

ENDING SOLITARY CONFINEMENT OF CHILDREN

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This memo addresses solitary confinement of children and provides ideas for legislation to end the practice.

I. BACKGROUND: SOLITARY CONFINEMENT AND CHILDREN

Children are subjected to solitary confinement—“physical and social isolation in a cell for 22 to 24 hours per day”¹— and similar practices of confinement in isolation in juvenile facilities and adult prisons across the country.² Subjecting children to isolation in confinement is dangerous--it hampers neurological and social development,³ causes or exacerbates mental health problems,⁴ and often results in physical harm.⁵ In light of these serious, negative consequences, numerous professional associations have called for restricting or ending solitary confinement of children.⁶ And some jurisdictions across the

¹ American Civil Liberties Union, *Alone & Afraid: Children Held in Solitary Confinement and Isolation in Juvenile Detention and Correctional Facilities* 2 (June 2014), <https://www.aclu.org/files/assets/Alone%20and%20Afraid%20COMPLETE%20FINAL.pdf>.

² See, e.g., Human Rights Watch & American Civil Liberties Union, *Growing Up Locked Down: Youth in Solitary Confinement in Jails and Prisons Across the United States* (2012) [hereinafter *Growing Up Locked Down*] (describing the widespread practice of solitary confinement in adult facilities that house juvenile offenders), available at <https://www.aclu.org/files/assets/us1012webwcover.pdf>; Jessica Feerman et al., *Unlocking Youth: Legal Strategies to End Solitary Confinement in Juvenile Facilities*, Juvenile Law Center 6 (2017) [hereinafter “*Unlocking Youth*”] (noting the “frequent use of solitary confinement of youth” in juvenile facilities across the country, and citing reports and surveys suggesting that the practice is widespread), available at http://jlc.org/sites/default/files/publication_pdfs/JLC_Solitary_Report-FINAL_0.pdf.

³ *Unlocking Youth*, *supra*, at 10-13.

⁴ *Growing Up Locked Down*, *supra*, at 23-37; American Academy of Child & Adolescent Psychiatry, *Solitary Confinement of Juvenile Offenders* (April 2012) (“The potential psychiatric consequences of prolonged solitary confinement are well recognized and include depression, anxiety, and psychosis. Due to their developmental vulnerability, juvenile offenders are at particular risk of such adverse reactions. Furthermore, the majority of suicides in juvenile correctional facilities occur when the individual is isolated or in solitary confinement.”), available at https://www.aacap.org/aacap/Policy_Statements/2012/Solitary_Confinement_of_Juvenile_Offenders.aspx.

⁵ *Growing Up Locked Down*, *supra*, at 37-41.

⁶ See, e.g., American Academy of Child & Adolescent Psychiatry, *Solitary Confinement of Juvenile Offenders* (April 2012) (opposing “the use of solitary confinement in correctional facilities for juveniles”); American Psychological Association, *Solitary Confinement of Juvenile Offenders*, available at <https://www.apa.org/advocacy/criminal-justice/solitary.pdf> (stating that the “APA supports efforts to eliminate the practice” of solitary confinement for juvenile offenders).

country have recently taken action to limit or prohibit the practice; examples of these recent reforms are summarized below.

II. EXAMPLES OF RECENT REFORMS LIMITING OR PROHIBITING SOLITARY CONFINEMENT OF CHILDREN

Jurisdictions across the country have recently taken action to limit or prohibit solitary confinement of children. We summarize below some examples of these recent legislative and administrative reforms. Note, however, that this list is not comprehensive. Some of the policies described below address children housed in juvenile facilities only, whereas others pertain to children in adult facilities only, and still others apply to all children regardless of facility.

