



NO CHILD LEFT ALONE

Campaign to Stop the Solitary Confinement
of Youth in Adult Jails and Prisons

ADVOCACY TOOLKIT

Prepared by:

ACLU National Prison Project
ACLU Center for Justice

ACLU Human Rights Program
ACLU Center for Democracy

ACLU Affiliate Support and Advocacy Department

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As the nation's largest public interest law organization, with affiliate offices in every state and a legislative office in Washington D.C., the ACLU works daily in courts, legislatures, and communities to promote more effective criminal justice policies.

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ADVOCACY TOOLKIT

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Section I: Issue Summary & Resources

Every day, in adult jails and prisons across the United States, children are held in solitary confinement. They spend 22 or more hours each day alone, isolated both physically and socially, usually in a small cell behind a solid steel door, often for days, weeks, or even months on end.

United States Department of Justice data suggest that nearly 200,000 children are charged as adults annually, and that close to 100,000 children are held in adult jails and prisons each year. Research by the ACLU and Human Rights Watch suggests that solitary confinement of children in adult facilities is widespread.

Yet academic research continues to show that treating children as if they were adults has negative public safety consequences, does not reduce violence, and likely increases recidivism. Medical experts and national standards view isolation as harmful and dangerous when used on children. Subjecting growing children to solitary confinement can cause permanent psychological damage, and Department of Justice data suggest it is also highly correlated with suicide. Because young people in solitary confinement are generally deprived of the programming and services necessary for healthy growth, the practice creates barriers to development and rehabilitation, raising concerns about its impact on public safety.

Many believe that it's time for Americans to take a second look at our routine practice of placing youth in solitary when they are incarcerated with adults. Some critics point to the enormous costs associated with solitary confinement. For example, in state prison systems, supermaximum security institutions (which house all prisoners in solitary confinement) typically cost two to three times more to build and operate than even traditional maximum-security prisons. Others point to the negative effects of solitary confinement on a child's development and the resulting failure of society to help troubled youth become productive citizens. Indeed, the costs of recidivism and long-term mental health care for children devastated by solitary are impossible to calculate.

The ACLU, together with our state affiliates, scholars, activists, mental health experts, and faith-based organizations around the country, is engaged in a campaign to challenge the use of solitary confinement on children – in the courts, in the legislatures, in reforms of correctional practice, and in the battle for public opinion. The goal of the *No Child Left Alone* campaign is to limit and ultimately abolish the use of solitary confinement on children in adult jails and prisons and, wherever possible, to remove children from adult facilities.

INDIVIDUAL STATE ADVOCACY

Several states have already engaged in legislative and administrative advocacy campaigns to limit the use of solitary confinement, especially for persons with mental illness. In the last few years, Colorado, Texas, New Mexico, Maine and Illinois have all engaged in legislative campaigns. In 2013, Florida, Texas, Nevada, California and Montana all had active campaigns to promote legislation that would limit or ban solitary confinement for children in jails and prisons.

This packet provides the tools you will need to engage in advocacy to limit the use of solitary confinement on children in adult facilities in your state. To assist your efforts, this toolkit includes:

- Messaging materials—including talking points and social networking language—to frame your arguments;
- A guide to gathering information on policies, practices, costs and outcomes regarding the use of solitary confinement in your jurisdiction, and sample questions to help in interviewing and corresponding with young people who have been subjected to this practice;
- Advocacy resources, including campaign dos and don'ts, a briefing paper, and various information handouts;
- Communications resources, including model blogs and press releases;
- National standards and analyses of best practices and advocacy opportunities to help pursue administrative reform; and
- Model legislation that can be easily adapted for your state.

RESOURCES AND CONTACT INFORMATION

For more information and technical assistance working on a *No Child Left Alone* campaign, please contact **Amy Fetting**, Senior Staff Counsel at the National Prison Project at afetting@npp-aclu.org; (202) 548-6608; **Tanya Greene**, Advocacy and Policy Counsel at the ACLU at tgreene@aclu.org; (212) 284-7325; or **Ian Kysel**, Aryeh Neier Fellow at the Human Rights Program at ikysel@aclu.org; (212) 549-2686.

If you are interested in joining the ACLU's *Stop Solitary Listserv*, please contact **Hilary Krase**, Paralegal, National Prison Project at hkrase@npp-aclu.org; (202) 548-6614.

The ACLU's website also contains tools and resources to support *Stop Solitary* campaigns. www.aclu.org/stopsolitary.



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Section III: Starting a Campaign

In order to lay the groundwork for an effective *No Child Left Alone* Campaign it is important to gather as much information as possible regarding the solitary confinement policies and practices in your jurisdiction as possible – and whether or not any special policies exist to protect youth.

This is especially important because isolation units tend to be closed to the public and hence the most hidden from public scrutiny. The same is true regarding charging and detention practices for youth in adult facilities.

By possessing the hard data and the facts, you will position your campaign more strategically, ensure the development of better solutions to the problems of solitary confinement in your community, and deal with an opposition that is most likely to rely on anecdotal stories and unsubstantiated claims about the need to isolate “the worst of the worst” or mete out “adult time for adult crime” without asking the basic question of why, to what end, and at what cost?

The following documents are included in this section:

- ACLU Stop Youth Solitary **Campaign Dos and Donts** to help you frame your approach to advocacy.
- The ACLU’s guide to starting a campaign, **Getting Started – Information Needed to Start a Campaign**, will help you seek the kind of data that will lay a strong foundation for your work.
- The ACLU’s **Checklist for a Visit to an Adult Facility that Houses Youth** will prepare you to tour local facilities and know what to ask..
- The ACLU’s **Interview Guide – Talking to Youth about Solitary Confinement** and **sample consent and release forms** will prepare you to consider interviewing and to interview youth.
- A guide to **Corresponding** with young people in custody, so you can find out more about their experience in solitary confinement.



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Campaign Do's and Don'ts

DO: Lead with core value statements about harm to youth and importance of rehabilitation.

DO: Stress that science and common sense show that children grow and change and are particularly receptive to treatment that promotes rehabilitation.

DO: Offer concrete examples of how alternatives are better, including getting youth out of adult jails and prisons and providing age-appropriate treatment, programming – and discipline.

DO: Take an “and” approach to banning solitary confinement of children. Acknowledge public safety concerns AND link reforms to decreased recidivism and importance of rehabilitation.

DO: Give examples of other states (especially conservative states) that have successfully moved youth out of adult facilities – e.g. California, Virginia, Texas, Pennsylvania, and Colorado.

DON'T: Lead with statistics that lack context or grounding in core values.

DON'T: Say we should ban solitary confinement of children without making the point that there are better, more humane alternatives that promote youth rehabilitation – in the juvenile system.

DON'T: Say that we need to balance the need for public safety against the need for fairness. This is not a zero-sum equation. In this case, more fairness = more safety.

DON'T: Expect that audiences will take your word for it without evidence to back up your point.

DON'T: Concede that some youth should be held in solitary confinement because of their conduct inside jails or prisons, or the conduct with which they are charged or convicted. Responding to management challenges with conditions that inhibit growth or development makes communities less safe and stacks the deck against youth who will be released.



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Getting Started – Information Needed to Start a Campaign

On any given day in the United States, thousands of youths under age 18 are confined in adult jails and prisons. Not only are children held in adult facilities, but they are also subjected to extended periods of solitary confinement. Without access to alternatives, jail and corrections officials claim they need solitary confinement to separate youths from adults and to discipline them when they act out, among other reasons. Isolation practices frequently involve placing a youth alone in a cell for more than 22 hours a day; restricting contact with family members; limiting access to reading and writing materials; and providing limited, if any, educational programming, recreation, drug treatment, or mental health services. Before they are old enough to get a driver's license, enlist in the armed forces, or vote, children in America are held in solitary confinement for days, months – and even years.

In order to lay the groundwork for an effective *No Child Left Alone* Campaign it is important to gather as much information regarding the solitary confinement policies and practices in your jurisdiction as possible. ACLU state affiliates, who have already worked on similar campaigns, identify the research and data collection they conducted through state FOIAs and other means as one of the key prerequisites to engaging in effective advocacy and to forming broad coalitions around the issue.

Thorough research and data collection is especially important because isolation units in jails and prisons tend to be the areas in a correctional system that are most closed to the public and hence the most hidden from public scrutiny. Likewise, youth subject to solitary confinement in adult facilities are often lost in the system without contact with parents, loved ones, or lawyers to protect them.

By possessing the hard data and the facts, you will position your campaign more strategically, and ensure the development of better solutions to the problems of solitary confinement of youth in your community.

Below is a list of the types of information you should seek to support your advocacy work and suggestions for how to obtain it.

Step 1: Learn About Youth Transfer and Detention Laws in Your Jurisdiction

The first question you need to answer when starting a *No Child Left Alone* campaign is, “what laws bring children into the adult criminal justice system and where youth are held?” You should obtain a copy of these laws and carefully read the provisions. The National Center for Juvenile Justice, at www.ncjj.org, maintains an electronic library of state laws on this topic that may be useful. Contacting your local public defender is another way to find out this information.

Once you have obtained the relevant laws from your jurisdiction, you should be able to find out the answers to these key questions:

- What is the age at which children can be charged as adults in my jurisdiction? Does this age vary by offense and circumstances?
- Who makes the decision to transfer a child to the adult system? The judge? A prosecutor? Or does a particular law require such a transfer (e.g., due to the crime alleged)?

- Can children charged as adults be held in the juvenile system pending trial? After conviction?
- Is detention of children charged as adults in the adult system (pending trial or after conviction) mandatory or permissive?
- Are there specific protections or legal provisions that impact the detention of youth in adult facilities in my jurisdiction (e.g., sight/sound separation requirements, minimum education requirements)?

Understanding the transfer and detention laws will help you understand the legal and policy drivers leading to the solitary confinement of youth in adult prisons and jails in your community. It will also help you formulate the necessary legal fixes for keeping children out of solitary confinement and returning them to the juvenile system.

When researching these laws, you should also find out who supported their enactment and who believes that transferring children to the adult system – and detaining them there – is a good idea. These interests and entities may well be the opposition to your reform efforts. You should anticipate their arguments by gathering all available research and evidence about the outcomes that transfer laws produce, such as increased recidivism and suicide rates. An excellent place to start this research is the website of the Campaign for Youth Justice. <http://www.campaignforyouthjustice.org/>

Step 2: Identify Where Youth are Held in Solitary Confinement

Finding out where youth are held in solitary confinement in your state or community is the next step. Here are some basic questions to guide you in this effort:

- Are youth charged as adults and held pre-trial in your jurisdiction held in general population, in special juvenile units, or in segregation or medical units within county jails? Does this vary from county to county?
- Do you have a youthful offender prison in your jurisdiction for youth convicted as adults and held post-conviction in the adult prison system? What is the age range of “youthful” inmates held there?
- Are all or some youth held in a single facility post-conviction? Or are all or some youth held in general population with adult prisoners?
- Is segregation used to protect, punish or manage those in jails or prisons in your jurisdiction?
- What rules govern those procedures?
- How many youth are subject to such detention?

This type of information may be publicly available on the county jail or state Department of Correction’s website or other government website, or by state regulations. Much of this information, however, will only be obtained through a formal public information request.

Please note that if you make a public records request, you will need to carefully define the meaning of “solitary confinement” in order ensure that your data is accurate; you will also need to carefully define your population of interest. Below we suggest an example of such definitions in the first bullet point.

These are samples of the type of information requests that can be made to collect necessary data:

- Produce documents sufficient to show the total number of detainees/prisoners under the age of 18 in the custody of the Department of Corrections/County Jail who are confined for a minimum of 22 hours a day in a single cell whether pursuant to disciplinary, administrative, medical, or classification action (hereinafter “solitary confinement”) [*as of the date of this request/in the past 12 months/in the past 24 months*].
- For the detainees/prisoners under the age of 18 held in solitary confinement who are identified above, produce any and all documents which demonstrate the following:
 - The date of birth and age of each prisoner/detainee.
 - The type and location of the facilities where prisoners/detainees are held, e.g., supermax facilities, separate segregation units, special housing units, as of the date of this request.
 - The number of detainees/prisoners held in each institution **in x time period** [*such as year, quarter, daily snapshot*].
 - The mean, median and standard distribution (or other data about the distribution) of length of stay in solitary confinement in each facility where detainees/prisoners are so confined (separated by status, such as disciplinary, administrative, and protective) **for x time period**, [*such as year, quarter, daily snapshot*].
 - The gender of the detainees/prisoners **for x time period** [*such as year, quarter, daily snapshot*].
 - The racial and ethnic make-up of detainees/prisoners, including the number of Caucasians, African Americans, Latinos, Asians, Native Americans, etc., **for x time period**. [*such as year, quarter, daily snapshot*].
 - The number of detainees/prisoners whose primary language is not English **for x time period** [*such as year, quarter, daily snapshot*].
 - The number of detainees/prisoners prescribed medications to treat DSM-IV Axis I and/or Axis II mental disorders in the last (**24 months/12 months**).
 - The number of detainees/prisoners who have mental health issues documented in their medical records **for x time period** [*such as year, quarter, daily snapshot*].
 - The number of detainees/prisoners who have a mental retardation diagnosis **for x time period** [*such as year, quarter, daily snapshot*].
 - The number of detainees/prisoners who have a learning or intellectual disability, including the number who have an Individual Education Plan (IEP) as required by federal/state law or are identified as in need of special education services [*insert any jurisdiction-specific terminology relevant*].
 - The number of detainees/prisoners who are currently or who were transferred to a mental health hospital [*insert the name of the mental health unit in your jurisdiction if one exists*] or other forms of in-patient care in the last 24 months.
 - The reason for placement/classification to solitary confinement for each detainee/prisoner as of [*date*], including the nature of any disciplinary infraction that caused such placement.
 - The number of four-point restraints in the last 24 months, indicating the starting date and ending date of each restraint.
 - The number of in-cell restraints in the last 24 months, indicating the starting date and ending date of each restraint.
 - The number of suicides that occurred in the last 24 months.
 - The number of incidents of self-harm documented in the last 24 months.

- The number of detainees/prisoners in solitary confinement placed on suicide watch during the past 24 months.
 - The number of cell extractions performed on detainees/prisoners held in solitary confinement in the last 24 months.
 - The number of uses of chemical agents in the last 24 months.
 - The number of individual counseling sessions provided in solitary confinement in the last 24 months.
 - The number of detainees/prisoners who attended educational programming outside of their cell in the last 24 months.
 - The number of detainees/prisoners provided with in-cell educational programming in the last 24 months.
 - The services or programming provided to detainees/prisoners in their cell or outside of their cell.
- Produce any and all documents related to any training given to correctional officers who work in solitary confinement units (or any unit in which youth are subjected to solitary confinement).
 - Produce any and all documents related to mental health training given to correctional officers and other staff who work in solitary confinement units (or any unit in which youth are subjected to solitary confinement).
 - Produce any and all documents related to training given to correctional officers regarding managing youth.
 - Produce any reports, audits, investigations or reviews by facility/DOC, any other government unit, or outside persons or entities concerning the delivery of mental health or medical services to detainees/prisoners held in solitary confinement. (*note: a general knowledge of such deficiencies will be pertinent to youth in the system whether or not the report focuses on the age of the detainees/prisoners*)
 - Produce any reports, audits, investigations or reviews by facility/DOC, any other government unit, or outside persons or entities concerning the delivery of educational services or programming to detainees/prisoners under the age of 18 held in solitary confinement.
 - Produce any written complaints from [*enter time period of about 2-3 years*] submitted by any facility/DOC staff member, including medical and mental health personnel, about the delivery of mental health services or the level of mental health staffing at any of the facilities where detainees/prisoners under the age of 18 are held in solitary confinement; include any written response by a facility/DOC administrator, including medical and mental health personnel.
 - Produce any written complaints from [*enter time period of about 2-3 years*] submitted by any facility/DOC staff member, including medical and mental health personnel, and educational service or program-provider staff, about the delivery of educational services or programming, or the level of educational or program staffing at any of the facilities where detainees/prisoners under the age of 18 are

held in solitary confinement; include any written response by a facility/DOC administrator, including medical and mental health personnel and educational service or program-provider staff.

- Produce any reports, audits, investigations or reviews by facility/DOC staff, any other government unit, or outside persons or entities concerning excessive use of force against detainees/prisoners under the age of 18 held in solitary confinement.
- Produce any written complaints from [*enter time period of about 2-3 years*] submitted by any facility/DOC staff member about excessive use of force at any of the facilities where detainees/prisoners under the age of 18 are held in solitary confinement, including any written response by a facility/DOC administrator.
- Produce any written complaints from [*enter time period of about 2-3 years*] submitted by detainees/prisoners under the age of 18 who are housed in solitary confinement and/or their advocates (attorney, family, friends, etc.) about the delivery of mental health services or the level of mental health staffing at any of the facilities where detainees/prisoners are held in solitary confinement, including any written response by a facility/DOC administrator, medical and/or mental health personnel.
- Produce any written complaints from [*enter time period of about 2-3 years*] submitted by detainees/prisoners under the age of 18 housed in solitary confinement and/or their advocates (attorney, family, friends, etc.) about the delivery of educational services or programming or the level of educational or program staffing at any of the facilities where detainees/prisoners are held in solitary confinement, including any written response by a facility/DOC administrator, medical and/or mental health personnel.
- Produce any written complaints from [*enter time period of about 2-3 years*] submitted by detainees/prisoners under the age of 18 housed in solitary confinement and/or their advocates (attorney, family, friends, etc.) about the excessive use of force at any of the facilities where detainees/prisoners are held in solitary confinement, including any written response by a facility/DOC administrator, medical and/or mental health personnel.

Step 3: Research the Policies that Govern Solitary Confinement in Your Community

You will need to understand the policies that govern solitary confinement in your jurisdiction. These are the types of general policies to look for when researching the operation of solitary confinement in your local prisons and jails:

- Discipline policies
- Administrative Segregation policies
- Protective Custody policies
- General Segregation policies
- Supermax prison operations

- Classification Plans or Classification Systems
- Suicide Prevention and Watch policies
- Visitation policies
- Recreation policies
- Prisoner property policies
- Program/Education/Work policies
- Phone Call policies
- Mental Health programs and policies
- Good time/earned time/credit time policies

By reviewing these policies, you may be able to learn answers to important questions such as those listed below. Of course, some policies will be unclear, vague or non-existent and answering these questions may require formal information requests, interviews of correctional officials, communications with prisoners and advocates or a combination thereof. The first place to look for policies, however, is the county jail or Department's website. Most Corrections Departments and some county jails now place some of their policies and/or regulations on the web.

The following are questions that can often be answered by a review of prison/jail policies and regulations (Pay special attention to whether or not any of these policies or regulations differ for youth under 18 years of age or take into account the age of the detainee/prisoner):

- What are the reasons detainees/prisoners are placed in solitary confinement?
 - What are the criteria used for placement in solitary confinement? Do criteria include crime(s) of conviction?
 - Is age ever a consideration in reducing or limiting placement in solitary confinement?
 - Is age ever a factor in disciplinary proceedings?
 - Is solitary confinement limited to individuals who have committed violent acts? Tried to escape?
 - What is the system's classification policy?
 - How is age and life experience weighed in the classification system?
- Are individuals held in solitary confinement because they are considered too vulnerable to be placed in general population? (*note: this practice is often referred to as protective custody*)
 - Youth detainees/prisoners (*consider minimum/maximum age*)
 - Gang renouncers
 - Sex offenders
- What due process is available to detainees/prisoners prior to being placed in solitary confinement? Are these processes adequate? Are they followed? (*Note: this will have to be ascertained anecdotally or through document review and will likely vary depending on the form of solitary confinement*).
- Is there a limit to how long a detainee/prisoner can be held in solitary confinement conditions? Are detainees/prisoners given a fixed term of solitary confinement and/or is solitary confinement indefinite?
- Are there any policies that place limits on the length of time youth may be held in solitary confinement?
- How often is a detainee's/prisoner's placement in solitary confinement reviewed and by whom?

- How do detainees/prisoners get out of solitary confinement units and back to a general population prison/unit?
- What access to rehabilitation programs do detainees/prisoners have in solitary confinement?
- Are any special accommodations made for ensuring that youth in solitary confinement receive educational, rehabilitative and other programming?
- What types of visitation with friends and loved ones is available to detainees/prisoners held in solitary confinement? Are youth allowed more visits than adult detainees/prisoners?
- What types of property, such as TVs, radios, legal materials, and books, are detainees/prisoners in solitary confinement allowed to have in their cells?
- Does policy govern a minimum amount of out-of-cell time or recreation time for detainees/prisoners held in solitary confinement? Under what circumstances can detainees/prisoners be denied access to out-of-cell time or recreation time? Is any provision made to ensure that youth are allowed more out-of-cell or recreation time than adults?
- Are detainees/prisoners released directly to the community from solitary confinement units or are they reintegrated back into general population housing before release?
- Are there any types of “resocialization” or “step-down” programs available for detainees/prisoners being released from solitary confinement – either in the jail/prison or the community?
- Is there a mental health screening process prior to placement in solitary confinement housing? Are individuals identified as mentally ill excluded from solitary confinement? If so, where are they housed and under what conditions?
- Is there a mental health step-down unit for detainees/prisoners diverted from solitary confinement as an alternative discipline? What is the nature of that program?
- Are detainees/prisoners adequately monitored for mental health impacts caused by solitary confinement?
 - How are they monitored?
 - How often does this monitoring take place?
 - Who does it?
 - How is it documented?
 - Is such monitoring held in a confidential setting or where other detainees/prisoners and correctional officers can hear, for example, at cell-front? (*Note: this may not be clear from simply looking at the policy; discussions with prisoners, correctional officers, and mental health staff may be necessary*).
 - Is any special mental health monitoring done for youth under 18?

Step 4: Develop a Qualitative Description of Solitary Confinement in your Community

It is important to understand the lived experience of youth who are subjected to solitary confinement in your jurisdiction. All too often official policies are simply not followed in practice and some aspects of life in solitary confinement will not be obvious from the paperwork. Information about daily life in solitary confinement is therefore best obtained by talking to or corresponding with detainees/prisoners incarcerated in those units, and if

possible, by touring the facility and asking questions of jail and prison officials (see the ACLU's *Interview Guide – Talking to Youth About Solitary Confinement*; *Corresponding with Youth About Solitary Confinement*; and *Checklist for a Visit to an Adult Facility that Houses Youth* for guidance on collecting the most useful information during your visit), and by speaking with staff, such as prison chaplains, or volunteers that regularly visit the facility.

Here are some examples of information to gather about the conditions youth live under in solitary confinement facilities, units, or cells:

- How many hours a day is the person held alone in his/her cell, i.e. what is the level of isolation?
- What is the size of each person's cell? Is it roughly the same size as a regular bathroom, for instance?
- Are detainees/prisoners able to engage in social interaction with one another? Any other human beings?
- Can detainees/prisoners ever see other human beings? If so, how and when (e.g. only when officers provide meals, etc.)?
- What is the lighting like in the cell? Is it on 24-hours a day? Is it bright enough to read by?
- What type of door is on the cell? Is it solid steel? Is there a window looking out?
- What type of walls and floors are in each cell? (e.g., solid concrete, dirt, etc.?)
- Is there a window that allows the prisoner to look outside? How big is the window? Is there any opportunity to see sky? Grass? Flowers? People?
- What is the temperature like in the unit? Is it comfortable to wear street clothes? A sweater? A t-shirt?
- Is there a call box or intercom in the cells so detainees/prisoners can contact correctional officers in an emergency? If not, what happens in an emergency? For instance, if a prisoner is having a seizure?
- What types of possessions can a detainee/prisoner keep in his/her cell? TVs, radios, reading materials, pictures of loved ones?
- What types of programs, if any, does a detainee/prisoner in solitary confinement have access to? Education? Art? Therapy?
- Are the detainee/prisoners allowed visits with friends and family? How often do these occur? What times/days are available for visits?
- If a detainee/prisoner receives a visit from his/her family, can s/he touch family members or children? Are the visits conducted in-person or behind glass?
- Do detainees/prisoners in the solitary confinement units have access to clergy?
- What is the type, frequency and length of recreation allowed in the unit? Is it indoors or outdoors? How big is the area where recreation is permitted?
- How sanitary are the cells in solitary confinement? What access to cleaning supplies do the detainees/prisoners have?
- Are detainees/prisoners provided with hygiene products? What are they?
- Do detainees/prisoners have sheets and mattresses?
- How can detainees/prisoners file complaints or grievances while in solitary confinement?
- What happens if a detainee/prisoner needs psychiatric care?
 - Do detainees/prisoners have access to counseling?
 - Does a detainee/prisoner have to ask a correctional officer if he needs a psychiatrist to visit him?

- Where does the counseling occur? Is it in a private room or does it take place at cell front where others can hear?
- What happens to a detainee/prisoner if he has a mental breakdown while in the solitary confinement? How is it determined when a detainee/prisoner is having a mental breakdown? Will he be sent to a hospital? If he recovers, will he be returned to solitary confinement?
- What happens if a detainee/prisoner needs medical care?
 - What happens in an emergency?
 - How can a detainee/prisoner access medical care in solitary confinement?
 - Does a detainee/prisoner have to ask a correctional officer if he needs medical care?

Step 5: Find Out How Much Solitary Confinement and Housing Youth in Adult Facilities Costs in your Community & What Outcomes it Produces

Once you've developed a basic understanding of the nature and operation of solitary confinement practices in your community and knowledge of the youth transfer and detention laws in your state, you should also research the costs and outcomes of using solitary confinement and of housing youth in adult facilities.

The human costs of solitary confinement and of housing youth in adult facilities have long been recognized and are well-documented. In the context of adult solitary confinement, many critics point to the enormous fiscal costs associated with solitary confinement. For example, supermax institutions typically cost two or three times more to build and operate than even traditional maximum-security prisons. And, because of staffing ratios, per-inmate costs can easily be higher in supermax prisons when compared to other facilities.

Despite the significant costs associated with such institutions, almost no research has been done on the outcomes produced by the increased use of solitary confinement or supermax prisons or units. In the research that has been conducted, there is little empirical evidence to suggest that the use of solitary confinement makes prisons safer. Indeed, emerging research suggests that supermax prisons actually have a negative impact on public safety. But despite these concerns, states and the federal government continue to invest scarce taxpayer dollars in constructing supermax prisons and enforcing solitary confinement conditions.

Direct fiscal comparisons regarding the cost of detaining youth in adult facilities as opposed to juvenile facilities can be especially complicated. Per-person costs for detaining juveniles – because of the minimum requisite staffing levels and costs of age- and developmentally-appropriate services and programming – can run to hundreds of dollars per day and can be two to three times more than an adult jail or prison spends on inmates in general population. The cost of state juvenile facilities – unlike county jail facilities – is often centrally budgeted by the legislature and some states require county contributions. All of this can make the projected cost of detention of youth in solitary or in the general population of adult facilities a less expensive alternative to detention in a juvenile facility. However, economies of scale available in juvenile facilities will often make juvenile facilities the more cost-effective alternative, because in almost every case, the per-person cost of an appropriately staffed and managed unit delivering minimally adequate services and programming in adult facilities would be much higher when compared to juvenile facilities already staffed and designed to house and manage youth.

While the cost comparisons regarding housing youth in adult facilities are complicated, there is a growing body of research that suggests that housing youth in adult facilities makes communities less safe by increasing recidivism rates.

In your campaign, it will be helpful to try to find as much data as possible regarding the true costs of solitary confinement, of holding youth in adult facilities, and the ultimate impact on public safety.

In order to estimate the true fiscal costs of the solitary confinement of youth, compare the following data between a general population unit or facility, a segregation unit or facility, and a juvenile justice facility in your jurisdiction:

- Equipment and technology costs and requirements associated with housing youth
- Staff-to-detainee/prisoner ratios in a solitary bed or unit vs. general population bed or unit
- Per detainee/prisoner cost of a solitary bed or unit vs. general population bed or unit
- Staffing costs and requirements associated with housing youth
- Operations costs and requirements associated with housing youth

It would also be helpful to request any government reports or evaluations of the cost and efficacy of using solitary confinement (although it is quite possible that none have actually been done). Here are some sample data requests:

- Produce any reports, audits, investigations or reviews by a county jail or state DOC, any other government unit, and entities or persons outside the government concerning the costs of incarcerating youth in solitary confinement or in adult facilities.
- Produce any reports, audits, investigations or reviews by a county jail or state DOC, any other government unit, and entities or persons outside the government concerning the impact of solitary confinement of youth on any of the following:
 - rates of inmate-on-inmate violence;
 - inmate-on-staff violence;
 - jail/prison riots;
 - jail/prison lock-downs;
 - overall jail/prison safety;
 - suicide rates;
 - recidivism;
 - additional stress for correctional officers;
 - weakened parent-child relationships between detainees/prisoners and their family (both children and parents) due to reduced visits, contact, etc.; and
 - the ability for detainees/prisoners to reintegrate into society successfully.



NO CHILD LEFT ALONE

Campaign to Stop the Solitary Confinement
of Youth in Adult Jails and Prisons

Checklist for a Visit to an Adult Facility that Houses Youth

This checklist is intended to help you understand what you're seeing when you visit a jail or prison that houses youth. Modern jails and prisons are not medieval dungeons. But youth in adult facilities are at serious risk of physical and sexual assault as well as devastating solitary confinement and other forms of isolation. Solitary confinement is traumatic and can cause serious psychological harm to youth and adults. Solitary confinement can also damage youth when it involves deprivations of treatment, education, programming and services necessary to facilitate healthy growth and development. As you visit the facility, please consider not only the physical effects of the facility upon the youth but also the effects the facility may have upon his/her mental and emotional well-being, and his/her ability to grow and develop and relate to others in society. Please also consider that jail and prison officials often have no choice and few resources when they detain youth, so they may be ready advocacy partners in efforts to divert youth from adult facilities.

Use the checklist below as an aid to help you observe and understand the impact life in jail or prison has on a child. After your visit to the facility, it may be useful to discuss your observations and opinions as a group.

Things to Observe:

- What is the size of each person's cell? Is it roughly the same size as a regular bathroom, for instance? An elevator? A parking space?
 - Is there space for a desk? Is one provided?
 - Is there anywhere to sit other than the bed?
 - How large is the bed?
 - What kind of mattress is there?
 - How far is the toilet from the bed?
 - Is there a sink in the cell?
 - Does the prisoner have any privacy in his/her cell when using the toilet?
 - How much could someone actually move around in the cell?
 - Is there room for any exercise such as push-ups or calisthenics?
- Is there a window that allows light in from the outside? Does the window allow the prisoner to look outside? How big is the window? Is there any opportunity to see sky? Grass? Flowers? People?
- What kind of lighting is in the cell? Is it similar to office lighting? Normal kitchen lighting? A dim room? Twilight?
 - Could you read easily by this light?
 - Can the prisoner turn the light off to sleep?
- Is there a lack of color in cells and corridors? Are things written or smeared on the cell walls?
- What is the door to the prisoner's cell like? Is there a window? Can the prisoner see other cells from the window? Is the door solid steel? Is there a food slot? Are there bars?

- Can air get into the cell through the door?
- What is the noise level in the unit like?
 - Is it eerily quiet or constantly noisy?
 - Is there a lot of noise from the prisoners? The doors and locks?
- What is the temperature like on the unit? Is it comfortable to wear street clothes? Sweater? T-shirt?
- What are the prisoners wearing in their cells?
- Do most of the prisoners appear to be sleeping in their cells? Pacing?
- Is there a call box or intercom in the cells so prisoners can contact correctional officers in an emergency? If not, what happens in an emergency?
- What types of possessions do you see in each person's cell?
- Are prisoners socializing with one another?
- Is it possible for prisoners to talk with one another? See one another?
- Are prisoners only able to speak with one another by shouting?
- What kind of recreation yard is available?
 - How often can a prisoner go to the yard?
 - How long can s/he stay on the yard?
 - Can s/he associate with other prisoners on the yard or is s/he alone?
 - Is the yard out-of-doors?
 - How big is it?
 - Is there any exercise equipment available? Even a handball, basketball or pull-up bar?
 - What can the prisoner bring to the yard? Water? Book? Hat?
 - What happens when the weather is cold and it snows? Can the prisoner wear a coat or boots when s/he goes to the yard?
 - What can you see in the yard? Trees, grass, sky, parking lot?
 - Could a prisoner feel a breeze in the yard?
- Are youth held in solitary confinement alongside adults?
- Are the solitary confinement cells different for youth than they are for adults?

Things to ask:

- Are prisoners under age 18 kept sight and sound separated from prisoners 18 and older?
- Do correctional officers and other staff receive any special training to work with youth?
- What possessions can the prisoner have in his/her cell?
 - Can s/he have pictures of friends and family?
 - Can s/he have a radio or TV?
 - How many books can s/he have at one time? How often is s/he allowed to get new books? Can s/he get books only from the facility's library or from friends and family?
 - Can a prisoner have magazines or newspapers in his/her cell? How many? How often? Can s/he get magazines or newspapers only from the facility's library or by subscription or from friends and family?
 - Can s/he have religious texts in his/her cell? Which texts are permitted or provided?
 - Can s/he save letters from friends and family? Stamps? Blank paper? Envelopes? Pens? Pencils?

- Can s/he keep a copy of a loved one's drawing in his/her cell?
 - What, if any, reminders of home, family, friends, is s/he allowed to keep with him/her?
- Can youth prisoners have more or fewer possessions in their cell than older inmates in solitary confinement?
- How many hours a day is the prisoner in the cell? During the week? On weekends?
- Is the location, schedule or duration of recreation different for youth than for older prisoners?
- When do prisoners receive meals? Do they eat together? Alone in their cells?
 - What type of food do they receive? Are nutrition requirements different for youth than for older prisoners?
 - What happens if a prisoner needs a special diet for medical purposes? For religious purposes?
- Is a prisoner able to clean his/her cell? How often? With what materials?
- Are prisoners able to engage in social interaction with one another? Any other human beings?
- Are correctional officers usually posted in the housing units or do they watch the housing units from a control center or guard tower?
- How often do correctional officials check on youth in solitary confinement? Every 15 minutes? Every hour? Is this check done through a closed door? Is it only a visual check or do staff speak with youth?
- Are there any types of structured activities that a prisoner could participate in?
 - Drug treatment
 - Group therapy
 - Religious services
 - Other programming
- Do prisoners receive any educational programming? Is educational programming different for youth than it is for adults? Is educational programming different for those with disabilities?
 - What does the education program involve? Are students taught in a classroom or are worksheets/books simply brought to their cells? What type of student-teacher interaction is allowed? How many hours/minutes a day or week is education offered?
 - If there are different programs, what ages or characteristics distinguish eligibility for them?
 - Does the facility have a mechanism to evaluate prisoners to determine if they have a cognitive or learning disability or impairment? Does the facility receive the school/education records of youth? Does it receive Individual Education Plans (IEPs) or other legally-mandated plans for students with disabilities?
- If a prisoner leaves his/her cell for any reason, will s/he be strip-searched or restrained? When does strip-searching or restraint occur? What type of restraints are used?
- How many times a week is the prisoner allowed to shower? For how long?
 - Is the prisoner cuffed during the shower?
 - What kind of privacy does the prisoner have for showering?
 - Do youth shower with or near adults?
- Do prisoners have access to clergy?
 - How often?
 - What faiths?
 - Are prisoners allowed to attend congregant religious services?
- What personal contact with other human beings does the prisoner have during the day?

- Can s/he shake hands with someone?
- Can s/he touch visitors?
- Does anyone ever touch the prisoner?
- How many phone calls is the prisoner entitled to a week? A month? For how long? How much does a phone call cost?
- How many letters can the prisoner write? Receive? Per week? Per month? How much do stamps and writing materials cost?
- Do prisoners have access to email? How often? For how long? How much does access to email cost?
- Are the prisoners allowed visits with friends and family? How often do these occur? What times/days are available for visits?
- If a prisoner receives a visit from his/her family, can s/he touch family members or children? Are the visits conducted in-person, behind glass, behind wire mesh, or by video?
- Are the practices related to correspondence and visits with family and loved ones different for youth than for older prisoners?
- Is there any evaluation of a prisoner's mental health before placement in solitary confinement?
 - If so, what is it? Who does the evaluation?
 - Does the person who does the evaluation have any training or expertise in adolescent development?
- Is there any on-going monitoring of a prisoner's mental health in solitary confinement?
 - If so, what is it? Who does the monitoring? How often?
 - Does the person who does the monitoring have any training or expertise in adolescent development?
- What provisions are made for suicide risk amongst prisoners in solitary confinement?
 - How is suicide risk measured?
 - Are those provisions different for youth than for adult prisoners?
 - Do the provisions for addressing suicide risk distinguish between low and high/active risk of suicide?
- What happens if a prisoner needs psychiatric care?
 - Do prisoners have access to counseling?
 - Does a prisoner have to ask a correctional officer if s/he needs a psychiatrist to visit him/her?
 - Where does the counseling occur? Is it in a private room or does it take place at cell front where others can hear?
 - What happens to a prisoner if s/he has a mental breakdown while in the solitary confinement? Will s/he be sent to a hospital? If s/he gets better, will s/he be returned to solitary confinement?
- What happens if a prisoner needs medical care?
 - What happens in an emergency?
 - How can a prisoner access medical care?
 - Does a prisoner have to ask a correctional officer if s/he needs medical care?
 - Does the person responding to the medical need have any training or expertise in adolescent development or pediatrics?
- Does the facility have access to the medical or mental health records of prisoners? From prior detention facilities? From the community?
- What kind of intake screening and assessment is done for prisoners?
 - Is this screening or assessment different for youth than for adults?

- Are there sections of the screening or assessment, or supplemental assessments, which are developed specifically for youth?
- Does the staff administering the screenings or assessments have training in adolescent development?
- How often is a screening or assessment administered during a youth's detention?
- What kinds of behaviors or violations result in transfer to solitary confinement? Are the behaviors or violations different for youth than they are for adults?
- Are there clear guidelines for determining when solitary confinement is warranted? Are those guidelines different for youth than they are for adults?
- Who has to sign off on a decision to put youth in solitary confinement?
- Are any special provisions made to accommodate the age, immaturity and developmental needs of youth when deciding whether to place them in solitary confinement? Are the mental health needs of youth or opinions of mental health staff considered?
- Are youth put in solitary confinement by default to separate them from adult prisoners? Are younger adolescents put in solitary confinement by default to separate them from older adolescents or adults?
- Are youth punished with solitary confinement? If so, are there any special provisions made to accommodate the youth's age, immaturity and developmental needs?
- How long do youth usually spend in solitary confinement? What is the average? Median? What explains the outliers?
- Is there any way for youth to work their way out of solitary confinement?
- Is there a limit to how long a youth can be held in solitary confinement? Is that a different limit than for adult prisoners?
- If a prisoner breaks the rules while in the solitary confinement, what kinds of disciplinary procedures are used? Are there any special provisions made to accommodate the youth's age, immaturity and developmental needs in those procedures?
- If a prisoner is released back to the community from solitary confinement, what programs are available to help that transition?



NO CHILD LEFT ALONE

Campaign to Stop the Solitary Confinement
of Youth in Adult Jails and Prisons

Interview Guide – Talking to Youth About Solitary Confinement

A *No Child Left Alone* campaign should draw from the personal experiences of young people who were subjected to solitary confinement while they were children – to understand the problem, to describe the harm isolation practices can cause, and to help advocate for reform. Advocates should meet with young people – while they are in custody as well as after they are released – to find out about their experiences and conditions of confinement when subjected to solitary at a given facility, and the impact on them. Advocates should also talk to family and community members about the impact of solitary confinement.

In this guide we set forth a comprehensive set of questions designed to elicit important facts about the experience of youth in solitary confinement. But other than the sample questions suggested below, there are four vitally important elements that a prospective interviewer should consider before and after interviewing a youth: (1) establishing whether the youth is currently represented by an attorney and/or has an ongoing criminal case(s); (2) being sensitive to trauma, substance abuse, cognitive or developmental issues, and/or mental health problems; (3) establishing informed consent; and (4) discussing confidentiality and its limits.

Establish Whether the Youth is Represented by an Attorney

The first thing any prospective interviewer needs to know is whether or not the youth s/he wants to interview is currently represented by an attorney. Before conducting the interview, make efforts to find this out by asking the youth directly, checking court and facility records, and reaching out to local public defenders and advocates if that is appropriate. If the young person is currently represented, reach out to his/her attorney to discuss the possibility of doing an interview and get the attorney's permission to speak with the youth before scheduling the interview. Be sure to discuss confidentiality of your notes and discovery issues. If the youth has pending criminal charges, the attorney may not want an outside agency or individual to interview him or her, or will need to be assured the criminal case and relevant information will not be discussed. The attorney may also want to be present during any interview.

Be Sensitive to the Trauma of Solitary Confinement

Before interviewing someone about their experiences, it is important to understand that solitary confinement is a devastating practice and can traumatize youth. Therefore, speaking with young people about their experience can be re-traumatizing and cause or exacerbate serious psychological harm. This is important to weigh before deciding to interview a young person about their experience. During the course of an interview, it is also important to consider trauma issues before continuing with difficult questions. It is equally important to ensure that you schedule enough time for your interview to accommodate sensitivity to these issues – and to end the conversation with topics unrelated to incarceration and solitary confinement and the trauma it may have caused the youth. While preparations may differ depending on whether the interviewee is in custody, it can be useful to research and contact service-providers to whom you can refer the interviewee if you have concerns about his/her health and well-being during or after the interview.

Additionally, many youth in custody suffer from past trauma, substance abuse issues as well as cognitive, developmental and/or mental health problems that impact their ability to remember, articulate, and understand many of their experiences. An interviewer must be sensitive to these issues and accommodate them.

It is strongly recommended that an interviewer who is new to this work with youth review current resources and materials that address the nuances and considerations of effective and undamaging interview techniques.

Establish Informed Consent

At the outset, during, and at the close of any interview, it is important to get the informed consent of the youth. Informed consent means that the interviewee understands and evaluates the risks and benefits of an interview and agrees to proceed with the interview. In order to establish informed consent, you should explain why you are doing the interview, what you will be asking about, how you will use the information the youth gives you, and that, given this understanding, the youth freely agrees to speak with you. A good way to do this is by asking the youth directly, “Do you understand?” and “Do you have any questions?” But this should not be the only way you evaluate this understanding. Make sure to let the youth know that s/he can ask you questions at any time during the interview. It is also always important to give the interviewee multiple opportunities to decline or revoke consent, or limit its scope.

Particularly if the interviewee is in a custodial setting, it is important to describe and directly discuss the possible risks involved, which can include retaliation or mistreatment from staff or other inmates.

If the youth is still under the age of 18, you should research the law of capacity to consent before conducting an interview. It may be necessary to contact a parent or guardian prior to interviewing a youth under the age of majority.

If you plan on using a youth’s story or testimony in your public education work and in advocacy, or if you want permission to use the youth’s name, you should make sure to secure the necessary releases from the youth and/or guardian (and evaluate and discuss all risks involved). It is a good practice to use consent and release forms to memorialize your discussion and agreement on these issues.

You should also be sure the youth understands that the interview is not to address the crime(s), conviction(s) or sentence(s) and related matters, and that you are not assisting in his/her criminal case(s).

Discuss Confidentiality and its Limits

Before you begin or take any notes, and before you end the interview, it is important that you discuss the confidentiality of the interview, whether and with whom you will share the information you were given – including identifying information. You should also discuss under what circumstances you might be forced to disclose information and to whom. These circumstances will vary depending upon whether you are an attorney interviewing the youth in a legal capacity; whether there is a civil or criminal action pending for or against the youth; and whether you suspect child abuse has occurred and you or your organization are subject to a mandatory child abuse reporting statute.

There is an extensive literature on the ethics, risks and best-practices for fact-finding interviews (and various training opportunities) that may be helpful to consider before undertaking an interview. Some resources that provide guidance on effective techniques for interviewing youth are:

- Lourdes M. Rosado, Ed., *Talking to Teens in the Justice System: Strategies for Interviewing Adolescent Defendants, Witnesses, and Victims*, AMERICAN BAR ASSOCIATION, JUVENILE LAW CENTER, AND YOUTH LAW CENTER (June 2000).

