

## **More Than a Time Out: Juvenile Solitary Confinement**

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## I. Introduction

Putting a child in “time out” in the home usually involves sending the child to her room for a short period or asking her to stay in one place and think about what she did. In the juvenile justice system, however, the use of isolation can have a much more insidious meaning and devastating effects on a child’s mental and physical well-being. This paper analyzes the problem of juvenile<sup>1</sup> solitary confinement in jails, prisons, and juvenile detention centers<sup>2</sup> across the United States and discusses a variety of state bills and laws which provide alternative options for the treatment of youths. Solitary confinement of juveniles should be restricted and monitored closely because it has “negative psychological consequences, including increasing risk of suicide, re-traumatizing, depression and agitation”, and prevents children from participating in rehabilitation programs.<sup>3</sup> One Florida juvenile described her confinement:

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

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<sup>1</sup> A “juvenile,” as defined by the U.S. Census Bureau, is a person under the age of eighteen. The 2002 Census estimated that there were 72,894,500 juveniles in the United States, and projected that the population of juveniles will increase by thirty-six percent between 2000 and 2050. The Census Bureau predicted that the juvenile population will grow in proportion to the general U.S. population, such that juveniles are and will continue to constitute approximately twenty-five percent of the general U.S. population. HOWARD N. SYNDER & MELISSA SICKMUND, *JUVENILE OFFENDERS AND VICTIMS: 2006 NATIONAL REPORT 2* (2006), available at <http://www.ojjdp.gov/ojstatbb/nr2006/downloads/NR2006.pdf>.

<sup>2</sup> The Juvenile Justice and Delinquency Prevention Act (1974) provides funds to states that comply with federal standards for juvenile detention. Every state except Wyoming participates. The Act also prohibits the detention or confinement of juveniles in adult jails and prisons. While a number of distinctions can be drawn between juvenile solitary confinement practices in adult and juvenile facilities, this short paper focuses on the issues shared by the two systems and the general effects of solitary confinement on juvenile detainees. See Juvenile Justice and Delinquency Prevention Act, Pub. L. No. 93-415, 42 U.S.C. § 5601 et seq. (1974); see also AMERICAN CIVIL LIBERTIES UNION, *INEQUALITY IN THE EQUALITY STATE: THE DAMAGED JUVENILE JUSTICE AND DETENTION SYSTEM IN WYOMING 15* (2010), available at [http://www.youthlaw.org/fileadmin/ncyl/youthlaw/juv\\_justice/ACLU\\_Wyo\\_Report.pdf](http://www.youthlaw.org/fileadmin/ncyl/youthlaw/juv_justice/ACLU_Wyo_Report.pdf).

<sup>3</sup> Sandra Simkins et al., *The Harmful Use of Isolation in Juvenile Facilities: The Need for Post-Disposition Representation*, 38 WASH. U. J. L. & POL’Y 241, 257 (2012) available at <http://digitalcommons.law.wustl.edu/cgi/viewcontent.cgi?article=1019&context=wujlp>.

crazy and can't even control my anger anymore.... I can't even get [out of solitary confinement] early if I do better, so it is frustrating and I just lose it. Screaming, throwing stuff around.... I feel like I am alone, like no one cares about me—sometimes I feel like, why am I even living?<sup>4</sup>

## II. What Is Solitary Confinement?

Solitary confinement is the seclusion of a detained person in isolation from others.<sup>5</sup> The generally accepted definition of solitary confinement is isolation for at least twenty-two hours per day, for one or more days.<sup>6</sup> Solitary cells typically have less furniture than regular cells, sometimes containing only a mattress, toilet, and sink.<sup>7</sup> Many have just

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<sup>4</sup> HUMAN RIGHTS WATCH AND AMERICAN CIVIL LIBERTIES UNION, *GROWING UP LOCKED DOWN: YOUTH IN SOLITARY CONFINEMENT IN JAILS AND PRISONS ACROSS THE UNITED STATES* 22 (2012), available at <http://www.hrw.org/sites/default/files/reports/us1012ForUpload.pdf> [hereinafter *GROWING UP LOCKED DOWN*].

<sup>5</sup> Juvenile facilities often use euphemisms such as “time out,” “room confinement,” “restricted engagement,” or a trip to the “reflection cottage” to signify isolation or even solitary confinement. AMERICAN CIVIL LIBERTIES UNION, *ALONE AND AFRAID: CHILDREN HELD IN SOLITARY CONFINEMENT AND ISOLATION IN JUVENILE DETENTION AND CORRECTIONAL FACILITIES* 2 (2013) [hereinafter *ALONE AND AFRAID*], available at <https://www.aclu.org/files/assets/Alone%20and%20Afraid%20COMPLETE%20FINAL.pdf>.

<sup>6</sup> *Id.*; *GROWING UP LOCKED DOWN*, *supra* note 4, at 20; *see* Simkins et al., *supra* note 3, at 251-52.

<sup>7</sup> In Simkins et al., *supra* note 3, at 242, the author observed juvenile solitary confinement in New Jersey. The author met with Troy, a detained sixteen-year-old, and found that Troy had spent twenty-four hours a day in an isolation cell for 180 of the 225 days he had been detained. The cell, which measured only seven feet by seven feet, contained “a mattress (no sheets or blankets), a sink, a toilet, and a small sealed window near the ceiling. Nothing else was permitted in the cell.” Troy’s physical condition was a testament to his mental suffering: his arms were “[covered in] [s]elf-mutilation scars, too numerous to count”. *See also* Shane Bauer, Tasneem Raja, & Ben Breedlove, *Life in the Hole: Inside a Solitary Cell*, MOTHER JONES (2012), available at <http://www.motherjones.com/politics/2012/10/solitary-cell-graphic> (depicting the anatomy of a generic solitary confinement cell); *see, e.g.* Elizabeth Landau, *Solitary Confinement: 29 Years in a Box*, CNN (2014), available at <http://www.cnn.com/2014/02/23/health/solitary-confinement-psychology/> (describing the experience of Robert King, a former adult inmate who spent twenty-nine years in solitary confinement and characterized his cell furnishings as a “steel bed and a sink that doubled as a toilet where he would also wash clothes”).

one small window high in the wall or no windows at all.<sup>8</sup> The resources a child receives in solitary confinement depend largely on the discretion of the individual facilities and their officers.<sup>9</sup> Although some facilities provide juveniles a weekly allowance of books or self-instructional educational materials, other facilities deny access to any recreational or educational materials whatsoever.<sup>10</sup>

Additionally, although juveniles in isolation should receive at least one to two hours of outdoor recreation time per day to maintain their physical and mental health, that goal is often unmet.<sup>11</sup> Whether due to staffing shortages, security concerns, or a lack of funding, many juveniles are forced to take their recreation time indoors, shackled, or not at all.<sup>12</sup> Even juveniles who are permitted outdoor recreation are often kept isolated in small cages and pens, barely larger than their cells, for the mandated period of time.<sup>13</sup>

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<sup>8</sup> ALONE AND AFRAID, *supra* note 5, at 2 (describing solitary cells as “cramped space[s]” which “often have no window or view of the world outside cell walls”); *see* Simkins et al., *supra* note 3, at 242.

