

ALONE & AFRAID:

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



November 2013



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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 US 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 US Attorney General’s *National Task Force on Children Exposed to Violence* also recently suggested that “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 goal of juvenile justice laws as well as the detention of children is both to protect public safety and to promote rehabilitation so that upon return to the community children can become 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. And yet, children across this country are subject to such treatment 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.

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 need age-appropriate services and programming for their healthy growth and development or 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’ 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 solitary, including: hypersensitivity to external 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 particularly at risk of adverse reactions from prolonged isolation and solitary confinement.³⁵

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.”

Risk of Suicide

For children, suicide is particularly strongly associated with isolation.³⁶ 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 out-of-cell physical exercise, is physically harmful to their health, well-being, and growth.

Developmental Harm

Children held in solitary confinement are generally denied access to programming provided to other youth as a “privilege.”³⁹ This can include educational programming, access to reading materials, and the ability to write, call, or visit with loved ones. 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.

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 make accommodation for disabilities when they care for children in custody.⁴¹

Court Challenges to Youth Solitary Confinement

Federal litigation pending in New Jersey challenges the repeated use of solitary confinement and isolation on children who spent weeks and months alone.

In 2011, the Juvenile Law Center filed a lawsuit on behalf of two boys against the New Jersey Juvenile Justice Commission. In the Complaint the boys allege that they were subjected to isolation and room seclusion while detained and that while in isolation, both were frequently without access to education, treatment, or other therapeutic support; denied personal possessions and proper clothing, nutrition and medical care; and allowed no physical recreation or exercise or other interaction with their peers. Both of them were subjected to isolation for days or for weeks at a time for minor behavioral infractions or for their purported protection. In total, they allege that one of them spent 178 days in solitary confinement, the other, 50 days. One of the boys attempted suicide and mutilated himself several times during the ordeal.

This important case seeking to protect children's rights is now pending in federal court.

Source: Second Amended Complaint, Troy D. and O'Neill S. v. Mickens, Civil Action No.: 1:10-cv-02902-JEI-AMD (D. N.J., Dec. 14, 2011), available at <http://www.jlc.org/legal-docket/td-and-os-v-mickens-et-al> (click on "Second Amended Complaint").

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 States⁴² 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 they are deemed to be out of control;
- **MEDICAL ISOLATION:** Physical and social isolation to medically treat children, such as for a contagious disease or for having expressed a desire to commit suicide.⁴⁴

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

Neither states nor the federal government 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 show why greater transparency and data-reporting is 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 Texas⁵¹ 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 policy at the state and federal levels 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 limits isolation to 72 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 – 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.⁵⁶ Six states—Alaska, Connecticut, Maine, Nevada, Oklahoma, and West Virginia—by statute have prohibited certain forms of isolation, such as solitary confinement, in juvenile detention facilities.⁵⁷

FEDERAL LAW AND POLICY – The *Juvenile Justice and Delinquency Prevention Act (JJJPA)* 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.⁵⁸ 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.⁵⁹ 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.⁶⁰ State juvenile facilities had until August 2013 to certify compliance with the regulations or potentially lose certain federal funding and there is not yet clear evidence that state juvenile justice facilities are adequately limiting isolation as required.⁶¹ And while DOJ investigations of state juvenile facilities have repeatedly found patterns and practices of excessive isolation and consistently declared them to be unconstitutional,⁶² there is still no ban on the solitary confinement of children in the custody of the federal government.⁶³

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 laws, which afford 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,⁶⁴ juvenile life without parole,⁶⁵ and custodial interrogations,⁶⁶ 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.⁶⁷ Children in confinement have a "liberty interest in safety and freedom from [unreasonable] bodily restraint."⁶⁸ Conditions of confinement are unreasonable when they are "a substantial departure from accepted professional judgment, practice or standards."⁶⁹ The Supreme Court has also held that government conduct violates substantive due process when it "shocks the conscience."⁷⁰ 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.⁷¹ Few courts have considered the issue recently.⁷² 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.⁷³ 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.⁷⁴ 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."⁷⁵ 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.⁷⁶ 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.⁷⁷

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),⁷⁸ the Committee on the Rights of the Child,⁷⁹ the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the Beijing Rules),⁸⁰ and the Inter-American Commission on Human Rights.⁸¹ 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 18.⁸²

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.⁸³

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 Any 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), 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), <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 4, at 3.

