Model Juvenile Justice Stop Solitary Act

Protecting Youth and Improving Justice Outcomes

By Ending the Use of Solitary Confinement in Juvenile Justice Facilities

Introduction

Across the country, juvenile justice facilities overuse extreme forms of isolation, sometimes imposing solitary confinement on children for several hours, days, or even weeks at a time. While a short cool-down period may sometimes be necessary—separating a youth from others when he or she poses an actual, immediate danger to him- or herself or others— isolation for punitive, protective, administrative, or retaliative reasons are not acceptable. The practice does not serve a valuable correctional purpose, and it is inhumane, exacerbating mental health problems and increasing the risk of self-harm and suicide. Fortunately, multiple avenues exist for reform, including administrative policy, litigation, and legislation.

Our model legislation provides a guide for statutory reform in state juvenile justice systems. (For campaigns focused on protecting children from solitary confinement in adult prisons and jails, please use our No Child Left Alone Toolkit.) In addition to this memorandum and accompanying model legislation, we recommend you use Alone and Afraid, our briefing paper on solitary confinement in juvenile justice facilities, which explains the most damning objections to the practice of youth solitary confinement, outlines its consequences, and addresses alternatives and reforms.1 We also recommend you consult another publication in our Solitary Confinement in Juvenile Justice Facilities Toolkit, Getting Started – Information Needed To Start a Campaign.

A note about terminology: Different juvenile justice facilities use a variety of terms for similar—and similarly damaging—practices. Common terms include solitary confinement, isolation, room restriction, and room confinement. Our proposed legislation uses “room confinement” to describe the involuntary removal of a youth from contact with others in a locked room.

The Current Reform Landscape

People want to be part of something exciting. Reform in the use of solitary confinement and other forms of extreme isolation in juvenile justice facilities is taking root nationwide. In some states, lawmakers have begun to address the issue, limiting the reasons and amount of time a youth may spend in isolation, and placing firm reporting requirements on administrators to facilitate better oversight of the practice. Alaska, Connecticut, Maine, Nevada, Oklahoma, and West Virginia have laws focused on aspects of the solitary confinement of youth in juvenile justice facilities; some of these state statutes limit the reasons a youth may be placed in isolation, others place time limits on the permissible duration of certain forms of isolation, and others require that administrators report incidents of

isolation for youth in their facilities.\textsuperscript{2} Several other states have undertaken successful administrative reforms, including Missouri, New York and Massachusetts.\textsuperscript{3}

Additionally, many juvenile facilities around the country have signed on as member sites of the Juvenile Detention Alternatives Initiative (JDAI), an initiative of the Annie E. Casey Foundation. JDAI has adopted a set of national standards for conditions in juvenile detention facilities. The initiative offers trainings for local teams to monitor compliance with the standards at facilities in participating jurisdictions. The JDAI standards now prohibit solitary confinement for disciplinary purposes, and strictly limit its emergency use.\textsuperscript{4} These reforms are all potential models for policy change; along with administrative and other avenues for reform, legislative advocacy can be an important piece of more permanent, long-term change.

### Legislative Strategies
A successful legislative campaign will start well before session so that you can understand the issues, the relevant laws or policies, and the relevant stakeholders—allowing you to plan a detailed strategy.

