



# STOP SOLITARY

## Ending the Solitary Confinement of Youth in Juvenile Detention and Correctional Facilities

### Youth Solitary Confinement: The Prison Rape Elimination Act (PREA)

#### THE IMPACT OF PREA ON ISOLATION PRACTICES

Seventy thousand children under 18 are held in juvenile detention and correctional facilities across the United States.<sup>1</sup> More than half of these children are 16 or younger.<sup>2</sup> Children in the custody of juvenile justice systems face a number of dangers—physical, psychological, and developmental. One particularly troubling danger for children deprived of their liberty is the possibility of sexual assault, either by authorities or by other children.<sup>3</sup> Using solitary confinement to protect children from rape and other assaults, however, exposes them to other serious risks. It is therefore imperative that officials protect youth from both dangers by providing adequate supervision, by providing adequate small-group housing, and by banning solitary confinement for all youth.

New federal regulations developed under the **Prison Rape Elimination Act (PREA)** to help address the crisis of sexual abuse in places of confinement offer tools for ensuring safer treatment of youth in custody. These regulations aim to protect youth from sexual abuse while recognizing that solitary confinement harms youth.

#### THE RISK OF SEXUAL ASSAULT

The National Prison Rape Elimination Commission, charged under PREA with developing national standards for both juvenile justice facilities and adult correctional facilities, found that children are uniquely vulnerable to sexual abuse while confined. The Commission noted that the rate of sexual abuse in juvenile facilities was more than five times greater than the rate of sexual abuse in adult correctional facilities.<sup>4</sup> Juvenile justice facilities can house youth ranging in age from 6 to 20 years old in close proximity to one another, making smaller children more vulnerable to larger, more powerful children.<sup>5</sup>

#### THE HARMS OF SOLITARY CONFINEMENT

Juvenile justice facilities may place children in solitary confinement or other forms of isolation for a range of reasons, including protection from others. But this practice, which can harm even healthy adults, is particularly dangerous for growing bodies and minds. Even a short period of isolation can do grave damage to a growing child. Solitary confinement can cause or exacerbate mental health problems and prevent young people from receiving adequate programming or rehabilitation services, including education.<sup>6</sup> The practice is also highly correlated with increased risk of suicidal thoughts and attempts.<sup>7</sup> As the US Attorney General's *National Task Force on Children Exposed to Violence* recently described it, "nowhere is the damaging impact of incarceration on vulnerable children more obvious than when it involves solitary confinement."<sup>8</sup>

#### PREA PROTECTS YOUTH FROM PHYSICAL DANGER AND LIMITS SOLITARY CONFINEMENT

In 2003, Congress passed PREA in response to the high rates of sexual assault across all forms of detention facilities in the United States.<sup>9</sup> The final PREA regulations implementing the law provide a range of protections for young offenders. States that do not comply with PREA face a 5% reduction in federal corrections funding unless

the Governor certifies that those funds will be used to enable compliance in the future.<sup>10</sup> In February 2014, the Department of Justice issued a letter to state governors reminding them of the upcoming first deadline of May 15, 2014, for this required certification, and of the Fiscal Year 2014 funds that could be cut off if certification is not received.<sup>11</sup>

The regulations implementing PREA include provisions regulating isolation in places of detention, including juvenile facilities.<sup>12</sup> Recognizing the risks posed by both isolation and sexual assault, the sections of the PREA regulations focusing on juvenile facilities characterize isolation as a measure of "last resort."<sup>13</sup> Protective or disciplinary isolation may only be used as a "**last resort when other less restrictive measures are inadequate to keep them and other residents safe, and then only until an alternative means of keeping all residents safe can be arranged.**"<sup>14</sup> In addition to this requirement that solitary be used only as a last resort, when alternatives have been exhausted, the regulations impose other requirements on juvenile detention and correctional facilities holding youth in isolation:

