

Date: November 29, 2023

To: DOC Licensed Juvenile Detention Facilities

From: Commissioner Paul Schneck



RE: Interim Guidance on the Imminent Approaching Isolation as Discipline Ban

Ban on Isolation as Discipline

Effective January 1, 2024, juvenile detention facilities are statutorily prohibited from using **isolation as discipline**. (Chpt. 52, Art. 11, Secs. 7, 32, 34; Minn. Stat. § 241.015, subd. 4(a)). The Commissioner of Corrections is authorized to take any action under Minn. Stat. § 241.021, subds. 2 and 3 to address violations of this prohibition. Given the punitive nature of the practice of disciplinary room time (DRT) currently enshrined in Chapter 2960.0710, supbs. 4, 8 as “a penalty or sanction”, this statutory ban prevents facilities from using DRT as of that date.

Bans of this kind have been enacted across the country and from speaking to many different facility administrators, their facilities did not become less safe. Administrators were able to drastically reduce their room time by focusing on several key strategies. These strategies include: having staff available to diffuse situations and provide 1 to 1 or small group supervision to youth struggling with stabilization. Facilities focused on incentive-based programming and having full and enriched schedules with minimal unstructured time. Having services and the ability to meet and treat the mental health and trauma needs of the residents were also important pieces to their success.

What Is Happening To Prepare?

DOC staff and partners have been working together since June to articulate a framework that will comply with the change in law to respond to kids’ unsafe behaviors and promote accountability while preparing for the elimination of the use of isolation as discipline. The Minnesota Juvenile Detention Association reviewed this framework and passed a motion to support it on September 28, 2023.

This memorandum serves as interim guidance to licensed facilities pending adoption of exempt rules next year. The framework established by this guidance will likely be incorporated into final rules, so Facility Administrators should consider following this guidance, so as to ease the transition once the new rules are promulgated.

Relatedly, the following actions should be taken:

- Annual reporting related to use of isolation begins February 15, 2024.
- DOC is directing facilities after Jan. 1, 2024 to revise their facility plan under Minnesota Rules, part 2960.0270, subpart 6, and their restrictive-procedures plan under Minnesota Rules, part 2960.0710, subpart 2, to be consistent with Minn. Stat. § 241.015, subd. 4.
 - After receiving notice from the commissioner, a facility must submit the revised plans to the commissioner within 60 days.

- DOC strongly recommends that superintendents review and update all of their documentation, including their discipline plans authorized under [Part 2960.0270](#) Facility Operation Services, Policies, and Practices, subp. 6 Discipline Plan. Language changes are likely needed to be made in many of the documents used by your staff to ensure consistency with the statutory requirements.
- DOC must engage in exempt rulemaking to address inconsistencies with this new prohibition in Chapter 2960 related, at a minimum, to training, facility audits, disciplinary room time, time-outs, and seclusion to ensure consistency with Minn. Stat. § 241.015, subd. 4.
- As of January 1, 2024, the statutory language controls and supersedes any contrary language in the current version of Chapter 2960.

Behavior Management Framework

Minn. Stat. § 241.015 subd. 4(b) does not restrict facilities from isolating juveniles for their safety, staff safety, or the safety of other facility residents when the isolation is consistent with rules adopted by the commissioner.

Definitions

Safety-based separation can occur when a child is separated by facility staff (in a locked or unlocked area where the youth is not free to leave) from other juveniles and by themselves.

There are three types of safety-based separation, all of which require varying levels of notice, documentation, and administrative approval:

- **Safety stabilization period (SSP)** – staff-initiated separation in a locked or unlocked room when the youth is not free to leave used to ensure the safety of youth, staff, and/or facility operations and requiring repeated attempts to reintegrate youth and increasingly escalated levels of administrative approval if it exceeds 1 hour, 4 hours, and every hour thereafter. SSP must not exceed 24 hours, excluding sleeping hours. (*See attached* SSP Process map, Appendix A).
- **Administrative separation** – staff-initiated separation used when a facility is looking into serious behavioral offense, evaluating, or investigating criminal activity, or placing youth in individualized modified environment, and determining next steps and requiring administrative approval. Documentation of why Administrative Separation was necessary and other alternatives attempted or considered are required and the instances of Administrative Separation must be tracked and documented.
- **Medical separation** – facility administrator-initiated separation, ultimately approved by licensed medical or mental health professionals, used to respond to medical events that threaten the safety of youth, staff, and facility operations (*e.g.*, used when responding to communicable diseases or acute mental health crises) and requiring administrative approval. Documentation of why Medical Separation was necessary in each use must be documented and retained by the facility.

These three safety-based separations replace disciplinary room time and seclusion.

