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Statement of the Youth Law Center
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
February 25, 2014

Chairman Durbin, Ranking Member Cruz, and Members of the Subcommittee:

In the two years since this Subcommittee first explored solitary confinement, the evidence has mounted that locking juveniles alone in their cells¹ is damaging to their mental and physical health, counter-productive to rehabilitation, and unnecessary to the safe, effective operation of juvenile facilities. In this Statement, the Youth Law Center outlines some of the key developments, and offers suggestions for the Subcommittee's action agenda.

The Youth Law Center is a national public interest law firm that works on behalf of children and youth in the juvenile justice and child welfare systems. 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 fielded many complaints from youth and families of youth held in solitary confinement. For many years, we have worked for stronger laws and policies governing solitary confinement, and better professional education about alternatives to its use.

Solitary Confinement Continues to Damage Vulnerable Youth

Sadly, in the period since the initial Hearing, the use of solitary confinement on juveniles continues unabated, resulting in serious harm to youth. In late 2013, the State of New Jersey settled a case involving the rampant use of solitary confinement of juveniles -- ostensibly for behavior management. One of the plaintiffs was a young

¹ In juvenile facilities, solitary confinement is used for multiple purposes and is called "room time," "room lock," "23 and 1," "isolation," "suicide watch," "administrative segregation," "behavior management program," and "special program." Whatever the designation or justification, it all comes down to one thing: a young person locked, alone, in a tiny room.

man who had been in care for by the state since he was three years old, and who suffered from post-traumatic stress, bipolar disorder, and psychosis. He was held in solitary confinement for 178 of his 225 days in custody.²

Similarly, in 2013, a lawsuit was filed against a juvenile detention center in Contra Costa County, California, alleging the use of solitary confinement on youth with disabilities. Youth, including those suffering from severe mental illness, were routinely locked in their room for up to 23 hours a day. The Department of Justice has just weighed in in the lawsuit, noting the tremendous damage solitary confinement does to vulnerable youth, and urging county officials to stop finger pointing and to fix the problems.³

These lawsuits represent only the tip of the iceberg. Litigation is expensive, and non-profit juvenile advocacy organizations have the capacity to pursue only a fraction of the cases deserving of attention. At the Youth Law Center, for example, we can only afford to bring lawsuits if we are virtually certain of success, so we can recover the extensive costs of investigation, hiring experts and litigating the case. Moreover, many states lack a “safety net” to address abuses of solitary confinement. Vague institutional policies or state regulations, often combined with poor oversight, contribute to institutional systems that have no meaningful way to investigate or address abuses of solitary confinement.

Also, many of the worst abuses of solitary confinement do not involve headline grabbing, lengthy periods of confinement, but are still extremely harmful to youth. The routine use of solitary confinement as a response to everything from disciplinary problems to the handling of suicidal youth is extremely damaging, but seldom comes to public attention.

In some facilities, for example, youth are “sentenced” to multiple days of confinement for relatively minor violations of institutional rules. In others, youth perceived to be vulnerable (for example gay or lesbian youth) are placed in solitary confinement “for their own protection.” Many facilities still isolate youth at risk of suicide, despite the consistent advice of experts that this is dangerous and harmful to youth. Some facilities feature “special programs” that consist of 20 or more hours of lockdown a day as the “program.” Yet other facilities lock youth in their rooms for extended periods because staff called in sick and there are no replacements. Youth in high security units in some facilities are sometimes locked in their rooms, even though they are already in a discrete living unit designed for their level of classification. Staff in some facilities impose institutional lockdowns that extend long after security dangers have subsided.

² Ryan Hutchins, “\$400K Awarded to Settle Lawsuit Over Solitary Confinement of 2 N.J. Boys,” *NJ.com* (Jan. 3, 2014).

³ Matthew Gafni, “Feds Chastise Contra Costa Officials Over Juvenile Hall Solitary Confinement Policy,” *Contra Costa Times* (Feb. 19, 2014).

These routine practices may never become the subject of litigation, but they reflect a serious lack of awareness of the damage inflicted on youth, and the concept that locked room time should be an exceedingly rare occurrence.

The Evidence of Harm Continues to Grow

Trauma and Solitary Confinement

Since 2012, the Youth Law Center has been a part of national efforts to understand the impact of harsh institutional practices, and to chart a course for change. As part of this work, we wrote a brief on *Trauma and the Environment of Care in Juvenile Institutions*, for the National Child Traumatic Stress Network.⁴ Our research confirmed that solitary confinement re-traumatizes youth who have already experienced abuse, neglect, community violence, or previous institutionalization. Locking them away reinforces their perception that they are worthless, and exacerbates their sense of rejection. It may cause their emotions to turn inward toward self-destruction and depression, or outward in anger and frustration. This is a cruel outcome for young people who depend on the system to recognize and help them work through the horrifying events they have already experienced in their young lives.