- **Federal** – In 2016, President Obama banned solitary confinement for all juveniles in federal custody, adopting the recommendation of the U.S. Department of Justice that juveniles should not be placed in restrictive housing.⁷ The 2018 First Step Act applies to juveniles held in federal facilities pretrial or based on federal delinquency adjudications and prohibits the use of room confinement for discipline, punishment, retaliation, or any reason other than as a temporary response to behavior that poses a serious and immediate risk of physical harm.⁸
- **California** – California restricted use of solitary confinement in juvenile facilities in 2016, providing that “room confinement”⁹ shall not be used: unless other, less restrictive options have been attempted and exhausted; for purposes of punishment, coercion, convenience, or retaliation; or to the extent that it compromises the mental and physical health of the juvenile.¹⁰ After four hours of room confinement, staff is to return the juvenile to general population, consult with mental health or medical staff, and/or develop and individualized plan to reintegrate the juvenile back into general population.¹¹
- **Colorado** – In 2017, Colorado limited the practice of solitary confinement in juvenile facilities with a pilot program designed to phase out “the practice of placing youths alone in a room or area behind a locked door from which egress is

⁷ Barack Obama, Presidential Memorandum -- Limiting the Use of Restrictive Housing by the Federal Government, White House Archives (Mar. 1, 2016), <https://obamawhitehouse.archives.gov/the-press-office/2016/03/01/presidential-memorandum-limiting-use-restrictive-housing-federal> (adopting the recommendations of the Department of Justice); *see also* United States Department of Justice, U.S. Department of Justice Report and Recommendations Concerning the Use of Restrictive Housing (2016), <https://www.justice.gov/archives/dag/file/815551/download> (under recommended policy, juveniles may be placed in a restrictive setting only as a temporary response to a behavioral issue that poses “a serious and immediate risk to any individual”).

⁸ 18 U.S.C. § 5043.

⁹ “‘Room confinement’ means the placement of a minor or ward in a locked sleeping room or cell with minimal contact with persons other than correctional facility staff and attorneys.” Cal. Welf. & Inst. Code § 208.3(a)(3).

¹⁰ *Id.* § 208.3(b).

¹¹ *Id.* § 208.3(c).

prevented, except during sleeping hours, and avoiding isolation of youths from their peers.”¹²

- **Connecticut** – In 2017, Connecticut passed legislation pertaining to juveniles in adult facilities, prohibiting the state Department of Correction from “hold[ing] any person under eighteen years of age on administrative segregation status.”¹³
- **District of Columbia** – In the Comprehensive Youth Justice Amendment of 2016, the District of Columbia limited the practice of solitary confinement for juveniles.¹⁴ The Act provides: “Penal institutions and secure juvenile facilities shall not use room confinement¹⁵ on a juvenile for the purposes of discipline, punishment, administrative convenience, retaliation, or staffing shortages.”¹⁶ Instead, room confinement may be used only in the case of “imminent harm to the juvenile or others” or “imminent danger to the safe or secure operation of the penal institution or secure juvenile facility.”¹⁷ Room confinement may occur only under “the least restrictive conditions practicable and consistent with the individualized rationale for placement,” and staff must develop a plan to permit the juvenile to leave room confinement and return to general population as soon as possible.¹⁸ Any such confinement must be approved “by a mental health professional that has assessed the juvenile in person,” and only “for the briefest period of time possible,” not to exceed six hours.¹⁹
- **Maryland** – In 2019, Maryland passed legislation providing that “a minor may not be placed in restrictive housing unless the managing official of the facility finds by clear and convincing evidence that there is an immediate and substantial risk: (1) of physical harm to the minor, other inmates, or staff; or (2) to the security of the facility.”²⁰ Maryland defines “restrictive housing” as physical separation that is not requested by the inmate that places them in a locked room or cell for approximately 22 hours or more in a 24 hour period.²¹ A minor that is placed in restrictive housing shall be provided: daily physical and mental health assessments to determine whether the minor may be released from restrictive housing; the same standard of access that is provided to inmates not in restrictive housing for phone calls, visits, mail, food, water, matters of personal hygiene,

¹² Colo. Rev. Stat. § 19-2-203 (4)(b)(V)(K).

¹³ Conn. Gen. Stat. § 18-96b(d). “Administrative segregation status,” as defined in the Act, “means the Department of Correction’s practice of placing an inmate on restrictive housing status following a determination that such inmate can no longer be safely managed within the general population of the correctional facility.” *Id.* § 18-96b(a)(1).

