

Solitary Confinement in Brazil: A Map of Prison Isolation in the Country

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Solitary confinement in Brazil, one of the most severe forms of restriction of freedom, manifests primarily through two regimes: the Differentiated Disciplinary Regime (RDD) and the inclusion of prisoners in the Federal Penitentiary System (SPF).

Brazil's sentence execution system, when establishing its penal policy of prolonged solitary confinement – both when instituting the Differentiated Disciplinary Regime (RDD) and when inaugurating the Federal Penitentiary System (SPF) – undeniably aligns with punitive models classified as Extraordinary Disciplinary Regimes (or Special or Differentiated ones). That is to say: from a conceptual standpoint, both punitive regimes materialize an even higher level of prison restrictions, so that their application, strictly speaking, requires a combination of factors marked by exceptionality and based on public security and strategic surveillance values, without thereby collapsing fundamental rights and guarantees addressed to persons deprived of liberty.

A mapping of statistical data, current legislation, reasons for application, and judicial control reveals a complex panorama regarding the use of isolation as a tool for managing prisoners and controlling criminal factions in the country.

The Scenario in Numbers: Quantifying Isolation

According to recent data from the National Penal Information System (SISDEPEN) of the National Secretariat of Penal Policies (SENAPPEN), referring to the first semester of 2024, Brazil has 511 prisoners in custody in the Federal Penitentiary System, distributed across five federal penitentiaries. Of this total, 16 were specifically under the Differentiated Disciplinary Regime. Additionally, the report indicates that 220 prisoners serve sanctions under RDD in 16 states of the federation.

Notwithstanding the survey of official data on prolonged solitary confinement in Brazil – suggesting, given the Brazilian prison universe, a small number of deprivations of liberty in this extreme modality –, a new prison phenomenon appears to be underway, structured and standardized within the architectural parameters of extraordinary prolonged confinement, in which the very nature of exceptional penal establishments, following the federal penitentiary model, gains momentum as a political-penal alternative. That is to say: the SPF, once introduced in Brazil as a mirror and copy of American Supermaxes, now – solidified over almost two decades as a strong instrument of punitive social control – becomes an inductor of penitentiary policies for federation states.

Current Legislation: The Rules of Confinement

The Differentiated Disciplinary Regime has been provided for since 2003 (law n° 10.792/03) in the Penal Execution Law (Law n° 7.210/84), being subject to substantial alterations promoted by the "Anticrime Package" (Law n° 13.964/19). The RDD has the nature of a disciplinary sanction, applicable to prisoners who commit serious infractions or who reveal high risk to the order and security of the prison or society and to those who fall under suspicion of involvement or leadership in criminal organizations.

The Federal Penitentiary System, in turn, is governed by Law n° 11.671/08 and is intended to house prisoners whose measure is justified in the interest of public security or the prisoner himself. Inclusion in the SPF is not, in itself, a disciplinary sanction, but a sentence execution regime under maximum security conditions (RFSM), given the very nature of the penal establishment, having North American Supermaxes as its paradigm.

In other words: while the RDD essentially has the nature of a disciplinary sanction, applied to prisoners who transgress administrative regulations that establish guidelines for behavior and prison coexistence, subverting internal order and discipline in a serious way, the SPF has a no less rigid "ordinary" disciplinary regime of isolation inherent to the very execution of the penal sanction under Maximum Security Closed Regime (RFSM), for prisoners who are included or transferred there.

Hypotheses of Application: The Reasons for Isolation

The legislation establishes specific criteria for subjecting a prisoner to RDD or transferring them to SPF. The main hypotheses are:

- Practice of intentional crime that subverts internal order.
- High risk to the order and security of the prison or society.
- Well-founded suspicion of involvement or leadership in criminal organization.

Dangerous Prisoner Management and the Preventive Paradigm

The application of RDD and inclusion in SPF are inserted within a "preventive paradigm" of public security management. This approach aims to neutralize future criminal actions through the isolation of individuals considered highly dangerous, especially faction leaders. The logic is that by cutting these inmates' communication with the outside world and their groups, the State prevents the articulation of new crimes.

Special Units: SPF as a Model

The Federal Penitentiary System consists of five maximum security penitentiaries, designed to be escape and riot-proof. These units have become a paradigm for states, which seek to replicate their structures and security protocols to deal with their own high-risk prisoners, reflecting the influence of SPF on national penitentiary policy.

Since the reform introduced by Law nº 13.964/19, entitled the anticrime package, in 2019, Brazilian federal legislation began to provide for the possibility of States and the Federal District to build maximum security penal establishments or adapt existing ones, in order to apply, where applicable, the material and procedural norms provided for in the federal penitentiary system governing law. In summary, the States and the Federal District, in the field of their political-criminal autonomy, may institute – in a movement of "federalization of state penitentiaries" – their own prison rules typical of the maximum security closed regime (RFSM), as well as provide procedures for inclusion and transfer of prisoners along the lines of Law nº 11.671/08, when the measure is justified in the interest of public security or the prisoner himself. Nonetheless, such circumstances do not remove the duty of these federated entities to treat such a rigorous sentence execution regime exceptionally and for a determined period.

