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Criminal Law

Solitary confinement ruling a 'turning point'

By Peter Small, AdvocateDaily.com Contributor



An Ontario Court of Appeal decision banning solitary confinement for longer than 15 days is a step in the right direction but more should be done for young people and the mentally ill, Toronto criminal lawyer [Jordana Goldlist](#) tells [AdvocateDaily.com](#).

"I think this definitely marks a turning point for the law in this area," says Goldlist, principal of [JHG Criminal Law](#).

Ontario's highest court [ruled](#) that keeping someone in solitary confinement — also called administrative segregation — for longer than 15 days is cruel and unusual punishment and breaches the Charter.

Justice Mary Lou Benotto, writing for the three-judge panel, said prolonged administrative segregation causes foreseeable harm that cannot be detected through monitoring until it has already occurred.

"It was certainly a fair decision and the right decision to rule that anyone who spends more than 15 days in solitary confinement has been subjected to cruel and unusual punishment," Goldlist says, adding she would have liked the court to distinguish vulnerable inmates from others.

The court stopped short of adopting the full position of the Canadian Civil Liberties Association, which sought to ban solitary confinement for inmates aged 18-21, those with mental illness, and those placed in segregation for their own protection.

"The unfortunate part of the decision for me was the Court of Appeal's refusal to acknowledge that there are different issues that affect people suffering from addictions and mental health

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concerns, and sort of separating this class of offenders from people who are being placed in solitary confinement for weapons or threats or actual acts of violence,” she says.

Psychologically challenged inmates pose a dilemma, Goldlist says — they should not be put in solitary confinement, but neither can they be placed in the general prison population.

“We need to find an answer,” she says. “We have to treat the underlying issues that are sending this person into segregation in the first place.”

One of the greatest tragedies of the justice system is how people with mental or addiction issues are treated on remand awaiting trial, Goldlist says.

“Jail guards are not equipped to deal with people who are going through drug withdrawals or are perhaps off their medications, creating serious mental health issues.”

Consequently, jailers turn to solitary confinement, which further damages inmates before they are returned to the general prison population or released into the community, she says.

Inmates experiencing mental health breakdowns need proper care, perhaps in a medical unit, Goldlist says.

“Once properly medicated, and with a proper treatment plan in place, they can live productive lives,” she says.

Judges are increasingly recognizing the harm of administrative segregation during pre-trial custody, and are decreasing sentences accordingly, Goldlist says.

She says she is keen to see the results of several Ontario civil lawsuits waged by former and current inmates who claim to have been damaged by solitary confinement.

One lawsuit, on behalf of Ontario inmates with severe mental illnesses, and those put in segregation for 15 days or longer, was certified as a class action last year, the [CBC](#) reports.

Solitary confinement is also misused for the general prison population, she adds.

A client called her last week because he had been placed in segregation after guards found him with a homemade knife.

“But, he had that shank on him because he had heard that there were three people on his range who were going to jump him,” Goldlist says. “We have to figure out a better way other than shoving someone like that into a box, and into a segregation unit, and then putting them back out on the same range where they're going to face the same situation.”

Although she thinks people with mental illnesses should not be placed in solitary confinement, Goldlist appreciates that violent inmates sometimes need to be separated from other prisoners, at least for a short time.

“Perhaps, we could cap it at 24 hours.”

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