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The Honorable Richard Durbin, Chairman
Senate Judiciary Subcommittee on the Constitution,
Civil Rights and Human Rights
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Statement of the Youth Law Center
Reassessing Solitary Confinement: The Human Rights, Fiscal and Public
Safety Consequences; Hearing Before the Senate Judiciary Subcommittee
on the Constitution, Civil Rights, and Human Rights (June 19, 2012)

Dear Chairman Durbin and Members of the Subcommittee:

The Youth Law Center is grateful for the opportunity to offer our experience and insight on the solitary confinement of juveniles in detention centers, training schools, jails and other institutions around the country.¹ The Youth Law Center is a national public interest law firm working on behalf of children and youth in the juvenile justice and child welfare systems since 1978. Our attorneys are widely recognized as experts on juvenile confinement law, and have been involved in conditions work in approximately 40 states. Many of our conditions lawsuits have involved solitary confinement issues. We have inspected or visited dozens of juvenile facilities where solitary confinement is used, and have received numerous complaints from youth and families of youth held in solitary confinement. For many years, we have worked for stronger laws and institutional policies governing solitary confinement, and better professional education about what it does to children. This statement will provide examples of solitary confinement and its impact on juveniles; rebut commonly used rationales for using solitary confinement; and suggest ways that Congress may act to eliminate this dehumanizing, damaging, and counter-productive practice.

¹ In juvenile facilities, solitary confinement is used for multiple purposes and goes by many names, including room time, room lock, 23 and 1, "the box", isolation, suicide watch, administrative segregation, and special program. It all comes down to the same thing: a young person locked, alone, in a tiny room.

Solitary Confinement is Especially Harmful to Juveniles

While solitary confinement is harmful to all human beings, it is especially so for children. For youth locked in a tiny room, a moment is an eternity, and it seems that the confinement will never end. And because youth in such confinement lack the maturity to put their current circumstances into a long term perspective, many feel hopeless and depressed. Alternatively, they may feel that the system isn't fair and that those in authority cannot be trusted. The message conveyed to them is that they are worthless and beyond all help.

Many of the very youth who wind up in solitary confinement have already experienced trauma or abuse and/or suffer from mental illness. Placing them in solitary confinement exacerbates already fragile psychological conditions, sometimes with devastating results. A national study of juvenile institutional suicides found that 75% involved youth confined to single occupant rooms, and 50% of those were youth being subjected to disciplinary confinement.²

Even brief periods of solitary confinement may have a lasting impact on a young person.³ This is especially so for the many youth who have already experienced abuse, neglect, or previous institutionalization. Locking them away subjects them to re-traumatization. This is a cruel outcome for those who depend on the system to recognize and help them work through the horrifying events they have already experienced in their young lives.

Youth subjected to solitary confinement are unable to do the very things that may reduce the length of confinement and ensure success in the community. Most are deprived of access to educational services, or are given worksheets or packets that do not help to advance them academically. They are unable to participate in group activities that would help them to present themselves in a positive light and move away from delinquency. They leave custody in worse condition than when they entered. Because of solitary confinement, the youth who need the most attention, receive the least.⁴

² Lindsay M. Hayes, "Characteristics of Juvenile Suicides in Confinement," OJJDP Juvenile Justice Bulletin (Feb. 2009).

³ Sandra Simkins, Marty Beyer, Lisa M. Geis, "The Harmful Use of Isolation in Juvenile Detention Facilities: The need for Post-Disposition representation," 38 *Washington University Journal of Law & Policy* 241 (2012).

⁴ See Michelle Deitch, Anna Lipton Galbraith, and Jordan Pollock, *Conditions for Certified Juveniles in Texas County Jails*, University of Texas at Austin, LBJ School of Public Affairs (2012).