<sup>9</sup> Children’s access to reading materials and educational programs varies not only by state, but also by facility within the state, and data is largely anecdotal. *See, e.g.* Simkins et al., *supra* note 3, at 256 (New Jersey juvenile had no access to books or reading materials in solitary); *Nelson v. Heyne*, 355 F. Supp. 451, 456 (N.D. Ind. 1972)(children in Indiana Boys’ School given only a Bible to read); GROWING UP LOCKED DOWN, *supra* note 4, at 4 (out of 125 children interviewed at detention facilities in nineteen states, twenty-five children reported “at least one period of time in solitary confinement during which they were not provided any educational programming at all” and sixteen children reported “sitting alone in their cell for days on end without even a book or a magazine to read”); *see generally* ALONE AND AFRAID, *supra* note 5, at 5 (reading materials are deemed a “privilege” which can be denied to children in solitary confinement).

<sup>10</sup> Simkins et al., *supra* note 3, at 252; ALONE AND AFRAID, *supra* note 5, at 2 (reporting that children held in solitary confinement are “regularly deprived of the services, programming, and other tools that they need for healthy growth, education and development” including limited or nonexistent access to school books).

<sup>11</sup> *See* Simkins et al., *supra* note 3, at 252; GROWING UP LOCKED DOWN, *supra* note 4, at 38; Centers for Disease Control and Prevention, *How much physical activity do children need?* available at <http://www.cdc.gov/physicalactivity/everyone/guidelines/children.html> (last visited Apr. 20, 2014).

<sup>12</sup> Simkins et al., *supra* note 3, at 252; GROWING UP LOCKED DOWN, *supra* note 4, at 38-39.

<sup>13</sup> GROWING UP LOCKED DOWN, *supra* note 4, at 1 (observing outdoor recreation areas to be “small metal cages”) & 38 (“[m]ost young people who did get to exercise outdoors... did so in a small, individual, fenced-in cage, often barely larger than their cell... It is hard to imagine that these conditions would permit adequate aerobic or muscle-strengthening exercise, let alone an adequate contrast from time in one’s cell”).

Juvenile facilities use solitary confinement for a variety of reasons that generally fall into four categories: disciplinary, administrative, medical, or protective.<sup>14</sup> Inmates who are isolated for disciplinary problems may have refused to abide by the rules of the facility, caused disturbances with other inmates, or verbally or physically attacked the facility staff.<sup>15</sup> Prison and detention center overcrowding could lead certain detainees to be housed in solitary confinement areas, simply due to administrative necessity.<sup>16</sup> Inmates with contagious health conditions and infectious diseases can be quarantined in isolation for medical reasons.<sup>17</sup> Additionally, inmates suspected of suicidal tendencies or mental health problems are sometimes placed in isolation for their own protection.<sup>18</sup> Finally, when officials have reason to believe a detainee is particularly vulnerable to abuse or danger in the general population of the facility, they may choose to house the individual separately from other inmates.<sup>19</sup>

### **III. The Effects of Physical Isolation on Juveniles**

There are several differences between juveniles and adults which merit differential treatment in detention facilities. Adolescence is a physically, socially, and psychologically tumultuous period in human development.<sup>20</sup> For example, the frontal lobe of the human brain does not fully develop until the mid-twenties.<sup>21</sup> The frontal lobe is responsible for cognitive processing, including the ability to organize thoughts, make plans, inhibit impulses, and prioritize.<sup>22</sup> Before the frontal lobe is fully

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<sup>14</sup> GROWING UP LOCKED DOWN, *supra* note 4, at 3; ALONE AND AFRAID, *supra* note 5, at 6.

<sup>15</sup> Facilities typically use disciplinary isolation to punish children for misbehavior and rule-breaking, such as possessing contraband, fighting, or disobeying corrections officers. GROWING UP LOCKED DOWN, *supra* note 4, at 3; ALONE AND AFRAID, *supra* note 5, at 6.

<sup>16</sup> Administrative isolation can be used when a child first arrives at the facility for processing or when a youth's behavior is deemed so disruptive to the orderly functioning of the institution that they must be separated from the general population. GROWING UP LOCKED DOWN, *supra* note 4, at 3; ALONE AND AFRAID, *supra* note 5, at 6.

<sup>17</sup> GROWING UP LOCKED DOWN, *supra* note 4, at 3; ALONE AND AFRAID, *supra* note 5, at 6.

<sup>18</sup> GROWING UP LOCKED DOWN, *supra* note 4, at 3; ALONE AND AFRAID, *supra* note 5, at 6.

<sup>19</sup> GROWING UP LOCKED DOWN, *supra* note 4, at 3; ALONE AND AFRAID, *supra* note 5, at 6.

<sup>20</sup> Dennis M. Styne, M.D., Remarks to Juvenile Justice Course: Adolescent Development (Jan. 16, 2013).

<sup>21</sup> GROWING UP LOCKED DOWN, *supra* note 4, at 15-16.

<sup>22</sup> *Id.* at 16.

developed, youths may be overly impulsive and susceptible to environmental pressures in decision-making.<sup>23</sup> Juveniles' biological inclination toward impetuosity and immaturity renders them unusually vulnerable to environmental pressures, causing them to experience greater suffering from social isolation and physical restriction than adults.<sup>24</sup>

Even a short period of isolation can have a devastating impact on a juvenile's mental health. Studies show that solitary confinement, more often than not, *causes* mental health problems and exacerbates existing mental conditions.<sup>25</sup> Because adolescent brains are still developing, youths often possess fewer psychological resources than adults to insulate them from the stress and anxiety of isolation.<sup>26</sup> Simkins observes that "based on what is known about adolescent development and teen brain studies, isolation is likely to be more damaging to a juvenile than to an adult."<sup>27</sup> While in solitary confinement, adult inmates generally display

[H]ypersensitivity to external stimuli; perceptual distortions and hallucinations; increased anxiety and nervousness; revenge fantasies, rage, and irrational anger; fears of persecution; lack of impulse control; severe and chronic depression; appetite loss and weight loss; heart palpitations; withdrawal; blunting of affect and apathy; talking to oneself; headaches; problems sleeping; confusing thought processes; nightmares; dizziness; self-mutilation; and lower levels of brain function, including a decline in EEG activity after only seven days in solitary confinement.<sup>28</sup>

Adults generally develop psychological coping mechanisms during their lives to deal with frightening, lonely, or perceptibly unfair

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<sup>23</sup> *See Id.*

<sup>24</sup> ALONE AND AFRAID, *supra* note 5, at 3.