- The ABA also has a number of other training resources available on its website, including a valuable training video entitled, *Interviewing the Child Client: Approaches and Techniques for a Successful Interview*, available at <http://apps.americanbar.org/litigation/committees/childrights/video/1006-interviewing-childclient.html>

SAMPLE INTERVIEW QUESTIONS

Below are some interview questions to consider in preparing for an interview with a youth who has been subjected to solitary confinement.

Biographic/Background Questions

The best interviews are conversational and comfortable – be sure to review these questions before the interview so that you can insert them as needed rather than interrupt an informative flow of conversation. You should also consider asking explicitly whether you can take notes – this might be a good way to discuss some of the issues regarding consent discussed above.

Consider starting the interview with something light to break the ice, reduce the youth’s anxiety, and begin building a rapport. This is a general rule for any interview, but is especially important when interviewing youth, who are often nervous and confused. The simplest way to help children feel at ease is to ask them about themselves: Do they have any siblings? Where did they grow up? Do they enjoy sports? What music do they like?

- Full name?
- Date of birth? Age?
- Where did you grow up?
- Where do your parents live?
- What are their names? Contact information?
- Tell me what you were like as a younger teenager – describe your personality?

[Transition – “now will discuss what might be difficult topics regarding your time since you were incarcerated. Remember you don’t have to answer any questions and can end the interview at any time”

You may also want to explain exactly what you mean when you say “solitary confinement.” Most jails/prisons do not use that term so the youth may not understand exactly what you are talking about unless you give them a definition. For instance, you could say: *“When I say solitary confinement, I mean when a person is placed alone in a cell for almost the entire day and not allowed out for meals, for programs, or other typical out-of-cell time, except maybe an hour or so for exercise or a shower. It doesn’t matter if the person is there for discipline, medical, administrative segregation or for protection. I’m just concerned that they are mostly left alone in their cells for days, weeks, months or longer. It doesn’t matter why.”*]

Jail Experience

- What date did you enter jail?
- How old were you?
- Did you know what to expect? How?
- How were you transported?
- Did you get an initial screening?

- What do you remember about any discussion jail staff had with you about where you would be housed in the jail?
- Were you held separate before being put in the population?
- Where were you placed?
- What was the inside of your cell/dorm like?
- Did you have cell mates?
- What were they like?
- How old were they?
- Were there other youth under 18 in the jail?
- Were you detained with them?
- What were your thoughts and feelings when you first entered the jail?

Conditions in jail generally

[skip if youth was placed directly into solitary confinement]

- What was an average day like in jail?
- How were you treated generally?
- How did the prison staff treat you?
- How did the other prisoners treat you?
- Did you feel safe? Why/why not?

If the youth was never placed in solitary confinement

- Did you know of other youth who were placed in solitary confinement?
- Do you know why they were placed in solitary?
- Why do you think you weren't placed in solitary confinement?
- Do you know how solitary impacted them? Did it change them? How?

Placement in solitary confinement

- What date did you enter solitary/single-cell/seg/PC?
- How old were you?
- How long were you in solitary confinement? Multiple times? Do you know the dates?
- Why were you placed in solitary? Discipline reasons? Protection? Medical reasons?

If the youth was placed in protective custody:

- Were you given the choice of whether to be placed in solitary confinement or not?
 - If the youth asked to be placed in protective custody ask:
 - Why did you request to be placed in isolation?
 - When did you make the request?
 - What were you told about isolation before you were placed in the cell?

- How long did you stay in protective isolation?
- Did you ever change your mind?
- Were you ever given the option to return to your previous housing arrangement?
- Did you ever request to be taken out of isolation?
- Did you ever discuss this with jail officials?
- If the youth did not ask to be placed in protective custody ask:
 - What were you told about the reason for your placement?
 - Did you ever ask to be taken out of solitary confinement/protective custody?
 - Were you ever told how you might get out of solitary confinement/protective custody?

If the youth was placed in disciplinary lockdown or administrative segregation:

- Were you notified of the jail rules when you arrived there?
- Did you understand them?
- Why were you placed in isolation?
- Were you given a description of the violation/ticket in writing?
- Was there a hearing? Did you get to attend?
- Were you allowed to have witnesses? Did you have a lawyer or someone to represent you?
- Was your age discussed at the hearing?
- Were you given the chance to appeal?
- Were your parents/guardians notified?
- How long were you placed in isolation initially?
- Was your time in disciplinary isolation extended for any reason?
- Why – what happened?

If the youth was placed in medical isolation:

- Why were you told you were being placed in isolation?
- Were you given a description of the need in writing?
- Did you discuss this with a medical doctor, nurse, or other medical practitioner?
- Did you understand all this at the time?
- Did you agree to be placed there?
- Were your parents/guardians notified?
- How long were you placed in medical isolation?
- Did you ever ask to be taken out of isolation?
- Was there a way for you to make a request to be taken out of isolation?
- Did you ever discuss this with any jail official?

General Conditions in Solitary Confinement

- Describe the inside of the cell?

- How big was it?
- What did it smell like?
- Was it hot/cold (summer/winter)?
- Were there windows? How many?
- Could you see the sky?
- What were the walls and door made out of?
- Could you see anything from the inside of the cell?
- What was inside the cell (bed? desk? toilet?)
- What noises could you hear from inside your cell?
- What did you think when you were first put there?
- What was a typical day like in solitary? What did you do all day?
- How much did you sleep while you were in solitary confinement?
- How often did you see or talk to other people when you were in solitary?
- What made a day in solitary “good”? What made a day in solitary “bad” for you?
- What were you allowed to have inside the cell? (radio, tv, reading materials, educational materials)
- Did these things change? Were such privileges ever taken away?
- Were the lights ever turned out in solitary? Was there enough light in your cell to read by?
- When were the lights turned on every day?
- Did jail officials look in on you regularly?
- How often?
- Was it a guard who looked in on you? Mental health staff? Religious officials? Others?
- Did they talk to you when doing their rounds or checks?
- What did they say to you?
- Could they see inside your cell clearly from outside the door?
- Was there a video camera in the cell?
- Could you hear or talk to other prisoners from your cell?
- Were they all adults or were some of them youth?
- What were your interactions with the guards like?
- How many times a day did you receive food in solitary? What time of day?
- Was it enough food? What were you served? How did it taste?
- Did you get to leave the cell – for what? (recreation, visits, phone, etc.)

Medical/Mental Health Treatment in Solitary Confinement

- While you were in solitary confinement, did you have sick call or were you able to make a medical request easily? What was the process for asking to see medical staff? How often could you ask/receive medical attention?

- While in solitary did you request to see medical staff? Mental health staff?
- How many times?
- What were their names? Were they nurses or doctors?
- Were you ever physically injured in jail? When you were in solitary?
- Were you ever prescribed medication in jail? When you were in solitary? Which medication(s)?
- When you were in solitary, would health care staff treat you in your cell or in the clinic/medical unit?
- How do you think the medical/psychological staff treated you?
- Did you ever talk to someone about your emotions or psychological/mental health while you were in jail? While you were in solitary confinement? How many times? What were their names?
- Were you ever diagnosed with a mental illness before or during time in jail? What diagnosis?
- Were there medications you took outside of jail that you weren't allowed to take in jail?
- Were you ever placed on suicide watch or taken to a medical unit for suicide watch? More than once? Why?
- What happened to you on suicide watch? Were you placed in a different cell? Given different clothes?
- How often did you see medical staff while you were on suicide watch?

[Transition “These next questions may be hard to talk about but are important. Remember, you can end the interview at any time – or tell me you would rather not answer a hard question. I don’t want answering these questions to make you end up feeling worse.”]

Impact of Solitary Confinement

- How did being in solitary confinement make you feel?
- What was the feeling you had most often?
- Were you angry or afraid?
- How would you describe how you felt or acted while in solitary confinement?
- Did you have any strategies for making the time pass or making it easier to be in solitary?
- Do you remember the hardest thing about being in solitary – or the most difficult moment?
- Did you feel like you were a different person when you left solitary?
- What did you want or need most when you were in solitary?
- Did you have dreams or nightmares?
- Did you ever try to hurt yourself? If so, did you ever talk about that with anyone?
- Did it feel like you were being punished?
- What advice would you give someone who was going into solitary at the age you were?

Visits/Telephone Calls

- Could your family or friends visit you while you were in solitary?
- How often were visits allowed?
- What are their names? Can we contact them? Contact information?

- Did religious clergy ever visit you in solitary?
- Any other community group or mentoring visits?
- What were their names? Contact information?
- Where did the visits take place?
- Could you touch or hug them? Were there limits? (e.g. one hug at start/end of visit)
- Was it hard to get these visits?
- How about telephone calls? Were you able to call your family while in solitary? How often?
- How long were these calls?
- Were there any restrictions on who you could call while you were in solitary?

Attorney/Client Relationship

- Did you have an attorney for your case while you were in jail?
- Did you meet with that attorney?
- When? How many times?
- Did you come directly from solitary to meet with your attorney? Were you strip searched before/after attorney visits?

Behavioral Difficulties in Solitary Confinement

- While in solitary did you ever misbehave? What happened?
- Were you ever disciplined while in solitary?
- Were you ever denied privileges while in solitary?

Abuse in Solitary Confinement

- Were you ever hurt or mistreated by corrections officers or jail officials generally? While in solitary? What happened?
- Were you ever mistreated by other prisoners in general? While in solitary? What happened?
- Were you ever placed in restraints while in jail? What happened? When did this occur?
- Were you ever forcibly given medication you didn't want to take while in jail? When did this happen? Do you remember the medication?
- Are there other ways you have been hurt or abused in jail or prison?

Recreation & Out of Cell Time

- Did you get time out of your cell while you were in solitary for recreation?
- Were you alone during recreation? With other prisoners? Other adult prisoners?
- How long did recreation last? Did it take place every day? On weekends?
- Where did recreation take place? Inside? Outside?
- How big was the recreation space? How else would you describe the recreation space? Could you see the sky?

- Was there any recreation equipment? A ball? Weights? A pull-up bar?
- Were you allowed out of your cell for other reasons?
- How about showers?
- Were you alone for hygiene/showers? Around adults?

Educational & Other Programming in Isolation

- Did you get out-of-cell time for education? If not, describe in-cell education programming.
- How many times per day or week (education)?
- For how long each time (education)?
- How many times per week (education)?
- How many other people were in the class? All youth?
- Was the same material taught to all of you?
- How many teachers?
- Get to keep the books in the cell?
- Ever work outside of class, take tests, do worksheets?
- Did you feel like you learned anything?
- How did school compare to what you were used to before you were in jail?
- What did you like or dislike about it?
- Did you get your GED?
- Did you take GED classes?
- Have you ever been diagnosed with a learning disability or another disability?
- Do you have an “individual education plan” (IEP) (where your school, teachers and parent/guardians discuss how you learn best)?
- Did the jail ever discuss your IEP with you – or make changes to it?
- Were your parents/guardians notified?
- Did you get out-of-cell time for other programming?
- Which programs?
- How many times per week?
- How much each time?
- Were these activities with other youth?
- Were there things you would have liked to do but couldn’t?

Further Research

- Do you have any documents related to your time in solitary confinement? (hearing documents, violations notices/tickets, findings letters, medical records, evaluations, etc.)
- Do you have any documents related to mistreatment you experienced in jail? (grievance, etc.)

- Do you know anyone else who experienced solitary confinement while they were under 18 in jail or prison – can I have their contact information?
- Is there anyone else in the facility (teacher, mentor, social worker, doctor, pastor, priest) who would know about youth in isolation and who we could contact?

If the Youth is Released

- When were you released?
- Were you in solitary confinement up until you were released?
- What did you first feel when you were released?
- What did you most want to do or where did you most want to go when you got out? Did you do it?
- Did you ever think about your time in solitary when you were released?
- Did you ever have dreams or nightmares about prison after you were released?

Youth Thoughts on Adult Jail, Solitary and Solutions

- Do you think people your age should be in adult jail or prison? What about solitary confinement?
- How would you describe the experience of being in adult jail to your brother/sister/cousin/friend?
- How would you describe the experience of being in solitary confinement to your brother/sister/cousin/friend?
- What would you tell a state legislator or a judge about putting youth in jail? In solitary confinement?
- What do you want to do when you get out?
- What advice would you give to someone who was entering jail at your age?
- I've asked you a lot of questions, but I don't always ask the right ones. Is there anything I didn't ask about that you think it's important for people to know?



NO CHILD LEFT ALONE

Campaign to Stop the Solitary Confinement
of Youth in Adult Jails and Prisons

Interview Guide – Sample Consent and Release Forms

When interviewing young people about their experience in solitary confinement, and particularly in custodial settings, it is vital to ensure that the interviewee gives their informed consent. When planning to use information received in an interview in public education and advocacy materials, it is wise to record this consent and an accompanying release of liability permitting use of the information in the future. Note that this consent and release can be revoked during and after the interview.

One good practice, therefore, is to explain and discuss consent and release at the outset and throughout an interview, but wait to record the consent and release when the interview concludes.

It is sometimes also useful to write to prisoners to receive consent before an interview as this may facilitate access to the facility (but this does not replace the need to get consent for and during the interview when you arrive). You should always call a correctional facility to find out the required process for setting up prisoner interviews – whether legal or non-legal – well in advance of the date you wish to visit the facility.

As part of your investigation and advocacy with a youth you may also need records related to their incarceration, or their education or medical or mental health status while in custody. If this is the case, you should check with the facility to find out what release forms are required and what process must be followed in order to obtain such records. Local advocacy groups and defense attorneys may also be able to advise you on the best way to obtain these records.

Two sample forms are included below.

SAMPLE CONSENT FORM

I understand that [*organization*], a non-governmental and private organization that [*insert information about organization's mission*], is collecting information for [*insert purpose, such as producing campaign materials*] on the subject of [*insert topic, such as solitary confinement*]. I hereby agree /d to be interviewed for this purpose when representatives from [*organization*] visit / ed _____ [*insert location and date*].

I further understand that I am not required to speak to a representative of [*organization*] if I do not wish to, or to answer any questions I do not wish to answer. I also understand that my interview with [*organization*] will be conducted privately, that is, between myself, [*organization*], and any necessary language interpreters except, if I desire, my legal representative.

Finally, I understand that [*organization*] will ask for my preference as to whether they use my real name or a pseudonym in their publications. I also understand that [*organization*] may be required in some cases to make public my real name and information from our discussions if required by administrative or judicial process. I understand that this could include court orders arising from litigation brought by [*organization or it*]'s partners on the subject of [*topic, such as solitary confinement*]. [*Organization*] will make efforts to prevent this from occurring.

I am _____ years of age and freely give my consent to be interviewed.

Signature

Date

Name

SAMPLE RELEASE FORM

I understand that [organization] is [insert purpose, such as producing campaign materials] on the subject of [insert topic, such as solitary confinement]. I hereby grant to you and any licensees permission to:

- 1) use and re-use in publication, on-line, and in other media, information about my criminal or delinquency case and any other information discussed in the interview on _____ [insert date].
- 2) use and re-use in publication, on-line, and in other media, information about my medical history discussed in the interview on _____ [insert date].
- 3) (where applicable) use and re-use in publication, on-line, and in other media, information received from my lawyer about my criminal or delinquency case.
- 4) use and re-use in publication, on-line, and in other media, pictures, videotape or audiotape of myself or my voice.
- 5) use my picture and likeness and / or voice, and biographical data in materials you prepare and in publicity and advertising concerning [organization].
- 6) I have discussed with _____ [interviewer] whether I want my name used in any of [organization]'s publications, on-line, and in other media, and have decided that:

Choose ONE:

- I would like my name used
 I would NOT like my name used.

Please use the following **FALSE NAME** instead _____

I have received nothing of value from [organization] for my interview or for the use of photographs, videotape or audiotape of myself. I hold [organization] harmless from any liability resulting from use of my photograph, videotape or audiotape.

I am ____ years old and freely enter into this release.

Signature

Date

Name



NO CHILD LEFT ALONE

Campaign to Stop the Solitary Confinement
of Youth in Adult Jails and Prisons

Corresponding with Youth About Solitary Confinement

An effective campaign to *No Child Left Alone* should seek to show that young people in jails and prisons in your community are subjected to solitary confinement and describe what solitary confinement is like for them – using personal stories. One effective way to get this information is by corresponding with young people in jails and prisons. Some jails and prisons make data about prisoners – even those under 18 – publicly available on the internet. You can also identify the names of young prisoners using court records – as well as by working with local defense attorneys, community groups, and family members. It is particularly important to work with defense attorneys when young people are represented or have pending criminal or civil cases. The following is a template letter and survey you can send an individual (directly or through his or her attorney if they are represented) to find out more about their experience in solitary confinement.

Dear [NAME],

I hope this letter finds you well. I am contacting you because [*describe how you got their name and information*].

My name is [X] and I am with [*X organization with X purpose*]. We are concerned that jails and prisons in [State] often put youth under the age of 18 in isolation or solitary confinement either for safety, disciplinary, or other reasons.

I understand that you may have been held in solitary confinement or segregation while in adult jail or prison when you were under 18 – this means locked for more than 22 hours a day by yourself in a cell or elsewhere with limited or no human contact, programs or other activities. If this is true, I hope you will share your experience with us, although I know these things may be difficult to think about and write about.

[*Organization's Name*] is collecting the stories of youth about their experiences in solitary confinement because we are going to [write a report/talk to legislators/talk to journalists] about this issue and want to include the stories of people like you so our leaders and the public can better understand what happens to youth behind bars. We will use the stories of people who have been impacted by solitary confinement to advocate for change. If you are willing to write to us about your experience, we will not publish your name or information that could identify you.

Note, however, that officials at many jails and prisons read and record correspondence to and from prisoners.

Please also note that we are unable to provide legal aid or other assistance in individual situations [*if you work at an organization that does provide legal aid, it is important to distinguish between correspondence that may lead to representation – and therefore cause certain confidentiality obligations to attach – and research for the purposes of legal advocacy*].

UNFORTUNATELY, OUR ORGANIZATION IS UNABLE TO ASSIST ON YOUR CRIMINAL CASE(S). **Our advocacy on this issue as relates to you only addresses the conditions of your confinement, not the reason for your sentence.** Please do not include information about your case in our correspondence.

In this letter I have included a list of questions below for you to consider – please feel free to share additional thoughts or comments about the solitary confinement of youth under 18 in jails and prisons. You can share my contact information and the questions with anyone who you think would have information that would help this investigation.

Thank you for your time and for thinking about writing to me about your experience.

Sincerely,
[X]

Questions for you to consider answering:

[You should either space these questions like a survey, with lines for responses, or include extra sheets of paper for the individual to use to provide their responses. You should also include a self-addressed stamped envelope for the response.]

Today's date: _____

Biographical information:

1. What is your full name? Do you have a nickname or do you go by another name?
2. How old are you – what is your date of birth?
3. How old were you at the time of the crime for which you are incarcerated?
4. How old were you when you were held in jail before trial or adjudication – what were the dates you entered and left jail?
5. How old were you when you were convicted – what was the date?
6. How old were you when you were transferred to prison – what was the date?

About your time in JAIL or PRISON (if you were held in solitary confinement in jail *and* prison, please answer these questions for one experience and then answer them again for the other):

7. Were you placed in solitary confinement while you were in jail or prison? What was the cell like? Did you have a cell mate?
8. Were you placed in solitary confinement in jail or prison because of your actions or as a disciplinary sanction?
9. Were you placed in solitary confinement in jail or prison to protect you because of your age, size, or another characteristic?
10. Were you placed in solitary confinement in jail or prison for a medical or mental health purpose or for suicide watch?
11. Were you placed in solitary confinement in jail or prison because you asked to be in isolation?
12. How long were you held in solitary confinement each time while you were in jail or prison – how much total time did you spend in solitary confinement? Can you give dates?

About SOLITARY CONFINEMENT

13. How did being in solitary confinement in jail or prison make you feel? Describe your feelings.
14. How much time, each day or each week, could you get out of your cell and what would you do while you were out (shower, exercise, use the phone, have visits, etc.)?

15. While you were in solitary confinement in jail or prison, were you able to access mental health services/programming – were they provided in your cell or outside your cell? Describe them.
16. While you were in solitary confinement in jail or prison, were you able to access education services/programming – were they provided in your cell or outside your cell? Describe them.
17. Did being in isolation in jail impact or change you? Describe what you mean.
18. How would you describe the overall experience of being in solitary confinement? What would you tell another person about what you went through?
19. What do you think about the use of solitary confinement by jail or prison officials – Do you think there are alternatives that achieve the same purpose? If so, what are they? Would you do the same thing or different if you were in charge? If yes, what would it be?
20. What advice would you give to someone under age 18 who was about to be placed in solitary confinement?
21. Do you know anyone else who was placed in solitary confinement? What is their name? Contact Information?
22. Do you have family members or friends who I could interview about your experience? What are their names? Contact information?



NO CHILD LEFT ALONE

Campaign to Stop the Solitary Confinement
of Youth in Adult Jails and Prisons

Section IV: Advocacy Materials

Included in this section are materials that can assist your advocacy:

- The **ACLU's Briefing Paper on the Solitary Confinement of Youth** provides a primer on the issue for coalition partners, allies, and legislators.
- The **Stop Youth Solitary Two-Pager** provides a brief overview of the issue.
- Short Advocacy documents explaining the importance of the fact that **Children are Not Miniature Adults** for advocacy; illustrating how **International Law and Practice** can be helpful in your campaign; and explaining how the **Prison Rape Elimination Act** can play a part in your advocacy on youth solitary are helpful for advocacy partners, allies, and legislators.
- The American Academy of Child and Adolescent Psychiatry (AACAP) **Policy Statement** against solitary confinement helps show the psychological risks of the practice.
- The Executive Summary of the 2012 ACLU/Human Rights Watch report, *Growing Up Locked Down: Youth in Solitary Confinement in Jails and Prisons Across the United States* provides a brief overview of research and findings on the issue and can be used in advocacy meetings. The full report is available at www.aclu.org/growinguplockeddown/.



NO CHILD LEFT ALONE

Campaign to Stop the Solitary Confinement of Youth in Adult Jails and Prisons

BRIEFING PAPER: YOUTH IN SOLITARY CONFINEMENT IN ADULT FACILITIES

Every day, in jails and prisons across the United States, children are held in solitary confinement. They spend 22 or more hours each day alone, usually in a small cell behind a solid steel door, isolated both physically and socially, often for days, weeks, or even months on end. Sometimes there is a window allowing natural light to enter or a view of the world outside cell walls. Sometimes it is possible to communicate by yelling to other prisoners, with voices distorted, reverberating against concrete and metal, but communicating with other prisoners is often forbidden. Occasionally, they get a book or Bible, and if they are lucky, education materials. But inside this cramped space, few things distinguish one hour, one day, one week, or one month, from the next.

While isolated in solitary confinement, children are deprived of the services and programming they need for healthy growth and development. Solitary confinement can cause serious psychological, physical, and developmental harm – or, worse, can lead to persistent mental health problems and suicide. These risks are magnified for young people with disabilities or histories of trauma and abuse. Normal human contact and a range of age-appropriate services and programming are essential for the development and rehabilitation of young offenders.

Children (young people under the age of 18) should never be held in adult facilities. But if they are, they should be held in separate areas with other children, and never locked in solitary confinement. Any practice that involves physical and social isolation of children should be strictly limited, regulated, and publicly reported.

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.”¹ It is time to abolish the solitary confinement of young people. State and federal lawmakers, local governments, and those who run adult jails and prisons should immediately embark on a review of the laws, policies, and practices that result in young people being held in solitary confinement, with the goal of definitively ending this practice.

WHY ARE CHILDREN HELD IN ADULT FACILITIES?

Across the United States, because of changes in the law beginning in the 1980s, children are often charged as adults and detained in adult jails and prisons before trial and after conviction. Department of Justice data suggest that nearly 200,000 children are charged as adults annually² and that close to 100,000 children are held in adult jails and prisons each year.³ Yet research continues to show that treating children as if they were adults has negative public safety consequences, does not reduce violence, and likely increases recidivism.⁴ And there is no question that their detention in adult facilities is extremely dangerous – with high rates of physical and sexual assault.⁵

STATE LAWS – Some states mandate that *all* individuals charged in criminal court be detained in adult jail pre-trial – regardless of age.⁶ Some states require that children held in adult facilities before trial be kept separate from adults in order to provide some protection from adults (often requiring separation “by sight and sound”).⁷ Other states leave it to each county to decide whether, how, and when young people need to be protected.⁸

Some state prison systems have special “youthful offender” facilities that serve some proportion of the youth admitted to prison who are under a certain age (generally in their early twenties).⁹ Still, the general practice in many states, including those with “youthful offender” systems, is to hold some children in adult facilities – in short, children and adults are held together nationwide.¹⁰

FEDERAL LAW – The *Juvenile Justice and Delinquency Prevention Act (JJJPA)* creates financial incentives for states to treat some young people differently from adults, including by diverting those subject to the jurisdiction of the juvenile justice system (and certain categories of misdemeanants) from adult facilities.¹¹ Those who are protected by the federal law must either never be held in adult facilities (such as “status offenders,” those whose conduct is illegal only by virtue of their age – like a curfew violation) or be moved from adult facilities within 6 hours (and must be sight and sound separated from adult prisoners while there).¹² However, this law is not currently interpreted to cover children who are charged with felonies in the adult system.¹³ Because the JJJPA does not explicitly extend its protections to children with these charges, a large swath of youth are left unprotected in adult facilities despite their age and vulnerability.



As the nation's largest public interest law organization, with affiliate offices in every state and a legislative office in Washington D.C., the ACLU works daily in courts, legislatures, and communities to promote more effective criminal justice policies.

To learn more visit www.aclu.org/stopsolitary

LOW LEVEL CRIMES – Except in the federal system,¹⁴ young people who are convicted as adults and sentenced to more than a year of incarceration are typically sent to adult prison. But a significant proportion of young people who are charged as adults or held in adult jails pre-trial do not end up in prison after conviction. In fact, Department of Justice data suggest that perhaps one-third or more of these youth are returned to the community with probation or with a sentence of “time served” – meaning that the time spent in jail awaiting trial is equivalent to or greater than the actual sentence the youth would have received for the crime committed. These data suggest that a significant proportion of youth charged as adults and held in adult facilities before trial are ultimately not convicted of serious crimes since they are never sentenced to time in prison.¹⁵

For these reasons, a range of national organizations, such as the American Jail Association, support holding children in juvenile rather than adult facilities.¹⁶

WHAT IS SOLITARY CONFINEMENT AND WHY ARE CHILDREN IN SOLITARY?

Solitary confinement means physical and social isolation in a cell for 22-24 hours per day.¹⁷ It is often accompanied by a range of restrictions and deprivations – limits on everything from reading materials to visitation to exercise.¹⁸

Adult jails and prisons generally use solitary confinement in the same way for all prisoners – including children.¹⁹ Prisoners are generally held in solitary confinement for four reasons:

- **DISCIPLINARY SOLITARY CONFINEMENT** (common euphemisms: punitive segregation, disciplinary custody): Physical and social isolation used to punish prisoners when they break facility rules, such as those against talking back, possessing contraband, or fighting;
- **PROTECTIVE SOLITARY CONFINEMENT** (common euphemisms: protective custody, administrative confinement): Physical and social isolation used to protect a prisoner from other prisoners (or, in the case of youth, from adults);
- **ADMINISTRATIVE SOLITARY CONFINEMENT** (common euphemism: administrative segregation): Physical and social isolation – frequently indefinite in duration – used because officials do not know how else to manage a prisoner or when a prisoner is deemed too disruptive to the safe or orderly running of an institution;
- **MEDICAL SOLITARY CONFINEMENT** (common euphemism: therapeutic seclusion): Physical and social isolation to medically treat prisoners, such as when they have a contagious disease or express a desire to commit suicide.²⁰

Jail and prison officials do not generally use the term “solitary confinement” to refer to the range of segregation and isolation practices they employ. But because the conditions and effects of various segregation practices are substantially the same, the ACLU uses a single term based on the level of social isolation and environmental deprivation.

Neither states nor the federal government publish systematic data that show the number of youth held in adult jails and prisons who are subjected to solitary confinement. But research suggests that *protective* and *punitive* solitary confinement likely account for a significant proportion of cases:²¹

- Research by Human Rights Watch and the ACLU recently found that some jails hold 100% of youth in solitary confinement for the entire period of their pre-trial detention – to protect them from adults.²² This practice is likely to account for much of the solitary confinement of youth in pre-trial adult facilities, particularly in counties that charge small numbers of youth as adults – and may disproportionately affect girls, even in counties that charge large numbers of boys as adults.²³
- Research by Human Rights Watch and the ACLU also recently found that in some jails and prisons, a significant percentage of youth are subjected to punitive solitary confinement. This practice is likely to account for much of the solitary confinement of youth in prisons and in counties that charge large numbers of youth as adults. Many officials reported that they subject youth and adults to the same disciplinary rules and that they subject youth to solitary confinement as a punitive sanction.²⁴ For example, disciplinary data reported by the New York City Department of Corrections suggest that more than 14 percent of adolescents between the ages of 16 and 18 spend part of their pre-trial detention in punitive solitary confinement.²⁵

WHAT IF YOUR CHILD WAS HELD IN SOLITARY CONFINEMENT?

The devastating effects of subjecting youth to solitary confinement reach our families and our communities. Vicky Gunderson, whose son Kirk committed suicide in an isolation cell, describes her experience when her child was incarcerated in an adult jail:

Kirk was accused by older men of being “immature;” each day he had to teach himself during the one hour of “school” because the teacher was frequently unavailable; the noise level in his block gave him headaches; a convicted sex offender exposed himself to Kirk; he was involved in a couple physical confrontations; his depression increased; and he was so bored that his thoughts consumed him. . . . Our family, extended and immediate, and a community of supportive friends and neighbors, did our best to support Kirk while he was in jail. Together, we never missed a phone call or visit. . . . Two days after Christmas in 2005, Kirk was placed in [solitary] confinement, known as “the hole” Kirk requested not to be alone because he was having anxiety. Despite his request for help and regulations requiring one-hour checks on inmates in confinement, Kirk was left alone for approximately two and a half hours. When jail staff finally checked on Kirk, my son was found dead hanging by a blanket from the smoke detector in the cell.

SOURCE: NEELUM ARYA, CAMPAIGN FOR YOUTH JUSTICE, *JAILING JUVENILES: THE DANGERS OF INCARCERATING YOUTH IN ADULT JAILS IN AMERICA* 11 (Nov. 15, 2007), available at http://www.campaignforyouthjustice.org/documents/CFYJNR_JailingJuveniles.pdf.

HOW DOES SOLITARY CONFINEMENT HARM CHILDREN?

Solitary confinement can cause serious psychological, physical, and developmental harm to young people who need age-appropriate services and programming for their healthy growth and development or to be rehabilitated (if found guilty). Solitary is even more harmful for young people with disabilities.

PSYCHOLOGICAL HARM

There is consensus that any isolation of youth should be strictly limited because of the potential for psychological harm. Although research on solitary confinement has focused on adults, the findings of this research reasonably can be applied to youth, particularly given parallels in other related areas and extensive research concerning children’s development and growth. This research has found that adults who are subject to solitary confinement generally exhibit a variety of negative physiological and psychological reactions, including: hypersensitivity to external stimuli;²⁶ perceptual distortions and hallucinations;²⁷ increased anxiety and nervousness;²⁸ revenge fantasies, rage, and irrational anger;²⁹ fears of persecution;³⁰ lack of impulse control;³¹ severe and chronic depression;³² appetite loss and weight loss;³³ heart palpitations;³⁴ withdrawal;³⁵ blunting of affect and apathy;³⁶ talking to oneself;³⁷ headaches;³⁸ problems sleeping;³⁹ confusing thought processes;⁴⁰ nightmares;⁴¹ dizziness;⁴² self-mutilation;⁴³ and lower levels of brain function, including a decline in EEG activity after only seven days in solitary confinement.⁴⁴

Young people are even less psychologically able than adults to handle solitary confinement. Youth are also psychologically different than adults. They experience time differently (a day for a child feels longer than a day to an adult) and have a greater need for social stimulation. Experts, such as the American Academy of Child and Adolescent Psychiatry, believe that, due to their “developmental vulnerability,” adolescents are particularly at risk of adverse reactions.⁴⁶

- Research by Human Rights Watch and the ACLU recently chronicled the experiences of young people in solitary confinement. Many spoke to researchers in harrowing detail about struggling with one or more of a range of serious mental health problems during their time in solitary. They talked about thoughts of suicide and self-harm; visual and auditory hallucinations; feelings of depression; acute anxiety; shifting sleep patterns; nightmares and traumatic memories; and uncontrollable anger or rage.⁴⁷

RISK OF SUICIDE

Prisoners in solitary confinement account for a disproportionate number of suicides among people in custody.⁴⁸ For youth, suicide is very strongly associated with isolation.⁴⁹

- Research published by the Department of Justice found that more than 50% of the suicides of children detained in juvenile facilities occurred while youth were confined alone in their room (a form of solitary confinement) – and that more than 60% of young people who committed suicide had a history of being held in isolation.⁵⁰
- Research by Human Rights Watch and the ACLU recently found that many children consider or attempt suicide while in solitary confinement.⁵¹

PHYSICAL HARM

Adult facilities are generally ill-equipped to provide age-appropriate mental health, medical, or dental services to young people, let alone nutrition adequate to support growing muscles and bones.⁵² The most common deprivation that accompanies solitary confinement, denial of physical exercise, is physically harmful to youth health, well-being, and growth.

- Research by Human Rights Watch and the ACLU recently found that many adult facilities could not provide youth access to medical or mental health professionals trained in adolescent development. Youth told researchers about being denied physical exercise – or only being able to exercise in a small metal cage.⁵³

DEVELOPMENTAL HARM

Adult facilities – even those with a constant population of children – often do not provide a range of programming and services tailored to the needs of young people.⁵⁴ Young people in solitary confinement are generally at an additional disadvantage, as they are denied access to whatever limited resources might be available to other youth as a “privilege” they don’t deserve. This can include educational programming, access to reading materials, and the ability to write, call, or visit with loved ones.

- Research by Human Rights Watch and the ACLU recently found that many facilities fail to provide education to young people, or merely provide an in-cell “study packet,” which is usually only photocopied worksheets, with limited or no access to an educator to ask questions or get feedback. Some youth reported being denied any reading materials whatsoever. Youth also told researchers that being unable to hug or visit with loved ones was torturous.⁵⁵

HARM TO CHILDREN WITH DISABILITIES OR A HISTORY OF TRAUMA AND/OR ABUSE

For many youth in jail or prison, the vulnerabilities of developmental immaturity are compounded by disabilities and/or by histories of trauma and abuse. Youth in the adult system report these vulnerabilities at much higher rates than the general population.⁵⁶ These factors, though experienced differently by different individuals, can significantly exacerbate the harm of solitary confinement. Federal law – the Americans with Disabilities Act, the Rehabilitation Act, and the Individuals with Disabilities Education Act – all require state and local governments to make accommodation for disabilities when they care for young people in custody.⁵⁷

- Research by Human Rights Watch and the ACLU recently found that many jails and prisons have few resources or protocols in place to identify or accommodate youth with disabilities. Because solitary confinement is traumatic, and commonly accompanied by a range of additional deprivations, youth with mental, intellectual, and cognitive or learning disabilities were particularly affected.⁵⁸

For these reasons, every major set of national standards governing age- and developmentally-appropriate practices to manage and care for youth under age 18 in correctional settings strictly regulates and limits all forms of isolation.⁵⁹

HOW ARE CHILDREN DIFFERENT FROM ADULTS?

Young people have needs that differ in nature and degree from those of adults because they are still developing physically and psychologically. The fact that youth are still developing means that they are particularly amenable to rehabilitation and particularly vulnerable to trauma and abuse.

Youth grow and change. Adolescence is transitory. As Elizabeth Scott and Laurence Steinberg, renowned experts in adolescent development, have written, “[t]he period is transitional because it is marked by rapid and dramatic change within the individual in the realms of biology, cognition, emotion, and interpersonal relationships.”⁶⁰

During adolescence, the body changes significantly, including the development of secondary sex characteristics. Boys and girls gain height, weight, and muscle mass, as well as pubic and body hair; girls develop breasts and begin menstrual periods, and boys’ genitals grow and their voices change.⁶¹ The human brain also goes through dramatic structural growth during teen years and into the mid-twenties. The major difference between the brains of teens and those of young adults is the development of the frontal lobe.⁶² The frontal lobe is responsible for cognitive processing, such as planning, strategizing, and organizing thoughts and actions.⁶³ Researchers have determined that one area of the frontal lobe, the dorsolateral prefrontal cortex, is among the last brain regions to mature, not reaching adult dimensions until a person is in his or her twenties.⁶⁴ This part of the brain is linked to “the ability to inhibit impulses, weigh consequences of decisions, prioritize, and strategize.”⁶⁵ As a result, teens’ decision-making processes are shaped by impulsivity, immaturity, and an under-developed ability to appreciate consequences and resist environmental pressures.⁶⁶

The differences between youth and adults make youth more vulnerable to harm, and disproportionately affected by trauma and deprivation.

HOW DOES THE LAW SPECIALLY PROTECT CHILDREN?

The developmental differences between youth and adults are reflected in international human rights law and have also been recognized by the U.S. Supreme Court in cases establishing that young people should be afforded greater constitutional protections in the context of crime and punishment.

U.S. CONSTITUTIONAL LAW

The U.S. Constitution protects persons deprived of their liberty, both before and after conviction. The Supreme Court has recognized that these protections apply differently to children and adults in the context of crime and punishment.

The Fifth and Fourteenth Amendment protections against deprivation of liberty without due process of law establish the contours of the protections afforded to pretrial detainees from unconstitutional conditions of confinement.⁶⁷ Pretrial, individuals may be held to ensure that they are “available for trial,”⁶⁸ and during this period may be subjected “to the restrictions and conditions of the detention facility.”⁶⁹ But they may not be subjected to punishment⁷⁰ or to treatment which “shocks the conscience.”⁷¹ The Eighth Amendment governs the protections afforded to convicted prisoners from unhealthy or dangerous conditions of confinement.⁷² Officials have an obligation to “provide humane conditions of confinement”⁷³ to those convicted of a crime. The limits of the prohibition against cruel and unusual punishment are defined by “evolving standards of decency.”⁷⁴ Criminal sanctions also constitute cruel and unusual punishment when they are “grossly disproportionate” and without penological justification.⁷⁵

Although no Court of Appeals has addressed the solitary confinement of children, a number of lower courts have found that the solitary confinement of individuals with serious mental health problems violates the Eighth Amendment because individuals with serious mental health problems are more likely than others to have great difficulty adjusting to and tolerating time in solitary confinement, and solitary confinement can even make the symptoms of mental health problems worse.⁷⁶ Likewise, as explained above, children are especially vulnerable to the negative consequences of solitary confinement.

In a string of recent cases, the Supreme Court has ruled that the Constitution’s protections apply differently to young people who come into conflict with the law because kids are *different* from adults. In cases involving the juvenile death penalty,⁷⁷ juvenile life without parole,⁷⁸ and custodial interrogations,⁷⁹ the Court has stated that treating youth as if they are adults – without acknowledging their age, developmental differences, or individual characteristics – is unconstitutional. The Court has suggested that because “an offender’s age is relevant to the Eighth Amendment ... criminal procedure laws that fail to take defendants’ youthfulness into account at all would be flawed.”⁸⁰ The Court has also repeatedly relied on international law and practice on children’s rights to affirm its reasoning.⁸¹ Given this analysis and the international consensus against the practice, the solitary confinement of children is grossly disproportionate, inconsistent with evolving standards of decency, and shocks the conscience.

INTERNATIONAL HUMAN RIGHTS LAW AND PRACTICE

International law, which identifies anyone below the age of 18 years as a child, recognizes that “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth.”⁸² The International Covenant on Civil and Political Rights (ICCPR), a treaty ratified by the United States, acknowledges the need for special treatment of children in the criminal justice system and emphasizes the importance of their rehabilitation.⁸³ The Convention on the Rights of the Child (CRC) also addresses the particular rights and needs of children who come into conflict with the law.⁸⁴

A number of international instruments and human rights bodies have declared that solitary confinement of children violates human rights laws and standards prohibiting cruel, inhuman or degrading treatment and called for the practice to be banned, such as: the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines),⁸⁵ the Committee on the Rights of the Child,⁸⁶ and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the Beijing Rules).⁸⁷ Based on the harmful physical and psychological effects of solitary confinement and the particular vulnerability of children, the Office of the U.N. Special Rapporteur on Torture has twice called for the abolition of solitary confinement of persons under age 18.⁸⁸

Just as the Supreme Court has found that differences between children and adults make children undeserving of the most severe and punitive sentences, so should children be seen as undeserving of the most severe and punitive conditions of confinement.⁸⁹

HOW CAN THIS PROBLEM BE SOLVED?

Because neither detention in adult facilities nor solitary confinement is safe for children, there is agreement among many corrections and mental health professionals that children should be removed from adult jails and prisons and that solitary confinement of youth under age 18 should be prohibited. No matter where children are held, there are a range of alternatives to manage and care for them safely – without resorting to solitary confinement.

Remove Children From the Adult Correctional System

The first and best option for reform is to remove children from the adult correctional system. Juvenile facilities are better equipped to provide for the needs of youth.

- Young people can be moved out of the adult prison system by statute, or without statutory change, by administrative measures, such as by Memoranda of Understanding between adult and juvenile facilities.
- A growing number of states – including California, Virginia, Texas, Pennsylvania, and Colorado – have enacted legislation permitting or mandating detention in juvenile facilities for youth accused or convicted of an adult crime.⁹⁰
- Another approach to this problem recently adopted by a number of states, such as Connecticut, Illinois, Mississippi, and Rhode Island, is to “raise the age” of juvenile court jurisdiction so that fewer youth are automatically prosecuted in the adult system.⁹¹
- Other states have changed the laws governing transfer of juveniles to adult court to limit such transfers to exceptional cases.⁹²

Strictly Limit Any Isolation of Children and Prohibit Solitary Confinement

Solitary confinement of youth under 18 should be banned. This practice can be ended by state legislators, local officials, and facility administrators. Because physical and social isolation is so harmful and traumatic – and accompanied by other serious deprivations (like denial of education), all isolation practices should be strictly limited and regulated. Children should never be subjected to any practice that involves significant levels or durations of physical or social isolation. Isolation should only be used as an emergency measure. Separation practices to protect, to manage, or to discipline youth should be used sparingly and should never rise to the level of solitary confinement.

A new tool for prison administrators, government officials, and community advocates are the federal regulations implementing the *Prison Rape Elimination Act (PREA)*. The PREA regulations mandate that adult jails and prisons separate children (those under 18) from older prisoners in common areas.⁹³ The regulations also mandate that facilities use their “best efforts” to avoid using isolation to separate youth and to provide certain programming and services to youth in isolation.⁹⁴ The regulations require that youth placed in isolation in spite of a facility’s “best efforts” should not be denied daily large-muscle exercise, or legally required special education services, and should be granted access to other programs and work opportunities.⁹⁵ PREA requires that facilities be audited for PREA compliance every three years and that these audits must be made available to the public.⁹⁶ If a state fails to comply with PREA it risks losing some percentage of federal funds.⁹⁷ PREA thus provides guidance for state and local officials on appropriate policy and provides advocacy opportunities for the public to ensure safer treatment of youth in adult facilities.

Require Public Reporting of Youth Solitary Confinement Practices

Solitary confinement is a terrible secret of our criminal justice system – jails and prisons rarely make data about isolation practices public and there are almost no data about the solitary confinement of young people in adult facilities. Meaningful reform must be accompanied by data reporting and increased accountability to allow the public and elected officials to engage in appropriate oversight. Advocating for legal and policy changes that make solitary confinement practices transparent to the public is a key step to ending this practice and implementing better alternatives.