The Systemic Impact of Solitary Confinement

The harm caused by solitary confinement has broader ramifications. Deteriorating mental and physical health translate into added costs to the justice system because youth are harder to place, and this results in additional costs of confinement. There are also costs for staff. Use of solitary confinement contributes to stress and work dissatisfaction, which in turn results in costly absenteeism, workers compensation claims and job turnover.

When something bad happens to a youth in solitary confinement – a suicide or a serious attempt - there are enormous additional costs from the inevitable litigation. In California, the family of a girl who suffered permanent brain damage after hanging herself in solitary confinement recently settled the case for more than two million dollars.

To the extent that use of solitary confinement interferes with the ability of the system to provide education, recreation, social interaction and emotional support to the child, there are even greater costs. For every minute a youth spends locked in a cell, opportunities are missed to provide much needed interventions that could change the course of the young person's life. For every youth the system fails to rehabilitate, there may be additional costs to the community in future criminality, victimization, court costs and dependence on public benefits.

Routine Use of Solitary is Pervasive in Juvenile facilities

While the United State Supreme Court has repeatedly recognized that juveniles are different from adults, and that their immaturity requires different interventions and sanctions,⁵ our correctional system has yet to catch up.⁶ Despite the serious short and long term consequences of solitary confinement, it is routinely used for

⁵ *Roper v. Simmons*, 543 U.S. 551 (2005); *Safford Unified School District v. Redding* (2009) 557 U.S. 364; *Graham v. Florida* (2010) 560 U.S. ___, 130 S.Ct 2011; *J.D.B. v. North Carolina* (2012) ___ U.S. ___, 131 S.Ct. 2394.

⁶ International law also prohibits the use of solitary confinement for juveniles. The United Nations Rules for the Protection of Juveniles Deprived of their Liberty, adopted by the General Assembly in Resolution 45/113, Article 67 (December 1990), prohibits “closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned.” The Convention on the Rights of the Child (CRC), Article 37, also prohibits cruel, inhuman or degrading treatment or punishment, and comments to that section reference “closed or solitary confinement.”

punishment, administrative convenience, or the misguided belief that it is needed to protect youth. The use of solitary confinement is found, for example, in facilities that:

- Impose disciplinary sanctions calling for multiple days in room confinement for violation of facility rules (for example, possession of a pencil);
- Place youth perceived to be vulnerable (for example youth with developmental disabilities) in solitary confinement for their own protection;
- Feature “special programs” that consist of 20 or more hours of lockdown a day and no programs;
- Isolate suicidal youth for their own protection;
- Lock youth in their rooms for extended periods because staff called in sick and there are insufficient on-call staff;
- Keep youth considered to be high security locked in their rooms, even though they are in a discrete living unit;
- “Treat” youth with mental illness or behavioral issues primarily with locked room time;
- Require youth who do not receive visits to remain locked in their room during visiting hours;
- Lock youth in their room while staff do paperwork;
- Impose institutional lockdowns that extend long after security dangers have subsided; or
- Allow juveniles to be held in adult institutions, and then place them in solitary confinement for their own protection.

While it surely may be necessary to isolate youth for brief periods to address safety issues or quell disturbances, the foregoing list reflects a system that does not treat solitary confinement as the rarely used crisis intervention it should be.

Solitary Confinement is Unnecessary and Alternative Models Already Exist

The pervasive use of solitary confinement on juveniles is often related to understaffing, inadequate staff training, and lack of professional mental health support. For example, facilities with large youth to staff ratios resort more quickly to solitary confinement because staff do not know the youth as well; are less able to head off escalating situations; do not have the time to work through alternative approaches that could prevent the need for solitary confinement; and are less able to supervise youth who cannot program with the rest of the youth. Similarly, in facilities that do not provide good training in behavioral interventions, staff are less likely to see alternative ways to handle situations that currently result in solitary confinement. Further, in facilities with meaningful mental health staffing, youth at risk of suicide and youth with behavioral issues are more likely to be dealt with in more normalized settings.