<sup>25</sup> GROWING UP LOCKED DOWN, *supra* note 4, at 23-24; Jeff Mitchell & Christopher Varley, *Isolation and Restraint in Juvenile Correctional Facilities*, 2 J.A.M. ACAD. CHILD ADOLESC. PSYCHIATRY 251, 252 (1990); *See* Juvenile Justice Reform Committee, American Academy of Child and Adolescent Psychiatry, *Solitary Confinement of Juvenile Offenders*, approved Apr. 2012, [http://www.aacap.org/cs/root/policy\\_statements/solitary\\_confinement\\_of\\_juvenile\\_offenders](http://www.aacap.org/cs/root/policy_statements/solitary_confinement_of_juvenile_offenders) (last visited Apr. 14, 2013); *see also* ALONE AND AFRAID, *supra* note 5, at 4.

<sup>26</sup> GROWING UP LOCKED DOWN, *supra* note 4, at 24.

<sup>27</sup> Simkins et al., *supra* note 3, at 257.

<sup>28</sup> ALONE AND AFRAID, *supra* note 5, at 4.

situations.<sup>29</sup> Youths without these coping mechanisms, however, often only respond with aggressive or antisocial behavior, self-harm, or even suicide.<sup>30</sup> Furthermore, young people are not always subjected to a thorough psychological examination before they are isolated, and counseling services at many jails and prisons are limited.<sup>31</sup>

In a 2012 report on juvenile solitary confinement, Human Rights Watch spoke with youths who described the psychological harm they suffered during and after their solitary confinement experiences.<sup>32</sup> Many youths reported hallucinations, extreme anxiety or rage, severe depression, suicidal thoughts or attempts, and intentionally cutting themselves.<sup>33</sup> Self-harm is used, more often by girls than by boys, as a cry for help to security officers or an act of self-loathing.<sup>34</sup> During adolescence, girls exhibit higher rates of depression than boys and mental health problems are more prevalent among incarcerated girls than boys.<sup>35</sup> A study of girls detained in Georgia's youth facilities found that fifty percent had eating disorders, forty-seven percent had attempted suicide and self-mutilation, and sixty-seven percent had psychiatric disorders.<sup>36</sup> Most disturbingly, youths in solitary confinement tend to commit suicide more often than youths in the general population.<sup>37</sup> A study conducted by the Office of Juvenile Justice and Delinquency Prevention in 1999 found that fifty percent of youth

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<sup>29</sup> *Id.*

<sup>30</sup> GROWING UP LOCKED DOWN, *supra* note 4, at 25-26.

<sup>31</sup> *Id.* at 7 n.45 (citing a Department of Justice report finding that "half of young people held in isolation for two hours or longer reported that they had not spoken with a counselor or mental health professional while incarcerated (including while in isolation)"). See generally Nat'l Mental Health Ass'n, *Mental Health Treatment for Youth in the Juvenile Justice System: a Compendium of Promising Practices* at 1 (2004), available at [https://www.nttac.org/views/docs/jabg/mhcurriculum/mh\\_mht.pdf](https://www.nttac.org/views/docs/jabg/mhcurriculum/mh_mht.pdf) (finding that the prevalence of mental disorders among youth in the juvenile justice system is approximately 60%, nearly three times the prevalence rate among non-incarcerated juveniles. Between a quarter and a third of incarcerated youth have been diagnosed with anxiety or mood disorders and "up to 19 percent of incarcerated youth may be suicidal."

<sup>32</sup> GROWING UP LOCKED DOWN, *supra* note 4, at 1, 22, 24, 29.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 29-30. The types of self-harm inflicted varies from cutting open the skin to hitting one's head against the wall. One sixteen-year-old female described how she "[liked] to take staples and carve letters and stuff in [her] arm." Another young woman reported her self-harm experiences in solitary: "I cut myself. I started doing it because it is the only release of my pain. I'd see the blood and I'd be happy...I did it with staples, not razors. When I see the blood and it makes me want to keep going."

<sup>35</sup> Nat'l Mental Health Ass'n, *supra* note 31, at 10.

<sup>36</sup> *Id.*

<sup>37</sup> Simkins et al., *supra* note 3, at 259.

suicides by detained children were committed in solitary confinement, while sixty-two percent of children who committed suicide in detention had at some previous time been in solitary confinement.<sup>38</sup>

Isolation may affect abused and traumatized children more severely than their peers.<sup>39</sup> Incarcerated children are more likely to have experienced physical, sexual, or psychological abuse prior to incarceration than the average American child.<sup>40</sup> Many female offenders “have been victims of physical, sexual, and/or emotional abuse . . . Many have sexually-transmitted diseases or other chronic physical health condition.”<sup>41</sup> Relative to incarcerated adults, children detained in U.S. jails are five times more likely to experience physical, sexual, or psychological abuse while incarcerated.<sup>42</sup> Girls detained in the juvenile justice system report experiencing more physical and sexual abuse while in detention than boys, with a staggering 70% of girls reporting such abuse.<sup>43</sup>

Forced isolation can re-traumatize the children since the lack of interaction and stimulation leaves them alone with their thoughts and memories.<sup>44</sup> For example, one Florida juvenile reported that she was held in protective custody at the age of fifteen for three months.<sup>45</sup> Prior to incarceration, she had been raped on three separate occasions, starting when she was only eleven years old.<sup>46</sup> She reported that the memories of her rape resurfaced during her isolation: “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.”<sup>47</sup> Involvement in the juvenile justice system can worsen the psychological condition of detained

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<sup>38</sup> *Id.*

<sup>39</sup> Simkins et al., *supra* note 3, at 258-59, n.159; GROWING UP LOCKED DOWN, *supra* note 4, at 24, 34; ALONE AND AFRAID, *supra* note 5, at 2, 5.

<sup>40</sup> GROWING UP LOCKED DOWN, *supra* note 4, at 34.

<sup>41</sup> Nat’l Mental Health Ass’n, *supra* note 31, at 10.

<sup>42</sup> GROWING UP LOCKED DOWN, *supra* note 4, at n. 42 (citing National Prison Rape Elimination Commission Report statistics that while juveniles make up less than one percent of all inmates in U.S. jails, they are 21% of victims of substantiated sexual abuse involving inmates).

<sup>43</sup> Nat’l Mental Health Ass’n, *supra* note 31, at 10 (finding that “[a]dolescent girls who come into contact with the juvenile justice system report extraordinarily high levels of abuse and trauma”).

<sup>44</sup> GROWING UP LOCKED DOWN, *supra* note 4, at 34; Simkins et al., *supra* note 3, at 259.