- daily large-muscle exercise for youth in disciplinary or protective isolation;<sup>15</sup>
- access to legally mandated educational programming or special-education services;<sup>16</sup>
- daily visits from a medical or mental health care clinician;<sup>17</sup>
- access to other programming (to the extent possible);<sup>18</sup> and
- periodic review of any continuing need for isolation.<sup>19</sup>

Additionally, in cases of "protective" isolation, the regulations require documentation of the basis for the safety concern and the reason for a lack of housing alternatives.<sup>20</sup> PREA also requires that juvenile facilities meet minimum staffing levels to adequately supervise residents,<sup>21</sup> which may over time help reduce incidents of youth isolation for protective or administrative reasons.

#### REFORMING YOUTH ISOLATION AND SOLITARY CONFINEMENT IS AN ESSENTIAL ASPECT OF PREA COMPLIANCE

PREA codifies a long-standing recognition that isolation of young people is harmful and counterproductive.<sup>22</sup> The need to separate and protect vulnerable individuals must therefore be balanced against the serious risks involved in isolating youth. Solitary confinement of youth under 18 should be banned. This practice can be abolished by combined efforts of state legislators, local officials, and facility administrators. All isolation of youth should be strictly limited and regulated. Physical and social isolation, even for short periods, is harmful and traumatic, and often accompanied by other serious deprivations such as denial of education. Youth should never be subjected to any practice that involves significant levels or durations of physical and social isolation. Isolation should only be used as a short-term, emergency measure. Separation used to protect, manage, or discipline youth should be used sparingly and must never rise to the level of social isolation.

