
STOP SOLITARY

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

# ADVOCACY TOOLKIT

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

*Prepared by:*

ACLU National Prison Project
ACLU Center for Justice

*June 2014*


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 ww.alcu.org/stopsolitary


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

## I. Issue Summary and Toolkit Overview

## II. Messaging

- Elevator Pitch
- Messaging Grid
- Sample Social Media Posts
- Writing Successful Op-Eds and Blog Posts

## III. Starting a Campaign

- Campaign Dos and Don'ts
- Getting Started – Information Needed to Start a Campaign
- Checklist for a Visit to Juvenile Detention or Correctional Facility
- Interview Guide – Talking to Youth About Solitary Confinement
- Interview Guide – Sample Consent and Release Forms
- Corresponding with Youth About Solitary Confinement

## IV. Advocacy Materials

- Briefing Paper: *Alone and Afraid*: Children Held in Solitary Confinement and Isolation in Juvenile Detention and Correctional Facilities
- Two-Pager: Solitary Confinement and Isolation in Juvenile Detention and Correctional Facilities
- International Law and Practice Two-Pager
- PREA Two-Pager

## V. National Standards and Policy Goals

- White Paper: Administrative Reforms to Stop Youth Solitary Confinement: Strategies for Advocates
- Summary of National Standards Restricting the Solitary Confinement of Youth
- American Academy of Child and Adolescent Psychiatry (AACAP) Policy Statement
- Reducing Isolation and Room Confinement (Source: Performance-based Standards Learning Institute)

## VI. Model Legislation

- Model Juvenile Justice Stop Solitary Act


STOP SOLITARY

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

# Section I: Issue Summary and Toolkit Overview

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Every day, in juvenile detention facilities across the United States, children are held in solitary confinement and other extreme forms of isolation. In solitary confinement, children 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. In addition to solitary confinement, juvenile facilities frequently use a range of other physical and social isolation practices, many distinguishable from solitary confinement only in their duration (stretching for many—but fewer than 22—hours).

Department of Justice data suggest that, on any given day, more than 70,000 young people are held in state or federal juvenile detention facilities across the United States, and that the use of isolation, including solitary confinement, in these facilities is widespread. Juvenile detention facilities generally use solitary confinement and other forms of isolation for one of four reasons: disciplinary isolation (solitary confinement as punishment), protective isolation from other children, administrative isolation (during the intake process or when a youth is deemed to be out of control), or medical isolation (such as suicide watch). Instead of the terms "solitary confinement" or "isolation," juvenile facilities often adopt euphemisms, including "time out," "room confinement," "restricted engagement," or a trip to the "reflection cottage." These terms mask the fact that, whereas a short amount of alone time may sometimes be necessary to defuse a moment of crisis, hours of isolation can be extremely damaging to young people.

Academic research continues to show that placing children in solitary confinement 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 multiple studies suggest it is highly correlated with suicide. Additionally, children in solitary confinement can be subjected to revocation of "privileges," resulting in reduced visitation or limited educational programming and classes. Because young people in solitary confinement can be 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.

It's time for Americans to take a hard look at the way juvenile detention facilities use solitary confinement. Some critics focus on the legal and humanitarian differences between children and adults, arguing that a punishment as harsh as solitary confinement has no place in the juvenile justice system, period. Others note, pragmatically, that solitary confinement can have a devastating effect on a child's development, and on his or her ability to become a productive citizen. Indeed, the costs of recidivism and long-term mental health care for children scarred 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 juvenile justice system, in the legislatures, in reforms of juvenile detention practice, and in the battle for public opinion. The goal of this Toolkit is to help advocates work towards limiting and ultimately abolishing the use of solitary confinement on children in juvenile detention and correctional facilities.

## Individual State Advocacy

Several states have already engaged in legislative and administrative advocacy campaigns to limit the use of solitary confinement of children in juvenile facilities. A majority of state juvenile justice agencies limit isolation to a maximum of five days; and six states—Alaska, Connecticut, Maine, Nevada, Oklahoma, and West Virginia—have passed statutes limiting forms of isolation or its duration in juvenile detention facilities.

This Toolkit provides the resources you will need to engage in advocacy to limit the use of solitary confinement in juvenile detention facilities in your state. To assist your efforts, this Toolkit includes:

- Messaging materials, including a messaging grid and sample social media posts, to frame your arguments;
- A guide to starting a campaign in your jurisdiction, and sample questions to help you interview and correspond with young people who have been subjected to this practice;
- Advocacy resources, including campaign dos and don'ts, a briefing paper, and summaries of major related issues;
- 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.

## About the National Prison Project and the Stop Solitary Campaign

The ACLU is a nationwide, nonprofit, non-partisan organization with more than a half million members, countless additional activists and supporters, and 53 affiliates nationwide dedicated to the principles of liberty and equality embodied in our Constitution and our civil rights laws. Consistent with that mission, the ACLU established the National Prison Project in 1972 to protect and promote the civil and constitutional rights of prisoners. Since its founding, the Project has challenged unconstitutional conditions of confinement and over-incarceration at the local, state and federal level through public education, advocacy and successful litigation. Along with the Criminal Law Reform Project and the Capital Punishment Project, the National Prison Project is part of the ACLU Center for Justice, which is focused on the problems in the U.S. criminal justice system, including the treatment of prisoners, the death penalty, and the policies of over-incarceration that have led the United States to imprison more people at a drastically higher rate than any other country in the world.

The ACLU's national Stop Solitary campaign works to end the pervasive use of solitary confinement and to divert children and persons with mental disabilities and mental illness out of solitary altogether. The monetary cost of solitary confinement, coupled with the human cost of increased psychological suffering and sometimes irreparable harm, far outweighs any purported benefits. More effective and humane and less costly alternatives exist. The ACLU's website also contains tools and resources to support ***Stop Solitary*** campaigns: www.aclu.org/stopsolitary.

## Resources and Contact Information

For more information and technical assistance working on a ***Stop Solitary*** campaign, please contact **Amy Fettig**, Senior Staff Counsel at the National Prison Project at afettig@aclu.org; (202) 548-6608; or **Tanya Greene**, Advocacy and Policy Counsel at the ACLU at tgreene@aclu.org; (212) 284-7325. If you are interested in joining the ACLU's ***Stop Solitary*** **Listserv**, please contact **Amy Fettig**, Senior Staff Counsel, National Prison Project, at afettig@aclu.org; (202) 548-6608.

## Section II: Messaging

The **Elevator Pitch, Messaging Grid, Sample Social Media Posts**, and **Guide to Writing Successful Op-Eds and Blog Posts** will help you frame this issue.

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in Juvenile Detention and Correctional Facilities

# Elevator Pitch

**Values Statement:** Sometimes children make mistakes, and the best thing we can do for them is focus on rehabilitating them so they can become productive members of society, not mistreating them and causing long-term damage.

**The Problem:** Locking children alone in a cell for 22-24 hours a day is child abuse—plain and simple. Isolation is psychologically shattering, especially for youth. What's more, it stunts their social and physical development. Given the lasting damage that solitary confinement can inflict on youth, it's time to end the solitary confinement of youth and strictly limit and uniformly regulate isolation practices in juvenile detention and correctional facilities.

**The Solution:** Rehabilitation is possible and it should be our goal. Healthy human contact, positive reinforcement, small-group living, and immediate and proportional interventions, as well as interactive treatment programs, are more successful at preventing problem behaviors and addressing mental health problems in youth than isolation. Solitary confinement actually provokes or worsens these problems.

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## Messaging Grid

**STRATEGIC COMMUNICATIONS GOAL**

Convince policymakers to stop using solitary confinement on youth in juvenile facilities and incite outrage among the general public about this practice.

**OVERARCHING MESSAGE**

Subjecting kids to the extreme punishment of solitary confinement is child abuse—plain and simple. Punishment for children should focus on helping them grow into productive adults, not subjecting them to possibly irreparable damage. It's time to end the solitary confinement of youth.

| **TOPIC 1**: The problem | **TOPIC 2**: ACLU position | **TOPIC 3**: Solution/call to action |
|---|---|---|
| **HEADLINE**<br>Locking children in solitary confinement is child abuse—plain and simple. | **HEADLINE**<br>Locking children in solitary confinement needlessly exposes them to extreme and perhaps irreparable damage to their social and psychological development. | **HEADLINE**<br>Our priority should be protecting kids, helping them grow into productive and healthy adults. Using solitary against kids directly threatens this goal, and it's time to put an end to this abuse. |
| **FACTS/DATA**<br>• If you locked your child in a closet you'd go to jail. Yet juvenile facilities routinely lock the 70,000 kids in their care on any given day in tiny cells for 22 - 24 hours a day, for days, weeks, or months on end.<br>• Isolation cells often have no window or view of the world outside cell walls. While confined, children are regularly deprived of the services, programming, and other tools that they need for healthy growth, education, and development. Sometimes they do not even receive access to school books. | **FACTS/DATA**<br>• Isolation is psychologically shattering, especially for young people. It exacerbates symptoms for those with mental disabilities and can create mental health problems.<br>• As the most extreme example, suicide rates for children in solitary confinement are far higher than for those held in general population. Research on suicides in juvenile facilities has demonstrated that a majority of suicides occur while youth are confined alone to their room. | **FACTS/DATA**<br>• Juvenile facilities across the country have been able to lock kids in solitary with little public oversight, knowledge, or legal limits. This treatment undermines healthy child development and, ultimately, community safety.<br>• Rehabilitation is possible, and it should be our goal. Positive reinforcement, small-group living, and immediate and proportional interventions, as well as interactive treatment programs, are more successful at preventing problem behaviors and addressing mental health problems in youth than isolation. Solitary confinement actually provokes or worsens these problems. |
| **EXAMPLE/STORY**<br>Lino Silva spent 7 years in solitary as a kid. She says she learned to play chess with other kids through a six inch wall to keep herself occupied. She describes solitary as a waking nightmare and says the conditions of solitary were so devastating she believes many of the kids subjected to it will not be able to "function anywhere other than adult prison." | | |
| **BOTTOM LINE**<br>Something that could be considered torture should never be used against kids as officially-sanctioned government punishment or as a misguided effort to protect them. | **BOTTOM LINE**<br>Solitary poses such dramatic risks of doing last harm to kids that it simply cannot ever be justified. | **BOTTOM LINE**<br>Kids deserve rehabilitation, not abuse. It's time to end the solitary confinement of youth and strictly limit and uniformly regulate isolation practices. |

**OVERALL BOTTOM LINE**

We should no longer tolerate the shameful and damaging use of solitary confinement on kids in our juvenile justice system.

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# Sample Social Media Posts

## TWITTER

This framing language can be used to craft tweets that are responsive to relevant news stories, litigation or legislative updates (just replace the report link with a link to the relevant article) or to engage your base on this topic, linking to the *Alone & Afraid* briefing paper, the Stop Solitary section of the ACLU website, or a section of your website devoted to solitary.

### Tweets:

Locking kids alone in a cell for 22-24 hours a day is child abuse—plain and simple http://bit.ly/Udgc2N #stopyouthsolitary

If you locked your kid in a closet you'd go to jail. But the gov't locks kids in isolation every day http://bit.ly/Udgc2N #stopyouthsolitary

#SolitaryConfinement is no place for kids. We must insist on alternatives http://bit.ly/Udgc2N #stopyouthsolitary

Punishment for children should focus on rehabilitating them. Solitary does the opposite http://bit.ly/Udgc2N #stopyouthsolitary

Kids held in #solitaryconfinement 6 months? That's no rehabilitation http://bit.ly/Udgc2N #stopyouthsolitary

More than half of kids who commit suicide in juvenile facilities are in #solitaryconfinement when they die http://bit.ly/12rayIg

### Hashtags:

#stopyouthsolitary #solitaryconfinement
#stopsolitary #solitary

## FACEBOOK


Locking kids in solitary is child abuse—plain and simple. So why are juvenile facilities still using solitary against the 70,000 kids in their care on any given day? SHARE THIS if you support ending youth solitary.

Learn more at http://bit.ly/Udgc2N.


Every day across the country, kids as young as 13 are held in solitary confinement—spending over 22 hours a day locked in a room the size of a parking spot. For young people who are still developing, the consequences are devastating. It's time to stop this child abuse.

Learn more at http://bit.ly/Udgc2N.

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# Guide to Writing Successful Op-Eds and Blog Posts

## Op-Ed Suggestions

Successfully placing an op-ed on ending youth solitary requires spotting the right moment and quickly adapting the talking points in the messaging grid to zealously advocate for change to a pressing problem.

- Instead of writing a canned op-ed that you shop around to different news outlets, spot a good publicity moment—such as a bill drop or a horror story about youth solitary making the local news – and then reach out to outlets and pitch your idea. Say that you would like to write a piece connecting the local story to the widespread damaging and largely unregulated use of solitary confinement against kids. Say that you would like to call for an outright ban and your piece will discuss alternatives that can much more successfully rehabilitate kids, which should be the goal.
- Once you have interest from an outlet, then adapt the messaging grid's main points to the local story, personalizing and localizing as much as possible.
- Successful op-eds tend to be written in a very engaging way (this isn't academic or legal writing!) with short paragraphs and few words wasted. Your opinion should be very clear and your concrete suggestions to named decision makers should be strongly articulated. Your piece should be around 500 words.

## Example of a Successful Blog Post

What makes the following blog post strong is that it includes all of the following elements, which tend to be most effective in the following order:

- A short, punchy, evocative and opinionated title
- A compelling and illustrative story about an impacted individual
- A succinct and persuasive statement about how this individual's story is representative of a widespread problem
- A brief and compelling discussion of the harm this trend causes
- A brief, easy-to-follow and seemingly plausible to implement discussion of the solution to this problem
- An invitation to be involved in making the solution a reality

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# Time Out Is for Kids. This Isn't.

**11/20/2013**

By Amy Fettig, ACLU National Prison Project & Tanya Greene, Advocacy and Policy Counsel, ACLU

"I developed techniques to survive. I've learned to play chess with other [kids] through a six-inch wall to keep myself occupied. But for others, it breaks them, makes them either violent or suicidal."

These are the words of Lino Silva, who had been incarcerated in a juvenile facility for over seven years when she wrote them. The "it" she mentions is solitary confinement, a practice that juvenile facilities routinely use on the approximately 70,000 kids in this country who are in their care on any given day.

For Lino, the conditions of solitary were so devastating she believes many of the kids subjected to it will not be able to "function anywhere other than adult prison." She writes:

> Being in a room over 21 hours a day is like a waking nightmare, like you want to scream but you can't. You want to stretch your legs, walk for more than a few feet. You feel trapped. Life becomes distorted. You shower, eat, sleep, and defecate in the same tiny room. In the same small sink, you "shower," quench your thirst, wash your hands after using the toilet, and warm your cold dinner in a bag.

For children, a short time alone may sometimes be necessary to defuse a moment of crisis. But this does not give license to juvenile facilities to hide their practice of subjecting kids to prolonged isolation behind seemingly innocuous euphemisms like "time out," "room confinement," "restricted engagement," or a trip to the "reflection cottage." These terms mask the fact that hours of isolation can be extremely damaging to young people.

This morning, the ACLU released *Alone and Afraid: Children Held in Solitary Confinement and Isolation in Juvenile Detention and Correctional Facilities*.This paper highlights what we know: that solitary can cause extreme psychological, physical, and developmental harm. For adults, the effects can be persistent mental health problems or, worse, suicide. And for children, who are still developing and more vulnerable to irreparable harm, the risks of solitary are magnified – particularly for kids with disabilities or histories of trauma and abuse.
As our new report makes clear, juvenile facilities have been locking kids in physical and social isolation for days, weeks, and even months. Isolation cells often have no window or view of the world outside cell walls. While confined, children are regularly deprived of the services, programming, and other tools that they need for healthy growth, education, and development. Sometimes they are not even provided access to school books. Inside this cramped space, few things distinguish one hour, one day, one week, or one month, from the next.

Our priority should be protecting kids, helping them grow into productive and healthy adults. When children veer off course, we should rehabilitate them as quickly and as effectively as possible. We can get closer to this goal by ensuring that children across this country are no longer locked in solitary with little public oversight, knowledge, or legal limits—treatment that undermines healthy child development and, ultimately, community safety. It is time to abolish the solitary confinement of children and strictly limit and uniformly regulate isolation practices. To this end, state and federal lawmakers, local governments, and administrators of juvenile detention and correctional facilities should immediately embark on a review of the laws, policies, and practices that result in children being held in solitary confinement or prolonged isolation, with the goal of prohibiting all harmful practices.

***For more solutions to the problem of juvenile solitary confinement, check out the entire report Alone and Afraid and our toolkit for activists No Child Left Alone.***

# Section III: Starting a Campaign

In order to lay the groundwork for an effective *Stop Solitary* campaign focused on juvenile detention and correctional facilities, it is important to gather as much information as possible regarding the juvenile detention policies and practices in your jurisdiction as possible—and what special policies exist governing solitary confinement, which may be classified under a euphemism, such as "time out" or "seclusion."

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.

The following documents are included in this section:

- The ACLU's **Campaign Dos and Don'ts** 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 Juvenile Detention or Correctional Facility** 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 Youth About Solitary Confinement** will provide tips to writing to youth, so you can find out more about their experience.

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## Campaign Dos and Don'ts

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

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

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

**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.

**DO:** Offer concrete examples of how alternatives are better, including providing age-appropriate education, treatment, programming—and discipline.

**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.

**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.

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

**DO:** Give examples of other states (especially conservative states) that have successfully limited certain forms of isolation or placed limits on the duration of isolation permitted in juvenile facilities—e.g., Alaska, Connecticut, Maine, Nevada, Oklahoma, and West Virginia.

**DON'T:** Concede that some youth should be held in solitary confinement because of their conduct while in custody, 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, tens of thousands of young people are confined in juvenile detention and correctional facilities. While some facilities stress rehabilitation, many more closely resemble adult prisons. And like adult prisons, juvenile facilities sometimes employ the most counterproductive and inhumane correctional practices—including extended periods of solitary confinement and other forms of isolation. Juvenile justice officials claim they need solitary confinement to isolate a youth after a confrontation, or for punishment and disciplinary purposes, among other reasons. But the practice is widely overused, and can cause much more serious problems than those it is ostensibly employed to temporarily solve. Isolation practices frequently involve placing a youth alone in a cell for several hours, sometimes more than 22 hours a day for multiple days; restricting contact with family members; limiting access to reading and writing materials; and providing limited 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, weeks—and even months. This practice occurs in every state, to varying degrees, but advocates are helping to put a stop to the solitary confinement and isolation of youth.

In order to lay the groundwork for an effective ***Stop Solitary*** campaign, it is important to gather as much information as possible regarding the solitary confinement policies and practices in juvenile facilities in your jurisdiction. Advocates 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.

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: Identify Where Youth are Held in Solitary Confinement

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

- Approximately how many youth are held in juvenile detention facilities in your jurisdiction?
- How many youth are subjected to solitary confinement (locked in a room for 22 or more hours per day)?
- How many youth are subjected to long periods of room confinement, such as periods of three or more hours at a time?
- Is segregation used to protect, punish, or manage children in juvenile facilities in your jurisdiction?
- What rules govern those procedures? Is there a state statute or other state or local rule limiting the use of solitary confinement or elaborating on its use?

This type of information may be publicly available on the federal Office of Juvenile Justice and Delinquency Prevention website, on your state's department of juvenile justice website, or in state regulations. Much of this information, however, will only be obtained through a formal public information request.

A NOTE ON DEFINITIONS: *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 ask separately for data on youth isolation of several hours—but less than 22 hours—at a time. 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 youth [under the age of 18] in the custody of the Juvenile Justice System 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*].**

- Produce documents sufficient to show the total number of youth [under the age of 18] in the custody of the Juvenile Justice System who have been confined for between 3 and 22 consecutive hours in a single cell whether pursuant to disciplinary, administrative, medical, or classification action **[*in the past 12 months/in the past 24 months*].**

- For the youths held in solitary confinement and other forms of isolation of three hours or longer, who are identified above, produce any and all documents which demonstrate the following:
    - The date of birth and age of each youth.
    - The type and location of the facilities where youths are held, e.g., separate units, room confinement cells, isolation cells, medical isolation units, etc., as of the date of this request.
    - The number of youths 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 youths 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 each youth **for x time period [*such as year, quarter, daily snapshot*]**.
    - The race and ethnicity of each youth, 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 youths whose primary language is not English for **x time period [*such as year, quarter, daily snapshot*]**.
    - The number of youths prescribed medications to treat DSM-IV Axis I and/or Axis II mental disorders in the last (**24 months/12 months**).
    - The number of youths who have mental health issues documented in their medical records **for x time period [*such as year, quarter, daily snapshot*]**.

- The number of youths who have a mental retardation diagnosis **for x time period [*such as year, quarter, daily snapshot*]**.
- The number of youths who have a learning or intellectual disability, including the number who have an Individual Education Plan (IEP) as required by federal/state law or who are otherwise identified as in need of special education services **[*insert any jurisdiction-specific terminology relevant*]**.
- The number of youths 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 in solitary confinement for each youth as of **[*date*]**, including the nature of any disciplinary infraction that caused such placement.
- The number of times four-point restraints were used in the last 24 months, indicating the starting date and ending date of each restraint.
- The number of times in-cell restraints were used 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 youths in solitary confinement placed on suicide watch during the past 24 months.
- The number of cell extractions performed on youths 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 youths who attended educational programming outside of their cell in the last 24 months.
- The number of youths provided with in-cell educational programming in the last 24 months.
- The services or programming provided to youths in their cell or outside of their cell.

- Produce any and all documents related to any training given to [security/correction/detention] officers who work in juvenile justice facilities that use room confinement/isolation/other forms of solitary confinement.

- Produce any and all documents related to mental health training given to [security/correction/detention] officers and other staff who work in juvenile justice facilities that use room confinement/isolation/other forms of solitary confinement.

- Produce any and all documents related to training given to [security/correction/detention] officers regarding managing youth.

- Produce any reports, audits, investigations or reviews by facility/department of juvenile justice, any other government unit, or outside persons or entities concerning the delivery of mental health or medical services to youths 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 youths.*)

- Produce any reports, audits, investigations or reviews by facility/ department of juvenile justice, any other government unit, or outside persons or entities concerning the delivery of educational services or programming to youths [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/ department of juvenile justice 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 youths under the age of 18 are held in solitary confinement; include any written response by a facility/department of juvenile justice administrator, including medical and mental health personnel.

- Produce any written complaints from [***enter time period of about 2-3 years***] submitted by any facility/department of juvenile justice 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 youths under the age of 18 are held in solitary confinement; include any written response by a facility/department of juvenile justice administrator, including medical and mental health personnel and educational service or program-provider staff.

- Produce any reports, audits, investigations or reviews by facility/department of juvenile justice staff, any other government unit, or outside persons or entities concerning excessive use of force against youths held in solitary confinement.

- Produce any written complaints from [***enter time period of about 2-3 years***] submitted by any facility/department of juvenile justice staff member about excessive use of force at any of the facilities where youths are held in solitary confinement, including any written response by a facility/department of juvenile justice administrator.

- Produce any written complaints from [***enter time period of about 2-3 years***] submitted by youths 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 youths are held in solitary confinement, including any written response by a facility/department of juvenile justice administrator, medical and/or mental health personnel.

- Produce any written complaints from [***enter time period of about 2-3 years***] submitted by youths 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 youths are held in solitary confinement, including any written response by a facility/department of juvenile justice administrator, medical and/or mental health personnel.

- Produce any written complaints from [***enter time period of about 2-3 years***] submitted by youths housed in solitary confinement and/or their advocates (attorney, family, friends, etc.) about the excessive use of

force at any of the facilities where youths are held in solitary confinement, including any written response by a facility/department of juvenile justice administrator, medical and/or mental health personnel.