\begin{itemize}
    \item While no law or administrative rule is perfect, several states have taken steps toward limiting isolation in the juvenile justice system. In particular, the reporting requirements of the Nevada law comprise an excellent model for creating more accountability, while the statutes in Oklahoma and West Virginia provide examples of statutory language either banning punitive isolation or restricting its use, although in practice the West Virginia law has unfortunately been interpreted somewhat loosely. See W.V. Code §49-5-16a, Rules governing juvenile facilities; Okla. Admin. Code, 377:35-11-4, Solitary Confinement. In Oklahoma solitary confinement is a "serious and extreme measure to be imposed only in emergency situations." Okla. Admin. Code § 377:35-11-4. Oklahoma’s juvenile solitary confinement statute provides the most substantive protection of all existing state statutes on this issue. In West Virginia, solitary confinement may not be used to punish a juvenile and except for sleeping hours, a juvenile may not be locked alone in a room unless that juvenile is “not amenable to reasonable direction and control.” See W. Va. Code § 49-5-16a; W.V. Div. of Juvenile Serv., Pol’y No. 330.00, Resident Discipline, Procedure 6, Category 1 Sanctions, available at [http://www.wvdjs.state.wv.us/Portals/0/Files/330.00%20Resident%20Discipline.pdf](http://www.wvdjs.state.wv.us/Portals/0/Files/330.00%20Resident%20Discipline.pdf) (permitting up to 10 days of room confinement for certain rule violations). Unfortunately, the implementation and enforcement of the punitive isolation ban in West Virginia is an ongoing challenge, as the state’s administrative policies continue to permit children to be held in solitary confinement for disciplinary purposes. In Nevada, a child who is detained in a local or regional facility for the detention of children may be subjected to “corrective room restriction” only if all other less-restrictive options have been exhausted and only for listed purposes, and no child may be locked alone in a room for longer than 72 hours (though the law also requires thorough reporting of any incident that does exceed 72 hours). See Nev. Rev. Stat. § 62B. Alaska bans the isolation of juveniles for "punitive" reasons, but defines "secure confinement" as permissible for "disciplinary" reasons and when there is a safety or security risk. See Alaska Delinquency Rule 13 (Oct. 12, 2012). In Connecticut, officials supervising children who have been arrested may not place “any child at any time” in “solitary confinement,” but the statute does not define “solitary confinement,” and reports of children being held in room confinement in juvenile detention facilities in Connecticut continue to surface. See Conn. Gen. Stat. Ann. § 46b-133 (d)(5). For post-adjudication youth in Connecticut, the use of “seclusion” is governed by a statute and corresponding regulations requiring periodic authorizations and thirty-minute checks; while this law helps to protect children from unfettered use of solitary confinement and isolation, it still permits officials to hold children in isolation essentially indefinitely. See Conn. Gen. Stat. Ann. § 17a-16(d)(1) (West 2014); Conn. Agencies Regs. § 17a-16-11 (2014). Maine’s statutory scheme includes segregation in the list of permissible punishments for adults, but not in the list for children; state law prohibits “confinement to a cell” and “segregation” as punishment in juvenile correctional facilities, but the state’s rules permit “room restriction” for juveniles, even for minor rule violations. See Me. Rev. Stat. tit. 34-A § 3032 (5).

\item Missouri and New York address behavioral issues through humane means, largely precluding the “need” for isolation. See generally ANNIE E. CASEY FOUNDATION, THE MISSOURI MODEL: REINVENTING THE PRACTICE OF REHABILITATING YOUTHFUL OFFENDERS (2010), available at [http://www.aecf.org/-/-/media/Initiatives/Juvenile%20Detention%20Alternatives%20Initiative/MOModel/MO_Fullreport_webfinal.pdf](http://www.aecf.org/-/-/media/Initiatives/Juvenile%20Detention%20Alternatives%20Initiative/MOModel/MO_Fullreport_webfinal.pdf) (describing the “Missouri Model” for juvenile justice and explaining why it has been successful); Sanctuary in Juvenile Justice Settings, THE SANCTUARY MODEL, [http://www.sanctuaryweb.com/juvenile.php](http://www.sanctuaryweb.com/juvenile.php) (providing links to descriptions of the implementation of the “Sanctuary Model” for juvenile justice in New York State). Massachusetts has a progressive administrative policy that prohibits disciplinary isolation for juveniles and requires a series of reports and permissions to increasingly higher-level administrators as the duration of isolation increases. See infra note 5 and accompanying text (describing and citing the Massachusetts policy).

\end{itemize}
The juvenile justice system is most often its own entity, separate from the adult corrections world, with its own courts, administrators, specialists, and other stakeholders. It is also, of course, a system focused on youth. You will need to identify potential allies, particularly nonprofit organizations and advocacy groups focused on the juvenile justice system and attorneys and legal organizations focused on representing youth in the juvenile justice system. It is important to work with potential allied stakeholders at the beginning, to address any problems well before session. They will also bring a wealth of practical knowledge to guide you in understanding how the system actually works and identifying critical reforms.

