

Written Statement of

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Hearing on

**Reassessing Solitary Confinement II:
The Human Rights, Fiscal, and Public Safety Consequences**

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I am grateful for this opportunity to present written testimony before the Senate Judiciary Committee Subcommittee on the Constitution, Civil Rights, and Human Rights for this hearing on solitary confinement in the United States. This is an extremely important issue and one on which both the United States Legislative and Executive Branches should and could take immediate action.

My testimony today will focus on the solitary confinement of children in the United States. In the last few years, I have interviewed or corresponded with scores of young people who were subjected to solitary confinement while they were under age 18 in juvenile facilities, as well as in jails and prisons in 20 states across the country. I want to share my perspective and some of their stories with this Subcommittee.

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Every day in this country, young people under the age of 18 are held in solitary confinement in juvenile facilities, jails and prisons.^{*} In solitary confinement, children spend 22 or more hours a day alone, usually in a small cell, isolated both physically and socially – and this can extend for days, weeks or months. Sometimes a window allows natural light to filter in or a view of the outside. Sometimes children can communicate with each other – yelling to other children, voices distorted, reverberating against concrete and metal. In some facilities, children get a book, or maybe just a bible, or perhaps study materials slipped under their door. But in solitary confinement, few contours distinguish one hour, day or week from the next.

I use the term ‘solitary confinement’ to refer to physical and social isolation of 22 to 24 hours per day for one day or more. Juvenile facilities, jails and prisons in the United States generally use solitary confinement for three purposes: to discipline, to manage or to treat. Children are held in solitary confinement to punish them when they break the rules inside a facility; to manage them, either to protect them from adults or one another or because they are deemed to require segregation when officials don’t know how else to handle them; or to medically treat them, such as when they threaten to take their own life. Some facilities, sometimes in addition to using solitary confinement, use various, shorter forms of physical and social isolation that can be imposed for many hours – though fewer than 22.

Much of the national discussion about solitary confinement focuses on the use of prolonged physical and social isolation to manage individuals in state and federal prisons: a practice which, in its most extreme iterations, involves near-complete isolation for decades. But, and although I have met those whose isolation began in their childhood and continued long into adulthood, the alarming truth is that children all across the United States, in juvenile facilities, jails and prisons, are subjected to a range of shorter solitary confinement practices, and with devastating consequences.

The solitary confinement of children is a serious and widespread problem in the United States. Extended isolation of children can have a devastating impact – inhibiting healthy growth, development and rehabilitation and causing serious pain and suffering, or worse. All isolation practices are problematic; prolonged isolation is inconsistent with medical and correctional best-practices and can violate both constitutional and international human rights law.

^{*} In the United States, the term ‘juvenile facility’ generally refers to a facility in which individuals subject to the jurisdiction of the juvenile justice system are held; the term ‘jail’ generally refers to a facility in which individuals subject to the criminal justice system are held either before trial or for short periods of post-conviction incarceration (usually less than one year) and the term ‘prison’ generally refers to a facility in which individuals convicted of an offense in the criminal justice system are held for long-term incarceration. In this testimony, I use the terms ‘child,’ ‘adolescent,’ ‘youth,’ and ‘young people’ interchangeably to refer to youth under the age of 18.

The Solitary Confinement of Children is Widespread and Harmful

There is no comprehensive national data on the solitary confinement of children in this country. But what research there is suggests that thousands of children each year are subjected to the practice.

In *Growing Up Locked Down: Youth in Solitary Confinement in Jails and Prisons Across the United States*, the only national study of the solitary confinement of children in the United States, which I authored, Human Rights Watch and the American Civil Liberties Union estimated (using Bureau of Justice Statistic data through 2011) that in recent years nearly 100,000 children – each year – are held in jails and prisons where they are at risk of being subjected to solitary confinement.ⁱ Jail and prison officials nationwide reported using the same techniques to manage children and adults in their care, including solitary confinement.ⁱⁱ Those few states in which data is available suggest that a striking percentage of children may be held in solitary confinement in adult jails and prisons each year – with some large state jail and prison systems reporting that well over 10% of children in their care are subjected to the practice and some small jail facilities holding 100% of children in their care in solitary.ⁱⁱⁱ