Time-out interventions in an unlocked room can still be used for brief durations to allow kids stabilization time, when appropriate. Time-outs must not exceed 30 minutes in duration. After 30 minutes, time-outs must be converted to SSP time and will require all necessary notification, documentation, and approval.

Safety-based separation **does not include** situations where a youth asks to go to their room and has the ability to request to leave, meets with a counselor, or is engaged in processing activities such as cool downs that are not staff-initiated and do not involve a locked room or a room where youth is alone and unable to leave.

Requirements

Safety-based separation is not a punitive response, so no behavior automatically results in any safety-based separation intervention. It must only be used to ensure the safety of youth, staff, and/or facility operations.

Safety-based separation should only be used after all intervention tactics have been tried or when a spontaneous unsafe event does not allow time for other interventions.

Licensed facilities should determine their own de-escalation processes in policy, such as motivational interviewing, encouraging a break, separation to an unlocked relaxation space, or use of coping skills toys. DOC I&E Unit can share evidence-based practices and resources if helpful.

Youth must still have access to all services required by law, including appropriate medical and mental health care, education, large muscle exercise, leisure time, living conditions, and other basic rights reflected in part 2960.0050, subp. 1. If access to any of these services must be denied due to an active safety risk, facility staff should document which services they are not able to provide and the safety risk that made provision of the service unsafe.

All three types of safety-based separation should end once the juvenile is **stable** (calm and able to engage), and the facility is **safe** (for *all* youth and staff).

Safety-based separation must be documented, tracked, reviewed, and reported in accordance with the instructions below.

There are many layers of notice, review, and approval required when using safety-based separation, as well as ongoing documented evaluation of need and efforts to reintegrate. Separate due process is not required. Youth should be able to grieve the use of any safety-based separation to ask for re-evaluation of those decisions.

When facility administrators update their Restrictive Procedures Plan required under 2960.0710, they should ensure all safety-based separations that may be used are listed and described, how the license holder will monitor and control their use, describe the training staff who use restrictive procedures receive, and meet all other requirements listed in 2960.0710, subp. 2.

Safety-Stabilization Period (SSP) – depicted in attached SSP Process Map

Once a youth demonstrates that they are unsafe and unstable and the behavior does not end with less restrictive interventions or there was no time for less restrictive interventions, staff should (during awake hours):¹

1. Place the youth in a locked room or an unlocked room where they are not free to leave and:
 - a. Notify: Supervisor or Lead as soon as possible but no later than 30 minutes after initiation of SSP
 - b. Document: track the start of SSP and notification to supervisor or lead within required timeframe
 - c. Obtain approval to begin SSP: none
 - d. Reporting: this should be tracked and included in reportable SSP data
2. No more than 30 minutes later, staff should:
 - a. Complete required well check
 - b. Assess for reintegration
3. At 1 hour, staff should:
 - a. Complete required well check
 - b. Assess for reintegration
 - c. Notify: none
 - d. Document:
 - i. reason(s) for SSP, including severity of behavior that led to SSP;
 - ii. how the behavior impaired safety and stability of youth, staff, and facility operations;
 - iii. reason(s) why continued SSP is needed to alleviate the ongoing risk to safety and stability;
 - iv. reason why reintegration is not possible at this time; and
 - v. the interventions, including specific de-escalation tactics, that were tried and failed to avoid SSP
 - e. Review and approval to continue SSP: Supervisor or Lead not involved in behavioral incident, unless not possible given staffing limitations that should be documented
4. No more than 30 minutes later, staff must:
 - a. Complete required well check
 - b. Assess for reintegration
5. At 2 hours, staff should:
 - a. Complete required well check
 - b. Assess for reintegration
 - c. Notify: none
 - d. Document:
 - i. reason(s) why continued SSP is needed to alleviate the ongoing risk to safety and stability;

¹ Actions should be taken every 30 minutes and are fully represented on the SSP Process Map. We have not listed every single step for 30 and hourly increments if the requirements are the same as the preceding hour. We have only listed steps where there is a change or increase in notification, documentation, or review and approval. These duplicative steps are noted with ellipses (. . .).

- ii. reason why reintegration is not possible at this time; and
 - iii. the interventions, including specific de-escalation tactics, that were tried and failed to avoid SSP
 - e. Review and approval to continue SSP: none
- 6. No more than 30 minutes later, staff should:
 - a. Complete required well check
 - b. Assess for reintegration