Identify potential opponents and prepare a strategy for addressing their concerns. State, local, or county-level administrators of juvenile justice programs, security officers’ unions, and other administrators and officials may initially oppose legislation that places limits on the management “tools” on which they have come to rely. Extensive documentation and reporting requirements may seem an overwhelming burden; discipline and administrative management without isolation (or with extremely limited isolation) may seem implausible to these parties when some juveniles present legitimate behavioral and safety concerns and staff either lack adequate training or take a punitive approach to “teaching kids a lesson.” Some officials may deny that isolation is a problem in the first place, while others may recognize the grave risks inherent in the practice.

We can overcome these objections. As noted above, states have already implemented reforms, recognizing the need to limit the placement of juveniles in isolation. And data shows that non-isolation management tools are safer and more effective. Alone and Afraid explains that solitary confinement and other forms of isolation can indeed harm children. Some initial opponents may be amenable to learning about alternatives, especially when you can present examples of successful reforms from other states, and of other officials who have come to embrace reformed isolation practices. Importantly, many juvenile justice officials have taken leadership roles in reforming the use of isolation and solitary confinement—even independent of legislative action. Since March 2013, Massachusetts has operated under a statewide agency policy restricting isolation to emergency situations and specifically banning its use for punitive purposes. Massachusetts also requires a series of reports to and permissions from increasingly higher-level administrators as the length of a stay in isolation increases to multiple hours.5

In Nevada, when a legislator passionate about this issue approached the ACLU of Nevada for assistance, the affiliate was able to overcome objections of juvenile justice administrators, state government lobbyists and local facility directors by meeting with legislators and documenting the actual harm of these practices. 5

SB 107, which passed in 2013, is not perfect, but it places important restrictions on the use of solitary confinement in juvenile facilities. The law authorizes the use of corrective room restriction only if all other less-restrictive options have been exhausted and only to: (1) “ modify” a youth’s negative behavior; (2) hold the juvenile accountable for a violation of a rule of the facility; or (3) ensure the safety of the juvenile, the staff or others or to ensure the security of the facility. The law also requires that corrective room restriction must be for the minimum time required to address the negative behavior, rule violation or threat; and last no longer than 72 hours. It also has additional requirements once confinement goes beyond two hours.

The ACLU of Nevada worked with faith-based groups to build public and legislative support and through the Campaign for Youth Justice (a national nonprofit organization dedicated to removing youth from adult prisons and


6 It is important to note that reform is a work in progress, even in a state like Nevada where there has been a legislative victory. While SB 107 is a good start, the new law is still too broad, permits punitive segregation, and lacks a number of other substantive protections that legislation would ideally include.
jails), and juvenile justice administrators were recruited as key supporters of the bill. As a result of the new law, Nevada juvenile justice facilities have been reporting monthly on incidents of “room confinement” since October 2013. Juvenile justice officials are currently working with Dr. Joseph Tomassone, the Chief of Treatment Services for the New York State Office of Children and Family Services, to reform the use of isolation in their facilities—a development beyond even the requirements of SB 107.

Model Legislation Challenges
The accompanying model legislation contemplates a variety of solitary confinement issues that will be applicable to all types of juvenile justice facilities, including those with high security levels. Nevertheless, the model’s versatility is limited by several factors, which you should consider at the outset of any advocacy efforts. And we at the ACLU’s National Prison Project are available to assist you in language and strategy issues as they arise.

First, this model legislation represents more forceful reform than will be possible in some states. While a goal of any Stop Solitary campaign should always be ultimately to abolish all but the most limited, emergency isolation of children, we understand that these steps may be incremental. Thus, Strategy Notes appearing on the right side of this model will suggest alternative language where a particular provision may be unrealistic at this time.

Second, this model should be modified to take into account your current juvenile justice system. It will be important to review existing statutes and regulations to understand how the system currently operates (most states do not have laws on the use of solitary confinement of children in the juvenile justice system), and which aspects of current law might need to be changed, and to ensure that any proposed legislation does not weaken any current protections. Juvenile defense attorneys and children’s advocacy groups can be a good resource to provide expertise on how the laws and regulations actually work in practice.
Model Juvenile Justice Stop Solitary Bill

The <Director of Juvenile Justice/ each County Commission responsible for the operation of each juvenile justice facility in the state> shall ensure that all juvenile detainees are treated in accordance with the minimum standards established in this Act.