With regard to juvenile facilities, a recent briefing paper by the American Civil Liberties Union, *Alone and Afraid: Children Held in Solitary Confinement and Isolation in Juvenile Detention and Correctional Facilities*, gathers the best data available on both solitary confinement and other isolation practices, including from a number of states.^{iv} The most recent comprehensive estimate from Bureau of Justice Statistics data suggests that in 2003 an estimated 35,000 young people between the ages of 10 and 20 were held in isolation in juvenile facilities in the United States with over half – or an estimated more than 17,000 children – held for more than 24 hours in a form of solitary confinement.^v

The children I have spoken with about their experience of solitary confinement in adult jails and prisons were haunting in their descriptions of the practice as harmful and counterproductive.

Young people told me about just how difficult it was for them to cope in solitary. Several described losing touch with reality while isolated. Carter, who entered prison when he was 14 years old, told me:

“I felt like I was going mad. Nothing but a wall to stare at... I started to see pictures in the little bumps. Eventually, I said the hell with it and started acting insane. I made little characters with my hands and acted out video games I used to play on the outside.”^{vi}

I spoke with at least a dozen young people in detail about their suicidal thoughts or attempts. This sad fact is no surprise, as there is widespread agreement that suicide is highly correlated with solitary confinement among youth in juvenile and adult facilities.^{vii}

Many of those who had attempted suicide, and a few others, had repeatedly cut themselves with staples or razors. One young man, Landon, showed me his arms while we spoke. One was covered in small cuts and scars. He said that when he was in solitary confinement, “I would hear stuff. When no one was around it was harder to control. When I was by myself, I would hear stuff and see stuff *more*.”^{viii} Landon said he had struggled with these auditory and visual hallucinations for many years, but that solitary confinement “is not a place that you want to go.”^{ix} He said, “It’s like mind torture.”^x

And young people described that solitary confinement brought back memories and pain from past trauma. One young girl, Melanie, was held in protective solitary confinement for three months when she was 15. She said, “when I was eleven, I was raped. And it happened again in 2008 and 2009.”^{xi} She said that when she was isolated, the memories came back. “I was so upset ... and a lot was surfacing from my past... I don’t like feeling alone. That’s a feeling I try to stay away from. I hate that feeling.”^{xii}

Because physical isolation is a defining feature of solitary, it is perhaps not surprising that the practice is unhealthy for growing bodies. Indeed, restriction of physical exercise is ubiquitous. I did not identify a single adult jail or prison through my research that encouraged the kind of strenuous aerobic physical activity recommended by the Department of Health and Human Services. Teens talked about only being allowed to exercise in small metal cages, alone, a few times a week.

Young people described barriers to care and programming. Not surprisingly, adult jails and prisons have little, if any, age-differentiated services or programming. But once young people are placed in solitary confinement in any detention setting they are more likely to be cut off (or have much greater difficulty accessing) whatever resources are available. This makes normal growth and development – social, emotional, educational – all but impossible.

One of the most striking effects of this is that young people in solitary confinement have a harder time getting access to mental health services. This can make suffering worse than it may otherwise have been. One girl told me:

“Sometimes you have to [cut yourself] to go to [medical solitary confinement for suicide watch] ... get psychological attention... because if you have a psychological emergency or you need to talk to somebody they won’t let you. [So I] cut myself on my arm [when] I be thinking in my head I need to talk to someone before I do something I don’t want to do.”^{xiii}

Young people described being prevented from going to school or participating in any activity that promotes growth or change. Henry said that then:

“The only thing left to do is go crazy – just sit and talk to the walls. I catch myself talking to the walls every now and again. It’s starting to become a habit because I have nothing else to do. I can’t read a book. I work out and try to make the best of it, but there is no best. Sometimes I go crazy and I can’t even control my anger anymore... I feel like I am alone, like no one cares about me – sometimes I feel like, why am I even living?”^{xiv}

Finally, young people in adult jails and prisons reported being denied contact with their families. Sean said, “It was very depressing not being able to give them a hug. I would cry about that.”^{xv} Lauren said: “visits behind glass were torture.”^{xvi} Again and again, young people who *did* get family visits told me that they gave them the will to live.