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- 7. At 4 hours, staff should:
 - a. Complete required well check
 - b. Assess for reintegration
 - c. Notify: Supervisor or designee with job description reflecting requisite accountability for the decision
 - d. Document:
 - i. reason(s) why continued SSP is needed to alleviate the ongoing risk to safety and stability;
 - ii. reason why reintegration is not possible at this time; and
 - iii. the interventions, including specific de-escalation tactics, that were tried and failed to avoid SSP
 - iv. Reintegration plan created with input from youth (if willing), reflecting what must be demonstrated by the youth for release, identifying any necessary restorative activities, and tailored to the youth's behavior and cognitive and developmental ability
 - e. Review and approval to continue SSP: Supervisor or designee with job description reflecting requisite accountability for the decision, and not involved in behavioral incident unless not possible given staffing limitations that must be documented
- 8. No more than 30 minutes later, staff should:
 - a. Complete required well check
 - b. Assess for reintegration

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- 9. At 16 hours, staff should:
 - a. Complete required well check
 - b. Assess for reintegration
 - c. Notify: Escalated level of supervisor and superintendent
 - d. Document:
 - i. reason(s) why continued SSP is needed to alleviate the ongoing risk to safety and stability;
 - ii. reason why reintegration is not possible at this time; and
 - iii. the interventions, including specific de-escalation tactics, that were tried and failed to avoid SSP
 - iv. Updates to reintegration plan created with input from youth (if willing), reflecting what must be demonstrated by the youth for release, identifying any

necessary restorative activities, and tailored to the youth's behavior and cognitive and developmental ability

- e. Review and approval to continue SSP: Supervisor or designee with job description reflecting requisite accountability for the decision, and not involved in behavioral incident unless not possible given staffing limitations that must be documented

10. No more than 30 minutes later, staff should:

- a. Complete required well check
- b. Assess for reintegration

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11. At 24 hours, staff should:

- a. Complete required well check
- b. Assess for reintegration
- c. Notify: DOC I&E unit, supervisor, superintendent, parent(s), and caseworker
- d. Document:
 - i. reason(s) why continued SSP is needed to alleviate the ongoing risk to safety and stability;
 - ii. reason why reintegration is not possible at this time; and
 - iii. the interventions, including specific de-escalation tactics, that were tried and failed to avoid SSP
 - iv. Updates to reintegration plan created with input from youth (if willing), reflecting what must be demonstrated by the youth for release, identifying any necessary restorative activities, and tailored to the youth's behavior and cognitive and developmental ability
- e. Review and approval to move to administrative hold or other detention options: DOC I&E Unit
- f. Evaluation referral: the youth should be referred to a mental health professional as available to determine whether additional treatment services are needed, regardless of whether the safety-based separation has ended.

Reintegration Efforts

All staff conducting well checks, assessing for continued SSP, developing reintegration plans, and deciding when youth will be released for a youth in safety-based separation should be trained in youth behavior interventions principles and demonstrate ongoing attempts to reintegrate youth.

All safety-based separation should be:

- logical – related to the harm caused or disruptive behavior
- developmentally appropriate and individualized – addresses the cause of the behavior and responds to youth's mental capacity
- proportionate – commensurate with behavior itself to minimize negative impacts of any behavioral intervention
- restorative – repairs harm caused from youth's actions

Staff interacting with youth should center these principles when encouraging youth to demonstrate stability and safety, which may require that the youth first process the situation that led to SSP and develop a plan to repair the harm they caused.

Facilities should develop their own requirements and processes to reintegrate youth after safety-based separation.

Administrative Separation

Administrative separation (AS) is staff-initiated separation used when youth:

- 1) engage in behavior that requires investigation to determine if criminal charges will be brought;
- 2) participate in gang activity that threatens facility operations without separation;
- 3) are vulnerable based on actions or comments that create a threat to their safety or require a different environment better suited to individual needs until a treatment plan can be created; or
- 4) are chronically disruptive and it presents a sustained, significant threat to safety and/or stability that cannot be alleviated with SSP.

Except for criminal investigations, administrative separation is used to place youth in an individualized modified environment because they are unable to maintain behaviors and daily expectations and cannot be programmed with peers. Administrative separation will most often be used when youth must be separated from their peers but still will interact with staff and programming providers.

Administrative separation requires administrative approval and daily documentation of why administrative separation was – or is still – necessary and why other alternatives were not available or were unsuccessful. This documentation should include a description of presenting problems, including circumstances leading to placement, safety concerns including assaultive behavior, any mental health concerns, victimization concerns, and articulate any modifications to daily programming.

For youth placed in AS, an individual modified plan or treatment plan should be created within 8 hours of placement, excluding holidays, weekends, and sleeping hours, to address modifications to daily programming such as education, recreation/leisure, unit separation, risk, and supervision status. Well-checks must still be completed every 30 minutes.

DOC I&E should be notified of the use of administrative separation via the special incident reporting system if it is expected to, or does, last 48 hours or more.

Facilities must track the use of administrative separation broken down by type, including the number of days of each instance of administrative separation.

All instances of administrative separation must also be reported annually to DOC as defined below. Additionally, any administrative separation where youth is, at least in part, required to be in their room (either locked or unlocked) by themselves must be tracked by the hour, documented, and included in annual reporting to the DOC.

