

UNLOCKING YOUTH

Legal Strategies to End Solitary Confinement in Juvenile Facilities

Authored by Jessica Feierman, Karen U. Lindell, and Natane Eaddy

EXECUTIVE SUMMARY

Despite a growing consensus that solitary confinement harms youth and undermines the rehabilitative goals of the juvenile justice system, the practice remains all too common. At the same time, the field lacks sufficient information on the prevalence of the practice, the alternatives, and the perspectives of affected youth and families. This report uses surveys of public defenders, conversations with youth and families, interviews with correctional administrators, and legal and psychological research to fill these gaps and set forth recommendations for reform.

What our research showed:

Solitary confinement in juvenile facilities remains too widespread. Almost half of juvenile facilities report that they isolate youth for more than four hours to control behavior, and more than two-thirds of our survey respondents reported that they have clients who spent time in solitary. The conditions these youth experience can be truly appalling – youth are routinely deprived of necessities such as mattresses, sheets, showers, eating utensils, and mental health treatment. Many spend 22-23 hours per day in cells by themselves.

Solitary confinement is harmful. Neurological research and sociological studies confirm what common sense tells us: isolating youth for days and weeks at a time has devastating, long-term effects on their health and development. Our interviews with youth highlight these effects.

“It was one of the breaking points for me as a young person ... Me realizing now, it was one of the first times I really knew I was depressed. I really didn’t want to do anything, I didn’t have an appetite. I became really frustrated and angry for being in there ... As a kid, never been through this, it’s a very traumatic experience.” – Eddie Ellis

Solitary confinement is unfairly applied. Studies suggest that youth of color and LGBTQ youth are at a heightened risk of being placed in solitary confinement. Girls and gender-non-conforming youth are more likely to enter the justice system with histories of sexual abuse or other trauma, which can exacerbate the harms of isolation and increase the risk of placement in solitary due to trauma-related behaviors. Youth with disabilities are too often placed in isolation for their own protection or due to a lack of available services or accommodations.

Solitary confinement is unnecessary and counterproductive. Juvenile justice systems can operate safely and effectively without reliance on solitary confinement. We highlight two jurisdictions – Ohio and Massachusetts – that have drastically limited the practice by increasing the amount of quality scheduled activities, training staff on de-escalation and other techniques, and adopting evidence-based therapeutic models.

From the Field

Juvenile Defenders Report on Solitary Confinement

This information is based on responses to Juvenile Law Center's 2016 national survey of juvenile defenders. Juvenile Law Center received 56 survey responses via SurveyMonkey.

Solitary confinement of youth is... Common



More than two-thirds of respondents reported that they had clients who spent time in solitary confinement.

Imposed for many different reasons

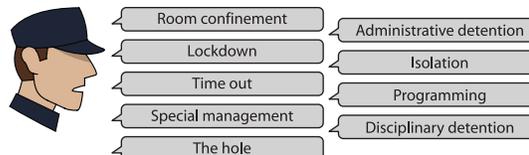
- | | | | |
|-------------------------|-------------------------------------|----------------------------|-------------------------------------|
| Discipline | <input checked="" type="checkbox"/> | In case of emergency | <input checked="" type="checkbox"/> |
| Prevention of self-harm | <input checked="" type="checkbox"/> | Understaffing | <input checked="" type="checkbox"/> |
| Protection of others | <input checked="" type="checkbox"/> | Administrative convenience | <input checked="" type="checkbox"/> |



Applied unevenly around the country



Called by different names



Imposed with few due process protections

More than two-thirds of respondents reported youth "never" receive a hearing before placement in solitary confinement



None reported that youth "always" receive a hearing

Recommendations for reform:

■ Policy Reforms:

Ensure that policies prohibit, rather than alter or ameliorate, solitary confinement. Reform must include a ban on solitary confinement for any reason other than to prevent immediate harm, with clear limits on its use even under emergency circumstances.