The Solitary Confinement of Children is Inadequately Regulated

While standards and policy at both the state and federal levels address the use of isolation, and while both international and constitutional law have been interpreted to ban the practice, there is a great need for a strong and unequivocal national ban on the solitary confinement of children.

Every set of national standards governing age-appropriate and developmentally-appropriate practices to manage children in rehabilitative and/or correctional settings strictly regulate and limit all forms of isolation.^{xvii} The Department of Justice Standards for the Administration of Juvenile Justice limit isolation to a maximum period of 24 hours.^{xviii} Notably, standards governing the isolation of children in medical and mental health facilities and educational settings are even more restrictive.^{xix} The American Academy of Child and Adolescent Psychiatry has recommended a ban on solitary confinement.^{xx} These standards show not just the consensus against this practice, but also that it is possible to manage and care for youth without reliance on solitary confinement or other harmful isolation practices.^{xxi}

No state prohibits the solitary confinement of children in adult jails and prisons by statute. Two states – Mississippi and Montana – currently impose some limitations on the use of solitary confinement in adult prisons, pursuant to agreements reached and reforms implemented following litigation, with a third – New York – set to do the same in the coming months.^{xxii} State juvenile justice agencies in recent years have implemented policy changes increasingly limiting isolation practices, with a majority of state agencies limiting isolation to a maximum of five days.^{xxiii} Only six states – Alaska, Connecticut, Maine, Nevada, Oklahoma, and West Virginia – have prohibited certain forms of isolation, such as solitary confinement, in juvenile facilities by statute.^{xxiv}

On the federal level, the Juvenile Justice and Delinquency Prevention Act (JJDP) creates financial incentives for states to treat some young people differently from adults, including by diverting those subject to the jurisdiction of the juvenile justice system (and certain categories of misdemeanants) from adult facilities.^{xxv} But no provision of either the JJDP – or any other federal law or implementing regulation – prohibits solitary confinement or isolation of children in juvenile detention facilities, jails or prisons.

Fortunately, regulations implementing the Prison Rape Elimination Act (PREA) do include provisions regulating isolation.^{xxvi} With regard to adult jails and prisons, the regulations require that adult facilities maintain sight, sound and physical separation between “youthful inmates” and adults and that officials should use their “best efforts” to avoid placing children in isolation to comply with the regulations.^{xxvii} The regulations also require that any young person separated or isolated in an adult facility must receive, absent exigent circumstances, daily large-muscle exercise, any legally-required special education services, and, to the extent possible, access to other programming and work opportunities.^{xxviii}

With regard to juvenile facilities, the PREA regulations require that any young person separated or isolated in a juvenile facility 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.^{xxix} There is as yet no data indicating whether these regulations have had an impact on the solitary confinement of youth. It is also important to note that, while a step in the right direction with regard to solitary confinement, the regulations are inconsistent in the way they protect youth, as they contain significant gaps that still leave children vulnerable to solitary confinement and the harmful conditions associated with prolonged isolation.

The Department of Justice has repeatedly recognized that isolation is not appropriate for youth (and the work of its Special Litigation Section deserves plaudits),^{xxx} yet the Department has neither banned this practice for youth in the custody of its Bureau of Prisons (who are held in contract facilities), nor has it issued clear guidance prohibiting the practice in juvenile facilities, jails or prisons across the country.^{xxxi}

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. Although no decision of the Supreme Court has considered the constitutionality of the solitary confinement of children, in its recent decisions on children in conflict with the law, the Supreme Court has ruled that the Constitution’s protections apply differently to children in that context because of the legal and developmental differences between children and adults. In cases involving the juvenile death penalty,^{xxxii} juvenile life without parole,^{xxxiii} and custodial interrogations,^{xxxiv} the Court has 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 constitutional protections generally applicable to conditions of confinement for children.^{xxxv} Children in confinement have a “liberty interest in safety and freedom from [unreasonable]

bodily restraint.^{»xxxvi} Conditions of confinement are unreasonable when they are “a substantial departure from accepted professional judgment, practice or standards.”^{»xxxvii} The Supreme Court has also held that government conduct violates substantive due process when it “shocks the conscience.”^{»xxxviii} 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.