## Endnotes

- 
- <sup>1</sup> Press Release, Annie E. Casey Foundation, Youth Incarceration Sees Dramatic Drop in the United States (Feb. 27, 2013), *available at* <http://www.aecf.org/Newsroom/NewsReleases/HTML/2013/YouthIncarcerationDrops.aspx>. This rate has declined in recent years. *See* Youth Incarceration in the United States, ANNIE E. CASEY FOUNDATION (Feb. 27, 2013), *available at* <http://www.aecf.org/~media/Pubs/Initiatives/KIDS%20COUNT/R/ReducingYouthIncarcerationInfo/YouthIncarcerationInfographicPrint13.pdf>. Notably, Department of Justice data also suggest that close to 100,000 children are held in *adult* jails and prisons each year. Human Rights Watch and the American Civil Liberties Union recently estimated that in each of the last 5 years, between 93,000 and 137,000 young people under 18 were held in adult jails and that, in 2011, more than 2,200 young people under age 18 were held in adult prisons. *See* HUMAN RIGHTS WATCH & THE AMERICAN CIVIL LIBERTIES UNION, GROWING UP LOCKED DOWN: YOUTH IN SOLITARY CONFINEMENT IN JAILS AND PRISONS ACROSS THE UNITED STATES (2012), *available at* <http://www.aclu.org/growinguplockeddown>.
- <sup>2</sup> NAT'L PRISON RAPE ELIMINATION COMM'N., NAT'L PRISON RAPE ELIMINATION COMM'N. REP. 16 (2009), *available at* <https://www.ncjrs.gov/pdffiles1/226680.pdf>.
- <sup>3</sup> *See id.* at 141-43.
- <sup>4</sup> *See id.* at 17 (reporting the BJS findings of a rate of 2.91/1,000 sexual abuse rate in adult facilities and a rate of 16.8/1,000 in juvenile facilities).
- <sup>5</sup> *Id.* at 145.
- <sup>6</sup> *See Reassessing Solitary Confinement: The Human Rights, Fiscal, and Public Safety Consequences: Hearing Before the Subcomm. on the Constitution, Civil Rights, and Human Rights of the S. Comm. on the Judiciary*, 112th Cong. 4 (2012), *available at* <http://solitarywatch.com/wp-content/uploads/2012/06/youth-law-center2.pdf> (statement of Youth Law Center).
- <sup>7</sup> LINDSAY HAYES, DEP'T OF JUSTICE OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, JUVENILE SUICIDE IN CONFINEMENT: A NATIONAL SURVEY (2009), *available at* <https://www.ncjrs.gov/pdffiles1/ojdp/213691.pdf>.
- <sup>8</sup> ATT'Y GEN.'S NAT'L TASK FORCE ON CHILDREN EXPOSED TO VIOLENCE, REP. OF THE ATT'Y GEN.'S NAT'L TASK FORCE ON CHILDREN EXPOSED TO VIOLENCE, DEFENDING CHILDHOOD: PROTECT, HEAL, THRIVE 178 (2012), *available at* <http://www.justice.gov/defendingchildhood/cev-rpt-full.pdf>.
- <sup>9</sup> Bureau of Justice Statistics data gathered since the Act's passage is available on the DOJ website here: <http://bjs.ojp.usdoj.gov/index.cfm?ty=tp&tid=20>.
- <sup>10</sup> Press Release, U.S. Dep't of Justice, Justice Department Releases Final Rule to Prevent, Detect, and Respond to Prison Rape (May 17, 2012), *available at* <http://www.justice.gov/opa/pr/2012/May/12-ag-635.html>.
- <sup>11</sup> Letter from Karol V. Mason, Assistant Attorney General, Office of Justice Programs, to State Governors (Feb. 11, 2014), *available at* <http://www.prearesourcecenter.org/sites/default/files/library/preagovlettersigned2-11-14.pdf>.
- <sup>12</sup> The regulations include detailed requirements for the prevention, detection, and investigation of sexual abuse in both adult and juvenile correctional facilities. *See* Press Release, Department of Justice, Justice Department Releases Final Rule to Prevent, Detect and Respond to Prison Rape (May 17, 2012), *available at* <http://www.justice.gov/opa/pr/2012/May/12-ag-635.html> (summary of regulations).
- <sup>13</sup> 28 C.F.R. § 115.342(b) (2012) (protective isolation); 28 C.F.R. § 115.378(b) (2012) (disciplinary isolation), *available at* [http://www.ojp.usdoj.gov/programs/pdfs/prea\\_final\\_rule.pdf](http://www.ojp.usdoj.gov/programs/pdfs/prea_final_rule.pdf).
- <sup>14</sup> 28 C.F.R. § 115.342 (b) (2012).
- <sup>15</sup> 28 C.F.R. § 115.342(b) (2012) (protective isolation); 28 C.F.R. § 115.378(b) (2012) (disciplinary isolation).
- <sup>16</sup> 28 C.F.R. § 115.342(b) (2012) (protective isolation); 28 C.F.R. § 115.378(b) (2012) (disciplinary isolation).
- <sup>17</sup> 28 C.F.R. § 115.342(b) (2012) (protective isolation); 28 C.F.R. § 115.378(b) (2012) (disciplinary isolation).
- <sup>18</sup> 28 C.F.R. § 115.342(b) (2012) (protective isolation); 28 C.F.R. § 115.378(b) (2012) (disciplinary isolation).
- <sup>19</sup> 28 C.F.R. § 115.342 (i) (2012) (requiring that every 30 days the facility provide a review to determine whether there is a "continuing need for separation").
- <sup>20</sup> 28 C.F.R. § 115.342 (h) (2012).
- <sup>21</sup> 28 C.F.R. § 115.313 (c) (2012) (requiring 1 security staff member per 8 juvenile residents during waking hours, and 1:16 during sleeping hours).
- <sup>22</sup> *See, e.g.*, DEP'T OF JUSTICE OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, STANDARDS FOR THE ADMINISTRATION OF JUVENILE JUSTICE 4.52 (1980), *available at* <http://catalog.hathitrust.org/Record/000127687>. ("Juveniles should be placed in room confinement only when no less restrictive measure is sufficient to protect the safety of the facility and the persons residing or employed therein . . . Room confinement of more than twenty-four hours should never be imposed.")