■ Litigation Strategies:

Argue for a child-specific constitutional standard. Several recent solitary confinement cases have successfully relied upon a series of decisions from the Supreme Court recognizing the effect of adolescent development research on constitutional standards.

Bring education claims in support of ending solitary confinement. Claims challenging the failure to provide a meaningful education can be a key part of litigation seeking to end solitary confinement, provided that the goal is to get youth out of solitary, not simply to improve conditions.

Challenge discriminatory policies and practices. Federal disability law can offer a more protective standard than classic conditions of confinement claims, and other discrimination claims should be considered when appropriate.

■ Strong Juvenile Defense:

Ensure post-disposition representation. Many, if not most, uses of solitary confinement in juvenile facilities occur post-adjudication, making post-dispositional representation an essential advocacy strategy.

Ask targeted questions. Youth and families may not immediately share information about the harsh conditions of confinement unless defenders ask specific questions and invite discussion on the issue.

Visit local facilities. By visiting their clients' placements, defenders can better advocate for clients and can also serve as a vital source of information to other stakeholders and advocates.

Enlist the court. Raising constitutional and statutory challenges to solitary confinement in individual cases can be an effective form of advocacy, and court orders can assist in getting youth appropriate services or supports.

File licensing complaints and grievances. By reporting uses of solitary confinement that may violate facility policy, licensing requirements, or other regulations, advocates create a written record of the problem and can potentially prompt an investigation or other responsive action.

Work with advocates engaged in system reform. By partnering with other organizations, such as the local Protection & Advocacy (P&A) agency, defenders can expand the resources available to challenge uses of solitary confinement.

■ Community Partnerships:

Work with youth, parents, and other community advocates. Community groups can help defenders, litigators, and policy advocates identify abuses, shape the broader reform effort, and elevate issues not easily presented as legal arguments.



“Our biggest effort was to get our staff to treat these kids like they are our kids. Once they did that, it got embedded in what we do every day, and that has been a game-changer.”

— HARVEY J. REED, DIRECTOR OF THE
OHIO DEPARTMENT OF YOUTH SERVICES

RECENT CASE HIGHLIGHTS:

- *J.J. v. Litscher*, No. 17-CV-47 (W.D. Wisc. June 23, 2017): This class action challenged the widespread use of punitive solitary confinement, pepper spray, and mechanical restraints at two juvenile facilities in Wisconsin. In an oral ruling finding that plaintiffs are entitled to preliminary injunctive relief on all claims, the court concluded that defendants had “demonstrated a callous indifference to the acute and permanent harm that residents [of the facilities] are suffering.”
- *Doe v. Hommrich*, No. 3-16-0799 (M.D. Tenn. Mar. 22, 2017): Plaintiffs in this class action emphasized the developmental vulnerabilities of adolescents and the international condemnation of solitary confinement of children. Relying on the Supreme Court’s recent decisions in this area, the court agreed that “being detained in solitary confinement or isolation for punitive or disciplinary purposes constitutes ... inhumane treatment,” in violation of the Eighth Amendment.
- *V.W. v. Conway*, No. 9:16-CV-1150 (N.D.N.Y. Feb. 22, 2017): This case challenged the use of solitary confinement on 16- and 17-year-old inmates in adult facilities, and it included a subclass of youth with disabilities. The court found that the local school district had violated the requirements of the IDEA and that punitive solitary confinement of youth violates the Eighth Amendment, citing the “broad consensus among the scientific and professional community that juveniles are psychologically more vulnerable than adults.”
- *G.F. v. Contra Costa County* (N.D. Cal. 2015): This case challenged the use of solitary confinement and corresponding educational deprivations on behalf of a class of youth with disabilities. Under the terms of the settlement, the county agreed not to “use room confinement for discipline, punishment, administrative convenience, retaliation, staffing shortages or reasons other than a temporary response to behavior that threatens immediate harm to the youth or others.”

www.JLC.org

Juvenile Law Center
The Philadelphia Building
1315 Walnut Street, Suite 400
Philadelphia, PA 19107
215.625.0551 / 800.875.8887
215.625.2808 fax