We reviewed the increasing evidence that the imposition of solitary confinement is damaging for juveniles, even when it is for brief periods.⁵ We found, for example, a national study of juvenile institutional suicides confirming that 75% of successful suicides involved youth confined in single occupant rooms, and that 50% of those were youth being subjected to disciplinary confinement.⁶

Our work has also revealed that use of solitary confinement interferes with the ability of the system to provide education, recreation, social interaction and emotional support to the child. 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. Certainly the use of solitary confinement interferes with the underlying goals of the system in helping youth to learn and to exercise internal control.

The Attorney General's 2012 report, *Defending Childhood*, specifically calls for youth in juvenile facilities to receive treatment that is free from the use of coercion, restraints, seclusion, and isolation, and that is designed specifically to promote recovery from the adverse impacts of violence exposure and trauma on physical, psychological, and psychosocial development, health, and well-being. The report also recognizes the

⁴ Sue Burrell, *Trauma and the Environment of Care in Juvenile Institutions*, National Child Traumatic Stress Network (2013).

⁵ The harms to youth caused by solitary confinement are extensively detailed in a report from the American Civil Liberties Union, *Alone and Afraid: Children Held in Isolation and Solitary Confinement in Juvenile Detention and Correctional Facilities* (Nov. 2013).

⁶ Lindsay M. Hayes, *Characteristics of Juvenile Suicide in Confinement Facilities*, OJJDP Juvenile Justice Bulletin (2009).

importance of coercion-free institutional practices in assuring a safe workplace for staff. The report specifically calls for juvenile systems to “[a]bandon juvenile justice correctional practices that traumatize children and further reduce their opportunities to become productive members of society.”⁷

Adolescent Development and Solitary Confinement

Since the 2012 Hearing, the National Research Council’s landmark study, *Reforming Juvenile Justice: An Adolescent Development Approach* has been released.⁸ The study comprehensively reviews what works and what doesn’t work in interventions with juveniles. A key finding is that, because of their immaturity, impulsivity and inability to think about future consequences, youth are not actually deterred by punishment. This has important implications for disciplinary systems that rely on solitary confinement as a way to “make youth think” about what they did so they will not do it in the future. Teenage brains simply do not work that way. Also, the *Reforming Juvenile Justice* study focuses on the interventions that best produce successful outcomes. These include putting youth in pro-social situations in which they can learn to exercise judgment and develop skills. Again, control-oriented disciplinary systems that isolate youth and keep them completely dependent on staff are the antithesis of effective interventions.

Thus, youth subjected to solitary confinement may be deprived of access to educational services, or be given worksheets or packets that do not help to advance them academically. They may be unable to participate in group activities that would help them to present themselves in a positive light and move away from delinquency. Many leave custody in worse condition than when they entered.

Legal and Professional Standards of Practice Are Changing

The developments of the past two years are not all bad. In a recent study, the Council of Juvenile Correctional Administrators reported that in 2012, fully 75% of participating detention centers and assessment centers had reduced the length of isolation or room confinement to four hours or less – a dramatically shorter time than when the times were first measured in 2008.⁹ This is good evidence that lengthy solitary confinement is unnecessary, and that concerted efforts to change longstanding practices can be quickly developed and implemented.

⁷ *Defending Childhood, Report of the Attorney General’s National Task Force on Children Exposed to Violence* (2012), Recommendation 6.2.

⁸ Richard A. Bonnie, et al., *Reforming Juvenile Justice: An Adolescent Development Approach*, National Research Council (2013).

⁹ Performance-based Standards Institute, Inc., *Reducing Isolation and Room Confinement*, Council of Juvenile Correctional Administrators (2012).

In addition, as this Statement is being submitted, a group of experienced practitioners is working to revise the Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative *Juvenile Detention Facility Standards*. Although the standards are already among the strongest in the profession, one of the issues under consideration is the elimination of locked room confinement for disciplinary purposes, and another is the need for additional limitations on confinement for mental health purposes.

Even state standards are beginning to change. Thus, in California, the most recent revisions to the *Minimum Standards for Juvenile Facilities* (Title 15 Cal. Code of Regs. § 1391, effective 2013), changed its provisions on locked room time for youth who commit major rules violations to call, instead, for sanctions that simply remove youth from regular programming.

The recent litigation, the law changes, and evolving professional standards evidence a growing recognition that solitary confinement of juveniles is damaging and longstanding practices must be changed. This work in the juvenile system mirrors remarkable shifts in the adult correctional system. This Subcommittee will surely hear from officials in Mississippi, Colorado, Washington, and New York about the work going on to reduce solitary confinement in adult corrections. New York, for example, is moving to eliminate 23 hour per day lockdowns of 16 and 17 year-olds being tried as adults.¹⁰

We Know How to Fix This

Solitary confinement is not needed for the safe, effective operation of juvenile facilities. Many of the policies and practices that result in its use are well-intentioned, but have not been thoughtfully considered in the light of modern research and knowledge. They are simply "the way we have always done it." Also, repressive measures such as solitary confinement are often a function of the following:

- Understaffing
- Deficiencies in mental health staffing
- Inadequate training
- Lack of quality programming
- Poor youth classification systems
- Punitive disciplinary systems relying on locked room time

These are all things that can be easily addressed, and many systems have already done so. Thus, for example, an important way of reducing the use of solitary confinement is to prevent situations from escalating or to intervene before they reach the point at which youth are removed to a locked room, but adequate staffing is needed to accomplish this.