I. Definitions
(1) For purposes of this section, the following definitions shall apply:

a. “Juvenile” means:
   i. A person under 18 years of age; or
   ii. A person who is confined in a juvenile facility.

b. “Juvenile facility” means a residential facility housing youth under the supervision of the <State Juvenile Justice Agency and/or County Board>.

c. “Room confinement” is the involuntary restriction of a juvenile alone in a cell, room, or other area, including the juvenile’s own room, except during normal sleeping hours.

II. Limitation on <Room Confinement>
(1) A juvenile shall not be placed in <Room Confinement> for any of the following reasons:

a. As a punishment or disciplinary sanction;

b. For the purposes of convenience to facility administrators or staff or due to staffing shortages;

c. For the purposes of retaliation by staff;

d. For the purposes of protection, except as permitted under Section III; or

e. For any reason other than those permitted under Section III.

Strategy Notes
“Director of Juvenile Justice/ each County Commission responsible for the operation of each juvenile justice facility in the state”: Identify both the state and local actors who oversee any juvenile justice facilities that house juvenile detainees.

I. Definitions: If your state law already uses these terms, or similar ones, you may want to cite to or substitute current state law definitions.

“Juvenile Facility”: Identify all juvenile justice facilities that house juvenile detainees. Do not include adult facilities that house children; our focus is on juvenile justice facilities. To address the problems facing youth in adult prisons and jails see the ACLU’s No Child Left Alone Toolkit.

“Room confinement” is a common term for the isolation of youth in the juvenile justice context, but terminology differs from state to state. We urge advocates to closely examine state laws and policies governing the conditions of confinement in juvenile justice facilities, so that your proposed legislation will conform to any existing terminology used. Your state law may already define solitary confinement in the adult system; however, the standards and the requirements we propose are distinct to juveniles, so in this model legislation we use the term “room confinement.” If your state already uses a different term, take that into account in drafting your bill.

Alternative Section II: This section contemplates a total ban on punitive/disciplinary room confinement. However, in some states a total ban on punitive/disciplinary room confinement may not be feasible. An alternative provision might instead limit punitive room confinement to 24 or 72 hours:

2. <Room confinement> is not to be used as a disciplinary measure or as punishment except after all other less-restrictive options have been exhausted, in extreme circumstances, which must be documented, and should not be used for 24 hours or longer.
   a. Disciplinary or punitive <room confinement> of more than 24 hours is reserved for the most serious violations, must be approved by the facility administrator, and shall not be imposed for more than 72 hours continuously under any circumstances.
   b. Any time a juvenile is placed in disciplinary or punitive <room confinement>, staff shall notify the unit supervisor. Staff may not keep juveniles in <room confinement> for longer than one hour without written approval of the unit supervisor. Staff may not keep juveniles in <room confinement> for longer than 4 hours without written approval of the facility administrator or designee.
   c. Any juvenile placed in disciplinary or punitive <room confinement> must be provided due process protections, including the opportunity to know the reason for the decision, to appeal the decision in writing and with an advocate present.
III. Limited permissible use of <room confinement> in cases of immediate and substantial risk of harm.

(1) A juvenile shall not be subject to <room confinement>, unless all other less-restrictive options have been exhausted, and

a. the juvenile poses an immediate and substantial risk of harm to oneself or to others and is out of control; or

b. <room confinement> is necessary for the juvenile’s own safety and protection.

(2) A juvenile may only be held in <room confinement> in accordance with the following:

a. The juvenile shall not be held in <room confinement> longer than the minimum time required to address the safety risk.

b. The juvenile shall only be held in <room confinement> for a period that does not compromise the mental and physical health of the juvenile. Staff shall not place youth in room confinement for a fixed period of time.

c. As soon as the safety risk is resolved, the juvenile shall be released from <room confinement>.

d. In all cases, a juvenile shall not remain in <room confinement> in excess of four hours. After four hours, staff shall return the youth to the general population, or consult with a qualified mental health professional to determine whether further treatment at a mental health facility is necessary.

e. <Room confinement> shall not be used for consecutive periods of time.

f. The juvenile shall not be placed in <room confinement> for more than 12 hours in a one-week period without the written approval of the <Director of Juvenile Justice/ each County Commission responsible for the operation of each>