ENDNOTES

- ¹ 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>.
- ² DOJ researchers note that data from 21 states accounts for at least 14,000 transfers in 2007 (the most recent year for which data is available); that another 175,000 youth under 18 charged as adults are likely accounted for by the 13 states that set the age of criminal majority below 18 in 2007; but that there are many significant gaps in the data. DEP'T OF JUSTICE OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, TRYING JUVENILES AS ADULTS: AN ANALYSIS OF STATE TRANSFER LAWS AND REPORTING (2011), *available at* <https://www.ncjrs.gov/pdffiles1/ojdp/232434.pdf>. *See also* REP. OF THE ATT'Y GEN.'S NAT'L TASK FORCE ON CHILDREN EXPOSED TO VIOLENCE, DEFENDING CHILDHOOD: PROTECT, HEAL, THRIVE, *supra* note 1.
- ³ 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. HUMAN RIGHTS WATCH & THE AMERICAN CIVIL LIBERTIES UNION, GROWING UP LOCKED DOWN: YOUTH IN SOLITARY CONFINEMENT IN JAILS AND PRISONS ACROSS THE UNITED STATES 101-107 (appendix 1) (2012), *available at* <http://www.aclu.org/growinguplockeddown>.
- ⁴ EDWARD MULVEY, DEP'T OF JUSTICE OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, TRANSFERS OF JUVENILES TO ADULT COURT: EFFECTS OF A BROAD POLICY IN ONE COURT (2012), *available at* <http://www.ojdp.gov/pubs/232932.pdf>; ROBERT HAHN, ET AL., CENTERS FOR DISEASE CONTROL, EFFECTS ON VIOLENCE OF LAWS AND POLICIES FACILITATING THE TRANSFER OF YOUTH FROM THE JUVENILE TO THE ADULT SYSTEM (2007), *available at* <http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5609a1.htm>.
- ⁵ NAT'L PRISON RAPE ELIMINATION COMM'N, NAT'L PRISON RAPE ELIMINATION COMM'N REP. 42 (2009), *available at* <https://www.ncjrs.gov/pdffiles1/226680.pdf>, *citing* HOWARD N. SNYDER & MELISSA SICKMUND, DEP'T OF JUSTICE OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, JUVENILE OFFENDERS AND VICTIMS: 2006 NAT'L REP. (2006); ALLEN J. BECK & PAIGE M. HARRISON, DEP'T OF JUSTICE BUREAU OF JUSTICE STATISTICS, SEXUAL VICTIMIZATION IN PRISONS AND JAILS REPORTED BY PRISONERS, 2008-09 (2010), *available at* <http://bjs.ojp.usdoj.gov/content/pub/pdf/svpjri0809.pdf>; Jeffrey Fagan, Martin Forst, & T. Scott Vivona, *Youth in Prisons and Training Schools: Perceptions and Consequences of the Treatment-Custody Dichotomy*, J. JUVENILE & FAMILY CT., 40, 49 (1989); JASON ZIEDENBERG & VINCENT SCHIRALDI, JUSTICE POLICY INSTITUTE, THE RISKS JUVENILES FACE WHEN THEY ARE INCARCERATED WITH ADULTS (1997), *available at* http://www.justicepolicy.org/images/upload/97-02_REP_RiskJuvenilesFace_JJ.pdf. *But see* ALLEN J. BECK ET AL., DEP'T OF JUSTICE BUREAU OF JUSTICE STATISTICS, SEXUAL VICTIMIZATION IN PRISONS AND JAILS REPORTED BY INMATES, 2011-12 22 (2013), *available at* <http://www.bjs.gov/content/pub/pdf/svpjri1112.pdf> (Finding that "[t]hese data do not support the conclusion that juveniles held in adult prisons and jails are more likely to be sexually victimized than inmates in other age groups.").
- ⁶ State law regarding charging children as adults varies. Some states designate all youth of a particular age (e.g. 16, 17) as adults. Some charge children who are accused of particular offenses (e.g. murder) as adults. Some jurisdictions make such categorical distinctions by statute; others give the prosecutor the discretion to decide on a case by case basis. REP. OF THE ATT'Y GEN.'S NAT'L TASK FORCE ON CHILDREN EXPOSED TO VIOLENCE, DEFENDING CHILDHOOD: PROTECT, HEAL, THRIVE, *supra* note 1; DEP'T OF JUSTICE OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, TRYING JUVENILES AS ADULTS: AN ANALYSIS OF STATE TRANSFER LAWS AND REPORTING, *supra* note 2; HUMAN RIGHTS WATCH & THE AMERICAN CIVIL LIBERTIES UNION, GROWING UP LOCKED DOWN, *supra* note 3, at 101-107; NEELUM ARYA, CAMPAIGN FOR YOUTH JUSTICE, JAILING JUVENILES: THE DANGERS OF INCARCERATING YOUTH IN ADULT JAILS IN AMERICA 26-37 (2007), *available at* http://www.campaignforyouthjustice.org/documents/CFYJNR_JailingJuveniles.pdf.
- ⁷ HUMAN RIGHTS WATCH & THE AMERICAN CIVIL LIBERTIES UNION, GROWING UP LOCKED DOWN, *supra* note 3, at 101-107 (appendix 1); ARYA, *supra* note 6, at 26-37.
- ⁸ REP. OF THE ATT'Y GEN.'S NAT'L TASK FORCE ON CHILDREN EXPOSED TO VIOLENCE, DEFENDING CHILDHOOD: PROTECT, HEAL, THRIVE, *supra* note 1; DEP'T OF JUSTICE OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, TRYING JUVENILES AS ADULTS: AN ANALYSIS OF STATE TRANSFER LAWS AND REPORTING, *supra* note 2; HUMAN RIGHTS WATCH & THE AMERICAN CIVIL LIBERTIES UNION, GROWING UP LOCKED DOWN, *supra* note 3, at 101-107 (appendix 1) (2012); ARYA, *supra* note 6, at 26 -37.
- ⁹ HUMAN RIGHTS WATCH & THE AMERICAN CIVIL LIBERTIES UNION, GROWING UP LOCKED DOWN, *supra* note 3, at 17-18.
- ¹⁰ *Id.*
- ¹¹ 42 U.S.C. § 5633(a)(11) (2006); HUMAN RIGHTS WATCH & THE AMERICAN CIVIL LIBERTIES UNION, GROWING UP LOCKED DOWN, *supra* note 3, at 17.
- ¹² 28 C.F.R. § 31.303(d)(1)(i) (2004).
- ¹³ 42 U.S.C. 5633(a)(11) (2006); CAMPAIGN FOR YOUTH JUSTICE, FACT SHEET: JAIL REMOVAL AND SIGHT AND SOUND CORE PROTECTIONS, *available at* <http://www.campaignforyouthjustice.org/documents/FactSheet-JailRemovalandSightandSoundcoreprotections.pdf> (last visited Mar. 5, 2013).
- ¹⁴ 18 U.S.C. 5039 (2012), *available at* <http://www.gpo.gov/fdsys/pkg/USCODE-2011-title18/pdf/USCODE-2011-title18-partIV-chap403-sec5040.pdf>; BUREAU OF PRISONS, PROGRAM STATEMENT 5216.05, JUVENILE DELINQUENTS (1999), *available at* http://www.bop.gov/policy/progstat/5216_005.pdf.
- ¹⁵ REP. OF THE ATT'Y GEN.'S NAT'L TASK FORCE ON CHILDREN EXPOSED TO VIOLENCE, DEFENDING CHILDHOOD: PROTECT, HEAL, THRIVE, *supra* note 1; DEP'T OF JUSTICE OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, TRYING JUVENILES AS ADULTS: AN ANALYSIS OF STATE TRANSFER LAWS AND REPORTING, *supra* note 2.
- ¹⁶ *See, e.g.*, AM. CORR. ASS'N, PUB. CORR. POLICY ON YOUTHFUL OFFENDERS TRANSFERRED TO ADULT CRIMINAL JURISDICTION (2009); AM. JAIL ASS'N, POLICY ON JUVENILES IN JAILS (2008).
- ¹⁷ HUMAN RIGHTS WATCH & THE AMERICAN CIVIL LIBERTIES UNION, GROWING UP LOCKED DOWN, *supra* note 3. This is also the definition used by the United Nations Special Rapporteur on Torture. Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Interim Rep. of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, ¶ 77, U.N. Doc. A/66/268 (Aug. 5, 2011) (by Juan Mendez), *available at* <http://solitaryconfinement.org/uploads/SpecRapTortureAug2011.pdf>.
- ¹⁸ *C.B., et al. v. Walnut Grove Authority*, No. 3:10cv663, ¶ IV(c)(1) (S.D. Miss. filed Feb. 3, 2012) (Consent decree), *available at* http://www.aclu.org/files/assets/68-1_ex_1_consent_decree.pdf; *Doe et al., v. Montana*, No. 6:2010cv00006 (Mont. 1st Dist. Ct. filed Jan. 26, 2010) (Complaint), *available at* <http://www.aclu.org/files/assets/2009-12-16-DoevMontana-Complaint.pdf>; Chris Vogel, *For Their Own Good*, TEX. OBSERVER, (June 9, 2010), *available at* <http://www.texasobserver.org/mollyaward/columns/for-their-own-good>; ARYA, *supra* note 6, at 26 -37 (2007); Letter from Human Rights Watch to L.A. County Sheriff (2003), *available at* <http://hrw.org/press/2003/06/us062503-ltr.htm>.
- ¹⁹ DEP'T OF JUSTICE NAT'L INST. OF CORR., YOU'RE AN ADULT NOW (2011), *available at* <http://static.nicic.gov/Library/025555.pdf>; *Keeping Youth Safe While in Custody: Sexual Assault in Adult and Juvenile Facilities: Hearing Before the H. Subcomm. on Crime, Terrorism and Homeland Security, Comm. on the Judiciary*, 111th Cong. (2010) (statement of Sheriff Gabriel Morgan), *available at* <http://www.gpo.gov/fdsys/pkg/CHRG-111hrrg55066/pdf/CHRG-111hrrg55066.pdf>; DEP'T OF JUSTICE OFFICE OF JUSTICE PROGRAMS, JUVENILE IN ADULT PRISONS AND JAILS: A NATIONAL ASSESSMENT (2000), *available at* <https://www.ncjrs.gov/pdffiles1/bja/182503.pdf>.
- ²⁰ *See generally* HUMAN RIGHTS WATCH & THE AMERICAN CIVIL LIBERTIES UNION, GROWING UP LOCKED DOWN, *supra* note 3; AMERICAN CIVIL LIBERTIES UNION, BRIEFING PAPER ON SOLITARY CONFINEMENT (2012), *available at* http://www.aclu.org/files/pdfs/prison/stop_sol_briefing_paper_july.pdf.
- ²¹ In the last decade, investigations conducted by the US Department of Justice have found youth in solitary confinement in adult facilities, and declared these practices unconstitutional as applied. Letter from Thomas E. Perez, Assistant Att'y Gen., to Andrew J. Spano, Westchester County Executive 27-30 (Nov. 19, 2010), *available at* http://www.justice.gov/crt/about/spl/documents/Westchester_findlet_11-19-09.pdf (noting that the average disciplinary sanction imposed was in excess of 365 days in isolation, with the longest period being 510 days, and noting how the isolation has contributed to the deteriorating mental health of juvenile prisoners); Letter from Wan J. Kim, Assistant Att'y Gen., to Jim Doyle, Governor of Wis. 10-13 (May 1, 2006), *available at* http://www.justice.gov/crt/about/spl/documents/taychedah_findlet_5-1-06.pdf (finding that the facility used administrative segregation and observation status for prisoners with severe mental illness in violation of the Constitution); Letter from Ralph F. Boyd, Jr., Assistant Att'y Gen., to Parris N. Glendenning, Governor of Md. (Aug. 13, 2002), *available at* http://www.justice.gov/crt/about/spl/documents/baltimore_findings_let.php (finding that juveniles were put in isolation cells under "supermax" conditions sometimes for as long as several months).
- ²² HUMAN RIGHTS WATCH & THE AMERICAN CIVIL LIBERTIES UNION, GROWING UP LOCKED DOWN, *supra* note 3, at 63-65.
- ²³ This is because the numbers of girls is generally so small that there might only be one girl in a facility that otherwise regularly has a small population of boys.
- ²⁴ HUMAN RIGHTS WATCH & THE AMERICAN CIVIL LIBERTIES UNION, GROWING UP LOCKED DOWN, *supra* note 3, at 63-65.

²⁵ *Id.* at 131-134.

²⁶ Stuart Grassian, *Psychopathological Effects of Solitary Confinement*, 140 AM. J. OF PSYCHIATRY 1450, 1452 (1983).

²⁷ *Id.*; Craig Haney, *Mental Health Issues in Long-Term Solitary and "Supermax" Confinement*, 49 CRIME & DELINQ. 124, 130, 134 (2003); see generally Richard Korn, *The Effects of Confinement in the High Security Unit at Lexington*, 15 SOC. JUST. 8 (1988).

²⁸ Grassian, *supra* note 26, at 1452-53; Haney, *supra* note 27, at 130, 133; Holly A. Miller, *Reexamining Psychological Distress in the Current Conditions of Segregation*, 1 J. OF CORRECTIONAL HEALTHCARE 39, 48 (1994). See generally Stanley L. Brodsky & Forrest R. Scogin, *Inmates in Protective Custody: First Data on Emotional Effects*, 1 FORENSIC REP. 267 (1988).

²⁹ Grassian, *supra* note 26, at 1453; Holly A. Miller & G. Young, *Prison Segregation: Administrative Detention Remedy of Mental Health Problem?*, 7 CRIM. BEHAV. AND MENTAL HEALTH 85, 91 (1997); Haney, *supra* note 27, at 130, 134; see generally HANS TOCH, MOSAIC OF DESPAIR: HUMAN BREAKDOWN IN PRISON (Am. Psychol. Ass'n., 1992).

³⁰ Grassian, *supra* note 26, at 1453.

³¹ *Id.*; Miller & Young, *supra* note 29, at 92.

³² *Id.*; Haney, *supra* note 27, at 131.

³³ Haney, *supra* note 27, at 130; see generally Korn, *supra*, note 27.

³⁴ Haney, *supra* note 27, at 131.

³⁵ Miller & Young, *supra* note 29, at 91; see generally Korn, *supra* note 27.

³⁶ *Id.*

³⁷ Haney, *supra* note 27, at 134; see generally Brodsky & Scogin, *supra* note 28.

³⁸ Haney, *supra* note 27, at 133.

³⁹ *Id.*

⁴⁰ Haney, *supra* note 27, at 137; see generally Brodsky & Scogin, *supra* note 28.

⁴¹ Haney, *supra* note 27, at 133.

⁴² *Id.*

⁴³ Grassian, *supra* note 26, at 1453; Eric Lanes, *The Association of Administrative Segregation Placement and Other Risk Factors with the Self-Injury-Free Time of Male Prisoners*, 48 J. OF OFFENDER REHABILITATION 529, 539-40 (2009).

⁴⁴ Paul Gendreau, N.L. Freedman, & G.J.S. Wilde, *Changes in EEG Alpha Frequency and Evoked Response Latency During Solitary Confinement*, 79 J. OF ABNORMAL PSYCH. 54, 57-58 (1972).

⁴⁵ Laurence Steinberg et al., *Age Differences in Future Orientation and Delay Discounting*, 80 CHILD. DEV. 28 (2009), available at <http://www.wisspd.org/htm/ATPracGuides/Training/ProgMaterials/Conf2011/AdDev/ADFO.pdf>; Jennifer Woolard et al., *Juveniles in Adult Correctional Settings: Legal Pathways and Developmental Considerations*, 4 INT'L J. OF FORENSIC MENTAL HEALTH 1 (2005), available at <http://www.policyarchive.org/handle/10207/bitstreams/20668.pdf>; Deborah Laible et al., *The Differential Relations of Parent and Peer Attachment to Adolescent Adjustment*, 29 J. OF YOUTH & ADOLESCENCE 45(2000), available at <http://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1050&context=psychfacpub>; David E. Arredondo, *Principles of Child Development and Juvenile Justice Information for Decision-Makers*, 5 J. CTR. FOR FAMILIES, CHILD & COURTS 127 (2004).

⁴⁶ AM. ACAD. OF CHILD & ADOLESCENT PSYCHIATRY, POLICY STATEMENTS: SOLITARY CONFINEMENT OF JUVENILE OFFENDERS (Apr. 2012), available at http://www.aacap.org/cs/root/policy_statements/solitary_confinement_of_juvenile_offenders.

⁴⁷ HUMAN RIGHTS WATCH & THE AMERICAN CIVIL LIBERTIES UNION, GROWING UP LOCKED DOWN, *supra* note 3, at 23-37.

⁴⁸ In California, for example, although less than 10 percent of the state's prison population was held in isolation units in 2004, those units accounted for 73 percent of all suicides. Expert Report of Professor Craig Haney at 45-46, n.119, *Coleman v. Schwarzenegger*, *Plata v. Schwarzenegger*, No. 90-0520 LKK-JFM P, No. C01-1351 TEH (E.D.Cal. N.D. Cal. filed Aug. 15, 2008).

⁴⁹ MARGARET NOONAN & E. ANN CARSON, U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, PRISON AND JAIL DEATHS IN CUSTODY, 2000-2009 - STATISTICAL TABLES (2011), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/pjdc0009st.pdf>; LINDSAY M. 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>; Seena Fazel, Julia Cartwright, et al., *Suicide in Prisoners: A systematic review of Risk Factors*, J. CLIN. PSYCHIATRY 69 (2008); CHRISTOPHER MUOLA, U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, SUICIDE AND HOMICIDE IN STATE PRISONS AND LOCAL JAILS (2005), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/shsplj.pdf>.

⁵⁰ DEP'T OF JUSTICE OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, JUVENILE SUICIDE IN CONFINEMENT: A NATIONAL SURVEY, *supra* note 49. The study suggests that, "When placed in a cold and empty room by themselves, suicidal youth have little to focus on – except all of their reasons for being depressed and the various ways that they can attempt to kill themselves." *Id.* at 42, citing LISA M. BOESKY, JUVENILE OFFENDERS WITH MENTAL HEALTH DISORDERS: WHO ARE THEY AND WHAT DO WE DO WITH THEM? 210 (2002).

⁵¹ HUMAN RIGHTS WATCH & THE AMERICAN CIVIL LIBERTIES UNION, GROWING UP LOCKED DOWN, *supra* note 3, at 30-32.

⁵² The US Ctrs. for Disease Control and the US Dep't of Health and Human Services both recommend that youth between the ages of six and seventeen engage in one hour or more of physical activity each day. Ctrs. for Disease Control and Prevention, *How Much Physical Activity do Children Need?*, <http://www.cdc.gov/physicalactivity/everyone/guidelines/children.html>; Dep't of Health and Human Services, *Physical Activity Guidelines for Americans*, <http://www.health.gov/paguidelines/factsheetprof.aspx>.

⁵³ HUMAN RIGHTS WATCH & THE AMERICAN CIVIL LIBERTIES UNION, GROWING UP LOCKED DOWN, *supra* note 3, at 37-41.

⁵⁴ *Concerning Pretrial Detention of Juveniles Prosecuted as Adults: Hearing on HB 12-1139 Before the H. Comm. on Judiciary*, 68th General Assem. (Colo. 2012) (statement of Peg Ackerman, County Sheriffs of Colorado), available at http://podcache-101.granicus.com/pstore1/coloradoga/coloradoga_d0c9ed72-c055-4de2-8a9a-730e8104df44.mp4; DEP'T OF HEALTH AND HUMAN SERVICES, PHYSICAL ACTIVITY GUIDELINES ADVISORY COMM., PHYSICAL ACTIVITY GUIDELINES ADVISORY COMM. REP. (2008), available at <http://www.health.gov/PAGuidelines/Report/pdf/CommitteeReport.pdf>; DEP'T OF AGRICULTURE & DEP'T OF HEALTH AND HUMAN SERVICES, DIETARY GUIDELINES FOR AMERICANS (2010), available at <http://www.cnpp.usda.gov/Publications/DietaryGuidelines/2010/PolicyDoc/PolicyDoc.pdf>; Individuals with Disabilities Education Act, 20 U.S.C. 1400 (2004), available at <http://idea.ed.gov/download/statute.html>; David E. Arredondo, *Principles of Child Development and Juvenile Justice Information for Decision-Makers*, 5 J. CTR. FOR FAMILIES, CHILD & COURTS 127 (2004); CTRS FOR DISEASE CONTROL TASK FORCE ON COMMUNITY PREVENTIVE SERVICES, EFFECTS ON VIOLENCE OF LAWS AND POLICIES FACILITATING THE TRANSFER OF YOUTH FROM THE JUVENILE TO THE ADULT JUSTICE SYSTEM (2007), available at <http://www.cdc.gov/mmwr/pdf/rrr5609.pdf>; BARRY HOLMAN & JASON ZIEDENBERG, JUSTICE POLICY INST., THE DANGERS OF DETENTION (2006), available at http://www.justicepolicy.org/images/upload/06-11_REP_DangersOfDetention_JJ.pdf.

⁵⁵ HUMAN RIGHTS WATCH & THE AMERICAN CIVIL LIBERTIES UNION, GROWING UP LOCKED DOWN, *supra* note 3, at 41-47.

⁵⁶ Jason Washburn et al., *Psychiatric Disorders Among Detained Youths: A Comparison of Youths Processed in Juvenile Court and Adult Criminal Court*, 59 PSYCHIATRIC SERV. 965 (2008), available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2718561/pdf/nihms109770.pdf>. There is also significant evidence of rates of mental health problems, trauma and abuse in system-involved youth generally. MEDA CHESNEY-LIND, THE FEMALE OFFENDER: GIRLS, WOMEN AND CRIME 25-26 (SAGE Pub'n, 1997); CATHY S. WISDOM & MICHAEL G. MAXFIELD, NAT'L. INST. OF JUSTICE, US DEP'T OF JUSTICE, AN UPDATE ON THE 'CYCLE OF VIOLENCE' (2001), available at <https://www.ncjrs.gov/pdffiles1/nij/184894.pdf>; NAT'L. MENTAL HEALTH

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⁵⁷ AMERICAN CIVIL LIBERTIES UNION, KNOW YOUR RIGHTS: LEGAL RIGHTS OF DISABLED PRISONERS (2005), available at http://www.aclu.org/files/images/asset_upload_file735_25737.pdf.

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⁶³ *Id.*; Jay N. Giedd, *Structural Magnetic Resonance Imaging of the Adolescent Brain*, 1021 ANNALS N.Y. ACAD. SCI. 83 (2004), available at <http://intramural.nimh.nih.gov/research/pubs/giedd05.pdf>.

⁶⁴ Jay N. Giedd, *Structural Magnetic Resonance Imaging of the Adolescent Brain*, *supra* note 63, at 1021.

⁶⁵ *Id.*

⁶⁶ Matthew S. Stanford et al., *Fifty Years of the Barratt Impulsiveness Scale: An Update and Review*, 47 PERSONALITY & INDIVIDUAL DIFFERENCES 385 (2009); Elizabeth Cauffman & Laurence Steinberg, *(Im)maturity of Judgment in Adolescence: Why Adolescents May Be Less Culpable Than Adults*, 18 BEHAV. SCI. & L. 741, 744-745 (2000).

⁶⁷ *Bell v. Wolfish*, 441 U.S. 520 (1979). The Eighth Amendment's prohibition of cruel and unusual punishment regulates conditions of confinement for convicted adult inmates. The rights of pre-trial adult detainees are at least as great as the rights of convicted offenders. *City of Revere v. Mass. Gen. Hosp.*, 463 U.S. 239, 44 (1983).

⁶⁸ *Bell v. Wolfish*, 441 U.S. 520, 534, 536-37 (1979).

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Bell v. Wolfish*, 441 U.S. 520 (1979). In some Federal Circuits, courts have looked to the Eighth Amendment to determine when conditions constitute 'punishment.' Although the Supreme Court has not addressed this specific question, the Court has made clear that these prohibitions are at least coextensive. See, e.g., *City of Revere v. Mass. Gen. Hosp.*, 463 U.S. 239, 44.

⁷² *Brown v. Plata*, 536 U.S. ___ Slip Op. at 12-13 (2011) ("Prisoners retain the essence of human dignity inherent in all persons. Respect for that dignity animates the Eighth Amendment prohibition against cruel and unusual punishment ... To incarcerate, society takes from prisoners the means to provide for their own needs. Prisoners are dependent on the State for food, clothing, and necessary medical care. A prison's failure to provide sustenance for inmates may actually produce physical 'torture or a lingering death ... Just as a prisoner may starve if not fed, he or she may suffer or die if not provided adequate medical care. A prison that deprives prisoners of basic sustenance, including adequate medical care, is incompatible with the concept of human dignity and has no place in civilized society) (Internal citations omitted). See also *Farmer v. Brennan*, 511 U.S. 825 (1994).

⁷³ *Brown v. Plata*, 536 U.S.; *Farmer v. Brennan*, 511 U.S. at 825, 832.

⁷⁴ *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981) ("These principles apply when the conditions of confinement compose the punishment at issue. Conditions must not involve the wanton and unnecessary infliction of pain, nor may they be grossly disproportionate to the severity of the crime warranting imprisonment."). See also *Farmer v. Brennan*, 511 U.S. at 825, 832; *Estelle v. Gamble*, 429 U.S. 97 (1976).

⁷⁵ *Rhodes v. Chapman*, 452 U.S. at 337, 46; *Hutto v. Finley*, 437 U.S. 678, 685-86 (1979); *Peoples II*, 2012 WL 2402593 at *4 (2d. Cir. 2012); *Smith v. Coughlin*, 748 F.2d 783, 87 (2d. Cir. 1984). See also *LeBron v. Artus*, No. 9:05-CV-0534 (LEK/DEP) 2007 WL 2765046 at 7 (N.D.N.Y. 2007) (finding that sanction of loss of two years good time for assault might violate Eighth Amendment if "grossly disproportionate," but finding no violation, citing *Fortuna v. Coughlin*, 222 A.D.2d 588, 588, 636 N.Y.S.2d 640 (2d Dep't 1995) (finding that penalties of 180 days in the SHU and one year's loss of good time were not so disproportionate to the offense ... as to shock one's sense of fairness) (emphasis added)). This theory has a long history in the context of analyzing the constitutionality of sentences under the Eighth Amendment. See, e.g., *Weems v. United States*, 217 U.S. 349 (1910), cited by *Miller v. Alabama*, 132 S.Ct. 2455 (2012). See also Marsha Levick et al., *The Eighth Amendment Evolves: Defining Cruel and Unusual Punishment Through the Lens of Childhood and Adolescence*, 15 U. PA. J. L. & SOC. CHANGE 285, 293 (2012); Alex Reinert, *Eighth Amendment Gaps: Can Conditions of Confinement Litigation Benefit from Proportionality Theory?*, 36 FORDHAM URB. L.J. 53 (Jan. 2009).

⁷⁶ See, e.g., *Ruiz v. Johnson*, 37 F. Supp. 2d. 855, 915 (S.D. Tex. 1999), *rev'd on other grounds*, *Ruiz v. Johnson*, 243 F.3d 941 (5th Cir. 2001), *adhered to on remand*, *Ruiz v. Johnson*, 154 F. Supp. 2d 975 (S.D. Tex. 2001) ("Conditions in TDCJ-ID's administrative segregation units clearly violate constitutional standards when imposed on the subgroup of the plaintiff's class made up of mentally-ill prisoners); *Coleman v. Wilson*, 912 F. Supp. 1282, 1320-21 (E.D. Cal. 1995); *Madrid v. Gomez*, 889 F. Supp. 1146, 1265-66 (N.D. Cal. 1995); *Casey v. Lewis*, 834 F. Supp. 1477, 1549-50 (D. Ariz. 1993); *Langley v. Coughlin*, 715 F. Supp. 522, 540 (S.D.N.Y. 1988) (holding that evidence of prison officials' failure to screen out from SHU "those individuals who, by virtue of their mental condition, are likely to be severely and adversely affected by placement there" states an Eighth amendment claim).

⁷⁷ *Roper v. Simmons*, 543 U.S. 551 (2005).

⁷⁸ *Graham v. Florida*, 130 S.Ct. 2011 (2010); *Miller v. Alabama*, 132 S.Ct. 2455 (2012).

⁷⁹ *J.D.B. v. North Carolina*, 564 U.S. ___ (2011).

⁸⁰ *Graham v. Florida*, 130 S.Ct. at 2031.

⁸¹ *Id.* at 2034; *Roper v. Simmons*, 543 U.S. at 575 (citing *Trop v. Dulles*, 356 U.S. 86, 102-103 (1958)). These cases start from the supposition that, whether a punishment is

"cruel and unusual" is a determination informed by "evolving standards of decency that mark the progress of a maturing society." *Trop v. Dulles*, 356 U.S. 86, 101 (1958) (plurality opinion).

⁸² United Nations Declaration on the Rights of the Child, G.A. Res. 1386 (XIV), U.N. Doc. A/4354 (Nov. 20, 1959). Similarly, The American Convention on Human Rights ("Pact of San José, Costa Rica"), Article 19, states, "Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state." Organization of American States, American Convention on Human Rights, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123 (entered into force July 18, 1978), *reprinted in* Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 25 (1992).

⁸³ International Covenant on Civil and Political Rights, Arts. 10, 14(4), *opened for signature* Dec. 16, 1966, S. Exec. Rep. 102-23, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976) (ratified by U.S. June 8, 1992) ("ICCPR"). The Human Rights Committee has interpreted the ICCPR's provisions on child offenders to apply to all persons under the age of 18. UN Human Rights Comm., 44th Sess., General Comment No. 1, U.N. Doc. HRI/GEN/1/Rev.1 at 155 (1994), *available at* <http://www1.umn.edu/humanrts/gencomm/hrcoim20.htm>.

⁸⁴ Convention on the Rights of the Child (CRC), *opened for signature* Nov. 20, 1989, 1577 U.N.T.S. 3 (entered into force Sept. 2, 1990) ("CRC"). The United States signed the CRC in 1995 but has not ratified.

⁸⁵ U.N. Guidelines for the Prevention of Juvenile Delinquency, G.A. Res. 45/112, Annex, 45 U.N. GAOR Supp. (No. 49A), U.N. Doc. A/45/49, at 201 (Dec. 14, 1990) ("The Riyadh Guidelines").

⁸⁶ U.N. Comm. on the Rights of the Child, 44th Sess., General Comment No. 10, Children's rights in juvenile justice, U.N. Doc. CRC/C/GC/10 (2007).

⁸⁷ U.N. Rules for the Protection of Juveniles Deprived of their Liberty, G.A. Res. 45/113, Annex, 45 U.N. GAOR Supp. (No. 49A), U.N. Doc. A/45/49, ¶ 67 (Dec. 14, 1990) ("The Beijing Rules").

⁸⁸ Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Interim Rep. of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, ¶¶ 78-85, Annex (Istanbul Statement on the Use and Effects of Solitary Confinement), U.N. Doc A/63/175 (July 28, 2008) (by Manfred Nowak), *available at* <http://www.unhcr.org/refworld/pdfid/48db99e82.pdf>; Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Interim Rep. of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, ¶ 77, U.N. Doc. A/66/268 (Aug. 5, 2011) (by Juan Mendez), *available at* <http://solitaryconfinement.org/uploads/SpecRapTortureAug2011.pdf>.

⁸⁹ Marsha Levick et al., *The Eighth Amendment Evolves: Defining Cruel and Unusual Punishment Through the Lens of Childhood and Adolescence*, 15 U. PA. J. L. & SOC. CHANGE 285, 293 (2012).

⁹⁰ Cal Welf. & Inst. Code § 207.1 & § 208 (West 2006); S.B. 259, 2010 Gen. Assemb., Reg. Sess. (Va. 2010); S.B. 1169, 2010 Gen. Assemb., Reg. Sess. (Pa. 2010); S.B. 1209, 82nd Leg. Sess. (Tex. 2011); H.B. 12-1139, 2012 Gen. Assemb. Reg. Sess. (Colo. 2012). *See also* SARAH ALICE BROWN, NATIONAL CONFERENCE OF STATE LEGISLATURES, TRENDS IN JUVENILE JUSTICE STATE LEGISLATION, 2001-2011 (June 2012), *available at* <http://www.ncsl.org/documents/cj/TrendsInJuvenileJustice.pdf>.

⁹¹ NEELUM ARYA, CAMPAIGN FOR YOUTH JUSTICE, STATE TRENDS: LEGISLATIVE CHANGES FROM 2005-2010 REMOVING YOUTH FROM THE ADULT CRIMINAL JUSTICE SYSTEM 29 (2011), *available at* http://www.campaignforyouthjustice.org/documents/CFYJ_State_Trends_Report.pdf.

⁹² For example, Arizona and Utah made it easier for youth who were tried as adults to get reverse waiver hearings so that they may be allowed to return to juvenile court. Arizona, Colorado, and Nevada have also refined age eligibility for adult prosecution to keep more youth out of adult courts. Indiana, Virginia, and Washington have limited the applicability of their "once an adult, always an adult" laws, which mandate that juveniles tried once as an adult will be tried as an adult on any subsequent charges regardless of the nature of the offense. *Id.* at 33.

⁹³ 28 C.F.R. § 115.5, 14(a) (2012), *available at* http://www.ojp.usdoj.gov/programs/pdfs/prea_final_rule.pdf.

⁹⁴ *Id.*

⁹⁵ *Id.*, § 115.5, 14(c).

⁹⁶ *Id.*, §§ 115.93, 115.193, 115.293, 115.393, 115.401, 115.402, 115.403, 115.404, 115.405, 115.501.

⁹⁷ 42 U.S.C. 15607 (c)(2) (2003).



NO CHILD LEFT ALONE

Campaign to Stop the Solitary Confinement of Youth in Adult Jails and Prisons

THE UNITED STATES SUBJECTS CHILDREN TO SOLITARY CONFINEMENT

On any given day in the United States, tens of thousands of youth under age 18 are confined in adult jails and prisons.¹ Not only are youth held in adult facilities, but they are often subjected to extended periods of solitary confinement.² Corrections officials claim they need solitary confinement to separate youth from adults and to discipline them when they act out.³ Both protective and punitive isolation practices frequently involve confining youth alone in a cell for 22 or more hours a day; restricting contact with family members; limiting access to reading and writing materials; and providing limited, if any, educational programming, physical exercise, drug treatment, or mental health services.⁴ Before they are old enough to get a driver's license, enlist in the armed forces, or vote, children in America are held in solitary confinement for days and months.

SOLITARY CONFINEMENT HARMS CHILDREN

Solitary confinement is well known to harm previously healthy adults. Children, who have special developmental needs, are even more vulnerable to the harms of prolonged isolation.

- **Psychological Damage:** Youth in adult facilities often live with extreme fear, anxiety, confusion, and paranoia. There is a broad consensus among mental health experts that long-term solitary confinement is psychologically harmful for adults – especially those with pre-existing mental illness.⁵ And the effects on children are even greater due to their unique developmental needs.⁶ The solitary confinement of children in adult jails is especially dangerous due to the extremely high rate of untreated mental illness among incarcerated youth.⁷
- **Increased Suicide Rates:** A tragic consequence of the solitary confinement of youth is the increased risk of suicide and self-harm, including cutting and other acts of self-mutilation. In juvenile facilities more than 50% of all youth suicides in custody occur in isolation.⁸ For youth in adult jails the suicide rates may be significantly higher.⁹
- **Denial of Education and Rehabilitation:** Adult jails and prisons are ill-equipped to provide for the minimum educational, mental health, treatment, and nutritional requirements of youth.¹⁰ Failure to provide appropriate programming for youth hampers their ability to grow and develop normally, to prepare for trial, and to contribute to society upon their release.¹¹

- **Stunted Development:** Young people's brains and bodies are still developing, placing youth at a higher risk of physical and psychological harm when healthy development is impeded.¹² Children have a special need for social stimulation.¹³ And youth frequently enter the criminal justice system with histories of substance abuse, mental illness and childhood trauma, which often go untreated in isolation, and only exacerbate the harmful effects of solitary confinement.¹⁴ Youth also need exercise and activity to support growing muscles and bones.¹⁵

CONSTITUTIONAL AND INTERNATIONAL LAW PROVIDE SPECIAL PROTECTIONS FOR CHILDREN

Recent Supreme Court jurisprudence makes clear that youth and adults must be treated differently in the context of crime and punishment.¹⁶ International human rights law also distinguishes between youth and adults – mandating that youth who commit crimes receive rehabilitative punishments appropriate to their age and status.¹⁷ The solitary confinement of youth is considered cruel, inhuman and degrading treatment and in some cases, torture.¹⁸

THERE ARE BETTER SOLUTIONS FOR INCARCERATED CHILDREN

Alternatives to solitary confinement produce positive results and less damage to children. National best practices for managing youth uniformly include strict limitations on the duration of and procedures for placing youth in isolation and encourage reliance on positive reinforcement.¹⁹ The negative effects of the prolonged isolation of youth, whether intended to protect or punish, far outweigh any purported benefits. Indeed, despite its pervasive use and documented harms to youth, prolonged isolation has no real positive outcome.²⁰ There is no research to support use of prolonged isolation of children as a therapeutic tool or to promote positive behaviors. In fact, interactive treatment programs are more successful at reducing behavior problems and mental health problems in youth than isolation – which actually provokes and worsens these problems.²¹

States are safely diverting youth from adult facilities altogether. Adult jails and prisons are never the best place to house youth because they either face an extremely high risk of physical and sexual assault by adult prisoners or staff, or suffer in solitary confinement which often leads to mental breakdown and sometimes to suicide. In either scenario, youth are denied critical rehabilitation programs and services in adult facilities. Faced with this reality, a growing number of states – including California, Colorado, Pennsylvania, Texas and Virginia – have enacted legislation permitting detention in juvenile facilities for youth accused of an adult crime.²²



As the nation's largest public interest law organization, with affiliate offices in every state and a legislative office in Washington D.C., the ACLU works daily in courts, legislatures, and communities to promote more effective criminal justice policies.

To learn more visit www.aclu.org/stopsolitary

ENDNOTES

- ¹ The Bureau of Justice Statistics estimates the population at more than 7,500 at any given time – with the ACLU and Human Rights Watch estimating the population in 2011 at more than 95,000. Todd D. Minton, DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, JAIL INMATES AT MIDYEAR 2010 - STATISTICAL TABLES (2011), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/jim10st.pdf>; Jason Ziedenberg, DEP'T OF JUSTICE NAT'L INST. OF CORR., YOU'RE AN ADULT NOW (2011), available at <http://static.nicic.gov/Library/025555.pdf>; HUMAN RIGHTS WATCH & THE AMERICAN CIVIL LIBERTIES UNION, GROWING UP LOCKED DOWN: YOUTH IN SOLITARY CONFINEMENT IN JAILS AND PRISONS ACROSS THE UNITED STATES 101-107 (appendix 1) (2012), available at <http://www.aclu.org/growinguplockeddown>.
- ² HUMAN RIGHTS WATCH & THE AMERICAN CIVIL LIBERTIES UNION, GROWING UP LOCKED DOWN, *supra* note 1.
- ³ ZIEDENBERG, *supra* note 1; *Keeping Youth Safe While in Custody: Sexual Assault in Adult and Juvenile Facilities: Hearing Before the H. Subcomm. on Crime, Terrorism and Homeland Security, Comm. on the Judiciary*, 111th Cong. (2010) (statement of Sheriff Gabriel Morgan), available at <http://www.gpo.gov/fdsys/pkg/CHRG-111hrrg55066/pdf/CHRG-111hrrg55066.pdf>; James Austin, Kelly DeDel Johnson & Maria Gregoriou, DEP'T OF JUSTICE OFFICE OF JUSTICE PROGRAMS, JUVENILES IN ADULT PRISONS AND JAILS: A NATIONAL ASSESSMENT (2000), available at <https://www.ncjrs.gov/pdffiles1/bja/182503.pdf>.
- ⁴ C.B., et al. v. *Walnut Grove Corr. Authority*, No. 3:10cv663, ¶ 1V(c)(1) (S.D. Miss. filed Feb. 3, 2012) (Consent decree), available at http://www.aclu.org/files/assets/68-1_ex_1_consent_decree.pdf; *Doe et al. v. Montana*, No. 6:2010cv00006 (Mont. 1st Dist. Ct. filed Jan. 26, 2010) (Complaint), available at <http://www.aclu.org/files/assets/2009-12-16-DoevMontana-Complaint.pdf>; Chris Vogel, *For Their Own Good*, TEX. OBSERVER, June 9, 2010, available at <http://www.texasobserver.org/mollyaward/columns/for-their-own-good>; Neelum Arya, CAMPAIGN FOR YOUTH JUSTICE, JAILING JUVENILES: THE DANGERS OF INCARCERATING YOUTH IN ADULT JAILS IN AMERICA 26-37 (2007), available at http://www.campaignforyouthjustice.org/documents/CFYJNR_JailingJuveniles.pdf; Letter from Human Rights Watch to L.A. County Sheriff (2003), available at <http://hrw.org/press/2003/06/us062503-ltr.htm>.
- ⁵ See, e.g., Stuart Grassian, *Psychopathological Effects of Solitary Confinement*, 140 AM. J. OF PSYCHIATRY 1450, 1452 (1983); Richard Korn, *The Effects of Confinement in the High Security Unit at Lexington*, 15 SOC. JUST. 8 (1988); Stanley L. Brodsky & Forrest R. Scogin, *Inmates in Protective Custody: First Data on Emotional Effects*, 1 FORENSIC REP. 267 (1988); Craig Haney, *Mental Health Issues in Long-Term Solitary and "Supermax" Confinement*, 49 CRIME & DELINQ. 124, 130, 134 (2003); Holly A. Miller & Glenn R. Young, *Prison Segregation: Administrative Detention Remedy of Mental Health Problem?*, 7 CRIM. BEHAV. & MENTAL HEALTH 85, 91 (1997); Hans Toch, *Mosaic of Despair: Human Breakdown in Prison* (Am. Psychol. Ass'n., 1992).
- ⁶ AM. ACAD. OF CHILD & ADOLESCENT PSYCHIATRY, POLICY STATEMENTS: SOLITARY CONFINEMENT OF JUVENILE OFFENDERS (Apr. 2012), available at http://www.aacap.org/cs/root/policy_statements/solitary_confinement_of_juvenile_offenders; Sandra Simkins, Marty Beyer & Lisa Geis, *The Harmful Use of Isolation in Juvenile Facilities: the Need for Post-Disposition Representation*, 38 WASH. U.J.L. & POL'Y 241, 257-61 (2012).
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- ⁸ Margaret Noonan & E. Ann Carson, DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, PRISON AND JAIL DEATHS IN CUSTODY, 2000-2009 - STATISTICAL TABLES (2011), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/pjdc0009st.pdf>; Hayes, *supra* note 7; Seena Fazel, Julia Cartwright, et al., *Suicide in Prisoners: A Systematic Review of Risk Factors*, J. CLIN. PSYCHIATRY 69 (2008); Christopher Muola, DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, SUICIDE AND HOMICIDE IN STATE PRISONS AND LOCAL JAILS (2005), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/shsplj.pdf>.
- ⁹ Arya, *supra* note 4, at 10.
- ¹⁰ *Concerning Pretrial Detention of Juveniles Prosecuted as Adults: Hearing on HB 12-1139 Before the H. Comm. on Judiciary*, 68th General Assem. (Colo. 2012) (statement of Peg Ackerman, County Sheriffs of Colorado), available at http://podcache-101.granicus.com/pstore1/coloradoga/coloradoga_d0c9ed72-c055-4de2-8a9a-730e8104df44.mp4; DEP'T OF HEALTH AND HUMAN SERVICES, PHYSICAL ACTIVITY GUIDELINES ADVISORY COMM., PHYSICAL ACTIVITY GUIDELINES ADVISORY COMM. REP. (2008), available at <http://www.health.gov/PAGuidelines/Report/pdf/CommitteeReport.pdf>; DEP'T OF AGRICULTURE & DEP'T OF HEALTH AND HUMAN SERVICES, DIETARY GUIDELINES FOR AMERICANS (2010), available at <http://www.cnpp.usda.gov/Publications/DietaryGuidelines/2010/PolicyDoc/PolicyDoc.pdf>; Individuals with Disabilities Education Act, 20 U.S.C. 1400 (2004), available at <http://idea.ed.gov/download/statute.html>; David E. Arredondo, *Principles of Child Development and Juvenile Justice Information for Decision-Makers*, 5 J. CTR. FOR FAMILIES, CHILD & COURTS 127 (2004).
- ¹¹ CTRS FOR DISEASE CONTROL TASK FORCE ON COMMUNITY PREVENTIVE SERVICES, EFFECTS ON VIOLENCE OF LAWS AND POLICIES FACILITATING THE TRANSFER OF YOUTH FROM THE JUVENILE TO THE ADULT JUSTICE SYSTEM (2007), available at <http://www.cdc.gov/mmwr/pdf/rr/rr5609.pdf>; Barry Holman & Jason Ziedenberg, JUSTICE POLICY INST., THE DANGERS OF DETENTION (2006), available at http://www.justicepolicy.org/images/upload/06-11_REP_DangersOfDetention_JJ.pdf.
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- ¹⁵ Ctrs For Disease Control and Prevention, *How Much Physical Activity do Children Need?*, <http://www.cdc.gov/physicalactivity/everyone/guidelines/children.html>; Dep't Health and Human Services, *Physical Activity Guidelines for Americans*, <http://www.health.gov/paguidelines/factsheetprof.aspx>.
- ¹⁶ See, e.g., *Graham v. Florida*, 130 S.Ct. 2011 (2010); *Roper v. Simmons*, 453 U.S. 551 (2005).
- ¹⁷ International Covenant on Civil and Political Rights, Arts. 10, 14(4), opened for signature Dec. 16, 1966, S. Exec. Rep. 102-23, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976) (ratified by U.S. June 8, 1992) ("ICCPR"); Convention on the Rights of the Child, Arts. 3(1), 37, 40(3)-(4), opened for signature Nov. 20, 1989, 1577 U.N.T.S. 3 (entered into force Sept. 2, 1990) ("CRC"). The United States signed the CRC in 1995 but has not ratified the treaty.
- ¹⁸ Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Interim Rep. of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, ¶ 77, U.N. Doc. A/66/268 (Aug. 5, 2011) (by Juan Mendez), available at <http://solitaryconfinement.org/uploads/SpecRapTortureAug2011.pdf>.
- ¹⁹ See, e.g., AM. CORR. ASS'N, PERFORMANCE BASED STANDARDS JUVENILE CORR. FACILITIES (4th ed. 2009); PBS LEARNING INST., PBS GOALS, STANDARDS, OUTCOME MEASURES, EXPECTED PRACTICES AND PROCESSES (2007), available at <http://sccounty01.co.santacruz.ca.us/prb/media%5CGoalsStandardsOutcome%20Measures.pdf>; JUVENILE DET. ALT. INITIATIVE, JUVENILE DETENTION ALTERNATIVES INITIATIVE (JDAI) FACILITY SITE ASSESSMENT INSTRUMENT (2006), available at <http://www.cclp.org/documents/Conditions/JDAI%20Standards.pdf>; DEP'T OF JUSTICE OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, STANDARDS FOR THE ADMINISTRATION OF JUVENILE JUSTICE (1980), available at <http://catalog.hathitrust.org/Record/000127687>; NAT'L COMM. ON CORR. HEALTH CARE, STANDARDS FOR HEALTH SERVICES IN JUVENILE DETENTION AND CONFINEMENT FACILITIES standard Y-39 (1995), available at <http://www.jdcap.org/SiteCollectionDocuments/Health%20Standards%20for%20Detention.pdf>; AM. ACAD. OF CHILD & ADOLESCENT PSYCHIATRY, POLICY STATEMENTS: SOLITARY CONFINEMENT OF JUVENILE OFFENDERS, *supra* note 6.
- ²⁰ See, e.g., Linda M. Finke, RN, PhD, *Use of Seclusion is not Evidence-Based Practice*, J. CHILD & ADOLESCENT PSYCHIATRIC NURSING, (2001), available at http://www.findarticles.com/p/articles/mi_qa3892/is_200110/ai_n8993463/print; Steven H. Rosenbaum, Chief, Special Litigation Section, Remarks before the Fourteenth Annual National Juvenile Corrections and Detention Forum (May 16, 1999), available at <http://www.usdoj.gov/crt/split/documents/juvspeech.htm>.
- ²¹ Simkins, *supra* note 6, at 257-58.
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NO CHILD LEFT ALONE

Campaign to Stop the Solitary Confinement of Youth in Adult Jails and Prisons

CHILDREN ARE NOT MINIATURE ADULTS

Young people have needs that differ in nature and degree from adults because they are still developing physically and psychologically. These developmental differences mean that, as compared to adults, youth are particularly amenable to rehabilitation and particularly vulnerable to trauma and abuse – and that they should be afforded heightened measures of legal protection. These differences are reflected in recent Supreme Court cases establishing that young people are entitled to greater constitutional protections in the context of crime and punishment.