A small number federal courts have ruled that solitary confinement and isolation practices used in juvenile detention facilities are unconstitutional.^{xxxix} Few courts have considered this issue recently.^{xl} However, an increasing number of federal district courts have recently found that the solitary confinement of adults with serious mental health problems violates the Eighth Amendment (which protects individuals who are convicted of an offense in the criminal justice system) because persons with mental disabilities have greater difficulty adjusting to solitary and because solitary can make mental health problems worse.^{xli} In a sense 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.

International human rights law, which identifies anyone below the age of 18 years as a child, recognizes that children, by reason of their physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth.^{xlii} 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.^{xliii} 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.^{xliiv}

A number of international instruments and human rights organizations have declared that the solitary confinement of children violates human rights laws and standards governing the protection of children, including those prohibiting cruel, inhuman or degrading treatment, and have thus called for the practice to be banned, including: the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines),^{xlv} the Committee on the Rights of the Child,^{xlvi} the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the Beijing Rules),^{xlvii} and the Inter-American Commission on Human Rights.^{xlviii} 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.^{xlix} This international consensus is important to legislators and policymakers because 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.¹

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. There is a clear international consensus that the practice violates the rights of children under human rights law, including under treaty and customary international law obligations binding on the United States. There is clear support for the view that the solitary confinement of children should be seen to violate both the substantive due process protections and the prohibition against cruel and unusual punishment in the U.S. Constitution. Indeed, in conjunction with the growing recognition that the practice is widespread and the broad consensus regarding how harmful it is for children, recent jurisprudence recognizing that ‘kids are different’ may well pave the way for clearer doctrinal recognition of the ways in which the practice violates the constitution – or at least waves of litigation seeking to protect children from the practice in juvenile facilities, jails and prisons.

In sum, the solitary confinement of children can and should no longer be the dark secret of our juvenile and criminal justice systems: It works against the rehabilitation of thousands of children each year. Congress must act to end the practice.

Recommendations

Congress should ban the solitary confinement of children and support increased federal oversight, monitoring, transparency and funding for alternatives to solitary confinement generally.

Congress should clearly prohibit the detention of children in adult facilities, as it has done with regard to juvenile delinquents and all children in the custody of the Attorney General.

Congress should mandate that federal, state, and local prisons, jails, detention centers and juvenile facilities report to the Department of Justice who is held in solitary confinement, for what reasons and how long, as well as the impact of the practices on cost, facility safety, incidents of self-harm and recidivism. This data must include the numbers of children who are subjected to solitary confinement and other forms of prolonged isolation.

Congress should require reforms of the use of solitary confinement in federal facilities. This should include a ban on the solitary confinement of children and the strict regulation of the use of other isolation practices on children held under the jurisdiction of the Federal government, including in the care of the Bureau of Prisons, the Department of Homeland Security, the Department of Defense, and the Department of Health and Human Services' Office of Refugee Resettlement.

Congress should encourage rulemaking by the Department of Justice to promulgate regulations that limit solitary confinement under existing or new statutory authority, and which provide for effective, evidence-based alternatives to isolation practices. These actions must include a ban on the solitary confinement of children and the strict regulation of the use of other isolation practices on children.

Congress should allocate federal funding to Department of Justice to support federal, state and local efforts to reduce the use of solitary confinement, with a focus on alternatives. This allocation should specifically direct the Department of Justice to seek the implementation of a national ban on the solitary confinement of children and the strict regulation of the use of other forms of isolation on children.

Congress must ensure that the United States fully engages in the international effort to reduce and reform the use of physical and social isolation, including solitary confinement. This must include constructive engagement in the process of updating the United Nations Standard Minimum Rules on the Treatment of Prisoners and facilitating a visit to the United States by the United Nations Special Rapporteur on Torture to investigate solitary confinement in the United States, including the solitary confinement of children.

ⁱ HUMAN RIGHTS WATCH & THE AMERICAN CIVIL LIBERTIES UNION, *GROWING UP LOCKED DOWN: YOUTH IN SOLITARY CONFINEMENT IN JAILS AND PRISONS ACROSS THE UNITED STATES* 106-12 (2012), available at <http://www.aclu.org/growinguplockeddown>.