## Step 2: Research the Policies that Govern Solitary Confinement in Your Community

You will need to understand the policies that govern solitary confinement at juvenile detention facilities in your jurisdiction. These are the types of general policies to look for when researching the operation of solitary confinement in your local juvenile detention facilities:

- Discipline policies
- Protective Isolation policies
- Administrative Segregation/Isolation/Seclusion policies
- Medical Isolation policies
- Room Confinement policies
- Classification Plans or Classification Systems
- Suicide Prevention and Watch policies
- Mental Health programs and policies
- Visitation policies
- Recreation policies
- Resident Property policies
- Education policies
- Phone Call policies

By reviewing these policies, you may be able to gather 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 juvenile justice officials or administrators, communication with youths in custody and advocates, or a combination thereof. The first place to look for policies, however, is the state department of juvenile justice website. Many departments now place some of their policies and/or regulations on the web.

<u>The following are questions that can often be answered by a review of juvenile justice system or facility policies and regulations</u>:

- What are the reasons youths are placed in solitary confinement?
    - What are the criteria used for placement in solitary confinement?
    - Is solitary confinement limited to individuals who have committed violent acts? Tried to escape?
- What due process is available to youths 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 youth can be held in solitary confinement conditions? Are youths 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 youths may be held in solitary confinement?
- How often is a youth's placement in solitary confinement reviewed and by whom?
- How do youths get out of solitary confinement and back to the facility's general housing?
- What access to rehabilitation and education programs do youths have in solitary confinement?
- Are any special accommodations made for ensuring that youths in solitary confinement receive educational, rehabilitative and other programming?
- What types of visitation with friends and loved ones is available to youths held in solitary confinement?
- What types of property, such as TVs, radios, legal materials, and books, are youths in solitary confinement allowed to have in their rooms?
- Does policy govern a minimum amount of out-of-cell time or recreation time for youths held in solitary confinement? Under what circumstances can youths be denied access to out-of-cell time or recreation time?
- Is there a mental health screening process prior to placement in solitary confinement housing? Are individuals with a documented history of mental illness excluded from solitary confinement? If so, where are they housed and under what conditions?
- Is there a mental health step-down unit for youths diverted from solitary confinement as an alternative discipline? What is the nature of that program?
- Are youths 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 residents and security officers can hear, for example, at the door to the youth's room or cell? ***(Note: This may not be clear from simply looking at the policy; discussions with residents, security officers, and mental health staff may be necessary.)***

## Step 3: Develop a Qualitative Description of Solitary Confinement in Your Community's Juvenile Detention and Correctional Facilities

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 youth who have experienced isolation, and if possible, by touring the facility and asking questions of juvenile justice 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 a Juvenile Detention or Correctional Facility* for guidance on collecting the most useful information during your visit), and by speaking with staff, such as chaplains, or volunteers that regularly visit the facility.

Here are some examples of questions to ask when gathering information about the conditions youth live under in solitary confinement:

- How many hours a day is the youth held alone in his/her room or cell, i.e. what is the level of isolation?
- Do written policies require that mental health or medical staff check on the youth at periodic intervals? Is compliance with such policies monitored and reported? Does the facility keep logs of these periodic checks of youth in isolation?
- What, if any, administrative review and analysis is undertaken of reports and records relating to isolation? Do reports contain enough information to provide a reasonable understanding of the entire incident and the other interventions staff took before using isolation/room confinement?
- What is the size of each person's room or cell?
- Are youth in isolation cells able to engage in social interaction with one another?
- Can a youth in isolation 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? What is it made of? Is there a window looking out?
- What type of walls and floors are in each cell (e.g., solid concrete, dirt)?
- Is there a window that allows the youth 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 youth can contact security officers in an emergency? If not, what happens in an emergency? For instance, if a youth were having a seizure?
- What types of possessions can a youth keep in his/her room or cell? TVs, radios, reading materials, pictures of loved ones?
- What types of programs, if any, does a youth in isolation or room confinement have access to? Education? Art? Therapy?
- While in isolation, are the youths allowed visits with friends and family? How often do these occur? What times/days are available for visits?
- If a youth receives a visit from his/her family, can s/he touch family members? Where are the visits conducted?
- Do youths in isolation have access to clergy?
- While in isolation, how may a youth make phone calls to his/her lawyer? How often can the youth call his/her lawyer? For how long can these phone calls last?
- What is the type, frequency and length of recreation allowed for youths while in isolation? Is it indoors or outdoors? How big is the area where recreation is permitted?
- How sanitary are the isolation cells? What access to cleaning supplies do the youths have?
- Are youths provided with hygiene products? What are they?
- Do youths have sheets and mattresses?
- How can youths file complaints or grievances while in solitary confinement?

- What happens if a youth needs psychiatric care?
    - Do youths have access to counseling?
    - Does a youth have to ask a security officer if he needs a psychiatrist to visit him or 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 youth if s/he has a mental breakdown while in the solitary confinement? How is it determined when a youth is having a mental breakdown? Will s/he be sent to a hospital? If s/he recovers, will s/he be returned to solitary confinement?
- What happens if a youth needs medical care?
    - What happens in an emergency?
    - How can a youth access medical care in solitary confinement?
    - Does a youth have to ask a security officer if s/he needs medical care?

## Conclusion

The goal of this guide, and other materials in this section, is to help you gather information for a full picture of isolation practices in the juvenile justice facilities in your area. Collecting detailed first-hand accounts from survivors of youth isolation will help to formulate an informed and accurate understanding of how isolation is used—and will help to develop an advocacy approach that will work within your state's system. This guide will help you start your own ***Stop Solitary*** campaign focused on juvenile detention and correctional facilities in a methodical, well-informed way.

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

# Checklist for a Visit to a Juvenile Detention or Correctional Facility

This checklist is intended to help you understand what you're seeing when you visit a juvenile justice facility. Certainly, juvenile detention officials have many important concerns, including safety and discipline. But when youth in custody are subjected to solitary confinement and other forms of isolation, the results can be devastating. Solitary confinement is traumatic and can cause serious psychological harm; the practice 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.

Use the checklist below as an aid to help you observe and understand the impact life in confinement—and especially in solitary confinement and other forms of isolation—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:

- Is the facility clean? Is there trash on the floor, or are there towels or dirty clothing?
- What is the size of each person's isolation cell/room? 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 youth have any privacy 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 youth 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 youth 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 room or cell like? Is there a window? Can the youth see other cells from the window? Is the door solid steel? Is there a food slot? Are there bars?
- Are isolation rooms/cells suicide-resistant and protrusion-free?
- 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 other residents and officers? The doors and locks?
- What is the temperature like? Is it comfortable to wear street clothes? Sweater? T-shirt?
- What are the youths wearing in their cells?
- Do most of the youths appear to be sleeping in their cells? Pacing?
- Is there a call box or intercom in the cells so a youth 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 room/cell?
- Are youths socializing with one another?
- Is it possible for youths to talk with one another? See one another?
- Are youths only able to speak with one another by shouting?
- What kind of recreation yard or other outdoor exercise facility is available?
    - How often can a youth go to the yard?
    - How long can s/he stay on the yard?
    - Can s/he associate with other youths 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 youth bring to the yard? Water? Book? Hat?
    - What happens when the weather is cold and it snows? Can the youth 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 youth feel a breeze in the yard?

## Things to ask:

- Do security officers and other staff receive any special training regarding the special needs of youth in isolation/solitary confinement?
- What possessions can the youth 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? From friends and family?
    - Can a youth 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 photographs? Drawings?
    - 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?
- How many hours a day can a youth spend in room confinement/isolation/solitary confinement? During the week? On weekends?
- Is the location, schedule or duration of recreation different for youth in isolation than for those in other housing setups?
- When do isolated youths receive meals? Do they eat together? Alone in their cells?
    - What type of food do they receive? Are nutrition requirements different for youth in isolation?
    - What happens if a youth needs a special diet for medical purposes? For religious purposes?
- Is a youth able to clean his/her cell? How often? With what materials?
- Are youths able to engage in social interaction with one another? Any other human beings?
- Are officers usually posted in the housing units or do they watch the housing units from a control center or guard tower?
- How often do officers check on youth in isolation? Every 15 minutes? Every hour? Is the check random or at consistent intervals? 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 youth can participate in while in isolation?
    - Drug treatment
    - Group therapy
    - Religious services
    - Other programming
- Do youths receive any educational programming while in isolation? 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 youth 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 youth 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 often, while held in isolation, is the youth allowed to shower? For how long?
    - Is the youth kept in some form of restraints during the shower?
    - What kind of privacy does the youth have for showering?
    - Do youth shower with or near others?
- Do youths have access to clergy while they are in isolation?
    - How often?
    - What faiths?

    - Are youths allowed to attend congregant religious services?
- While held in isolation, what personal contact with other human beings does the youth have during the day?
    - Can s/he shake hands with someone?
    - Can s/he have visitors? Have contact visits?
    - Does anyone ever touch him/her?
- How often is the youth permitted to make a phone call while held in isolation? To whom (family, attorney, friends)? For how long? How much does a phone call cost?
- How many letters can the youth write while held in isolation? Receive? Per week? Per month? How much do stamps and writing materials cost?
- Are the youths in isolation allowed visits with friends and family? How often do these occur? What times/days are available for visits?
- If a youth 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 while they are in isolation than in other housing arrangements?
- Is there any evaluation of a youth's mental health before placement in isolation?
    - If so, what is it? Who does the evaluation?
    - Does the person who does the evaluation have any training in the effects of solitary confinement on youth development?
- Is there any on-going monitoring of a youth's mental health in isolation?
    - If so, what is it? Who does the monitoring? How often?
    - Does the person who does the monitoring have any training in the effects of isolation on youth development?
- What provisions are made for suicide risk amongst youths in isolation?
    - How is suicide risk measured?
    - Do the provisions for addressing suicide risk distinguish between low and high/active risk of suicide?
- What happens if a youth needs psychiatric care?
    - Do youths have access to counseling?
    - Does a youth have to ask an 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 youth if s/he has a mental breakdown while in isolation? Will s/he be sent to a hospital? If s/he gets better, will s/he be returned to isolation?
- What happens if a youth needs medical care?
    - What happens in an emergency?
    - How can a youth access medical care?
    - Does a youth have to ask an officer if s/he needs medical care?
    - Are there designated areas and policies for medically isolating youth? If so, is the area for medical isolation of youth conducive to direct and continuous observation by staff? Are medically isolated youth observed at frequent intervals? How long?
- Does the facility have access to the medical or mental health records of youths? From prior detention facilities? From the community?

- What kinds of behaviors or violations result in transfer to isolation?
    - Are there clear guidelines for determining when isolation is warranted? Do those guidelines specify specific periods of time in isolation for specific violations?
    - Do staff receive training in conflict management, de-escalation techniques, and management of assaultive behavior, including when isolation may be used?
    - Does the facility administrator or his/her appointee review and investigate all uses of isolation?
- For what other reasons, besides disciplinary violations/punitive reasons, are youth sent to isolation?
    - Medical? Suicide watch?
    - Protection from others?
    - Administrative purposes?
    - Short cool-down periods?
- Who has to sign off on a decision to put youth in isolation?
- What, if any, administrative review and analysis is undertaken of reports and records relating to placement of youth in isolation?
- Does the facility keep logs of periodic checks of youth in isolation by staff?
    - Where are the logs kept (taped to the door of the room; at the staff station; in the unit log, etc.)?
    - Do they have the exact time of each check?
    - Do they appear to have been written at different times (e.g., different ink or handwriting)?
    - Are the records for current youth filled out before the actual time?
- In cases of disciplinary/punitive isolation/room confinement, do reports contain enough information to provide a reasonable understanding of the entire incident that led to the isolation? Does the report contain enough information to assess whether staff took proper interventions before using isolation?
- Are the mental health needs of youth or opinions of mental health staff considered?
- Are younger children put in isolation by default to separate them from older adolescents?
- Are youth punished with isolation? 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 isolation? What is the average? Median? What explains the outliers?
- Is there a limit to how long a youth can be held in isolation?
- If a youth breaks the rules while in isolation, 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?


STOP SOLITARY

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

# Interview Guide – Talking to Youth About Solitary Confinement

Your ***Stop Solitary*** campaign should draw from the personal experiences of young people who were subjected to solitary confinement and other forms of extreme isolation 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 isolation had on them. Advocates should also talk to family and community members about the impact of isolation/solitary confinement on youth.

In this guide we set forth a comprehensive set of questions designed to elicit important facts about the experience of youth in isolation. In addition to 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 delinquency or 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 delinquency or criminal charges, the attorney may not want an outside agency or individual to interview him or her, or will need to be assured the delinquency or 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 delinquency or 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 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 American Bar Association (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 when you were younger—describe your personality?

**[Transition:** ***"Now I'd like to talk about 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 systems and facilities do not use that term (for instance, many use the term "room confinement"), 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 several hours or the entire day and not allowed out for meals, for programs, or for 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."*]

## Juvenile Justice System Experience

- What date did you enter this facility?
- How old were you?
- Did you know what to expect? How?
- How were you transported?
- Did you get an initial screening? [You may have to describe what this is.]
- What do you remember about any discussion facility staff had with you about where you would be housed?
- 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?
- What were your thoughts and feelings when you first entered the facility?

## Conditions Generally

**[Skip if youth was placed directly into isolation/solitary confinement]**

- What was an average day like in the juvenile justice facility?
- How were you treated generally?
- How did the staff treat you?
- How did the other residents treat you?
- Did you feel safe? Why/why not?

## If the youth was never placed in isolation/room confinement/solitary confinement

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

## Placement in Isolation

- What date did you enter room confinement cell/isolation cell/etc.?
- How old were you?
- How long were you in isolation/solitary confinement? Multiple times? Do you know the dates?
- Were you told why you were placed in isolation? What were you told? Discipline reasons/punishment? Protection? Medical reasons?

### *If the youth was placed in protective custody:*

- Were you given the choice of whether to be placed in isolation 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 facility 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 isolation:*

- Were you notified of the facility 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?
- 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 facility official?

## General Conditions in Isolation/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, etc.)?
- Did you have water and hygiene supplies in the isolation room/cell?
- [If the youth did not have a toilet] What happened if you needed to use the bathroom when you were in isolation?
- What noises could you hear from inside your cell?
- What did you think when you were first put there?
- If you spent longer than a day in isolation, what was a typical day like? What did you do all day?
- How much did you sleep while you were in isolation?
- How often did you see or talk to other people when you were in isolation?
- What made a day in isolation "good"? What made a day in isolation "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 isolation? Was there enough light in your cell to read by?
- When were the lights turned on every day? Could you turn them on or off?
- Did facility 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 young people 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 isolation? 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 Isolation

- While you were in isolation, 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 isolation 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 the juvenile justice facility? When you were in isolation?
- Were you ever prescribed medication in the facility? When you were in isolation? Which medication(s)?
- When you were in isolation, 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 the facility? While you were in isolation? How many times? What were their names? Were your conversations private/confidential?
- Were you ever diagnosed with a mental illness before or during time in the juvenile justice system? What diagnosis?
- Were there medications you took outside of the facility that you weren't allowed to take once you started living there?
- 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?
- Were you ever taken to a hospital while you were in isolation? Why? When?

**[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 Isolation/Solitary Confinement

- How did being in isolation/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 isolation?
- Did you have any strategies for making the time pass or making it easier to be in isolation?
- Do you remember the hardest thing about being in isolation—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 isolation?
- 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 isolation at the age you were?

### Visits/Telephone Calls

- Could your family or friends visit you while you were in isolation?
- 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 isolation? How often?
- How long were these calls?
- Were there any restrictions on who you could call while you were in isolation?

### Attorney/Client Relationship

- Did you have an attorney for your case while you were in the custody of the juvenile justice system?
- Did you meet with that attorney?
- When? How many times?
- Did you ever come directly from isolation to meet with your attorney? Were you strip searched before/after attorney visits?

### Behavioral Difficulties in Isolation

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

## Abuse in Isolation

- Were you ever hurt or mistreated by security officers or other staff or facility officials? While in isolation? What happened?
- Were you ever mistreated by other residents in the facility? While in isolation? What happened?
- Were you ever placed in restraints while in isolation/solitary? What happened? When did this occur?
- Were you ever forcibly given medication you didn't want to take? When did this happen? Do you remember the medication?
- Are there other ways you have been hurt or abused while in this facility?

## Recreation & Out-of-Cell Time

- Did you get time out of your cell for recreation while you were in isolation?
- Were you alone during recreation? With other residents?
- How long did recreation last? How often did you get to go? If you were in solitary confinement for more than one day, which days were you allowed to go to recreation?
- 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?

## 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?
- For how long each time?
- How many times per week?
- How many other people were in the class?
- Was the same material taught to all of you?
- How many teachers?
- Did you get to keep the books in the cell?
- Did you 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 entered the juvenile justice system?
- What did you like or dislike about it?
- Are you taking high school classes? Are you in a GED program?

- 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 facility 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 often? (Every day?)
- 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 isolation/solitary confinement (hearing documents, violations notices/tickets, findings letters, medical records, evaluations, grievances, etc.)?
- Do you have any documents related to mistreatment you experienced while in custody of the juvenile justice system (grievance, etc.)?
- Have you heard of someone being placed in isolation for a long time, or longer than you? What is the longest time you have heard of? Do you know the reason/s that person was placed in isolation? Can you give me that person's 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 Has Been 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 isolation after you were released?
- Did you ever have dreams or nightmares about the facility after you were released?

### Youth's Thoughts on Isolation/Solitary and Solutions

- Do you think people your age should be in isolation or solitary confinement?
- How would you describe the experience of being in isolation or solitary confinement to your brother/sister/cousin/friend?
- What would you tell a state legislator or a judge about putting youth in isolation/solitary confinement?

- What do you want to do when you get out?
- What advice would you give to someone who was entering the juvenile justice system 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 is important for people to know?


STOP SOLITARY

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

# Interview Guide – Sample Consent and Release Forms

When interviewing young people about their experiences in solitary confinement, and particularly in custodial settings, it is vital to ensure that the interviewees give 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 young people 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 juvenile justice facility to find out the required process for setting up interviews with youth in their custody 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 on the following pages.

# 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, online, 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, online, 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, online, and in other media, information received from my lawyer about my criminal or delinquency case.
4) use and re-use in publication, online, 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, online, 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


STOP SOLITARY

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

# Corresponding with Youth About Solitary Confinement

An effective ***Stop Solitary*** campaign should seek to show that young people in the custody of your state or community juvenile justice system are subjected to solitary confinement and describe what solitary confinement is like for them—using personal stories. One effective way to gather this information is by corresponding with young people in juvenile justice facilities. You can identify youth in juvenile justice facilities by reaching out to advocates, community groups, family members, and public defenders. It is particularly important to work with attorneys when young people are represented or have pending delinquency, criminal, or civil cases. The following is a template letter and survey you can send an individual (directly or through his or her attorney or other representative) 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 juvenile detention and correctional facilities in [*State*] often put youth in isolation or solitary confinement either for safety, as punishment, or for other reasons.

I understand that you may have been held in room confinement, solitary confinement, or some other form of isolation—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 stories from youth about their experiences in solitary confinement because we are going to [write a report/talk to legislators/talk to journalists] about this issue. We want to include the stories of people like you so our leaders and the public can better understand what happens to youth in the juvenile system. 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 juvenile justice facilities can read and record correspondence to and from incarcerated youth.

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 DELINQUENCY OR 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, and please do not mail us documents that you need returned.

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 in juvenile facilities. 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, if doing so is permitted by the facility.]

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 detention before trial or adjudication? What were the dates you entered and left detention?
5. How old were you when you were adjudicated? What was the date?
6. How old were you when you were transferred to a juvenile justice facility? What was the date?

About your time in a juvenile justice facility/place of detention (if you were held in solitary confinement in more than one facility, 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 a juvenile justice facility? What did the cell or room look like? Did you have a cell mate?
8. Did you have water and hygiene supplies while in isolation/room confinement/solitary confinement?
9. Did you have a toilet in your isolation/room confinement room/cell? If you did not have a toilet, how did you go to the bathroom?
10. What were you told when you were placed in isolation?
11. Were you placed in solitary confinement as a punishment for your actions?
12. Were you placed in solitary confinement to protect you because of your age, size, or another characteristic?
13. Were you placed in solitary confinement for a medical or mental health purpose or for suicide watch?
14. Were you placed in solitary confinement because you asked to be in isolation?
15. How long were you held in solitary confinement each time? How much total time did you spend in solitary confinement? Can you give dates?

About SOLITARY CONFINEMENT

16. How did being in solitary confinement make you feel? Describe your feelings.

17. How much time, each day or each week, were you allowed out of your cell or room? What would you do while you were out (shower, exercise, use the phone, have visits, etc.)?
18. While you were in solitary confinement, were you able to access mental health services/programming? Were they provided in your room or outside your room? Describe them.
19. While you were in solitary confinement, were you able to access education services/programming? Were they provided in your room or outside your room? Describe them.
20. Did being in isolation impact or change you? Describe what you mean.
21. How would you describe the overall experience of being in solitary confinement? What would you tell another person about what you went through?
22. What do you think about the use of solitary confinement by juvenile justice officials? Do you think there are alternatives that achieve the same purpose? If so, what are they?
23. Would you do anything differently if you were in charge of the facility? What would it be?
24. What advice would you give to a youth who was about to be placed in solitary confinement?
25. Do you know anyone else who was placed in solitary confinement? What is their name? Contact information?
26. Do you have family members or friends who I could interview about your experience? What are their names? Contact information?

# Section IV: Advocacy Materials

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

- ***Alone* & *Afraid*, the ACLU's Briefing Paper on the Solitary Confinement of Youth in Juvenile Detention and Correctional Facilities**, provides a primer on the issue for coalition partners, allies, and legislators.

- The ***Alone* & *Afraid* Two-Pager** provides a brief overview of the issue.

- Short advocacy documents illustrate how **International Law and Practice** can be helpful in your campaign and explain how the **Prison Rape Elimination Act** can play a part in your advocacy on youth solitary are helpful for advocacy partners, allies, and legislators.

# ALONE & AFRAID:

## Children Held in Solitary Confinement and Isolation in Juvenile Detention and Correctional Facilities


June 2014 (Revised)

ACLU
AMERICAN CIVIL LIBERTIES UNION

# ALONE & AFRAID:
## Children Held in Solitary Confinement and Isolation in Juvenile Detention and Correctional Facilities

June 2014 (Revised)


American Civil Liberties Union
125 Broad Street
New York, NY 10004
www.aclu.org

# TABLE OF CONTENTS

# Introduction

*"Being in a room over 21 hours a day is like a waking nightmare, like you want to scream but you can't."*

- Lino Silva
On her experience in solitary confinement as a child

Every day, in juvenile detention and correctional facilities across the United States, children are held in solitary confinement and other forms of isolation. Solitary confinement is the most extreme form of isolation, and involves physical and social isolation in a cell for 22 to 24 hours per day.[1] In addition to solitary confinement, juvenile facilities frequently use a range of other physical and social isolation practices, many distinguishable from solitary confinement only in their duration (stretching for many—but fewer than 22—hours). Instead of the terms "solitary confinement" or "isolation," juvenile facilities often adopt euphemisms, including "time out," "room confinement," "restricted engagement," or a trip to the "reflection cottage."[2] These terms mask the fact that, whereas a short amount of alone time may sometimes be necessary to defuse a moment of crisis, hours of isolation can be extremely damaging to young people. Physical and social isolation practices can extend for days, weeks, and even months. Isolation cells often have no window or view of the world outside cell walls. While confined, children are regularly deprived of the services, programming, and other tools that they need for healthy growth, education, and development. Sometimes they are not even provided access to school books. Inside this cramped space, few things distinguish one hour, one day, one week, or one month from the next.

Solitary confinement can cause serious psychological, physical, and developmental harm, resulting in persistent mental health problems or, worse, suicide. Lengthy periods of isolation can be equally traumatizing and result in the same serious risks to health. These risks are magnified for children with disabilities or histories of trauma and abuse.

Federal government agencies and experts agree that the use of isolation on children can be harmful and counterproductive. The U.S. Department of Justice (DOJ) has stated that the "isolation of children is dangerous and inconsistent with best practices and that excessive isolation can constitute cruel and unusual punishment."[3] The U.S. Attorney General's *National Task Force on Children Exposed to Violence* also recently stated, "nowhere is the damaging impact of incarceration on vulnerable children more obvious than when it involves solitary confinement."[4] The National Research Council of the National Academies of Sciences has also concluded that "confinement [of children] under punitive conditions may increase recidivism."[5]

Normal human contact and a range of age-appropriate services and programming are essential to a child's development, education, and rehabilitation. The goals of juvenile justice laws and the results of detaining and confining children should be to protect public safety while promoting rehabilitation. Upon return to the community, children should have the tools to be productive and healthy citizens. Any practice involving physical and social isolation of children can significantly undermine these objectives and should be strictly limited, regulated, closely monitored, and publicly reported.