¹⁴ *See* D.C. Code § 24-912.

¹⁵ Room confinement is defined in the Act as “the involuntary restriction of a juvenile alone, other than during normal sleeping hours or facility-wide lockdowns, in a cell, room, or other area.” D.C. Code § 24-911(3).

¹⁶ *Id.* § 24-912(a).

¹⁷ *Id.* § 24-912(b)(1)(A).

¹⁸ *Id.* § 24-912(b)(2)(D).

¹⁹ *Id.* § 24-912(e).

²⁰ Md. Code Corr. Servs. § 9-614.1(c).

²¹ *Id.* § 9-614(a)(3)(i).

property, and health care; and maximized access to recreation, education, and programming unless it poses a risk of physical harm.²²

III. STRATEGIES TO ELIMINATE SOLITARY CONFINEMENT FOR JUVENILE OFFENDERS

Two recent publications provide guidance for advocates working to eliminate solitary confinement of children in juvenile facilities.

In “No Child Left Alone: Campaign to Stop the Solitary Confinement of Youth in Adult Jails and Prisons,” an advocacy toolkit published in 2013, the ACLU provides a comprehensive model bill to regulate the use of isolation on youth in adult facilities.²³ The model bill proposes, *inter alia*, that children shall not be placed in emergency cell confinement—defined as the confinement to a cell of a youth prisoner who presents an immediate and serious threat to safety—for more than 24 consecutive hours. Youth subject to emergency cell confinement must have at least one hour per day of out-of-cell exercise, access to programming and reading materials, and contact with parents and legal guardians. The bill further proposes that disciplinary cell confinement—imposed as a sanction for a major rule violation—shall not exceed more than 72 consecutive hours, with at least one hour of out-of-cell programming per day as well as access to education and other programming opportunities, daily showers, and contact with parents and legal guardians. Youth in protective custody may be so confined only if it is the least restrictive means necessary to maintain safety, and must have, *inter alia*, at least five hours per day out of cell, access to personal property, and access to programming and other prison resources. The bill also includes addresses documentation of the in-cell confinement practices and training for corrections officers and related staff.

The Juvenile Law Center offers recommendations for effective policies on solitary confinement of children in juvenile facilities in its recent report, “Unlocking Youth: Strategies to End Solitary Confinement in Juvenile Facilities,” published in 2017.²⁴ These recommendations may be used to shape legislation aimed at restricting or eliminating the practice. In particular, the Juvenile Law Center suggests that effective policies on solitary confinement must ensure that:

- “Solitary confinement is clearly and comprehensively defined;”²⁵
- “Solitary confinement is prohibited for disciplinary or punitive purposes, for administrative convenience, and for any reason other than when necessary to prevent immediate harm;”²⁶

²² *Id.* § 9-614.1(d).

²³ ACLU National Prison Project et al., *No Child Left Alone: Campaign to Stop the Solitary Confinement of Youth in Adult Jails and Prisons* 138-50 (June 2013), available at <https://www.aclu.org/other/no-child-left-alone>.

²⁴ Although this report addresses confinement of children in *juvenile* facilities, its recommendations may be adapted to support reform and advocacy efforts in various settings, including to combat the use of solitary confinement of children in adult facilities.

²⁵ *Unlocking Youth*, *supra*, at 18.

²⁶ *Id.* at 18-19.

- “Solitary confinement is limited to no more than three hours; youth are released as soon as they are calm and safe to exit the cell;”²⁷
- “Staff must use the least restrictive alternatives, including de-escalation;”²⁸
- “Facilities must offer individualized services that address persistent behavior concerns to avoid use of solitary confinement;”²⁹ and
- “Comprehensive data collection, analysis, and dissemination is essential.”³⁰

²⁷ *Id.* at 19.

²⁸ *Id.* at 19-20.

²⁹ *Id.* at 20.

³⁰ *Id.* at 20.