ⁱⁱ *Id.* 53-54. Some data suggests that in some jurisdictions, youth may actually be subjected to higher rates of solitary confinement than adults because their behavior leads to more disciplinary infractions associated with solitary confinement. Attapol Kuanliang et al., *Juvenile Inmates in an Adult Prison System: Rates of Disciplinary Misconduct and Violence*, 35 *CRIMINAL JUSTICE & BEHAVIOR* 1186, 93 (2008), available at <http://cjb.sagepub.com/content/35/9/1186.full.pdf> (finding that—per year—youth under age 18 are found guilty of “potentially violent rule violations” at a rate of 353.17 per 1,000 and of “assaultive rule violations” at a rate of 109.38 per 1,000 – both higher than the relevant rates for adults).

ⁱⁱⁱ *GROWING UP LOCKED DOWN*, *supra* note 1 at 64-65 (citing examples from Florida, New York, Ohio, and Pennsylvania).

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- ^{iv} THE AMERICAN CIVIL LIBERTIES UNION, ALONE AND AFRAID 7 (2013), available at [https://www.aclu.org/files/assets/Alone_and_Afraid COMPLETE FINAL.pdf](https://www.aclu.org/files/assets/Alone_and_Afraid_COMPLETE_FINAL.pdf) (citing national data and data from California, Ohio and Texas).
- ^v DEP'T OF JUSTICE OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, CONDITIONS OF CONFINEMENT: FINDINGS FROM THE SURVEY OF YOUTH IN RESIDENTIAL PLACEMENT 9 (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. 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.
- ^{vi} GROWING UP LOCKED DOWN, *supra* note 1 at 25.
- ^{vii} Homer Venters et al., Solitary Confinement and Risk of Self-Harm Among Jail Inmates, 104 Am. J. Pub. Health 442 (2014), available at <http://ajph.aphapublications.org/doi/full/10.2105/AJPH.2013.301742>; LINDSAY M. HAYES, DEP'T OF JUSTICE OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, JUVENILE SUICIDES 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*, 69 J. CLIN. PSYCHIATRY 1721 (2008), available at <http://www.ncbi.nlm.nih.gov/pubmed/19026254>; Christopher Muola, US 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>.
- ^{viii} GROWING UP LOCKED DOWN, *supra* note 1 at 33.
- ^{ix} *Id.*
- ^x *Id.*
- ^{xi} *Id.* at 34.
- ^{xii} *Id.*
- ^{xiii} *Id.* at 36.
- ^{xiv} *Id.* at 22.
- ^{xv} *Id.* at 42.
- ^{xvi} *Id.*
- ^{xvii} JUVENILE DET. ALT. INITIATIVE, JUVENILE DETENTION ALTERNATIVES INITIATIVE FACILITY SITE ASSESSMENT, Standard VII(E) (2006), available at <http://www.cclp.org/documents/Conditions/JDAI%20Standards.pdf>; 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 2 (Sept. 2012), available at http://pbstandards.org/uploads/documents/PbS_Reducing_Isolation_Room_Confinement_201209.pdf (“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”).
- ^{xviii} DEP'T OF 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.”).
- ^{xix} 42 C.F.R. 482.13(e) (2012), available at <http://www.ecfr.gov/cgi-bin/textidx?c=ecfr&SID=5ba18485f8033f30fb496dba3e87c626&rgn=div8&view=text&node=42:5.0.1.1.1.2.4.3&idno=42> (implementing 42 U.S.C. 1395x § 1861(e)(9)(A)) (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); US 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).

^{xx} 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.

^{xxi} See, e.g., Paul DeMuro, *Towards Abolishing the Use of Disciplinary Isolation in Juvenile Institutions: Some Initial Ideas*, Youth Advocate Program, Inc. (Jan. 22, 2014), available at <http://www.yapinc.org/Portals/0/Documents/News/Abolishing%20Isolation%20Juvenile%20Justice%20Demuro.pdf>.

^{xxii} 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); Benjamin Weiser, *New York State in Deal to Limit Solitary Confinement*, N.Y. TIMES, Feb. 19, 2014, available at http://www.nytimes.com/2014/02/20/nyregion/new-york-state-agrees-to-big-changes-in-how-prisons-discipline-inmates.html?_r=0.

^{xxiii} PERFORMANCE-BASED STANDARDS, REDUCING ISOLATION AND ROOM CONFINEMENT, *supra* note 17 at 4.