<sup>45</sup> GROWING UP LOCKED DOWN, *supra* note 4, at 34.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

children, particularly girls, as “the characteristics of the detention environment (e.g. seclusion, staff insensitivity, loss of privacy) can add to the negative feelings and loss of control girls feel, resulting in suicide attempts and self-mutilation.”<sup>48</sup> The psychological harm resulting from isolation is exacerbated by prior abuse and can cause detained youths such as this teenage girl to suffer insomnia or other sleep disorders, traumatic memories, or mental anguish.<sup>49</sup>

Many youths experience abuse as children through isolation, such as a child who is locked in a closet while her parents go out.<sup>50</sup> For these children, each experience of isolation evokes traumatic memories of past confinements and can severely impede or prevent recovery.<sup>51</sup> Simkins observes that if “a parent was confining her child to a small room for days at a time, with minimal human contact, no educational or medical services, and very limited sensory stimuli” it would be considered child abuse, yet it happens daily to youths in rehabilitative facilities.<sup>52</sup> Youths traumatized from prior abuse or neglect are re-traumatized because isolation tends to “activate painful memories and may be experienced as re-victimization.”<sup>53</sup> Isolation can cause abused youths to experience the same feelings of

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<sup>48</sup> Nat’l Mental Health Ass’n, *supra* note 31, at 10.

<sup>49</sup> GROWING UP LOCKED DOWN, *supra* note 4, at 28-29.

<sup>50</sup> *Id.* at 34. Unfortunately, long periods of isolation and restraint are not uncommon modes of child abuse and neglect. For instance, in one of the most horrifying and infamous child abuse cases of the 1970s, “Genie” was kept in isolation and restraint for nearly eleven years, where “[m]ost of the time, she was kept harnessed into an infant’s potty chair; otherwise she was confined in a homemade sleeping bag in an infant’s crib covered with wire mesh.” Susan Curtiss et al., *The Linguistic Development of Genie*, 50 LANG. 528, 529, available at <http://www.neiu.edu/~circill/bofman/ling450/linguistic.pdf> (last visited Feb. 28, 2014). More recently, in 2000, *The Oprah Show* dedicated a special episode to the story of Clayton, an abused six-year-old boy whose father and stepmother kept him locked inside a dark, airless bathroom closet measuring only two feet by two feet. Wrapped in a sharp wire fence and bound in chains, Clayton was often locked in the closet for days on end, forced to sleep standing up and go to the bathroom on himself. *Clayton’s Survival Story*, <http://www.oprah.com/oprahshow/Claytons-Survival-Story/> (last visited Mar. 5, 2014).

<sup>51</sup> Simkins et al., *supra* note 3, at 259.

<sup>52</sup> *Id.* See also *Inmates of Boys’ Training Sch. v. Affleck*, 346 F. Supp. 1354, 1367 (D.R.I. 1972) (“If a boy were confined indoors by his parents, given no education or exercise and allowed no visitors, and his medical needs were ignored, it is likely that the state would intervene and remove the child for his own protection”).

<sup>53</sup> *Id.* at 258-59.

helplessness and powerlessness they felt during the abuse, hindering their emotional and psychological recovery.<sup>54</sup>

Solitary confinement can have devastating physical consequences for juveniles as well. Confinement in a small space with limited or no physical exercise can stunt normal physical development.<sup>55</sup> Some juveniles reported losing weight and subnormal physical development as a result of inadequate nutrition and lack of exercise.<sup>56</sup> Insufficient nutrition and exercise has particularly detrimental effects on juveniles because their bodies are still growing and beginning to develop secondary sex characteristics.<sup>57</sup>

While the purpose of the juvenile justice system is to rehabilitate juvenile offenders and facilitate their transition back into society, the physical and mental setbacks children receive in solitary confinement undermine that objective. Additionally, in many jails and prisons, juveniles are denied “privileges” such as access to rehabilitative programs, education, certain health services, books, magazines, and contact with their families while in solitary confinement.<sup>58</sup> Denial of rehabilitation services and family contact can impede adolescents’ mental and social development and, consequently, their successful reintegration into the general population and eventually, mainstream society.<sup>59</sup>

*A. Alternatives to Solitary Confinement: A Case Study of the Yolo County Juvenile Detention Facility*

There are alternative ways to accomplish the objectives of solitary confinement without completely isolating the juvenile in segregated housing. Many facilities that house juveniles do not use solitary confinement.<sup>60</sup> Facilities that contain only juveniles, such as juvenile halls, often have best practice standards that mandate lower maximum solitary confinement times that are less than the maximums at prisons and

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<sup>54</sup> *Id.* at 259.

<sup>55</sup> See ALONE AND AFRAID, *supra* note 4, at 5 (observing that “the most common deprivation that accompanies solitary confinement, denial of out-of-cell physical exercise, is physically harmful to [juveniles’] health, well-being, and growth”).

<sup>56</sup> GROWING UP LOCKED DOWN, *supra* note 4, at 39-41.

<sup>57</sup> See ALONE AND AFRAID, *supra* note 5, at 3.

<sup>58</sup> *Id.* at 5.

<sup>59</sup> *Id.*

<sup>60</sup> GROWING UP LOCKED DOWN, *supra* note 4, at 21.

jails.<sup>61</sup> Additionally, many facilities use a more lenient “time out” form of solitary confinement.<sup>62</sup>

I visited the Yolo County Juvenile Detention Facility in the spring of 2013 to learn about the standards of care for juvenile detainees and, specifically, the use of solitary confinement for disciplinary purposes. The Yolo County Juvenile Detention Center is one of the most secure, efficient, and rehabilitation-oriented youth facilities, and as a result of their stellar reputation, recently won a bid from the Department of Homeland Security to house immigrant child offenders during their pending immigration court hearings.<sup>63</sup> Superintendent Ray Simmons outlined the “time out” procedures which provide due process to juvenile offenders.<sup>64</sup> Upon receiving a complaint about a juvenile resident, security officers investigate the juvenile’s behavior and may confine the juvenile to his or her room. The officer is required, within a reasonable period of time, to report the confinement to a supervisor who then listens to both sides of the story, evaluates whether the confinement was merited, and decides when to release the juvenile. “Time outs” are used less to punish the adolescents for their behavior, but rather for the protection of the other children and the officers.<sup>65</sup>

The Yolo County Juvenile Detention Center, like many juvenile hall facilities, provides a high standard of physical and mental healthcare to their residents.<sup>66</sup> Children are split into three community pods.<sup>67</sup> Each

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<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> E-mail from F. Ray Simmons, Superintendent, Yolo County Juvenile Detention Center, to Laura Anne Gallagher, J.D. Candidate, UC Davis School of Law (Apr. 18, 2013, 11:15 PST)(on file with author). Superintendent Simmons describes the process by which immigrant youth are selected to be housed in the Yolo County Juvenile Detention Facility. The Federal Government Office of Refugee Resettlement (ORR) Division of Unaccompanied Children’s Services (DUCS) places children in Shelter, Staff-Secure, or long/short term foster care. The Yolo Facility is a “secure” placement facility for undocumented youth who have been adjudicated in a U.S. Court and are currently awaiting an immigration court adjudication. The Facility was selected for participation in this program in 2007, and Yolo is currently the only secure facility partnered with ORR for this program. To qualify, the Yolo Facility underwent numerous upgrades and policy reviews to provide the necessary services to immigrant youth, such as transportation to the San Francisco Immigration Court.