Solitary confinement and other forms of isolation undermine both healthy child development and, ultimately, community safety. Yet children across the country are subject to such treatment with little public oversight or legal limits.

It is time to abolish the solitary confinement of children and strictly limit and uniformly regulate isolation practices. To this end, state and federal lawmakers, local governments, and administrators of juvenile detention and correctional facilities should immediately embark on a review of the laws, policies, and practices that result in children being held in solitary confinement or prolonged isolation, with the goal of prohibiting all harmful practices.

## How Do Solitary Confinement and Isolation Harm Children?

Solitary confinement and other forms of isolation can cause serious psychological, physical, and developmental harm to children who either need age-appropriate services and programming that promotes healthy growth and development, or need to be rehabilitated (if adjudicated delinquent). Solitary confinement and isolation practices can be even more harmful for children with disabilities.

Children grow and change. Adolescence is transitory. As Elizabeth Scott and Laurence Steinberg, 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."[6]

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.[7] 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.[8] The frontal lobe is responsible for cognitive processing, such as planning, strategizing, and organizing thoughts and actions.[9] 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.[10] This part of the brain is linked to "the ability to inhibit impulses, weigh consequences of decisions, prioritize, and strategize."[11] As a result, teens'

## What Is it Like for Children in Solitary Confinement?

The devastating effects of solitary confinement on children have haunting consequences, as shown by this first-hand account from Lino Silva, written about her experience in solitary confinement in a juvenile facility in California:

> "Being in a room over 21 hours a day is like a waking nightmare, like you want to scream but you can't. You want to stretch your legs, walk for more than a few feet. You feel trapped. Life becomes distorted. You shower, eat, sleep, and defecate in the same tiny room. In the same small sink, you 'shower,' quench your thirst, wash your hands after using the toilet, and warm your cold dinner in a bag. I developed techniques to survive. I keep a piece of humanity inside myself that can't be taken away by the guards . . . There's no second chance here."

Reassessing Solitary Confinement: The Human Rights, Fiscal, and Public Safety Consequences: Hearing Before the Subcomm. on the Constitution, Civil Rights, and Human Rights of the S. Comm. on the Judiciary, 112th Cong. (2012) (statement of Sumayyah Washeed & Jennifer Kim, Ella Baker Center for Human Rights, Books not Bombs Campaign).

decision-making processes are shaped by impulsivity, immaturity, and an under-developed ability to appreciate consequences and resist environmental pressures.[12]

The differences between children and adults make young people more vulnerable to harm, and disproportionately affected by the trauma and deprivations of solitary confinement and isolation.

## Psychological Harm

Extensive research on the impact of isolation has shown that adult prisoners generally exhibit a variety of negative physiological and psychological reactions to conditions of solitary confinement, including: hypersensitivity to stimuli;[13] perceptual distortions and hallucinations;[14] increased anxiety and nervousness;[15] revenge fantasies, rage, and irrational anger;[16] fears of persecution;[17] lack of impulse control;[18] severe and chronic depression;[19] appetite loss and weight loss;[20] heart palpitations;[21] withdrawal;[22] blunting of affect and apathy;[23] talking to oneself;[24] headaches;[25] problems sleeping;[26] confusing thought processes;[27] nightmares;[28] dizziness;[29] self-mutilation;[30] and lower levels of brain function, including a decline in EEG activity after only seven days in solitary confinement.[31]

One can reasonably conclude that, at a minimum, children too experience these negative effects.[32] Indeed, given their stage of growth and development, children may be even less able than adults to handle solitary confinement.[33] Psychologically, children are different from adults, making their time spent in isolation even more difficult and the developmental,

psychological, and physical damage more comprehensive and lasting. 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.[34] The American Academy of Child and Adolescent Psychiatry has concluded that, due to their "developmental vulnerability," adolescents are in particular danger of adverse reactions to prolonged isolation and solitary confinement.[35]

## Risk of Suicide

Suicide is strongly associated with isolation—especially for children.[36] Studies have repeatedly shown that children who are or have been held in solitary confinement are more likely to commit suicide, attempt suicide, and engage in other acts of self-harm. Research published by the Department of Justice found that more than 50% of the suicides of children detained in juvenile facilities occurred while young people were isolated alone in their rooms, and that more than 60% of young people who committed suicide had a history of being held in isolation.[37]

## Physical Harm

Given that children are still developing physically, they need age-appropriate mental health, medical, and dental services, as well as nutrition adequate to support growing muscles and bones.[38] The most common deprivation that accompanies solitary confinement, denial of meaningful out-of-cell physical exercise, is physically harmful to their health, well-being, and growth.

## Developmental Harm

Children held in solitary confinement are typically denied access to programming provided to other youth—treating important educational programming, access to reading materials, and the ability to write, call, or visit with loved ones as privileges rather than rights to which all children are entitled.[39] Denying children access to this programming undermines their ability to develop into healthy adults, able to function in society. In some cases, such as with denial of educational programming, it also violates the law. Holding children in solitary confinement can thus result in long-term harm, undermining their future and the purported goals of the juvenile justice system.

## Harm to Children with Disabilities or a History of Trauma and/or Abuse

For many children in the juvenile justice system, the vulnerabilities of developmental immaturity are compounded by disabilities and/or histories of trauma and abuse.[40] These factors, though experienced differently by different children, can significantly exacerbate the harm of solitary confinement. The Americans with Disabilities Act, the Rehabilitation Act, and the Individuals with Disabilities Education Act all require state and local governments to accommodate disabilities when they care for children in custody.[41]

### Fighting Youth Solitary in the Courts

Across the country, challenges to the solitary confinement of youth have reached the courts, resulting in policy changes as well as financial settlements.

- In a 2014 settlement with the U.S. Department of Justice and the Children's Law Center, the **Ohio** State Department of Youth Services agreed to dramatically reduce, and eventually eliminate, its use of seclusion on young people in its custody; the Department also agreed to improve individualized mental health treatment. Conditions that DOJ investigated in Ohio included the excessive seclusion of youth with mental health disorders.
- The **Illinois** Department of Juvenile Justice agreed in 2014 to dramatically improve conditions at six state juvenile justice facilities. The agreement, following the 2012 ACLU lawsuit *R.J. v. Jones*, includes a ban on the use of solitary confinement for disciplining youth, and requires a new policy limiting when and how youths' freedom of movement may be restrained.
- In 2013, two boys won a $400,000 settlement against **New Jersey**'s Juvenile Justice Commission; one plaintiff had spent 178 days in solitary confinement at age 16, the other, 50 days at 15. One of the youths, who had been diagnosed with post-traumatic stress disorder and bipolar disorder, attempted suicide and mutilated himself several times while in custody.

*See* Justice Department Settles Lawsuit Against State of Ohio to End Unlawful Seclusion of Youth in Juvenile Correctional Facilities, Justice News (May 21, 2014), http://www.justice.gov/opa/pr/2014/May/14-crt-541.html; Agreed Order, S.H. v. Reed, Civ. Action No. 2:04-cv-01206-ALM-TPK, Doc. 401 (S.D. Ohio May 21, 2014); Plan Advanced To Improve Conditions in Illinois' Juvenile Justice Facilities, ACLU of Illinois (Mar. 17, 2014), http://www.aclu-il.org/plan-advanced-to-improve-conditions-in-illinois-juvenile-justice-facilities/; Jeff Goldman, N.J. To Pay Half of $400K Settlement Over Solitary Confinement of Juveniles, Star-Ledger (Dec. 10, 2013), available at http://www.nj.com/news/index.ssf/2013/12/nj_to_pay_most_of_400k_settlement_over_solitary_confinement_of_juveniles.html; Second Amended Complaint, Troy D. & O'Neill S. v. Mickens, 1:10-cv-02902-JEI-AMD (D. N.J., Dec. 14, 2011), http://www.jlc.org/legal-docket/td-and-os-v-mickens-et-al.

## Why Are Children Held in Solitary Confinement and Isolation?

Department of Justice data suggest that, on any given day, more than 70,000 young people are held in state or federal juvenile detention facilities across the United States[42] and that the use of isolation, including solitary confinement, in these facilities is widespread.[43] Juvenile detention facilities generally justify solitary confinement and other forms of physical and social isolation for one of four reasons:

- DISCIPLINARY ISOLATION: Physical and social isolation used to punish children when they break facility rules, such as those prohibiting talking back, possessing contraband, or fighting;
- PROTECTIVE ISOLATION: Physical and social isolation used to protect a child from other children;
- ADMINISTRATIVE ISOLATION: Physical and social isolation—sometimes for a short period but other times without any limit on duration—used during initial processing at a new

facility, because officials do not know how else to manage a child, or when a child is deemed too disruptive to the safe or orderly operation of an institution, such as when he or she is deemed to be out of control;
- MEDICAL ISOLATION: Physical and social isolation to medically treat children, such as fora contagious disease or for having expressed a desire to commit suicide;[44]

While short periods of isolation—measured in minutes—may be appropriate in rare emergencies, all too often children are placed in isolation unnecessarily, causing grave harm. Physical and social isolation practices are often accompanied by a range of restrictions and deprivations—limits on everything from reading materials to visitation to exercise.[45] Children are frequently subjected to these practices repeatedly and sometimes moved between different forms of isolation time and again while detained.[46]

Most states and the federal government do not regularly publish systematic data showing the number of young people subjected to solitary confinement or other isolation practices while held in juvenile detention facilities, and almost no detention facilities make this data available to the public. The available data, however, suggest that children in the juvenile justice system are routinely subject to solitary confinement and other forms of isolation—and also why greater transparency and data reporting are so desperately needed:

- Department of Justice estimates, based on survey data from 2003, establish that one-third of youth in custody (35 percent and close to 35,000 young people between the ages of 10 and 20) at that time had been held in isolation with no contact with other residents. The vast majority of those young people (87 percent) were held in isolation for longer than 2 hours and more than half (55 percent) were held in solitary confinement for longer than 24 hours. This amounts to more than 17,000 of the approximately 100,000 young people in confinement having been subjected to solitary confinement.[47]
- Data gathered in 2012 by the Performance-based Standards Initiative of the Council of Juvenile Corrections Administrators (from a group of 162 voluntarily participating juvenile detention facilities in 29 states) suggest that, in these facilities (representing fewer than 10 percent of juvenile facilities nationwide), the average duration of isolation was just over 14 hours. The group also reports that the number of youth who reported being held in solitary confinement for longer than 11 days and between 6 and 10 days fell between 2010 and 2012, though the number of children held in solitary confinement for between 1 and 5 days increased.[48]
- Recent state-level data on the use of solitary confinement and isolation in juvenile detention facilities in California,[49] Ohio,[50] and Texas[51] suggest that children spend tens of thousands of hours locked up alone in the United States each year.

## How Are Solitary Confinement and Other Isolation Practices Currently Regulated?

National standards and state and federal law and policy address the use of isolation on children and recommend restrictions on its use.

NATIONAL STANDARDS: Every set of national standards governing age- and developmentally-appropriate practices to manage children in rehabilitative or correctional settings strictly regulate and limit all forms of isolation. The Department of Justice Standards for the Administration of Juvenile Justice limit isolation to a maximum period of 24 hours.[52] Another leading set of national standards prohibits any isolation for punitive or disciplinary reasons, and limits isolation in cases of emergency to 4 hours or less,[53] and yet another recommends that isolation be kept to a few minutes, not hours (and, in all cases, be limited to the shortest duration necessary).[54] Standards governing the isolation of children in medical and mental health facilities and in educational settings are even more restrictive.[55]

STATE LAW AND POLICY: With building momentum, state juvenile justice agencies have implemented policy changes in recent years increasingly limiting isolation practices, with a majority of state agencies limiting isolation to a maximum of five days.[56] Some state agencies have become leaders in reforming the use of isolation; notably, the Massachusetts Department of Youth Services enforces a complete statewide ban on isolation of children for punitive or disciplinary reasons, and requires that any isolation used in emergencies be approved by high-level supervisors.[57] Other states, including Missouri and New York, have reformed their entire juvenile justice systems, addressing behavioral issues through more humane, holistic policies and treatments that largely preclude the "need" for isolation.[58] Six states—Alaska, Connecticut, Maine, Nevada, Oklahoma, and West Virginia—by statute have placed reporting requirements and certain limitations on the use of isolation of youth in some or all of their juvenile detention and correctional facilities.[59]

FEDERAL LAW AND POLICY: The *Juvenile Justice and Delinquency Prevention Act (JJDPA)* creates financial incentives for states to treat some young people differently from adults, including by deinstitutionalizing status offenders, diverting those subject to the jurisdiction of the juvenile justice system (and certain categories of misdemeanants) from adult facilities, ensuring sight and sound separation between youth and adults in adult facilities, and reducing disproportionate minority contact with the juvenile justice system.[60] However, no provision of this law—or any other federal law—*prohibits* solitary confinement or isolation of children in juvenile detention facilities. Fortunately, recent comprehensive national regulations implementing the Prison Rape Elimination Act include provisions regulating isolation in juvenile facilities.[61] The regulations require that any young person separated or isolated as a disciplinary sanction or protective measure must receive daily large-muscle exercise; access to legally mandated educational programming or special education services; daily visits from a medical or mental health care clinician; and, to the extent possible, access to other

programs and work opportunities.[62] By statute, state juvenile detention and correctional facilities had until August 2013 to certify compliance with these regulations or potentially lose certain federal funding; assessments of state compliance and determinations as to funding are ongoing.[63] And while DOJ investigations of state juvenile facilities have repeatedly found patterns and practices of excessive isolation and consistently declared them to be unconstitutional,[64] there is still no outright ban on the solitary confinement of children in the custody of the federal government.[65]

## U.S. and Human Rights Laws Provide Specific Protections for Children

The U.S. Supreme Court has repeatedly emphasized that young people should be afforded heightened constitutional protections in the context of crime and punishment. The fact that children are particularly vulnerable and deserving of different treatment than adults is also reflected in human rights law, which affords special measures of protection to children who come into conflict with the law.

### U.S. Constitutional Law

The U.S. Constitution protects persons deprived of their liberty, both before and after conviction. It also provides extra protections for children charged with crimes. In a string of recent cases, the Supreme Court has ruled that the Constitution's protections apply differently to children who come into conflict with the law because *kids are different* from adults. In cases involving the juvenile death penalty,[66] juvenile life without parole,[67] and custodial interrogations,[68] the Court held that punishing or questioning children without acknowledging their age, developmental differences, or individual characteristics is unconstitutional.

The Fifth- and Fourteenth-Amendment protections against deprivation of liberty without due process of law establish the contours of the protections generally applicable to conditions of confinement for children.[69] Children in confinement have a "liberty interest in safety and freedom from [unreasonable] bodily restraint."[70] Conditions of confinement are unreasonable when they are "a substantial departure from accepted professional judgment, practice or standards."[71] The Supreme Court has also held that government conduct violates substantive due process when it "shocks the conscience."[72] As with evaluation of the most extreme sentences, efforts to determine when extreme isolation practices breach professional standards and shock the conscience must take into account the developmental differences and individual characteristics of children.

Additionally, over the years, a small number of federal courts have ruled that solitary confinement and isolation practices used in juvenile detention facilities are unconstitutional.[73] Few courts have considered the issue recently.[74] However, a number of federal district courts have recently found that the solitary confinement of adults with serious mental health problems violates the Eighth Amendment because such persons are more likely than others

to have great difficulty adjusting to and tolerating time in solitary confinement, and because solitary confinement can even make the symptoms of mental health problems worse.[75] Similar to persons with mental disabilities, and because they are still growing and developing, children are especially vulnerable to the negative consequences of solitary confinement and other harmful isolation practices.

Solitary confinement is extreme—well outside of the range of acceptable best practices for caring for and managing children—and it carries a high risk of physical, developmental, and psychological harm, and even death. Laws and practices that subject children to this inherently cruel and punitive treatment shock the conscience and may violate the Constitution.

### Human Rights Law and Practice

U.S. courts, including the Supreme Court, have repeatedly relied on international law and practice on children's rights to affirm their reasoning that certain domestic practices violate the Constitution.[76] International human rights 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."[77] 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.[78] The Convention on the Rights of the Child (CRC), a treaty signed by the United States, also addresses the particular rights and needs of children who come into conflict with the law.[79]

A number of international instruments and human rights organizations have declared that the solitary confinement of children violates human rights laws and standards prohibiting cruel, inhuman or degrading treatment and called for the practice to be banned, including: the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines),[80] the Committee on the Rights of the Child,[81] the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the Beijing Rules),[82] and the Inter-American Commission on Human Rights.[83] 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 repeatedly called for the abolition of solitary confinement of persons under age 18.[84]

## The Need to Ban the Solitary Confinement of Children

Solitary confinement and isolation are not safe for children. There are a range of alternatives to manage and care for young people safely—without resorting to harmful physical and social isolation practices. 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 abolishing solitary confinement, strictly limiting

and regulating the use of other forms of isolation, and emphasizing positive reinforcement over punishment.[85]

Best practices recognize that it is acceptable to separate individual youth from the general population to accomplish a limited range of legitimate 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.*** Below we suggest the steps necessary to improve both policy and practice:

- Prohibit Solitary Confinement and Strictly Limit Other Forms of Isolation of Children.

Solitary confinement of children under 18 should be banned. This practice can be ended by state legislators, local officials, and juvenile facility administrators. Other, shorter-term isolation practices should be strictly limited and regulated because of their harmful and traumatic effect on children and because they are often accompanied by other serious deprivations (like denial of education).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 and for as short a duration as necessary. Separation practices to protect, manage, or discipline youth should be used sparingly and should never rise to the level of solitary confinement.

- Require Public Reporting of Solitary Confinement Practices in Juvenile Detention Centers.

Governments rarely systematically collect data on the use of solitary confinement or other isolation on young people in juvenile detention facilities—or make public what is available. Reforms to solitary confinement and isolation practices must be accompanied by monitoring of isolation practices, recording of data, and public reporting about policies and practices as well as data about their use. Such transparency is necessary to give public and elected officials, and the general public, the information required to meaningfully engage in debate and appropriate oversight.

## Conclusion

Solitary confinement and isolation of children in juvenile facilities is psychologically, developmentally, and physically damaging and can result in long-term problems and even suicide. Laws, policies, and practices must be reformed to ensure that more effective, safer alternatives are utilized with children in the juvenile system, and that our priority is their proper protection and rehabilitation.

## 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 (2012), *available at* http://www.aclu.org/growinguplockeddown. 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*, ¶ 26, U.N. Doc. A/66/268 (Aug. 5, 2011) (by Juan Mendez), *available at* http://solitaryconfinement.org/uploads/SpecRapTortureAug2011.pdf. Although isolation practices in many facilities do not rise to the level of solitary confinement, because the conditions and effects of various segregation practices are substantially the same, the ACLU uses a single term – solitary confinement – based on the level of social isolation and environmental deprivation to describe the most extreme forms of physical and social isolation.

[2] Bridget Clerkin, *Trenton-based corrections union pushes for new image of solitary confinement*, NJ.COM (Aug. 19, 2013, 7:15 AM), *available at* http://www.nj.com/mercer/index.ssf/2013/08/trenton_pba_union_pushes_for_new_image_of_solitary_confinement.html; Keila Parks, *"Reflection Cottages": The Latest Spa Getaway or Concrete Solitary Confinement for Kids?*, ACLU BLOG OF RIGHTS (Apr. 29, 2013), *available at* http://www.aclu.org/blog/prisoners-rights-criminal-law-reform/reflection-cottages-latest-spa-getaway-or-concrete.

[3] Letter from Robert L. Listenbee, Administrator, US Department of Justice, to Jesselyn McCurdy, Senior Legislative Counsel, American Civil Liberties Union 1 (Jul. 5, 2013), *available at* https://www.aclu.org/sites/default/files/assets/doj_ojjdp_response_on_jj_solitary.pdf.

[4] ATTY' GEN.'S NAT'L TASK FORCE ON CHILDREN EXPOSED TO VIOLENCE, REP. OF THE ATTY' 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; *see also* Letter from Robert L. Listenbee, *supra* note 3, at 3.

[5] Letter from Robert L. Listenbee, *supra* note 3, at 3.

[6] ELIZABETH S. SCOTT & LAURENCE STEINBERG, RETHINKING JUVENILE JUSTICE 31 (2008).

[7] Sedra Spano, *Stages of Adolescent Development*, ACT FOR YOUTH UPSTATE CENTER FOR EXCELLENCE (May 2004), http://www.actforyouth.net/resources/rf/rf_stages_0504.pdf; *Adolescent Development*, NAT'L INSTS. OF HEALTH, http://www.nlm.nih.gov/medlineplus/ency/article/002003.htm (last visited Aug. 26, 2013).

[8] Laurence Steinberg et al., *The Study of Development Psychopathology in Adolescence*: *Integrating affective neuroscience with the study of context*, *in* DEVELOPMENTAL PSYCHOPATHOLOGY 710 (DANTE CICCHETTI & DONALD J. COHEN EDS., 2d ed. 2006).

[9] *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.

[10] Jay N. Giedd, *Structural Magnetic Resonance Imaging of the Adolescent Brain*, *supra* note 9, at 1021.

[11] *Id.*

[12] 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).

[13] Stuart Grassian, *Psychopathological Effects of Solitary Confinement*, 140 AM. J. OF PSYCHIATRY 1450, 1452 (1983) (reporting, among prisoners subjected to solitary confinement, dysesthetic responses to external stimuli).

[14] *Id.*; Craig Haney, *Mental Health Issues in Long-Term Solitary and "Supermax" Confinement*, 49 CRIME & DELINQ. 124, 134 (2003) (reporting that 44% of Pelican Bay SHU prisoners experienced perpetual distortions and 41% experienced hallucinations); Richard Korn, *The Effects of Confinement in the High Security Unit at Lexington*, 15 Soc. Just. 8, 15 (1988) (observing that several prisoners in isolation at Lexington Prison experienced an onset of hallucinatory symptoms).

[15] Grassian, *supra* note 13, at 1452-53 (prisoners reported feelings of "massive, free-floating anxiety" during their incarceration in solitary confinement); Haney, *supra* note 14, at 130, 133 (noting that 91% of Pelican Bay SHU prisoners experienced anxiety or nervousness); Holly A. Miller, *Reexamining Psychological Distress in the Current Conditions of Segregation*, 1 J. OF CORRECTIONAL HEALTHCARE 39, 48 (1994) (finding increased levels of psychological distress in more restrictive environments).

[16] Grassian, *supra* note 13, at 1453 (prisoners in solitary reported the emergence of aggressive revenge fantasies against prison guards); Holly A. Miller & Glenn R. Young, *Prison Segregation: Administrative Detention Remedy or Mental health Problem?*, 7 CRIM. BEHAV. & MENTAL HEALTH 85, 91 (1997) (inmates housed in disciplinary segregation reported more feelings of anger, including aggression, irritability, and rage than those housed in administrative detention or general population); Haney, *supra* note 14, at 130, 134 (reporting that 88% of Pelican Bay SHU prisoners experienced irrational anger and 61% reported having violent fantasies); *see generally* HANS TOCH, MOSAIC OF DESPAIR: HUMAN BREAKDOWN IN PRISON (1992) (describing the variety of stress transactions that occur in the prison setting).

[17] Grassian, *supra* note 13, at 1453 (prisoners in solitary reported ideas of reference and paranoia associated with persecutory fears).

[18] *Id.*; Miller & Young, *supra* note 16, at 92 (finding that specific psychological distress symptoms including irresistible impulses increase with levels of housing restriction).

[19] Miller & Young, *supra* note 16, at 90 (finding that prisoners in restrictive housing commonly experience depression); Haney, *supra* note 14, at 131, 134 (finding that 77% of Pelican Bay SHU prisoners experienced chronic depression); Korn, *supra* note 14 at 15 (observing that the force and pressure of rage experienced by prisoners in isolation is turned inward and manifests as low-level to severe depression).

