

UNLOCKING YOUTH

Strong Juvenile Defense

Juvenile defenders play a key role in eliminating the use of solitary confinement by zealously advocating for their individual clients and raising awareness of the issue generally. Here are a few strategies to consider:

Ensure Post-Disposition Representation

Although youth have the right to counsel in delinquency proceedings, that right often ends at adjudication, leaving youth without counsel once sentenced. Yet post-disposition is the point at which youth are most likely to be placed in solitary confinement. The National Juvenile Defender Center (NJDC) hosts a comprehensive database with resources that can guide defenders who are interested in assisting their clients through post-dispositional proceedings. In jurisdictions with post-dispositional representation, such as Massachusetts and Pennsylvania, defenders can ask key questions and take needed steps to advocate on conditions of confinement, as outlined below. In jurisdictions without such representation, defenders can work toward policy reforms or identify law school clinical partners or others who may be able to offer representation pro bono. For example, advocates in Illinois and New Jersey created legal clinics at local law schools to assist youth with post-dispositional representation.

Ask Targeted Questions

A key aspect of effective representation involves regular communication between an attorney and his or her client. Speaking directly with youth is the best way to gather data and information about the use of solitary confinement in a particular jurisdiction. Defenders should not expect a client or his or her parents to volunteer information about time spent in solitary confinement. Youth may avoid talking about such a difficult subject or may not label their experience as “solitary confinement.” Defenders should be prepared to ask several questions to elicit information from the young person about the day-to-day experiences of confinement. As Juvenile Law Center’s survey of juvenile defenders revealed, attorneys are often left in the dark about what their clients are experiencing on a day-to-day basis. Attorneys should find out how much time youth spend by themselves and under what conditions, inquire frequently about mental health concerns or other disability issues, and craft questions with sensitivity to the risk of retraumatizing youth. While attorneys should speak with their clients directly, they should also talk to the youth’s parents and other supports, such as teachers or caseworkers. If permissible, they should also make inquiries directly to facility staff. Moreover, defenders should request and review the facility’s records of their clients.

QUESTIONS FOR YOUTH

Potential questions juvenile defenders can ask youth include:

- Do you ever spend time in your room or cell by yourself? How often does that happen? How long do you usually spend there?
- What's the longest time you've ever had to spend in a room or cell by yourself?
- Do you ever spend all day, or almost all day, in your cell? Are you by yourself?
- Is there anything called "the box," "the hole," or the SHU in your facility? Have you ever spent time there?
- What happens to kids who get in trouble? Has that ever happened to you?

For more guidance on talking to youth about solitary confinement, see the youth interview guide in the [ACLU's toolkit on ending the solitary confinement of youth in juvenile detention and correctional facilities](#).

QUESTIONS FOR FACILITY STAFF

Potential questions juvenile defenders can ask during a facility visit include:

- What is the policy for addressing youth who may be considered disruptive or non-compliant? How do staff determine what constitutes a disruption or non-compliant behavior?
- Is there a team of health professionals (including medical, behavioral, mental, dental, etc.) available to meet the needs of youth on-site? If not, how are these services accessed for youth both in emergency and non-emergency situations?
- Have all correctional staff been trained on how to use de-escalation techniques? What specific de-escalation techniques do staff use?
- Is room confinement used at the facility? For what purpose and for how long?
- What is the facility's grievance policy and process for youth, parents, attorneys, or other interested parties? How long does it take for a grievance to receive a response?

A useful resource in understanding how to navigate facilities and ask facility staff specific questions about room confinement is the [Juvenile Detention Alternatives Initiative's Guide to Juvenile Detention Reform](#).

Visit Local Facilities

Another way to find out whether and to what degree youth may be exposed to solitary confinement is to visit the facilities where youth are placed. Understanding and viewing the conditions of a facility, in addition to requesting and reviewing facility documentation related to youth, can enhance a defender's representation strategy at trial. An attorney can better speak to whether the facility will be able to or has met the

youth's needs. By regularly visiting placements and educating themselves about their practices and policies, defenders can also serve as a vital source of information to other stakeholders in the system, including judges and policy advocates. If a facility refuses access to specific records related to an attorney's client, seeking a court order or submitting a Freedom of Information Act request can be effective in soliciting necessary information to further ensure a youth's rights are not violated.

Enlist the Court

When a youth is placed in solitary confinement, or if an attorney is concerned that a client may be isolated, these concerns should be brought to the attention of the court. At a disposition or review hearing, defenders can ask the judge to issue an order that a client not be placed in isolation as punishment or that the judge be notified in writing if the youth is placed in isolation. Judges can also order staff to notify defenders and provide written copies of all disciplinary reports. This will allow defenders to gain more access into the often hidden practices inside facilities. All of the same constitutional and statutory arguments described above are available in individual cases as well, and can be highly effective at keeping individual youth out of solitary. Additionally, requesting court orders can be effective when there are difficulties getting appropriate services or supports for youth. These services can help avoid placements in solitary and can force institutions to address the underlying problems that result in the use of such harmful practices.

Moreover, the National Council of Juvenile and Family Court Judges (NCJFCJ) has shown its support in reducing the use of solitary confinement through its 2016 resolution. Among the NCJFCJ's resolutions that defenders may consider using to enlist the court's assistance is that judges should "continually review policies and practices related to solitary confinement of youth."

File Licensing Complaints and Grievances

When a facility's use of solitary confinement violates facility policy, licensing requirements, or other regulations, defenders should use the available complaint or grievance mechanisms to report the issue. Defenders can also assist youth or families in filing grievances or making complaints. Using these complaint mechanisms calls attention to the issue, creates a written record of the problem, and can potentially prompt an investigation or other responsive action. Youth may also be required under the Prison Litigation Reform Act (PLRA) to make use of available grievance processes at the facility before litigation challenging solitary confinement can be brought.

Work with Advocates Engaged in System Reform

In a defender agency without the capacity for significant system reform efforts, connect with local advocacy groups, including impact litigators, Protection & Advocacy (P&A) agencies, and others to move the agenda. Notably, P&A agencies, which exist in each state, have both the investigative authority to enter facilities that house individuals with disabilities and the ability to file legal challenges or take other actions to enforce disability laws. Juvenile Law Center also serves as a resource to advocates around the country.