<sup>64</sup> Superintendent F. Ray Simmons, Comments at the Yolo County Juvenile Detention Facility (Mar. 13, 2013).

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

thirty-person pod has its own medical unit, and children are encouraged to seek the help of doctors and counselors if needed.<sup>68</sup> The pods are also equipped with classrooms, libraries, and other rehabilitative options, which can provide a constructive outlet for the children and better their chances of a successful re-integration into society.<sup>69</sup> With such extraordinary resources available at many juvenile facilities to support the physical, mental, and emotional health of the detained children, it is particularly regrettable when solitary confinement denies children access to those opportunities.

*B. My Analytic Approach to Evaluating the Severity of Solitary Confinement*

While “time outs” are still used for disciplinary purposes at the Yolo County Facility, this isolation generally does not reach the severity of solitary confinement. Based on my research, there are a variety of factors to consider in evaluating the severity of solitary confinement.<sup>70</sup> Firstly, look at where the isolation takes place. A juvenile who is confined in his or her regular sleeping cell (as at the Yolo County Facility previously mentioned) will likely be less traumatized by the confinement than a child who is removed to a completely separate area of the facility. In a regular sleeping cell, a youth, despite being isolated, still has somewhat familiar surroundings and knows that only a short physical distance away are other human beings. Cells specifically designated as “solitary cells,” however, are unfamiliar, physically distant from peers, and often colder and more sparsely furnished than regular cells. Cells that are specifically used for solitary confinement typically bear ominous slang names (such as “the strip room” or “the bug-out room”) because they are often colder, bleaker, darker, and more sparsely furnished than the average sleeping cell.<sup>71</sup> Next, consider whether the youth is afforded some degree

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<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> See generally ALONE AND AFRAID, *supra* note 5; GROWING UP LOCKED DOWN, *supra* note 4; Simkins et al., *supra* note 3; Superintendent F. Ray Simmons, *supra* note 64 .

<sup>71</sup> The term “the strip room” arises from *Lollis v. New York State Dept. of Soc. Servs.*, 322 F. Supp. 473, 475 (S.D.N.Y. 1970) . Children in isolation such as Lollis were put in the strip room “so called because it is stripped of all facilities normally available to inmates.” *Id.* The term “bug-out room” arises from *Inmates of Boys' Training Sch. v. Affleck*, 346 F. Supp. 1354, 1359 (D.R.I. 1972), as boys who “bugged out” (i.e. misbehaved) in detention were sent there as punishment. *Id.* at 1362. In California, solitary confinement is often called the “SHU,” an acronym for “Secure Housing Unit.”

of due process before the confinement takes place or is ordered. Is solitary confinement a consequence of specific behavior, or completely at the discretion of security officers? Does the youth have the opportunity to present his or her side of the story to an adjudicating officer, whether another officer or a supervisor? Thirdly, look at the length of time the youth is confined and how that period is determined. While a fifteen minute time-out may not be “cruel and unusual punishment,” spending a few weeks or even months in isolation could be. Does the period depend on the discretion of the officers alone, or is it preset by official standards? Fourthly, does the youth have access to reading, educational, and recreational materials in isolation? Finally, look at how much time the youth spends in outdoor recreation time. A child should spend at least three hours per day in outdoor recreation, weather permitting, to attain normal physical and mental development.<sup>72</sup>

#### **IV. Juvenile Solitary Confinement Challenged in the Courts**

In the 1970’s, a number of highly publicized juvenile solitary confinement cases outraged the public and caused many state governments to re-evaluate their juvenile isolation policies. In *Lollis v. New York*, a New York District Court found that the two-week solitary confinement of a fourteen-year-old girl, without access to recreational or reading materials, violated the Eighth Amendment’s ban on cruel and unusual punishment.<sup>73</sup> Antoinette Lollis was detained in a New York State training school as a “Person in Need of Supervision” upon her mother’s request.<sup>74</sup> After a “fracas” with a matron, Antoinette was placed in solitary confinement, known as a “strip room” because it was stripped of all amenities ordinarily available to inmates.<sup>75</sup> There, Antoinette was held for two weeks, and according to the court, “she wore pajamas all day, sat

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<sup>72</sup>*Inmates of Boys' Training Sch.*, 346 F. Supp. at 1369 (“A well fenced exercise yard is available and is part of the institution. It should be used to provide a minimum of three hours of outdoors exercise daily, weather permitting. Defendants must provide daily outdoors exercise for all inmates of the BTS.”). See Geoffrey Godbey, *Outdoor Recreation, Health, and Wellness: Understanding and Enhancing the Relationship* at 4, RFF-DP 09-21 (2009), available at <http://www.rff.org/documents/RFF-DP-09-21.pdf> (finding that contact with nature “positively affects blood pressure, cholesterol, outlook on life, stress reduction, and behavioral problems among children”); at 10 (children should optimally spend several hours in outdoor recreation time daily for healthy development).

<sup>73</sup>*Lollis*, 322 F. Supp. at 482.

<sup>74</sup>*Id.* at 475.

<sup>75</sup>*Id.* at 482.

staring at the wall and did absolutely nothing.”<sup>76</sup> Her predicament eventually came to the attention of a visiting juvenile court judge, who discovered that Antoinette had no set release date from solitary confinement.<sup>77</sup> When the judge pressed the warden for more information about Antoinette’s release, the warden responded that she would be released when she apologized to the matron – who was, unfortunately, on vacation.<sup>78</sup> Fortunately for Antoinette, the judge secured her release from solitary.<sup>79</sup> Without procedural safeguards to ensure children receive a hearing before they are isolated, or are released after a specified period of time, a child could languish alone for an indefinite period of time, depending on the guards’ discretion.

In *Inmates of Boys’ Training School v. Affleck*, a Rhode Island District Court identified rehabilitation as the state purpose behind the confinement of juveniles.<sup>80</sup> As a result, the Court found that facilities detaining children needed to use isolation judiciously and provide humane conditions in solitary confinement.<sup>81</sup> The *Affleck* plaintiffs, inmates of the Rhode Island Boys’ Training School, suffered gross deprivations in the dilapidated Annex C solitary confinement facilities. After attempting an escape, juvenile James Young was confined to a maximum security cell for 21 days, where he was held in a cell with adult inmates<sup>82</sup> and “learned how to do “‘better’ B & E’s (breaking and entering’s) and to do armed robberies.”<sup>83</sup> In addition, James testified that:

[He] had twice been put in Annex B’s solitary cells, once for two or three days, and once for seven to ten days. The solitary cell was completely dark and was cold with winter air coming in through the knocked out window. He had no toilet paper, soap, sheets, blankets, or change of clothes. The only clothing he had was underwear. The covering on

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<sup>76</sup> *Id.* at 476.