^{xxiv} 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.”).

^{xxv} Coalition for Juvenile Justice, *The JJDA: Federal Juvenile Justice and Delinquency Prevention Act* (2007), available at www.juvjustice.org/media/.../CJJ%20Hill%20Packet--Handouts.doc.

^{xxvi} The regulations include detailed requirements for the prevention, detection, and investigation of sexual abuse in both adult and juvenile correctional facilities. See US Dep’t of Justice, *Press Release: 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> (providing a summary of regulations).

^{xxvii} 28 C.F.R. § 115.14 (2012), available at http://www.ojp.usdoj.gov/programs/pdfs/prea_final_rule.pdf.

^{xxviii} *Id.*

^{xxix} Compare 28 C.F.R. § 115.378(b) (2012), available at http://www.ojp.usdoj.gov/programs/pdfs/prea_final_rule.pdf.

^{xxx} See 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; 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 and stating, “Isolation in juvenile facilities should only be used when the youth poses an imminent danger to staff or other youth, or when less severe interventions have failed.”); Letter from Thomas E. Perez, Assistant Att’y Gen., to Hon. Mitch Daniels, Governor, State of Indiana, Investigation of the Indianapolis Juvenile Correctional Facility, Indianapolis, Indiana 21-22 (Jan. 29, 2010), available at http://www.justice.gov/crt/about/spl/documents/Indianapolis_findlet_01-29-10.pdf (Finding that facility subjected youth to excessively long periods of isolation without adequate process and stating, “generally accepted juvenile justice practices dictate that [isolation] should be used only in the most extreme circumstances and only when less restrictive interventions have failed or are not practicable.”); Letter from Grace Chung Becker, Acting Assistant Att’y Gen., to Yvonne B. Burke, Chairperson, Los Angeles County Board of Supervisors, Investigation of the Los Angeles County Probation Camps 42-45 (Oct. 31, 2008), available at http://www.justice.gov/crt/about/spl/documents/lacamps_findings_10-31-08.pdf (Finding inadequate supervision of youth isolated in seclusion or on suicide watch); Letter from Wan J. Kim, Assistant Att’y Gen., to Marion County Executive Committee Members and County Council President, Marion County Juvenile Detention Center, Indianapolis, Indiana 10-12 (Aug. 6, 2007), available at http://www.justice.gov/crt/about/spl/documents/marion_juve_ind_findlet_8-6-07.pdf (Finding that isolation practices substantially departed from generally acceptable professional standards and that use of isolation was excessive and lacked essential procedural safeguards and 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_findingletpdf (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.).

^{xxxvi} 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-incare-of-the-federal-government>; Letter from The American Civil Liberties Union et al. to Eric H. Holder, Jr., Attorney General, US Department of Justice, (Oct. 11, 2013).

^{xxxvii} *Roper v. Simmons*, 453 U.S. 551 (2005).

^{xxxviii} *Miller v. Alabama*, 132 S.Ct. 2455 (2012); *Graham v. Florida*, 130 S.Ct. 2011 (2010).

^{xxxix} *J.D.B. v. North Carolina*, 564 U.S. ___ (2011).

^{xl} *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).

^{xli} *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).

^{xlii} *Id.*

^{xliiii} *County of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998).

^{xliiii} *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).

^{xliiii} *R.G. v. Koller*, 415 F. Supp. 2d 1129, 1155-56 (D. Haw. 2006) (Concluding that, "The expert evidence before the court uniformly indicates that long-term segregation or isolation of youth is inherently punitive and is well outside the range of accepted professional practices... Defendants' practices are, at best, an excessive, and therefore unconstitutional, response to legitimate safety needs of the institution."); *Hughes v. Judd*, 8:12-cv-568-T-23MAP, 2013 WL 1821077 (M.D.Fl. 2013); *Troy D. and O'Neill S. v. Mickens et al.*, Civil Action No.: 1:10-cv-02902-JEI-AMD (D. N.J. 2013).

^{xliiii} *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).

^{xliiii} 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).

^{xliiii} 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.

^{xliiii} 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.

^{xliiii} 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").

^{xlvi} 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).

^{xlvii} 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”).

^{xlviii} 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*).

^{xlix} 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>.

¹ *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).