if there are available persons who meet this requirement who are able to carry out the duties of a commission member in a manner satisfactory to the appointing authority. One member shall be a licensed social worker, licensed psychiatrist, or licensed psychologist with expertise in adolescent development, if there is an available person who meets this requirement who is able to carry out the duties of a commission member in a manner satisfactory to the appointing authority. The presiding judge of the superior court with the concurrence of the judge of the juvenile court or, in a county having more than one judge of the juvenile court, with the concurrence of the presiding judge of the juvenile court of each of the participating counties shall appoint an equal number of members to the regional justice commission and the members shall hold office for a term of four years. Of those first appointed, however, if the number of members appointed is an even number, one-half shall serve

for a term of two years and one-half shall serve for a term of four years. If the number of members first appointed is an odd number, the greater number nearest one-half shall serve for a term of two years and the remainder shall serve for a term of four years. The respective terms of the members first appointed shall be determined by lot as soon as possible after their appointment. Upon a vacancy occurring in the membership of the commission, and upon the expiration of the term of office of any member, a successor shall be appointed by the presiding judge of the superior court with the concurrence of the judge of the juvenile court or, in a county having more than one judge of the juvenile court, with the concurrence of the presiding judge of the juvenile court of the county that originally appointed the vacating or retiring member. If a vacancy occurs for any reason other than the expiration of a term of office, the appointee shall hold office for the unexpired term of his or her predecessor.

(b) This section shall become operative on January 1, 2017.

**SEC. 6.** Section 229 of the Welfare and Institutions Code is amended to read:

**229.** (a) It shall be the duty of a juvenile justice commission to inquire into the administration of the juvenile court law in the county or region in which the commission serves. For this purpose the commission shall have access to all publicly administered institutions authorized or whose use is authorized by this chapter situated in the county or region, shall inspect ~~such those institutions no less frequently than~~ at least once a year, and may hold hearings. A judge of the juvenile court ~~shall have the power to~~ may issue subpoenas requiring attendance and testimony of witnesses and production of papers at hearings of the commission.

(b) A juvenile justice commission shall annually inspect any jail or lockup within the county ~~which that~~, in the preceding calendar ~~year~~ year, was used for confinement for more than 24 hours of any minor. It shall report the results of ~~such inspection~~ the inspection, together with its recommendations based thereon, in writing, to the juvenile court and to the Board of State and Community Corrections.

(c) This section shall remain in effect only until January 1, 2017, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2017, deletes or extends that date.

**SEC. 7.** Section 229 is added to the Welfare and Institutions Code, to read:

**229.** (a) It shall be the duty of a juvenile justice commission to inquire into the administration of the juvenile court law in the county or region in which the commission serves. For this purpose the commission shall have access to all publicly administered institutions authorized or whose use is authorized by this chapter situated in the county or region, shall inspect those institutions at least once a year, and may hold public hearings. A judge of the juvenile court may issue subpoenas requiring attendance and testimony of witnesses and production of papers at hearings of the commission.

(b) A juvenile justice commission shall annually inspect any jail or lockup within the county that, in the preceding calendar year, was used for confinement for more than 24 hours of any minor. As part of the annual inspection, the commission may review the records of the jail or lockup as to the use of solitary confinement, as defined in paragraph (2) of subdivision (a) of Section 208.3. The commission shall report the results of the inspection, together with its recommendations based thereon, in writing, to the juvenile court and the Board of State and Community Corrections, and may report those results to the county board of supervisors. The commission may present its report at an annual hearing on the condition of juvenile justice corrections as part of a regularly scheduled public meeting of the county board of supervisors, and may publish the report on the county government's Internet Web site.

(c) A juvenile justice commission may annually inspect any facility within the county other than a jail or lockup that, in the preceding calendar year, was used for confinement for more than 3 hours of any minor. As part of the annual inspection, the commission may review the records of the facility as to the use of solitary confinement, as defined in paragraph (2) of

subdivision (a) of Section 208.3. If the commission inspects a facility, the commission may report the results of the inspection, together with its recommendations based thereon, in writing, to the juvenile court, the county board of supervisors, and the Board of State and Community Corrections. The commission may present its report at an annual hearing on the condition of juvenile justice corrections as part of a regularly scheduled public meeting of the county board of supervisors, and may publish the report on the county government's Internet Web site.

