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Kevin Young

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In the Courts: When the Bell Rings Silently: Punitive and other Constitutional Concerns for Juvenile Detainees in Isolation

By Kevin Young

While isolation is contrary to the social nature of humanity, it is commonly used by correctional facilities to punish juvenile detainees. In some instances, incarcerated youth have been isolated for a period exceeding seven hundred hours. Given such occurrences, isolating juveniles is a controversial topic that has been in the courts for years. In 1979, the Supreme Court determined in the case of *Bell v. Wolfish* what the appropriate use of isolation should be for juveniles. The Court stated that as a general rule, punitive ramifications could not be used on juveniles because as minors, they are not to be considered convicts under the Due Process Clause of the Fourteenth Amendment. The Court stated further that for a punitive detention to be warranted, an officer must have expressed intent to punish the detainee, and there must be an objectively rational basis for the officer's act. Alternatively, isolation can be used as a punitive measure if it is reasonably related to the government's objective and if the isolation the detainee is subjected to is not excessive in relation to such objective. Different jurisdictions have implemented their own methods of applying the *Bell* rule to the isolation of juvenile detainees, occasionally borrowing from procedures for dealing with other acts of violence and implementing review boards.

Several years after *Bell v. Wolfish*, the Eleventh Circuit Court of Appeals implemented a multifactor test for determining whether the use of isolation should be considered punitive. In *H.C. by Hewett v. Jarrard*, the court borrowed the multifactor test used by several other circuits to determine whether an officer's conduct to a detainee is unreasonable. The factors include the need for force, the amount of force used, the extent of the injury inflicted, and whether force was applied in good faith to maintain or restore discipline.

The case of *H.C. by Hewett v. Jarard*, involved a juvenile detainee who was placed in isolation after laughing at another detainee's prank of flushing underwear down a toilet. The detainee was kept in isolation for seven days and was not given the chance to defend the allegations or present evidence on his own behalf. The court held that the isolation was not reasonable under the circumstances and amounted to a violation of the detainee's procedural Due Process rights. Given the nature of the offense and the extensive period of time that the detainee was in isolation as a result, the court ruled the punishment to be unconstitutional.

Isolation triggers multiple layers of constitutional review. Even if isolation is allowed as punishment under the Fourteenth Amendment, it must also meet the Eighth Amendment's threshold for cruel and unusual punishment. Isolation violates the Eighth Amendment in two ways: if its use is not measurable to the goals of punishment and thus becomes a purposeless and needless imposition of pain and suffering, or if it is grossly out of proportion to the severity of the act committed.

The Seventh Circuit case of *Mary and Crystal v. Ramsden* identified five factors to be applied in making the determination of whether isolation furthered a purposeless

imposition of pain and suffering, or was significantly out of proportion to the stature of the act committed. The ruling came a year after the *Bell* case, and the *Ramsden* court said that the detainee's age, nature of the misconduct, the emotional state of the detainee when isolated, how the facility treated the detainee while isolated, and the nature and extent of any injury suffered by the detainee, should all be factors considered when determining its constitutionality.

These factors are applied liberally to both the initial isolation and successive decisions that the correctional facilities make. For example, in *Ramsden*, two detainees were isolated after attempting to escape and assaulting a guard. The issue was not whether the initial choice of isolation was appropriate, but rather whether the conduct was deemed unconstitutional because the facility denied medical attention and removed the detainees' bed and linens. The facility's subsequent actions, and not the initial act of assigning isolation, were what was held to be a needless infliction of pain and suffering.

Illinois has also ruled on how detainees can be isolated by categorizing and addressing what protections these detainees should be guaranteed upon isolation. In the case of *In re Washington*, the administrative statutes in place regarding juvenile isolation were challenged. The Illinois Supreme Court affirmed the various procedures used by the Department of Corrections stating that isolation is permissible when used only as a means of removing a detainee from the general population due to the danger that the detainee may pose to the safety of other detainees or to the staff. When isolation is used, minors have the opportunity to confront the validity of the charges that led to the isolation and present evidence in the case of their defense.

The court additionally affirmed the grouping method previously in place that determined how correctional facilities use isolation - whether an emergent or non-emergent isolation case. Emergency isolation is the immediate isolation of a detainee when he/she presents a clear and present danger to the safety of others in the facility or if the security of the correctional facility would be endangered without isolation. When this type of isolation is triggered, the detainee is to receive a hearing within a three-hour period of the act. Non-emergency isolation requires the removal of the minor from the current activity, and the detainee is subsequently placed in the recreational area where they would await a hearing within the hour.

Without regard to whether the punishment is allowed, alarming patterns are present throughout the isolation cases. One commonly stressed issue by the court is whether a detainee can use evidence and present evidence in his or her defense. In both considering whether isolation is punitive and in determining whether it is cruel and unusual, courts also consider whether an independent body making decisions had the opportunity to hear from the detainee. If a board was not present in making the isolation determination, courts seem to accept as an alternative an appellate process that allows a detainee to question the isolation decision and return to the general juvenile population.

Another commonality is how isolation can turn into a negative spiral and lead to further problems for the detainee. In *Ramsden*, the detainee attempted suicide by hanging herself with her towel, and as a result the staff removed her bed linens. A similar situation is seen in the *H.R.* case, where a detainee initially received reasonable punishment by being placed in a cell which had a toilet with an operating mechanism

located outside the cell. In order to flush the toilet the detainee had to get the attention of the guards down the hall by pounding on the cell door. After relations had deteriorated between the detainee and the guards, the guards refused to operate his toilet. In both situations, the court noted that the trauma suffered by the detainees was caused by the stresses of being put into isolation. As such, any use of isolation for juveniles should be questioned.

Punitive measures are constitutionally forbidden from being used on juvenile detainees in correctional facilities. This rule applies to all forms of punishment, including isolation. The use of isolation should be tailored back to ensure that constitutional rights are protected. As it has been abused as a technique in the past, isolation is already under increased scrutiny. Additionally because the relations between the correctional facility and the detainee often deteriorate during isolation, there is a slippery slope that might trigger a constitutional violation during the course of isolation. As such, courts should rule against the use of isolation for juvenile detainees.

Sources:

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