A Note on Alternatives to Room Confinement: In pursuing legislation that aims to limit room confinement, advocates may encounter pushback. Officials, legislators, and others may argue—mistakenly—that room confinement is an essential disciplinary tool, and/or that they need to retain the option of using it for indefinite periods of time. This is simply not true, as alternatives to room confinement have proven successful in reformed agency policies. We discuss these alternatives in detail in the Memorandum introducing this Model Legislation, in the Alone & Afraid briefing paper included elsewhere in this Toolkit, and in other Toolkit resources. Please consult these resources to prepare responses to questions you may encounter on alternatives to room confinement.

d. If a four-hour cap is not politically feasible in your state, this number could be increased. E.g., proposed legislation in California makes the cap 24 hours. Another possible alternative would be to add the following subsections:

i. If the juvenile cannot safely be moved out of room confinement after four hours, security officers, as well as the director of the facility and mental-health and medical staff, must immediately begin to work together to develop and implement a plan to better manage the youth and address his/her needs, and <a high-level state official> must be notified immediately in writing, including an explanation for why continued room confinement beyond four hours was necessary. This management plan may result in the transfer of the juvenile to a mental-health facility or hospital for inpatient care.

Additionally, you may choose to modify/increase the 4-hour cap to 24 or 72 hours if you propose legislation permitting punitive room confinement pursuant to the alternative proposed language in Section 2 Strategy Notes, above.

Insert appropriate title.
juvenile justice facility in the state or designee. Written approval shall be required for each 12-hour period thereafter.

g. All rooms used for <room confinement> shall have at least 80 square feet of floor space, and shall have adequate and operating lighting, heating/cooling, and ventilation for the comfort of the juvenile. Rooms must be clean, suicide-resistant, and protrusion-free. Juveniles in <room confinement> for any period of time must have access to water, toilet facilities, and hygiene supplies.

h. Juveniles in <room confinement> shall have access to the same meals and drinking water, contact with parents and legal guardians, and legal assistance as is provided to juveniles in the general population, as well as access to educational programming and reading materials approved by a licensed mental health clinician.

i. Juveniles in <room confinement> shall have access to appropriate medical and mental health services. If the juvenile appears in need of mental health services, mental health staff promptly visit the juvenile and provide all necessary treatment.

j. Juveniles in <room confinement> shall be continuously monitored by staff.

IV. Documentation and Reporting Requirements

(1) <Room confinement> of a juvenile for longer than 1 hour shall be approved by a supervisor and documented in writing. <Room confinement> of a juvenile for longer than 2 hours shall be approved by the director of the juvenile facility and documented in writing. <Room confinement> of a juvenile for longer than 3 hours shall be approved by both the director of the juvenile facility and by the <state/local/county juvenile justice administrator> and documented in writing.

(2) This documentation must include the date of the occurrence, the race, ethnicity, age, and gender of the juvenile, the reason for placement in <room confinement>,

If your proposed legislation permits up to 12 hours or longer in room confinement (instead of the ideal 4-hour cap on all room confinement), you should add an additional provision to section (i):

Juveniles in <room confinement> for 12 consecutive hours or more shall have at least one hour of out-of-cell large-muscle exercise daily, including access to outdoor recreation when the weather permits.

("Large-muscle exercise" is a widely used term which refers to meaningful exercise of the major muscle groups (legs, arms, abdomen, etc.). The purpose of this section is to require meaningful opportunities for exercise.)

Alternative Provisions. If this relatively extensive Documentation and Reporting Requirements system is not politically or fiscally feasible in your state, you may consider certain alternatives, which are less burdensome while still imposing measures of accountability on officials:

Change the 1-hour reporting threshold to 3 hours, and require the report at that point to go directly to the juvenile facility director.

If you choose to increase the maximum period of time a juvenile may spend in room confinement, pursuant to Section 3, above, to a period of time significantly longer than 3 hours, this section should be expanded to require approvals from increasingly higher officials and administrators at periodic intervals of confinement. For example, a revised section (1) and (2) might read as follows:

(cont. on next page)
an explanation of why less restrictive means were unsuccessful, the ultimate duration of the placement in room confinement, and documentation of any incidents of self-harm or suicide that occurred while the youth was isolated.