Medical Separation

Medical Separation is staff-initiated separation used to address:

- 1) self-injurious behavior;
- 2) serious/persistent medical issues; or

3) communicable disease.

Medical separation should be directed by a licensed medical or mental health professional and requires administrative approval.

Medical separation requires administrative approval and daily documentation of why the separation was – or is still – necessary. This documentation should include a description of presenting medical problems, including circumstances leading to placement, safety concerns including self-injurious behavior, any mental health concerns, and articulate any modifications to daily programming.

DOC I&E should be notified of the use of medical separation via the special incident reporting system if it is expected to, or does, last 48 hours or more.

Facilities must track the use of medical separation broken down by type, including the number of days of each instance of medical separation.

All instances of medical separation must also be reported annually to DOC as defined below. Additionally, any medical separation where youth is, at least in part, required to be in their room (either locked or unlocked) by themselves must be tracked by the hour, documented, and included in annual reporting to the DOC.

Reporting

Facility administrators may use forms that comply with the documentation requirements and must make those forms available for DOC I&E Unit during inspection.

Facility administration should review all safety-based separations monthly to identify trends and disproportionate use by specific staff or on specific kids.

All SSP time that is in a locked space must be tracked and reported to DOC. This time does not include sleeping hours and time youth are alone but in a space that they can elect to leave on their own.

Quarterly reportable data to DOC must include:

1. Number of separate incidences of SSP use, broken down by:
 - a. Length of each period of SSP, excluding sleeping hours
 - b. Cumulative time removed from unit and/or programming
2. Number of kids who experienced SSP including:
 - a. Demographic data by age, race, and gender

Annually reportable data to DOC must include:

1. Number of separate incidences of SSP use, broken down by:
 - a. Length of each period of SSP, excluding sleeping hours
 - b. Cumulative time removed from unit and/or programming
2. Number of kids who experienced SSP including:
 - a. Demographic data by age, race, and gender
3. Number of separate incidences of Administrative Separation use, broken down by:
 - a. Type of AS (either criminal activity evaluation and investigation or individualized modified environment)

- b. Number of days spent on administrative separation
 - c. Amount of time spent alone (meaning no other people are in the room)
- 4. Number of kids who experienced Administrative Separation including:
 - a. Demographic data by age, race, and gender
- 5. Number of separate incidences of Medical Separation use, broken down by:
 - a. Length of each period of Medical Separation, excluding sleeping hours
 - b. Cumulative time removed from unit and/or programming
- 6. Number of kids who experienced Medical Separation including:
 - a. Demographic data by age, race, and gender

At this time, manual reporting will be required. DOC is working to create reporting mechanisms and will update licensed facilities as soon as possible on developments.

DOC Inspection & Enforcement Unit Support for Framework

DOC is committed to supporting licensed facilities to respond to youth behavior in a way that prioritizes restorative practices and promotes positive behavior. DOC I&E staff will offer technical assistance to licensed facilities.

Please direct any requests for support or guidance to Kristi Strang, DOC Inspection & Enforcement Unit Director.

How Do We Respond to Disruptive or Negative Behaviors that are not Unsafe or after SSP ends?

DOC strongly encourages facilities to put positive behavior interventions and systems of logical, developmentally appropriate consequences in place that fit the type of juvenile detention provided and needs of those youth.

In addition to creating opportunities for youth to earn privileges, focus youth on behavior you WANT to see, not just behavior you don't. This may involve use of positive verbal feedback, awards, extra leisure activities, honor dorms, level systems offering additional benefits once earned, Thinking Reports, journaling, youth defined consequences, learning/research experiences, verbal or written apologies, loss of privileges, or community service hours.

For youth who are still destabilized after 24 hours of SSP, alternatives or transitions to other safety-based separations are needed such as administrative separation with an individualized modified or treatment plan that will allow them to maintain access to education, recreation time, etc., but keep them separated from youth if dangerous or sufficiently disruptive where ongoing contact destabilizes the environment.

Who Else Will Be Involved and How?

In order for this behavior intervention framework to be effective, it should be implemented by facilities while prioritizing restorative practices and promoting positive behavior.

DOC I&E Unit has been involved and will continue to be as the mechanisms for reporting and technical assistance are identified and managed by I&E.

Beginning in 2024, impacted groups and stakeholders – including licensed facilities – will be engaged by DOC and members of MN Juvenile Detention Association to offer feedback on this framework. That feedback will be considered during the rulemaking process. Modifications are anticipated before a final rule draft is proposed.

I am confident that we are on the right track to providing supportive, therapeutic, and safe environments for youth to receive detention services and staff to support transformation. We will continue to work with you all to improve this framework next year and codify it in rule.