⁵ Letter from Robert L. Listenbee, *supra* note 4, 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 CICCETTI & DONALD J. COHEN EDS., 2nd 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.*

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- 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).
- ¹⁴ *Id.*; Craig Haney, *Mental Health Issues in Long-Term Solitary and "Supermax" Confinement*, 49 CRIME & DELINQ. 124, 130, 134 (2003); *see generally* Richard Korn, *The Effects of Confinement in the High Security Unit at Lexington*, 15 SOC. JUST. 8 (1988).
- ¹⁵ Grassian, *supra* note 13, at 1452-53; Haney, *supra* note 14, at 130, 133; Holly A. Miller, *Reexamining Psychological Distress in the Current Conditions of Segregation*, 1 J. OF CORRECTIONAL HEALTHCARE 39, 48 (1994). *See generally* Stanley L. Brodsky & Forrest R. Scogin, *Inmates in Protective Custody: First Data on Emotional Effects*, 1 FORENSIC REP. 267 (1988).
- ¹⁶ Grassian, *supra* note 13, at 1453; Holly A. Miller & G. Young, *Prison Segregation: Administrative Detention Remedy of Mental Health Problem?*, 7 CRIM. BEHAV. AND MENTAL HEALTH 85, 91 (1997); Haney, *supra* note 14, at 130, 134; *see generally* HANS TOCH, *MOSAIC OF DESPAIR: HUMAN BREAKDOWN IN PRISON* (Am. Psychol. Ass'n., 1992).
- ¹⁷ Grassian, *supra* note 13, at 1453.
- ¹⁸ *Id.*; Miller & Young, *supra* note 16, at 92.
- ¹⁹ *Id.*; Haney, *supra* note 14, at 131.
- ²⁰ Haney, *supra* note 14, at 130; *see generally* Korn, *supra*, note 14.
- ²¹ Haney, *supra* note 14, at 131.
- ²² Miller & Young, *supra* note 16, at 91; *see generally* Korn, *supra* note 14.
- ²³ *Id.*
- ²⁴ Haney, *supra* note 14, at 134; *see generally* Brodsky & Scogin, *supra* note 15.
- ²⁵ Haney, *supra* note 14, at 133.
- ²⁶ *Id.*
- ²⁷ Haney, *supra* note 14, at 137; *see generally* Brodsky & Scogin, *supra* note 15.
- ²⁸ Haney, *supra* note 14, at 133.
- ²⁹ *Id.*
- ³⁰ Grassian, *supra* note 13, at 1453; Eric Lanes, *The Association of Administrative Segregation Placement and Other Risk Factors with the Self-Injury-Free Time of Male Prisoners*, 48 J. OF OFFENDER REHABILITATION 529, 539-

40 (2009).

³¹ Paul Gendreau, N.L. Freedman, & G.J.S. Wilde, *Changes in EEG Alpha Frequency and Evoked Response Latency During Solitary Confinement*, 79 J. OF ABNORMAL PSYCH. 54, 57-58 (1972).

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 *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), 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/~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 42, 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://texasajc.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 JUVENILE DET. ALT. INITIATIVE, JUVENILE DETENTION ALTERNATIVES INITIATIVE (JDAI) FACILITY SITE ASSESSMENT INSTRUMENT, Standard VII(E) (2006), *available at* <http://www.cclp.org/documents/Conditions/JDAI%20Standards.pdf>.

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 PERFORMANCE-BASED STANDARDS, REDUCING ISOLATION AND ROOM CONFINEMENT, *supra* note 48. The report states that "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.

⁵⁷ These states at a minimum either ban punitive solitary confinement or heavily restrict its use. *See* Alaska Delinquency Rule 13 (Oct. 15, 2012) ("A juvenile may not be confined in solitary confinement for punitive reasons"); Conn. Gen. Stat. Ann. § 46b-133 (2012) ("no child shall at any time be held in solitary confinement"); Me. Rev. Stat. tit. 34-A § 3032 (5) (2006) (including "segregation" in the list of punishments for adults, but not in the list for children); Nev. Rev. Stat. § 62B (2013) ("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]."); Okla. Admin. Code § 377:35-11-4 (2013) ("Solitary confinement is a serious and extreme measure to be imposed only in emergency situations."); W. Va. Code § 49-5-16a (1998) ("A juvenile may not be punished by . . . imposition of solitary confinement and 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.").