<sup>77</sup> *Id.* at 475-76.

<sup>78</sup> *Id.* at 476.

<sup>79</sup> *Id.* at 475 (Family Court Judge Beatrice Burstein insisted upon Lollis’s release).

<sup>80</sup> *Inmates of Boys’ Training Sch.*, 346 F. Supp. at 1364.

<sup>81</sup> *Id.*

<sup>82</sup> The Boys’ Training School functioned on the same grounds as an adult prison facility and shared some of the same resources and buildings.

<sup>83</sup> *Id.* at 1362.

the mattress was worn through and he lay on the springs. He was never allowed out of the cell.<sup>84</sup>

In the face of these horrific conditions, the court held that children in solitary confinement should have a minimum of three hours daily of outdoor exercise, and all children in detention facilities are entitled to adequate artificial reading light until 10:00 p.m., seasonally-appropriate clothing, sufficient bedding to be changed once a week, personal hygiene supplies, a fresh change of underwear and socks daily, letter-writing materials, eyeglasses, daily showers, access to medical facilities, and access to educational materials.<sup>85</sup>

Detained and formerly detained juveniles sued the Texas Youth Council for abuses of their Eighth Amendment and due process rights.<sup>86</sup> In *Morales v. Turman*, the Texas District Court forbade the Texas Youth Council from isolating juvenile detainees based on their race, color, national origin, or suspected homosexuality.<sup>87</sup> The Texas Court reiterated many of the persuasive standards of the Rhode Island *Affleck* case, such as limits on the use of isolation, and ordered improved record-keeping about who is isolated and for how long.<sup>88</sup> Now, children in solitary confinement must be checked visually every fifteen minutes and receive daily visits from social workers, nurses, and prison personnel.<sup>89</sup>

#### A. *California's Legislative Response*

Like most states, California has struggled to weigh the detrimental effects of solitary confinement on juveniles against the need to protect correctional officers and other inmates from harm. California State Senator Yee, representing San Francisco and San Mateo counties, has spearheaded a number of efforts to ban or severely restrict juvenile solitary confinement.<sup>90</sup> In fact, nearly every winter Yee proposes a bill to

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<sup>84</sup> *Id.* at 1362.

<sup>85</sup> *Id.* at 1373.

<sup>86</sup> *Morales v. Turman*, 569 F. Supp. 332, 353 (E.D. Tex. 1983).

<sup>87</sup> *Id.*

<sup>88</sup> *Id.* at 345-46.

<sup>89</sup> *Id.* at 345.

<sup>90</sup> See Susan Feriss, *Suit Alleges Mistreatment of California Minors with Mental Health Problems*, Ctr for Publ. Integrity (2013) available at <http://www.publicintegrity.org/2013/08/09/13152/suit-alleges-mistreatment-california-minors-mental-health-problems>; See also *CA Bill to Limit Solitary Confinement in Local and State Juvenile Facilities Passes*

eliminate juvenile solitary confinement for disciplinary purposes and impose procedural safeguards to protect young people from spending excessive time in isolation. In February of 2012, Yee proposed SB 1363, a bill to redefine solitary confinement as sixteen or more hours per day in isolation, ensure certain rights and privileges for youths in isolation, and limit the isolation of mentally unstable and suicidal youths.<sup>91</sup> The bill died after it failed passage in the Committee on Public Safety several times.<sup>92</sup>

In January of 2013, State Senator Yee introduced SB 61, proposing to amend California Welfare and Institutions Code Sections 208.3, 225, 226, 229, and 230, to add additional protections for juveniles against solitary confinement.<sup>93</sup> SB 61 aimed to restrict the discretion of guards in isolating juveniles to situations where the “minor or ward poses an immediate and substantial risk of harm to others or to the security of the facility, and all other less-restrictive options have been exhausted.”<sup>94</sup> The child could only be kept isolated for the minimum amount of time necessary to eliminate the security risk, and no child could be isolated if isolation would negatively impact the child’s psychological or physical well-being.<sup>95</sup> The bill required trained counselors or medical personnel to check in face-to-face with the detainee one hour after isolation begins, and then every four hours after that.<sup>96</sup> SB 61 prohibited facility staff from isolating a juvenile for punishment, discipline, or retaliatory reasons, and restricted using solitary confinement for children with known suicidal tendencies.<sup>97</sup> The bill was referred to the Committee on Public Safety but again failed to pass and by September of 2013, the bill became inactive.<sup>98</sup>

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*Senate Floor 24-14*, Ella Baker Ctr for Human Rts (2013) available at <http://ellabakercenter.org/in-the-news/ca-bill-to-limit-solitary-confinement-in-local-state-juvenile-facilities-passes-senate>.

<sup>91</sup> S.B. 1363, 2011-2012 Leg. Reg. Sess. (Cal. 2012).

<sup>92</sup> *Id.* Click on “Legislative History” for a full summary of the bill’s history.

<sup>93</sup> S.B. 61, 2013-2014 Leg. Reg. Sess. (Cal. 2013).

<sup>94</sup> *Id.* at § 1

<sup>95</sup> The evaluation must be made face-to-face by a “clinician” and the results must be documented. A “clinician” is defined as a licensed health or mental health care professional. *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> See S.B. 1363, 2011-2012 Leg. Reg. Sess. (Cal. 2012) (click on “legislative history”). See also CALIFORNIA LEGISLATIVE INFORMATION, [http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?\\_afessionid=bab936de8bfae0aed8ad1e1e75a1](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?_afessionid=bab936de8bfae0aed8ad1e1e75a1) (last visited January 22, 2014).

On February 10, 2014, State Senator Yee introduced a new bill, SB 970, proposing substantially the same statutory amendments as SB 1363 and SB 61.<sup>99</sup> The Senate referred the bill to the Committee on Public Safety on February 20th, and it remains to be seen whether or not California will adopt this humane and progressive piece of legislation or the bill will languish and die in front of the Committee on Public Safety once more.<sup>100</sup> The progress of Senator's Yee's campaign to end youth solitary confinement may stall, as a grand jury recently indicted the state senator on charges of corruption and conspiracy to traffic in firearms.<sup>101</sup> Senator Yee's background in child psychology and education, however, has made an invaluable, irreplaceable contribution to juvenile justice advocacy in Sacramento.<sup>102</sup> He observed that when children are in solitary confinement,

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<sup>99</sup> S.B. 970, 2013-2014 Leg. Reg. Sess. (Cal. 2014) *available at* [http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201320140SB970&search\\_keywords=](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB970&search_keywords=) (last visited Mar. 5, 2014).