In a recent line of cases – involving the death penalty,¹ sentences of life without parole,² and custodial interrogations³ – differences between youth and adults, particularly with regard to brain development, have driven the Court to articulate distinct Constitutional standards for youth. These standards recognize that juvenile status is relevant to when a child is considered to be in custody (for *Miranda* purposes) and when a punishment is considered cruel and unusual (as are the juvenile death penalty, life without parole for non-homicide offenses, and mandatory life without parole for homicide offenses).

The differences between youth and adults, and the particular vulnerabilities of individual youth, suggest that subjecting youth to solitary confinement under policies and procedures that fail to take into account the status and vulnerabilities of youth is unconstitutional. And though the Supreme Court has not yet addressed this question, it can be argued that in conjunction with these differences and vulnerabilities, the severity of solitary confinement suggests that the practice is inherently punitive, grossly disproportionate, and uniquely harmful to youth – and thus unconstitutional.

DIFFERENCES BETWEEN YOUTH & ADULTS INCREASE IMPACT OF SOLITARY CONFINEMENT

That children grow and change is no great revelation. But there are a range of physical and psychological changes that are relevant to how solitary confinement particularly affects children. As a result, the negative and debilitating consequences of solitary confinement for youth are even greater than for adults.

- **Physical changes** highlight why denial of recreation, programming, and social and family contact, for example, can be so cruel and disproportionate.

During adolescence, the body changes significantly, including through the development of secondary sexual characteristics. Boys and girls gain height, weight, and muscle mass, as well as pubic and body hair; girls develop breasts and begin menstrual periods, and boys' genitals grow and their voices change.⁴

- **Psychological changes** highlight why policies and practices for adults are ill-suited to youth, and why social isolation and denial of programming, education, and contact with family and peers can be so harmful and disproportionate. These changes also show why youth are more receptive to rehabilitation and management practices based on positive reinforcement.

Youth experience time differently from adults and have a special need for social stimulation.⁵ The human brain goes through dramatic structural growth during teen years and into the mid-twenties. The most dramatic difference between the brains of teens and young adults is the development of the frontal lobe.⁶ The frontal lobe is responsible for cognitive processing, such as planning, strategizing, and organizing thoughts and actions.⁷ Researchers have determined that one area of the frontal lobe, the dorsolateral prefrontal cortex, is among the *last* brain regions to mature, not reaching adult dimensions until a person is in his or her twenties.⁸ This part of the brain is linked to “the ability to inhibit impulses, weigh consequences of decisions, prioritize, and strategize.”⁹ As a result, teens’ decision-making processes are shaped by impulsivity, immaturity, and an under-developed ability to appreciate consequences and resist environmental pressures.¹⁰

Supreme Court Cases Recognizing that Developmental Differences for Youth and Individual Vulnerabilities are Constitutionally Relevant Can be Applied to Challenging the Solitary Confinement of Children.

The Supreme Court has placed great weight on the differences between youth and adults as well as on individual vulnerabilities in analyzing how children’s constitutional rights must be protected in the context of crime and punishment. These arguments can be useful in advocacy to protect youth from solitary confinement. On the reverse side are key findings of the Court that support arguments that placing youth in solitary confinement in the same manner as adults inflicts disproportionate harm on children that cannot be justified under the Constitution.



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A ONE SIZE FITS ALL APPROACH IS INVALID

That youth and adults are developmentally different makes treating them the same (using the same policies, procedures, and practices) legally suspect:

- On the basis of the many legal distinctions (including examples from criminal, contract, property, tort, and family law) made between youth and adults, the Supreme Court has described a “settled understanding that the differentiating characteristics of youth are universal;”¹¹ suggested that, as a matter of law, “children cannot be viewed simply as miniature adults;”¹² and stated that, “criminal procedure laws that fail to take defendants youthfulness into account at all” should be seen as “flawed.”¹³

CHILDREN ACT OUT

Developmental differences may make youth more likely to act in ways that are punished with solitary confinement – or misbehave when in solitary confinement – and thus make the practice particularly disproportionate in the eyes of the law:

- The Supreme Court has acknowledged that the decision-making skills and abilities of youth and adults are different – and that youth are more impulsive than adults – in describing the “susceptibility of juveniles to immature and irresponsible behavior;”¹⁴ their “lack of maturity and [] underdeveloped sense of responsibility;”¹⁵ and that these characteristics “lead[] to recklessness, impulsivity, and heedless risk-taking.”¹⁶
- The Supreme Court has described youth as “more than a chronological fact” – but “a time of immaturity, irresponsibility, impetuousness[,] and recklessness.”¹⁷

YOUTH ARE VULNERABLE

The Supreme Court has recognized that youth are marked by “vulnerability and comparative lack of control over their immediate surroundings,”¹⁸ and that they are “more vulnerable or susceptible to negative influences and outside pressures,”¹⁹ “including from their family and peers,”²⁰ and “lack the ability to extricate themselves from horrific, crime-producing settings.”²¹

CHILDREN GROW AND CHANGE

Developmental differences make youth more deserving of rehabilitative treatment and programming, and make the stark isolation and cruel deprivations of solitary confinement particularly disproportionate and punitive:

- The Supreme Court has acknowledged that the transitory nature of adolescence has important consequences for how youth are treated. The Court has described how youth “struggle to define their identity,”²² and have a “capacity for change,” and that they are therefore “in need of and receptive to rehabilitation.”²³ Indeed, the Court has stated that the “signature qualities” of youth are all “transient.”²⁴ The Court recognized that these characteristics make youth particularly receptive to rehabilitation.²⁵

SOME YOUTH ARE PARTICULARLY VULNERABLE

The individual vulnerabilities of certain youth, or subclasses of youth, make the counter-therapeutic and anti-rehabilitative practice of solitary confinement cruel and unusual:

- The Supreme Court has suggested the importance of taking into account, “the family and home environment that surrounds [youth] – and from which [he or she] cannot extricate [his or her] self – no matter how brutal or dysfunctional,”²⁶ in analyzing culpability. The Court has explicitly discussed “physical abuse” and “neglect,”²⁷ as well as “family background” and “immersion in violence”²⁸ as legally significant individual circumstances for youth that are relevant to decision-making in the criminal justice context.
- The Supreme Court has also explicitly discussed “regular use of drugs and alcohol” (in a family environment with a parent who “suffered from alcoholism and drug addiction”)²⁹ as a legally significant individual circumstance relevant to youth decision-making in the criminal justice context.
- While the Supreme Court did not explicitly discuss youth with disabilities in its recent cases on sentencing, the Court has pointed to a history of suicide attempts³⁰ as a legally significant individual circumstance relevant to decision-making in the criminal justice context. This suggests the importance of broader consideration of the individual characteristics of youth with mental health problems and other disabilities.³¹

CONCLUSION

The constitutionality of solitary confinement of youth cannot be considered without reference to the developmental differences between youth and adults and the individual vulnerabilities of young people. The physiological and psychological realities of adolescence have been incorporated into the recent jurisprudence of the Supreme Court in reference to youth. The Court’s reasoning in these cases suggests that strong arguments can be marshaled in support of viewing the solitary confinement of children as a violation of the constitutional protections of procedural and substantive due process and against cruel and unusual punishment.

ENDNOTES

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- ³ *J.D.B. v. North Carolina*, 564 U.S. ___ (2011).
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- ⁵ Laurence Steinberg et al., *Age Differences in Future Orientation and Delay Discounting*, 80 CHILD. DEV. 28 (2009), available at <http://www.wisspd.org/htm/ATPracGuides/Training/ProgMaterials/Conf2011/AdDev/ADFO.pdf>; Jennifer Woolard et al., *Juveniles in Adult Correctional Settings: Legal Pathways and Developmental Considerations*, 4 INT'L J. OF FORENSIC MENTAL HEALTH 1 (2005), available at <http://www.policyarchive.org/handle/10207/bitstreams/20668.pdf>; Deborah Laible et al., *The Differential Relations of Parent and Peer Attachment to Adolescent Adjustment*, 29 J. OF YOUTH & ADOLESCENCE 45(2000), available at <http://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1050&context=psychfacpub>; David E. Arredondo, *Principles of Child Development and Juvenile Justice Information for Decision-Makers*, 5 J. CTR. FOR FAMILIES, CHILD & COURTS 127 (2004).
- ⁶ Laurence Steinberg et al., *The Study of Development Psychopathology in Adolescence: Integrating affective neuroscience with the study of context*, in DEVELOPMENTAL PSYCHOPATHOLOGY 710 (DANTE CICCETTI & DONALD J. COHEN Eds., 2nd ed. 2006).
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- ⁸ *Id.*
- ⁹ *Id.*
- ¹⁰ Matthew S. Stanford et al., *Fifty Years of the Barratt Impulsiveness Scale: An Update and Review*, 47 PERSONALITY & INDIVIDUAL DIFFERENCES 385(2009); Elizabeth Cauffman & Laurence Steinberg, *(Im)maturity of Judgment in Adolescence: Why Adolescents May Be Less Culpable Than Adults*, 18 BEHAV. SCI. & L. 741, 744-745 (2000).
- ¹¹ *J.D.B. v. North Carolina*, 564 U.S. at ___ (slip op. at 10 n 6) (2011) (including examples from criminal, contract, property, tort, and family law).
- ¹² *Id.*, at 11 (citing *Eddings v. Oklahoma*, 455 U.S. 104, 115-16 (1982)).
- ¹³ *Miller v. Alabama*, 567 U.S. ___ (2012) (citing *Graham v. Florida*, 560 U.S. ___ (2010)).
- ¹⁴ *Roper v. Simmons*, 453 U.S. 551, 569-70 (2005).
- ¹⁵ *Graham*, 560 U.S. at ___ (slip op., at 17) (citing *Roper*, 453 U.S., at 569).
- ¹⁶ *Miller*, 567 U.S. at ___ (slip op., at 9) (citing *Roper*, 453 U.S., at 569).
- ¹⁷ *Id.*, at 13 (citing *Eddings*, 455 U.S., at 115 and *Johnson v. Texas*, 509 U.S. 350, 368 (1993)).
- ¹⁸ *Roper*, 453 U.S., at 570.
- ¹⁹ *Graham*, 560 U.S. at ___ (slip op., at 17) (citing *Roper*, 453 U.S., at 569).
- ²⁰ *Miller*, 567 U.S. at ___ (slip op., at 8) (citing *Roper*, 453 U.S., at 569).
- ²¹ *Id.*
- ²² *Roper*, 453 U.S., at 570.
- ²³ *Graham*, 560 U.S. at ___ (slip op., at 23).
- ²⁴ *Miller*, 567 U.S. at ___ (slip op., at 13) (citing *Johnson v. Texas*, 509 U.S. 350, 368 (1993)).
- ²⁵ *Graham*, 560 U.S. at ___ (slip op., at 23).
- ²⁶ *Miller*, 567 U.S. at ___ (slip op., at 15).
- ²⁷ *Id.*, at 16.
- ²⁸ *Id.*
- ²⁹ *Id.*, at 4.
- ³⁰ *Id.*, at 16.
- ³¹ Of course, with regard to adults, the Supreme Court has already stated that "mentally retardation" – i.e. serious cognitive and intellectual disabilities – is relevant as an individual and class characteristic to analysis of culpability and of cruel and unusual punishment. *Atkins v. Virginia*, 536 U.S. 304 (2002). A host of lower courts have already declared that subjecting persons with serious mental illness to solitary confinement is unconstitutional. See, e.g., *IPAS v. Commissioner* 2012 WL 6738517 (S.D.Ind. 2012); *Jones'El v. Berge*, 164 F. Supp. 2d 1096 (W.D.Wis. 2001) (granting preliminary injunction ordering removal of seriously mentally ill prisoners from supermax prison); *Ruiz v. Johnson*, 37 F. Supp. 2d 855, 915 (S.D. Tex. 1999), rev'd on other grounds, *Ruiz v. Johnson*, 243 F.3d 941 (5th Cir. 2001), adhered to on remand, *Ruiz v. Johnson*, 154 F. Supp. 2d 975 (S.D.Tex. 2001) ("Conditions in TDCJ-ID's administrative segregation units clearly violate constitutional standards when imposed on the subgroup of the plaintiff's class made up of mentally-ill prisoners"); *Coleman v. Wilson*, 912 F. Supp. 1282, 1320-21 (E.D.Cal. 1995); *Madrid v. Gomez*, 889 F. Supp. 1146, 1265-66 (N.D.Cal. 1995); *Casey v. Lewis*, 834 F. Supp. 1477, 1549-50 (D.Ariz. 1993); *Langlely v. Coughlin*, 715 F. Supp. 522, 540 (S.D.N.Y. 1988) (holding that evidence of prison officials' failure to screen out from SHU 'those individuals who, by virtue of their mental condition, are likely to be severely and adversely affected by placement there' states an Eighth amendment claim).



NO CHILD LEFT ALONE

Campaign to Stop the Solitary Confinement of Youth in Adult Jails and Prisons

INTERNATIONAL LAW PROHIBITS THE SOLITARY CONFINEMENT OF ANYONE UNDER 18

International law prohibits anyone below 18 years of age from being subjected to solitary confinement, and condemns the practice as a form of cruel, inhuman or degrading treatment or punishment. These international laws and standards – encompassed in treaties and other international instruments – are persuasive sources of authority in formulating policy and legislation, and in interpreting how the Constitution protects children in the context of crime and punishment.

The **United Nations (U.N.) Convention on the Rights of the Child (CRC)** establishes that “children,” defined as any person below the age of 18, should be afforded heightened measures of protection by the State, in particular when they come into conflict with the law.¹ Article 37 of the CRC requires that children be protected from torture and other forms of cruel, inhuman or degrading punishment and treated with humanity and respect at all times, even when incarcerated.² The Committee on the Rights of the Child, the body tasked with monitoring, enforcing and interpreting the CRC, has stated that the use of solitary confinement violates Article 37 of the CRC.³

Likewise, the U.N. Guidelines for the Prevention of Juvenile Delinquency (**Riyadh Guidelines**) recognize punitive solitary confinement of children as a form of cruel, inhuman, or degrading treatment.⁴ The U.N. Rules for the Protection of Juveniles Deprived of their Liberty (**Beijing Rules**) also explicitly prohibit solitary confinement of children.⁵

Based on the harmful physical and psychological effects of solitary confinement and the particular vulnerability of children to those effects, the Office of the **U.N. Special Rapporteur on Torture** has twice called for the abolition of solitary confinement of persons under age 18. In his 2008 report to the U.N. General Assembly the Special Rapporteur endorsed the recommendations made in the **Istanbul Statement on the Use and Effects of Solitary Confinement** to abolish solitary confinement of persons below 18 years of age.⁶ More recently, in his 2011 report to the General Assembly, the Special Rapporteur reiterated this recommendation.⁷

HEIGHTENED LEVELS OF PROTECTION FOR CHILDREN WITH MENTAL DISABILITIES

International law and practice also prohibit the use of solitary confinement on persons with mental disabilities. Because the harmful effects of solitary are particularly acute for people with mental disabilities, the Office of the U.N. Special Rapporteur on Torture has recommended an absolute ban on solitary confinement of these individuals.⁸ By extension, in light of their age and disability, children with mental disabilities are doubly vulnerable to the harmful effects of solitary confinement and should never be subject to the practice.

INTERNATIONAL LAW PROVIDES STRONG AUTHORITY FOR INTERPRETING THE U.S. CONSTITUTION

U.S. courts have long recognized international law and practice as a persuasive source of authority for questions arising under the U.S. Constitution. Significantly, the Supreme Court has repeatedly looked to international and comparative law in its analysis of the Eighth Amendment’s prohibition of “cruel and unusual punishment,” and its specific application to children. Whether a punishment is “cruel and unusual” is a determination informed by “evolving standards of decency that mark the progress of a maturing society.”⁹

In *Roper v. Simmons*, the Supreme Court ruled that allowing children to be executed was a disproportionate punishment that violated the Eighth Amendment. In reaching its decision, the Court looked “to the laws of other countries and to international authorities as instructive for its interpretation of the Eighth Amendment’s prohibition of ‘cruel and unusual punishments.’”¹⁰

Most recently, in *Graham v. Florida*, the Court affirmed the relevance of international law to the proper interpretation of the Eighth Amendment protections applicable to children. In its analysis of the constitutionality of juvenile life without parole laws, the Court examined the practices of other countries in sentencing children, continuing the Court’s “longstanding practice in noting the global consensus against the sentencing practice in question.”¹¹ The Court concluded that international law, agreements and practices are “relevant to the Eighth Amendment ... because the judgment of the world’s nations that a particular sentencing practice is inconsistent with basic principles of decency demonstrates that the Court’s rationale has respected reasoning to support it.”¹²

Given this strong authority, international law is relevant to the determination of how the Constitution applies to disproportionate and punitive conditions of confinement for children and whether solitary confinement constitutes “cruel and unusual” punishment.

CONCLUSION

International law and practice prohibit the solitary confinement of anyone under the age of 18 and condemn it as a form of cruel, inhuman or degrading treatment or punishment. These international standards are relevant to the interpretation of how the Constitution protects children as well as in formulating policy and legislation, because they confirm that the solitary confinement of persons under the age of 18 is contrary to contemporary standards of decency and therefore may well violate the cruel and unusual punishment clause of the Eighth Amendment.



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ENDNOTES

¹ U.N. Convention on the Rights of the Child, *opened for signature* Nov. 20, 1989, 1577 U.N.T.S. 3 (entered into force Sept. 2, 1990) (“CRC”). As the Supreme Court recognized in *Roper*, the CRC is relevant to the interpretation of the protections afforded by the Eighth Amendment even although the United States is one of only two countries that have not ratified the treaty. See *Roper v. Simmons*, 543 U.S. 551, 576 (2005).

² *Id.*, art. 37 (requiring, in relevant part, that State Parties ensure that: “(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment ... (b) ... Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age ...”).

³ U.N. Comm. on the Rights of the Child, 44th Sess., General Comment No. 10, Children’s rights in juvenile justice, U.N. Doc. CRC/C/GC/10 (2007).

⁴ U.N. Guidelines for the Prevention of Juvenile Delinquency, G.A. Res. 45/112, Annex, 45 U.N. GAOR Supp. (No. 49A), U.N. Doc. A/45/49, at 201 (Dec. 14, 1990) (“The Riyadh Guidelines”).

⁵ U.N. Rules for the Protection of Juveniles Deprived of their Liberty, G.A. Res. 45/113, Annex, 45 U.N. GAOR Supp. (No. 49A), U.N. Doc. A/45/49, ¶ 67 (Dec. 14, 1990) (“The Beijing Rules”) (“[a]ll disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned.”).

⁶ Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Interim Rep. of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, ¶¶ 78-85, Annex (Istanbul Statement on the Use and Effects of Solitary Confinement), U.N. Doc A/63/175 (July 28, 2008) (by Manfred Nowak) available at <http://www.unhcr.org/refworld/pdfid/48db99e82.pdf>.

⁷ Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Interim Rep. of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, ¶ 77, U.N. Doc. A/66/268 (Aug. 5, 2011) (by Juan Mendez) available at <http://solitaryconfinement.org/uploads/SpecRapTortureAug2011.pdf>.

⁸ *Id.*, ¶¶ 67-68, 78. See also Istanbul Statement, *supra* note 6, at 24-25.

⁹ *Trop v. Dulles*, 356 U.S. 86, 101 (1958) (plurality opinion).

¹⁰ *Roper v. Simmons*, 543 U.S. 551, 575 (2005) (citing *Trop v. Dulles*, 356 U.S. 86, 102-103).

¹¹ *Graham v. Florida*, 130 S.Ct. 2011, 2032 (2010).

¹² *Id.*, at 2034.



NO CHILD LEFT ALONE

Campaign to Stop the Solitary Confinement of Youth in Adult Jails and Prisons

SOLITARY CONFINEMENT ISN'T SAFE FOR CHILDREN: The Impact of the Prison Rape Elimination Act

More than 90,000 children (under age 18) were held in adult jails and prisons in the United States in each of the last five years.¹ Holding children in adult facilities puts them in extreme danger because of the high rates of physical and sexual assault.² Unfortunately, too often adult facilities attempt to solve this problem by placing youth in solitary confinement, often for long periods of time. Using solitary confinement to protect children from rape in jails and prisons exposes them to other serious risks. It is therefore imperative that officials protect youth from both dangers by moving them out of adult facilities and by banning solitary confinement for all youth.

Fortunately, new federal regulations developed under the **Prison Rape Elimination Act (PREA)** to help deal with the national problem of sexual abuse in corrections facilities present new tools for corrections officials and the community to ensure safer treatment for youth in adult facilities. These regulations recognize that youth are always at risk of adult sexual abuse when housed together with adults, but at the same time they also recognize that solitary confinement is not the answer and that youth should not be isolated.

WHAT RISKS DO CHILDREN FACE IN ADULT FACILITIES?

The National Prison Rape Elimination Commission, charged with developing national standards for both youth and adult correctional facilities, found that "more than any other group of incarcerated persons, youth incarcerated with adults are probably at the highest risk for sexual abuse."³ Studies suggest that youth in adult facilities are as much as five times more likely to be sexually assaulted than youth in juvenile facilities.⁴

HOW DOES SOLITARY CONFINEMENT HARM YOUTH?

Adult facilities housing children often react to the increased risk of sexual abuse by housing youth in isolated settings, such as solitary confinement – physical and social isolation for 22-24 hours per day.⁵ But this practice, which can harm even healthy adults, is particularly dangerous for growing bodies and minds. Solitary confinement can cause or exacerbate mental health problems and prevent young people from receiving any type of programming or rehabilitation services, including education.⁶ Solitary confinement is also highly correlated with increased risk of suicidal thoughts and attempts.⁷ 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."⁸

PREA PROTECTS YOUTH IN ADULT FACILITIES

In 2003, Congress passed PREA in response to the high rates of sexual assault across all forms of detention facilities in the United States.⁹ The final PREA regulations implementing the law provide a range of protections for young offenders in adult facilities. These regulations are binding on the Federal Bureau of Prisons immediately. 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.¹⁰ State Governors must submit the first certification of PREA compliance in August 2013.¹¹

PREA implementation presents an important opportunity to protect youth. The PREA regulations recognize the risks posed by both isolation and sexual assault, and requires that adult facilities make their "**best efforts**" to avoid placing youthful detainees in isolation.¹²

The regulations require that "youthful inmates" (defined as any youth under 18 under adult court supervision and incarcerated or detained in a prison or jail) be housed such that they will not come in **sight, sound, or physical contact** with any adult inmate (anyone 18 and above) through the use of a shared dayroom or other common space, shower area, or sleeping quarters.¹³ Under the regulations, youth placed in isolation in spite of a facility's best efforts cannot – absent exigent circumstances – be denied (1) daily large-muscle exercise or (2) any legally required special education services and must – to the extent possible – be granted access to other programs and work opportunities.¹⁴

HOW SHOULD FACILITIES COMPLY WITH PREA'S REQUIREMENTS FOR YOUTH IN ADULT FACILITIES?

PREA codifies a long-standing recognition that isolation of young people is harmful and counterproductive.¹⁵ The need to separate and protect vulnerable individuals must therefore be balanced against the serious risks involved in isolating youth who are still developing.

- **Remove Children From the Adult Correctional System**

The first and best option for reform is to remove youth from the adult correctional system. Juvenile facilities are better equipped to provide for the needs of growing children. Young people can be moved out of the adult prison system by statute or by Memoranda of Understanding between adult and juvenile facilities. A growing number of states – including California, Virginia, Texas, Pennsylvania, and Colorado – have enacted legislation permitting or mandating detention in juvenile facilities for youth accused or convicted of an adult crime.¹⁶ A second approach to this problem recently adopted by a number of states, such as Connecticut, Illinois, and Mississippi, is to "raise the age" of juvenile court jurisdiction so that fewer youth are automatically prosecuted in the adult system.¹⁷ Another approach has been to change the laws governing transfer of juveniles to adult court.¹⁸

- **Prohibit Solitary Confinement, and Strictly Limit and Publicly Report Isolation Practices**

Solitary confinement of youth under 18 should be banned. This practice can be abolished by state legislators, local officials, and facility administrators. Because physical and social isolation is so harmful and traumatic – and accompanied by other serious deprivations (like denial of education), all isolation practices should be strictly limited and regulated. 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 practices – to protect, to manage, or to discipline youth – should be used sparingly and must never rise to the level of solitary confinement.



As the nation's largest public interest law organization, with affiliate offices in every state and a legislative office in Washington D.C., the ACLU works daily in courts, legislatures, and communities to promote more effective criminal justice policies.

To learn more visit www.aclu.org/stopsolitary

ENDNOTES

¹ HUMAN RIGHTS WATCH & THE AMERICAN CIVIL LIBERTIES UNION, GROWING UP LOCKED DOWN: YOUTH IN SOLITARY CONFINEMENT IN JAILS AND PRISONS ACROSS THE UNITED STATES 101-107 (appendix 1) (2012), *available at* <http://www.aclu.org/growinguplockeddown>.

² NAT'L PRISON RAPE ELIMINATION COMM'N., NAT'L PRISON RAPE ELIMINATION COMM'N. REP. 42 (2009), *available at* <https://www.ncjrs.gov/pdffiles1/226680.pdf>, *citing* HOWARD N. SNYDER & MELISSA SICKMUND, DEP'T OF JUSTICE OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, JUVENILE OFFENDERS AND VICTIMS: 2006 NAT'L REP. (2006); ALLEN J. BECK & PAIGE M. HARRISON, DEP'T OF JUSTICE BUREAU OF JUSTICE STATISTICS, SEXUAL VICTIMIZATION IN PRISONS AND JAILS REPORTED BY PRISONERS, 2008-09 (2010), *available at* <http://bjs.ojp.usdoj.gov/content/pub/pdf/svpjri0809.pdf>; Jeffrey Fagan, Martin Forst, & T. Scott Vivona, *Youth in Prisons and Training Schools: Perceptions and Consequences of the Treatment-Custody Dichotomy*, J. JUVENILE & FAMILY CT., 40, 9 (1989); JASON ZIEDENBERG & VINCENT SCHIRALDI, JUSTICE POLICY INSTITUTE, THE RISKS JUVENILES FACE WHEN THEY ARE INCARCERATED WITH ADULTS (1997), *available at* http://www.justicepolicy.org/images/upload/97-02_REP_RiskJuvenilesFace_JJ.pdf.

³ See NAT'L PRISON RAPE ELIMINATION COMM'N. REP., *supra* note 2, at 18 (2009). See also *id.* at 8 (Finding 3) ("The Commission is concerned that correctional facilities may rely on protective custody and other forms of segregation (isolation or solitary confinement) as a default form of protection. And the Commission learned that desperate prisoners sometimes seek out segregation to escape attackers. Serving time under these conditions is exceptionally difficult and takes a toll on mental health, particularly if the victim has a prior history of mental illness. Segregation must be a last resort and interim measure only."). *But see* ALLEN J. BECK ET AL., DEP'T OF JUSTICE BUREAU OF JUSTICE STATISTICS, SEXUAL VICTIMIZATION IN PRISONS AND JAILS REPORTED BY INMATES, 2011-12 22 (2013), *available at* <http://www.bjs.gov/content/pub/pdf/svpjri1112.pdf> (Finding that "[t]hese data do not support the conclusion that juveniles held in adult prisons and jails are more likely to be sexually victimized than inmates in other age groups.").

⁴ Fagan et al., *Youth in Prisons and Training Schools*, *supra* note 2. This finding was also explicitly cited by Congress in passing the Act. 42 U.S.C. 15601(4) (2003). See also ZIEDENBERG & SCHIRALDI, THE RISKS JUVENILES FACE WHEN THEY ARE INCARCERATED WITH ADULTS, *supra* note 2.

⁵ See *generally* HUMAN RIGHTS WATCH & THE AMERICAN CIVIL LIBERTIES UNION, GROWING UP LOCKED DOWN, *supra* note 1, at appendix 1.

⁶ *Id.*

⁷ 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/ojjdp/213691.pdf>.

⁸ 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>.

⁹ See *Prison Rape Elimination Act (Sexual Violence in Correctional Facilities)*, Bureau of Justice Statistics (last visited May 31, 2013), *available at* <http://www.bjs.gov/index.cfm?ty=tp&tid=20> (listing Bureau of Justice Statistics data gathered since the act's passage).

¹⁰ 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>.

¹¹ 42 U.S.C. 15607 (c)(2) (2003). States must also audit state facilities every three years. See 28 C.F.R. §§ 115.93, 115.193, 115.293, 115.393, 115.401, 115.402, 115.403, 115.404, 115.405, 115.501 (2012), *available at* http://www.ojp.usdoj.gov/programs/pdfs/prea_final_rule.pdf.

¹² 28 C.F.R. §§ 115.89, 115.189, 115.289, 115.389 (2012), *available at* http://www.ojp.usdoj.gov/programs/pdfs/prea_final_rule.pdf.

¹³ 28 C.F.R. §§ 115.5, 115.14(a) (2012), *available at* http://www.ojp.usdoj.gov/programs/pdfs/prea_final_rule.pdf.

¹⁴ 28 C.F.R. § 115.14(c) (2012), *available at* http://www.ojp.usdoj.gov/programs/pdfs/prea_final_rule.pdf.

¹⁵ 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.")

¹⁶ Cal Welf. & Inst. Code § 207.1 & § 208 (West 2006); S.B. 259, 2010 Gen. Assemb., Reg. Sess. (Va. 2010); S.B. 1169, 2010 Gen. Assemb., Reg. Sess. (Pa. 2010); S.B. 1209, 82nd Leg. Sess. (Tex. 2011); H.B. 12-1139, 2012 Gen. Assemb. Reg. Sess. (Colo. 2012). See also SARAH ALICE BROWN, NATIONAL CONFERENCE OF STATE LEGISLATURES, TRENDS IN JUVENILE JUSTICE STATE LEGISLATION, 2001-2011 (June 2012), *available at* <http://www.ncsl.org/documents/cj/TrendsInJuvenileJustice.pdf>.

¹⁷ NEELUM ARYA, CAMPAIGN FOR YOUTH JUSTICE, STATE TRENDS: LEGISLATIVE CHANGES FROM 2005-2010 REMOVING YOUTH FROM THE ADULT CRIMINAL JUSTICE SYSTEM 29 (2011), *available at* http://www.campaignforyouthjustice.org/documents/CFYJ_State_Trends_Report.pdf.

¹⁸ For example, Arizona and Utah made it easier for youth who were tried as adults to get reverse waiver hearings so that they may be allowed to return to juvenile court. Arizona, Colorado, and Nevada have also refined age eligibility for adult prosecution to keep more youth out of adult courts. Indiana, Virginia, and Washington have limited the applicability of their "once an adult, always an adult" laws, which mandate that juveniles tried once as an adult will be tried as an adult on any subsequent charges regardless of the nature of the offense. *Id.*, at 33.

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Solitary Confinement of Juvenile Offenders

Approved by Council, April 2012

To be reviewed by June 2017

By the Juvenile Justice Reform Committee

Solitary confinement is defined as the placement of an incarcerated individual in a locked room or cell with minimal or no contact with people other than staff of the correctional facility. It is used as a form of discipline or punishment.

The potential psychiatric consequences of prolonged solitary confinement are well recognized and include depression, anxiety and psychosis¹. Due to their developmental vulnerability, juvenile offenders are at particular risk of such adverse reactions². Furthermore, the majority of suicides in juvenile correctional facilities occur when the individual is isolated or in solitary confinement.

Solitary confinement should be distinguished from brief interventions such as "time out," which may be used as a component of a behavioral treatment program in facilities serving children and/or adolescents, or seclusion, which is a short term emergency procedure, the use of which is governed by federal, state and local laws and subject to regulations developed by the Joint Commission, CARF and supported by the National Commission of Correctional Healthcare (NCHHC), the American Correctional Association (ACA) and other accrediting entities.

The Joint Commission states that seclusion should only be used for the least amount of time possible for the immediate physical protection of an individual, in situations where less restrictive interventions have proven ineffective. The Joint Commission specifically prohibits the use of seclusion "as a means of coercion, discipline, convenience or staff retaliation." A lack of resources should never be a rationale for solitary confinement.

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty establish minimum standards for the protection of juveniles in correctional facilities. The UN resolution was approved by the General Assembly in December, 1990, and supported by the US. They specifically prohibit the solitary confinement of juvenile offenders. Section 67 of the Rules states:

"All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned." In this situation, cruel and unusual punishment would be considered an 8th Amendment violation of our constitution³.

Measurements to avoid confinement, including appropriate behavioral plans and other interventions should be implemented⁴.

The American Academy of Child and Adolescent Psychiatry concurs with the UN position and opposes the use of solitary confinement in correctional facilities for juveniles. In

addition, any youth that is confined for more than 24 hours must be evaluated by a mental health professional, such as a child and adolescent psychiatrist when one is available.

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Growing Up Locked Down

Youth in Solitary Confinement in Jails and Prisons Across the United States

HUMAN
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Summary

Being in isolation to me felt like I was on an island all alone[,] dying a slow death from the inside out.

—Letter from Kyle B. (pseudonym), from California to Human Rights Watch, May 3, 2012.

Every day, in jails and prisons across the United States, young people under the age of 18 are held in solitary confinement.¹ They spend 22 or more hours each day alone, usually in a small cell behind a solid steel door, completely isolated both physically and socially, often for days, weeks, or even months on end. Sometimes there is a window allowing natural light to enter or a view of the world outside cell walls. Sometimes it is possible to communicate by yelling to other inmates, with voices distorted, reverberating against concrete and metal. Occasionally, they get a book or bible, and if they are lucky, study materials. But inside this cramped space, few contours distinguish one hour, one day, week, or one month, from the next.

This bare social and physical existence makes many young people feel doomed and abandoned, or in some cases, suicidal, and can lead to serious physical and emotional consequences. Adolescents in solitary confinement describe cutting themselves with staples or razors, hallucinations, losing control of themselves, or losing touch with reality while isolated. They talk about only being allowed to exercise in small metal cages, alone, a few times a week; about being prevented from going to school or participating in any activity that promotes growth or change. Some say the hardest part is not being able to hug their mother or father.

The solitary confinement of adults can cause serious pain and suffering and can violate international human rights and US constitutional law. But the potential damage to young

¹ In the United States, and throughout the report, the term “jail” refers to a facility that generally holds individuals awaiting trial in the criminal justice system or sentenced to less than a year of incarceration; “prison” refers to a facility that generally holds individuals sentenced to one or more years of incarceration. This report uses various terms, including “youth,” “teenagers,” “children,” “young people,” and “adolescents,” interchangeably to refer to youth under the age of 18. Throughout the report, the term “solitary confinement” is used to describe physical and social isolation for 22 to 24 hours per day and for one or more days, regardless of the purpose for which it is imposed. While solitary confinement is apparently used in juvenile facilities on occasion, this report focuses only on its use in adult jails and prisons.

people, who do not have the maturity of an adult and are at a particularly vulnerable, formative stage of life, is much greater.

Experts assert that young people are psychologically unable to handle solitary confinement with the resilience of an adult. And, because they are still developing, traumatic experiences like solitary confinement may have a profound effect on their chance to rehabilitate and grow. Solitary confinement can exacerbate, or make more likely, short and long-term mental health problems. The most common deprivation that accompanies solitary confinement, denial of physical exercise, is physically harmful to adolescents' health and well-being.

Human Rights Watch and the American Civil Liberties Union estimate that in 2011, more than 95,000 youth were held in prisons and jails. A significant number of these facilities use solitary confinement—for days, weeks, months, or even years—to punish, protect, house, or treat some of the young people who are held there. Solitary confinement of youth is, today, a serious and widespread problem in the United States.

This situation is a relatively recent development. It has only been in the last 30 years that a majority of jurisdictions around the country have adopted various charging and sentencing laws and practices that have resulted in substantial numbers of adolescents serving time in adult jails and prisons. These laws and policies have largely ignored the need to treat young people charged and sentenced as if adults with special consideration for their age, development, and rehabilitative potential.

Young people can be guilty of horrible crimes with significant consequences for victims, their families, and their communities. The state has a duty to ensure accountability for serious crimes, and to protect the public. But states also have special responsibilities not to treat young people in ways that can permanently harm their development and rehabilitation, regardless of their culpability.

This report describes the needless suffering and misery that solitary confinement frequently inflicts on young people; examines the justifications that state and prison officials offer for using solitary confinement; and offers alternatives to solitary confinement in the housing and management of adolescents. The report draws on in-person interviews and correspondence with more than 125 individuals who were held in jails or prisons while

under age 18 in 19 states, and with officials who manage jails or prisons in 10 states, as well as quantitative data and the advice of experts on the challenges of detaining and managing adolescents.

This report shows that the solitary confinement of adolescents in adult jails and prisons is not exceptional or transient. Specifically, the report finds that:

- Young people are subjected to solitary confinement in jails and prisons nationwide, and often for weeks and months.
- When subjected to solitary confinement, adolescents are frequently denied access to treatment, services, and programming adequate to meet their medical, psychological, developmental, social, and rehabilitative needs.
- Solitary confinement of young people often seriously harms their mental and physical health, as well as their development.
- Solitary confinement of adolescents is unnecessary. There are alternative ways to address the problems—whether disciplinary, administrative, protective, or medical—which officials typically cite as justifications for using solitary confinement, while taking into account the rights and special needs of adolescents.

Adult jails and prisons generally use solitary confinement in the same way for adolescents and adults. Young people are held in solitary confinement to punish them when they break the rules, such as those against talking back, possessing contraband, or fighting; they are held in solitary confinement to protect them from adults or from one another; they are held in solitary confinement because officials do not know how else to manage them; and sometimes, officials use solitary confinement to medically treat them.

There is no question that incarcerating teenagers who have been accused or found responsible for crimes can be extremely challenging. Adolescents can be defiant, and hurt themselves and others. Sometimes, facilities may need to use limited periods or forms of segregation and isolation to protect young people from other prisoners or themselves. But using solitary confinement harms young people in ways that are different, and more profound, than if they were adults.

Many adolescents reported being subjected to solitary confinement more than once while they were under age 18. Forty-nine individuals—more than a third—of the seventy-seven

interviewed and fifty with whom we corresponded described spending a total of between one and six months in solitary confinement before their eighteenth birthday.

Adolescents spoke eloquently about solitary confinement, and how it compounded the stresses of being in jail or prison—often for the first time—without family support. They talked about the disorientation of finding themselves, and feeling, doubly alone.

Many described struggling with one or more serious mental health problems during their time in solitary confinement and of sometimes having difficulty accessing psychological services or support to cope with these difficulties. Some young people, particularly those with mental disabilities (sometimes called psychosocial disabilities or mental illness, and usually associated with long-term mental health problems), struggled more than others. Several young people talked about attempting suicide when in isolation.

Adolescents in solitary confinement also experienced direct physical and developmental harm, a consequence of being denied physical exercise or adequate nutrition. Thirty-eight of those interviewed said they had experienced at least one period in solitary confinement when they could not go outside. A few talked about losing weight and going to bed hungry.

The report finds that young people in solitary confinement are deprived of contact with their families, access to education and to programming, and other services necessary for their growth, development, and rehabilitation. Twenty-one of the young people interviewed said they could not visit with loved ones during at least one period of solitary confinement. Twenty-five said they spent at least one period of time in solitary confinement during which they were not provided any educational programming at all. Sixteen described sitting alone in their cell for days on end without even a book or magazine to read.