[20] Haney, *supra* note 14, at 130, 133 (noting that 63% of Pelican Bay SHU prisoners reported loss of appetite); Korn, *supra* note 14 at 16 (prisoners held in isolation at Lexington reported loss of weight varying from 10-20 pounds and unpalatability of food).

[21] Haney, *supra* note 14, at 133 (reporting that 63% of Pelican Bay SHU prisoners experienced heart palpitations).

[22] Miller & Young, *supra* note 16, at 91 (prisoners housed in disciplinary segregation reported significantly more feelings of withdrawal and isolation than prisoners in less restrictive housing); Korn, *supra* note 14 at 15 (prisoners in isolation at Lexington reported defensive psychological withdrawal as a coping mechanism).

[23] Korn, *supra* note 14, at 15 (reporting that "a commonly noted adjustment to unbearable environments is a form of protective withdrawal and desensitization by means of which one decreases one's feelings of suffering").

[24] Haney, *supra* note 14, at 134 (noting that 63% of Pelican Bay SHU prisoners reported talking to themselves).

[25] *See id.* at 133 (noting that 88% of Pelican Bay SHU prisoners experienced headaches).

[26] *See id.* (finding that 84% of Pelican Bay SHU prisoners had trouble sleeping).

[27] *See id.* at 137 (noting that 84% of Pelican Bay SHU prisoners reported confusing thought processes).

[28] *See id.* at at 133 (reporting that 55% of Pelican Bay SHU prisoners experienced nightmares).

[29] *See id* .(finding that 56% of Pelican Bay SHU prisoners experienced feelings of dizziness).

[30] Grassian, *supra* note 13, at 1453 (prisoners subjected to solitary confinement reported experiencing " impulsive self-mutiliation"); Eric Lanes, *The Association of Administrative Segregation Placement and Other Risk Factors with the Self-Injury-Free Time of Male Prisoners*, 48 J. OFFENDER REHABILITATION 529, 539-40 (2009) (finding that prisoners in administrative segregation housing experienced shorter self-injury-free periods than prisoners housed in general population).

[31] Paul Gendreau, N.L. Freedman, G.J.S. Wilde & G.D. Scott, *Changes in EEG Alpha Frequency and Evoked Response Latency During Solitary Confinement*, 79 J. OF ABNORMAL PSYCHOL. 54, 57-58 (1972) (finding that one week of solitary confinement produced significant changes in EEG frequency and visual evoked potentials that parallel those reported in studies of sensory deprivation).

[32] For detailed narrative descriptions of the experiences of youth who were subjected to solitary confinement, see HUMAN RIGHTS WATCH & THE AMERICAN CIVIL LIBERTIES UNION, GROWING UP LOCKED DOWN, *supra* note 1.

[33] The Court has described how youth have a "capacity for change," and that they are therefore "in need of and receptive to rehabilitation." *Graham v. Florida*, 130 S.Ct. 2011, 2017 (2010).

[34] 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).

[35] 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.

[36] 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/ojjdp/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. Adults in solitary confinement also account for a disproportionate number of suicides among people in prisons. 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); for information on adult suicide rates in jails and prisons, see generally 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 (providing detailed statistics on suicide rates nationally in adult jails and prisons.

[37] DEP'T OF JUSTICE OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, JUVENILE SUICIDE IN CONFINEMENT: A NATIONAL SURVEY, *supra* note 36.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).

[38] 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.

[39] *See Reassessing Solitary Confinement: The Human Rights, Fiscal, and Public safety Consequences: Hearing Before the Subcomm. on the Constitution, Civil Rights, and Human Rights of the S. Comm. on the Judiciary*, 112th Cong. 4 (2012), *available at* http://solitarywatch.com/wp-content/uploads/2012/06/youth-law-center2.pdf. (statement of Youth Law Center).

[40] American Academy of Pediatrics, Policy Statement: Health Care for Youth in the Juvenile Justice System, 128 PEDIATRICS 1219, 1223-24 (2011), *available at* http://pediatrics.aappublications.org/content/128/6/1219.full.pdf (reviewing the literature on the prevalence of mental health problems among incarcerated youth).OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, NATURE AND RISK OF VICTIMIZATION: FINDINGS FROM THE SURVEY OF YOUTH IN RESIDENTIAL PLACEMENT 4 (June 2013), *available at* http://www.ojjdp.gov/pubs/240703.pdf (finding that 56 percent of youth in custody experience one or more types of victimization *while in custody,* including sexual assault, theft, robbery and physical assault).

[41] NATIONAL COUNCIL ON DISABILITY, ADDRESSING THE NEEDS OF YOUTH WITH DISABILITIES IN THE JUVENILE JUSTICE SYSTEM: THE CURRENT STATUS OF EVIDENCE-BASED RESEARCH 23-21 (May 2003), *available at* http://www.ncd.gov/rawmedia_repository/381fe89a_6565_446b_ba18_bad024a59476?document.pdf.

[42] Press Release, Annie E. Casey Foundation, Youth Incarceration Sees Dramatic Drop in the United States (Feb. 27, 2013), http://www.aecf.org/Newsroom/NewsReleases/HTML/2013/YouthIncarcerationDrops.aspx. This rate has declined in recent years. Youth Incarceration in the United States, ANNIE E. CASEY FOUNDATION (Feb. 27, 2013), *available at* http://www.aecf.org/~/media/Pubs/Initiatives/KIDS%20COUNT/R/ReducingYouthIncarcerationInfo/YouthIncarcerationInfographicPrint13.pdf. Notably, Department of Justice data also suggest that close to 100,000 children are held in *adult* jails and prisons each year. Human Rights Watch and the American Civil Liberties Union recently estimated that in each of the last 5 years, between 93,000 and 137,000 young people under 18 were held in adult jails and that, in 2011, more than 2,200 young people under age 18 were held in

adult prisons. HUMAN RIGHTS WATCH & THE AMERICAN CIVIL LIBERTIES UNION, GROWING UP LOCKED DOWN, *supra* note 1.

[43] DEP'T OF JUSTICE OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, CONDITIONS OF CONFINEMENT: FINDINGS FROM THE SURVEY OF YOUTH IN RESIDENTIAL PLACEMENT (May 2010), *available at* https://www.ncjrs.gov/pdffiles1/ojjdp/227729.pdf. The study, based on a nationally-representative sample of more than 7,000 young people ages 10-20, finds that in 2003 more than one-third (35 percent) of youth in juvenile facilities reported being isolated as a punishment and that more than half of those children were held for longer than 24 hours –amounting to more than 17,000 young people held in solitary confinement. *Id.* at 9. In response to a 2010 Department of Justice census (the most recent year for which there is data) of close to 4,000 juvenile facilities, more than 850 facilities indicated that they locked young people in their room in certain circumstances and more than 430 facilities reported locking young people alone for more than 4 hours at a time in certain circumstances. JUVENILE RESIDENTIAL FACILITY CENSUS CODEBOOK, US DEP'T OF JUSTICE, INTER-UNIVERSITY CONSORTIUM FOR POLITICAL AND SOCIAL RESEARCH 42, 156-57 (2010), *available at* http://www.icpsr.umich.edu/cgi-bin/file?comp=none&study=34449&ds=1&file_id=1097802.

[44] *See, e.g.*, *Reassessing Solitary Confinement: The Human Rights, Fiscal, and Public safety Consequences: Hearing Before the Subcomm. on the Constitution, Civil Rights, and Human Rights of the S. Comm. on the Judiciary*, 112th Cong. 4 (2012) (statement of Youth Law Center), *supra* note 39.

[45] *Id.*; *Reassessing Solitary Confinement: The Human Rights, Fiscal, and Public safety Consequences: Hearing Before the Subcomm. on the Constitution, Civil Rights, and Human Rights of the S. Comm. on the Judiciary*, 112th Cong. (2012) (statement of Center for Children's Law and Policy), *available at* http://www.cclp.org/documents/Conditions/Testimony%20of%20the%20Center%20for%20Children's%20Law%20and%20Policy%20-%20Reassessing%20Solitary%20Confinement.pdf. Department of Justice research found that half of young people held in isolation for 2 hours or longer reported that they had not spoken with a counselor or mental health professional while incarcerated (including while in isolation). DEP'T OF JUSTICE OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, CONDITIONS OF CONFINEMENT: FINDINGS FROM THE SURVEY OF YOUTH IN RESIDENTIAL PLACEMENT, *supra* note 42, at 19.

[46] Sandra Simkins, Marty Beyer, &Lisa M. Geis, *The Harmful Use of Isolation in Juvenile Facilities: The Need for Post-Disposition Representation*, 38 WASH. U. J.L. & POL'Y 241, 242 (2012), *available at* http://digitalcommons.law.wustl.edu/cgi/viewcontent.cgi?article=1019&context=wujlp.

[47] DEP'T OF JUSTICE OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, CONDITIONS OF CONFINEMENT: FINDINGS FROM THE SURVEY OF YOUTH IN RESIDENTIAL PLACEMENT, *supra* note 43, at 19.

[48] PERFORMANCE-BASED STANDARDS, REDUCING ISOLATION AND ROOM CONFINEMENT 4-6 (Sept. 2012), *available at* http://pbstandards.org/uploads/documents/PbS_Reducing_Isolation_Room_Confinement_201209.pdf; PERFORMANCE-BASED STANDARDS, SAFETY AND ACCOUNTABILITY FOR JUVENILE CORRECTIONS AND DETENTION FACILITIES 10 (2012), *available at* http://pbstandards.org/uploads/documents/PbS_Li_MarketingPacket.pdf.

[49] In California, many of the revelations have been brought about through litigation in *Farrell v. Cate*. In 2011, the California Office of Audits and Court Compliance issued a report on the Ventura Youth Correctional Facility in response to the Office of the Special Master's concerns related to the *Farrell* case. The report found that from January 1 through January 31, 2011, 184 juveniles were in restricted programs. They reported receiving between thirty minutes and three hours of out-of-room time, with one hour a day being the most commonly reported. From February 1 through February 28, 2011, ninety-three juveniles were placed in a restricted program, with sixteen of them there for three or more days. The average number of out-of-room minutes for these wards was seventy-four, well below the 180 that was required. MICHAEL K. BRADY, OFFICE OF AUDITS AND

COURT COMPLIANCE, REVIEW OF THE OFFICE OF SPECIAL MASTER'S IDENTIFIED CONCERNS: VENTURA YOUTH CORRECTIONAL FACILITY 2, 5-6 (Mar. 25, 2011), *available at* https://s3.amazonaws.com/s3.documentcloud.org/documents/203430/djj-audit.pdf.

[50] In Ohio, many of the revelations have been brought about through litigation in *S.H. v. Stickrath* (now *S.H. v. Reed*). In 2008, an expert in the case issued a report with data regarding multiple facilities, finding that: at Scioto Juvenile Correctional Facility, from May 1 through June 30, 2007, there were 267 "seclusion intervention events" that added up to 3,485 hours; at Indian River Juvenile Correctional Facility, from May to July of 2007, there were 143 youth in seclusion, each for at least seventy-two hours, for a total of 17,271 hours; at Mohican, which is now closed, four juveniles were in seclusion for more than seventy-two hours, for a total of 383 hours from May to July 2007; at Circleville, "[o]ver a recent, three-month period, only five events resulted in seclusion for over 36 hours and the incident reports show that serious misbehavior precipitated the event." On the system as a whole, Cohen reported that "[f]or DYS as a whole however, the unwarranted and excessive use of force along with questionable isolation/seclusion practices remains of serious concern." FRED COHEN, FINAL FACT-FINDING REPORT: S.H. V. STICKRATH 23-24, 29, 30, 38, 40 (Jan. 2008), *available at* http://www.dys.ohio.gov/DNN/LinkClick.aspx?fileticket=lDovnn7P96A%3D&tabid=81&mid=394. A settlement in the case was approved on May 21, 2008, which has led to annual reports on compliance with the stipulation. The most recent report was issued in 2012, which noted the number of "pre-hearing seclusion hours" in each facility: At Indian River, there was an average of 2,500 hours per month; at Circleville, there were 20,000 hours from July through September of 2011 and 6,500 for October through December of the same year; at Scioto, there were 2,300 hours from June through August of 2011 and 6,000 from September through November. WILL HARRELL & TERRY SHUSTER, S.H. V. REED 2012 ANNUAL REPORT 3, 7, 32 (Dec. 20, 2012), *available at* http://www.gbfirm.com/litigation/documents/28_S.H.v.Reed2012AnnualReport.pdf.

[51] In Texas, the revelations have come as a result of state records requests. According to the Texas Criminal Justice Coalition, in 2011, juveniles in Texas were secluded more than 37,000 times. These estimates are based on facility registry data provided by the Texas Juvenile Justice Department. While the underlying registry data did not specify the length of seclusion, other data provided suggest that thousands of seclusion events exceed twenty-four hours. BENET MAGNUSON, TEXAS CRIMINAL JUSTICE COALITION, HEAL THE INVISIBLE WOUNDS OF TRAUMATIZED YOUTH IN THE JUVENILE SYSTEM 2 & nn.5-6 (2012), *available at* http://texascjc.org/sites/default/files/publications/Healing%20Trauma%20and%20Reducing%20Seclusion%20for%20Youth%202012%20Fact%20Sheet_0.pdf. *See also* Cat McCulloch, *Youth Solitary Confinement in Texas: A Two-Step in the Right Direction*, ACLU BLOG OF RIGHTS (Apr. 23, 2013), http://www.aclu.org/blog/prisoners-rights-criminal-law-reform/youth-solitary-confinement-texas-two-step-right-direction.

[52] DEP'T JUSTICE OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, STANDARDS FOR THE ADMINISTRATION OF JUVENILE JUSTICE, Standard 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.")

[53] *See, e.g.*, JUVENILE DETENTION ALTERNATIVES INITIATIVE (JDAI), A GUIDE TO JUVENILE DETENTION REFORM: JUVENILE DETENTION FACILITY ASSESSMENT 2014 UPDATE 177 (2014), *available at* http://www.aecf.org/m/resourcedoc/aecf-juveniledetentionfacilityassessment-2014.pdf.

[54] 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; PERFORMANCE-BASED STANDARDS, REDUCING ISOLATION AND ROOM CONFINEMENT, *supra* note 48, at 2 ("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").

[55] 42 C.F.R. 482.13(e) (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 (Prohibiting isolation used for coercion, discipline, convenience or retaliation and allowing 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. The regulations also 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); 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 (Requiring that 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); DEP'T OF EDUCATION, RESTRAINT AND SECLUSION: RESOURCE DOCUMENT 11-23 (2012), *available at* http://www2.ed.gov/policy/seclusion/restraints-and-seclusion-resources.pdf (Stating 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).

[56] *See* PERFORMANCE-BASED STANDARDS, REDUCING ISOLATION AND ROOM CONFINEMENT, *supra* note 48 ("[V]ery 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.").

[57] *See* Massachusetts Dept. of Health & Human Services, Policies, § 3.03 Room Confinement, *available at* http://www.mass.gov/eohhs/gov/laws-regs/dys/policies/chapter-03-daily-living-policies.html.

[58] *See generally* ANNIE E. CASEY FOUNDATION, THE MISSOURI MODEL: REINVENTING THE PRACTICE OF REHABILITATING YOUTHFUL OFFENDERS (2010), available at http://www.aecf.org/~/media/Pubs/Initiatives/Juvenile%20Detention%20Alternatives%20Initiative/MOModel/MO_Fullreport_webfinal.pdf (describing the "Missouri Model" for juvenile justice and explaining why it has been successful); *Sanctuary in Juvenile Justice Settings*, THE SANCTUARY MODEL, http://www.sanctuaryweb.com/juvenile.php (providing links to descriptions of the implementation of the "Sanctuary Model" for juvenile justice in New York State).

[59] While no law is perfect, and there is still much work to be done, some states have taken steps toward limiting isolation in the juvenile justice system. In particular, the reporting requirements of the Nevada law comprise an excellent model for creating more accountability, while the statutes in Oklahoma and West Virginia provide examples of statutory language either banning punitive isolation or restricting its use, although in policy and practice at the agency level the West Virginia law has unfortunately been interpreted loosely. *See* Okla. Admin. Code, 377:35-11-4, Solitary Confinement. In Oklahoma solitary confinement is a "serious and extreme measure to be imposed only in emergency situations." Okla. Admin. Code § 377:35-11-4; W.V. Code §49-5-16a, Rules governing juvenile facilities; *cf.* W.V. Div. Juvenile Serv., Pol'y No. 330.00, Institutional Operations, at 9, *available at* http://www.wvdjs.state.wv.us/Portals/0/Files/330.00%20-%20Resident%20Discipline.pdf (permitting room confinement of up to ten days as a sanction for some offenses). Oklahoma's juvenile solitary confinement statute provides the most substantive protection of all existing state statutes on this issue. In West Virginia, solitary confinement may not be used to punish a juvenile and except for sleeping hours, a juvenile may not be locked alone in a room unless that juvenile is "not amenable to reasonable direction and control." *See* W. Va. Code §

49-5-16a; W.V. Div. of Juvenile Serv., Pol'y No. 330.00, Resident Discipline, Procedure 6, Category I Sanctions, *available at* http://www.wvdjs.state.wv.us/Portals/0/Files/330.00%20-%20Resident%20Discipline.pdf (permitting up to 10 days of room confinement for certain rule violations). Unfortunately, the implementation and enforcement of the punitive isolation ban in West Virginia is an ongoing challenge, as the state's administrative policies continue to permit children to be held in solitary confinement for disciplinary purposes. In Nevada, a child who is detained in a local or regional facility for the detention of children may be subjected to "corrective room restriction" only if all other less-restrictive options have been exhausted and only for listed purposes, and no child may be locked alone in a room for longer than 72 hours (though the law also requires thorough reporting of any incident that does exceed 72 hours). See Nev. Rev. Stat. § 62B. Alaska bans the isolation of juveniles for "punitive" reasons, but defines "secure confinement" as permissible for "disciplinary" reasons and when there is a safety or security risk. See Alaska Delinquency Rule 13 (Oct. 15, 2012). In Connecticut, officials supervising children who have been arrested may not place "any child at any time" in "solitary confinement," but the statute does not define "solitary confinement," and reports of children being held in room confinement in juvenile detention facilities in Connecticut continue to surface. *See* Conn. Gen. Stat. Ann. § 46b-133 (d)(5). For post-adjudication youth in Connecticut, the use of "seclusion" is governed by a statute and corresponding regulations requiring periodic authorizations and thirty-minute checks; while this law helps to protect children from unfettered use of solitary confinement and isolation, it still permits officials to hold children in isolation essentially indefinitely. *See* Conn. Gen. Stat. Ann. § 17a-16(d)(1) (West 2014); Conn. Agencies Regs. § 17a-16-11 (2014). Maine's statutory scheme includes segregation in the list of permissible punishments for adults, but not in the list for children; state law prohibits "confinement to a cell" and "segregation" as punishment in juvenile correctional facilities, but the state's rules permit "room restriction" for juveniles, even for minor rule violations. See Me. Rev. Stat. tit. 34-A § 3032 (5).

Other states have placed legislative, administrative, or court-ordered limits on the solitary confinement of youth, either in adult or juvenile facilities. *See, e.g.*, *supra* note 57 and accompanying text (discussing sweeping policy restrictions on the use of room confinement in Massachusetts); supra note 58 and accompanying text (describing the holistic and more humane management systems of the juvenile justice programs in New York State and Missouri); "Fighting Youth Solitary in the Courts" text box, p. 6. *See also* Consent Decree, C.B., et al. v. Walnut Grove Corr. Facility, No. 3:10-cv-663 (S.D. Miss. 2012) (prohibiting solitary confinement of children); Settlement Agreement, Raistlen Katka v. Montana State Prison, No. BDV 2009-1163 (Apr. 12, 2012), *available at* http://www.aclumontana.org/images/stories/documents/litigation/katkasettlement.pdf (limiting the use of isolation and requiring special permission); Mo. Sup. Ct. Rule 129.04 app. A § 9.5-9.6 (2009) (placing limits on "room restriction" exceeding twenty-four hours).

Other states have seen legislation introduced that would place limits and requirements on the isolation of children. Texas recently passed a bill that will require a statewide review of the state's use of solitary confinement in youth and adult facilities. *See* 2013 Tex. Sess. Law Serv. Ch. 1184 (S.B. 1003) (West). Legislators in New Hampshire also recently considered a study bill on the use of solitary confinement, which was introduced in 2013 and reintroduced the following year. See N.H. H.B. 480-FN (2014), http://www.gencourt.state.nh.us/bill_status/Bill_docket.aspx?lsr=794&sy=2014&sortoption=&txtsessionyear=2014&txttitle=solitary%20confinement. A proposed bill in California would have imposed stricter substantive limits on the use of isolation in juvenile facilities, with a focus on mental health. See Cal. S.B. 61 (2013), http://www.leginfo.ca .gov/pub/13-14/bill/sen/sb_0051-0100/sb_61_bill_20130528_amended_sen_v96.pdf. *See also* Appendix 1 (providing a chart that describes existing state statutes limiting juvenile solitary confinement).

[60] Coalition for Juvenile Justice, The JJDPA: Federal Juvenile Justice and Delinquency Prevention Act, 2007, available at: www.juvjustice.org/media/.../CJJ%20Hill%20Packet--Handouts.doc.

[61] The regulations include detailed requirements for the prevention, detection, and investigation of sexual abuse in both adult and juvenile correctional facilities. *See* Press Release, Department of Justice, Justice Department Releases Final Rule to Prevent, Detect and Respond to Prison Rape (May 17, 2012), *available at*

http://www.justice.gov/opa/pr/2012/May/12-ag-635.html (summary of regulations).

[62] *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.

[63] *See* 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. 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. *See also* 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. PREA compliance and state governor certification, and the resulting withholding of funds, is an ongoing process. In February 2014, the Department of Justice issued a letter to state governors reminding them of the upcoming first deadline for this required certification, May 15, 2014, and of the Fiscal Year 2014 funds that could be cut off if certification is not received. *See* Letter from Karol V. Mason, Assistant Attorney General, Office of Justice Programs, to State Governors (Feb. 11, 2014), *available at* http://www.prearesourcecenter.org/sites/default/files/library/preagovlettersigned2-11-14.pdf. For recent status updates on PREA compliance in the states, see, for example, Rebecca Boone, *Some States Opt Out of Federal Prison Rape Law*, ASSOCIATED PRESS, May 23, 2014, *available at* http://www.wral.com/some-states-opting-out-of-federal-prison-rape-law/13671389/.