Solitary confinement also persists because “this is how we have always done it.” Many facilities have historically relied on solitary confinement as their sole response to disciplinary issues, and have never explored other ways to handle misbehavior. In fact, a number of jurisdictions have moved in a different direction. Missouri had only one isolation cell for its entire state facility system when we visited. It avoids the need for solitary by having good staffing ratios (2 to 11), lots of programs, and positive support systems for youth. A number of other jurisdictions have drastically reduced their use of solitary confinement by replacing punitive discipline systems with positive behavior support systems.

Finally, and perhaps, most disturbingly, a number of forms of solitary confinement are justified as “for the protection of the child.” Thus, in many facilities around the country, youth spend days and weeks in solitary confinement because they are at risk of suicide or other self harm. This practice persists despite the fact that experts urge facilities not to isolate youth on suicide watch.⁷ Similarly, in the mental health community, the harm to juveniles caused by “seclusion” is well-recognized. The Substance Abuse and Mental Health Services Administration (SAMSHA) has noted the particular dangers of seclusion for children, and has a national project aimed at eliminating seclusion and restraint.⁸ Federal regulations now strictly limit the practice in treatment facilities, and require intensive involvement by mental health professionals in its use for even those brief periods.⁹

⁷ See Lindsay Hayes, *supra*, note 2.

⁸ See http://www.samhsa.gov/matrix2/seclusion_matrix.aspx; and “Promoting Alternatives to the Use of Seclusion and Restraint,” SAMSHA Issue Brief #1 (March 2010), http://www.samhsa.gov/matrix2/IssueBrief1_B.pdf.

⁹ 42 C.F.R. § 482.13, *et seq.*

What Congress Should Do

The recent promulgation of the Prison Rape Elimination Act stands as a testament to the fact that Congress can effectively intervene to address institutional abuses. The SAMSHA work on seclusion and restraint also provides a strong model that includes standards, professional education, and technical assistance in developing alternative interventions. Eliminating juvenile solitary confinement calls for the same kind of multi-faceted approach, including standards, fiscal incentives, and technical assistance. Here are some of the specific things Congress should do to help:

- Reauthorize the Juvenile Justice and Delinquency Prevention Act (JJDPA) and condition funding to the States on elimination of solitary confinement; provide incentive grants and technical assistance to jurisdictions to assist in this process. Also, eliminate the loopholes that currently permit juveniles to be held in adult jails and status offenders to be held in secure detention for violation of court orders – both of which frequently result in solitary confinement of youth;
- Enact legislation requiring the promulgation of national standards that eliminate solitary confinement for discipline, mental health/behavioral purposes, and administrative convenience. Because eliminating solitary confinement requires attention to many other areas of institutional operation (staffing, training, mental health resources, oversight), consider dusting off and updating the outstanding National Advisory Commission for Juvenile Justice and Delinquency Prevention *Standards for the Administration of Juvenile Justice* (July 1980), and formally adopting them;
- Require juvenile facilities to adhere to the strict requirements for “seclusion” now imposed by federal statute for treatment facilities;¹⁰
- Support diversion programs and wraparound services for youth who are incompetent to stand trial or have mental health issues that frequently result in solitary confinement in juvenile facilities;
- Provide support to advocates to monitor and respond to complaints about solitary confinement; and
- Provide additional support for Department of Justice investigations into solitary confinement.

¹⁰ *Id.*

Conclusion

The rampant use of solitary confinement on juveniles is antithetical to our values about the treatment of young people. It hurts rather than helps youth in their journey toward rehabilitation. In today's world of evidence-based practices, there is no place for this medieval holdover. There are effective, more humane ways to address the issues that result in solitary confinement. We urge the Subcommittee to take action to respond to these issues. Thank you for your consideration, and please count on us to assist in any way we can as your efforts move forward.

Sincerely,



Sue Burrell, Staff Attorney
YOUTH LAW CENTER