



NO CHILD LEFT ALONE

Campaign to Stop the Solitary Confinement of Youth in Adult Jails and Prisons

BRIEFING PAPER: YOUTH IN SOLITARY CONFINEMENT IN ADULT FACILITIES

Every day, in jails and prisons across the United States, children are held in solitary confinement. They spend 22 or more hours each day alone, usually in a small cell behind a solid steel door, isolated both physically and socially, often for days, weeks, or even months on end. Sometimes there is a window allowing natural light to enter or a view of the world outside cell walls. Sometimes it is possible to communicate by yelling to other prisoners, with voices distorted, reverberating against concrete and metal, but communicating with other prisoners is often forbidden. Occasionally, they get a book or Bible, and if they are lucky, education materials. But inside this cramped space, few things distinguish one hour, one day, one week, or one month, from the next.

While isolated in solitary confinement, children are deprived of the services and programming they need for healthy growth and development. Solitary confinement can cause serious psychological, physical, and developmental harm – or, worse, can lead to persistent mental health problems and suicide. These risks are magnified for young people with disabilities or histories of trauma and abuse. Normal human contact and a range of age-appropriate services and programming are essential for the development and rehabilitation of young offenders.

Children (young people under the age of 18) should never be held in adult facilities. But if they are, they should be held in separate areas with other children, and never locked in solitary confinement. Any practice that involves physical and social isolation of children should be strictly limited, regulated, and publicly reported.

As the US Attorney General's *National Task Force on Children Exposed to Violence* recently described it, "nowhere is the damaging impact of incarceration on vulnerable children more obvious than when it involves solitary confinement."¹ It is time to abolish the solitary confinement of young people. State and federal lawmakers, local governments, and those who run adult jails and prisons should immediately embark on a review of the laws, policies, and practices that result in young people being held in solitary confinement, with the goal of definitively ending this practice.

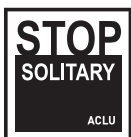
WHY ARE CHILDREN HELD IN ADULT FACILITIES?

Across the United States, because of changes in the law beginning in the 1980s, children are often charged as adults and detained in adult jails and prisons before trial and after conviction. Department of Justice data suggest that nearly 200,000 children are charged as adults annually² and that close to 100,000 children are held in adult jails and prisons each year.³ Yet research continues to show that treating children as if they were adults has negative public safety consequences, does not reduce violence, and likely increases recidivism.⁴ And there is no question that their detention in adult facilities is extremely dangerous – with high rates of physical and sexual assault.⁵

STATE LAWS – Some states mandate that *all* individuals charged in criminal court be detained in adult jail pre-trial – regardless of age.⁶ Some states require that children held in adult facilities before trial be kept separate from adults in order to provide some protection from adults (often requiring separation "by sight and sound").⁷ Other states leave it to each county to decide whether, how, and when young people need to be protected.⁸

Some state prison systems have special "youthful offender" facilities that serve some proportion of the youth admitted to prison who are under a certain age (generally in their early twenties).⁹ Still, the general practice in many states, including those with "youthful offender" systems, is to hold some children in adult facilities – in short, children and adults are held together nationwide.¹⁰

FEDERAL LAW – The *Juvenile Justice and Delinquency Prevention Act (JJJPA)* creates financial incentives for states to treat some young people differently from adults, including by diverting those subject to the jurisdiction of the juvenile justice system (and certain categories of misdemeanants) from adult facilities.¹¹ Those who are protected by the federal law must either never be held in adult facilities (such as "status offenders," those whose conduct is illegal only by virtue of their age – like a curfew violation) or be moved from adult facilities within 6 hours (and must be sight and sound separated from adult prisoners while there).¹² However, this law is not currently interpreted to cover children who are charged with felonies in the adult system.¹³ Because the JJJPA does not explicitly extend its protections to children with these charges, a large swath of youth are left unprotected in adult facilities despite their age and vulnerability.



As the nation's largest public interest law organization, with affiliate offices in every state and a legislative office in Washington D.C., the ACLU works daily in courts, legislatures, and communities to promote more effective criminal justice policies.