Three other states have placed other limits on solitary confinement, either in adult or juvenile facilities. *See* 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).

California, Texas, and New Hampshire also are considering 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). *See also* Appendix 1.

⁵⁸ Coalition for Juvenile Justice, The JJDP: Federal Juvenile Justice and Delinquency Prevention Act, 2007, *available at*: www.juvjustice.org/media/.../CJJ%20Hill%20Packet--Handouts.doc.

⁵⁹ 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).

⁶⁰ *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.

⁶¹ 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.

⁶² 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. 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.).

⁶³ 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>.

⁶⁴ *Roper v. Simmons*, 453 U.S. 551 (2005).

⁶⁵ *Graham v. Florida*, 130 S.Ct. 2011 (2010); *Miller v. Alabama*, 132 S.Ct. 2455 (2012).

⁶⁶ *J.D.B. v. North Carolina*, 564 U.S. ___ (2011).

⁶⁷ *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).

⁶⁸ *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).

⁶⁹ *Id.*

⁷⁰ *County of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998).

⁷¹ 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).

⁷² *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.FI. 2013); *Troy D. and O’Neill S. v. Mickens et al.*, Civil Action No.: 1:10-cv-02902-JEI-AMD (D. N.J. 2013).

⁷³ 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).

⁷⁴ *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).

⁷⁵ 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).

⁷⁶ 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.

⁷⁷ 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.

⁷⁸ 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”).

⁷⁹ 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).

⁸⁰ 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”).

⁸¹ 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*).

⁸² 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>.

⁸³ 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 DET. ALT. INITIATIVE, JUVENILE DETENTION ALTERNATIVES INITIATIVE (JDAI) FACILITY SITE ASSESSMENT INSTRUMENT Standard VII(B) (2006), *available at* <http://www.cclp.org/documents/Conditions/JDAI%20Standards.pdf>.

Appendix 1: The Legal Landscape on Isolation and Solitary Confinement of Children

States Which Prohibit Solitary Confinement by Statute		
State	Status	Text
Alaska	Ban on punitive juvenile solitary confinement	"A juvenile may not be confined in solitary confinement for punitive reasons." Alaska Delinquency Rule 13 (Oct. 15, 2012).
Connecticut	Ban on juvenile solitary confinement	"Any child confined in a community correctional center or lockup shall be held in an area separate and apart from any adult detainee, except in the case of a nursing infant, and no child shall at any time be held in solitary confinement." Conn. Gen. Stat. Ann. § 46b-133 (2012).
Maine	Ban on solitary confinement at juvenile 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. 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).
Nevada	Juvenile solitary confinement is only allowed in limited circumstances after alternatives have been exhausted and requires special approval and monitoring	"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." (A substantial amount of additional information is omitted). Nev. Rev. Stat. § 62B (2013).

Oklahoma	Ban on punitive juvenile solitary confinement	<p>(a) Solitary confinement is 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. Solitary confinement is a serious and extreme measure to be imposed only in emergency situations. Staff shall impose solitary confinement only when a juvenile in an OJA institution:</p> <p>(1) is out of control;</p> <p>(2) is a serious and immediate physical danger to himself or others; and</p> <p>(3) has failed to respond to less restrictive methods of control.</p> <p>(b) Solitary confinement shall not be used for punishment at any OJA institution. No juvenile shall remain in solitary confinement in excess of three hours. As soon as the juvenile is sufficiently under control so as to no longer pose a serious and immediate danger to himself or others, the juvenile shall be released from solitary confinement. The use of consecutive periods of solitary confinement to evade the spirit and purpose of this Section shall be prohibited. All rooms used for solitary confinement shall have at least 80 square feet of floor space, and shall have adequate lighting, heating/cooling, and ventilation for the comfort of the juvenile. Juveniles in solitary confinement shall have access to appropriate medical and psychological services." Okla. Admin. Code § 377:35-11-4 (2013).</p>
West Virginia	Ban on punitive juvenile solitary confinement.	<p>"(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).</p>

Other State Legislative Initiatives and Pending Legislation		
State	Status	Text
California	Legislation in committee 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 in committee 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.	"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).