(d) This section shall become operative on January 1, 2017.

**SEC. 8.** Section 230 of the Welfare and Institutions Code is amended to read:

**230.** A juvenile justice commission may recommend to any person charged with the administration of any of the provisions of this chapter ~~such~~ those changes as it has concluded, after investigation, will be beneficial. A commission may publicize its ~~recommendations~~ recommendations on the county government's Internet Web site.

**SEC. 9.** If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

**PROPONENT:** Bar Association of San Francisco

## **STATEMENT OF REASONS**

### The Problem:

The ACLU report, revised in June 2014, "ALONE & AFRAID: Children Held in Solitary Confinement and Isolation in Juvenile Detention & Correctional Facilities" states:

Solitary confinement can cause serious psychological, physical, and developmental harm, resulting in persistent mental health problems or, worse, suicide. Lengthy periods of isolation can be equally traumatizing and result in the same serious risks to health. These risks are magnified for children with disabilities or histories of trauma and abuse.

Federal government agencies and experts agree that the use of isolation on children can be harmful and counterproductive. The U.S. Department of Justice (DOJ) has stated that the "isolation of children is dangerous and inconsistent with best practices and that excessive isolation can constitute cruel and unusual punishment." The U.S. Attorney General's National Task Force on Children Exposed to Violence also recently stated, "nowhere is the damaging impact of incarceration on vulnerable children more obvious than when it involves solitary confinement." The National Research Council of the National Academies of Sciences has also concluded that "confinement [of children] under punitive conditions may increase recidivism."

### The Solution:

This resolution would generally prohibit a minor or ward who is detained in, or sentenced to, any juvenile facility or other secure state or local facility from being subject to solitary confinement, as defined, unless the minor or ward poses an immediate and substantial risk of harm to others, and all other less-restrictive options have been exhausted. The bill would permit the minor or ward to be held in room confinement only in accordance with specified guidelines, including that the minor or ward be held in solitary confinement for only the minimum time required to address the safety risk and for a period that does not compromise the mental and physical health of the minor or ward. The bill would prohibit a minor or ward from being placed in solitary confinement for more than 3 hours if the minor has been deemed a threat to the safety of others, or 30 minutes if the minor is deemed a threat to him or herself. The bill would require each local and state juvenile facility to document the usage of solitary confinement, as prescribed.

This resolution would also make important changes to the monitoring requirements of juvenile detention facilities to ensure that the room confinement restrictions are being faithfully executed.

**LEGISLATIVE HISTORY**

SB 61 (Yee) of 2013 – Died on Assembly Inactive File (approved by Senate and by Assembly policy and fiscal committees).

SB 970 (Yee) of 2014 – Not referred to policy committee for reasons unrelated to bill.

**IMPACT STATEMENT**

The proposed resolution does not affect any other law, statute or rule.

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**RESPONSIBLE FLOOR DELEGATE:** Jill E. McInerney

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**COMMENTS TO RESOLUTION 06-09-2014**

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**BAR ASSOCIATION OF NORTHERN SAN DIEGO COUNTY**

DISAPPROVE: This resolution is not germane. Attorneys do not have special expertise beyond that of the general public with respect to the internal management of the Department of Corrections. Even if found germane, this resolution should be disapproved, because it only takes into account one side of the problem, the toll solitary confinement takes on the prisoner. There are legitimate reasons why the California Department of Corrections and Rehabilitation places prisoners in solitary confinement, generally for the protection of either the prisoner, or the prison population. The resolution fails to take into account that the prisoners in these situations find themselves in prison because they are unable to function in polite society, as they operate with a different moral and ethical framework from most of us. Except in rare instances, they are perpetrators, not victims, with long histories of antisocial behavior. It is a monumental task for the Department of Corrections and Rehabilitation to manage the prisons in such a way that the more violent and anti-social prisoners do not constantly attack the others. Particularly in a situation where a prisoner has a life sentence with little prospect of parole, the Department of Corrections and Rehabilitation has only a limited number of strategies that can be implemented to prevent violent crime by certain prisoners. This strategy should not be taken away.