<sup>100</sup> *Id.*

<sup>101</sup> Sharon Bernstein, *California's Senator Yee Indicted on Gun, Corruption Charges*, REUTERS (2014) *available at* <http://www.reuters.com/article/2014/04/04/us-usa-california-yee-idUSBREA331K720140404>. The indictment charges Yee with six counts of corruption and one count of conspiracy to traffic in firearms. It alleges that Yee accepted bribes from undercover FBI agents and even assisted an agent in obtaining illegal firearms. For now, Yee has been suspended from the State Senate with pay. *See also* Brian Shields, *Leland Yee Suspended from California State Senate*, KRON4 (2014) *available at* <http://news.kron4.com/news/breaking-news-leland-yee-suspended-from-california-state-senate/> (criminal complaint available at <http://news.kron4.com/news/document-criminal-complaint-state-sen-leland-yee-indicted-on-public-corruption-charges/>). *See generally* Vic Lee, *Lawyer: Former SF Sup Ed Jew Ratted on Leland Yee Early*, ABC LOCAL (2014) *available at* <http://abclocal.go.com/kgo/story?id=9483195> (Senate President Pro Tem Darrell Steinberg announced the suspension with pay of Senator Yee, commenting: "I wish that Sens. Yee and Calderon would resign and spare this proud and productive institution and its members the stigma of associating with their alleged actions. **Leave please**") (emphasis added).

<sup>102</sup> Gary Gately, *Juvenile Solitary Confinement: Modern-Day 'Torture' in the U.S.*, Juvenile Justice Information Exchange (2014) *available at* <http://jjie.org/juvenile-solitary-confinement-modern-day-torture-in-the-u-s/>. The impact of Senator Yee's indictment on S.B. 970 remains to be seen. *See* Patrick McGreevy, *Sen. Leland Yee's Chief of Staff Leaving for Private Sector Job*, L.A. TIMES (2014) *available at* <http://www.latimes.com/local/political/la-me-pc-sen-yees-chiefstaff-leaving-for-private-sector-job-20140403,0,3336700.story#axzz2xvu9Fh3I> (discussing the future of S.B. 970. Other legislators who co-authored the bill with Yee are in talks to see if one of them will "step up and become the lead author responsible for carrying [the bill] through the Legislature").

Kids become depressed, they become disassociated, they begin to sometimes decompose psychologically. So there's nothing good that comes out of solitary confinement for the youngster. It's all bad, and it seems to me that if the [state Department of Corrections and Rehabilitation] would just simply pick up a book on psychology and read it, they would understand that this is not a good thing for youngsters and not good for our society in general.... Torture doesn't help anybody at all.<sup>103</sup>

### *B. Other Legislative Responses*

Many other state legislatures have passed statutes limiting the use of isolation to "time-outs" as part of a behavioral treatment program or "seclusion," a short-term isolation to be used in emergencies.<sup>104</sup> Connecticut, Maine, Massachusetts, Missouri, New York, Oregon, Pennsylvania, Oklahoma, West Virginia, Alaska, and Washington, D.C. have all passed laws similar to SB 970, banning solitary confinement for "punitive reasons."<sup>105</sup> The American Academy of Child and Adolescent Psychiatry published an opinion in 2012 describing the detrimental effect of solitary confinement on juveniles and recommending (as in SB 970) that isolation only be used for minimal amounts of time, after less-restrictive measures have proved ineffective, and never for retaliation or staff convenience.<sup>106</sup>

Many states have deemed limited uses of solitary confinement necessary for the protection of juveniles. In New Jersey, the Juvenile Justice Commission's policy allows temporary restriction of a juvenile to an isolated room for disciplinary purposes only as a last resort after other measures have failed and only "to gain control of an acting-out juvenile and [to] ensure the security and safety of the facility, staff, and other

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<sup>103</sup> Gately, *supra* note 102.

<sup>104</sup> See generally *Solitary Confinement of Juvenile Offenders*, *supra* note 25 (distinguishing harmful solitary confinement from "brief interventions" and "time outs," which are acceptable short-term emergency procedures utilized in behavioral treatment programs).

<sup>105</sup> Gary Gately, *Growing Number of States Moving Away From Juvenile Solitary Confinement*, Juvenile Justice Information Exchange (2014) available at <http://jjie.org/growing-number-of-states-moving-away-from-juvenile-solitary-confinement/>.

<sup>106</sup> *Solitary Confinement of Juvenile Offenders*, *supra* note 25.

juveniles[.]” not simply for punitive reasons.<sup>107</sup> The New Jersey Administrative Code allows facility officials to detain a juvenile in solitary confinement for up to five days per violation, but must allow juveniles at least two days of housing in the general population of the facility in between each five-day stint.<sup>108</sup>

New York’s juvenile correctional facilities also failed to protect juveniles and the courts directed them to improve their procedures.<sup>109</sup> After a number of horrific victimizations of incarcerated juveniles, including beatings, arbitrary and unnecessarily long periods of solitary confinement, and a death in custody, the U.S. Department of Justice investigated several New York facilities.<sup>110</sup> They found a pattern of mistreatment, and in 2010, New York agreed to federal oversight of four of their juvenile halls.<sup>111</sup> In February of 2014, New York settled a lawsuit

<sup>107</sup> Simkins et al., *supra* note 3, at 266.

<sup>108</sup> N.J. ADMIN. CODE § 13:101-- 6.17 (2011).

<sup>109</sup> Jeffrey Fagan & Aaron Kupchik, *Juvenile Incarceration and the Pains of Imprisonment*, 3 DUKE F. L. & SOC. CHANGE 29, 40 (2011).

<sup>110</sup> Dept of Just. Office of Publ. Affairs, *Justice Department Announces a Comprehensive Agreement with New York to Remedy Violations and Ensure Constitutional Rights at Four Juvenile Justice Facilities* (2010) available at <http://www.justice.gov/opa/pr/2010/July/10-crt-811.html>. The Department of Justice found that four New York juvenile facilities “systematically violated juveniles’ constitutional rights in the areas of protection from harm and mental health care.” The settlement agreement between the DOJ and the New York State Office of Children and Family Services (OCFS) requires comprehensive reform in a number of areas, such as use of restraints, mental health care, and reporting and investigation of incidents. The complaint can be found at <http://www.justice.gov/opa/documents/compliant-07142010.pdf> and the settlement can be found at <http://www.justice.gov/opa/documents/agreement-07142010.pdf>. The settlement agreement, however, failed to address the issue of juvenile isolation, and specifically excluded “room confinement” from the definition of “restraint.” Settlement Agreement at 4.