But as a number of jail and prison officials recognize, solitary confinement is costly, ineffective, and harmful. There are other means to handle the challenges of detaining and managing adolescents. Young people can be better managed in specialized facilities, designed to house them, staffed with specially trained personnel, and organized to encourage positive behaviors. Punitive schemes can be reorganized to stress immediate and proportionate interventions and to strictly limit and regulate short-term isolation as a rare exception.

Solitary confinement of youth is itself a serious human rights violation and can constitute cruel, inhuman, or degrading treatment under international human rights law. In addition, the conditions that compound the harm of solitary confinement (such as lack of psychological care, physical exercise, family contact, and education) often constitute independent, concurrent, and serious human rights violations. Solitary confinement cannot be squared with the special status of adolescents under US constitutional law regarding crime and punishment. While not unusual, it turns the detention of young people in adult jails and prisons into an experience of unquestionable cruelty.

It is time for the United States to abolish the solitary confinement of young people. State and federal lawmakers, as well as other appropriate officials, should immediately embark on a review of the laws, policies, and practices that result in young people being held in solitary confinement, with the goal of definitively ending this practice. Rather than being banished to grow up locked down in isolation, incarcerated adolescents must be treated with humanity and dignity and guaranteed the ability to grow, to be rehabilitated, and to reenter society.

Key Recommendations

To the US Federal Government and/or State Governments

- Prohibit the solitary confinement of youth under age 18.
- Prohibit the housing of adolescents with adults, or in jails and prisons designed to house adults.
- Strictly limit and regulate all forms of segregation and isolation of young people.
- Monitor and report on the segregation and isolation of adolescents.
- Ratify human rights treaties protecting young people without reservations.

Growing Up Locked Down

Youth in Solitary Confinement in Jails and Prisons Across the United States

Every day in jails and prisons across the United States, large numbers of young people under age 18 are held in solitary confinement. They spend 22 or more hours each day physically and socially isolated in a small cell, often for weeks or even months on end. Adolescents in solitary confinement are routinely denied access to needed treatment, services, and programming. The practice is serious and widespread.

The solitary confinement of adults can cause severe pain and suffering and can violate international human rights and US constitutional law. But the potential damage to young people, who do not have the maturity of an adult and are at a particularly vulnerable stage of life, is much greater. Yet, solitary confinement of young people is not necessary; there are alternative ways to address the problems that officials cite as justifications for using solitary confinement.

Human Rights Watch and the American Civil Liberties Union call on US federal and state governments to prohibit the solitary confinement of young people under age 18; prohibit the housing of adolescents with adults or in adult jails and prisons; strictly limit and regulate all forms of segregation and isolation; and monitor and report on the segregation and isolation of young people, whenever they are deprived of their liberty.



A cell at the Pinellas County jail, an adult facility where young people are held in solitary confinement. One girl interviewed for the report said she spent four months in isolation there.

© 2008 AP Photo/Pinellas County Sheriff's Office



NO CHILD LEFT ALONE

Campaign to Stop the Solitary Confinement
of Youth in Adult Jails and Prisons

Section V: Communications Materials

Included in this section are materials that can assist your media and public education work once your campaign is under way:

- The **Sample National and State Press Releases** can be adapted to announce the work of your campaign.
- A **Sample Op Ed** can be adapted to promote the work of your campaign.
- The **Sample Blog Posts** on youth solitary issues can be adapted to inform the public about specific issues or milestones in your campaign.
- **Press Clippings** from national media can be helpful in pitching your work and in explaining the issue to advocacy targets.

Embargoed for Release

Not for Publication Until:

10:01 in Washington, D.C., Wednesday, October 10, 2012

14:00 GMT, October 10, 2012

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US: Teens in Solitary Confinement

Youths Suffer Serious Harm From Weeks, Months in 'Lock-Down'

(Washington D.C., October 10, 2012) – Young people are held in solitary confinement in jails and prisons across the United States, often for weeks or months at a time, Human Rights Watch and the American Civil Liberties Union (ACLU) said in a report released today.

The 141-page report, “Growing Up Locked Down: Youth in Solitary Confinement in Jails and Prisons Across the United States,” is based on research in both US jails and prisons in five states – Colorado, Florida, Michigan, New York, and Pennsylvania – and correspondence with young people in 14 others. The isolation of solitary confinement causes anguish, provokes serious mental and physical health problems, and works against rehabilitation for teenagers, Human Rights Watch and the ACLU found.

“Locking kids in solitary confinement with little or no contact with other people is cruel, harmful, and unnecessary,” said Ian Kysel, Aryeh Neier Fellow with Human Rights Watch and the ACLU and author of the report. “Normal human interaction is essential to the healthy development and rehabilitation of young people; to cut that off helps nobody.”

The report is based on interviews and correspondence with more than 125 young people in 19 states who spent time in solitary confinement while under age 18, as well as with jail and/or prison officials in 10 states.

Human Rights Watch and the ACLU estimate that in 2011, more than 95,000 young people under age 18 were held in prisons and jails. A significant number of these facilities use solitary confinement – for days, weeks, months, or even years – to punish, protect, house, or treat some of the young people held there.

Because young people are still developing, traumatic experiences like solitary confinement may have a profound effect on their chance to rehabilitate and grow, the groups found. Solitary confinement can exacerbate short- and long-term mental health problems or make it more likely that such problems will develop. Young people in solitary confinement are routinely denied access to treatment, services, and programming required to meet their medical, psychological, developmental, social, and rehabilitative needs.

The New York City Department of Corrections, for example, reported that in fiscal year 2012, which ended in June, more than 14 percent of all adolescents were held in at least one period of solitary confinement while detained. The average length of time young people spent in solitary confinement at Rikers Island was 43 days. More than 48 percent of adolescents at Rikers have diagnosed mental health problems.

“Being in isolation to me felt like I was on an island all alone, dying a slow death from the inside out,” said “Kyle B.,” from California, who spent time in solitary confinement while under age 18.

Young people interviewed for the report repeatedly described how solitary confinement compounded the stress of being in jail or prison. They spoke about cutting themselves with staples or razors while in solitary confinement, having hallucinations, and losing touch with reality. Several said they had attempted suicide multiple times in solitary confinement.

Those allowed outside described only being allowed to exercise in small metal cages, alone, a few times a week. Several said they could not get books, magazines, paper, pens or pencils, or attend any classes or programming. For some, the hardest part about solitary confinement was being denied visits and not being able to hug their mother or father.

The solitary confinement of young people under age 18 is itself a serious human rights violation and can constitute cruel, inhuman, or degrading treatment under international human rights law, Human Rights Watch and the ACLU said. Conditions that compound the harm of solitary confinement, such as denial of educational programming, exercise, or family visits, often constitute independent, serious human rights violations.

A number of corrections officials have begun to recognize and speak against the use of solitary confinement, saying that it is costly, ineffective, and harmful.

There are alternative ways to address the problems – whether disciplinary, administrative, protective, or medical – that officials typically cite to justify using solitary confinement, while taking into account the rights and special needs of adolescents, Human Rights Watch and the ACLU said. Youth could be housed in specialized facilities organized to encourage positive behavior. And punishment should be proportional to the infraction, using any short-term isolation as a rare exception.

The federal and state governments should ban placing youth in solitary confinement, Human Rights Watch and the ACLU said. They should also prohibit housing adolescents with adults or in jails and prisons designed to house adults, and strictly regulate and monitor all forms of isolation of young people.

“No one believes that locking a teenager in a closet is an effective way to improve either their behavior or their character, much less to protect them long term,” Kysel said. “Young people have rights and needs that are different from adults; jail and prison practices should reflect those differences and promote their ability to grow and change – we should invest in youth, not banish them.”

During the embargo period, “Growing Up Locked Down: Youth in Solitary Confinement in Jails and Prisons Across the United States” is available at:

<http://hrw.org/embargo/node/110545?signature=35460e188751724c8ea7fd036e2b821c&suid=6>

Upon release, it will be available at:

<http://hrw.org/reports/2012/10/10/growing-locked-down>

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Selected quotes from young people interviewed:

“In seg[regation] you either implode or explode; you lose touch with reality, hear voices, hallucinate and think for hours about killing yourself, others or both. The anger and hurt gets so intense that you suspect everyone and trust no one and when someone does something nice for you, you don’t understand it.” – “Douglas C.” Colorado, April 2012.

“The hardest thing about isolation is that you are trapped in such a small room by yourself. There is nothing to do so you start talking to yourself and getting lost in your own little world. It is crushing. You get depressed and wonder if it is even worth living. Your thoughts turn over to the more death-oriented side of life ... I want[ed] to kill myself.” – “Paul K.,” Michigan, March 2012.

“I just felt I wanted to die, like there was no way out – I was stressed out. I hung up the first day. I took a sheet and tied it to my light and they came around ... The officer when she was doing rounds found me. She was banging on the window – ‘Are you alive? Are you alive?’ I could hear her but I felt like I was going to die. I couldn’t breathe.” – “Luz M.,” New York, April 2012

“Me? I cut myself. I started doing it because it is the only release of my pain. I’d see the blood and I’d be happy ... I did it with staples, not razors. When I see the blood and it makes me want to keep going. I showed the officers and they didn’t do anything ... I wanted [the staff] to talk to me. I wanted them to understand what was going on with me.” – “Alyssa E.,” Florida, April 2012.

“If I would describe isolation to another person I would tell them it’s bad. We didn’t do anything wrong to be put in isolation. They say it’s to protect us but I think it puts us in more danger... [H]ow could we be charged as men but be separated from men. It makes no sense. If that’s the case, keep our cases at juvenile if they want to protect us.” – “Charles O.,” Pennsylvania, April 2012.

NEW REPORT: Teens in Solitary Confinement

Youths Suffer Serious Harm from Weeks, Months in “Lock-down”

Embargoed for release until 10:00 AM ET October 10, 2012

CONTACT:

XXXXXXX

CITY - Young people are held in solitary confinement in jails and prisons in [Colorado, Florida, Michigan, New York, Pennsylvania] and across the United States, often for weeks or months at a time, the American Civil Liberties Union and Human Rights Watch said in a report released today.

The 141-page report, “Growing Up Locked Down: Youth in Solitary Confinement in Jails and Prisons Across the United States,” is based on research in both US jails and prisons in five states, Colorado, Florida, Michigan, New York and Pennsylvania, and correspondence with young people in 14 others. The isolation of solitary confinement causes anguish, provokes serious mental and physical health problems, and works against rehabilitation for teenagers, Human Rights Watch and the ACLU found.

“Locking kids in solitary confinement with little or no contact with other people is cruel, harmful and unnecessary,” said Ian Kysel, Aryeh Neier Fellow with Human Rights Watch and the ACLU and author of the report. “Normal human interaction is essential to the healthy development and rehabilitation of young people; to cut that off helps nobody.”

The report is based on interviews and correspondence more than 125 young people in 19 states who spent time in solitary confinement while under age 18 as well as with jail and/or prison officials in 10 states.

INSERT STATE-SPECIFIC INFO:

[In Colorado, researchers corresponded with or interviewed 20 individuals who reported being subjected to one or more periods of solitary confinement while under age 18 in jails in Adams, Arapahoe, Clear Creek, Denver, El Paso, Jefferson, and Park Counties; and in a number of state prisons.]

[In Florida, researchers corresponded with or interviewed 38 individuals who had been subjected to solitary confinement while under age 18 in jails in Bay, Citrus, Clay, Duval, Escambia, Highlands, Hillsboro, Jackson, Lee, Leon, Miami, Okaloosa, Okeechobee, Orange, Palm Beach, Pinellas, Polk, and St. Lucie Counties; and in a number of state prisons.]

[In Michigan, researchers corresponded with or interviewed 15 individuals who reported being subjected to one or more periods of solitary confinement while under age 18 in jails in Berrien, Calhoun, Ingham, Kent, Oakland, Wayne, and Saginaw counties; and in a number of state prisons.]

[In New York, researchers interviewed seven individuals who reported being subjected to one or more periods of solitary confinement while under age 18 at Rikers Island.]

[In Pennsylvania, researchers interviewed or corresponded with 11 individuals who reported being subjected to one or more periods of solitary confinement while under 18 in county prisons (jails) in Allegheny, Dauphin, Lackawanna, Lebanon, Lehigh, and Philadelphia Counties; and in state prison.]

Human Rights Watch and the ACLU estimate that in 2011, more than 95,000 young people under age 18 were held in prisons and jails. A significant number of these facilities use solitary confinement—for days, weeks, months, or even years—to punish, protect, house, or to treat some of the young people held there.

Because young people are still developing, traumatic experiences like solitary confinement may have a profound effect on their chance to rehabilitate and grow, the groups found. Solitary confinement can exacerbate short and long-term mental health problems or make it more likely that such problems will develop. Young people in solitary confinement are routinely denied access to treatment, services, and programming required to meet their medical, psychological, developmental, social, and rehabilitative needs.

INSERT STATE-SPECIFIC INFO:

[Ten young people in Colorado, for example, described spending a total of more than five months in solitary confinement in county jails before they turned 18; three said they had spent four months or longer in solitary confinement in prison.]

[Seven young people in Florida, for example, described spending fifteen days at a time or longer in solitary confinement in county jails before they turned eighteen; three said they had spent three months or longer in solitary confinement in prison.]

[Five young people in Michigan, for example, described spending two months or longer in solitary confinement in county jails before they turned eighteen; three said they had spent more than one period of one month or longer in solitary confinement in prison]

[The New York City Department of Corrections reported, for example, that in FY2012, which ended in June, more than 14 percent of all adolescents were held in at least one period of solitary confinement while detained. The average length of time young people spent in solitary confinement at Rikers Island was 43 days. More than 48 percent of adolescents at Rikers have diagnosed mental health problems.]

[Five young people in Pennsylvania, for example, described spending one month or longer in protective solitary confinement in county prisons (jails) before they turned 18; state prison officials reported holding approximately 10 percent of all young offenders (up to age 21) in solitary confinement at SCI Pine Grove prison.]

Young people interviewed for the report repeatedly described how solitary confinement compounded the stress of being in jail or prison. They spoke about cutting themselves with staples or razors while in solitary confinement; having hallucinations, and losing touch with reality. Several said they had attempted suicide multiple times in solitary confinement.

Those allowed outside described only being allowed to exercise in small metal cages, alone, a few times a week. Several said they could not get books, magazines, paper, pens, or pencils, or attend any classes or programming. For some, the hardest part about solitary confinement was being denied visits and not being able to hug their mother or father.

INSET APPROPRIATE EXCERPT:

In seg[regation] you either implode or explode; you lose touch with reality, hear voices, hallucinate and think for hours about killing yourself, others or both. The anger and hurt gets so intense that you suspect everyone and trust no one and when someone does something nice for you, you don't understand it. - "Douglas C." Colorado, April 2012.

The hardest thing about isolation is that you are trapped in such a small room by yourself. There is nothing to do so you start talking to yourself and getting lost in your own little world. It is crushing. You get depressed and wonder if it is even worth living. Your thoughts turn over to the more death-oriented side of life ... I want[ed] to kill myself. - "Paul K.," Michigan, March 2012.

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If I would describe isolation to another person I would tell them it's bad. We didn't do anything wrong to be put in isolation. They say it's to protect us but I think it puts us in more danger... [H]ow could we be charged as men but be separated from men. It makes no sense. If that's the case, keep our cases at juvenile if they want to protect us. - "Charles O.," Pennsylvania, April 2012.

The solitary confinement of young people under age 18 is itself a serious human rights violation and can constitute cruel, inhuman, or degrading treatment under international human rights law, Human Rights Watch and the ACLU said. Conditions that compound the harm of solitary confinement, such as denial of educational programming, exercise, or family visits, often constitute independent, serious human rights violations.

INSERT PERSONALIZED QUOTE. SUGGESTED LANGUAGE:

No one believes that locking a teenager in a closet is an effective way to improve either their behavior or their character, much less to protect them long term.

Young people have rights and needs that are different from adults; jail and prison practices should reflect those differences and promote their ability to grow and change – we should invest in youth, not banish them.

A number of corrections officials have begun to recognize and speak against the use of solitary confinement, saying that it is costly, ineffective, and harmful.

There are alternative ways to address the problems—whether disciplinary, administrative, protective, or medical—that officials typically cite to justify using solitary confinement, while taking into account the rights and special needs of adolescents, Human Rights Watch and the ACLU said. Youth could be housed in specialized facilities organized to encourage positive behavior. And punishment should be proportional to the infraction, using any short-term isolation as a rare exception.

The federal and state governments should ban placing youth in solitary confinement, Human Rights Watch and the ACLU said. They should also prohibit housing adolescents with adults or in jails and prisons designed to house adults, and strictly regulate and monitor all forms of isolation of young people.

“Growing Up Locked Down,” as well as additional materials including a video, podcast and multimedia feature, can be found online at: www.aclu.org/growinguplockeddown.



Ian Kysel

Ian Kysel is the Aryeh Neier Fellow at Human Rights Watch and the ACL. He is the author of a new report "Growing Up Locked Down" about the use of solitary confinement for juvenile prisoners.

How not to rehabilitate young prisoners

Sending young people to solitary confinement is the perverse consequence of treating them like adults, writes Kysel.

Last Modified: 19 Oct 2012 09:37



An estimated 95,000 people under 18 were held in adult jails and prisons in the US in 2011 [GALLO/GETTY]
 "Being in isolation to me felt like I was on an island all alone, dying a slow death from the inside out."

This is just one of the many haunting comments I heard from scores of teenagers describing their experiences in solitary confinement in jails and prisons across the United States.

Solitary confinement is a common practice in US jails and prisons, and one that has been the subject of increasing scrutiny in recent years due to its cruelty. What many people don't realise is that young people are frequently sent to solitary confinement.

An estimated 95,000 people under 18 were held in adult jails and prisons in the US last year. Many are held in isolation for 22 to 24 hours a day, in some cases for weeks or months at a time. While there, they are often denied exercise, counselling, education and family visits.

Sending young people to solitary confinement is the perverse consequence of treating them like adults. They may often think they are, but every parent knows better. It is an ongoing tragedy that our criminal justice system does not.

Solitary confinement

In line with recent advances in neuroscience showing that our brains continue to develop until we are in our mid-20s, the US Supreme Court has repeatedly affirmed, in the context of crime and punishment, that young people are constitutionally different. They are still evolving and in need of age-appropriate treatment and care to grow, mature and be rehabilitated. Prolonged solitary confinement of kids is the opposite of appropriate treatment, holding back development and closing the door to opportunities for rehabilitation.

New York City officials told me that more than 14 per cent of 16 to 18 year olds in city jails in the most recent fiscal year were held in solitary confinement to punish them. The average stay was 43 days - longer than for adults. In Pennsylvania's prison facility for "youthful offenders", which holds young people ranging from age 14 to their early 20s, officials told me that nearly 10 per cent of their population is in some form of solitary confinement on any given day.

I met a boy who had first been held in solitary in an adult jail when he was 13. Dozens of other kids talked about spending months locked down in solitary before their 18th birthday. I talked to girls and boys who recounted in painful detail how they lost control of themselves in solitary confinement, hallucinated, or cut themselves.

One girl from Florida described to me how she coped. "Me? I cut myself. I started doing it because it is the only release of my pain. I'd see the blood and I'd be happy ... I did it with staples, not razors. When I see the blood ... it makes me want to keep going."

More than a few told me about attempting suicide; family members shared painful stories about those who succeeded. "A boy from Michigan said, "[t]he hardest thing about isolation is that you are trapped in such a small room by yourself. There is nothing to do so you start talking to yourself and getting lost in your own little world. It is crushing. You get depressed and wonder if it is even worth living."

Rehabilitate prisoners

There is no question that detaining and managing young people can be a challenge for jail and prison officials, which is why they shouldn't be in adult facilities in the first place. Youth are vulnerable to abuse from older inmates and they can be defiant and break the rules. Thus officials often use solitary to protect young people from adult inmates or simply to punish them.

Yet no one who deals with rebellious teens would recommend locking them in a closet, as opposed to engaging them and trying to reward them for positive behaviour. Even if some limited amount of segregation or isolation is needed, there's no justification for it to last for 22 - or even 24 - hours at a time.

And there are alternatives. Corrections officials - even those who use solitary confinement - told me that facilities can use positive reinforcement to reduce reliance on punishment. They can also use proportional punishment, such as taking away privileges, rather than prolonged solitary confinement.

Prisons across the country rely too much on solitary confinement for prisoners young and old. It costs too much, does nothing to rehabilitate prisoners and exacerbates mental health problems. All of that is never more evident than when young people are locked away in solitary. It is time to ban the practice.

Charles Dickens once likened solitary confinement to a "secret punishment which slumbering humanity is not roused up to stay".

It is time to wake up.

Ian Kysel is the Aryeh Neier Fellow at Human Rights Watch and the ACLU. He is the author of a new report "Growing Up Locked Down" about the use of solitary confinement for juvenile prisoners.

Follow him on Twitter: [@janmkysel](#)

The views expressed in this article are the author's own and do not necessarily reflect Al Jazeera's editorial policy.

Source: Al Jazeera



Too young to shave, but old enough for solitary

May 3, 2012

By [David Fathi](#), National Prison Project at 5:24pm

As any parent knows, teenagers are different than adults. This common-sense observation is backed by hard scientific evidence; we know that an adolescent's brain continues to grow and develop well into his or her twenties. The fact that teenagers' brains are still developing makes them especially vulnerable to trauma of all kinds, including the trauma of social isolation and sensory deprivation.

That's why the leading American child psychiatry association just approved a [policy statement](#) opposing the use of solitary confinement in correctional facilities for juveniles. The American Academy of Child & Adolescent Psychiatry represents over 7,500 child and adolescent psychiatrists and other interested physicians.

This groundbreaking policy statement from adolescent psychiatry experts comes not a moment too soon. While recent settlements in ACLU lawsuits in [Montana](#) and [Mississippi](#) include limits on solitary confinement for youth, the practice remains alarmingly widespread, with thousands of persons under 18 held in solitary on any given day, in juvenile facilities as well as in adult jails and prisons. I remember the first time I visited a 13-year-old boy in solitary in an adult prison – his voice hadn't changed yet and he was too young to shave, but that didn't save him from being locked alone in a cell for 23 hours a day.

Solitary confinement can be harmful for people of any age, but it's especially damaging to youth. The 17-year-old plaintiff in the ACLU's Montana case tried to kill himself several times while in solitary confinement in an adult prison. And while youth in solitary are a relatively small percentage of the total population of juvenile facilities, they account for more than half of the suicides.

Fortunately efforts are underway to end this inhumane and destructive practice. In California, Sen. Leland Yee introduced [a bill](#) to ban solitary confinement for juveniles except in the most exceptional circumstances. The bill attracted considerable support, but eventually failed to pass out of committee. And in West Virginia, the Division of Juvenile Services [recently announced a state-wide ban on the practice](#).

It's time for the United States to catch up to the rest of the world. The United Nations has established [minimum standards](#) for the protection of youth in correctional facilities, which specifically prohibit solitary confinement. Just last year, the [United Nations Special Rapporteur on Torture](#) concluded that solitary confinement can in some circumstances amount to torture, and called for a complete ban on solitary for juveniles.

Virtually all incarcerated juveniles will eventually be released back into society. It's in everyone's interest that they be prepared to live law-abiding lives, not further damaged and traumatized by solitary confinement.

Learn more about solitary confinement: [Sign up for breaking news alerts](#), [follow us on Twitter](#), and [like us on Facebook](#).

Published on *American Civil Liberties Union* (<http://www.aclu.org>)

Source URL: <http://www.aclu.org/blog/prisoners-rights-criminal-law-reform/too-young-shave-old-enough-solitary>



New Support for Ending the Solitary Confinement of Youth

October 17, 2012

By [Rachel Myers](#), ACLU at 10:48pm

Last week the ACLU and Human Rights Watch [released a report](#) about the solitary confinement of young people in America's jails and prisons. Kids in solitary often spend 22 to 24 hours a day alone, sometimes without access to books, let alone other people. The isolation can last for days, weeks, or even months at a time.

As the report explains, long-term solitary confinement can have devastating effects for anyone, but it is especially damaging to young people who rely on human interaction for healthy development and rehabilitation. The young people interviewed for the report described mounting fear and anxiety from being in solitary that often led them to cut themselves or attempt suicide.

Based on the findings of the report, the ACLU and HRW recommend that kids never be held in adult facilities, but when they are, they be held in separate areas with other kids, and never locked in solitary confinement.

This week, the [New York Times](#) called for states to ban or sharply minimize the solitary confinement of young people. As the *Times* points out:

Corrections officials have a duty to protect the public from crime. But they also have a responsibility not to permanently scar the lives of young people who are far from fully developed when they land in custody.

At the [Washington Post](#), columnist Ruth Marcus writes:

This treatment is unconscionable and unconstitutional. Whatever you think about the use of solitary confinement when it comes to adults — and evidence suggests that it is both cruel and counterproductive — it cannot pass the minimum tests of decency to inflict this punishment on adolescents, with their still-developing brains, reduced capacity for impulse control and greater prospects for reform.

We know that the detention of adolescents poses certain challenges. They can be defiant, and sometimes try to hurt themselves and others. As the report notes, "Sometimes, facilities may need to use limited periods or forms of segregation and isolation to protect young people from other prisoners or themselves." But alternatives like small group living, immediate and proportional interventions, and interactive treatment programs are more successful at preventing problem behaviors and addressing mental health problems in youth than isolation.

Using solitary confinement can harm children in profound ways. There should be no place in our society for a criminal justice system that leaves young people less equipped to live in society than when they entered.

Learn more about juvenile detention: [Sign up for breaking news alerts](#), [follow us on Twitter](#), and [like us on Facebook](#).

Published on *American Civil Liberties Union* (<http://www.aclu.org>)

Source URL: <http://www.aclu.org/blog/criminal-law-reform-prisoners-rights/new-support-ending-solitary-confinement-youth>



The Sad State of Solitary in Florida: Is There Hope for this Human Rights Violation?

March 13, 2013

By [Julie Ebenstein](#), ACLU of Florida at 3:59pm

The world got a glimpse this week into how the United States treats those we lock in solitary confinement, when the Inter-American Commission on Human Rights heard ACLU testimonies on how our treatment of vulnerable prisoners violates international human rights norms. The short story: we should be ashamed. For a more detailed picture, check back throughout the week for an ongoing blog series on the issue.

The United States has become a global outlier in its over-reliance on incarceration. Our soaring incarceration rates are, by now, a familiar statistic, expressed in any number of shocking formulas: the U.S. has less than 5 percent of the world's population but [over 25 percent of the world's incarcerated people](#); the incarceration rate in the U.S. is four times the average for Western European countries; the U.S. incarcerates more people than South America, Central America and the Caribbean combined. In this era of mass incarceration, the racial disparities are staggering: [one in four African-American children](#) in the U.S. has grown up with a parent incarcerated.

But none of these statistics quite capture our inhumane treatment of many prisoners, especially those who are the most vulnerable – children, the elderly, and those struggling with mental illness.

Prison conditions, particularly conditions of [solitary confinement](#), are often, by definition, hidden from public view. Yesterday, the world peered into our prisons and jails when the [Inter-American Commission on Human Rights](#) (IACHR) held a hearing on human rights and solitary confinement in the Americas. The ACLU of Florida and Florida Institutional Legal Services [submitted testimony](#) to the IACHR describing the solitary confinement of children and the prisoners with mental disabilities incarcerated in Florida prisons and jails.

Currently, the sad state of affairs in Florida serves as a prime example of the U.S.'s poor human rights record on solitary confinement.

Florida's state prison population is the [third largest in the United States](#), with a higher incarceration rate than any country in Central or South America. Florida incarcerates 100,272 people in its 60 state prisons and supervises almost 115,000 offenders on community supervision. Florida sends [more young people under age 18](#) to adult state prisons than any other state in the nation.

Prisoners held in solitary confinement in Florida state prisons can be there for months on end. They are detained in nearly complete isolation, entitled to leave their cell three times per week to take a shower, and, only after thirty days, an additional three hours per week to exercise. Children in state prison may be subjected to solitary confinement and endure long periods without exercise, educational instruction, contact with their families or any rehabilitative programs and services.

Although children and mentally ill prisoners are particularly susceptible to the devastating physical and psychological effects of total isolation, [they are dramatically overrepresented in solitary confinement](#). Neither Florida law nor its correctional regulations applies solitary confinement any differently to children or those who are seriously mentally ill, as compared to other prisoners, demonstrating a willful blindness to the particular vulnerability of these populations. In recognition of these practices, international bodies are increasingly investigating the treatment of incarcerated juveniles in the U.S.

The systemic isolation of vulnerable prisoners bucks [the emerging consensus](#) that extended solitary confinement violates the international prohibition on cruel and inhumane treatment. By reporting on solitary confinement in the Americas, the IACHR will have an opportunity to shine a light on how the U.S. has deviated from international human rights norms.

It's clear that Florida is out of step with international law and standards. However, there may be cause for hope. If [Florida passes SB 812](#), which was introduced by State Senator Gibson in February, the state would go from being one of worst violators to the state with strongest protections against harmful solitary confinement for young people in adult jails and prisons.

If a nation's greatness is measured by how it treats its weakest members, Florida must act quickly to remedy the mistreatment of our most vulnerable prisoners. We can begin by passing and implementing SB 812 to protect children in facilities statewide.

Previous posts in the series:

[Progress in Maine](#)

[ACLU: Solitary Violates Human Rights](#)

[Solitary in New York](#)

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October 15, 2012

Adolescents in Grown-Up Jails

The practice of confining young people to adult jails and prisons is both counterproductive and inhumane. Adolescents who are locked up with adults are more likely to be raped, battered or driven to suicide than young people who are handled through the juvenile justice system. After the trauma of doing hard, adult time, young people often return home as damaged individuals who are more likely to commit violent crimes and end up back inside.

The prudent approach would be for the states to keep children out of adult jails and channel them through the juvenile justice systems, where they could get the counseling and mental health services that so many of them clearly need. But, as it stands today, tens of thousands of young people each year are charged as adults, even for nonviolent offenses and property crimes that do not warrant adult time.

Many states have adopted various protective strategies, under which young inmates are separated from adults who would otherwise prey on them. One of these strategies is to segregate young people in solitary confinement — a soul-killing punishment that condemns young people to spend weeks or even months locked up alone in small cells for up to 23 hours a day, cut off from all contact with other prisoners.

[A new study issued earlier this month](#) by Human Rights Watch and the American Civil Liberties Union shows the degree to which extended isolation — which is hard going for mature adults — can easily lead to mental illness and other damage among emotionally immature young people. The report, [Growing Up Locked Down](#), is based on interviews and correspondence in 2011 and 2012 with more than 125 individuals who were sent to jail or prison in 20 states while under the age of 18.

Prison officials use solitary confinement for several reasons that apply to all prisoners: to isolate inmates who need protection or could be dangerous to others; to deal with those who have mental problems or have threatened suicide; or to punish inmates who break rules, even minor rules like failing to make their beds or close their cell doors. Young people are naturally more prone to rule-breaking because they are impulsive and generally less capable of reasoned judgment.

Like others in solitary, young prisoners are routinely cut off from their families, sometimes

denied books or forbidden from writing home. All of this deepens the terminal sense of isolation. Many of the young prisoners interviewed for the report spoke of suffering acute anxiety, depression or hallucinations. Some spoke of deliberately injuring others, thinking about suicide. Others spoke of being overcome with an uncontrollable anger. In some cases, would get them bounced right back into solitary once they got out.



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Corrections officials have a duty to protect the public from crime. But they also have a responsibility not to permanently scar the lives of young people who are far from fully developed when they land in custody. To meet that responsibility, states and localities should ban or sharply minimize solitary confinement for young people, and, more broadly, make sure that fewer of them land in adult jails in the first place.

AP

Advertisement

The Big Story

Rights groups: Ban solitary confinement of youths

By **DAVID CRARY**

— Oct. 10 2:48 PM EDT

[Home](#) » [New York](#) » Rights groups: Ban solitary confinement of youths

FILE - In this Thursday, May 31, 2007 file photo, Juvenile Corrections Officers Robert Zinn, left, and Nathan Castle, right, look in on prisoners in their solitary confinement cells and fill out a log of check times at the Marion Juvenile Corrections Institute in Marion, Ohio. Each of the inmates needs to be checked on every 15 minutes by the officers while in confinement. In a report released Wednesday, Oct. 10, 2012, two of the nation's leading advocates for prisoners' rights state state governments should abolish the use of solitary confinement for offenders under 18, whether as a punitive or protective measure. (AP Photo/Columbus Dispatch, James D. DeCamp)

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NEW YORK (AP) — State governments should abolish the use of solitary confinement for offenders under 18, whether as a punitive or protective measure, two of America's leading advocates for prisoners' rights said in report Wednesday.

Human Rights Watch and the American Civil Liberties Union said brief periods of isolation may be needed as a security measure. However, they contend that longer spans of solitary confinement can cause serious psychological and physical harm to young people, including heightened risk of suicide.

Solitary confinement of adults also can be harmful, the report said. "But the potential damage to young people, who do not have the maturity of an adult and are at a particularly vulnerable, formative stage of life, is much greater."

The report, "Growing Up Locked Down," said lack of detailed state data made it impossible to estimate the number of juveniles subjected to solitary confinement and other forms of isolation at any given time. But it described the practice as widespread, notably among juveniles held in adult facilities.

The report cited psychiatric studies and medical experts warning of the risks that solitary confinement could pose to juveniles. It included input from 49 people who spent time in jails or prisons as minors and described spending at least a month in solitary before turning 18.

"The only thing left to do is go crazy — just sit and talk to the walls," a youth confined in Florida was quoted as saying. "Screaming, throwing stuff around — I feel like I am alone, like no one cares about me. Sometimes I feel like, why am I even living?"

The report's author, human rights researcher Ian Kysel, acknowledged that young people can present serious challenges for corrections officials — both as potential rule-breakers and as potential victims of older inmates.

"Officials may need to use limited periods of segregation and isolation to protect young people from other inmates or even from themselves," he said. "But the extremely stark conditions of solitary confinement that we found across the country, isolation for 22-24 hours a day, often for weeks or months, harm young people in ways that are different than if they were adults."

His report says youths shouldn't be serving time in adult jails and prisons, and instead should be at juvenile facilities where staff trained to deal with young people could find alternative ways to address disciplinary and security problems.

"Punitive schemes can be reorganized to stress immediate and proportionate interventions and to strictly limit and regulate any short-term isolation as a rare exception," the report says.

For now, however, many state and local corrections agencies do house some juveniles in adult facilities, and options for dealing with problems may be limited by lack of space and resources.

Daron Hall, president of the American Correctional Association, is also county sheriff in Nashville, Tenn., and oversees a 4,000-bed jail system that only has 20 beds set aside for juveniles.

"When you have fights, you're limited in your ability to separate people without putting them in what you'd call isolation," he said. "You can't move them into adult unit, so you start running out of options."

Once in isolation in the Nashville system, the offender gets more attention from the staff, not less — including visits from chaplains and mental health professionals, Hall said. He traced that hands-on approach to a suicide of a young prisoner

about 15 years ago who apparently was distraught being placed in solitary confinement.

"It better be important enough to separate someone, because you're going to spend more time and money on them," said Hall. "We need to be sure they're not harming themselves."

Hall acknowledged, however, that some corrections agencies, for example in rural areas, might lack the resources to take this hands-on approach.

Martin Horn, executive director of New York State Sentencing Commission and formerly the top corrections official in New York City and in Pennsylvania, said he opposed any sort of "throw them in the hole" policies that involve rigid isolation and sensory deprivation.

"But we have to be very careful not to deprive officials of necessary tools," he said. "There are and always will be predatory individuals in custody, including youngsters, who can prey on other youngsters. Sometimes physical separation may be the only resort."

He said any decision to isolate a minor in custody should entail extra efforts to "keep them connected to the world, to their family, to social and intellectual stimulation."

Michelle Mason, an attorney with the Defender Association of Philadelphia, said states should move aggressively to stop placing any juveniles in adult facilities, even if they are charged with adult crimes. This step would make it easier to find alternatives to the use of isolation, she said.

"A tremendous number of these youths have mental problems," she said. "They're already a very fragile population, and doing something that makes them more at risk is ludicrous."

According to the new report, New York City was among the jurisdictions making extensive use of punitive segregation for juveniles held at its Rikers Island jail complex.

On Wednesday, Corrections Commissioner Dora Schriro said her department was adopting a new strategy of short-term "time outs" — also known as temporary cell restriction — that should dramatically decrease the use of solitary confinement.

The report by Kysel is the latest in a series of appeals for a halt to solitary confinement of minors.

Last year, the United Nations' investigator on torture, Juan Mendez, urged a complete ban on the practice. The American Academy of Child and Adolescent Psychiatry endorsed that position in April, and said any youth confined in isolation for more than 24 hours should be evaluated by a mental health professional.

Several states have been grappling with controversies and lawsuits related to solitary confinement of juveniles.

Earlier this year, Mississippi authorities settled a 2010 lawsuit filed by the ACLU and the Southern Poverty Law Center with an agreement to stop placing minors in solitary confinement for more than 20 hours at a time.

The ACLU also sued in Montana in 2009 over the treatment of a mentally ill 17-year-old boy placed in solitary confinement at the Montana State Prison. A settlement was reached in April regulating the amount of time juveniles can be placed in isolation without a top-level review of the case.

West Virginia's Division of Juvenile Services has partially settled a lawsuit over the treatment of juvenile offenders. Under the terms, the agency agreed that young offenders should not be isolated as often and should be quickly assessed by a counselor.

In Illinois, authorities trying to fend off an ACLU lawsuit said they would cut back on the practice of long-term solitary confinement for juveniles. According to the suit, some youths were being kept in solitary for up to three months.

___(equals)

Online:

Human Rights Watch: <http://www.hrw.org/>

ACLU: <http://www.aclu.org/>

American Corrections Association: <http://www.aca.org/>

___(equals)

David Cray can be followed on Twitter at <http://twitter.com/CrayAP>

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THE CRIME REPORT

YOUR COMPLETE CRIMINAL JUSTICE RESOURCE

Inside Criminal Justice

Kids in Solitary

November 5, 2012 04:46:00 am

By Henrick Karoliszyn

For the past two years, Lisa Ortega has watched her son decay mentally and physically behind bars.

With every visit to Rikers Island, the mammoth New York City jail complex which houses juvenile as well as adult offenders, she saw her once-outgoing boy "change for the worse."

"He lost his hair, he got juvenile diabetes," said Ortega, 44. "I would get eye contact only sometimes, but his shoulders would slump.

"There was nothing except bitterness."

Kendall Davis, Ortega's son, was convicted of two counts of criminal possession of a weapon in 2010, when he was 16 years old, she said.

At the time, Davis was diagnosed with Generalized Anxiety Disorder (GAD) by a doctor, Ortega said.

But now the Bronx mother worries his mental problems have slid into dangerous territory.

"He's losing touch with reality," she said. "He doesn't know how to build a conversation any more, he seems like he's somewhere else. I don't know what's going to happen."

Ortega blames what she claims is the repeated use of solitary confinement as punishment for minor infractions like walking in line too slowly, which left her son locked in a tiny room by himself for weeks at a time.

"He was put in solitary constantly, and he'll never be the same because of it," she said. "For 23 hours a day he couldn't do anything; he was by himself."

ACLU Report

Davis' case is far from unusual.

According to an October [report](http://www.hrw.org/sites/default/files/reports/us1012ForUpload.pdf) (<http://www.hrw.org/sites/default/files/reports/us1012ForUpload.pdf>) prepared by Human Rights Watch and the American Civil Liberties Union (ACLU), the use of solitary confinement as a punishment for juvenile offenders held in detention facilities "makes many young people feel doomed and abandoned, or in some cases, suicidal, and can lead to serious physical and emotional consequences."

The 141-page document, titled [Growing Up Locked Down](#), surveys the use of the practice in 19 states, and provides no quantitative or comparative data.

But it identifies what it claims is a disturbingly frequent use of the punishment in the states that were surveyed, based on interviews and letters from over 125 young people who had spent time in solitary confinement while under age 18.



Photo by DieselDemon, via Flickr

TCR at a Glance

Identifying Prosecutors Who Overcharge

NEW & NOTABLE MARCH 29, 2013

An essay in the latest Ohio State Journal of Criminal Law proposes metrics to identify chronic overchargers

The "Dirty Little Secret" of Elder Abuse

SPECIAL REPORT MARCH 28, 2013

Prosecutors, cops and social workers team up in a new effort to safeguard some of America's most vulnerable citizens

Dealing with Police-Community Conflict

Q & A MARCH 26, 2013

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MARCH 26, 2013

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In Pennsylvania, for example, the report estimated that 10 percent of young people under the age of 18 “are consistently held in a form of solitary confinement.”

The report noted that “Pennsylvania is among the 15 states that hold the largest number of young people under age 18 in adult prisons.”

The states surveyed also included: Connecticut, Florida, New York, Pennsylvania and Virginia on the east coast; Alabama, Texas, Louisiana, Mississippi and South Carolina in the south; Illinois, Kansas, Michigan, Missouri, Nebraska, Ohio and Wisconsin in the midwest; and Colorado, California and Utah in the west.

According to the report, “adolescents in solitary confinement describe cutting themselves with staples or razors, hallucinations, losing control of themselves, or losing touch with reality while isolated.”

20 Days in Solitary for Fighting

The report cited New York City Department of Correction figures indicating that a typical period of punitive solitary confinement for fighting for adolescents between the ages of 16 and 18 is 20 days—and that the median period of solitary confinement for all varieties of punishment adolescents is 29 days.

“New York City officials hold more than 14 percent of adolescents on Rikers Island in solitary confinement and for longer, on average, than adults,” Ian Kysel, author of the report, said in an interview.

“Solitary is costly to taxpayers and is a barrier to normal adolescent development and rehabilitation.”

Kysel concedes that in some instances brief periods of isolation from the general prison population may be needed as a security measure in some cases, but “any use must be strictly monitored and used for the shortest period of time.”

Kysel continued: “The goal must always be to return the young person to the general population. It must never be so extreme as to constitute solitary confinement—and it never needs to be.”

In response to the report, DOC Commissioner Dora Schiro said her department was undertaking a “comprehensive review and reform of the ways young adults are supervised in jail and readied for release.”

She said in an interview that the goal was to secure prisons for both inmates and prison guards, noting that one of the ways Rikers Island is planning to stop the over-use of solitary confinement is through a “time-out” strategy.

Schiro added that the strategy, which involves a temporary cell restriction, is being applied in many juvenile and adult systems around the country and provides an alternative to the formal disciplinary process.

She claimed it will “offer youth in the city’s system additional opportunity for self-correction— preventing escalation of events and averting infractions.”

Opponents of the punishment insist that the practice promotes mental instability.

‘Cruel and Inhumane’

Dr. Louis Kraus, director of the child and adolescent psychiatry program at Rush University Medical Center in Chicago calls solitary confinement for youths harmful.

“The facilities say ‘we’re going to really punish them and they’ll behave,’” he said. “The reality is that it’s cruel and inhumane, a degrading level of corporeal punishment.

“The question really extends as far as: is it torturous in nature?”

He added that youths held in solitary confinement have a greater incidence of mental health issues.

“Kids are different than adults,” he said.

“Juveniles should have rehabilitation. If a child is in solitary confinement for any period of time (he or she will) be at a higher risk of a mental health issue than the regular population and at a higher risk of committing suicide.”

Ortega said the worst infraction her son committed was raising his voice and cursing because he was deprived of his juvenile diabetes medication by a guard. Because of this, she claims, he was confined to a small room with a thin mattress, no toothbrush and only one meal per day.

He remained by himself for 23 hours a day, she said.

The Crime Report was unable to confirm her account. Nevertheless, Dr. Kraus said this type of punishment is often meted out in juvenile detention facilities, where it is described as “minimal time-outs for behavioral control.”

“Typically, they say it’s a safety issue, not a mental health issue—when that should be the focus,” he said.

Ortega now says the biggest fear her once-cheerful boy has is getting out of prison at age 18.