The fact is that Brazilian prison regulations are now guided by a new, silent and operative policy that induces the (under construction) archetype of the SPF as a factor for expanding and legitimizing prolonged solitary confinement. In contemporary legal-administrative practice, a progressive emptying movement of RDD use by Brazilian States is observed. This phenomenon stems from the perception that the application for inclusion of the inmate in the SPF or the reconfiguration of high security regimes present themselves as more efficient alternatives for the custody of people in prolonged isolation, without the legal obstacles that characterize the inclusion of prisoners in RDD. In other words: the adhesion of Brazilian States to the paradigmatic model of the Maximum Security Closed Regime (RFSM) of the SPF implies the relativization of jurisdictional control of sentence execution incidents, which no longer require prior disciplinary sanction or formal inclusion and transfer processes typical of the federal model. This new dynamic essentially configures an open door to the federalization of the state penitentiary system, operationalized without the rigid control of judicial instances.

Prisoner Profile: The Distortion of the Original Target

Ideally, prisoners subjected to these extreme regimes would be the great leaders of criminal organizations with national reach. However, a critical debate, fueled by inspection reports and academic research, points, not infrequently, to a distortion of this profile.

There is growing concern about the hasty inclusion of inmates in the SPF, which often functions as a "relief valve" for overloaded state prison systems. Instead of housing only the country's most dangerous criminals, the system ends up receiving prisoners who, although they may cause local problems, do not possess the national leadership profile that would justify the extreme measure.

This practice is frequently based on fragile, laconic intelligence reports with little concrete evidence, making the work of defense and judicial control difficult. The consequence is the "popularization of the federal prisoner": a common inmate gains status and notoriety by being transferred, which can produce an effect contrary to the desired one, strengthening rather than weakening factions.

Judicial Precedents and Constitutional and Conventional Control

The issue was elevated to higher courts, whereby the Superior Court of Justice (STJ), for a long time, has

been positioning itself for the constitutionality of RDD, arguing the proportionality of the measure given the high risk to society of a certain group of criminals, as well as that fundamental rights are not absolute, being able to be relativized in the balance of values of social interest in public security and the effectiveness of individual segregation (In this sense, STJ, HC 40.300-RJ, judged on 07.06.05, and HC 92.714/RJ, judged on 06.12.07).

The constitutionality of RDD is questioned in the Federal Supreme Court (STF) through Direct Action of Unconstitutionality (ADI) 4162, filed by the Brazilian Bar Association (OAB) in 2008, which still awaits judgment.

At the international level, Brazil responds before the Inter-American Court of Human Rights in the case *Norambuena vs. Brazil*. The case questions the compatibility of RDD and isolation conditions with the American Convention on Human Rights. The Court's future decision will have a significant impact on Brazilian jurisprudence regarding solitary confinement, forcing an analysis of the compatibility of internal laws with international treaties (conventional control).

COMPARATIVE TABLE RDD AND SPF

The table below details the main analytical assumptions of each:

Analytical Assumption	Differentiated Disciplinary Regime (RDD)	Federal Penitentiary System (SPF)
1. Legal Nature	Disciplinary Sanction. It is an additional punishment, a "penalty within the penalty," applied when the prisoner commits a serious infraction.	Place/Regime of Sentence Execution. It is not a disciplinary sanction, but rather the place and set of rules under which a highly dangerous prisoner will serve their sentence under maximum security closed regime (RFSM)
2. Reason for Application (Trigger)	Practice of serious infraction. Occurs after an act of indiscipline, such as the practice of an intentional crime that causes subversion of the prison's internal order.	Risk to public security. It is, as a rule, a preventive measure, based on intelligence reports indicating that the prisoner, even without committing an infraction, exercises leadership in a criminal faction, threatening security outside the prison.
3. Target Subjects (Profile)	The undisciplined prisoner or one who presents high risk to the security of the prison establishment where they are already located.	The prisoner of extremely high danger, especially leaders of criminal organizations with interstate activity or who represent a threat to society in general.
4. Temporality (Duration)	Up to 2 years, renewable for an equal period in case of repetition of serious infraction of the same type. The law provides for successive 1-year extensions for "precautionary RDD."	Up to 3 years, renewable for equal periods while the reasons that determined the transfer persist. This renewal is a major focus of legal debate.
5. Level of Social Interaction	Extremely restricted. Biweekly visits, by 2 people at a time, in parlatory (without physical contact). 2 hours daily sunbathing in groups of up to 4 prisoners.	Extremely restricted and controlled. Weekly visits, in parlatory or by videoconference (without physical contact). 2 hours daily sunbathing. Communication monitoring is total.
6. Place of Execution	Can be served in state or federal prison units, either in specific maximum security wings or in penitentiaries built exclusively for this purpose.	Exclusively in Federal Maximum Security Penitentiaries, which are specific units managed by the Union (currently in Catanduvas/PR, Campo Grande/MS, Mossoró/RN, Porto Velho/RO and Brasília/DF).
7. Decision-Making Authority	Penal Execution Judge of the place where the prisoner serves sentence, after the establishment of an administrative disciplinary procedure.	Complex judicial decision involving the state judge of origin (who requests the transfer) and the federal corrective judge of the federal penitentiary (who authorizes inclusion).

Comparative Summary

In simplified form, the main difference lies in the purpose of each regime:

RDD is a tool of internal discipline, a reaction to concrete misbehavior by the prisoner within the prison system. Its focus is the order and security of the prison.

SPF is a strategic containment policy, a preventive action to neutralize the influence of great criminal leaders. Its focus is public security, beyond prison walls.

It is important to note that the regimes are not mutually exclusive. A prisoner transferred to SPF who commits a serious infraction within the federal penitentiary may, additionally, be subjected to RDD in that establishment. In practice, SPF represents the maximum level of isolation and prison control in Brazil, with RDD being one of its internal disciplinary tools, in addition to existing autonomously in state systems.

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