[64] Letter from Robert L. Listenbee, *supra* note 4, at 3; Letter from Thomas E. Perez, Assistant Att'y Gen., to Hon. Mitch Daniels, Governor, State of Indiana, Investigation of the Pendleton Juvenile Correctional Facility 8 (Aug. 22, 2012), *available at* http://www.justice.gov/crt/about/spl/documents/pendleton_findings_8-22-12.pdf. (Finding excessively long periods of isolation of suicidal youth. Stating that, "the use of isolation often not only escalates the youth's sense of alienation and despair, but also further removes youth from proper staff observation. . . . Segregating suicidal youth in either of these locations is punitive, anti-therapeutic, and likely to aggravate the youth's desperate mental state."); Letter from Thomas E. Perez, Assistant Att'y Gen., to Hon. Chairman Moore, Leflore County Board of Supervisors, Investigation of the Leflore County Juvenile Detention Center 2, 7 (Mar. 31, 2011), *available at* http://www.justice.gov/crt/about/spl/documents/LeFloreJDC_findlet_03-31-11.pdf. (Finding that isolation is used excessively for punishment and control, and the facility has unfettered discretion to impose such punishment without process.); Letter from Thomas E. Perez, Assistant Att'y Gen., to Hon. Michael Claudet, President, Terrebonne Parish, Terrebonne Parish Juvenile Detention Center, Houma, Louisiana 12-13 (Jan.18, 2011), *available at* http://www.justice.gov/crt/about/spl/documents/TerrebonneJDC_findlet_01-18-11.pdf. (Finding excessive use of isolation as punishment or for control – at four times the national average – and that the duration of such sanctions is far in excess of acceptable practice for such minor violations, and violates youths' constitutional rights. Stating, "Isolation in juvenile facilities should only be used when the youth poses an imminent danger to staff or other youth, or when less severe interventions have failed."); Letter from Thomas E. Perez, Assistant Att'y Gen., to Hon. Mitch Daniels, Governor, State of Indiana, Investigation of the Indianapolis Juvenile Correctional Facility, Indianapolis, Indiana 21-22 (Jan. 29, 2010), *available at* http://www.justice.gov/crt/about/spl/documents/Indianapolis_findlet_01-29-10.pdf (finding that facility subjected youth to excessively long periods of isolation without adequate process and stating, "generally accepted juvenile justice practices dictate that [isolation] should be used only in the most extreme circumstances and only when less restrictive interventions have failed or are not practicable"); Letter from Grace Chung Becker, Acting Assistant Att'y Gen., to Yvonne B. Burke, Chairperson, Los Angeles County Board of Supervisors, Investigation of the Los Angeles County Probation Camps 42-45 (Oct. 31, 2008), *available at* http://www.justice.gov/crt/about/spl/documents/lacamps_findings_10-31-08.pdf. (Finding inadequate supervision of youth isolated in seclusion or on suicide watch); Letter from Wan J. Kim, Assistant Att'y Gen., to Marion County Executive Committee Members and County Council President, Marion County Juvenile Detention Center, Indianapolis, Indiana 10-12 (Aug. 6, 2007), *available at* http://www.justice.gov/crt/about/spl/documents

/marion_juve_ind_findlet_8-6-07.pdf. (Finding that isolation practices substantially departed from generally acceptable professional standards and that use of isolation was excessive and lacked essential procedural safeguards. Stating, "Regardless of the name used to describe it, the facility excessively relies on isolation as a means of attempting to control youth behavior" and that "Based on the review of housing assignments in January and February 2007, on any given day, approximately 15 to 20 percent of the youth population was in some form of isolation."); Letter from Bradley J. Scholzman, Acting Assistant Att'y Gen., to Hon. Linda Lingle, Governor, State of Hawaii, Investigation of the Hawaii Youth Correctional Facility, Kailua, Hawaii 17-18 (Aug. 4, 2005), *available at* http://www.justice.gov/crt/about/spl/documents/hawaii_youth_findlet_8-4-05.pdf (finding excessive use of disciplinary isolation without adequate process); Letter from Alexander Acosta, Assistant Atty Gen., to Hon. Jennifer Granholm, Governor, State of Michigan, CRIPA Investigation of W.J. Maxey Training School, Whitmore Lake, MI 4-5 (Apr. 19, 2004), *available at* http://www.justice.gov/crt/about/spl/documents/granholm_findinglet.pdf (finding excessive use of isolation for disciplinary purposes, often without process and for arbitrary reasons and durations); Letter from Thomas E. Perez, Assistant Att'y Gen., to Janet Napolitano, Governor, State of Arizona, CRIPA Investigation of Adobe Mountain School and Black Canyon School in Phoenix, Arizona; and Catalina Mountain School in Tuscon, Arizona (Jan. 23, 2004), *available at* http://www.justice.gov/crt/about/spl/documents/ariz_findings.pdf (finding that youth are kept in isolation for extended and inappropriate periods of time that fly in the face of generally accepted professional standards).

[65] Ian Kysel, *Ban Solitary Confinement for Youth in the Care of the Federal Government*, THE HILL (Apr. 11, 2013), *available at* http://thehill.com/blogs/congress-blog/judicial/293395-ban-solitary-confinement-for-youth-in-care-of-the-federal-government.

[66] *Roper v. Simmons*, 453 U.S. 551 (2005).

[67] *Graham v. Florida*, 130 S.Ct. 2011 (2010); *Miller v. Alabama*, 132 S.Ct. 2455 (2012).
[68] *J.D.B. v. North Carolina*, 564 U.S. __ (2011).

[69] *Schall v. Martin*, 467 U.S. 253, 269 (1984) (Holding that the state has a legitimate interest in detaining youth prior to delinquency proceedings but that their conditions of confinement must not amount to punishment.). Notably, some courts apply both the Substantive Due Process protections as well as the prohibition against Cruel and Unusual punishment to conditions claims of post-adjudication youth. *Morgan v. Sproat*, 432 F.Supp. 1130, 1135 (S.D.Miss. 1977).

[70] *Youngberg v. Romeo*, 457 U.S. 307, 323 (1982) (the case, while focused on the treatment of persons held in mental health facilities, has repeatedly been used to evaluate conditions of confinement for youth).

[71] *Id.*

[72] *County of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998).

[73] *See, e.g.*, *D.B. v. Tewksbury,* 545 F.Supp. 896, 905 (D.Or.1982) (ruling that "[p]lacement of younger children in isolation cells as a means of protecting them from older children" violates plaintiffs' Due Process rights under the fourteenth amendment."); *Inmates of Boys' Training School v. Affleck*, 346 F.Supp. 1354 (D.C.R.I.1972); *Lollis v. N.Y. State Dep't of Soc. Servs.,* 322 F.Supp. 473, 480-82 (S.D.N.Y.1970).

[74] *R.G. v. Koller*, 415 F. Supp. 2d 1129, 1155-56 (D. Haw. 2006) (Concluding that, "The expert evidence before the court uniformly indicates that long-term segregation or isolation of youth is inherently punitive and is well outside the range of accepted professional practices… Defendants' practices are, at best, an excessive, and therefore unconstitutional, response to legitimate safety needs of the institution."); *Hughes v. Judd*, 8:12–cv–

568–T–23MAP, 2013 WL 1821077 (M.D.Fl. 2013); *Troy D. and O'Neill S. v. Mickens et al.,* Civil Action No.: 1:10-cv-02902-JEI-AMD (D. N.J. 2013).

[75] *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).

[76] *Graham v. Florida*, 130 S.Ct. 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).

[77] 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).

[78] 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. Treaties signed and ratified by the United States are the "supreme Law of the Land." U.S. CONST. art. VI cl. 2.

[79] 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.

[80] 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").

[81] 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).

[82] 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").

[83] Press Release, Annex to the Press Release Issued at the Close of the 147th Session (Apr. 5, 2013), *available at* http://www.oas.org/en/iachr/media_center/PReleases/2013/023A.asp (incorporating the definition of the United Nations Special Rapporteur on Torture, Mr. Juan Mendez, into the IACHR *corpus juris*).

[84] 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.

[85] 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, Standard 4.52, *supra* note 52 ("[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 DETENTION ALTERNATIVES INITIATIVE (JDAI), A GUIDE TO JUVENILE DETENTION REFORM: JUVENILE DETENTION FACILITY ASSESSMENT 2014 UPDATE 177 (2014), *available at* http://www.aecf.org/m/resourcedoc/aecf-juveniledetentionfacilityassessment-2014.pdf (prohibiting isolation of juveniles except in cases of imminent threats to safety and security, and then never for longer than four hours).

# Appendix 1: The Statutory Landscape on Isolation and Solitary Confinement of Children in Juvenile Facilities

| States Which Prohibit Juvenile Solitary Confinement by Statute | | |
|---|---|---|
| **State** | **Status** | **Text** |
| Alaska | Apparent ban on punitive juvenile solitary confinement | "A juvenile may not be confined in solitary confinement for punitive reasons." Alaska Delinq. R. 13 (Oct. 15, 2012). However, the Alaska Administrative Code defines "secure confinement" as including isolation "for the purposes of safety, security, or discipline." Alaska Admin. Code tit. 7 §§ 52.900(16). |
| Connecticut | • Ban on juvenile "solitary confinement" of youth in detention (but no definition of the term, allowing for ambiguity in agency policy)<br>• Limits on/checks required for "seclusion" in post-adjudication juvenile facilities except when youth is out of control and/or dangerous | • Children in detention after arrest: "...nor shall any child at any time be held in solitary confinement." Conn. Gen. Stat. Ann. § 46b-133 (2012). Unfortunately, the statute does not define "solitary confinement," and reports of children being held in room confinement in juvenile detention facilities in Connecticut continue to surface.<br>• Children in juvenile correctional facilities, post-adjudication: "Seclusion" must be authorized periodically; youth must be checked every thirty minutes. However, with proper repeated authorization officials may continue to hold children in isolation. *See* Conn. Gen. Stat. Ann. § 17a-16(d)(1) (West 2014); Conn. Agencies Regs. § 17a-16-11 (2014). |
| Maine | Prohibition on "confinement to a cell" and "segregation" as punishment at juvenile correctional facilities | "A. Punishment at *all correctional facilities, except juvenile correctional facilities*, may consist of warnings, loss of privileges, restitution, monetary sanctions, labor at any lawful work, *confinement to a cell, segregation* or a combination of these.<br>B. Punishment at *juvenile correctional* facilities and any detention facility may consist of warnings, restitution, labor at any lawful work and loss of privileges." Me. Rev. Stat. tit. 34-A § 3032 (5) (2006) (emphasis added). |
| Nevada | Juvenile solitary confinement requires special approval and monitoring, is only allowed in limited circumstances after alternatives have been exhausted, and may not last longer than 72 hours | "1. A child who is detained in a local or regional facility for the detention of children may be subjected to corrective room restriction only if all other less-restrictive options have been exhausted and only for the purpose of: (a) Modifying the negative behavior of the child; (b) Holding the child accountable for a violation of a rule of the facility; or (c) Ensuring the safety of the child, staff or others or ensuring the security of the facility." Nev. Rev. Stat. § 62B (2013). The statute also prohibits any "corrective room restriction" longer than 72 hours and establishes a monthly reporting regime. |

| | | |
|---|---|---|
| Oklahoma | Ban on punitive juvenile solitary confinement | "A child shall not be punished by . . . solitary confinement" in facilities operated by or contracted by the Office of Juvenile Affairs. Okla. Stat. tit. 10A, § 2-7-603(A) (2013). Solitary confinement is defined as "the involuntary removal of a juvenile from contact with other persons by confinement in a locked room, including the juvenile's own room, except during normal sleeping hours." Okla. Admin. Code § 377:35-11-4(a) (2014). The state Administrative Code elaborates on the emergency conditions under which solitary confinement of a juvenile is permissible. |
| West Virginia | Apparent statutory ban on punitive solitary confinement of juveniles and on "lock[ing a youth] alone in a room unless that juvenile is not amenable to reasonable direction and control" (though state administrative policy permits room confinement as a sanction). | "(1) A juvenile may not be punished by physical force, deprivation of nutritious meals, deprivation of family visits or imposition of solitary confinement," and "(3) Except for sleeping hours, a juvenile in a state facility may not be locked alone in a room unless that juvenile is not amenable to reasonable direction and control." W. Va. Code § 49-5-16a (1998). *But see* W.V. Div. of Juvenile Serv., Pol'y No. 330.00, Resident Discipline, Procedure 6, Category I Sanctions (permitting room confinement of a juvenile for up to 10 days as a sanction for certain offenses). |

| Other State Legislative Initiatives and Pending Legislation | | |
|---|---|---|
| **State** | **Status** | **Text** |
| California | Legislation introduced in 2013 would ban juvenile solitary confinement except in limited cases. | "This bill would provide that a minor or ward who is detained in, or sentenced to, any juvenile facility or other secure state or local facility shall not be subject to solitary confinement, as defined, unless the minor or ward poses an immediate and substantial risk of harm to others or to the security of the facility, and all other less-restrictive options have been exhausted." Cal. S.B. 61 (2013). |
| New Hampshire | Legislation reintroduced in 2014 would place an absolute ban on solitary confinement of people younger than 18. | "(c) Solitary confinement shall not be used as a form of housing for inmates under the age of 18 years." N.H. H.B. 480-FN (2013). |
| Texas | Amidst several proposed reforms, Texas passed legislation to review the use of solitary confinement in adult and juvenile facilities. | "SECTION 2. DUTIES OF TASK FORCE. The task force shall: (1) conduct a comprehensive review of administrative segregation and seclusion policies and practices in facilities in this state." A Review of and Report Regarding the Use of Adult and Juvenile Administrative Segregation in Facilities in this State, 2013 Tex. Sess. Law Serv. Ch. 1184 (S.B. 1003) (West). |

ACLU
AMERICAN CIVIL LIBERTIES UNION

# STOP SOLITARY

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

## Solitary Confinement and Isolation in Juvenile Detention and Correctional Facilities

### The United States Subjects Children to Solitary Confinement

Before they are old enough to get a driver's license or vote, some children in America are held in solitary confinement for hours, days, and even months at a time. On any given day in the United States, more than 70,000 young people are held in state or federal juvenile detention facilities.[1] The use of isolation, including solitary confinement, in these facilities is widespread.[2] Officials often claim they need solitary confinement to separate youth after a fight, to discipline them when they act out, or for administrative reasons.[3] Both protective and punitive isolation practices frequently involve confining youth alone in a cell for several hours at a time, sometimes for 22-24 hours per day, sometimes for days, weeks, or months. Extreme social isolation is harmful in itself; it also frequently coincides with restricted visitation with family members, limited educational materials, and curtailed physical exercise privileges.[4]

### Solitary Confinement Harms Children

Solitary confinement is well known to harm previously healthy adults, placing any prisoner at risk of grave psychological damage. Children, who have special developmental needs, are even more vulnerable to the harms of prolonged isolation.

- **Psychological Damage:** Mental health experts agree 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]
- **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. According to research published by the Department of Justice, more than 50% of all youth suicides in juvenile facilities occurred while young people were isolated alone in their rooms, and that more than 60% of young people who committed suicide in custody had a history of being held in isolation.[7]
- **Denial of Education and Rehabilitation:** Access to regular meaningful exercise, to reading and writing materials, and to adequate mental health care—the very activities that could help troubled youth grow into healthy and productive citizens—is hampered when youth are confined in isolation.[8] Failure to provide appropriate programming for youth hampers their ability to grow and develop normally, to access legal services, and to contribute to society upon their release.[9]
- **Stunted Development:** Young people's brains and bodies are developing, placing youth at risk of physical and psychological harm when healthy development is impeded.[10] Children have a special need for social stimulation.[11] And since many children in the juvenile justice system have disabilities or histories of trauma and abuse, solitary confinement can be all the more harmful to the child's future ability to lead a productive life.[12] Youth also need exercise and activity to support growing muscles and bones.[13]

### 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.[14] 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.[15] According to the United Nations Special Rapporteur on Torture, solitary confinement of youth is cruel, inhumane and degrading treatment and in some cases, torture.[16]

### There are Better Solutions

**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.[17] 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 well known harms, prolonged isolation serves no correctional purpose.[18] There is no research to support the prolonged isolation of children as a therapeutic tool or to promote positive behavior. In fact, interactive treatment programs are more successful at reducing behavior problems and mental health problems in youth, while isolation provokes and worsens these problems.[19]

**States are safely and successfully limiting the solitary confinement of juveniles in custody.** Reports indicate that state juvenile justice agencies have implemented policy changes in recent years increasingly limiting isolation practices, with a majority of state agencies limiting isolation to a maximum of five days.[20] Six states—Alaska, Connecticut, Maine, Nevada, Oklahoma, and West Virginia—by statute have limited certain forms of isolation in juvenile detention facilities.[21] In some of these states, lawmakers have passed substantive bans on punitive isolation or on isolation for periods longer than 72 hours. In others, such as Nevada, strict reporting requirements have been implemented, to monitor the system-wide use of isolation. Meanwhile, other states have adopted more systemic models that eliminate the need for isolation. New York, for instance, has moved completely away from using isolation by implementing the "Sanctuary Model," which emphasizes trauma-informed care in lieu of punitive responses to youth misbehavior.[22]

### Conclusion

Solitary confinement and isolation of children is psychologically and developmentally damaging and can result in long-term problems and even suicide. Laws, policies, and practices must be reformed to ensure that conditions in the juvenile justice system are effective and safe—and that they prioritize protection and rehabilitation.

*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. www.aclu.org/stopsolitary.*

**Endnotes**

[1] Press Release, Annie E. Casey Foundation, Youth Incarceration Sees Dramatic Drop in the United States (Feb. 27, 2013), available at http://www.aecf.org/Newsroom/NewsReleases/HTML/2013/YouthIncarcerationDrops.aspx. This rate has declined in recent years. Youth Incarceration in the United States, ANNIE E. CASEY FOUNDATION (Feb. 27, 2013), available at http://www.aecf.org/resources/reducing-youth-incarceration-in-the-united-states/. Notably, Department of Justice data also suggest that close to 100,000 children are held in adult jails and prisons each year. Human Rights Watch and the American Civil Liberties Union recently estimated that in each of the last 5 years, between 93,000 and 137,000 young people under 18 were held in adult jails and that, in 2011, more than 2,200 young people under age 18 were held in adult prisons. 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] U.S. DEP'T OF JUSTICE OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, CONDITIONS OF CONFINEMENT: FINDINGS FROM THE SURVEY OF YOUTH IN RESIDENTIAL PLACEMENT (May 2010), *available at* https://www.ncjrs.gov/pdffiles1/ojjdp/227729.pdf. The study, based on a nationally-representative sample of more than 7,000 young people ages 10-20, finds that in 2003 more than one-third (35 percent) of youth in juvenile facilities reported being isolated as a punishment and that more than half of those children were held for longer than 24 hours—amounting to more than 17,000 young people held in solitary confinement. *Id.* at 9. In response to a 2010 Department of Justice census (the most recent year for which there is data) of close to 4,000 juvenile facilities, more than 850 facilities indicated that they locked young people in their room in certain circumstances and more than 430 facilities reported locking young people alone for more than 4 hours at a time in certain circumstances. JUVENILE RESIDENTIAL FACILITY CENSUS CODEBOOK, US DEP'T OF JUSTICE, INTER-UNIVERSITY CONSORTIUM FOR POLITICAL AND SOCIAL RESEARCH 42, 156-57 (2010), *available at* http://www.icpsr.umich.edu/cgi-bin/file?comp=none&study=34449&ds=1&file_id=1097802.

[3] *See Reassessing Solitary Confinement: The Human Rights, Fiscal, and Public Safety Consequences: Hearing Before the Subcomm. on the Constitution, Civil Rights, and Human Rights of the S. Comm. on the Judiciary*, 112th Cong. 4 (2012) (statement of Youth Law Center), *available at* http://solitarywatch.com/wp-content/uploads/2012/06/youth-law-center2.pdf.

[4] *Id.*; *Reassessing Solitary Confinement: The Human Rights, Fiscal, and Public Safety Consequences: Hearing Before the Subcomm. on the Constitution, Civil Rights, and Human Rights of the S. Comm. on the Judiciary*, 112th Cong. (2012) (statement of the Center for Children's Law and Policy), *available at* http://solitarywatch.com/wp-content/uploads/2012/06/center-for-childrens-law-and-policy.pdf. DOJ research found that half of young people held in isolation for 2 hours or longer reported that they had not spoken with a counselor or mental health professional while incarcerated (including while in isolation). U.S. DEP'T OF JUSTICE OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, CONDITIONS OF CONFINEMENT: FINDINGS FROM THE SURVEY OF YOUTH IN RESIDENTIAL PLACEMENT 19 (May 2003), available at https://www.ncjrs.gov/pdffiles1/ojjdp/227729.pdf.

[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).

[7] *Id.* at 27; *see also* 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. The study by Lindsay M. Hayes of the Department of Justice 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. HAYES, *supra* note **Error! Bookmark not defined.**, at 42, *citing* LISA M. BOESKY, JUVENILE OFFENDERS WITH MENTAL HEALTH DISORDERS: WHO ARE THEY AND WHAT DO WE DO WITH THEM? 210 (2002).

[8] *See* Statement of the Center for Children's Law and Policy, *supra* note 4; DEP'T OF JUSTICE OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, CONDITIONS OF CONFINEMENT: FINDINGS FROM THE SURVEY OF YOUTH IN RESIDENTIAL PLACEMENT, *supra* note 4, at 19.

[9] 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.

[10] AM. ACAD. OF CHILD & ADOLESCENT PSYCHIATRY, POLICY STATEMENTS: SOLITARY CONFINEMENT OF JUVENILE OFFENDERS, *supra* note 6; Lawrence Steinberg et al., *The Study of Development Psychopathology in Adolescence: Integrating affective neuroscience with the study of context*, *in* DEVELOPMENTAL PSYCHOPATHOLOGY 710 (DANTE CICCHETTI & DONALD J. COHEN EDS., 2d ed. 2006); Jay N. Giedd, *Structural Magnetic Resonance Imaging of the Adolescent Brain*, 1021 ANNALS N.Y. ACAD. SCI. 83 (2004).

[11] Laurence Steinberg et al., *Age Differences in Future Orientation and Delay Discounting*, 80 CHILD. DEV. 28 (2009); 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).

[12] American Academy of Pediatrics, Policy Statement: Health Care for Youth in the Juvenile Justice System, 128 PEDIATRICS 1219, 1223-24 (2011), *available at* http://pediatrics.aappublications.org/content/early/2011/11/22/peds.2011-1757.full.pdf (reviewing the literature on the prevalence of mental health problems among incarcerated youth); OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, NATURE AND RISK OF

VICTIMIZATION: FINDINGS FROM THE SURVEY OF YOUTH IN RESIDENTIAL PLACEMENT 4 (June 2013), *available at* http://www.ojjdp.gov/pubs/240703.pdf (finding that 56 percent of youth in custody experience one or more types of victimization while in custody, including sexual assault, theft, robbery, and physical assault).

[13] Ctrs For Disease Control and Prevention, *How Much Physical Activity do Children Need?*, *available at* 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.

[14] *See, e.g.*, *Graham v. Florida*, 130 S.Ct. 2011 (2010); *Roper v. Simmons*, 453 U.S. 551 (2005). In addition to these Supreme Court opinions on the difference between youth and adults in the context of crime and punishment, courts are increasingly hearing cases specifically about juveniles in solitary confinement. Recently, for instance, two young men who experienced mental health deterioration while held in solitary confinement in juvenile facilities in New Jersey prevailed against the state in a $400,000 settlement. See Jeff Goldman, *N.J. To Pay Half of $400K Settlement over Solitary Confinement of Juveniles*, THE STAR-LEDGER, Dec. 10, 2013.

[15] 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.

[16] 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.

[17] *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.santa-cruz.ca.us/prb/media%5CGoalsStandardsOutcome%20Measures.pdf; JUVENILE DETENTION ALTERNATIVES INITIATIVE (JDAI), A GUIDE TO JUVENILE DETENTION REFORM: JUVENILE DETENTION FACILITY ASSESSMENT 2014 UPDATE 177 (2014), *available at* http://www.aecf.org/m/resourcedoc/aecf-juveniledetentionfacilityassessment-2014.pdf ("Staff never use room confinement for discipline, punishment, administrative convenience, retaliation, staffing shortages, or reasons other than a temporary response to behavior that threatens immediate harm to a youth or others."); 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.

[18] *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.

[19] Simkins, *supra* note 6, at 257-58.

[20] PERFORMANCE-BASED STANDARDS, REDUCING ISOLATION AND ROOM CONFINEMENT 4-6 (Sept. 2012), *available at* http://pbstandards.org/uploads/documents/PbS_Reducing_Isolation_Room_Confinement_201209.pdf. The report states, "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." *Id.* at 4.