(3) If any health or mental health clinical evaluations are performed during the time the juvenile was in room confinement of longer than 1 hour, the results of these evaluations shall be considered in any decision to place a juvenile in <room confinement> or to continue <room confinement>.

(4) Any facility for the detention of juveniles shall report monthly to the <State JJ Agency> the number of juveniles who were subjected to <room confinement> during that month and the length of time that each juvenile was in <room confinement>, along with the youth’s race, ethnicity, age, gender, and reason for the confinement.

(5) Any <room confinement> of a juvenile for over 4 hours is a violation of Section <##> above and must be documented and addressed in a monthly report to the state legislature, and the report must include all reasons why attempts to return the juvenile to the general population of the facility were unsuccessful, and must detail corrective measures taken to secure future compliance with this law.

(6) The <State Juvenile Justice Agency>, shall review all data collected pursuant to this Section in order to assess the use of <room confinement> for juveniles in each facility and prepare an annual report of its findings, including but not limited to identifying changes in policy and practice which may lead to decreased use of such confinement. This report shall be reported formally and publicly to the state legislature on an annual basis.

V. Reviewing Existing Policies and Promulgating Regulations to Implement this Act.

(1) The <Director of Juvenile Justice/ each County Commission responsible for the operation of each juvenile justice facility in the state> shall review all policies of the <Department/County> in effect on the effective date of this Act relating to juveniles held in <room confinement> or its equivalent and revise those policies (cont. from previous page)

1) Any instance of <room confinement> of a juvenile for longer than 1 hour must be approved by a supervisor and documented in writing. Any extension of <room confinement> to longer than 3 hours must be approved by the director of the facility and documented in writing. Any extension of <room confinement> to longer than 8 hours must be approved by both the director of the facility and the <state/local/county juvenile justice administrator> and documented in writing.

2) This documentation must include the date and duration of each occurrence, the reason for placement in <room confinement>, an explanation of why less restrictive means of calming the youth down were unsuccessful, and the race, age, and gender of the juvenile placed in <room confinement>. Each extension of a period in <room confinement> pursuant to Section 4.a. must be documented.

Insert appropriate entity title

If you choose a different maximum length of time for emergency room confinement pursuant to Section 3, change the number of hours in this provision.

If a monthly report is too onerous, you may choose to substitute a requirement of a quarterly report or a semi-annual report.

The goal of this provision is to make this report easily accessible to the public. This may be through a formal annual report to the legislature; other means may be more direct, such as publication on the state agency website. Rework as necessary in your state.

Insert appropriate title and program name here.
as necessary to conform to this Act within <90 days> of the effective date of this Act. The <State and local JJ Commissions/Agencies> shall promulgate such regulations as are necessary to implement this Act.

(2) Nothing in this Act shall be construed to conflict with any law providing greater or additional protections to juveniles in <State>.

VI. Training

(1) The <State and local JJ Commissions/Agencies> shall ensure that training for all <juvenile program> officers, and other department staff who work in facilities housing juveniles, shall include at least 40 hours of initial training and 16 hours of annual training about:

a. Adolescent development;

b. The value of positive over negative reinforcement in dealing with juveniles and methods of implementing positive behavior incentives;

c. The health and behavioral effects of <room confinement> on human beings generally and juveniles in particular;

d. Effective de-escalation techniques to use with juveniles;

e. The signs and symptoms of mental illnesses and other significant mental impairments;

f. How to effectively and safely manage juveniles with mental illness or with other mental or intellectual disabilities;

g. The need to utilize medications only as appropriate for juveniles, recognition of mental health emergencies and adverse reactions to psychotropic medication, and specific instructions on contacting the appropriate professional care provider and on taking other appropriate action;

h. Suicide potential and prevention for juveniles; and

i. Any additional training on correctional care and custody of juveniles with mental illness or other significant mental impairments, and related topics on an

While no specific organization oversees training standards for juvenile justice officers, this section is based on standard accepted practice for the management of youth in correctional settings.

Insert appropriate entity titles.

You may wish to vary these requirements, depending on the existing laws and regulations in your state.
ongoing basis as community standards of care change or as otherwise deemed appropriate.

VII. **Operative Date**
(1) This section shall become operative on <Date>.

Include an “Operative Date” section if necessary.