¹⁰ Benjamin Weiser, "New York State in Deal to Limit Solitary Confinement," *New York Times* (Feb. 19, 2014).

Facilities should have 1:8 or better staffing ratios, and in some units, may need to have even more staff, depending on the population or the needs of individual youth. The trend is toward even lower ratios such as 1:6 (Massachusetts) or 2:11 (Missouri).

In addition, many facilities that rely heavily on solitary confinement do not have access to skilled mental health staff who can help to prevent crises, or help staff to design interventions that do not rely on extended isolation. Providing adequate mental health staffing is immensely helpful in reducing the use of solitary confinement.

Similarly, good quality training and supervision can give staff the tools they need to intervene without using solitary confinement. Training on crisis intervention, de-escalation, and other ways to discipline youth or handle youth who are aggressive or out of control can go a long way in helping staff to feel more confident about their skills. Training gives them a bigger repertoire of tools to use in preventing the need for interventions such as solitary confinement. Supervision is also an important component of good practice. When incidents do occur, it is important that there be debriefing with the staff and youth to better understand what happened; whether some other intervention would have been effective; and what might be done to prevent future such incidents.

Programming can go a long way toward reducing the situations that lead to solitary confinement. Youth who are actively engaged in education or recreational activities are much less likely to cause disturbances or engage in self-destructive behavior. Thus, it is critically important to make sure that institutional programming is good quality and that youth are not getting into mental health or behavioral crises simply because they are bored or under-stimulated.

Moreover, while facilities vary in terms of size and living unit configuration, another way to reduce use of extreme control measures such as solitary confinement is to improve the classification system under which youth are assigned to living units and programs. Sometimes moving even one or two youth to a different location can make a huge difference in decreasing the kinds of situations that result in the use of solitary confinement.

And finally, facilities can substantially reduce the number of situations in which solitary confinement is the default response by replacing outmoded punitive disciplinary systems. We have been gratified to come into contact with an increasing number of jurisdictions that are moving toward the use of positive behavior management.¹¹ The idea is that youth are supported and reinforced for doing things right, rather than punished for doing things wrong. Using positive behavior

¹¹ Positive behavior supports originated in the education world, but have been increasingly embraced in juvenile justice. Information about the concept is available at National Center for Positive Behavior Interventions and Supports, *U.S. Department of Education, Office of Special Education Programs*.

interventions helps these jurisdictions to avoid the no-win scenario of placing the young person in more and more restrictive settings.

Youth Law Center is not alone in believing that addressing these key issues in institutional operations can reduce the need for solitary confinement. In January 2014, respected juvenile expert Paul DeMuro published *Toward Abolishing the Use of Disciplinary Isolation in Juvenile Justice Institutions: Some Initial Ideas*, which offers a similar plan. And again, the principle of providing pro-social programming that allows youth to develop judgment and skills is a key element in the National Research Council's *Reforming Juvenile Justice: A Developmental Approach*.

An Action Agenda for Change

Eliminating juvenile solitary confinement calls for a multi-faceted approach that includes standards, fiscal incentives, and technical assistance. Here are some of the specific things this Subcommittee should be working for:

- Reauthorize the Juvenile Justice and Delinquency Prevention Act (JJDP Act) 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;
- Require states to report on the use of solitary confinement, including the length of confinement, reason for confinement, costs to the system, incidents of self-harm of youth held in solitary confinement, and outcomes for youth subjected to solitary confinement;
- Call for the Office of Juvenile Justice and Delinquency Prevention or the Bureau of Justice Statistics to annually report the gathered statistical information on the use of solitary confinement in the United States;
- 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;

- In the interim before national standards are promulgated, require juvenile facilities to adhere to the strict requirements for “seclusion” now imposed by federal law for treatment facilities;¹²
- 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;
- Provide additional support for Department of Justice investigations into solitary confinement; and
- Support training and technical assistance on alternative ways to address disciplinary issues, protect youth from self-harm and address behavioral issues for jurisdictions seeking to eliminate the solitary confinement of juveniles.

Conclusion

The developments of the last two years have underlined the need for this Subcommittee’s leadership and advocacy to eliminate the solitary confinement of juveniles. We know too much about the damage caused by solitary confinement to turn away from the need for change. That knowledge is now bolstered by solid information and expertise about how to safely and humanely care for young people without using solitary confinement. But without vision and concerted deliberate action, the pockets of reform will remain just that.

Thank you for the opportunity to share our experiences, observations, and suggestions at this critical juncture. We are grateful for this opportunity, and look forward to working with you and your staff in any way we can as this initiative moves forward.

Respectfully submitted,



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¹² 42 C.F.R. § 482.13 *et seq.*