[21] *See* Okla. Admin. Code, 377:35-11-4, Solitary Confinement (noting that solitary confinement of youth is a "serious and extreme measure to be imposed only in emergency situations"); W.V. Code §49-5-16a, Rules governing juvenile facilities (solitary confinement may not be used to punish a juvenile and except for sleeping hours, a juvenile may not be locked alone in a room unless that juvenile is "not amenable to reasonable direction and control."); *but see* W.V. Div. Juvenile Serv., Pol'y No. 330.00, Institutional Operations, at 9, *available at* http://www.wvdjs.state.wv.us/Portals/0/Files/330.00%20-%20Resident%20Discipline.pdf (permitting up to ten days room confinement as a sanction for some offenses); Nev. Rev. Stat. § 62B (children may be subjected to "corrective room restriction" only if all other less-restrictive options have been exhausted and only for listed purposes, and no child may be locked alone in a room for longer than 72 hours); Alaska Delinquency Rule 13 (Oct. 15, 2012) (banning isolation of juveniles for "punitive" reasons, but defining "secure confinement" as permissible for "disciplinary" reasons and when there is a safety or security risk); Conn. Gen. Stat. Ann. § 46b-133 (d)(5) (officials supervising children who have been arrested may not place "any child at any time" in "solitary confinement," but the statute does not define "solitary confinement"); Conn. Gen. Stat. Ann. § 17a-16(d)(1) (West 2014); Conn. Agencies Regs. § 17a-16-11 (2014) (for post-adjudication youth in Connecticut, the use of "seclusion" is governed by a statute and corresponding regulations requiring periodic authorizations and thirty-minute checks); Me. Rev. Stat. tit. 34-A § 3032 (5) (including segregation in the list of permissible punishments for adults, but not in the list for children; however, while state law prohibits "confinement to a cell" and "segregation" as punishment in juvenile correctional facilities, the state's rules permit "room restriction" for juveniles, even for minor rule violations). California, Texas, and New Hampshire have also recently considered legislation to limit or ban the solitary confinement of children, and Texas is conducting a full review of the practice. See 2013 Tex. Sess. Law Serv. Ch. 1184 (S.B. 1003) (West); Cal. S.B. 61 (2013); N.H. H.B. 480-FN (2013). For other state reforms, see, for example, Consent Decree, C.B., et al. v. Walnut Grove Corr. Facility, No. 3:10-cv-663 (S.D. Miss. 2012) (prohibiting solitary confinement of children); Settlement Agreement, Raistlen Katka v. Montana State Prison, No. BDV 2009-1163 (Apr. 12, 2012) (limiting the use of isolation and requiring special permission); Mo. Sup. Ct. Rule 129.04 app. A § 9.5-9.6 (2009) (placing limits on "room restriction" exceeding twenty-four hours).

[22] *See* Sanctuary Network, The Sanctuary Model, http://www.sanctuaryweb.com/network.php (last visited Mar. 12, 2014) (listing systems and facilities that have adopted the Sanctuary Model for juvenile justice).

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# Youth Solitary Confinement: International Law and Practice

## 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 **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 especially vulnerable to the harmful effects of solitary confinement and should never be subjected 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.

***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.*** **www.aclu.org/stopsolitary/**

## 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 though 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.* at 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.

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

## The Impact of PREA on Isolation Practices

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

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

## The Risk of Sexual Assault

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

## The Harms of Solitary Confinement

Juvenile justice facilities may place children in solitary confinement or other forms of isolation for a range of reasons, including protection from others. But this practice, which can harm even healthy adults, is particularly dangerous for growing bodies and minds. Even a short period of isolation can do grave damage to a growing child. Solitary confinement can cause or exacerbate mental health problems and prevent young people from receiving adequate programming or rehabilitation services, including education.[6] The practice 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 from Physical Danger and Limits Solitary Confinement

In 2003, Congress passed PREA in response to the high rates of sexual assault across all forms of detention facilities in the United States.[9] The final PREA regulations implementing the law provide a range of protections for young offenders. States that do not comply with PREA face a 5% reduction in federal corrections funding unless the Governor certifies that those funds will be used to enable compliance in the future.[10] In February 2014, the Department of Justice issued a letter to state governors reminding them of the upcoming first deadline of May 15, 2014, for this required certification, and of the Fiscal Year 2014 funds that could be cut off if certification is not received.[11]

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

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

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

## Reforming Youth Isolation and Solitary Confinement Is an Essential Aspect of PREA Compliance

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

## Endnotes

[1] Press Release, Annie E. Casey Foundation, Youth Incarceration Sees Dramatic Drop in the United States (Feb. 27, 2013), *available at* http://www.aecf.org/Newsroom/NewsReleases/HTML/2013/YouthIncarcerationDrops.aspx. This rate has declined in recent years. *See* Youth Incarceration in the United States, ANNIE E. CASEY FOUNDATION (Feb. 27, 2013), *available at* http://www.aecf.org/~/media/Pubs/Initiatives/KIDS%20COUNT/R/ReducingYouthIncarcerationInfo/YouthIncarcerationInfographicPrint13.pdf. Notably, Department of Justice data also suggest that close to 100,000 children are held in *adult* jails and prisons each year. Human Rights Watch and the American Civil Liberties Union recently estimated that in each of the last 5 years, between 93,000 and 137,000 young people under 18 were held in adult jails and that, in 2011, more than 2,200 young people under age 18 were held in adult prisons. *See* HUMAN RIGHTS WATCH & THE AMERICAN CIVIL LIBERTIES UNION, GROWING UP LOCKED DOWN: YOUTH IN SOLITARY CONFINEMENT IN JAILS AND PRISONS ACROSS THE UNITED STATES (2012), *available at* http://www.aclu.org/growinguplockeddown.

[2] NAT'L PRISON RAPE ELIMINATION COMM'N., NAT'L PRISON RAPE ELIMINATION COMM'N. REP. 16 (2009), *available at* https://www.ncjrs.gov/pdffiles1/226680.pdf.

[3] *See id.* at 141-43.

[4] *See id.* at 17 (reporting the BJS findings of a rate of 2.91/1,000 sexual abuse rate in adult facilities and a rate of 16.8/1,000 in juvenile facilities).

[5] *Id.* at 145.

[6] *See Reassessing Solitary Confinement: The Human Rights, Fiscal, and Public Safety Consequences: Hearing Before the Subcomm. on the Constitution, Civil Rights, and Human Rights of the S. Comm. on the Judiciary*, 112th Cong. 4 (2012), *available at* http://solitarywatch.com/wp-content/uploads/2012/06/youth-law-center2.pdf (statement of Youth Law Center).

[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] Bureau of Justice Statistics data gathered since the Act's passage is available on the DOJ website here: http://bjs.ojp.usdoj.gov/index.cfm?ty=tp&tid=20.

[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] Letter from Karol V. Mason, Assistant Attorney General, Office of Justice Programs, to State Governors (Feb. 11, 2014), *available at* http://www.prearesourcecenter.org/sites/default/files/library/preagovlettersigned2-11-14.pdf.

[12] The regulations include detailed requirements for the prevention, detection, and investigation of sexual abuse in both adult and juvenile correctional facilities. *See* Press Release, Department of Justice, Justice Department Releases Final Rule to Prevent, Detect and Respond to Prison Rape (May 17, 2012), *available at* http://www.justice.gov/opa/pr/2012/May/12-ag-635.html (summary of regulations).

[13] 28 C.F.R. § 115.342(b) (2012) (protective isolation); 28 C.F.R. § 115.378(b) (2012) (disciplinary isolation), *available at* http://www.ojp.usdoj.gov/programs/pdfs/prea_final_rule.pdf.

[14] 28 C.F.R. § 115.342 (b) (2012).

[15] 28 C.F.R. § 115.342(b) (2012) (protective isolation); 28 C.F.R. § 115.378(b) (2012) (disciplinary isolation).

[16] 28 C.F.R. § 115.342(b) (2012) (protective isolation); 28 C.F.R. § 115.378(b) (2012) (disciplinary isolation).

[17] 28 C.F.R. § 115.342(b) (2012) (protective isolation); 28 C.F.R. § 115.378(b) (2012) (disciplinary isolation).

[18] 28 C.F.R. § 115.342(b) (2012) (protective isolation); 28 C.F.R. § 115.378(b) (2012) (disciplinary isolation).

[19] 28 C.F.R. § 115.342 (i) (2012) (requiring that every 30 days the facility provide a review to determine whether there is a "continuing need for separation").

[20] 28 C.F.R. § 115.342 (h) (2012).

[21] 28 C.F.R. § 115.313 (c) (2012) (requiring 1 security staff member per 8 juvenile residents during waking hours, and 1:16 during sleeping hours).

[22] *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.").

# Section V: 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.

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, Administrative Reforms to Stop Youth Solitary Confinement: Strategies for Advocates**, lays out strategies for pursuing administrative reform on youth solitary confinement in juvenile detention and correctional facilities. This White Paper will be useful to advocates in thinking through specific policy reforms based on real models.

- A **Summary of National Standards Restricting the Solitary Confinement of Youth** 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 (AACAP)**, which recommends a ban on solitary confinement, shows the clear consensus of psychiatric experts.

- The **Performance-based Standards Learning Institute** publication **Reducing Isolation and Room Confinement**, which summarizes nationally recognized best practices and reforms.

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# White Paper
# Administrative Reforms to Stop Youth Solitary Confinement
## *Strategies for Advocates*

Every day, in juvenile detention and correctional facilities across the United States, children are held in solitary confinement and other forms of extreme isolation. They spend hours, days, weeks, or longer alone, isolated both physically and socially. 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 youth, with voices distorted, reverberating against concrete and metal. Occasionally, youth in solitary confinement get a book or Bible, or education materials like worksheets. But inside this cramped space, few things distinguish one hour, one day, or one week from the next.

While held in isolation, 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 confining 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. In rare, emergency situations, facilities may need to use limited periods of separation to protect young people from other prisoners or themselves, particularly when a youth is uncontrollably violent. But solitary confinement profoundly harms young people, and brief periods of isolation should be used only when a youth is out of control, presenting an immediate physical threat that cannot otherwise be contained.

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

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[1] *See* 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/ojjdp/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] *See, e.g.*, 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 DETENTION ALTERNATIVES INITIATIVE (JDAI), A GUIDE TO JUVENILE DETENTION REFORM: JUVENILE DETENTION FACILITY ASSESSMENT 2014 UPDATE

and developmentally appropriate management techniques applies regardless of whether young people are detained in the juvenile or adult criminal justice system.

Every set of national standards governing age- and developmentally-appropriate practices to manage children in rehabilitative or correctional settings strictly regulate and limit all forms of isolation. The Department of Justice Standards for the Administration of Juvenile Justice limit isolation to a maximum period of 24 hours.[3] Another leading set of national standards bans all punitive isolation and limits isolation for other reasons to four hours or less,[4] and yet another recommends that isolation be kept to a few minutes, not hours (and, in all cases, be limited to the shortest duration necessary).[5] Standards governing the isolation of children in medical and mental health facilities and in educational settings are even more restrictive.[6]

Federal law also takes the harms of youth isolation into account. In 2003, Congress passed the Prison Rape Elimination Act (PREA) in response to high rates of sexual assault across all forms of detention facilities in the United States.[7] The final PREA regulations implementing the law provide a range of protections for young people, including substantive limits on solitary confinement, which the standards characterize as a measure of "last resort."[8] 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.[9] In February 2014, the Department of

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177-80 (2014) (setting forth standards governing the use of "room confinement" in juvenile detention and correctional facilities), *available at* http://www.aecf.org/m/resourcedoc/aecf-juveniledetentionfacilityassessment-2014.pdf.

[3] DEP'T JUSTICE OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, STANDARDS FOR THE ADMINISTRATION OF JUVENILE JUSTICE, Standard 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.")

[4] *See* A GUIDE TO JUVENILE DETENTION REFORM: JUVENILE DETENTION FACILITY ASSESSMENT 2014 UPDATE, *supra* note 2, at 177-78.

[5] 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; PERFORMANCE-BASED STANDARDS, REDUCING ISOLATION AND ROOM CONFINEMENT, *supra* note 48, at 2 ("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").

[6] 42 C.F.R. 482.13(e) (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 (Prohibiting isolation used for coercion, discipline, convenience or retaliation and allowing 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. The regulations also 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); 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 (Requiring that 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); DEP'T OF EDUCATION, RESTRAINT AND SECLUSION: RESOURCE DOCUMENT 11-23 (2012), *available at* http://www2.ed.gov/policy/seclusion/restraints-and-seclusion-resources.pdf (stating 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).

[7] Bureau of Justice Statistics data gathered since the Act's passage is available at http://bjs.ojp.usdoj.gov/index.cfm?ty=tp&tid=20.

[8] 28 C.F.R. § 115.342(b) (2012) (protective isolation); 28 C.F.R. § 115.378(b) (2012) (disciplinary isolation), *available at* http://www.ojp.usdoj.gov/programs/pdfs/prea_final_rule.pdf.

[9] 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.

Justice issued a letter to state governors reminding them of the upcoming first deadline, May 15, 2014, for this required certification, and of the Fiscal Year 2014 funds that could be cut off if certification is not received.[10]

## Promoting Better Practices for Youth Held in Juvenile Detention and Correctional Facilities

As the experience of some states has already shown, juvenile detention and correctional facilities can implement changes to policy and practice that provide for safe management of youth while still meeting their developmental, educational, physical, mental health, and rehabilitative needs. Effective management of a juvenile justice facility can be more effectively accomplished without resort to harmful and extreme forms of isolation. One core change is ensuring staffing levels, such that youth are adequately supervised and not exposed to significant levels of physical and social isolation.

Various national standards for youth facilities provide a clear framework for developmentally appropriate institutional practices which can reduce reliance on isolation. The most comprehensive set of standards is the Juvenile Detention Alternatives Initiative (JDAI), a nationally recognized set of best practices.[11] Another is the Performance-based Standards Initiative (PbS), a program of the Council of Juvenile Correctional Administrators.[12] Both strictly regulate isolation practices and identify a range of institutional practices that can be used to discipline and care for young people in custody without exposing them to harm, undermining rehabilitation, or compromising public safety.

Additionally, specific state systems provide valuable models for holistic reforms that focus on the needs of youth and provide rehabilitative models. These reform states have been successful in both improving conditions for youth in custody and providing effective management tools that promote rehabilitation and institutional safety. New York, for instance, has moved away from using isolation by implementing the more therapeutic "Sanctuary Model" in many of its facilities.[13] This model provides a holistic structure for trauma-informed and evidence-based care, and discourages punitive responses to youth misbehavior or aggression. Meanwhile, the "Missouri Model" for juvenile justice has focused on rehabilitation by instituting therapeutic facilities like smaller group homes and treatment centers that maintain safety through fostering positive relationships among youth and between youth and staff and providing adequate staff supervision, and thus avoiding isolation and other punitive and extreme correctional responses.[14]

### 1. Promoting Youth-Centered Practices and Operations

Managing and caring for children deprived of their liberty requires adequate staff who can respond appropriately to the needs of youth. Appropriate 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

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[10] Letter from Karol V. Mason, Assistant Attorney General, Office of Justice Programs, to State Governors (Feb. 11, 2014), *available at* http://www.prearesourcecenter.org/sites/default/files/library/preagovlettersigned2-11-14.pdf.

[11] *See* A Guide to Juvenile Detention Reform: Juvenile Detention Facility Assessment 2014 Update, *supra* note 2, at 177-80.

[12] PbS Learning Inst., Performance-based Standards (PbS), http://pbstandards.org/initiatives/performance-based-standards-pbs (last visited May 29, 2013).

[13] *See generally* Laura Mirsky, *The Sanctuary Model: A Restorative Approach for Human Services Organizations*, Restorative Practices EForum, *available at* http://www.sanctuaryweb.com/PDFs_new/Mirsky%20The%20Sanctuary%20model%20a%20restorative%20approach.pdf (describing the Sanctuary Model approach); *Sanctuary in Juvenile Justice Settings*, The Sanctuary Model, *available at* http://www.sanctuaryweb.com/juvenile.php (providing links to resources on New York's implementation of the Sanctuary Model).

[14] *See* The Annie E. Casey Foundation, The Missouri Model: Reinventing the Practice of Rehabilitating Youthful Offenders 2 (2010), *available at* http://www.aecf.org/~/media/Pubs/Initiatives/Juvenile%20Detention%20Alternatives%20Initiative/MOModel/MO_Fullreport_webfinal.pdf.

general policy and operational changes that can be implemented to better serve the unique needs of youth in confinement:

- Facilities should maintain staff-to-youth ratios of at least 1:8[15] (ideally 1:6) during waking hours, and 1:12 during sleeping hours (counting only staff who engage in continuous and direct supervision of youth).[16]
- Facilities should provide staff with specialized training and ongoing coaching in age-appropriate, positive behavior-management techniques, particularly de-escalation techniques designed for youth.[17]
- Facilities should implement positive, rewards-based management practices that do not primarily rely on punitive discipline to manage youth behavior.[18]
- Facilities should provide age-appropriate education, programming, recreational activities, and other services that take up a significant proportion of the youth's waking hours, seven days a week, available to all youth at all times (even when they are separated from the general population).[19]
- Facilities should provide access to dental, medical, and mental health services from qualified professionals with specialized training in caring for children and adolescents; these services should be available to all youth at all times (even when they are separated from the general population).[20]
- 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.[21]
- Facilities should use age-appropriate classification and evaluation instruments to identify educational, programming, mental health and other needs and diagnoses.[22]

### 2. BANNING SOLITARY CONFINEMENT AND STRICTLY REGULATING OTHER ISOLATION PRACTICES

The use of isolation in juvenile detention and correctional facilities is widespread. Facilities generally justify solitary confinement and other forms of physical and social isolation for one of four reasons:

- **DISCIPLINARY ISOLATION** (common euphemisms: punitive segregation, disciplinary custody, lock-up, room confinement): Physical and social isolation used to punish children when they break facility rules, such as those prohibiting talking back, possessing contraband, or fighting;
- **PROTECTIVE ISOLATION** (common euphemisms: protective custody, administrative confinement): Physical and social isolation used to protect a child from other children;

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[15] 28 C.F.R. § 115.313(c) (2012) (requiring, in the PREA regulations, adequate staffing of juvenile justice facilities).

[16] 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.

[17] PBS GOALS, STANDARDS, OUTCOME MEASURES, EXPECTED PRACTICES AND PROCESSES, *supra* note 5; AM. CORR. ASS'N, STANDARDS FOR ADULT CORRECTIONAL INSTITUTIONS 4-4312 (4th ed. 2003); THE MISSOURI MODEL, *supra* note 14, at 27.

[18] PBS GOALS, STANDARDS, OUTCOME MEASURES, EXPECTED PRACTICES AND PROCESSES, *supra* note 5, at 10; MENDEL, *supra* note 11, at 29.

[19] *See, e.g.*, A GUIDE TO JUVENILE DETENTION REFORM: JUVENILE DETENTION FACILITY ASSESSMENT 2014 UPDATE, *supra* note 2, at 178 (providing that individualized plans for youth in room confinement should include "[i]n-person provision of educational services").

[20] 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").

[21] *See, e.g.*, A GUIDE TO JUVENILE DETENTION REFORM: JUVENILE DETENTION FACILITY ASSESSMENT 2014 UPDATE, *supra* note 2, at 174 (providing standards requiring that facilities prohibit the use of chemical agents on children).

[22] See *id.* at 99-102 (providing standards that govern classification in juvenile detention and correctional facilities), 134-43 (governing programming in juvenile detention and correctional facilities).

- **ADMINISTRATIVE ISOLATION** (common euphemisms: room confinement, administrative segregation): Physical and social isolation—sometimes for a short period but other times without any limit on duration—used during initial processing at a new facility, because officials do not know how else to manage a child, or when a child is deemed too disruptive to the safe or orderly operation of an institution, such as when they are deemed to be out of control;
- **MEDICAL SOLITARY CONFINEMENT** (common euphemism: therapeutic seclusion, medical quarantine): Physical and Social isolation to medically treat children, such as for a contagious disease or for having expressed a desire to commit suicide;[23]

In rare circumstances, isolation may be warranted as a brief, temporary response to behavior that threatens immediate harm to the youth or others, such as during a fight where the youth cannot be calmed down using de-escalation techniques and other accepted methods of crisis management. Youth should never be subjected to any practice that involves significant levels or extended periods of physical and social isolation. Implementing this imperative requires adopting practices that are appropriate to youth, addressing their unique developmental and educational needs.

### *Successful reform requires a shift in systemic thinking about solitary confinement and other isolation practices.*

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

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 that poses an immediate risk of serious harm to the youth or others. 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, once the youth has calmed down or after a new mental health plan has been put into place.

### Administrators of juvenile detention and correctional facilities 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[24] —and should never use solitary confinement or other forms of isolation for

[23] *See, e.g.*, Reassessing Solitary Confinement: The Human Rights, Fiscal, and Public safety Consequences: Hearing Before the Subcomm. on the Constitution, Civil Rights, and Human Rights of the S. Comm. on the Judiciary, 112th Cong. 4 (2012) (statement of Youth Law Center), *supra* note 39.

[24] 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 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.

punitive/disciplinary reasons or for any reasons other than as a temporary response to current acting-out behavior that poses an immediate risk of physical harm to the youth or others.[25]

- Facilities should reform **disciplinary practices** to completely eliminate all forms of isolation. Separation from the general population for disciplinary purposes should be prohibited.[26]
- Facilities should reform **short-term isolation practices** to strictly limit emergency isolation (to interrupt current, acting-out behavior) to a maximum of **4 hours**, and only for as long as an immediate physical threat exists.[27] Emergency isolation should never be assigned for fixed periods of time; it should be discontinued as soon as the youth no longer poses a threat.[28]
- Youth who have been separated from general population for any reason must continue to receive access to education, medical, mental health and other services, visits, telephone calls and other forms of **social interaction**.[29] 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.[30]
- Facilities should reform **protection practices** to eliminate social and physical isolation and resolve immediate needs for protection without subjecting youth to conditions of solitary confinement.[31] 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 should transfer youth with an active risk of suicide to a medical facility or section of the facility that can provide appropriate treatment.[32]
- 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, including: 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.[33]

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[25] *See* A GUIDE TO JUVENILE DETENTION REFORM: JUVENILE DETENTION FACILITY ASSESSMENT 2014 UPDATE, *supra* note 2, at 177 (banning all "room confinement" of youth except as a "temporary response to behavior that threatens immediate harm to the youth or others").

[26] *See id*. at 177.

[27] *See id.* at 178.

[28] *See id.*

[29] *See id*. at 177-80.

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

[31] *See* A GUIDE TO JUVENILE DETENTION REFORM: JUVENILE DETENTION FACILITY ASSESSMENT 2014 UPDATE, *supra* note 2, at 102 (noting that room confinement should never be used to protect a youth from others), 177 (noting that room confinement may only be used as a temporary response to an immediate threat of physical harm); *see also* AM. CORR. ASS'N, PERFORMANCE BASED STANDARDS JUVENILE CORR. FACILITIES, *supra* note 28, at Standard 4-JCF-3C-02.

[32] *See* AACAP POLICY STATEMENT: SOLITARY CONFINEMENT OF JUVENILE OFFENDERS, *supra* note 1; KIM J. MASTERS & CHRISTOPHER BELLONCI, 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.jaacap.com/article/S0890-8567(09)60552-9/abstract.

[33] *See* A GUIDE TO JUVENILE DETENTION REFORM: JUVENILE DETENTION FACILITY ASSESSMENT 2014 UPDATE, *supra* note 2, at 177-80 (requiring access to educational materials, hygienic quarters, and other necessities while in room confinement and setting standards for generally adequate conditions in juvenile detention and correctional facilities).

### 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 while protecting others. This separation should only be used in cases of emergency, where the youth presents a serious risk of immediate physical harm to him- or herself or others. It should *never* constitute or approximate solitary confinement. In cases where short-term separation is justified, 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, 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:**

- 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.[34]
- Facilities should ensure that, before emergency isolation is used, all de-escalation techniques are exhausted.[35]
- Facilities should use emergency isolation for periods measured in minutes, with an absolute maximum of 4 hours.[36]
- Facilities should prohibit any use of isolation as a disciplinary or punitive measure, or for administrative convenience, staffing shortages, or retaliation.[37]
- Facilities should ensure that emergency isolation persists only as long as necessary to abate the current imminent threat to the youth or others.[38]
- Facilities should ensure that any youth subjected to emergency isolation is constantly monitored, one-on-one, by qualified staff.[39]
- Facilities should ensure that youth who cannot regain self-control 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, or that some other appropriate treatment plan is immediately developed and implemented.[40]

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[34] 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).

[35] *See* A GUIDE TO JUVENILE DETENTION REFORM: JUVENILE DETENTION FACILITY ASSESSMENT 2014 UPDATE, *supra* note 2, at 177 (requiring that de-escalation techniques be used before resorting to placing a child in room confinement).