He is slated for release on December 4.

“He will never be the same,” she said. “He’s destroyed. He feels like he’s not worth anything. He is scared to come home. He doesn’t know what to do.”

The mother said solitary confinement altered his view of humanity as well.

“He’s mad at the system,” she said. “They’re not nurturing and rehabilitating the youth. What they’re doing is creating monsters.

“And the monsters will retaliate and it will be bad.”

Henrick Karolyszyn is a reporter for The New York Daily News, and a 2012 John Jay/Tow Juvenile Justice Reporting Fellow. He welcomes comments from readers.



NO CHILD LEFT ALONE

Campaign to Stop the Solitary Confinement
of Youth in Adult Jails and Prisons

Section VI: National Standards and Policy Goals

One of the first questions you may be asked in your campaign is, “what is the alternative?” Fortunately, this question has been thoroughly addressed by a variety of experts. Every set of standards or national best practices for caring for youth in confinement settings strictly regulates isolation. And a growing body of research (and a number of national standards) disfavor holding youth in adult jails and prisons.

This section includes a number of materials to pursue advocacy reform and promote best practices, even in the absence of legislative reform:

- An **ACLU White Paper** lays out strategies for pursuing administrative reform on youth solitary confinement in adult facilities, including two sample **Memoranda of Understanding** for agreements between adult and juvenile agencies to shift youth out of adult facilities.
- A **Summary of National Standards** on isolation shows how national best practices for corrections, mental health, and education settings all strictly regulate isolation and support prohibiting solitary confinement for youth. The **Policy Statement** of the American Academy of Child and Adolescent Psychiatrists, which recommends a ban on solitary confinement, shows the clear consensus of psychiatric experts. A set of **Standards and Policies** on youth in the adult system, courtesy of the Campaign for Youth Justice, is also included.
- A **Backgrounder on PREA** explains how ongoing implementation of the Prison Rape Elimination Act may create advocacy opportunities for reducing youth solitary confinement as states and counties move to implement federal law in 2013 and beyond.



NO CHILD LEFT ALONE

Campaign to Stop the Solitary Confinement
of Youth in Adult Jails and Prisons

Administrative Reforms to Stop Youth Solitary Confinement: *Strategies for Advocates*

Every day, in jails and prisons across the United States, children are held in solitary confinement. They spend 22 or more hours each day alone, usually in a small cell behind a solid steel door, isolated both physically and socially, often for days, weeks, or even months on end. Sometimes there is a window allowing natural light to enter or a view of the world outside cell walls. Sometimes it is possible to communicate by yelling to other prisoners, with voices distorted, reverberating against concrete and metal. Occasionally, youth in solitary confinement get a book or Bible, and if they are lucky, education materials. But inside this cramped space, few things distinguish one hour, one day, one week, or one month, from the next.

While isolated in solitary confinement, children are commonly deprived of the services and programming they need for healthy growth and development. Solitary confinement can cause serious psychological, physical, and developmental harm – or, worse, can lead to persistent mental health problems and suicide.¹ These risks are magnified for young people with disabilities or histories of trauma and abuse.

There is no question that incarcerating young people who have been accused of or found responsible for crimes can be extremely challenging. Youth can be defiant, and they sometimes hurt themselves and others. Sometimes, facilities may need to use limited periods of separation or isolation to protect young people from other prisoners or themselves. But solitary confinement harms young people in ways that are different, and more profound, than if they were adults.

Indeed, there is broad consensus that the most effective and developmentally appropriate techniques for managing youth and promoting their healthy growth and development while they are detained require strictly limiting and regulating the use of isolation, and emphasizing positive reinforcement over punishment.² This need for effective and developmentally appropriate management techniques applies regardless of whether young people are detained in the juvenile or adult criminal justice system.

¹ AM. ACAD. OF CHILD & ADOLESCENT PSYCHIATRY, POLICY STATEMENTS: SOLITARY CONFINEMENT OF JUVENILE OFFENDERS (Apr. 2012), available at http://www.aacap.org/cs/root/policy_statements/solitary_confinement_of_juvenile_offenders; LINDSAY M. 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>. The study suggests that, “When placed in a cold and empty room by themselves, suicidal youth have little to focus on – except all of their reasons for being depressed and the various ways that they can attempt to kill themselves.” *Id.* at 28 (citing LISA M. BOESKY, JUVENILE OFFENDERS WITH MENTAL HEALTH DISORDERS: WHO ARE THEY AND WHAT DO WE DO WITH THEM? 210 (2002)).

² 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> (“nowhere is the damaging impact of incarceration on vulnerable children more obvious than when it involves solitary confinement.”); 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> (“[i]solation is a severe penalty to impose upon a juvenile, especially since this sanction is to assist in rehabilitation as well as punish a child . . . After a period of time, room confinement begins to damage the juvenile, cause resentment toward the staff, and serves little useful purpose.”). The most up-to-date national standards are consistent on this point. See, e.g., JUVENILE DET. ALT. INITIATIVE, JUVENILE DETENTION ALTERNATIVES INITIATIVE (JDAI) FACILITY SITE ASSESSMENT INSTRUMENT Standard VII(B) (2006), available at <http://www.cclp.org/documents/Conditions/JDAI%20Standards.pdf>.

There is also widespread recognition that youth should be housed in specialized juvenile facilities while they are growing and developing – because these facilities are better able to care for them – regardless of how the youth have been charged or sentenced.³

Accordingly, state and local governments across the country – as well as facility administrators – are taking steps to reform policies and practices to reflect correctional best practices in these areas.

In some jurisdictions advocates are working with state legislatures to ensure that laws protect youth from solitary confinement and/or that youth are not prosecuted as adults or are allowed to stay in the juvenile system until reaching the age of majority. But where legislative reform is not immediately possible or practical, there are a number of administrative steps that can be taken in the alternative. This document summarizes the steps that advocates can encourage facilities to take in the absence of statutory changes to promote best practices and reduce reliance on harmful isolation practices for youth in adult facilities.⁴

As the Supreme Court has recognized, young people in conflict with the law are not simply miniature adults.⁵ They are particularly receptive to rehabilitative services and programming. And they should be managed with practices and policies that support their growth and development.

Transferring Youth to Juvenile Facilities

The best option for reform is to remove youth from the adult correctional system. In most jurisdictions, the number of youth held in adult jails or prisons at any given time is small compared to the strain that housing these youth places on facility resources. Juvenile facilities are better equipped to provide for the needs of growing children.

Administrators of adult jails and prisons can establish Memoranda of Understanding (MOUs) with local, regional, or state juvenile facilities to house youth under their jurisdiction in juvenile facilities before trial and after conviction.

- MOUs should stipulate that youth be held in juvenile facilities until they reach the upper age of juvenile jurisdiction (the preferred approach), or until they turn 18.⁶
- MOUs should stipulate that youth never be subjected to solitary confinement – physical and social isolation for 22-24 hours per day.
- MOUs should stipulate that youth receive the same services and programming as youth charged or adjudicated in the juvenile justice system.

³ See, e.g., AM. CORR. ASS'N, PUB. CORR. POLICY ON YOUTHFUL OFFENDERS TRANSFERRED TO ADULT CRIMINAL JURISDICTION (2009), available at

https://www.aca.org/government/policyresolution/view.asp?ID=51&origin=results&QS='PoliciesAndResolutionsYMGHFREName=POLICY+ON+YOUTHFUL+OFFENDERS&reversesearch=false&viewby=50&union=AND&startrec=1&top_parent=360; AM. JAIL ASS'N, POLICY ON JUVENILES IN JAILS (2008).

⁴ In some jurisdictions, statutes (for example those mandating jails as the place of detention for all persons charged with certain felony offenses) may prevent jail or prison officials from exercising discretion. You should research these statutes to determine whether there are statutory challenges that can be overcome.

⁵ *J.D.B. v. North Carolina*, 564 U.S. ___ Slip Op. at 3(2011).

⁶ The Florida Departments of Corrections and Juvenile Justice have an MOU in place that allows them to designate youth for housing in DJJ custody on a case-by-case basis.

Promoting Better Practices for Youth Held in Adult Facilities

It will not always be possible to move youth back to the juvenile system without legislation. In that event, there are changes to policy and practice that can be implemented in adult facilities to manage youth and keep them safe while meeting their developmental, educational, physical, mental health, and rehabilitative needs – and without placing them in solitary confinement. One core change is ensuring staffing levels, such that youth are adequately supervised and not exposed to significant levels of physical and social isolation.

There are various national standards for youth facilities that together provide a clear framework for developmentally appropriate institutional practices which can reduce reliance on isolation. These can and should be adopted for youth held in adult facilities. The most comprehensive set of standards is the Juvenile Detention Alternatives Initiative (JDAI), a nationally-recognized set of best practices.⁷ Another is the Performance-Based Standards Initiative (PbS), a program of the Council of Juvenile Correctional Administrators.⁸ Both strictly regulate isolation practices and identify a range of institutional practices that can be used to separate, discipline, and care for young people in correctional settings without exposing them to harm, undermining rehabilitation, or compromising public safety.

1. PROMOTING YOUTH-CENTERED PRACTICES AND OPERATIONS

It is well recognized in the corrections field that best practices for managing and caring for children deprived of their liberty differ significantly from those for managing adults.⁹ Adult facility administrators can modify their policies and practices and implement a number of reforms, including instituting adequate staffing levels, to ensure that they can appropriately respond to the needs of youth. Adequate supervision of youth while keeping them engaged ensures that youth are safe and reduces the circumstances in which facilities might otherwise resort to punishment or isolation.

The following are general policy and operational changes that can be implemented to better serve the unique needs of incarcerated youth:

- **Facilities should maintain complete separation between adults (18 and over) and youth under 18 – including separation by sight and sound and extending to common and housing areas.**¹⁰
- Facilities should reduce unit/pod size and implement a plan that allows small-group living units of 10-12 youth.¹¹

⁷ COALITION FOR JUVENILE JUSTICE, COALITION FOR JUVENILE JUSTICE BEST PRACTICE BULLETIN (2009), available at http://juvjustice.org/media/resources/public/resource_232.pdf; *JDAI/Detention Reform*, CTR. FOR CHILDREN'S LAW AND POLICY, <http://www.cclp.org/JDAI.php> (last visited May 29, 2013).

⁸ PBS LEARNING INST., PERFORMANCE-BASED STANDARDS (PBS), <http://pbstandards.org/initiatives/performance-based-standards-pbs> (last visited May 29, 2013).

⁹ As American Correctional Association (ACA) policy states, "Juveniles have developmental needs that require highly specialized management and treatment by corrections professionals." PUB. CORR. POLICY ON YOUTHFUL OFFENDERS TRANSFERRED TO ADULT CRIMINAL JURISDICTION, *supra* note 3.

¹⁰ 42 U.S.C. § 5633(a)(11) (2006); 28 C.F.R. § 115.5, 14(a) (2012), available at http://www.ojp.usdoj.gov/programs/pdfs/prea_final_rule.pdf.

¹¹ RICHARD MENDEL, THE ANNIE E. CASEY FOUNDATION, THE MISSOURI MODEL: REINVENTING THE PRACTICE OF REHABILITATING YOUTHFUL OFFENDERS 29 (2010), available at

- Facilities should increase staffing to maintain staff-to-youth ratios, 1:8¹² or ideally 1:6 during waking hours and 1:12 during sleeping hours (counting only staff who engage in continuous and direct supervision of youth).¹³
- Facilities should provide staff with specialized training in adolescent development and age-appropriate positive behavior management techniques, and particularly de-escalation techniques designed for youth.¹⁴
- Facilities should implement positive, rewards-based management practices that do not primarily rely on punitive discipline to manage youth behavior.¹⁵
- Facilities should provide age-appropriate education, programming, activities, and other services that take up a significant proportion of the youth's waking hours, seven – not five – days a week, available to all youth at all times (even when they are separated from the general population).¹⁶
- Facilities should provide access to dental, medical, and mental health services from medical professionals with specialized training in caring for children and adolescents to all youth at all times (even when they are separated from the general population).¹⁷
- Facilities should ban the use of mechanical and chemical restraints, corporal punishment, pain compliance, stun weapons such as tasers and stun shields, and chemical agents such as pepper spray or mace.¹⁸
- Facilities should use age-appropriate classification and evaluation instruments to identify educational, programming, mental health and other needs and diagnoses.¹⁹

2. BANNING SOLITARY CONFINEMENT AND STRICTLY REGULATING OTHER ISOLATION PRACTICES

Adult facility administrators use a range of isolation practices to manage young people. Despite their varied names and purposes, all of these types of isolation can be harmful when used for extended periods of time. Isolation practices in corrections environments fall roughly into four categories:

- **DISCIPLINARY SOLITARY CONFINEMENT** (common euphemisms: punitive segregation, disciplinary custody, room confinement): Physical and social isolation used to punish a prisoner who breaks the rules, such as those against talking back, possessing contraband, or fighting;

http://www.aecf.org/MajorInitiatives/~/_media/Pubs/Initiatives/Juvenile%20Detention%20Alternatives%20Initiative/MOModel/MO_Fullreport_webfinal.pdf.

¹² 28 C.F.R. § 115.313(c) (2012), available at http://www.ojp.usdoj.gov/programs/pdfs/prea_final_rule.pdf.

¹³ CTR. ON CHILDREN'S LAW AND POLICY, WHAT ARE SOME BEST PRACTICES RELATED TO SEXUAL MISCONDUCT PREVENTION, DETECTION, AND RESPONSE THAT ARE NOT INCLUDED IN THE PRISON RAPE ELIMINATION ACT (PREA) STANDARDS? (2012), available at <http://www.cclp.org/documents/PREA/BestPractices.pdf>.

¹⁴ PBS LEARNING INST., PBS GOALS, STANDARDS, OUTCOME MEASURES, EXPECTED PRACTICES AND PROCESSES (2007), available at <http://sccounty01.co.santa-cruz.ca.us/prb/media%5CGoalsStandardsOutcome%20Measures.pdf>; AM. CORR. ASS'N, STANDARDS FOR ADULT CORRECTIONAL INSTITUTIONS 4-4312 (4th ed. 2003); MENDEL, *supra* note 11, at 27.

¹⁵ PBS GOALS, STANDARDS, OUTCOME MEASURES, EXPECTED PRACTICES AND PROCESSES, *supra* note 14, at 10; MENDEL, *supra* note 11, at 29.

¹⁶ JDAI FACILITY SITE ASSESSMENT INSTRUMENT, *supra* note 2, at Standard IV(B).

¹⁷ U.N. Rules for the Protection of Juveniles Deprived of their Liberty, G.A. Res. 45/113, Annex, 45 U.N. GAOR Supp. (No. 49A), U.N. Doc. A/45/49, ¶ 67 (Dec. 14, 1990) ("The Beijing Rules").

¹⁸ JDAI FACILITY SITE ASSESSMENT INSTRUMENT, *supra* note 2, at Standard VII(A).

¹⁹ STANDARDS FOR ADULT CORRECTIONAL INSTITUTIONS, *supra* note 14, at 4-4307, 4-4309.

- **PROTECTIVE SOLITARY CONFINEMENT** (common euphemisms: protective custody, administrative confinement): Physical and social isolation used to protect a prisoner from other prisoners (or, in the case of youth in adult facilities, from adults);
- **ADMINISTRATIVE SOLITARY CONFINEMENT** (common euphemisms: administrative segregation, special housing units): Physical and social isolation used because officials do not know how else to manage a prisoner, such as when he or she is deemed dangerous, after multiple periods of punitive solitary confinement, or because the prisoner is a witness in an ongoing investigation;
- **MEDICAL SOLITARY CONFINEMENT** (common euphemism: therapeutic seclusion, medical quarantine): Physical and Social isolation for medical reasons, such as when he or she expresses a desire to commit suicide, or until medical testing is completed upon arrival to a facility.²⁰

Youth should never be subjected to any practice that involves significant levels or extended durations of physical and social isolation. But implementing this imperative requires adopting practices that are appropriate to youth, not just imposing a scaled-down version of adult segregation practices.

➤ *It is Important to Remember that Successful Reform Requires Shifting Correctional Thinking About Solitary and Other Isolation Practices*

It is acceptable to separate individual youth from the general population to accomplish a limited range of legitimate penological objectives. Youth can be *separated* from the general population to interrupt their current acting-out behavior; to discipline them; to keep them safe; to manage them; and to medically treat them.

But separation policies and practices must further distinguish between practices which *do not* involve significant levels of physical and social isolation and those which *do*.

Youth can be separated from other prisoners to provide individualized services, programming, treatment and greater staff contact – in short, the opposite of isolation – but this separation must involve regular interaction with staff and other helping professionals, not extended periods of isolation.

Youth can be subjected to separation practices involving *short* periods of physical and social isolation –measured in minutes or hours – to interrupt current acting-out behavior, to address a current need for protection and to medically treat them. These practices must be clearly limited in policy and practice and subjected to strict oversight. Separation must end as soon as the need for it has concluded – for example, when the youth has calmed down.

Administrators of adult jails and prisons can modify their policies and practices and implement a number of reforms that strongly discourage isolation:

- Facilities should completely **prohibit solitary confinement** – physical and social isolation for 22-24 hours per day.²¹

²⁰ See generally HUMAN RIGHTS WATCH & THE AMERICAN CIVIL LIBERTIES UNION, GROWING UP LOCKED DOWN: YOUTH IN SOLITARY CONFINEMENT IN JAILS AND PRISONS ACROSS THE UNITED STATES 48 – 69 (2012), available at <http://www.aclu.org/growinguplockeddown>; AMERICAN CIVIL LIBERTIES UNION, BRIEFING PAPER ON SOLITARY CONFINEMENT (2012), available at http://www.aclu.org/files/pdfs/prison/stop_sol_briefing_paper_july.pdf.

²¹ REP. OF THE ATT'Y GEN.'S NAT'L TASK FORCE ON CHILDREN EXPOSED TO VIOLENCE, DEFENDING CHILDHOOD: PROTECT, HEAL, THRIVE, *supra* note 2, at 178 (2012); Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Interim*

- Facilities should reform **short-term isolation practices** to strictly limit emergency isolation (to interrupt current, acting-out behavior) to a maximum of **4 hours**.²²
- Facilities should reform **disciplinary practices** to eliminate significant social and physical isolation. Separation from the general population for disciplinary purposes should be strictly limited to **72 hours** and should distinguish separation for minor offenses (limited to *minutes or hours*) from separation for major offenses (limited in most cases to *24 hours* and in rare cases to *72 hours*).²³ During such disciplinary isolation, youth must continue to receive education, medical, mental health and other services, visits, telephone calls and other forms of social interaction.
- Facilities should reform prisoner **management practices** to eliminate significant social and physical isolation. Separation of youth due to assaultive or dangerous behavior or mental health needs should *increase* staff interaction as well as access to specialized programming and services, and should maintain a goal of returning the individual to the general population.²⁴
- Facilities should reform **protection practices** to eliminate significant social and physical isolation and resolve immediate needs for protection within **72 hours**.²⁵ Temporary separation of youth from the general population due to a current need for protection, until alternative housing can be arranged, should ensure a level of staff interaction and access to programming and services substantially equivalent to youth in general population.
- Facilities should reform **medical quarantine and seclusion practices** to eliminate significant and prolonged social and physical isolation and to transfer youth with an active risk of suicide to a medical facility or section of the facility that can provide appropriate treatment.²⁶
- Facilities should ensure that all youth – including youth separated from the general population – are provided a hygienic environment and managed in a way that respects their basic rights (which includes living quarters with a mattress, pillow, blankets, and sheets; a full complement of clean clothes and personal hygiene items; access to clean water, bathroom facilities, and an opportunity for a daily shower; parental and attorney visits and means for communication with counsel and loved ones; age-appropriate meals and snacks; educational programming; the right to receive and send mail; access to reading and legal materials; and an opportunity to attend congregant religious services and/or obtain religious counseling of the youth’s choice).²⁷

3. REFORMING SHORT-TERM ISOLATION PRACTICES

Standards and best practices for managing and caring for youth recognize that in a very limited set of circumstances, separating individual youth from the general population may help interrupt current acting-out behavior and allow a young person to regain self-control. This separation should *never* constitute or approximate solitary confinement. In cases where short-term separation is justified, physical and social isolation can be appropriate but – given the risk of

Rep. of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ¶ 77, U.N. Doc. A/66/268 (Aug. 5, 2011) (by Juan Mendez), available at <http://solitaryconfinement.org/uploads/SpecRapTortureAug2011.pdf>.

²² JDAI FACILITY SITE ASSESSMENT INSTRUMENT, *supra* note 2, at Standard VII(B).

²³ *Id.* at Standard VII(E).

²⁴ AM. CORR. ASS’N, PERFORMANCE BASED STANDARDS JUVENILE CORR. FACILITIES Standard 4-JCF-3C-01 (comment) (4th ed. 2009).

²⁵ *Id.* at Standard 4-JCF-3C-02.

²⁶ POLICY STATEMENTS: SOLITARY CONFINEMENT OF JUVENILE OFFENDERS, *supra* note 1; AM. ACAD. OF CHILD & ADOLESCENT PSYCHIATRY, PRACTICE PARAMETER FOR THE PREVENTION AND MANAGEMENT OF AGGRESSIVE BEHAVIOR IN CHILD AND ADOLESCENT PSYCHIATRIC INSTITUTIONS, WITH SPECIAL REFERENCE TO SECLUSION AND RESTRAINT 55 (2002), available at http://www.aacap.org/galleries/PracticeParameters/JAACAP_SR_2002.pdf.

²⁷ JDAI FACILITY SITE ASSESSMENT INSTRUMENT, *supra* note 2, at Standard VII(D) - (E).

harm posed by any use of isolation – it should be strictly limited and used only as a last resort. Such isolation should also be distinguished from voluntary time-outs, in which youth voluntarily remove themselves from programming to regain control over themselves and then return.

In the absence of legislative reform, adult facility administrators can review policies and practices to permit appropriate and limited uses of isolation.

The following are guidelines for the use of short-term isolation on youth in adult facilities:

- Facilities should limit emergency isolation only to those limited circumstances where youth pose an imminent threat to themselves or to others (labeling such physical and social isolation “emergency isolation” helps reinforce that limited isolation is only appropriate in a small range of circumstances).²⁸
- Facilities should ensure that emergency isolation is used only after other de-escalation techniques are exhausted.²⁹
- Facilities should use emergency isolation for periods measured in minutes, with an absolute maximum of 4 hours.³⁰
- Facilities should prohibit any use of emergency isolation as a disciplinary or punitive measure.³¹
- Facilities should ensure that emergency isolation persists only as long as necessary to abate the current imminent threat to the youth or others.³²
- Facilities should ensure that any youth subjected to emergency isolation is constantly monitored, one-on-one, by facility staff.³³
- Facilities should ensure that any youth subjected to emergency medical isolation is evaluated by a medical professional within 30 minutes, and at least every hour thereafter.³⁴
- Facilities should ensure that youth who cannot regain control over themselves after 4 hours of emergency isolation – or whom a medical professional concludes cannot be managed by non-medical staff – are transferred to a medical or mental health unit or facility for care and supervision by mental health professionals.³⁵
- Facilities should ensure that within 4 hours of placing a youth who has exhibited suicidal behavior or committed acts of self-harm in emergency isolation, an individualized suicide crisis intervention plan approved by a licensed mental health clinician who has evaluated the youth is implemented. The youth’s condition must be closely monitored by a licensed mental health clinician familiar with the youth prisoner in order to reduce or eliminate the risk of self-harm. If the youth’s suicide risk is not resolved within 24 hours, and the youth has not already been transferred to a medical or mental health unit or facility, the youth must be moved to an offsite hospital or mental health hospital.³⁶

²⁸ PBS LEARNING INST., REDUCING ISOLATION AND ROOM CONFINEMENT 2 (2012), *available at* http://pbstandards.org/uploads/documents/PbS_Reducing_Isolation_Room_Confinement_201209.pdf; JDAI FACILITY SITE ASSESSMENT INSTRUMENT, *supra* note 2, at Standard VII(B) (2006).

²⁹ JDAI FACILITY SITE ASSESSMENT INSTRUMENT, *supra* note 2, at Standard VII(B).

³⁰ *Id.*; REDUCING ISOLATION AND ROOM CONFINEMENT, *supra* note 28, at 2.

³¹ *Id.*

³² JDAI FACILITY SITE ASSESSMENT INSTRUMENT, *supra* note 2, at Standard VII(B); PBS GOALS, STANDARDS, OUTCOME MEASURES, EXPECTED PRACTICES AND PROCESSES, *supra* note 14, at 10 (2007).

³³ JDAI FACILITY SITE ASSESSMENT INSTRUMENT, *supra* note 2, at Standard VII(B).

³⁴ *Id.*

³⁵ *Id.*; POLICY STATEMENTS: SOLITARY CONFINEMENT OF JUVENILE OFFENDERS, *supra* note 1.

³⁶ *Id.*

- Facilities should ensure that every instance of emergency isolation is documented, reviewed by facility administrators, and regularly publicly reported.³⁷ Facility administrators should make regular “spot checks” to ensure that emergency isolation is being used appropriately³⁸ and/or the approval of a facility administrator should be required to authorize the use of emergency isolation beyond 60 minutes.

4. REFORMING DISCIPLINARY PRACTICES

Standards and best practices for managing and caring for youth suggest that the most effective techniques rely on positive reinforcement in lieu of discipline.³⁹ Yet they recognize that a range of disciplinary measures can be safely employed in conjunction with practices that promote good behavior and healthy development. In facilities that continue to employ disciplinary management practices, these *can* involve separating youth from the general population. But they should *never* involve significant levels of social or physical isolation or rise to the level of solitary confinement. Facilities that are adequately staffed should be able to supervise youth separated from the population without resorting to significant levels of physical and social isolation.

Disciplinary policies and procedures should always favor sanctions that do not require separating youth from the general population. Disciplinary policies and practices should always distinguish between major and minor rule violations, and sanctions should be designed to be immediate and proportionate, and take developmental differences and individual characteristics of youth into account. All disciplinary management techniques should guarantee youth due process.

The following are basic principles that should be incorporated into any correctional discipline system involving youth:

- Facilities should take a youth’s age and mental health status into account when deciding any sanction for a rule violation.⁴⁰
- Facilities that separate youth from the general population as a disciplinary sanction should only do so for the shortest period of time possible.
- In response to **minor rule violations**, facilities should never separate youth from the general population for more than a few hours and should only do so to facilitate the denial of participation in specific programming, or activities, or to limit the enjoyment of a limited subset of privileges.⁴¹
- In response to **major rule violations**, facilities should only separate youth from the general population in extreme cases, and generally for under 24 hours and never for more than 72 hours.⁴² Confinement for more than 24 hours should be reserved for the most egregious and dangerous behavior.
- Facilities should not use significant levels of physical and social isolation as a part of a disciplinary sanction for youth. If any isolation is used as a disciplinary sanction, it should only be used for major rule violations and only when other interventions have not succeeded.⁴³

³⁷ JDAI FACILITY SITE ASSESSMENT INSTRUMENT, *supra* note 2, at Standard VII(B); PBS GOALS, STANDARDS, OUTCOME MEASURES, EXPECTED PRACTICES AND PROCESSES, *supra* note 14, at 10.

³⁸ PBS GOALS, STANDARDS, OUTCOME MEASURES, EXPECTED PRACTICES AND PROCESSES, *supra* note 14, at 10.

³⁹ MENDEL, *supra* note 11.

⁴⁰ See, e.g., 28 C.F.R. § 115.78(c), 115.378(c) (2012), available at http://www.ojp.usdoj.gov/programs/pdfs/prea_final_rule.pdf.

⁴¹ BUREAU OF PRISONS, STATEMENT OF WORK: CONTRACT SECURE JUVENILE FACILITIES 36-39 (2011), available at http://www.bop.gov/locations/cc/SOW_Secure_Juvie.pdf.

⁴² JDAI FACILITY SITE ASSESSMENT INSTRUMENT, *supra* note 2, at Standard VII(E).

- Facilities that employ brief, limited physical and social isolation as a disciplinary sanction for rule violations should ensure that:
 - youth are never placed in such an isolation setting until after they have been given effective notice of the alleged misconduct and a hearing that complies with due process.⁴⁴ The hearing should ensure that youth have the opportunity to challenge the allegations.⁴⁵ The hearing officer should consider whether the youth's medical or mental health condition contributed to the youth's behavior and factor that information into a decision whether discipline is warranted, and what sanction is appropriate.⁴⁶
 - youth receive access to out-of-cell educational and other programming, services and activities, including physical recreation, for at least 4 hours per day during the facility's waking hours.⁴⁷
 - youth continue to receive out-of-cell access to physical recreation (out of doors whenever possible) 2 or more hours every single day (the schedule for recreation should enables youth to do a combination of activities, including vigorous aerobic activity, like running, at least three days each week; muscle-strengthening activity, such as gymnastics, at least three days each week; and bone-strengthening activity, such as jumping rope, at least three days each week).⁴⁸
 - youth are regularly monitored by staff (at least once every 15 minutes) and such monitoring involves more than a visual check: staff should enter the individual's room or cell and converse during hours when youth would normally be awake.⁴⁹
 - youth are evaluated by a medical professional at least daily.⁵⁰
 - youth are provided with a way to work their way out of isolation prior to the limits imposed by policy and due process, such as through completing certain activities or programs.
 - when a youth being disciplined comes to pose an imminent threat to self or others, or exhibits suicidal behavior or commits acts of self-harm, or when a medical professional concludes that the youth cannot be safely managed by non-medical staff, that youth must be transferred to a medical or mental health unit or facility for care and supervision by mental health professionals.⁵¹
- Facilities should ensure that all disciplinary sanctions are *preceded* by due process.⁵²
- Facilities should ensure that all disciplinary actions are documented and reviewed by facility administrators, and that data are regularly publicly reported.⁵³

⁴³*Id.*; NAT'L COMM. ON CORR. HEALTH CARE, STANDARDS FOR HEALTH SERVICES IN JUVENILE DETENTION AND CONFINEMENT FACILITIES standard Y-39 (1995), available at <http://www.jdcap.org/SiteCollectionDocuments/Health%20Standards%20for%20Detention.pdf>.

⁴⁴ JDAI FACILITY SITE ASSESSMENT INSTRUMENT, *supra* note 2, at Standard VII(E).

⁴⁵ *Id.*

⁴⁶ See, e.g., 28 C.F.R. § 115.78(c), 115.378(c) (2012), available at http://www.ojp.usdoj.gov/programs/pdfs/prea_final_rule.pdf.

⁴⁷ S.B. 812, 2013 Leg. (Fla. 2013), available at <http://www.flsenate.gov/Session/Bill/2013/0812> (Youth in Solitary Confinement Reduction Act); *C.B., et al. v. Walnut Grove Corr. Authority*, No. 3:10cv663, ¶ IV(c)(1) (S.D. Miss. filed Feb. 3, 2012) (Consent decree), available at http://www.aclu.org/files/assets/68-1_ex_1_consent_decree.pdf.

⁴⁸ *How Much Physical Activity do Children Need?*, CENTERS FOR DISEASE CONTROL AND PREVENTION,

<http://www.cdc.gov/physicalactivity/everyone/guidelines/children.html>; *Physical Activity Guidelines for Americans*, DEP'T OF HEALTH AND HUMAN SERVICES, <http://www.health.gov/paguidelines/factsheetprof.aspx>.

⁴⁹ AM. CORR. ASS'N, PERFORMANCE BASED STANDARDS FOR JUVENILE CORR. FACILITIES 52 (4th ed. 2009); JDAI FACILITY SITE ASSESSMENT INSTRUMENT, *supra* note 2, at Standard VII(E).

⁵⁰ STANDARDS FOR HEALTH SERVICES IN JUVENILE DETENTION AND CONFINEMENT FACILITIES, *supra* note 43, at Standard Y-E-09; 28 C.F.R. § 115.378 (2012), available at http://www.ojp.usdoj.gov/programs/pdfs/prea_final_rule.pdf.

⁵¹ JDAI FACILITY SITE ASSESSMENT INSTRUMENT, *supra* note 2, at Standard VII(B); POLICY STATEMENTS: SOLITARY CONFINEMENT OF JUVENILE OFFENDERS, *supra* note 1.

⁵² JDAI FACILITY SITE ASSESSMENT INSTRUMENT, *supra* note 2, at Standard VII(E).

⁵³ *Id.*; PBS GOALS, STANDARDS, OUTCOME MEASURES, EXPECTED PRACTICES AND PROCESSES, *supra* note 14, at 10.

5. REFORMING ADMINISTRATIVE SEGREGATION PRACTICES

In many adult facilities, administrators react to perceived security risks – such as actual or suspected gang involvement or repeated assaultive incidents – by using long-term isolation to house individual young people deemed to threaten facility security. Adult facilities often use administrative segregation or special housing units for this purpose.

Subjecting youth to prolonged administrative segregation involving physical and social isolation in response to the challenge of being forced to manage small numbers of children in adult facilities is not an appropriate solution.

Standards and best practices disfavor the use of prolonged segregation to manage and care for youth. However, they recognize that in some circumstances youth can be effectively managed in smaller units that provide more individualized attention, services and programming. These practices can involve separation from the general population or the division of general population into different sub-communities or classification levels.

In no case should these practices involve significant levels of social and physical isolation, or reduced access to programming, activities, or privileges. Such young people should generally be managed with *more* staff and services than other young people in the facility. The goal of this type of separation should be to reintegrate the individual young people back into the “general” population of young people. However, young people should never be integrated into the “general” adult population.

Adult facilities can implement administrative segregation reforms to care for youth in the following manner:

- Facilities should ensure that youth identified as requiring a higher level of staff interaction and individualized services or programming are not subjected to significant levels of social and physical isolation.
- Facilities should ensure that youth identified as requiring a higher level of staff interaction and individualized services or programming receive levels of programming, services, education and staff interaction equal to or greater than youth in the general population.⁵⁴
- Facilities should ensure that the goal of such separation is to return youth to the “general” population of young people.
- Facilities should ensure that any separation implemented for management purposes is documented, reviewed by facility administrators, and regularly publicly reported.⁵⁵

6. CREATING THERAPEUTIC ENVIRONMENTS WHERE NECESSARY

Young people with mental disabilities, including serious pre-existing or emerging mental health problems, are often among those who have the most difficulty conforming their behavior to facility rules. Many administrators (often in the absence of adequate diagnostic capacity) react to these management challenges by using long-term solitary confinement, including administrative segregation, special housing units, or prolonged medical isolation to house young people with mental disabilities.

⁵⁴ PERFORMANCE BASED STANDARDS FOR JUVENILE CORR. FACILITIES, *supra* note 49, at 51.

⁵⁵ JDAI FACILITY SITE ASSESSMENT INSTRUMENT, *supra* note 2, at Standard VII(B); PBS LEARNING INST., PBS GOALS, STANDARDS, OUTCOME MEASURES, EXPECTED PRACTICES AND PROCESSES, *supra* note 14, at 10.

Standards and best practices disfavor the use of prolonged solitary confinement or segregation to manage and care for youth with mental disabilities. On the basis of appropriate clinical evaluation and diagnosis, young people with the most serious mental health problems may be diverted to specialized medical facilities. Young people with less acute mental health problems can in some circumstances be effectively managed in smaller, therapeutic communities that provide more individualized attention, services and programming.

In no case should practices for managing young people with serious mental health problems involve significant levels of social and physical isolation, or reduced access to programming, activities, or privileges. As with youth separated for administrative reasons, such groups of young people with mental health problems should generally be managed with *more* staff and services than the general population. The goal of any separation should always be to reintegrate young people into the “general” population of other youth. However, in spite of this goal, young people should never be integrated into the “general” adult population.

Adult facilities can implement reforms to care for youth with mental disabilities in the following manner:

- Facilities should have adequate clinical staff, trained in age-differentiated care and diagnosis, so that young people have ready access to mental health treatment and services.
- Facilities should ensure that young people with acute mental health problems that cannot be resolved through treatment, increased programming, or staff contact at the facility – or whom at any time a medical professional concludes cannot be managed by non-medical staff – be transferred to a medical or mental health unit or facility for care and supervision by mental health professionals.⁵⁶
- A goal of mental health care and services should be to manage youth in the general population whenever possible.
- Young people with mental health problems who are identified as likely to benefit from a higher level of staff interaction and individualized attention, services and programming should not be subjected to significant levels of social and physical isolation.
- Facilities should ensure that youth identified as requiring a higher level of staff interaction and individualized attention, services and programming receive levels of programming, services, and staff interaction equal to or greater than youth in the general population.⁵⁷
- Facilities should ensure that any separation implemented for treatment purposes is documented, reviewed by facility administrators, and regularly publicly reported.⁵⁸

7. REFORMING PROTECTIVE CUSTODY PRACTICES

Youth who have a current need for protection from adults or from other youth can be separated from the general population only for as long as is necessary to identify a safe housing alternative. Such youth may be identified by the facility or may identify themselves voluntarily. Such separation should never involve significant levels of physical and social isolation.

⁵⁶ JDAI FACILITY SITE ASSESSMENT INSTRUMENT, *supra* note 2, at Standard VII(B); POLICY STATEMENTS: SOLITARY CONFINEMENT OF JUVENILE OFFENDERS, *supra* note 1.

⁵⁷ PERFORMANCE BASED STANDARDS FOR JUVENILE CORR. FACILITIES, *supra* note 49, at 51.

⁵⁸ JDAI FACILITY SITE ASSESSMENT INSTRUMENT, *supra* note 2, at Standard VII(B); PBS GOALS, STANDARDS, OUTCOME MEASURES, EXPECTED PRACTICES AND PROCESSES, *supra* note 14, at 10.

Subjecting youth to prolonged protective custody status involving physical and social isolation as a solution to the challenge of being forced to manage small numbers of children in adult facilities is not an appropriate solution.

Adult facilities can implement reforms to care for youth who have a current need for additional protection in the following manner:

- Facilities should ensure that youth separated due to a current need for protection are not subjected to significant levels of social and physical isolation.
- Facilities should ensure that youth separated due to a current need for protection receive levels of programming, including education and recreation, services, and staff interaction equal to youth in the general population.
- Facilities should ensure that alternative housing is identified for youth with a current need for protection within **72 hours**.⁵⁹
- Facilities should ensure that any separation implemented for protective purposes is documented, reviewed by facility administrators, and regularly publicly reported.⁶⁰

8. REFORMING MEDICAL ISOLATION PRACTICES

Youth who require separation from the general population as a result of a serious communicable diseases or medical conditions should be managed and supervised by medical professionals in a medical facility or section of the facility. Other youth can be safely managed without separation.

Adult facilities can implement reforms to care for youth who are under medical supervision in the following manner:

- Youth should receive a medical assessment upon entering the facility which screens for tuberculosis and other communicable diseases.⁶¹
- Youth must be engaged in social interaction – not isolated – while being assessed (such as while a tuberculosis skin test is being employed) and must have an opportunity to participate in activities and programming.
- Youth with medical conditions can be separated from the general population in a medical unit but must be engaged in social interaction – not isolated – while being treated and must have an opportunity to participate in activities and programming.
- Youth identified as having been exposed to serious communicable diseases, such as infectious tuberculosis, can be separated from the general population (such as in a negative airflow room) in a medical unit but should be managed in medical facilities that provide specialized care.⁶² Youth so separated must be engaged in social interaction – not isolated – while being treated and must have an opportunity to participate in activities and programming.

⁵⁹ PERFORMANCE BASED STANDARDS FOR JUVENILE CORR. FACILITIES, *supra* note 49, at 51.

⁶⁰ JDAI FACILITY SITE ASSESSMENT INSTRUMENT, *supra* note 2, at Standard VII(B); PBS GOALS, STANDARDS, OUTCOME MEASURES, EXPECTED PRACTICES AND PROCESSES, *supra* note 14, at 10.

⁶¹ JDAI FACILITY SITE ASSESSMENT INSTRUMENT, *supra* note 2, at Standard II(A).

⁶² CENTERS FOR DISEASE CONTROL, TUBERCULOSIS CONTROL LAWS AND POLICIES 18, 29 (Oct. 2009), *available at* <http://www.cdc.gov/tb/programs/TBLawPolicyHandbook.pdf>.

- When youth are placed in medical isolation they must be checked frequently for changes in physical and mental status and accommodated in a room with, at a minimum: a separate toilet; hand-washing facility; soap dispenser; and single service towels.⁶³

9. REFORMING SECLUSION PRACTICES

Youth who require separation from the general population as a result of an active risk of suicide should be managed and supervised by mental health professionals in a medical facility or section of the facility. Other youth can be safely managed without separation.

Adult facilities can implement reforms to care for youth who are identified to be at a risk of self-harm in the following manner:

- Youth at risk of self-harm must be engaged in appropriate activities and programs that will raise their self-esteem and reduce their risk of further self-harming behavior.⁶⁴
- Youth at risk of suicide must be engaged in social interaction – not isolated – and must have an opportunity to participate in activities and programming.⁶⁵
- Youth who develop an active risk of suicide should be managed by mental health staff (who should be notified immediately regardless) and/or through the procedures for emergency isolation outlined above.
- Youth who are deemed to be actively suicidal must be placed on constant observation, and potentially suicidal youth must be monitored on an irregular schedule with no more than 15 minutes between checks.⁶⁶
- In the rare instance where a suicidal youth must be placed in emergency isolation, constant observation is required.⁶⁷
- Facilities should ensure that youth whose active risk of suicide is not resolved after 4 hours of emergency isolation – or who at any time a medical professional identifies as being unable to be managed by non-medical staff – be transferred to a medical or mental health unit or facility for care and supervision by mental health professionals.⁶⁸
- Facilities should ensure that within 4 hours of placing a youth who has exhibited suicidal behavior or committed acts of self-harm in emergency isolation, an individualized suicide crisis intervention plan approved by a licensed mental health clinician who has evaluated the youth is implemented. The youth's condition must be closely monitored by a licensed mental health clinician familiar with the youth prisoner in order to reduce or eliminate the risk of self-harm. If the youth's suicide risk is not resolved within 24 hours, and the youth has not already been transferred to a medical or mental health unit or facility, the youth must be moved to an offsite hospital or mental health hospital.⁶⁹

⁶³ STANDARDS FOR HEALTH SERVICES IN JUVENILE DETENTION AND CONFINEMENT FACILITIES, *supra* note 43, at Standard Y-B-01 (3)(a)-(d) .

⁶⁴ JDAI FACILITY SITE ASSESSMENT INSTRUMENT, *supra* note 2, at Standard II(E).

⁶⁵ *Id.*

⁶⁶ STANDARDS FOR HEALTH SERVICES IN JUVENILE DETENTION AND CONFINEMENT FACILITIES, *supra* note 43, at Standard Y-G-05 (1)(c)-(d).

⁶⁷ *Id.*, at Standard Y-G-05 (1)(d).

⁶⁸ JDAI FACILITY SITE ASSESSMENT INSTRUMENT, *supra* note 2, at Standard VII(B); POLICY STATEMENTS: SOLITARY CONFINEMENT OF JUVENILE OFFENDERS, *supra* note 1.

⁶⁹ *Id.*

- Facilities should ensure that any emergency isolation implemented as a suicide risk intervention is documented, reviewed by facility administrators, and regularly publicly reported.⁷⁰

⁷⁰ JDAI FACILITY SITE ASSESSMENT INSTRUMENT, *supra* note 2, at Standard VII(B); PBS GOALS, STANDARDS, OUTCOME MEASURES, EXPECTED PRACTICES AND PROCESSES, *supra* note 14, at 10.

INTERAGENCY AGREEMENT BETWEEN THE DEPARTMENT OF JUVENILE JUSTICE AND THE DEPARTMENT OF CORRECTIONS FOR THE TRANSFER OF JUVENILE INMATES

AUTHORITY: Section 985.57, Florida Statutes, 2010

Interagency Agreement between the Department of Juvenile Justice and the Department of Corrections

Rules or Regulations – None

The following procedures are issued for the purpose of processing transfer requests of juvenile inmates under the age of 18 from the Department of Corrections to the Department of Juvenile Justice pursuant to Section 985.57, Florida Statutes.