<sup>111</sup> *Id.* Many other states have dealt with the issue of juvenile solitary confinement, whether through the legislature or through the courts. In Texas, *Morales v. Turman* established that “no student shall be segregated on the basis of race, color, national origin, or suspected homosexuality.” *Morales v. Turman*, 569 F. Supp. 332, 353 (E.D. Tex. 1983). Florida State Senator Audrey Gibron recently proposed S.B. 812, limiting juvenile solitary confinement to under twenty-four hours and requiring documentation of the isolation and an evaluation by a mental health professional. S.B. 812, 2013-2014 Leg. Reg. Sess. (Fla. 2013). After an ACLU class action suit, Mississippi agreed to enter into a consent decree which would ban the use of solitary confinement for juveniles incarcerated in adult prisons. Jessica Pieklo, *Mississippi Bans Solitary Confinement For Juveniles*, CARE 2 (Feb. 29, 2012, 7:55 AM), <http://www.care2.com/causes/mississippi-bans-solitary-confinement-for-juveniles.html>.

with three adult inmates of New York detention facilities who claimed the facilities subjected them to inhumane disciplinary practices, including prolonged periods of isolation with little or no procedural safeguards in place.<sup>112</sup> The settlement agreement prohibits the use of solitary confinement for minors for disciplinary purposes, although it still allows it for administrative, medical, or protective reasons.<sup>113</sup> It imposes “sentencing guidelines” for detention infractions:

“[S]pecifying the length of punishment allowed for different infractions and, for the first time in all cases, a maximum length that such sentences may run . . . [Juveniles] who are subjected to even the most restrictive form of disciplinary confinement must be given at least five hours of outdoor exercise and programming outside of their cells five days a week. The state must also set aside space at designated facilities to accommodate the minors who would normally be placed in solitary confinement.”<sup>114</sup>

Since the vast majority of juveniles in solitary confinement are placed there for disciplinary reasons, this settlement could have positive, far-reaching consequences for young detainees.<sup>115</sup>

Montana State Prison recently settled with the ACLU in *Raistlen Katka v. Montana State Prison*.<sup>116</sup> Raistlen Katka, a mentally ill seventeen-year-old boy, was kept in solitary confinement for over one year and denied regular bedding and running water.<sup>117</sup> The settlement mandates changes to Montana State Prison policies, setting a maximum of seventy-two hours in solitary without the warden’s express approval.<sup>118</sup> Mentally ill children will not be placed in solitary if it is deemed harmful

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<sup>112</sup> Benjamin Weiser, *New York State in Deal to Limit Solitary Confinement*, N.Y. TIMES, Feb. 19, 2014, [http://www.nytimes.com/2014/02/20/nyregion/new-york-state-agrees-to-big-changes-in-how-prisons-discipline-inmates.html?hpw&rref=nyregion&\\_r=2](http://www.nytimes.com/2014/02/20/nyregion/new-york-state-agrees-to-big-changes-in-how-prisons-discipline-inmates.html?hpw&rref=nyregion&_r=2).

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> *Settlement Protects Juvenile Prisoners*, AMERICAN CIVIL LIBERTIES UNION OF MONTANA, <http://aclumontana.org/raistlen-katka-v-state-of-montana/> (last visited Apr. 15, 2013).

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

to their mental health, and will receive attention from counselors and psychologists as needed.<sup>119</sup>

International law prohibits solitary confinement, of adults or juveniles. The United Nations General Assembly approved a resolution in 1990 requiring:

All disciplinary measures constituting cruel, inhuman, or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned.<sup>120</sup>

In 1990, the United Nations General Assembly adopted the Rules for the Protection of Juveniles Deprived of their Liberty.<sup>121</sup> The Rules specifically address the problems associated with the solitary confinement of youths, and describe isolation of juveniles as “cruel, inhuman, or degrading treatment.”<sup>122</sup> That language stems from the United Nations Convention Against Torture (CAT), an international treaty (which the U.S. signed, with the caveat that it is non-self-executing) which prohibits countries from using or permitting acts which fall under the category of torture.

## V. Conclusion

Although these forward-looking reforms have significantly improved the lives of juvenile detainees, solitary confinement of children is still a widespread problem. A Human Rights Watch report found that over one third of the youths interviewed had spent between one and six months in solitary confinement before they turned eighteen.<sup>123</sup> According to a facility audit, children in California juvenile facilities had been held in isolation for twenty-four hours hundreds of times during the first four

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<sup>119</sup> *Id.*

<sup>120</sup> G.A. Res. 45/113, ¶ 67, U.N. Doc. A/RES/45/113 (Dec. 14, 1990). *Solitary Confinement of Juvenile Offenders*, *supra* note 25.

<sup>121</sup> Simkins et al., *supra* note 3, at 253. *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> The Human Rights Watch Report interviewed seventy-seven and corresponded with fifty present and former juvenile detainees in their survey. GROWING UP LOCKED DOWN, *supra* note 4, at 3, 4.

months of 2011.<sup>124</sup> This is an unacceptable figure, in light of the rehabilitative purpose of the juvenile justice system and the proven detrimental effects of solitary confinement on youth. Since the publication of the ACLU and Human Rights Watch report in 2012, media attention to the issue of solitary confinement has increased dramatically.<sup>125</sup>

Senator's Yee's proposed bill, and the increased media coverage, offered hope to juvenile justice advocates in California. States such as California must address the problematic outcomes of isolating incarcerated children, such as irreversible physical and psychological harm, and create minimum procedural and substantive requirements for isolation to achieve fundamental fairness. Legislative efforts should address the major factors in the severity of solitary confinement, such as location, length of time in isolation, and living conditions of confinement. Lawmakers should impose caps on the length of isolation, and mandate that prison and juvenile hall supervisors maintain accurate records of which children are isolated and for how long. Facilities should also be required to address due process considerations when isolating a juvenile, granting the child a fair hearing and reviewing officers' decisions to increase oversight. These changes will improve the physical and mental well-being of detained children and improve their chances of rehabilitation and reintegration into society.

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<sup>124</sup> *Solitary Confinement: FAQ*, SOLITARY WATCH <http://solitarywatch.com/wp-content/uploads/2012/01/solitary-confinement-faq-short-version.pdf> (last visited Mar. 9, 2014).

<sup>125</sup> See Elizabeth Chuck et al. *Criminal Justice System's 'Dark Secret': Teenagers in Solitary Confinement*, NBCNEWS.COM, [http://rockcenter.nbcnews.com/\\_news/2013/03/22/17403150-criminal-justice-systems-dark-secret-teenagers-in-solitary-confinement?lite](http://rockcenter.nbcnews.com/_news/2013/03/22/17403150-criminal-justice-systems-dark-secret-teenagers-in-solitary-confinement?lite) (last visited Mar. 9, 2014) (Ted Koppel, a legendary journalist and Rock Center Special Correspondent, created a special report on juvenile solitary confinement and published the interviews and several news articles about this issue). See also Susan Feriss, *Why Did California Reject New Limits on Solitary Confinement for Juveniles?* HUFFINGTON POST, Jul. 3, 2012, [http://www.huffingtonpost.com/the-center-for-public-integrity/why-did-california-reject\\_b\\_1646031.html](http://www.huffingtonpost.com/the-center-for-public-integrity/why-did-california-reject_b_1646031.html) (series of articles addressing the concerns of juvenile solitary confinement, particularly in California).