[36] *See id*. at 177-78; REDUCING ISOLATION AND ROOM CONFINEMENT, *supra* note 28, at 2.

[37] *See* A GUIDE TO JUVENILE DETENTION REFORM: JUVENILE DETENTION FACILITY ASSESSMENT 2014 UPDATE, *supra* note 2, at 177.

[38] *See id*. at 177-78; PBS GOALS, STANDARDS, OUTCOME MEASURES, EXPECTED PRACTICES AND PROCESSES, *supra* note 5, at 10 (2007).

[39] *See* A GUIDE TO JUVENILE DETENTION REFORM: JUVENILE DETENTION FACILITY ASSESSMENT 2014 UPDATE, *supra* note 2, at 177.

[40] *See id*. at 178; POLICY STATEMENTS: SOLITARY CONFINEMENT OF JUVENILE OFFENDERS, *supra* note 1.

- Facility administrators should make regular "spot checks" to ensure that emergency isolation is being used appropriately[41] and/or the approval of a facility administrator should be required to authorize the use of emergency isolation beyond 60 minutes.
- Facilities should ensure that every instance of emergency isolation is documented, reviewed by facility administrators, and regularly publicly reported.[42]
- Facilities should ensure that any youth separated from general population for medical reasons is admitted to the facility infirmary by a qualified medical professional; the facility infirmary should have 24-hour staffing by qualified medical professionals and should have physicians on call 24 hours per day.[43]
- Youth who have expressed suicidal ideation should be engaged in social interaction and not placed in room confinement. They should be permitted to engage in programming and social activities while supervised one-on-one by qualified staff who check on the youth at least every ten minutes.[44]
- For a youth who has engaged in suicidal acts or other acts of self-harm, facilities should develop an individualized suicide crisis intervention plan approved by a licensed mental health clinician who has evaluated the youth. Facilities should place any youth who is actively suicidal on constant observation by a qualified staff member, or should transfer the youth to a mental health facility.[45]

### 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.[46] A range of disciplinary measures can be safely employed in conjunction with practices that promote good behavior and healthy development. Youth should never be placed in solitary confinement or isolation for purposes of punishment or discipline. Appropriate disciplinary management practices should *never* involve social or physical isolation, or rise to the level of solitary confinement.

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 discipline system involving youth:**

- Facilities should never use isolation as a punishment or disciplinary sanction for youth.[47]
- Facilities should take a youth's age and mental health status into account when deciding any sanction for a rule violation.[48]

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[41] PBS Goals, Standards, Outcome Measures, Expected Practices and Processes, *supra* note 5, at 10.
[42] *See id.* at 10; A Guide to Juvenile Detention Reform: Juvenile Detention Facility Assessment 2014 Update, *supra* note 2, at 179-80 (outlining standards for documentation of incidents of "room confinement" in juvenile detention and correctional facilities).
[43] *See* A Guide to Juvenile Detention Reform: Juvenile Detention Facility Assessment 2014 Update, *supra* note 2, at 113.
[44] *See id.* at 120.
[45] *See id.* at 119.
[46] *See, e.g.*, The Missouri Model, *supra* note 14.
[47] *See* A Guide to Juvenile Detention Reform: Juvenile Detention Facility Assessment 2014 Update, *supra* note 2, at 177; Standards for Health Services in Juvenile Detention and Confinement Facilities, *supra* note 6, at standard Y-39.
[48] *See, e.g.*, 28 C.F.R. § 115.78(c), 115.378(c) (2012).

- 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.[49]
- If a facility has not yet abolished the use of solitary confinement/isolation for punishment or disciplinary purposes, it should ensure that any disciplinary sanctions are *preceded* by due process.[50] Due process must include effective notice of the alleged misconduct and a hearing at which the youth has the opportunity to challenge the allegations.
- Facilities should also provide youth with due process protections before punishing youth with significant loss of privileges or with transfer to a more restrictive unit/housing assignment.[51]
- Facilities should ensure that all disciplinary actions are documented and reviewed by facility administrators, and that data are regularly publicly reported.[52]

### 5. 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 isolation, including disciplinary "room confinement" or prolonged medical isolation, to house young people with mental disabilities.

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. The goal of any separation should always be to reintegrate young people into the general population of their facility.

**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

[49] *See* Policy Statements: Solitary Confinement of Juvenile Offenders, *supra* note 1.
[50] *See* A Guide to Juvenile Detention Reform: Juvenile Detention Facility Assessment 2014 Update, *supra* note 2, at 181.
[51] *See id.*
[52] *See* PBS Goals, Standards, Outcome Measures, Expected Practices and Processes, *supra* note 5, at 10.

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.[53]

- 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 recognize when young people have histories of trauma and ensure that they do engage in practices that further traumatizes youth in their custody.
- 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.
- Facilities should ensure that any separation implemented for treatment purposes is documented, reviewed by facility administrators, and regularly publicly reported.[54]

### 6. Reforming Protective Isolation Practices

Youth who have a current need for protection from others may not be placed in solitary confinement, but must be protected through adequate supervision and classification to a safe housing unit or pod. Separation of a youth from the general population should never involve physical and social isolation.

**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 social and physical isolation.[55]
- Facilities should ensure that youth separated due to a current need for protection receive levels of programming, including education and recreation, services, medical and psychological care and check-ins, and staff interaction equal to youth in the general population.[56]
- Facilities should ensure that alternative housing is identified for youth with a current need for protection within **4 hours**.[57]
- Facilities should ensure that any separation implemented for protective purposes does not constitute social isolation or solitary confinement, and that it is documented, reviewed by facility administrators, and regularly publicly reported.[58]

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[53] *See* A Guide to Juvenile Detention Reform: Juvenile Detention Facility Assessment 2014 Update, *supra* note 2, at 116 (describing actions that a facility should take to provide appropriate mental-health care); Policy Statements: Solitary Confinement of Juvenile Offenders, *supra* note 1.

[54] *See* PBS Goals, Standards, Outcome Measures, Expected Practices and Processes, *supra* note 5, at 10.

[55] *See, e.g.*, 28 C.F.R. § 115.342(b) (2012) (requiring daily mental health visits, programming, and other social and supervisory safeguards against isolation for youth who are separated).

[56] *See, e.g.*, 28 C.F.R. § 115.342(b), (2012).

[57] *See* A Guide to Juvenile Detention Reform: Juvenile Detention Facility Assessment 2014 Update, *supra* note 2, at 117-18 (limiting any instance of room confinement to a maximum of 4 hours).

[58] *See* PBS Goals, Standards, Outcome Measures, Expected Practices and Processes, *supra* note 5, at 10.

### 7. Reforming Medical Isolation Practices

Youth who require physical separation 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.

**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.[59]
- 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.[60] 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.
- 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.[61]

### 8. Reforming Isolation Practices

Youth who require separation 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.

**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.[62]
- Youth at risk of suicide must be engaged in social interaction—not isolated—and must have an opportunity to participate in activities and programming.[63]

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[59] *See* A Guide to Juvenile Detention Reform: Juvenile Detention Facility Assessment 2014 Update, *supra* note 2, at 107.
[60] Centers for Disease Control, Tuberculosis Control Laws and Policies18, 29 (Oct. 2009), *available at* http://www.cdc.gov/tb/programs/TBLawPolicyHandbook.pdf.
[61] Standards for Health Services in Juvenile Detention and Confinement Facilities, *supra* note 6, at standard Y-B-01 (3)(a)-(d).
[62] *See* A Guide to Juvenile Detention Reform: Juvenile Detention Facility Assessment 2014 Update, *supra* note 2, at 119.
[63] *Id.* at 120.

- 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 10 minutes between checks.[64]
- Facilities should ensure that youth who pose an active risk of suicide be evaluated by a qualified mental health professional, that an individualized treatment plan be developed, and, if necessary, that the youth is hospitalized and placed under the care of mental health providers.[65]
- If emergency isolation has not yet been abolished as a suicide risk intervention, any instance of isolation as a suicide risk intervention should be documented, reviewed by facility administrators, and regularly publicly reported.[66]

[64] *Id*. at 119-20.

[65] *See* A GUIDE TO JUVENILE DETENTION REFORM: JUVENILE DETENTION FACILITY ASSESSMENT 2014 UPDATE, *supra* note 2, at 119; POLICY STATEMENTS: SOLITARY CONFINEMENT OF JUVENILE OFFENDERS, *supra* note 1.

[66] *See* A GUIDE TO JUVENILE DETENTION REFORM: JUVENILE DETENTION FACILITY ASSESSMENT 2014 UPDATE, *supra* note 2, at 177, 179-80 (requiring supervisor approvals and documentation for all instances of "room confinement"); PBS GOALS, STANDARDS, OUTCOME MEASURES, EXPECTED PRACTICES AND PROCESSES, *supra* note 5, at 10.

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

# Summary of National 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 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. Numerous national and international organizations are calling for stricter limitations on this harmful practice:

- **Every set of standards governing age- and developmentally appropriate practices to manage and care for youth under 18 strictly regulates and limits all forms of isolation.**
- The leading set of national standards for managing youth in a correctional setting limits isolation to **4 hours or less, and never for purposes of punishment**.[3]
- The rules implementing the federal Prison Rape Elimination Act (PREA), which regulate all prisons and places of juvenile detention in the country, impose strict limits on juvenile isolation.
- In 2012, the American Academy of Child and Adolescent Psychiatrists adopted an official policy statement proposing a strict limit of **24 hours.**[4]

Below we highlight national standards and best practices for **juvenile justice settings** (including examples from specific 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.

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[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 DETENTION ALTERNATIVES INITIATIVE (JDAI), A GUIDE TO JUVENILE DETENTION REFORM: JUVENILE DETENTION FACILITY ASSESSMENT 2014 UPDATE 177-80 (2014) (setting forth standards governing many conditions of confinement in juvenile detention and correctional facilities, including the use of "room confinement"), *available at* http://www.aecf.org/m/resourcedoc/aecf-uveniledetentionfacilityassessment-2014.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.

## NATIONAL STANDARD FRAMEWORKS

## Juvenile Detention Alternatives Initiative (JDAI)

JDAI, an initiative of the Annie E. Casey Foundation,[5] is the most widely recognized set of national best practices.[6] JDAI 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 "room confinement" and "voluntary time outs."

- ***Room confinement* is defined as the "involuntary restriction of a youth alone in a cell, room, or other area," and it may only be used as a temporary response to behavior that threatens immediate harm to the youth or others.[9] It may never be used as a punishment or disciplinary sanction.**
- By contrast, *voluntary time out* is defined as a "brief period of time in a youth's room or other space at the request of the youth"; youth must be checked on by staff at 10-minute intervals and the door may not be locked during a voluntary time out.[10]

### JDAI ROOM CONFINEMENT STANDARDS

Under JDAI standards, **Room Confinement**:[11]

- must be governed by policies and procedures;
- must be documented by facility staff;
- can only be used if incidents are reviewed regularly by the facility administrator;
- **can only be used if a youth's behavior threatens imminent physical harm to the youth or to others;**
- **can never be used for purposes of punishment, discipline, administrative convenience, or staffing shortages;**
- 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;
- must be explicitly approved by a unit supervisor, and must be explicitly approved by increasingly senior administrators as the length of time in room confinement increases;
- **can never be used for longer than 4 hours;**
- can only be used if staff provide continuous one-on-one crisis intervention and observation inside the cell or directly outside the cell;

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[5] *JDAI/Detention Reform*, CTR. FOR CHILDREN'S LAW AND POLICY, http://www.cclp.org/JDAI.php (last visited Mar. 5, 2013).
[6] COALITION FOR JUVENILE JUSTICE, COALITION FOR JUVENILE JUSTICE BEST PRACTICE BULLETIN (2009), *available at* http://juvjustice.org/media/resources/public/resource_232.pdf.
[7] *Id*.
[8] *See* A GUIDE TO JUVENILE DETENTION REFORM: JUVENILE DETENTION FACILITY ASSESSMENT 2014 UPDATE, *supra* note 3.
[9] *Id*. at 172, 177.
[10] *Id.* at 172, 181.
[11] *See id.* at 177-80.

JDAI requires that youth held in room confinement in clean, sanitary, 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.[12] Youth can 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.[13]

JDAI mandates that, for any youth placed in room confinement, staff develop a plan that will allow the youth to leave room confinement and return to programming as soon as possible. Procedures must clearly describe how and when staff should involve qualified medical and mental health professionals in treating the out-of-control youth.[14] 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 4 hours, the youth has not regained self-control, the youth should be transferred to a mental health facility or the medical unit of the facility.[15]

JDAI mandates that youth at risk of self-harm should be encouraged "to participate in activities and programs unless staff cannot manage their behavior safely."[16] Youth at risk of suicide must be engaged in social interaction—not isolated—and have an opportunity to participate in school and activities, and must be monitored one-on-one on a continuous basis or transferred to a mental health facility.[17]

## 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."[18] It is a voluntary membership organization with more than 100 participating facilities across 29 states.[19] A major focus of the PbS initiative is gathering and disseminating data to promote best practices.[20]

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[12] *Id*. at 178-79.
[13] *Id*. at 177-79.
[14] *Id*. at 177.
[15] *Id*. at 178.
[16] *Id*. at119.
[17] *Id*. at 119-20.
[18] PBS LEARNING INST., PERFORMANCE-BASED STANDARDS (PBS), http://pbstandards.org/initiatives/performance-based-standards-pbs (last visited Feb. 27, 2014).
[19] 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.
[20] *Id*.

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;**"[21] "**isolation . . . should not be used as punishment.**"[22] 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."[23]

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.[24]

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.[25]

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

ACA policy recognizes that "children and youths have distinct personal and developmental needs"[26] and calls for all youth deprived of their liberty—even those charged as adults—to be held in specialized juvenile facilities.[27]

The ACA standards permit the removal from general population of juveniles who threaten the secure and orderly management of the facility and their placement in special units.[28] ACA standards distinguish between three types of isolation/removal practices: Disciplinary Room Confinement, Protective Custody, and Special Management.[29]

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

[22] 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.

[23] PBS LEARNING INST., REDUCING ISOLATION AND ROOM CONFINEMENT, *supra* note 20, at 4.

[24] *Id.* at 4-5.

[25] PBS LEARNING INST., PBS GOALS, STANDARDS, OUTCOME MEASURES, EXPECTED PRACTICES AND PROCESSES, *supra* note 21, at 8-10.

[26] AM. CORR. ASS'N, PUB. CORR. POLICY ON JUVENILE JUSTICE (2007).

[27] AM. CORR. ASS'N, PUB. CORR. POLICY ON YOUTHFUL OFFENDERS TRANSFERRED TO ADULT CRIMINAL JURISDICTION (2009).

### 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.[30]

### 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 not continue beyond 72 hours without 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.[31]

### Special Management

ACA standards limit the use of special management to high-risk youth 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.[32]

## 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.[33]

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 persons residing or employed therein. . . . Room confinement of more than twenty-four hours should never be imposed."**[34] 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."[35]

The DOJ Standards mandate 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. . . . [J]uveniles 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."[36]

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[28] Am. Corr. Ass'n, Performance Based Standards Juvenile Corr. Facilities 51 (4th ed. 2009).
[29] *Id*. at 51-52.
[30] *Id*. at 52 (Standards 4-JCF-3C-03; 4-JCF-3C-04).
[31] *Id*. at 51 (Standard 4-JCF-3C-02).
[32] *Id*. at 51 (Standard 4-JCF-3C-01).
[33] 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.
[34] *Id*. at Standard 4.52.
[35] *Id*.
[36] *Id*.

The DOJ Standards state that all youth in residential facilities should have a right to a basic level of services: 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.[37] They also require a maximum level of treatment services, including individual and group counseling; psychiatric and psychological services; and casework services.[38]

## FEDERAL LAWS AND REGULATIONS

### Prison Rape Elimination Act (PREA) and Regulations

In 2003, Congress passed PREA in response to the high rates of sexual assault across all forms of detention facilities in the United States.[39] The final PREA regulations implementing the law provide a range of protections for young offenders. States that do not comply with PREA face a 5% reduction in federal corrections funding unless the Governor certifies that those funds will be used to enable compliance in the future.[40] In February 2014, the Department of Justice issued a letter to state governors reminding them of the upcoming first deadline for this required certification, May 15, 2014, and of the Fiscal Year 2014 funds that could be cut off if certification is not received.[41]

The regulations implementing PREA include provisions regulating isolation in places of detention, including juvenile facilities.[42] Recognizing the risks posed by both isolation and sexual assault, the sections of the PREA regulations focusing on juvenile facilities characterize isolation as a measure of "last resort."[43] Protective or disciplinary isolation may only be used as a "last resort when other less restrictive measures are inadequate to keep them and other residents safe, and then only until an alternative means of keeping all residents safe can be arranged."[44]

In addition to **the requirement that solitary be used only as a last resort, when alternatives have been exhausted**, the regulations impose other requirements on the use of isolation:

- Young people in disciplinary or protective isolation must receive daily large-muscle exercise;[45]
- They must have access to legally-mandated educational programming or special education services;[46]

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[37] *Id.* at Standard 4.410.
[38] *Id.*
[39] Bureau of Justice Statistics data gathered since the Act's passage is available at http://bjs.ojp.usdoj.gov/index.cfm?ty=tp&tid=20.
[40] 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.
[41] Letter from Karol V. Mason, Assistant Attorney General, Office of Justice Programs, to State Governors (Feb. 11, 2014), *available at* http://www.prearesourcecenter.org/sites/default/files/library/preagovlettersigned2-11-14.pdf.
[42] The regulations include detailed requirements for the prevention, detection, and investigation of sexual abuse in both adult and juvenile correctional facilities. *See* Press Release, Department of Justice, Justice Department Releases Final Rule to Prevent, Detect and Respond to Prison Rape (May 17, 2012), *available at* http://www.justice.gov/opa/pr/2012/May/12-ag-635.html (summary of regulations).
[43] 28 C.F.R. § 115.342(b) (2012) (protective isolation); 28 C.F.R. § 115.378(b) (2012) (disciplinary isolation), *available at* http://www.ojp.usdoj.gov/programs/pdfs/prea_final_rule.pdf.
[44] 28 C.F.R. § 115.342 (b) (2012).
[45] 28 C.F.R. § 115.342(b) (2012) (protective isolation); 28 C.F.R. § 115.378(b) (2012) (disciplinary isolation).
[46] 28 C.F.R. § 115.342(b) (2012) (protective isolation); 28 C.F.R. § 115.378(b) (2012) (disciplinary isolation).

- They must receive daily visits from a medical or mental health care clinician;[47]
- To the extent possible, they must have access to other programs and work opportunities;[48]
- In cases of protective isolation, the regulations also require **documentation** of the basis of the safety concern, and the reason for a lack of housing alternatives;[49]
- Periodic review of any continuing need for isolation is required.[50]

PREA also requires that juvenile facilities meet **minimum staffing levels to adequately supervise residents**.[51] Because youth may be isolated for protective or administrative reasons, adequate staffing should help facilities avoid placing children in isolation.

## MODEL STATE SYSTEMS

State reforms also provide a model for systemic standards. The state juvenile justice systems that have most effectively reduced their use of isolation have done so by taking an all-inclusive approach to the custody and rehabilitation of youth. In key reform states, instituting better alternatives to isolation often precludes the "need" for isolation of children who have problems that make it difficult for them to comply with facility rules. Some reformers have also recognized that isolation is only appropriate as a temporary response to violent acting-out behavior, and never appropriate as a punishment.

### New York and the Sanctuary Model

The New York State Office of Children and Family Services has become a leader of reform in conditions of confinement for youth, moving away from using isolation by implementing the more therapeutic "Sanctuary Model" in many of its facilities.[52] This model provides a holistic structure for trauma-informed and evidence-based care, and discourages punitive responses to youth misbehavior or aggression. Instead, the model emphasizes restorative practices by health care providers, security staff, administrators, and others involved in the custody of youth. Guided by therapeutic principles, the Sanctuary Model prioritizes treatment and outcomes for youth in custody, instead of treating them like miniature versions of adult prisoners.

### The Missouri Model

Missouri has also played a lead role in reforming juvenile justice practices, including the use of isolation. The "Missouri Model" for juvenile justice focuses on rehabilitation by instituting alternative facilities like smaller group homes and treatment centers that maintain safety through fostering positive relationships among youth and between youth and staff and providing adequate staff supervision, and thus avoiding isolation and other punitive and extreme

[47] 28 C.F.R. § 115.342(b) (2012) (protective isolation); 28 C.F.R. § 115.378(b) (2012) (disciplinary isolation).
[48] 28 C.F.R. § 115.342(b) (2012) (protective isolation); 28 C.F.R. § 115.378(b) (2012) (disciplinary isolation).
[49] 28 C.F.R. § 115.342 (h) (2012).
[50] 28 C.F.R. § 115.342 (i) (2012) (requiring that every 30 days the facility must provide a review to determine whether there is a "continuing need for separation").
[51] 28 C.F.R. § 115.313 (c) (2012) (requiring 1 security staff member per 8 juvenile residents during waking hours, and 1:16 during sleeping hours).
[52] *See generally* Laura Mirsky, *The Sanctuary Model: A Restorative Approach for Human Services Organizations*, RESTORATIVE PRACTICES EFORUM, *available at* http://www.sanctuaryweb.com/PDFs_new/Mirsky%20The%20Sanctuary%20model%20a%20restorative%20approach.pdf (describing the Sanctuary Model approach); *Sanctuary in Juvenile Justice Settings*, THE SANCTUARY MODEL, http://www.sanctuaryweb.com/juvenile.php (providing links to resources on New York's implementation of the Sanctuary Model).

correctional responses.[53] Importantly, the Missouri model discourages youth isolation by imposing reporting requirements on the practice,[54] and the central focus of the model is to provide individual, ongoing attention to youth who act out, instead of repeatedly—and counter-productively—punishing them with isolation.[55]

### Administrative Reform in Massachusetts

Officials in Massachusetts have recently made their state a model in reforming the use of isolation and solitary confinement. Since March 2013, Massachusetts has operated under a statewide agency policy restricting isolation to emergency situations and specifically banning its use for punitive purposes. Massachusetts also requires a series of reports to and permissions from increasingly higher-level administrators as the length of a stay in isolation increases to multiple hours. Today, Massachusetts only uses isolation to separate youth who are out of control in cases of emergency—and rarely for more than a few hours at a time.

## 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.[56] 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.[57]

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.[58] 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**.[59] 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.[60] 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.[61]

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[53] *See* THE ANNIE E. CASEY FOUNDATION, THE MISSOURI MODEL: REINVENTING THE PRACTICE OF REHABILITATING YOUTHFUL OFFENDERS 2 (2010), *available at* http://www.aecf.org/~/media/Pubs/Initiatives/Juvenile%20Detention%20Alternatives%20Initiative/MOModel/MO_Fullreport_webfinal.pdf.

[54] *Id.* at 9.

[55] *See id.* at 13.

[56] 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.

[57] *Id.* at § 591(b).

[58] 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.)

[59] 42 C.F.R. 482.13(e) (2012).

[60] 42 C.F.R. 482.13(e)(2)(8) (2012). The limit for children under 9 is one hour.

[61] *Id.*

## The American Academy of Child and Adolescent Psychiatry (AACAP)

In 2012, AACAP issued a policy statement **opposing the use of solitary confinement for juveniles and urging that any youth isolated 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.[62] 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).[63]

AACAP also has standards strictly limiting the use of isolation (or "seclusion") in the context of mental health treatment. In the therapeutic context, 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.[64] 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.[65]

## The National Commission on Correctional Health Care (NCCHC)

For facilities seeking accreditation through the NCCHC, its standards require that medical and administrative staff jointly create segregation policies and that youth in segregation should be evaluated daily by qualified health personnel.[66] 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.**[67]

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."[68] 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."[69]

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[62] POLICY STATEMENTS: SOLITARY CONFINEMENT OF JUVENILE OFFENDERS, *supra* note 4.
[63] *Id.*
[64] 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.jaacap.com/article/S0890-8567(09)60552-9/fulltext.
[65] *Id.*
[66] 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.
[67] *Id.*
[68] *Id.*
[69] *Id.*

## 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.[70] But the Department of Education has issued a set of general guidelines for the use of involuntary isolation in schools.[71]

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.[72] 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.[73] The guidelines also propose constant visual monitoring of children in isolation, parental notification and documentation.[74]

## 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.[75]

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.[76]

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[70] *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* http://www.autcom.org/pdf/HowSafeSchoolhouse.pdf.

