PJDC
PACIFIC JUVENILE DEFENDER CENTER

Ensuring excellence in juvenile defense and promoting justice for all children

VIA EMAIL

February 21, 2014

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
Owen_Reilly@judiciary-dem.senate.gov

RE: Statement of the Pacific Juvenile Defender Center (PJDC) for Reassessing Solitary Confinement II: The Human Rights, Fiscal, and Public Safety Consequences,

Hearing Before the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights

Dear Chairman Durbin and Members of the Subcommittee:

The Pacific Juvenile Defender Center (PJDC) thanks the Subcommittee for holding this hearing on the use of solitary confinement in the prisons, jails, and juvenile halls of the United States. We write to offer our insight on the profound and permanently negative effects of solitary confinement upon children.

PJDC is the regional affiliate for California and Hawaii of the National Juvenile Defender Center based in Washington, D.C. PJDC works to build the capacity of the juvenile defense bar, and to improve access to counsel and quality of representation for children in the justice system. Collectively, PJDC's membership of more than 400 juvenile attorneys represents tens of thousands of children in California and Hawaii's delinquency and dependency courts.

Extensive research by mental health and medical professionals has shown that solitary confinement of adults is the most extreme form of criminal punishment besides death, and only should be used in the most limited of circumstances. (C. Haney, "Mental Health Issues in Long-Term Solitary and Supermax Confinement," 49 Crime & Delinquency 124 (2003).) When used with children, its effects are even more devastating. Anyone who has spent time

with a child realizes that their conception of time is very different from that of adults, and an hour is an eternity. The negative impacts seen in adults after a month in solitary can be seen in children after brief periods of solitary. (S. Simkins, M. Beyer, L. Geis, "The Harmful Use of Isolation in Juvenile Detention Facilities: The Need for Post-Disposition Representation," 38 WASH. U. J. OF L. & POL'Y 241 (2012).) The U.S. Supreme Court has repeatedly held that children *are* different than adults, and as a result they deserve different punishment. *Roper v. Simmons*, 543 U.S. 551 (2005); *Safford Unified School Dist. v. Redding*, 557 U.S. 364 (2009); *Graham v. Florida*, 560 U.S. ___, 130 S.Ct. 2011 (2010); *J.D.B. v. North Carolina*, __ U.S. __, 131 S.Ct. 2394 (2012).

Most youth who are isolated in solitary confinement at juvenile detention facilities have histories of abuse, trauma, and mental illness. However, even for children without mental illness or abuse histories, being isolated for 23 to 24 hours a day and denied the most basic of human contact induces grave and permanent results. Children in solitary confinement often are denied education or substance abuse and mental health treatment, rehabilitative services that would do the most good to prepare them for a successful return to their families and community.

One of the most common justifications for isolating youth in solitary confinement is that they are at risk of self-harm or suicide. Isolating these vulnerable children for days or weeks on end, rather than providing them appropriate mental health treatment, exacerbates their conditions. This practice flies in the face of extensive research by mental health and criminal justice experts. Furthermore, federal courts have found that prisons may not isolate seriously mentally ill adults; such reasoning surely applies to mentally ill children. *Madrid v. Gomez*, 889 F.Supp. 1146 (N.D. Calif., 1995); *Jones 'El v. Berge,* 164 F.Supp.2d 1096 (W.D. Wis. 2001); *Presley v. Epps*, No. 4:05CV148-JAD (N.D. Mississippi, 2005 & 2007). Isolating mentally ill children or children in crisis does nothing but compound their trauma.

Another common justification for isolating children in solitary confinement is ostensibly for their own protection. We have heard from all too many attorneys in California about how their clients are put in isolation because the child was attacked or threatened by other youth, because the child is very young or small for his or her age, or because the child is or is perceived to be gay, lesbian, or transgendered.

A recent national study of suicides in juvenile detention facilities published by the U.S. Department of Justice found that half of all youth who killed themselves in custody were subjected to isolation in disciplinary confinement, and that 75% of juvenile suicides were children who were confined to single-occupant cells. (L. Hayes, "Characteristics of Juvenile Suicides in Confinement," OJJDP Juvenile Justice Bulletin, Feb. 2009).

The federal government has taken steps to end the practice of "seclusion" of children in mental health institutions because of the permanent physical and mental harms that occur. The Children's Health Act of 2000 required Substance Abuse and Mental Health Services Administration (SAMHSA) and the Centers for Medicare & Medicaid Services (CMS) to develop regulations governing use of restraint and seclusion in health care facilities receiving federal dollars and in non-medical, community-based facilities for youth. CMS has established standards that prohibit hospitals and residential psychiatric treatment facilities for people under age 21 from using restraint and seclusion except for very brief periods of time to ensure safety during emergencies. SAMHSA's goal is to end the use of seclusion (and restraints) on children in mental health institutional settings. (http://www.samhsa.gov/samhsanewsletter/Volume_18_Number_6/EndSeclusionRestraint.aspx).

Not all states isolate their children in juvenile detention facilities. For example, through programs such as the Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative, jurisdictions are moving away from using punitive solitary confinement and replacing it with positive behavior support programs. And the State of New York announced earlier this week that it would end the practice of isolating children.

The work by SAMHSA and CMS in mental health institutions, and the decision by the State of New York to end the use of isolation for children, provides a roadmap for how Congress could end the use of such punitive treatment of our children. Congress should reauthorize the Juvenile Justice and Delinquency Prevention Act (JJDPA) to condition federal funding to the states on greatly restricting or eliminating the use of solitary confinement of children. Congress can require juvenile detention facilities and jails to adhere to the strict requirements for "seclusion" now imposed on mental health treatment facilities. Congress can create transparency by requiring states and counties to provide data regarding the use of isolation on children, including collecting information such

as the child's age, gender, race, perceived or real sexual orientation, reason for being placed in isolation, and length of stay in isolation. Congress can similarly enact legislation that requires the Department of Justice (and other agencies) to promulgate standards, professional education, and technical assistance to end the isolation of children.

Thank you for your consideration of our comments on the issue of solitary confinement for children.

Sincerely yours,

/s/ Jonathan Laba
Jonathan Laba, Deputy Director

/s/ Corene Kendrick
Corene Kendrick, Board of Directors

PACIFIC JUVENILE DEFENDER CENTER