The request for the transfer of inmates to the Department of Juvenile Justice from the Department of Corrections should be for those offenders deemed appropriate for successful program participation and amenable to treatment.

Inmates may be returned to the Department of Corrections for completion of their sentence, prior to becoming 18.6 years of age, if the Department of Juvenile Justice ascertains he or she has completed all treatment services available.

I. The Department of Juvenile Justice may transfer an inmate from the Department of Corrections or the Department of Corrections may recommend the transfer of selected inmates to the Department of Juvenile Justice. In either case, the following procedures will be followed.

- A. A letter of recommendation, from the Department of Corrections to the Department of Juvenile Justice, will accompany each transfer request, providing written justification to support the appropriateness for such request.
- B. Documentation to be included in the referral shall include but not be limited to:
 - 1. One copy of the inmate's sentencing order.
 - 2. One copy of the State Attorney's information or indictment.
 - 3. The inmate's file with a current admission summary.
 - 4. One copy of the Department of Corrections pre-sentence investigation.
 - 5. One copy of the Department of Juvenile Justice pre-disposition or waiver report.
 - 6. Confirmation the inmate has been interviewed by the Department of Corrections and agrees to the transfer if approved.
 - 7. Any psychological or psychiatric information available to the Department of Corrections.
- C. All transfer requests and supporting documentation will be sent to the Department of Juvenile Justice, Residential Services, Classification and Placement Administration.
- D. Classification and Placement Administration staff will review all case material and supporting documentation for completeness and insure all requests are within the criteria and requirements specified.

II. Transfer requests received by the Office of Residential Services will be processed in the following manner:

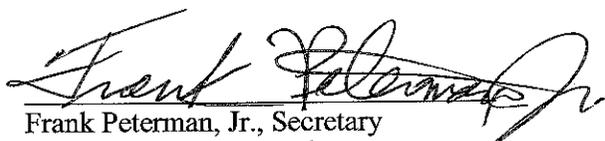
- A. Upon receipt of each transfer request the Department of Juvenile Justice, Classification and Placement staff will contact the sentencing judge, by letter, requesting a written recommendation from the court concerning the proposed transfer.
- B. Prior to approval or denial by the Secretary of Juvenile Justice, Classification and Placement Administration staff located in the region in which the inmate is incarcerated will interview the inmate and explain the Department of Juvenile Justice available options, expectations, consequences of noncompliance and obtain a signed understanding of the conditions of placement if the transfer were approved.
- C. With all requirements completed, Classification and Placement Administration staff will prepare a summary for the Secretary.
- D. If the Secretary of the Department of Juvenile Justice approves the transfer, the department's Classification and Placement Administration staff will contact the Department of Corrections Bureau of Classification and Central Records, the sentencing judge and any other individuals deemed appropriate. If the transfer is denied, the Department of Juvenile Justice, Classification and Placement Administration will notify all individuals contacted.
- E. Upon approval of the transfer request, the parent or guardian of the inmate will be contacted by the regional Juvenile Justice staff and consent for medical treatment will be obtained.
- F. Upon approval of the transfer request, and a suitable placement identified, all relevant information will be sent to the appropriate facility in which the inmate will receive treatment.
- G. Following notification of transfer, the Department of Corrections Bureau of Classification and Central Records will be responsible for the transportation of the inmate to the Department of Juvenile Justice commitment program on a date and time agreeable to both agencies. All personal possessions, the inmate's medical record and any pertinent information or behavioral summaries will accompany the inmate at the time of transfer.

III. GENERAL PROVISIONS

- A. All inmates transferred to the Department of Juvenile Justice are subject to Department of Juvenile Justice rules, regulations, policies, and services relevant to all other committed youth at the facility in which transfer placement is made.
- B. The Department of Juvenile Justice will notify the Department of Corrections thirty (30) days prior to release of any inmate or immediately of the death of an inmate while in the custody of the Department.
- C. If, such inmate becomes 18.6 years of age and the sentence has not expired, the inmate must be transferred back to the Department of Corrections for placement in a youthful offender program, for the remainder of the sentence.
- D. The Department of Corrections shall grant gain-time for good conduct or may declare forfeiture thereof, as described in Sections 944.275 and 944.28, Florida Statutes. If the inmate was sentenced

pursuant to Section 921.18, Florida Statutes, is transferred to the department, the department may determine the exact sentence of the child, but the sentence may not be longer than the maximum sentence that was imposed by the court pursuant to 921.18, Florida Statutes. All time spent in the custody of the Department of Juvenile Justice shall count toward the expiration of sentence. The Department of Corrections will assist the Department of Juvenile Justice in determining the gain-time earned.

- E. Any inmate transferred from the Department of Corrections who fails to respond to the treatment provided by the Department of Juvenile Justice may, at the discretion of the Secretary of Juvenile Justice, be returned to the Department of Corrections.
- F. If an inmate successfully completes his/her juvenile justice commitment program and the Department of Juvenile Justice determines additional treatment in a juvenile institution will be of limited or no benefit to the inmate, the inmate will be returned to the Department of Corrections.
- G. Following notification, the Department of Corrections, Bureau of Classification and Central Records, will be responsible for the transportation of the inmate to the appropriate Department of Corrections facility. The Department of Juvenile Justice, Classification and Placement Administration will assist with coordinating the transfer.


 Frank Peterman, Jr., Secretary
 Department of Juvenile Justice


 Walter A. McNeil, Secretary
 Department of Corrections

Date 10/25/10

Date 11/05/10

DEPARTMENT OF CORRECTIONS
 APPROVED AS TO FORM AND LEGALITY
 10/27/10
 GENERAL COUNSEL

INTERDEPARTMENTAL AGREEMENT

Access to Woodside Juvenile Rehabilitation Center For Youth Under the Jurisdiction of The Department of Corrections

The Department for Children and Families (DCF) operates the Woodside Juvenile Rehabilitation Center. Woodside is primarily used for short-term detention and placement of youth who have been adjudicated delinquent; it also operates a secure treatment program. The detention wing of Woodside is designed for a maximum capacity of 16 youth.

While Woodside is intended to serve youth adjudicated delinquent and in the custody of the Commissioner of DCF, under certain circumstances it may be appropriate to utilize vacancies in the Woodside Detention program for youth who are the responsibility of the Department of Corrections (DOC)

- At times, youth sixteen or seventeen years of age are placed in the custody of the Department of Corrections during the pendency of misdemeanor criminal proceedings. Federal and state laws prohibit the housing of youth who have not been convicted of a felony or who are not currently charged with a felony in facilities used for the incarceration of adults; DOC must make alternative arrangements for the detention of these minor detainees.
- At times, youth sixteen or seventeen years of age are convicted of a misdemeanor and court ordered to serve some or all of their time in a facility. State law prohibits the housing of youth convicted of a criminal misdemeanor in facilities used for the incarceration of adults; DOC must make alternative arrangements for the containment of these youth convicted of a misdemeanor.
- Infrequently, youth under the age of 16 are charged or sentenced in adult court for serious felony crimes. These youth may not be housed in adult facilities.

DCF and DOC enter into this Interdepartmental Agreement to outline the circumstances in which youth in DOC custody may be placed at Woodside.

A youth in the custody of the Department of Corrections is eligible for placement at Woodside in the following circumstances:

1. The youth is 16 or 17 years old and is charged or convicted as an adult for the commission of a misdemeanor AND
 - i. there is no felony charge pending AND
 - ii. the Commissioner of Corrections or designee has determined the youth is in the custody of DOC and requires detention or containment AND

- iii. there is no available community-based residential placement for the youth.
AND
 - iv. the admission of the youth is compatible with the juvenile population mix at Woodside.
2. Youth under 16 who are charged with a felony and require secure detention or are serving sentence as the result of a felony conviction will be housed at Woodside and may remain at the Center until their 16th birthday.

Procedure

Intake for all DOC referrals:

1. When DOC has an eligible youth in custody who it wishes to place at Woodside, the DOC Field Services Executive or designee shall contact the commissioner of DCF or designee and request placement. Additionally, the DOC Field Services Executive shall provide the DCF commissioner or designee with information about the youth, the offense, and any related court documents.
2. The DCF Commissioner or designee will promptly review the material submitted by DOC and render a decision in consultation with the Woodside Director and Placement Consultant. That decision will be communicated to the DOC Field Services Executive or designee. If admission is to occur, the DOC field representative will arrange it with the Woodside Director or designee.
3. The Director of Woodside or designee and the Superintendent of the Chittenden Regional Correctional Facility will formalize admission with the completion of furlough papers, medical permissions and other necessary releases.
4. Within the five business days of placement, the DCF Placement Consultant and the DOC Field Services Executive or designee will convene a treatment team meeting for the youth that will consist of appropriate DOC and DCF representatives. The Treatment Team will complete a written plan of services (Attachment A) including anticipated discharge date and plan.\
5. The Department of Corrections shall be ultimately responsible for the education of youth in its custody who are housed at Woodside and may delegate the provision of such educational services if appropriate. When the Treatment Team is convened, if it is determined that the youth does not have a legal guardian who is authorized to obtain educational records, then DOC will enroll the youth in Community High School and request the youth's educational records. The records will be shared as needed with the Woodside Education Director.

Discharge:

Discharge consideration and/or date will be determined by the DCF Commissioner or designee in consultation with DOC representative.

A. For misdemeanants, the DCF Commissioner or designee may terminate a DOC placement when:

1. The population of the Woodside detention wing reaches sixteen;
 2. In the DCF Commissioner or designee's judgment, the placement is no longer compatible with the Woodside juvenile population.
- In unusual circumstances, in consideration of the best interests of a youth, DOC may request an exception to these criteria and may contribute resources to meet staffing and safety needs at Woodside.
- Should DCF terminate a DOC placement, DCF shall endeavor to give DOC at least forty-eight hours of notice. Immediate discharge may be required to permit the placement of high risk DCF youth who require secure placement.

B. Felony DOC placements who under 16 and have no other placement option will be housed at Woodside until their 16th birthday or until DOC implements an alternative plan.

General Agreements

1. Under no circumstances shall a youth over the age of eighteen reside at Woodside.
2. DOC will pay for any and all services provided to the youth that are not included in the Woodside standard detention program. Such services, and their cost, shall be outlined in the youth's plan of services. Commissioners' designees may negotiate further cost sharing in particular circumstances as necessary.
3. DOC shall have the right to re-take a youth housed at Woodside and committed to DOC custody at any time.
4. This agreement is for the benefit of the two parties only, and does not convey third-party beneficiary status on anyone.
5. No youth committed to the DOC shall have any right under this agreement to petition the DOC, the DCF, or the courts to seek placement at Woodside.
6. Upon request by the DOC, the DCF shall provide access to the DOC of all DCF records that are specifically related to youths detained at Woodside pursuant to this agreement. DCF may redact all information that references other youths under its care.
7. This Interdepartmental Agreement maybe cancelled by either party with a thirty-day written notice.
8. This Interdepartmental Agreement is effective until it is cancelled.

Ally Ie 6/27/09
Commissioner of DCF Date

Andrew Bellis June 9, 2009
Commissioner of Corrections Date

I hereby delegate the placement authority conveyed to me in 33 V.S.A. § 5505 to the commissioners of the Department of Corrections and the Department for Children and Families, to be exercised in accordance with the provisions of this Interdepartmental Agreement.

[Signature]
Secretary of Agency of Human Services

6/25/09

Date

Attachment A PLAN OF SERVICE

| | |
|----------------------------|-----------------------------------|
| Child's Name | Date of Birth |
| Treatment Plan Date | Treatment Plan Review Date |

| Area of Interest | Actions to be Taken | Responsible Parties |
|-----------------------|---------------------|--|
| Custody/Legal | | |
| Housing | | |
| Transport | | |
| Education | | |
| Medical/Mental Health | | |
| Case Review/Planning | | Core Team Members: DOC CSS Woodside Social Worker (DCF) Mental Health (DCF/DOC) Education (DCF/DOC) Adjunct as indicated |
| Victim Services | | |

It is understood and agreed that circumstances and conditions affecting this plan of service are subject to change. Modifications and changes may be verbally agreed to by the Parties as deemed necessary or at subsequent Team meetings.

Jackie Kotkin or Designee
Assistant Director of Correctional
Services

Cindy Walcott or Designee
Deputy Commissioner of Child
Welfare & Youth Justice



NO CHILD LEFT ALONE

Campaign to Stop the Solitary Confinement
of Youth in Adult Jails and Prisons

Standards Restricting the Solitary Confinement of Youth

There is widespread agreement that isolation and particularly solitary confinement can severely damage youth. As the U.S. 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."¹ The Task Force accordingly proposed abandoning correctional practices, like solitary confinement, which traumatize children and reduce their opportunities to become productive members of society.² This is just the latest call to strictly limit youth isolation:

- **Every set of standards governing age- and developmentally-appropriate practices to manage and care for youth under age 18 strictly regulates and limits all forms of isolation.**
- The leading set of national standards for managing youth in a correctional setting limits isolation at **72 hours or less.**³
- In 2012, the American Academy of Child and Adolescent Psychiatrists proposed a strict limit of **24 hours.**⁴

Below we highlight national standards and best practices for **correctional settings** (including examples from specific corrections systems), as well as **mental health** and **educational** facility standards and best practices, and **international** standards. These standards and best practices – drawn from a range of institutional environments – all apply limitations on the use of solitary confinement for youth.

NATIONAL STANDARD FRAMEWORKS - CORRECTIONS

Juvenile Detention Alternatives Initiative (JDAI)

JDAI, a nationally-recognized set of best practices,⁵ and an initiative of the Annie E. Casey Foundation,⁶ has four goals: "to eliminate the inappropriate or unnecessary use of secure detention; to minimize re-arrest and failure-to-appear rates pending adjudication; to ensure appropriate conditions of confinement in secure facilities; and to redirect public finances to sustain successful reforms."⁷ The Initiative uses a set of standards and facility assessments conducted by local stakeholders to evaluate and improve conditions of confinement.⁸

With regard to isolation, JDAI distinguishes between "isolation," "voluntary time-outs," and "room confinement:"

¹ 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>.

² *Id.* at 114.

³ JUVENILE DET. ALT. INITIATIVE, JUVENILE DETENTION ALTERNATIVES INITIATIVE (JDAI) FACILITY SITE ASSESSMENT INSTRUMENT Standard VII(E) (2006), *available at* <http://www.cclp.org/documents/Conditions/JDAI%20Standards.pdf>.

⁴ AM. ACAD. OF CHILD. & ADOLESCENT PSYCHIATRY, POLICY STATEMENTS: SOLITARY CONFINEMENT OF JUVENILE OFFENDERS (Apr. 2012), *available at* http://www.aacap.org/cs/root/policy_statements/solitary_confinement_of_juvenile_offenders.

⁵ COALITION FOR JUVENILE JUSTICE, COALITION FOR JUVENILE JUSTICE BEST PRACTICE BULLETIN (2009), *available at* http://juvjustice.org/media/resources/public/resource_232.pdf.

⁶ JDAI/*Detention Reform*, CTR. FOR CHILDREN'S LAW AND POLICY, <http://www.cclp.org/JDAI.php> (last visited Mar. 5, 2013).

⁷ *Id.*

⁸ JDAI FACILITY SITE ASSESSMENT INSTRUMENT, *supra* note 3.

- *Isolation* is defined as placing a youth in a room because of his or her current acting-out behavior and limited at an absolute maximum of 4 hours;⁹
- *Room confinement* is defined as a disciplinary sanction requiring youth to remain in a room after a youth has violated a rule and limited at an absolute maximum of 72 hours.¹⁰

JDAI ISOLATION STANDARDS

Under JDAI standards, **Isolation**:

- must be governed by policies and procedures;
- must be documented by facility and medical staff;
- incidents must be reviewed regularly by the facility administrator;
- can only be used if a youth's behavior threatens imminent harm to self or others or serious destruction of property;
- can only be used after exhaustion of less restrictive de-escalation techniques;
- can only be used for the amount of time necessary for the youth to regain self-control and no longer pose a threat;
- can only be used for longer than one hour with explicit approval of a unit supervisor;
- can never be used for longer than four hours;
- can only be used if staff provides one-on-one crisis intervention and observation inside the cell or directly outside the cell;
- can only be used if a medical professional directly monitors youth held for longer than 30 minutes at least every hour;
- can only be effectuated in clean, suicide-resistant and protrusion-free rooms, with adequate ventilation and at comfortable temperatures and that ensure reasonable access to water, toilet facilities, and hygiene supplies.¹¹

JDAI requires that if at any time a qualified mental health professional determines that the level of crisis service needed is not available in the current environment, or if – at the end of four hours – an individual has not regained self-control, the youth should be transferred to a mental health facility or the medical unit of the facility.¹²

JDAI ROOM CONFINEMENT STANDARDS

Under JDAI standards, **Room Confinement**:

- must be governed by policies and procedures;
- must be documented by facility staff;
- incidents must be reviewed regularly by the facility administrator;
- as a sanction lasting longer than 4 hours is subject to a due process hearing which must take place within 24 hours of the incident and *before* the youth is placed in room confinement;
- should not routinely be imposed for longer than 24 hours and never imposed for more than 72 hours;
- can only be employed for longer than one hour with the approval of a unit supervisor;
- can only be employed for longer than four hours with the approval of the facility administrator or designee;

⁹ *Id.* at Standard VII(B).

¹⁰ *Id.* at Standard VII(E).

¹¹ *Id.* at Standard VII(B).

¹² *Id.*

- can only be employed for longer than 24 hours for the most serious violations and with the approval of the facility administrator;
- can only be employed for longer than 48 hours after the review of a facility administrator not involved in the incident;
- can only be employed if staff monitor youth at 15 minute intervals;
- can only be employed if youth who appear in need of mental health services are promptly visited by mental health staff;
- can only be employed for longer than 24 hours if a qualified mental health or health professional visits the youth daily;
- can only be effectuated in clean and sanitary rooms that ensure reasonable access to water, toilet facilities, and hygiene supplies.¹³

JDAI requires that youth held in room confinement never be deprived of:

- a mattress, pillow, blankets, and sheets;
- full meals and evening snacks;
- a full complement of clean clothes;
- parental and attorney visits;
- personal hygiene items;
- daily opportunity for exercise;
- telephone contact with attorney;
- the right to receive and send mail;
- a regular daily education program;
- an opportunity for a daily shower;
- an opportunity to attend religious services and/or obtain religious counseling of the youth's choice;
- access to reading materials.¹⁴

JDAI mandates that youth at risk of self-harm must be “engaged in appropriate activities and programs that will raise their self-esteem and reduce their risk of further self-harming behavior;”¹⁵ and that youth at risk of suicide must be engaged in social interaction – not isolated – and have an opportunity to participate in school and activities (youth at active risk of suicide must be monitored one-on-one on a continuous basis or transferred to a mental health facility).¹⁶

Performance-based Standards (PbS)

The PbS initiative, a program of the Council of Juvenile Correctional Administrators, “is a [national] program for agencies and facilities to identify, monitor and improve conditions and treatment services provided to incarcerated youths using national standards and outcome measures.”¹⁷ It is a voluntary, membership organization with more

¹³ *Id.* at Standard VII(E).

¹⁴ *Id.* at Standard VII(D)-(E).

¹⁵ *Id.* at Standard II(E).

¹⁶ *Id.*

¹⁷ PBS LEARNING INST., PERFORMANCE-BASED STANDARDS (PBS), <http://pbstandards.org/initiatives/performance-based-standards-pbs> (last visited Feb. 20, 2013).

than 100 participating facilities across 29 states.¹⁸ A major focus of the PbS initiative is gathering and disseminating data to promote best-practices.¹⁹

With regard to isolation, **“PbS standards are clear: isolating or confining a youth to his/her room should be used only to protect the youth from harming himself or others and if used, should be brief and supervised. Any time a youth is alone for 15 minutes or more is a reportable PbS event and is documented;”**²⁰ **“isolation... should not be used as punishment.”**²¹ The agency documents that, nationally, “very few state agency policies permit extended isolation time for youths and the majority limit time to as little as three hours and a maximum of up to five days.”²²

In PbS facilities, aggregated data from between 2008 and 2012 made public by PbS, shows that in long-term juvenile corrections facilities, the average duration of isolation declined to 14.28 *hours* in 2012, with the percentage of cases ending in *four hours or less* increasing to 60% in 2012; and that in short-term detention and assessment centers, the average duration of isolation declined to 5.59 *hours* in 2012, with the percentage of cases ending in *four hours or less* increasing to 75% in 2012.²³

There are a range of expected practices and processes that PbS recommends for facilities, including that:

- the facility have a behavior management system that relies on rewards and incentives;
- isolation is used to neutralize out-of-control behavior and redirect it into positive behavior and should not be used as punishment;
- the staff training program includes an adolescent development curriculum that features the value of positive over negative reinforcement in dealing with youths;
- the staff training program presents the negative repercussions and ineffectiveness of long-term isolation and the rationale for shorter brief periods;
- the facility have policies governing the duration of isolation and room confinement;
- the facility review all events and incidents resulting in isolation to determine if isolation could have been avoided or its use shortened;
- the facility review all incidents of isolation routinely for appropriateness, length of isolation and monitoring of youth in isolation;
- the facility require an oversight agency to conduct regular reviews of isolation inclusive of the monitoring of youth while in isolation.²⁴

American Correctional Association (ACA) Performance-Based Standards for Juvenile Correctional Facilities

¹⁸ PBS LEARNING INST., PERFORMANCE-BASED STANDARDS: SAFETY AND ACCOUNTABILITY FOR JUVENILE DETENTION FACILITIES (2012), available at http://pbstandards.org/uploads/documents/PbS_Li_MarketingPacket.pdf.

¹⁹ *Id.*

²⁰ PBS LEARNING INST., REDUCING ISOLATION AND ROOM CONFINEMENT 2 (2012), available at http://pbstandards.org/uploads/documents/PbS_Reducing_Isolation_Room_Confinement_201209.pdf.

²¹ PBS LEARNING INST., PBS GOALS, STANDARDS, OUTCOME MEASURES, EXPECTED PRACTICES AND PROCESSES 10 (2007), available at <http://sccounty01.co.santa-cruz.ca.us/prb/media%5CGoalsStandardsOutcome%20Measures.pdf>.

²² PBS LEARNING INST., REDUCING ISOLATION AND ROOM CONFINEMENT, *supra* note 20, at 4.

²³ *Id.* at 5.

²⁴ PBS LEARNING INST., PBS GOALS, STANDARDS, OUTCOME MEASURES, EXPECTED PRACTICES AND PROCESSES, *supra* note 21, at 10.

ACA policy recognizes that “children and youths have distinct personal and developmental needs”²⁵ and calls for all youth – even those charged as adults – to be held in specialized juvenile facilities whenever they are deprived of their liberty.²⁶

With regard to isolation, ACA standards for juveniles permit the removal from general population of juveniles who threaten the secure and orderly management of the facility and their placement in special units.²⁷ ACA standards distinguish between three types of removal practices:

- **DISCIPLINARY ROOM CONFINEMENT,**
- **PROTECTIVE CUSTODY,**
- **SPECIAL MANAGEMENT.**²⁸

DISCIPLINARY ROOM CONFINEMENT

ACA standards **limit disciplinary room confinement to five days**. Juveniles in room confinement must be checked visually by staff at least every 15 minutes and visited at least once each day by personnel from administrative, clinical, social work, religious, and/or medical units, during which staff must actually enter the room for the purpose of discussion or counseling. The ACA standards require that youth in disciplinary room confinement be afforded living conditions and privileges earned that approximate those available to the general population.²⁹

PROTECTIVE CUSTODY

ACA standards limit protective custody to circumstances where youth need protection from others and then only until alternative permanent housing is found. The ACA standards require that **continued confinement to protective custody should only continue beyond 72 hours with the approval of a facility administrator**. Under the ACA standards, facilities should develop special management plans for youth in protective custody to ensure continuous services and programming.³⁰

SPECIAL MANAGEMENT

ACA standards limit the use of special management to high-risk juveniles who cannot control their assaultive behavior or present a danger to themselves. The ACA suggests that youth in special management should benefit from an individualized and constructive behavior management plan that allows for individualized attention. The ACA standards require that placement in special management must be reviewed within 72 hours.³¹

Department of Justice (DOJ) Standards for the Administration of Juvenile Justice

In 1980, the Justice Department issued Standards related to a broad range of issues in the juvenile justice system.³²

With regard to isolation, the DOJ Standards provide that “**juveniles should be placed in room confinement only when no less restrictive measure is sufficient to protect the safety of the facility and the**

²⁵ AM. CORR. ASS’N, PUB. CORR. POLICY ON JUVENILE JUSTICE (2007).

²⁶ AM. CORR. ASS’N, PUB. CORR. POLICY ON YOUTHFUL OFFENDERS TRANSFERRED TO ADULT CRIMINAL JURISDICTION (2009).

²⁷ AM. CORR. ASS’N, PERFORMANCE BASED STANDARDS JUVENILE CORR. FACILITIES 51 (4th ed. 2009).

²⁸ *Id.* at 51-52.

²⁹ *Id.* at 52 (Standards 4-JCF-3C-03; 4-JCF-3C-04).

³⁰ *Id.* at 51 (Standard 4-JCF-3C-02).

³¹ *Id.* at 51 (Standard 4-JCF-3C-01).

³² DEP’T JUSTICE OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, STANDARDS FOR THE ADMINISTRATION OF JUVENILE JUSTICE (1980), available at <http://catalog.hathitrust.org/Record/000127687>.

persons residing or employed therein ... Room confinement of more than twenty-four hours should never be imposed.”³³ The commentary to the standards states that “[i]solation is a severe penalty to impose upon a juvenile, especially since this sanction is to assist in rehabilitation as well as punish a child ... After a period of time, room confinement begins to damage the juvenile, cause resentment toward the staff, and serves little useful purpose.”³⁴

The DOJ standard mandates that juveniles placed in room confinement should be examined at least once during the day by a physician, be visited at least twice during the day by a child-care worker or other member of the treatment staff, and be provided with educational materials and other services as needed ... juveniles placed in room confinement for more than twelve hours should be provided with at least thirty minutes of recreation and exercise outside of the room in which they are confined.”³⁵

The DOJ standards state that all youth in residential facilities should have a right to a basic level of services (including an adequate and varied diet; varied recreation and leisure-time activities; preventive and immediate medical/dental care; remedial, special, vocational, and academic educational services; protection against physical and mental abuse; freedom to develop individuality; opportunity to participate or not participate in religious observances; clean, safe, adequately heated and lighted accommodations; and maximum feasible contact with family, friends, and community) as well as a maximum level of treatment services (including individual and group counseling; psychiatric and psychological services; and casework services).³⁶

SPECIFIC SYSTEMIC STANDARDS - CORRECTIONS

Mississippi Department of Corrections

As a result of litigation, in 2012 the Mississippi Department of Corrections entered into a consent decree and agreed to create a Youthful Offender Unit to house all youth 17 and under diverted from other Department of Corrections facilities; to prohibit solitary confinement of youth; and to strictly regulate all forms of isolation such that youth are never in isolation for more than 20 consecutive hours.³⁷ The consent decree allows only two exceptions: **“emergency cell confinement,”** and **“disciplinary cell confinement.”**

EMERGENCY CELL CONFINEMENT IS LIMITED AT 24 HOURS for youth who present an immediate, serious threat to the safety of others and can only last until the youth has regained self-control.³⁸

DISCIPLINARY CELL CONFINEMENT IS LIMITED AT 72 HOURS for youth who violate a major facility rule. Youth in any form of cell confinement cannot be denied basic educational programming, the opportunity for daily out-of-cell and outdoor exercise (at least one hour of large muscle exercise), or opportunity for weekly contact with family through visits, phone calls and letters, and must receive the same meals, clothing, access to drinking water, medical treatment, educational services, exercise, correspondence, privileges, contact with parents and legal guardians, and legal assistance provided to other youth prisoners.³⁹

³³ *Id.* at Standard 4.52.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.* at Standard 4.410.

³⁷ *C.B., et al. v. Walnut Grove Corr. Authority*, No. 3:10cv663, ¶ IV(c)(1) (S.D. Miss. filed Feb. 3, 2012) (Consent decree), available at http://www.aclu.org/files/assets/68-1_ex_1_consent_decree.pdf.

³⁸ *Id.* at ¶ IV(c)(2).

³⁹ *Id.* at ¶ IV(a)-(h).

Youth in either form of cell confinement must be visually checked by staff at least 4 times an hour and not more than 15 minutes apart and interviewed by medical and mental health staff at least every 24 hours.⁴⁰

Federal Bureau of Prisons Model Contract with Secure Juvenile Facilities

The Federal Government does not house youth under age 18 in its custody in adult facilities.⁴¹ Youth who are charged under federal criminal law or adjudicated delinquent under federal law are therefore not held in Bureau of Prison facilities for adults. Rather, the federal government contracts with secure juvenile facilities to house them. The BOP has made public a Statement of Work that guides contracting with these facilities and which requires that facilities create policies consistent with certain requirements contained in this “model contract.”

With regard to isolation, the Bureau of Prisons Model Contract requires that facilities that house youth detained by the federal government distinguish between **room restrictions or a “cooling off period” for a maximum of one hour** in an unlocked room for minor rule violations; and **confinement in a secure unit for major rule violations for up to 24 hours**, but which can be reviewed every 24 hours and extended (during which youth are seen by a licensed psychiatrist or psychologist and a physician every 24 hours). The Model Contract further requires that room confinement should **normally not exceed 5 consecutive days**.⁴² The BOP also **permits confinement in special management housing to provide individualized attention**.⁴³ Youth in this status must be checked by staff every 15 minutes; they must be visited at least once a day by a non-correctional officer; the time in this status must be proportionate to the offense committed; and youth must receive a room, food, clothing, exercise, and medical, psychological, educational, and other services comparable to other juveniles – 50 hours a week of quality programming and 4 hours of school per week day.⁴⁴

There is no public documentation verifying whether conditions at BOP contract facilities meet these minimum standards.

NATIONAL STANDARD FRAMEWORKS – MENTAL HEALTH

Federal Legislation and Implementing Regulations

The **Children’s Health Act of 2000** protects the rights of residents of any health care facility that receives federal funds.⁴⁵ The statute strictly limits the use of involuntary locked isolation (or “seclusion”) by **prohibiting disciplinary isolation or isolation used for the purposes of convenience and allowing locked isolation only (1) to ensure the physical safety of the resident, a staff member, or others and (2) upon the written order of a physician or licensed practitioner** that specifies duration.⁴⁶

⁴⁰ *Id.* at ¶ IV(c)(8).

⁴¹ 18 U.S.C. 5039 (2012), available at <http://www.gpo.gov/fdsys/pkg/USCODE-2011-title18/pdf/USCODE-2011-title18-partIV-chap403-sec5040.pdf>; BUREAU OF PRISONS, PROGRAM STATEMENT 5216.05, JUVENILE DELINQUENTS (1999), available at http://www.bop.gov/policy/progstat/5216_005.pdf.

⁴² BUREAU OF PRISONS, STATEMENT OF WORK: CONTRACT SECURE JUVENILE FACILITIES 36-39 (2011), available at http://www.bop.gov/locations/cc/SOW_Secure_Juvie.pdf.

⁴³ *Id.* at 38.

⁴⁴ *Id.* at 19.

⁴⁵ Children’s Health Act of 2000, Pub. L. 106-310, 114 Stat. 1101 § 591(a) (2000), available at <http://www.gpo.gov/fdsys/pkg/PLAW-106publ310/pdf/PLAW-106publ310.pdf>.

⁴⁶ *Id.* at § 591(b).

Regulations implementing the health and safety requirements of the **Social Security Act** also strictly limit the use of involuntary isolation (or “seclusion”) in medical facilities.⁴⁷ The regulations similarly prohibit involuntary isolation used for coercion, discipline, convenience or retaliation and allow involuntary isolation **only (1) when less restrictive interventions have been determined to be ineffective, (2) to ensure the immediate physical safety of the patient, staff member, or others, and (3) must be discontinued at the earliest possible time.**⁴⁸ These regulations **limit involuntary isolation to a total maximum of 24 hours and limit individual instances of involuntary isolation to 2 hours for children and adolescents age 9 to 17.**⁴⁹ The regulations mandate that individuals subjected to involuntary isolation be evaluated within 1 hour of the intervention by a medical professional, who must document (1) a description of the patient’s behavior and the intervention used; (2) alternatives or other less restrictive interventions attempted; (3) the patient’s conditions or symptoms that warranted the use of seclusion; and (4) the patient’s response, including the rationale for continued isolation.⁵⁰

The American Academy of Child and Adolescent Psychiatrists (AACAP)

In 2012 the AACAP issued a policy statement **opposing the use of solitary confinement for juveniles and urging that any youth confined for more than 24 hours should be evaluated by a mental health professional.**

The statement **recognized the potential psychiatric consequences of prolonged solitary confinement (including depression, anxiety, and psychosis) and that, due to their developmental vulnerability, juveniles are at particular risk for such adverse reactions.**⁵¹ The statement also distinguishes between the use of isolation to punish, which is unacceptable, and the use of brief interventions, which are acceptable (these include “time-outs,” which may be used as a component of a behavioral treatment program and “seclusion,” an emergency procedure which should be used for the least amount of time possible for the immediate protection of the individual).⁵²

The AACAP also has standards strictly limiting the use of isolation (or “seclusion”) in the context of mental health treatment. In the therapeutic context, the AACAP opposes the use of seclusion except (1) to prevent dangerous behavior to self or others, disruption of the treatment program, or serious damage to property; and (2) only after less restrictive options have failed or are impractical.⁵³ These standards also state that seclusion should never be used as a punishment or for the convenience of the program and should only be implemented by trained staff.⁵⁴

The National Commission on Correctional Health Care (NCCCHC)

For facilities seeking accreditation through the NCCCHC, its standards require that medical and administrative staff jointly create segregation policies and that youth in segregation should be evaluated daily by qualified health

⁴⁷ 42 C.F.R. 482.13 (2012) (implementing 42 U.S.C. 1395x § 1861(e)(9)(A)), available at <http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=5ba18485f8033f30fb496dba3e87c626&rgn=div8&view=text&node=42:5.0.1.1.1.2.4.3&idno=42.>)

⁴⁸ 42 C.F.R. 482.13(e) (2012).

⁴⁹ 42 C.F.R. 482.13(e)(2)(8) (2012).

⁵⁰ *Id.*

⁵¹ POLICY STATEMENTS: SOLITARY CONFINEMENT OF JUVENILE OFFENDERS, *supra* note 4.

⁵² *Id.*

⁵³ AM. ACAD. OF CHILD & ADOLESCENT PSYCHIATRY, PRACTICE PARAMETER FOR THE PREVENTION AND MANAGEMENT OF AGGRESSIVE BEHAVIOR IN CHILD AND ADOLESCENT PSYCHIATRIC INSTITUTIONS, WITH SPECIAL REFERENCE TO SECLUSION AND RESTRAINT 55 (2002), available at http://www.aacap.org/galleries/PracticeParameters/JAACAP_SR_2002.pdf.

⁵⁴ *Id.*

personnel.⁵⁵ NCCHC standards require that these **segregation policies should state that isolation is to be reserved for incidents in which the youth’s behavior has escalated beyond the staff’s ability to control the youth by counseling or disciplinary measures and presents a risk of injury to the youth or others.**⁵⁶

The NCCHC standard is based on its finding that, “segregation is a behavioral control measure (thus subjected to administrative responsibility) **which may pose medical danger** (thus subject to medical responsibility). This danger increases as segregation is prolonged.”⁵⁷ The discussion concludes that, “[i]t is reasonable to assume from these [research] findings and the successful experiences of juvenile detention/confinement programs that have strict, self-imposed limits on isolation, **that the vast majority of segregation events can be limited to minutes or hours**, and the use of segregation for a day or more is unnecessary in all but a very few cases.”⁵⁸

NATIONAL STANDARD FRAMEWORKS – EDUCATION

Department of Education Guidelines

There are a range of state policies, laws and practices regarding the use of involuntary isolation for young people in educational contexts.⁵⁹ But the Department of Education has issued a set of general guidelines for the use of involuntary isolation in schools.⁶⁰

The Department of Education guidelines restrict involuntary confinement of a student to a room alone (or “seclusion”) and state that **isolation should not be used as a punishment or convenience** and is appropriate only in situations where a child’s behavior poses an imminent danger of serious physical harm to self or others, where other interventions are ineffective and should be discontinued as soon as the imminent danger of harm has dissipated.⁶¹ The guidelines propose that any use of isolation, but particularly where there is repeated use for an individual child, should trigger a review of strategies in place to address dangerous behavior, and these strategies should address the underlying cause or purpose of the behavior.⁶² The guidelines also propose constant visual monitoring of children in isolation, parental notification and documentation.⁶³

⁵⁵ NAT’L COMM. ON CORR. HEALTH CARE, STANDARDS FOR HEALTH SERVICES IN JUVENILE DETENTION AND CONFINEMENT FACILITIES, Standard Y-E-09 (2011); NAT’L COMM. ON CORR. HEALTH CARE, STANDARDS FOR HEALTH SERVICES IN JUVENILE DETENTION AND CONFINEMENT FACILITIES, Standard Y-39 (1995), *available at* <http://www.jdcap.org/SiteCollectionDocuments/Health%20Standards%20for%20Detention.pdf>.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *See generally*, DEP’T OF EDUCATION, SUMMARY OF SECLUSION AND RESTRAINT STATUTES, REGULATIONS, POLICIES AND GUIDANCE, BY STATE AND TERRITORY (2010) *available at* http://www.pbis.org/common/pbisresources/publications/SeclusionRestraint_summary_ByState.pdf; JESSICA BUTLER, HOW SAFE IS THE SCHOOLHOUSE?: AN ANALYSIS OF STATE SECLUSION AND RESTRAINT LAWS AND POLICIES (Autism National Committee, 2012), *available at* www.autcom.org/pdf/howsafeschoolhouse.pdf.

⁶⁰ DEP’T OF EDUCATION, RESTRAINT AND SECLUSION: RESOURCE DOCUMENT 11-23 (2012), *available at* www2.ed.gov/policy/seclusion/restraints-and-seclusion-resources.pdf.

⁶¹ DEP’T OF EDUCATION, RESTRAINT AND SECLUSION: RESOURCE DOCUMENT 12-13 (2012), *available at* www2.ed.gov/policy/seclusion/restraints-and-seclusion-resources.pdf.

⁶² *Id.*

⁶³ *Id.*

INTERNATIONAL STANDARDS

United Nations Special Rapporteur on Torture

The United Nations Special Rapporteur on Torture, in his 2011 report to the General Assembly, called for an absolute ban on solitary confinement for youth under age 18:

The Special Rapporteur holds the view that the imposition of solitary confinement, of any duration, on juveniles is cruel, inhuman or degrading treatment and violates article 7 of the International Covenant on Civil and Political Rights and article 16 of the Convention against Torture.⁶⁴

This absolute ban reflects an agreement that solitary confinement is an affront to the humanity, dignity, and child status of any youth. And it reflects an interpretation of two treaties – the International Covenant on Civil and Political Rights and the Convention against Torture – which the United States has ratified.⁶⁵

Other International Standards

Other international human rights laws and standards condemn solitary confinement of children (defined as anyone below 18 years of age) – for any duration – as cruel, inhuman or degrading treatment, and under certain circumstances, torture. The United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) and The United Nations Rules for the Protection of Juveniles Deprived of their Liberty (The Beijing Rules) both describe punitive solitary confinement of children as cruel, inhuman or degrading treatment.⁶⁶ The Committee on the Rights of the Child, tasked with monitoring and enforcing the Convention on the Rights of the Child, confirms to this view, interpreting punitive solitary confinement of children as a form of cruel, inhuman or degrading treatment that violates the Convention.⁶⁷

⁶⁴ Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Interim Rep. of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, ¶ 77, U.N. Doc. A/66/268 (Aug. 5, 2011) (by Juan Mendez) available at <http://solitaryconfinement.org/uploads/SpecRapTortureAug2011.pdf>. This report reiterates previous statements by the UN Special Rapporteurship regarding juvenile solitary confinement. Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Interim Rep. of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, ¶¶ 78-85, Annex (Istanbul Statement on the Use and Effects of Solitary Confinement), U.N. Doc A/63/175 (July 28, 2008) (by Manfred Nowak) available at <http://www.unhcr.org/refworld/pdfid/48db99e82.pdf>.

⁶⁵ International Covenant on Civil and Political Rights, Dec. 16, 1966, S. Exec. Rep. 102-23, 999 U.N.T.S. 171 (“ICCPR”) (entered into force Mar. 23, 1976) (ratified by U.S. June 8, 1992); Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85, 113 (“CAT”) (entered into force Jun. 26, 1987) (ratified by U.S. Oct. 21, 1994).

⁶⁶ U.N. Guidelines for the Prevention of Juvenile Delinquency, G.A. Res. 45/112, Annex, 45 U.N. GAOR Supp. (No. 49A) at 201, U.N. Doc. A/45/49 (Dec. 14, 1990) (“The Riyadh Guidelines”).

⁶⁷ U.N. Comm. on the Rights of the Child, 44th Sess., General Comment 10, Children’s rights in juvenile justice, U.N. Doc. CRC/C/GC/10 (2007).

Policy Statements

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Solitary Confinement of Juvenile Offenders

Approved by Council, April 2012

To be reviewed by June 2017

By the Juvenile Justice Reform Committee

Solitary confinement is defined as the placement of an incarcerated individual in a locked room or cell with minimal or no contact with people other than staff of the correctional facility. It is used as a form of discipline or punishment.

The potential psychiatric consequences of prolonged solitary confinement are well recognized and include depression, anxiety and psychosis¹. Due to their developmental vulnerability, juvenile offenders are at particular risk of such adverse reactions². Furthermore, the majority of suicides in juvenile correctional facilities occur when the individual is isolated or in solitary confinement.

Solitary confinement should be distinguished from brief interventions such as "time out," which may be used as a component of a behavioral treatment program in facilities serving children and/or adolescents, or seclusion, which is a short term emergency procedure, the use of which is governed by federal, state and local laws and subject to regulations developed by the Joint Commission, CARF and supported by the National Commission of Correctional Healthcare (NCHHC), the American Correctional Association (ACA) and other accrediting entities.

The Joint Commission states that seclusion should only be used for the least amount of time possible for the immediate physical protection of an individual, in situations where less restrictive interventions have proven ineffective. The Joint Commission specifically prohibits the use of seclusion "as a means of coercion, discipline, convenience or staff retaliation." A lack of resources should never be a rationale for solitary confinement.

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty establish minimum standards for the protection of juveniles in correctional facilities. The UN resolution was approved by the General Assembly in December, 1990, and supported by the US. They specifically prohibit the solitary confinement of juvenile offenders. Section 67 of the Rules states:

"All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned." In this situation, cruel and unusual punishment would be considered an 8th Amendment violation of our constitution³.

Measurements to avoid confinement, including appropriate behavioral plans and other interventions should be implemented⁴.

The American Academy of Child and Adolescent Psychiatry concurs with the UN position and opposes the use of solitary confinement in correctional facilities for juveniles. In

addition, any youth that is confined for more than 24 hours must be evaluated by a mental health professional, such as a child and adolescent psychiatrist when one is available.

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Snapshot of National Organizations' Policy Statements on Youth in the Adult Criminal Justice System



An estimated 250,000 youth are prosecuted in the adult criminal justice system every year, and nearly 10,000 youth are locked in adult jails or prisons on any given day. The adult criminal justice system is not set up to adequately manage youth offenders. Developmental studies have shown that youth are ill-prepared to actively participate in adult court proceedings, and are unable to adequately recognize the long-term consequences of their legal decisions. Judges and attorneys in adult criminal court often have little to no experience with young offenders, and once convicted, system stakeholders may not be familiar with age appropriate programs and resources to help children.

The consequences of an adult criminal conviction for youth are serious, negative, life-long, and severely impair youth chances at future success. Youth tried in adult criminal courts can lose access to student financial aid and their right to vote; making it even more difficult for youth to achieve positive outcomes by obtaining an education, gainful employment, and participating in the democratic process. Most states allow employers to deny jobs to people with adult criminal records, regardless of the age at conviction or how minor the offense.