[71] DEP'T OF EDUCATION, RESTRAINT AND SECLUSION: RESOURCE DOCUMENT 11-23 (2012), *available at* www2.ed.gov/policy/seclusion/restraints-and-seclusion-resources.pdf.

[72] DEP'T OF EDUCATION, RESTRAINT AND SECLUSION: RESOURCE DOCUMENT 12-13 (2012), *available at* www2.ed.gov/policy/seclusion/restraints-and-seclusion-resources.pdf.

[73] *Id.*

[74] *Id.*

[75] 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.

## 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.[77] 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.[78]

[76] 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).

[77] 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").

[78] 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

Quick Links

- Policy Statements by Topic
- Policy Statements by Year

Search For

## 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 psychosis[1]. Due to their developmental vulnerability, juvenile offenders are at particular risk of such adverse reactions[2]. 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 constitution[3].

Measurements to avoid confinement, including appropriate behavioral plans and other

interventions should be implemented[4].

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.

**References:**


1. Grassian, Stuart. "Psychiatric Effects of Solitary Confinement." Journal of Law and Policy. (2006): 325-383.
2. Mitchell, Jeff, M.D. & Varley, Christopher, M.D. "Isolation and Restraint in Juvenile Correctional Facilities." J.Am. Acad. Child Adolesc. Psychiatry, 29:2, March 1990.
3. Vasiliades, Elizabeth. "Solitary Confinement and International Human Rights: Why the U.S. Prison System Fails Global Standards." American University International Law Review 21, no. 1 (2005): 71-99.
4. Sedlak, Andrea, McPherson, Carla, Conditions of Confinement, OJJDP, May 2010.

Performance-*based* Standards

# Reducing Isolation and Room Confinement

*September 2012*

PbS Learning Institute, Inc.
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http://pbstandards.org

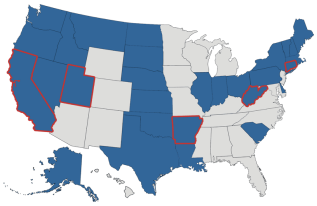
Performance-based Standards

## Introduction

The detrimental and counter-productive effects of isolation have been known since the first experiments of solitary confinement at the Eastern State Penitentiary in Philadelphia nearly 200 years ago. In the 1820s, the Quakers built the first American prisons with individual stone cells kept bare except for a Bible to encourage self-reflection and repentance. The belief was the criminal would use the time alone to repent, pray and find introspection. But instead many went insane, committed suicide or were not able to function in society and the practice was slowly abandoned.

Isolation returned to adult facilities about 50 years ago for reasons cited such as overcrowding, increasingly violent inmates, insufficient funding for security and repressive behavior management strategies. It moved into juvenile facilities with other adult practices and policies superimposed on new agencies for lack of an alternative. Over the past decade, juvenile leaders have questioned and eliminated many of the adult approaches, including use of isolation and room confinement.

Performance-based Standards (PbS), a program developed by the Council of Juvenile Correctional Administrators (CJCA) to improve conditions of confinement, has cut in half the time youths spend in isolation or room confinement in participating facilities. PbS sets national standards that establish the highest expectations for facility conditions and services and measures practices impacting the quality of life. PbS trains and supports participants to collect data, analyze the results and change practices to best serve youths, staff, families and communities.



*States shown in blue have participating corrections, detention or community-based programs. States highlighted in red have new sites joining in October 2012.*

PbS addresses seven areas of facility management: safety, security, order, health/mental health, programming, reintegration and justice. PbS collects both quantitative and qualitative data from administrative forms, youth records, incident reports, exit interviews of youths and climate surveys of youths and staff. The results are presented in easy-to-read reports showing how well facilities meet PbS' commitment to treating all youths in custody as one of our own. In 2004 PbS won the Innovation in American Government Award for uniquely and effectively addressing conditions of confinement.

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. PbS reports isolation, room confinement and segregation/special management unit data together to draw attention to practices that are inappropriate, ineffective and can have deadly consequences[1].

[1] *As reported in the "Juvenile Suicide in Confinement: A National Survey" by Lindsay Hayes, half of the youths who committed suicide were confined in their rooms for punishment; more than half had a history of room confinement.*

## PbS Goal and Outcomes

Each of the seven areas of facility management is addressed in "Goals, Standards, Outcome Measures, Expected Practice and Processes," the PbS blueprint, which links the activities, practices and experiences within facilities to performance meeting the PbS goals and standards. The PbS blueprint specifies the standards of performance required to meet each goal, the outcome measures that indicate facility performance and the practices and policies that contribute to achieving success. PbS worked with national safety, behavior management and mental health experts, advocates, researchers and practitioners[2] to establish the following goal for facility order:

> **"To establish clear expectations of behavior and an accompanying system of accountability for youths and staff that promote mutual respect, self discipline and order."**

The PbS outcome measures in the order area monitor the facility's behavior management practices, such as engaging youths in programming and following rules as well as responses to misconduct, including use of isolation, room confinement and segregation/special management unit. PbS' advisors established a comprehensive definition of isolation that includes any instance a youth is confined alone for cause or punishment for 15 minutes or more in his or her sleeping room or another room or separation unit. Exceptions are made for protective isolation, medical isolation or when requested by a youth. The time measured begins when the youth is placed in the room and continues until when he or she leaves, including sleeping time when extending over night.

PbS facilities collect information about the use of isolation and room confinement by reviewing all incident reports during two data collection months a year – April and October. PbS' growth model measures specific moments in time and monitors progress made toward meeting goals. The incident report data are checked with qualitative survey responses from youths. PbS facilities monitor four outcome measures of isolation and confinement:

- Number of cases of isolation, room confinement and segregation/special management unit is used,
- Average duration of uses of isolation, room confinement and segregation/special management unit,
- Percent of cases terminated in four hours or less, and
- Percent of cases terminated in eight hours or less.

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[2] *In 1995, PbS created an Order Working Group to draft the goals and standards that were later approved by the National Advisory Board. Members of both included representatives from the American Bar Association – Juvenile Justice Center, Youth Law Center, Council of Juvenile Correctional Administrators, National Council of Juvenile and Family Court Judges, American Correctional Association, National Juvenile Detention Association, Correctional Education Association, National Commission on Correctional health Care, National GAINS Center for People with Co-Occurring Disorders in the Justice System and public defenders, prosecutors, facility administrators, researchers and practitioners.*

Performance-based Standards

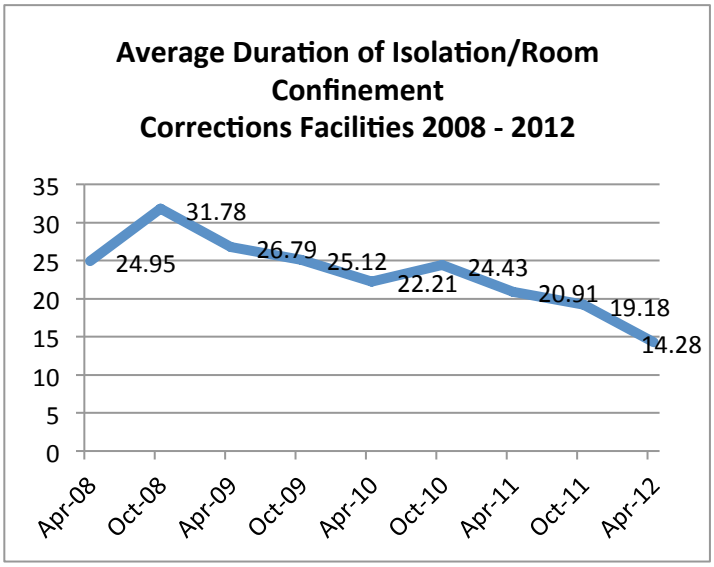
## The Dangers of Isolation and Room Confinement

When PbS was developed in 1995, it was common for a juvenile agency to have inherited policies that permitted isolation sanctions to be ordered in number of days, some as many as up to 30 days. PbS set out to change that mindset and count isolation and room confinement in hours. Currently, 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[3].

The release of the landmark "Juvenile Suicide in Confinement: A National Survey" in 2009, ignited changes in suicide prevention practices across the country and drew a direct connection from isolation and room confinement to suicide. The report highlighted many of the dangerous practices that are most likely to lead to suicide in youth facilities, one of which was confining them alone in their room. The research was promoted by PbS and spread across the country to help reduce the use of isolation, room confinement and risks of suicide.

## Isolation and Room Confinement Time Cut in Half

Since 2008, the average time a youth spends in isolation has declined in all PbS facilities: long-term correction, short-term detention and assessment centers[4]. Corrections facilities more than cut in half the average time a youth spent in isolation and room confinement from October 2008 to April 2012, the most recent PbS data collection period. The all-time high in October 2008 was an average time of almost 32 hours. In April 2012, the average time was about 14 hours.




During that same time period, the percent of cases of isolation and room confinement ending in four hours or less increased (from 57 percent in October 2008 to 60 percent in April 2012) and the percent of cases ending in eight hours or less increased (from 61 percent in October 2008 to 67 percent in April 2012.) The data shows progress has been made to reduce isolation and room confinement and practices are changing.

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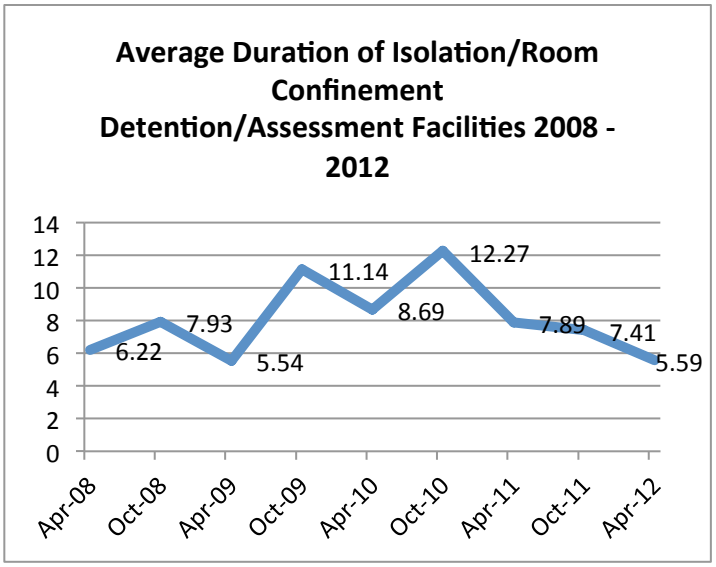
[3] *CJCA Yearbook 2012: A National Perspective of Juvenile Corrections and CJCA Yearbook 2010: A National Perspective. Braintree, MA. Council of Juvenile Correctional Administrators.*

[4] *The PbS incident report database currently has more than 42,000 incident reports from the past four years that have met PbS' data quality requirements.*

In detention and assessment centers, the average time youths spent in isolation and room confinement dropped from the longest time of about 12 hours in October 2010 to less than six hours in April 2012 – a reduction of more than 50 percent. While not quite as low as April 2009, the most recent average time is still shorter than the trend average since 2008 of eight hours and the decline has been consistent over the past two years.




Also during those two years, the percent of isolation and room confinement cases that ended in four hours or less increased (from 59 to 75 percent) and the percent of cases ending in eight hours or less stayed at 85 percent. Again the data shows progress has been made to reduce isolation and room confinement of youths.

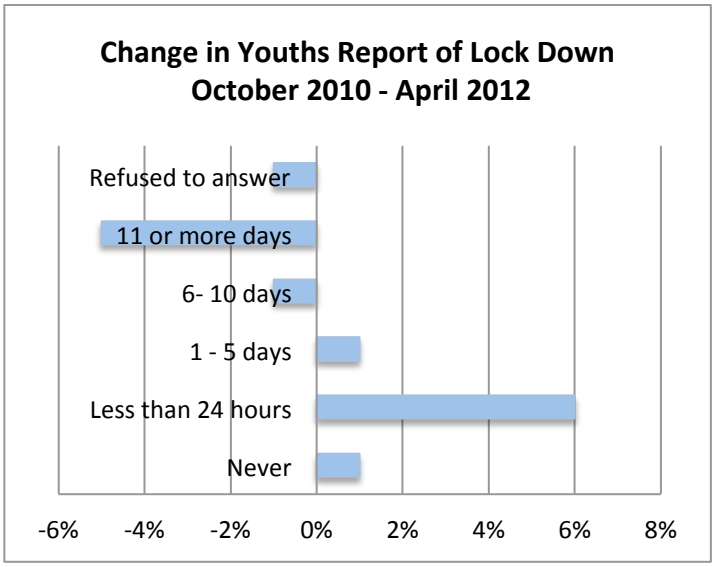
## Youths Also Report Shorter Time in Isolation and Room Confinement

In addition to extensive data quality assurance practices PbS employs internally and on-site to ensure reporting is accurate and meets PbS definition and sample size requirements, the data is analyzed with qualitative information from surveys of youths[5]. In October 2010 and April 2012, a similar number of youths were surveyed (about 4,000 youths) and the same percent (38 percent) reported being "locked down" or isolated or confined to their room. In both data collection periods, more than half of the youths reported they had not been locked down. The remaining youths either refused to answer, said they did not know or left the question blank.

PbS asks the youths who reported they had been locked down to describe how long they were locked down for and offers a range of choices ranging from "never" to "11 days or more." In April 2012, the data showed two large percentages changes: six percent more youths reported the shortest time in lock down and five percent fewer youths reported the longest period of time. All three of the shortest descriptions of lock down saw increased percentages and both of the longest time periods saw decreases, showing the field is moving away from isolating and confining youths in their rooms for longer periods of time and supporting the reduction in isolation and room confinement practices documented in incident report data.

[5] *PbS facilities survey a minimum random sample of 30 youths and 30 staff every data collection period to assess facility conditions, safety, culture, services, staff-youth relationships, contacts with family and lawyers and overall facility climate.*

There is work to be done but change is happening and needs to be recognized. Dedicated agency and facility leaders and staff are finding ways to change cultures – amidst budget cuts, turnover and politics. PbS facilities are continually working to further reduce use and duration of isolation and room confinement and some facilities have safely eliminated its use, proving it can be done. PbS will continue to help the field by providing resources, networking and site-specific coaching to continue progress implementing behavior management best practices and to sustain positive change.




## PbS Reports

*The field of juvenile justice knows now more than ever that youths are developmentally different from adults and need to be treated as individuals, within the context of their families, maximizing their strengths and in the care of professionals and agencies dedicated to recognizing kids are kids. PbS focuses exclusively on at-risk and delinquent youths and the facilities and agencies that serve them and will continue to work to improve conditions of confinement, quality of life and outcomes for incarcerated youths, their families and communities.*


STOP SOLITARY

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

# Section VI: Model Legislation

The following is a **Model Juvenile Justice Stop Solitary Act**, proposing to limit solitary confinement and other forms of isolation in juvenile detention and correctional facilities. Combined with effective agency policies and oversight, legislation can be a key element to successful reform.

The model bill is accompanied by Strategy Notes beside the text. These notes provide possible alternative language which you may choose to use if the optimal reforms reflected in the model bill language are not politically feasible in your state.

The model legislation is also introduced by a thorough Memorandum that explains how to approach a legislative campaign on this issue.

STOP SOLITARY

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

# Model Juvenile Justice Stop Solitary Act

*Protecting Youth and Improving Justice Outcomes*

*By Ending the Use of Solitary Confinement in Juvenile Justice Facilities*

## Introduction

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

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

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

## The Current Reform Landscape

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

[1] AMERICAN CIVIL LIBERTIES UNION, ALONE AND AFRAID: CHILDREN HELD IN SOLITARY CONFINEMENT AND ISOLATION IN JUVENILE DETENTION AND CORRECTIONAL FACILITIES (2013), *available at* https://www.aclu.org/files/assets/Alone%20and%20Afraid%20COMPLETE%20FINAL.pdf.

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

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

## Legislative Strategies

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

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[2] While no law or administrative rule is perfect, several states have taken steps toward limiting isolation in the juvenile justice system. In particular, the reporting requirements of the Nevada law comprise an excellent model for creating more accountability, while the statutes in Oklahoma and West Virginia provide examples of statutory language either banning punitive isolation or restricting its use, although in practice the West Virginia law has unfortunately been interpreted somewhat loosely. See W.V. Code §49-5-16a, Rules governing juvenile facilities; Okla. Admin. Code, 377:35-11-4, Solitary Confinement. In Oklahoma solitary confinement is a "serious and extreme measure to be imposed only in emergency situations." Okla. Admin. Code § 377:35-11-4. Oklahoma's juvenile solitary confinement statute provides the most substantive protection of all existing state statutes on this issue. In West Virginia, solitary confinement may not be used to punish a juvenile and except for sleeping hours, a juvenile may not be locked alone in a room unless that juvenile is "not amenable to reasonable direction and control." *See* W. Va. Code § 49-5-16a; W.V. Div. of Juvenile Serv., Pol'y No. 330.00, Resident Discipline, Procedure 6, Category I Sanctions, *available at* http://www.wvdjs.state.wv.us/Portals/0/Files/330.00%20-%20Resident%20Discipline.pdf (permitting up to 10 days of room confinement for certain rule violations). Unfortunately, the implementation and enforcement of the punitive isolation ban in West Virginia is an ongoing challenge, as the state's administrative policies continue to permit children to be held in solitary confinement for disciplinary purposes. In Nevada, a child who is detained in a local or regional facility for the detention of children may be subjected to "corrective room restriction" only if all other less-restrictive options have been exhausted and only for listed purposes, and no child may be locked alone in a room for longer than 72 hours (though the law also requires thorough reporting of any incident that does exceed 72 hours). See Nev. Rev. Stat. § 62B. Alaska bans the isolation of juveniles for "punitive" reasons, but defines "secure confinement" as permissible for "disciplinary" reasons and when there is a safety or security risk. See Alaska Delinquency Rule 13 (Oct. 15, 2012). In Connecticut, officials supervising children who have been arrested may not place "any child at any time" in "solitary confinement," but the statute does not define "solitary confinement," and reports of children being held in room confinement in juvenile detention facilities in Connecticut continue to surface. *See* Conn. Gen. Stat. Ann. § 46b-133 (d)(5). For post-adjudication youth in Connecticut, the use of "seclusion" is governed by a statute and corresponding regulations requiring periodic authorizations and thirty-minute checks; while this law helps to protect children from unfettered use of solitary confinement and isolation, it still permits officials to hold children in isolation essentially indefinitely. *See* Conn. Gen. Stat. Ann. § 17a-16(d)(1) (West 2014); Conn. Agencies Regs. § 17a-16-11 (2014). Maine's statutory scheme includes segregation in the list of permissible punishments for adults, but not in the list for children; state law prohibits "confinement to a cell" and "segregation" as punishment in juvenile correctional facilities, but the state's rules permit "room restriction" for juveniles, even for minor rule violations. See Me. Rev. Stat. tit. 34-A § 3032 (5).

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

[4] JUVENILE DETENTION ALTERNATIVES INITIATIVE, A GUIDE TO JUVENILE DETENTION REFORM: JUVENILE DETENTION FACILITY ASSESSMENT 2014 UPDATE 177 (2014), *available at* http://www.aecf.org/m/resourcedoc/aecf-juvenile detentionfacilityassessment-2014.pdf.

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

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

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

In Nevada, when a legislator passionate about this issue approached the ACLU of Nevada for assistance, the affiliate was able to overcome objections of juvenile justice administrators, state government lobbyists and local facility directors by meeting with legislators and documenting the actual harm of these practices. SB 107, which passed in 2013, is not perfect, but it places important restrictions on the use of solitary confinement in juvenile facilities. The law authorizes the use of corrective room restriction only if all other less-restrictive options have been exhausted and only to: (1) "modify" a youth's negative behavior; (2) hold the juvenile accountable for a violation of a rule of the facility; or (3) ensure the safety of the juvenile, the staff or others or to ensure the security of the facility.[6] The law also requires that corrective room restriction must be for the minimum time required to address the negative behavior, rule violation or threat; and last no longer than 72 hours. It also has additional requirements once confinement goes beyond two hours.

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

[5] *See* Massachusetts Dept. of Health & Human Services, Policies, Section 3.03 Room Confinement, *available at* http://www.mass.gov/eohhs/gov/laws-regs/dys/policies/chapter-03-daily-living-policies.html.

[6] It is important to note that reform is a work in progress, even in a state like Nevada where there has been a legislative victory. While SB 107 is a good start, the new law is still too broad, permits punitive segregation, and lacks a number of other substantive protections that legislation would ideally include.

jails), and juvenile justice administrators were recruited as key supporters of the bill. As a result of the new law, Nevada juvenile justice facilities have been reporting monthly on incidents of "room confinement" since October 2013. Juvenile justice officials are currently working with Dr. Joseph Tomassone, the Chief of Treatment Services for the New York State Office of Children and Family Services, to reform the use of isolation in their facilities—a development beyond even the requirements of SB 107.

## Model Legislation Challenges

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

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

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

## Model Juvenile Justice Stop Solitary Bill

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

### I. Definitions

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

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

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

c. <"Room confinement"> is the involuntary restriction of a juvenile alone in a cell, room, or other area, including the juvenile's own room, except during normal sleeping hours.

### II. Limitation on <Room Confinement>

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

a. As a punishment or disciplinary sanction;

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

c. For the purposes of retaliation by staff;

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

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

## Strategy Notes

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

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

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

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

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

2. <Room confinement> is not to be used as a disciplinary measure or as punishment except after all other less-restrictive options have been exhausted, in extreme circumstances, which must be documented, and should not be used for 24 hours or longer.

a. Disciplinary or punitive <room confinement> of more than 24 hours is reserved for the most serious violations, must be approved by the facility administrator, and shall not be imposed for more than 72 hours continuously under any circumstances.

b. Any time a juvenile is placed in disciplinary or punitive <room confinement>, staff shall notify the unit supervisor. Staff may not keep juveniles in <room confinement> for longer than one hour without written approval of the unit supervisor. Staff may not keep juveniles in <room confinement> for longer than 4 hours without written approval of the facility administrator or designee.

c. Any juvenile placed in disciplinary or punitive <room confinement> must be provided due process protections, including the opportunity to know the reason for the decision, to appeal the decision in writing and with an advocate present.

## III. Limited permissible use of <room confinement> in cases of immediate and substantial risk of harm.

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

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

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

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

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

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

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

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

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

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

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

**d. If a four-hour cap is not politically feasible in your state, this number could be increased.** E.g., proposed legislation in California makes the cap 24 hours.

Another possible alternative would be to add the following subsections:

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

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

Insert appropriate title.

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

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

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

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

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

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

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

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

## IV. Documentation and Reporting Requirements

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

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

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

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

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

(cont. on next page)

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

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

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

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

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

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

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

(cont. from previous page)

1) Any instance of <room confinement> of a juvenile for longer than 1 hour must be approved by a supervisor and documented in writing. Any extension of <room confinement> to longer than 3 hours must be approved by the director of the facility and documented in writing. Any extension of <room confinement> to longer than 8 hours must be approved by both the director of the facility and the <state/local/county juvenile justice administrator> and documented in writing.
2) This documentation must include the date and duration of each occurrence, the reason for placement in <room confinement>, an explanation of why less restrictive means of calming the youth down were unsuccessful, and the race, age, and gender of the juvenile placed in <room confinement>. Each extension of a period in <room confinement> pursuant to Section 4.a. must be documented.

Insert appropriate entity title

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

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

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

Insert appropriate title and program name here.

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

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

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

## VI. Training

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

Insert appropriate entity titles.

You may wish to vary these requirements, depending on the existing laws and regulations in your state.

a. Adolescent development;

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

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

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

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

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

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

h. Suicide potential and prevention for juveniles; and

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

ongoing basis as community standards of care change or as otherwise deemed appropriate.

## VII. Operative Date

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

Include an "Operative Date" section if necessary.