The public strongly supports investing in rehabilitative approaches to help youth-not prosecuting youth in adult court or placing youth in adult jails and prisons. A new national survey released in October, 2011 conducted on behalf of the Campaign for Youth Justice reveals that Americans are squarely on the side of reform-

ing our youth justice system—with a greater focus on rigorous rehabilitation over incarceration, and against placing youth in adult jails and prisons.¹ The public strongly favors rehabilitation and treatment approaches, such as counseling, education, treatment, restitution, and community service, rejects the placement of youth in adult jails and prisons, and strongly favors individualized determinations on a case-by-case basis by juvenile court judges in the juvenile justice system than automatic prosecution in adult criminal court.

Studies across the nation have consistently concluded that juvenile transfer laws are ineffective at deterring crime and reducing recidivism. The Office of Juvenile Justice and Delinquency Prevention (OJJDP) released a report highlighting the ineffectiveness of juvenile transfer laws at providing a deterrent for juvenile delinquency and decreasing recidivism and the federal Centers for Disease Control and Prevention released a report with similar findings.²

States have started to take action to remove youth from the adult criminal justice system and from adult jails and prisons. The National Conference of State Legislatures (NCSL) released a report in August, 2012, *Juvenile Justice Trends in State Legislation, 2001-2011*, that shows trends in juvenile justice state legislation over the past decade reducing the prosecution of youth in adult criminal court with legislators using a growing body of research on adolescent development

and responding to this by changing state policies such as expanding the jurisdiction of juvenile courts by increasing the upper age of jurisdiction.

The overwhelming consensus of diverse organizations ranging from the American Correctional Association to the National Association of Counties is that:

1. Youth should never be automatically prosecuted in the adult criminal court.
2. Youth charged with non-violent offenses and first-time offenders should not be prosecuted in adult criminal court.
3. Youth should be removed from adult jails and prisons.
4. Youth should be treated in a developmentally appropriate manner throughout the justice system.
5. Harsh sentences for youth, such as mandatory minimums, should be eliminated.

Copies of the policy statements and guidelines in their entirety can be found online at <http://www.campaignforyouthjustice.org/national-resolution.html>.

CAMPAIGN FOR

YOUTH JUSTICE

BECAUSE THE CONSEQUENCES AREN'T MINOR



Youth Prosecuted in Adult Criminal Court

Key Policy Statements

“Transfer to adult court should not be automatic or a presumption in the handling of juvenile cases. . . Any transfer to criminal court should consider the individual case and the community, and not be based solely on the type of offense. Consideration of the case should include the mental health of the youth and its bearing on the charges.”³

– *American Academy of Child and Adolescent Psychiatry*

“ABA opposes, in principle, the trend toward processing more and younger youth as adults in the criminal justice system.”⁴

– *American Bar Association*

“Standard 1.1 C. provides that the juvenile court, rather than a criminal court, should be the setting for the waiver decision. The criminal court may assert jurisdiction only after the juvenile court waives. The juvenile court should waive jurisdiction only over extraordinary juveniles in extraordinary factual circumstances.

Standard 2.2 C. defines those circumstances...Subsection 1 requires that the juvenile be charged with a ‘serious’ class one or class two juvenile offense [which] are defined by the maximum sanctions that may be imposed. Most offenses likely to fall within the categories, such as murder, rape, and armed robbery, will be ‘serious’...Only juveniles who pose genuine threats to community safety should be waived and ex-

posed to the greater sanctions of the criminal court.”⁵

– *Institute of Judicial Administration/American Bar Association*

“Reform should specifically include [an] elimination of transfers for non-violent offenders [and] first-time offenders. Reform should specifically include [a] moratorium on the expansion of eligibility criteria for transfer.”⁶

– *American Psychiatric Association*

“CJJ opposes trying and sentencing youth in adult criminal court, except in the rare case of a chronic and violent offender, and then only at the discretion of, and following an assessment by, a juvenile court judge...CJJ also opposes giving prosecutors the authority to transfer youth to adult court.”⁷

– *Coalition for Juvenile Justice*

“When waiver to the adult criminal justice system does occur, CJCA believes that it should be accomplished through a process that maintains judicial decision-making to determine the appropriateness of transferring young offenders into the adult correctional system. CJCA opposes all policies that result in the automatic transfer of young people to the adult system without judicial review, as well as policies that grant the prosecutor full discretion.”⁸

– *Council of Juvenile Correctional Administrators*

“NACo opposes trying and sentencing youth in adult criminal court, except in the case of a chronic and violent offender, and then only at the discretion of a juvenile court judge...NACo supports that the decision to transfer a juvenile to adult court should be made by a juvenile court judge or jury... NACo supports the reform of state laws that inappropriately send far too many youth under the age of 18, including first-time and non-violent offenders into the adult criminal justice system.”⁹

– *National Association of Counties*

“[W]aiver and transfer decisions should only be made on an individual, case-by-case basis, and not on the basis of the statute allegedly violated; and affirms that the decision should be made by the juvenile delinquency court judge... [and] waiver and transfer of juveniles to adult court should be rare and only after a very thoroughly considered process.”¹⁰

– *National Council of Juvenile and Family Court Judges*





Youth in Adult Facilities

Key Policy Statements

“Children and adolescents should be detained or incarcerated only in facilities with developmentally appropriate programs (or structure) and staff trained to deal with their unique needs. If children and adolescents must be housed in adult correctional care facilities, they should be separated from the adult population by sight and sound and provided with a developmentally appropriate environment.”¹¹

– *American Academy of Pediatrics*

“If detained or incarcerated, youth in the adult criminal justice system should be housed in institutions or facilities separate from adult facilities until at least their eighteenth birthday. Youth detained or incarcerated in the adult criminal justice system should be provided programs which address their educational, treatment, health, mental health, and vocational needs.”

– *American Bar Association*

“The American Correctional Association supports separate housing and special programming for youths under the age of majority who are transferred or sentenced to adult criminal jurisdiction... In those jurisdictions that continue to house youths under the age of majority in adult correctional/detention systems, hous[e] them in specialized facilities or units [that] have no sight or sound contact with adult offenders in living,

program, dining or other common areas of the facility.”¹²

– *American Correctional Association*

“[T]he American Jail Association [is] opposed in concept to housing juveniles in any jail unless that facility is specifically designed for juvenile detention and staffed with specially trained personnel.”¹³

– *American Jail Association*

“Specialized facilities for transferred youth [should address] the developmental, educational, health, mental health, religious, and other special needs of these youth; and [be] adequately staffed with qualified workers to ensure safety and specialized programming.”¹⁴

– *American Psychiatric Association*

“Counties are urged to remove juveniles from correctional facilities which detain accused or adjudicated adults.”¹⁵

– *National Association of Counties*

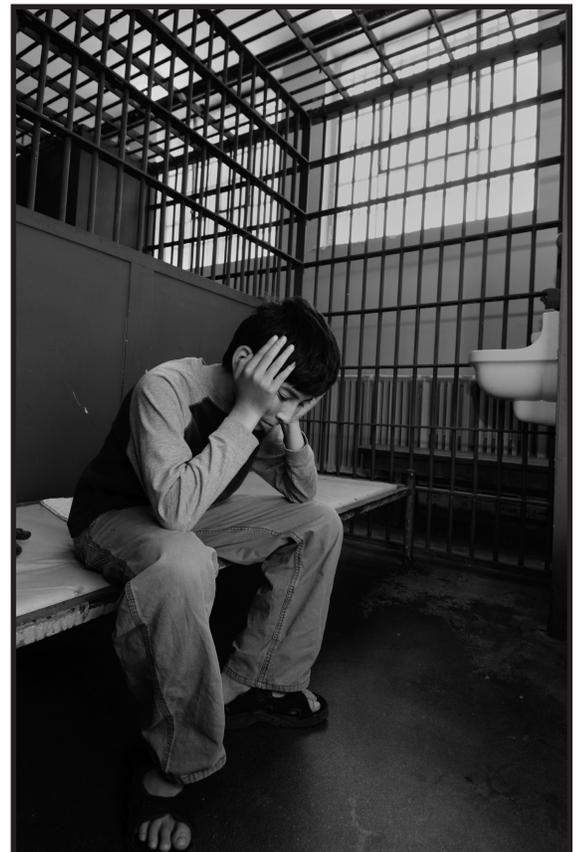
“The National Commission on Correctional Health Care believes the incarceration of adolescents in adult correctional facilities is detrimental to the health and developmental well-being of

youth...Adolescents should be separated and provided opportunities for appropriate peer interaction.”¹⁶

– *National Commission on Correctional Health Care*

“The facility [should] be constructed in a way that eliminates even accidental or incidental sight, sound or physical contact between juvenile detainees and adult prisoners.”¹⁷

– *National Juvenile Detention Association*



Sources

For links to the complete policies and position statements of the following national organizations go to: <http://www.campaignforyouthjustice.org/national-resolution.html>

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- United States Conference of Mayors*, Calling for Reauthorization of the Juvenile Justice and Delinquency Prevention Act (2008)

Appendix - How a Youth Ends Up in the Adult Justice System¹⁸

| | |
|------------------------------------|--|
| Age of Juvenile Court Jurisdiction | These laws determine the age of adulthood for criminal justice purposes. They effectively remove certain age groups from the juvenile court control for all infractions, whether violent or non-violent, and place them within the adult court jurisdiction. |
| Transfer and Waiver Provisions | These laws allow young people to be prosecuted in adult courts if they are accused of committing certain crimes. A variety of mechanisms exist by which a youth can be transferred to adult court. Most states have transfer provisions, but they vary in how much authority they allow judges and prosecutors to exercise. |
| Judicial Waiver | This is the most traditional and common transfer and waiver provision. Under judicial waiver laws, the case originates in juvenile court. Under certain circumstances, the juvenile court judge has the authority to waive juvenile court jurisdiction and transfer the case to criminal court. Some states call the process “certification,” “remand,” or “bind over for criminal prosecution.” Others “transfer” or “decline jurisdiction” rather than waiver. State statutes vary in how much guidance they provide judges on the criteria used in determining if a youth’s case should be transferred. |
| Prosecutorial Waiver | These laws grant prosecutors discretion to file cases against young people in either juvenile or adult court. Such provisions are also known as “concurrent jurisdiction,” “prosecutorial discretion,” or “direct file.” |
| Reverse Waiver | This is a mechanism to allow youth whose cases are being prosecuted in adult court to be transferred back down to the juvenile court system under certain circumstances. |
| Statutory or Legislative Exclusion | These laws exclude certain youth from juvenile court jurisdiction entirely by requiring particular types of cases to originate in criminal rather than juvenile court. |
| “Once an Adult, Always an Adult” | These laws require youth who have been tried as adults to be prosecuted automatically in adult courts for any subsequent offenses. |
| Blended Sentencing | These laws allow juvenile or adult courts to choose between juvenile and adult correctional sanctions in sentencing certain youth. Courts often will combine a juvenile sentence with a suspended adult sentence, which allows the youth to remain in the juvenile justice system as long as he or she is well-behaved. |

To learn more about the laws in your state see, Office of Juvenile Justice and Delinquency Prevention, *Trying Juveniles as Adults: An Analysis of State Transfer Laws and Reporting* (September 2011).

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NO CHILD LEFT ALONE

Campaign to Stop the Solitary Confinement
of Youth in Adult Jails and Prisons

Capitalizing on the Federal PREA Regulations: *New Limits on the Solitary Confinement of Youth in Adult Facilities*

The Prison Rape Elimination Act (PREA) was signed into law in 2003. The act charged the Department of Justice (DOJ) with gathering data on the incidence of prison rape,¹ and created the National Prison Rape Elimination Commission (NPREC) to study the problem and recommend national standards to DOJ.² The DOJ promulgated a comprehensive set of national standards implementing the Act in May 2012.³ Those standards include detailed requirements for the prevention, detection, and investigation of sexual abuse in both adult and juvenile correctional facilities.

While the Federal government was immediately bound to implement the PREA regulations,⁴ state juvenile facilities, jails and prisons – which are all covered by the regulations – have until August 2013 to certify compliance with the regulations or potentially lose certain federal funding.⁵ State agencies are also required to make public certain records and aggregate data related to prison rape and prevention.⁶

Adult facilities use solitary confinement to punish, protect and manage youth – including youth who commit or are at risk of being victims of sexual abuse. The PREA regulations recognize these risks and thus regulate a range of corrections practices.

➤ *The PREA Regulations Provide Advocacy Opportunities for Reducing the Solitary Confinement of Youth in Adult Facilities.*

The National Prison Rape Elimination Commission, charged with developing national standards for both youth and adult correctional facilities, found that “more than any other group of incarcerated persons, youth incarcerated with adults are probably at the highest risk for sexual abuse.”⁷ Studies suggest that youth in adult facilities are as many as five times more likely to be sexually assaulted than minors in juvenile facilities.⁸

¹ See *Prison Rape Elimination Act (Sexual Violence in Correctional Facilities)*, Bureau of Justice Statistics (last visited May 31, 2013), available at <http://www.bjs.gov/index.cfm?ty=tp&tid=20> (listing Bureau of Justice Statistics data gathered since the act’s passage).

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³ 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).

⁴ 42 U.S.C. 15601 §8(b) (2003). See also Memorandum from the President of the United States Implementing the Prison Rape Elimination Act (May 17, 2012), available at <http://www.whitehouse.gov/the-press-office/2012/05/17/presidential-memorandum-implementing-prison-rape-elimination-act>.

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⁶ See 28 C.F.R. §§ 115.89, 115.189, 115.289, 115.389 (2012), available at http://www.ojp.usdoj.gov/programs/pdfs/prea_final_rule.pdf.

⁷ See NAT’L PRISON RAPE ELIMINATION COMM’N. REP., *supra* note 2, at 18. See also *id.* at 8 (Finding 3) (“The Commission is concerned that correctional facilities may rely on protective custody and other forms of segregation (isolation or solitary confinement) as a default form of protection. And the Commission learned that desperate prisoners sometimes seek out segregation to escape attackers. Serving time under

Adult facilities housing children often react to this increased risk of sexual abuse by housing youth in isolated settings, such as solitary confinement, which cause or exacerbate mental health problems and can prevent them from receiving any type of programming or rehabilitation services, including education.⁹ Solitary confinement is also highly correlated with increased risk of suicidal thoughts and attempts.¹⁰

The need to separate and protect vulnerable individuals – such as children – and punish crimes committed within facilities must therefore be balanced against the serious risks involved in isolating youth who are still developing. Simply placing youth in solitary confinement is the opposite of a safe response.

The implementation of PREA can be leveraged to create openings at the state and local level to reduce solitary confinement of youth – and to get youth out of adult jails and prisons. Below we discuss several areas of opportunity presented by the PREA regulations and advocacy strategies for ensuring that jurisdictions comply with PREA’s requirements, including in reforming policies regarding housing youth in adult facilities, protective custody, and facility discipline.

PREA’S SPECIFIC REQUIREMENTS FOR “YOUTHFUL INMATES”

The PREA regulations require that “youthful inmates” (defined as any youth under 18 under adult court supervision and incarcerated or detained in a prison or jail) be housed such that they will not come in sight, sound, or physical contact with any adult inmate through the use of a shared dayroom or other common space, shower area, or sleeping quarters.¹¹ Furthermore, facilities are required to either maintain sight and sound separation *outside* of housing units or to provide direct staff supervision of youthful inmates.¹² The regulations require that facilities make their “best efforts” to avoid placing youthful inmates in isolation to comply with the regulations.¹³

Under the regulations, youth placed in isolation in spite of a facility’s best efforts cannot – *absent exigent circumstances* – be denied (1) daily large-muscle exercise or (2) any legally required special education services and – *to the extent possible* – be granted access to other programs and work opportunities.¹⁴ This is slightly different from the regulations for juvenile facilities, which require that juveniles in isolation as a disciplinary sanction or as voluntary

these conditions is exceptionally difficult and takes a toll on mental health, particularly if the victim has a prior history of mental illness. Segregation must be a last resort and interim measure only.”). *But see* ALLEN J. BECK ET AL., DEP’T OF JUSTICE BUREAU OF JUSTICE STATISTICS, SEXUAL VICTIMIZATION IN PRISONS AND JAILS REPORTED BY INMATES, 2011-12, 22 (2013), *available at* <http://www.bjs.gov/content/pub/pdf/svpjri1112.pdf> (Finding that “[t]hese data do not support the conclusion that juveniles held in adult prisons and jails are more likely to be sexually victimized than inmates in other age groups.”).

⁸ Jeffrey Fagan, Martin Forst, & T. Scott Vivona, *Youth in Prisons and Training Schools: Perceptions and Consequences of the Treatment-Custody Dichotomy*, J. JUVENILE & FAMILY CT. 9 (1989). This finding was also explicitly cited by Congress in passing the Act. 42 U.S.C. 15601(4) (2003). *See also* JASON ZIEDENBERG & VINCENT SCHIRALDI, JUSTICE POLICY INSTITUTE THE RISKS JUVENILES FACE WHEN THEY ARE INCARCERATED WITH ADULTS (1997), *available at* http://www.justicepolicy.org/images/upload/97-02_REP_RiskJuvenilesFace_JJ.pdf. *But see* BECK ET AL., *supra* note 7, at 22 (Finding that “[t]hese data do not support the conclusion that juveniles held in adult prisons and jails are more likely to be sexually victimized than inmates in other age groups.”).

⁹ *See generally*, HUMAN RIGHTS WATCH & THE AMERICAN CIVIL LIBERTIES UNION, GROWING UP LOCKED DOWN: YOUTH IN SOLITARY CONFINEMENT IN JAILS AND PRISONS ACROSS THE UNITED STATES (appendix 1) (2012), *available at* <http://www.aclu.org/growinguplockeddown>.

¹⁰ DEP’T 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>.

¹¹ 28 C.F.R. §§ 115.5, 115.14(a) (2012), *available at* http://www.ojp.usdoj.gov/programs/pdfs/prea_final_rule.pdf.

¹² 28 C.F.R. § 115.14(b) (2012), *available at* http://www.ojp.usdoj.gov/programs/pdfs/prea_final_rule.pdf.

¹³ 28 C.F.R. §§ 115.89, 115.189, 115.289, 115.389 (2012), *available at* http://www.ojp.usdoj.gov/programs/pdfs/prea_final_rule.pdf.

¹⁴ 28 C.F.R. § 115.14(c) (2012), *available at* http://www.ojp.usdoj.gov/programs/pdfs/prea_final_rule.pdf.

and involuntary protective custody must *also* receive access to legally required educational programming (not just legally-required special education services) and daily visits from a medical or mental health clinician.¹⁵

- **PREA IS A TOOL TO ADVOCATE FOR THE REMOVAL OF YOUTH FROM ADULT FACILITIES:** Given that many state prison systems and some jail systems intermingle younger inmates of various ages (those below 18 with those above 18) and because many systems have relatively small populations of inmates under 18, the best way to comply with PREA’s sight, sound, and physical contact separation requirements is to move youth out of adult facilities altogether. Advocates should urge states to effectuate this by statute. In the absence of statutory reform, advocates should urge jails and prisons to develop Memoranda of Understanding with local and state juvenile justice facilities to permit the housing youth under the jurisdiction of the adult criminal justice system in juvenile facilities until the youth turn 18 or until they reach the upper age of juvenile jurisdiction.¹⁶
- **PREA CAN BE USED TO IMPROVE CONDITIONS FOR YOUTH IN ADULT FACILITIES:**
 - **Advocate for strict limits on the use of solitary confinement:** Policies governing sight, sound, and physical separation of youth from adult prisoners should only permit isolation of youth until an alternative means of separation can be arranged and any isolation should be limited to hours, not days.
 - **Work to define “best efforts” to avoid solitary confinement under PREA:** Advocates should work with corrections officials and other state and local leaders to ensure that the “best efforts” required to avoid placing youth in isolation under PREA include facility policies which prohibit the solitary confinement of youthful inmates to effectuate sight, sound, and physical contact separation from adult prisoners.
 - **Advocate for policies that ensure youth access to rehabilitative programming:** Policies governing sight, sound, and physical contact separation of youth from adult prisoners should prohibit solitary confinement and ensure that youth receive access to legally required educational programming, legally required special education services, and daily visits from a medical or mental health clinician, and are granted access to other programs, privileges, education, and work opportunities.
 - **Ensure that youth and adult prisoners are never housed in the same segregation units:** Facility policies should prohibit housing youth and adults in the same segregation wing as a “sleeping quarter” under the regulations. Policies should also strictly limit and regulate any physical and social isolation imposed when segregating youth, given the serious harm involved.

PREA’S IMPACT ON PROTECTIVE CUSTODY POLICIES

The PREA regulations strictly regulate protective custody (separation from others to address a current need for protection). Prisoners cannot be placed in ‘involuntary segregated housing’ unless (1) an assessment of all available alternatives is made **AND** (2) a determination has been made that no available alternative means of separation is

¹⁵ Compare 28 C.F.R. § 115.342(b) (2012) with 28 C.F.R. § 115.378(b) (2012), available at http://www.ojp.usdoj.gov/programs/pdfs/prea_final_rule.pdf.

¹⁶ Note that it is also important to ensure that juvenile facilities do not use isolation to separate youth charged or convicted as if adults from other youth once they are transferred to juvenile facilities.

available (and this determination must be made within the first 24 hours of involuntary segregation).¹⁷ This is slightly different from the regulations for juvenile facilities, which do not distinguish between involuntary and voluntary protective custody.¹⁸ In an adult facility, a youth prisoner can *only* be assigned to involuntary segregation until an alternative means of separation can be arranged (and such an assignment should not usually extend beyond 30 days, must be documented, and any determination that there is a *lack* of alternatives must be justified and reviewed every 30 days).¹⁹ Youth prisoners placed in protective custody are also required to have access to programs, privileges, education, and work opportunities *to the extent possible* (with any deprivations justified and documented).²⁰

Unlike PREA's requirements for protective custody, the PREA regulations for "youthful inmates" discussed above do *not* set an outside limit for the duration of isolation (either per day or overall). Those regulations also do not use the term 'involuntary segregated housing' to describe isolation of youth in adult facilities. Therefore it is unclear how facilities should balance the protections set forth for protective custody with the requirements of sight, sound, and physical contact separation for youth.²¹ Below we suggest strategies for ensuring that youth benefit from the *full* protections set forth in PREA.

- **ADVOCATE FOR PREA'S FULL PROTECTIVE CUSTODY PROTECTIONS FOR YOUTH:** Ensure that any solitary confinement/isolation of youthful prisoners created by sight, sound, and physical contact separation policies is limited by the same protections as PREA requires for "involuntary segregated housing." Namely, youth should only be held in isolation until an alternative means of separation can be arranged and there should be a firm durational limit on isolation – preferably hours, not days.
- **ADVOCATE FOR YOUTH ACCESS TO PROGRAMMING:** Policies governing the placement of youth in any isolation setting, whether for protective custody or sight & sound separation requirements must ensure that youth receive access to legally required educational programming, legally required special education services, and daily visits from a medical or mental health clinician, and are granted access to other programs, privileges, education, and work opportunities.

PREA'S IMPACT ON DISCIPLINE POLICIES

The PREA regulations require that disciplinary sanctions regarding sexual contact be proportional and preclude facilities from treating consensual inmate-on-inmate sexual activity as abuse unless coerced.²² The regulations also call for consideration of whether mental disability or mental illness contributed to a prisoner's behavior in determining a disciplinary sanction.²³

¹⁷ 28 C.F.R. 115.43(a) (2012), available at http://www.ojp.usdoj.gov/programs/pdfs/prea_final_rule.pdf.

¹⁸ 28 C.F.R. §§ 115.342(a), (h)-(i) (2012), available at http://www.ojp.usdoj.gov/programs/pdfs/prea_final_rule.pdf.

¹⁹ 28 C.F.R. §§ 115.43(c)-(e) (2012), available at http://www.ojp.usdoj.gov/programs/pdfs/prea_final_rule.pdf.

²⁰ 28 C.F.R. § 115.43(b) (2012), available at http://www.ojp.usdoj.gov/programs/pdfs/prea_final_rule.pdf.

²¹ Compare 28 C.F.R. § 115.14 (2012) with 28 C.F.R. § 115.43 (2012), available at http://www.ojp.usdoj.gov/programs/pdfs/prea_final_rule.pdf.

²² 28 C.F.R. §§ 115.78(a)-(b), (g) (2012), available at http://www.ojp.usdoj.gov/programs/pdfs/prea_final_rule.pdf. The rules for juveniles in juvenile facilities contain these same requirements. 28 C.F.R. §§ 115.378(a)-(b), (g) (2012), available at http://www.ojp.usdoj.gov/programs/pdfs/prea_final_rule.pdf.

²³ 28 C.F.R. § 115.78(c) (2012), available at http://www.ojp.usdoj.gov/programs/pdfs/prea_final_rule.pdf. The rules for juveniles in juvenile facilities contain these same requirements. 28 C.F.R. § 115.378(c) (2012), available at http://www.ojp.usdoj.gov/programs/pdfs/prea_final_rule.pdf.

- **ADVOCATE FOR DISCIPLINE POLICIES TO TAKE AGE/DEVELOPMENTAL DIFFERENCES INTO ACCOUNT:** Discipline policies and procedures (and not just those related to sexual contact) can only be proportional for youth if they explicitly consider youth status and developmental differences and the individual characteristics of particularly vulnerable subclasses of youth. Discipline policies and procedures should therefore always distinguish between youth and adults.
- **ADVOCATE FOR YOUTH TO BE EVALUATED BY MENTAL HEALTH PROFESSIONALS AS PART OF THE DISCIPLINE PROCESS:** Discipline policies and procedures (especially those which carry the potential for solitary confinement, and not just those related to sexual contact) should always consider mental disability or mental illness in determining a disciplinary sanction. In the case of youth, such consideration should involve the participation of psychological or psychiatric experts who have specialized training in adolescent development and youth mental health needs.



NO CHILD LEFT ALONE

Campaign to Stop the Solitary Confinement
of Youth in Adult Jails and Prisons

Section VII: Model Legislation

Below is a **Model Bill**, which represents a balanced approach to regulating the use of isolation on youth in adult facilities without reducing the ability of jail and prison officials to ensure the safety of both staff and youth.

The bill will need to be adjusted to the specifics of your state. It will be important to study carefully the existing statutes and regulations in your state to understand what aspects of current law might need to be changed, to ensure that any proposed legislation addresses those concerns without weakening current law, and to understand the operations of the correctional system in your jurisdiction.

This bill can be introduced as a stand-alone measure or can be incorporated into a larger bill that more broadly addresses prison or jail reform. Language from this bill can also be adapted for use in bills that focus on a particular aspect of youth solitary confinement.

Please note that the **Reporting and Oversight** section of the Model will need to be adjusted for various state set-ups. Many states do not have a specific oversight body for prisons and jails or may have a particular governmental or non-governmental body that can be used to perform this function.



NO CHILD LEFT ALONE

Campaign to Stop the Solitary Confinement
of Youth in Adult Jails and Prisons

Model Stop Youth Solitary Act:
*Protecting Youth & Improving Justice Outcomes By Ending the Use of Solitary
Confinement for Youth in Adult Facilities*

The problem of solitary confinement for youth reaches into adult prisons and jails. This model is drafted to treat a continuum of solitary confinement issues in all these facilities, but should be modified to address the specific dynamics of the criminal and juvenile justice systems in your state.

It will be important to review existing statutes and regulations in your state to understand what aspects of current law might need to be changed, to ensure that any proposed legislation addresses those concerns without weakening current law, and to understand the operations of the juvenile or adult jail or prison system in your jurisdiction. We have highlighted terms that need to be modified to fit your state by putting them in brackets (< >).

The terminology for solitary confinement also varies from jurisdiction to jurisdiction so it will be important to know the terms used in your locality and either incorporate them herein or ensure that the definitions as set forth here cover the actual operating conditions in the facilities you want to cover.

Strategy Notes

We have highlighted the terms on the left that correlate with strategy notes listed below.

The <Director of Corrections/each Sheriff/County Commission responsible for the operation of each prison/jail in the state> shall ensure that all youth prisoners are treated in accordance with the minimum standards established in this Act.

1. Definitions.

- a. “Disciplinary Cell Confinement” is a disciplinary sanction imposed for a major rule violation in which a youth prisoner is confined to a cell.
- b. “Emergency Cell Confinement” is the confinement to a cell of a youth prisoner who presents an immediate, serious threat to the safety of him/herself or others.
- c. “Major Rule Violation” is the following:
 - i. An act of violence that either: (1) resulted in or was likely to result in serious injury or death to another, or (2) occurred in connection with any act of non-consensual sexual intercourse; or
 - ii. Two or more discrete acts which caused serious disruption of <facility> operations; or
 - iii. An escape, attempted escape, or conspiracy to escape from within a security perimeter or custody, or both.
- d. “Mental Health Clinician” is a psychiatrist, psychologist, social worker or nurse practitioner who is licensed in <State >.

“Director of Corrections/each Sheriff/County Commission responsible for the operation of each prison/jail in the state”: Identify both the state and local actors who oversee corrections facilities that may house youth prisoners.

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

1(c). “Major Rule Violation”: Please note that “Disciplinary Cell Confinement” may only be imposed for a “Major Rule Violation” as defined herein. Because the definition sections make this clear, it is not spelled out in Section 4 below.

Strategy Notes

We have highlighted the terms on the left that correlate with strategy notes listed below.

- e. “Protective Custody” is a status for youth prisoners requiring protection because they are in danger of being victimized by other prisoners in the facility.
- f. “Solitary Confinement” is confinement to a cell for more than 20 hours a day.
- g. “Youth Prisoner” is a person under 18 years of age, who is incarcerated or detained in any adult facility, who is accused of, convicted of, or sentenced for violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program.

2. Solitary Confinement of Youth Prisoners Prohibited. Youth prisoners held under the jurisdiction of any state or local government body in <State> shall not be held in solitary confinement, except as set forth in sections 3-4 below. Cell confinement of youth prisoners held under the jurisdiction of any state or local government body in <State> shall be limited as set forth in Sections 3-5 below.

3. Emergency Cell Confinement of Youth Prisoners.

- a. A youth prisoner subject to emergency cell confinement shall not be held for a period exceeding 24 consecutive hours and shall not be held in such confinement on consecutive days.
- b. A youth prisoner shall not be subject to emergency cell confinement unless all other less restrictive options have been

1(g). “Youth Prisoner”: This model uses the term “youth prisoner” in order to simplify application of its requirements to youth in all facilities regardless of status. An alternative approach could just use the term “youth” but additional language will need to be added in that case to ensure that the terms of the bill cover youth with different status, in different facilities and at different stages in the adjudicative process.

2. “Sections 3-4”: For emergency cell confinement – a youth may be confined for more than 20 hours in a 24 hour period – in extreme cases. In the model, we have put in a best practice requirement for disciplinary cell confinement that ensures the youth is out-of-cell for at least 4 waking hours. However, if this best practice is not possible in your jurisdiction, this section will need to be modified. Note that “Protective Custody” is not considered solitary confinement in this model because it mandates at least 5 hours of out-of-cell time.

3(a). “Consecutive Days”: This language ensures that a youth is not taken off of the status for a brief period of time and simply placed back in isolation after a brief period. It is meant to ensure that a youth who cannot be stabilized within a 24 hour period is given appropriate clinical supports or transferred from the jail/prison if he/she cannot be stabilized.

Strategy Notes

We have highlighted the terms on the left that correlate with strategy notes listed below.

- exhausted. The placement of a youth prisoner in emergency cell confinement **shall be documented in writing**, including the reason for such placement and all other less restrictive options attempted prior to such placement.
- c. A youth prisoner shall not be subject to emergency cell confinement beyond the minimum time required to address the safety risk and shall not be held in such confinement if a licensed mental health clinician determines such confinement to be detrimental to the youth prisoner's mental or physical health.
- d. A youth prisoner subject to emergency cell confinement shall be assessed in person and face-to-face (i.e., not through a cell door or through a glass wall) by a licensed mental health clinician within thirty minutes **after placement** and a minimum of every hour thereafter to determine if the youth prisoner shall remain in such confinement. Such an assessment shall be documented in writing, and shall include at a minimum: (1) assessment of current mental status and condition; (2) assessment of current risk of suicide or other self-harming behavior; (3) review of all available mental health records; (4) the name of the licensed mental health clinician; (5) the date and time of the assessment; and (6) the reason for continued or discontinued placement in emergency cell confinement. If medical staff determine at any time that the youth cannot be safely managed by non-medical staff

3(b). "Shall be documented in writing":

Requiring documentation can be an effective way to enforce the law. But some state legislators hesitate to be overly prescriptive in legislative language and agencies may resist such efforts. Depending upon the political situation in your jurisdiction, another option here would be to include a strengthened documentation requirement including the following:

- i. The name of the youth prisoner;
- ii. Date and time the youth prisoner was placed in emergency cell confinement;
- iii. Name and position of person authorizing placement of the youth prisoner in emergency cell confinement;
- iv. The staff involved in the incident; description of the circumstances leading up to the use of emergency cell confinement; the alternative actions attempted and found unsuccessful, or reasons why alternatives were not possible; and
- v. Referrals and contacts with mental health clinicians, including the date, time and personal contact.

3(d). "After placement": Timely and continuous observation by mental health staff of youth in crisis is absolutely necessary to prevent harm. It is also required by most national standards.

The best practice JDAI standards for youth facilities establish the timing set forth in this model. A more conservative standard for mental health observation would be:

- i. Assessment by a mental health clinician within 1 hour after placement.
- ii. Re-assessment by a mental health clinician every four hours thereafter.

Strategy Notes

We have highlighted the terms on the left that correlate with strategy notes listed below.

- the youth must be transferred to a medical or mental health unit or facility for care and supervision by mental health professionals.
- e. During the time a youth prisoner is subject to emergency cell confinement, staff shall conduct visual checks no less than every 15 minutes. If the youth is determined to be actively suicidal he or she must be placed under constant **observation**. During the time a youth prisoner is awake, the staff shall to speak to the youth prisoner during the visual checks. After each visual check, the **staff shall document in writing** the status of the youth prisoner. A staff supervisor or administrator shall review and sign off on the documentation at least every 6 hours.
- f. If a youth prisoner is placed in emergency cell confinement for exhibiting suicidal behaviors or committing acts of self-harm, within 4 hours of placement, a written individualized suicide crisis intervention plan shall be developed and implemented. This plan shall be approved by a licensed mental health clinician who has evaluated the youth prisoner since the youth prisoner was placed in emergency cell confinement. The youth prisoner's condition shall be closely monitored by a licensed mental health clinician familiar with the youth prisoner in order to reduce or eliminate the risk of self-harm. If the youth prisoner's suicide risk is abated within 24 hours, the youth prisoner shall be moved to an offsite hospital or mental health hospital.

3(e). "Observation": These requirements reflect the standards for suicide prevention programs set forth by the National Commission on Correctional Health Care (NCCCHC), Standards for Health Services in Juvenile Detention and Confinement Facilities, Standard Y-G-05 (essential).

3(e). "Staff shall document in writing": Consider adding the following language to strengthen this documentation requirement:

- i. Name of staff performing the visual check;
- ii. Date and time of visual check;
- iii. Physical description of the youth;
- iv. Description of the conversation held with the youth; and
- v. Whether a referral to a mental health clinician is warranted at that time.

Strategy Notes

We have highlighted the terms on the left that correlate with strategy notes listed below.

- g. A youth prisoner subject to emergency cell confinement shall be provided:
 - i. at least one hour of out-of-cell large muscle exercise daily, including access to outdoor recreation when the weather permits;
 - ii. access to the same meals and drinking water, medical treatment, contact with parents and legal guardians, and legal assistance as is provided to youth prisoners in the general population; and
 - iii. access to educational programming and reading materials approved by the licensed mental health clinician.

4. Disciplinary Cell Confinement of Youth Prisoners.

- a. A youth prisoner subject to disciplinary cell confinement shall not be held for a period exceeding 72 consecutive hours after being found to have engaged in a major rule violation.
- b. During the time a youth prisoner is subject to disciplinary cell confinement, staff shall conduct visual checks no less than every 15 minutes. During the time a youth prisoner is awake, the staff shall to speak to the youth prisoner during the visual checks. After each visual check, the staff shall document in writing the status of the youth prisoner.
- c. A youth prisoner subject to disciplinary cell confinement shall be assessed in person and face-to-face (i.e., not through a cell door

4(b). “Shall document in writing”: Consider adding the following language to strengthen this documentation requirement:

- i. Name of staff performing the visual check;
- ii. Date and time of visual check;
- iii. Physical description of the youth;
- iv. Description of the conversation held with the youth; and
- v. Whether a referral to a mental health clinician is warranted at that time.

Strategy Notes

We have highlighted the terms on the left that correlate with strategy notes listed below.

- or through a glass wall) by a licensed mental health clinician within **one hour** after placement. **Such an assessment shall be documented in writing, and shall include:** (1) assessment of current mental status and condition; (2) assessment of current risk of suicide or other self-harming behavior; (3) review of all available mental health records; (4) the name of the licensed mental health clinician; and (5) the date and time of the assessment. Any youth prisoner who is determined at such an evaluation to be at risk of self-harm or to have a serious mental illness or to suffer from another significant mental impairment shall be immediately removed from disciplinary cell confinement.
- d. A youth prisoner subject to disciplinary cell confinement shall **be provided:**
- i. daily health monitoring by either medical or mental health professionals;
 - ii. access to at least four hours out-of-cell programming per day, including at least one hour of out-of-cell large muscle exercise daily that includes access to outdoor recreation when the weather permits;
 - iii. access to educational and programming opportunities consistent with the youth prisoner's safety and security and any federal and state law requirements;
 - iv. daily showers; and

4(c). "One hour": This high standard may get push back, especially from smaller facilities or county jails that do not have 24-hour medical staffing. Possible alternatives are to:

- i. Require that mental health assessment take place within 24 hours of placement in disciplinary cell confinement; or
- ii. Require that if health staff are not on duty at the time of placement that health staff on call be notified when a juvenile is placed in disciplinary cell confinement and once on duty must perform the assessment.

These requirements are similar to the NCCHC standard set forth for segregated juveniles (Standard Y-E-09).

4(c). "Such an assessment shall be documented in writing, and shall include": This refers to the assessment immediately above in this subsection and already limited to face-to-face.

4(d). "Be provided": Because this is a punitive measure, youth prisoners will have reduced privileges. However, the requirements set forth in this section are meant to reduce harmful social isolation. In particular the health monitoring standards come from NCCHC's standards for segregated youth; the 1-hour of large muscle exercise is a JDAI standard; and the other provisions are set forth to ensure appropriate care and a rehabilitative environment for youth.

Strategy Notes

We have highlighted the terms on the left that correlate with strategy notes listed below.

- v. access to the same meals and drinking water, clothing, medical treatment, correspondence privileges, reading materials, contact with **parents and legal guardians**, and legal assistance as is provided to youth prisoners in the general population.

4(d)(v). “Parents and legal guardians”: This provision ensures that youth prisoners still have contact with parents and legal guardians but does not allow for more limited visiting and phone calls than general population prisoners. The goal here is to allow for graduated sanctions rather than just the negative option of solitary confinement.

5. Protective Custody of Youth Prisoners.

- a. If a youth prisoner is subject to protective custody, the restrictions to which the youth prisoner is subject shall be the least restrictive means necessary to maintain the safety of the youth prisoner and the institution. At a minimum, the youth prisoner shall be provided:
 - i. access to programming opportunities consistent with the youth prisoner’s safety and security;
 - ii. at least five hours a day of out-of-cell time, including a minimum of one hour of out-of-cell large muscle exercise daily, including access to outdoor recreation when the weather permits;
 - iii. access to personal property, including but not limited to TVs, radios; family photos, and other printed material;
 - iv. access to daily showers;
 - v. access to the law library; and
 - vi. access to the same meals and drinking water, clothing, medical treatment, educational services, legal assistance,

Strategy Notes

We have highlighted the terms on the left that correlate with strategy notes listed below.

reading materials, correspondence privileges, visits, and phone calls as is provided to youth prisoners in the general population.

6. **Documentation.**

- a. Each local or state facility that houses youth prisoners, or contracts with any private facility that houses youth prisoners, shall create a written record of every incident in which youth prisoners are subject to emergency cell confinement, disciplinary cell confinement, or protective custody. These records shall include the type of confinement, the reason for each confinement, and the dates and duration of each confinement, and shall be available to the public upon redacting individual identifying information.
- b. Each state or local **agency** that oversees facilities that house youth prisoners, including both public and private facilities, shall review all data collected and aggregated pursuant to 6(a) in order to assess the use of emergency cell confinement, disciplinary cell confinement, and protective custody for youth prisoners 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.
- c. By **<July 1>** of each year, every **<Warden and Sheriff>** of a facility that houses youth prisoners in **<state>** shall certify to the

6. Documentation: Oversight and accountability mechanisms will be instrumental in ensuring the ultimate implementation of solitary confinement reform. In sections 6-8 we offer several options that can stand alone or be used in combination depending upon your bill strategy and the operating environment.

6(b). "Agency": This agency may be a county commission, a Department of Corrections., or another entity, depending upon your jurisdiction.

Strategy Notes

We have highlighted the terms on the left that correlate with strategy notes listed below.

<Governor/Director of Corrections/County Commission> that no youth prisoner in his or her custody has been subject to solitary confinement, except as provided in sections 3-5 above. These records shall be made available to the public on the <Governor's/Department's/County's> website within 30 days of submission to the <Governor/Department/County>.

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

- a. The <Director of Corrections/County Commission for each County in the State> shall review all policies of the <Department/County> in effect on the effective date of this Act relating to youth prisoners held in solitary confinement or protective custody and revise those policies as necessary to conform to this Act within <90 days> of the effective date of this Act. The <Department of Corrections, Department of Juvenile Justice and the County Commissions of each County in the State> shall promulgate such regulations as are necessary to implement this Act.
- b. Nothing in this Act shall be construed to conflict with any law providing greater or additional protections to youth prisoners in <State>.

6(c). "Sections 3-5": This section will need to be modified depending upon the protections that are ultimately achieved for disciplinary cell confinement and protective custody.

7(b). "Nothing in this Act shall be construed to conflict with any law providing greater or additional protections to youth prisoners in <State>": This provision is inserted in the event that special protections already exist or may be promulgated for youth prisoners or prisoners generally as it relates to isolation practices, so that pre-existing protections are not weakened by this law.

Strategy Notes

We have highlighted the terms on the left that correlate with strategy notes listed below.

8. Training

- a. The **<Department of Corrections/Department of Juvenile Justice/County Commissions of each County in the State>** shall ensure that training for all **<corrections>** officers, and other department staff who work in facilities housing youth prisoners, shall include at least **<40>** hours of initial training and **<12>** hours of annual training about:
- i. adolescent development, including the value of positive over negative reinforcement in dealing with youth prisoners;
 - ii. the health and behavioral effects of solitary confinement on human beings generally and adolescents in particular;
 - iii. effective de-escalation techniques to use with adolescents;
 - iv. the signs and symptoms of mental illnesses and other significant mental impairments;
 - v. how to effectively and safely manage youth prisoners with mental illness or with other mental impairments;
 - vi. the need to utilize medications only as appropriate for adolescents, rather than adults; recognition of adverse reactions to psychotropic medication and of mental health emergencies, and specific instructions on contacting the

8. Training: Changing isolation practices often requires a change in institutional culture that requires staff training – especially if new policies/procedures are to be effective. Staff training, however, does entail costs and this should be factored into your legislative strategy.

In this section we suggest some areas where staff training could help facilitate the changes in solitary practices envisioned in the bill. Discussions with local activists, facility administrators, corrections officers, unions, etc. will help flesh this section for your particular jurisdiction.

Strategy Notes

We have highlighted the terms on the left that correlate with strategy notes listed below.

appropriate professional care provider and taking other appropriate action;

- vii. suicide potential and prevention for youth prisoners;
- viii. any additional training on correctional care and custody of youth prisoners with mental illness or other significant mental impairments, and related topics on an ongoing basis as community standards of care change or as otherwise deemed appropriate.