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LOW LEVEL CRIMES – Except in the federal system,¹⁴ young people who are convicted as adults and sentenced to more than a year of incarceration are typically sent to adult prison. But a significant proportion of young people who are charged as adults or held in adult jails pre-trial do not end up in prison after conviction. In fact, Department of Justice data suggest that perhaps one-third or more of these youth are returned to the community with probation or with a sentence of “time served” – meaning that the time spent in jail awaiting trial is equivalent to or greater than the actual sentence the youth would have received for the crime committed. These data suggest that a significant proportion of youth charged as adults and held in adult facilities before trial are ultimately not convicted of serious crimes since they are never sentenced to time in prison.¹⁵

For these reasons, a range of national organizations, such as the American Jail Association, support holding children in juvenile rather than adult facilities.¹⁶

WHAT IS SOLITARY CONFINEMENT AND WHY ARE CHILDREN IN SOLITARY?

Solitary confinement means physical and social isolation in a cell for 22-24 hours per day.¹⁷ It is often accompanied by a range of restrictions and deprivations – limits on everything from reading materials to visitation to exercise.¹⁸

Adult jails and prisons generally use solitary confinement in the same way for all prisoners – including children.¹⁹ Prisoners are generally held in solitary confinement for four reasons:

- **DISCIPLINARY SOLITARY CONFINEMENT** (common euphemisms: punitive segregation, disciplinary custody): Physical and social isolation used to punish prisoners when they break facility rules, such as those against talking back, possessing contraband, or fighting;
- **PROTECTIVE SOLITARY CONFINEMENT** (common euphemisms: protective custody, administrative confinement): Physical and social isolation used to protect a prisoner from other prisoners (or, in the case of youth, from adults);
- **ADMINISTRATIVE SOLITARY CONFINEMENT** (common euphemism: administrative segregation): Physical and social isolation – frequently indefinite in duration – used because officials do not know how else to manage a prisoner or when a prisoner is deemed too disruptive to the safe or orderly running of an institution;
- **MEDICAL SOLITARY CONFINEMENT** (common euphemism: therapeutic seclusion): Physical and social isolation to medically treat prisoners, such as when they have a contagious disease or express a desire to commit suicide.²⁰

Jail and prison officials do not generally use the term “solitary confinement” to refer to the range of segregation and isolation practices they employ. But because the conditions and effects of various segregation practices are substantially the same, the ACLU uses a single term based on the level of social isolation and environmental deprivation.

Neither states nor the federal government publish systematic data that show the number of youth held in adult jails and prisons who are subjected to solitary confinement. But research suggests that *protective* and *punitive* solitary confinement likely account for a significant proportion of cases:²¹

- Research by Human Rights Watch and the ACLU recently found that some jails hold 100% of youth in solitary confinement for the entire period of their pre-trial detention – to protect them from adults.²² This practice is likely to account for much of the solitary confinement of youth in pre-trial adult facilities, particularly in counties that charge small numbers of youth as adults – and may disproportionately affect girls, even in counties that charge large numbers of boys as adults.²³
- Research by Human Rights Watch and the ACLU also recently found that in some jails and prisons, a significant percentage of youth are subjected to punitive solitary confinement. This practice is likely to account for much of the solitary confinement of youth in prisons and in counties that charge large numbers of youth as adults. Many officials reported that they subject youth and adults to the same disciplinary rules and that they subject youth to solitary confinement as a punitive sanction.²⁴ For example, disciplinary data reported by the New York City Department of Corrections suggest that more than 14 percent of adolescents between the ages of 16 and 18 spend part of their pre-trial detention in punitive solitary confinement.²⁵

WHAT IF YOUR CHILD WAS HELD IN SOLITARY CONFINEMENT?

The devastating effects of subjecting youth to solitary confinement reach our families and our communities. Vicky Gunderson, whose son Kirk committed suicide in an isolation cell, describes her experience when her child was incarcerated in an adult jail:

Kirk was accused by older men of being “immature;” each day he had to teach himself during the one hour of “school” because the teacher was frequently unavailable; the noise level in his block gave him headaches; a convicted sex offender exposed himself to Kirk; he was involved in a couple physical confrontations; his depression increased; and he was so bored that his thoughts consumed him. . . . Our family, extended and immediate, and a community of supportive friends and neighbors, did our best to support Kirk while he was in jail. Together, we never missed a phone call or visit. . . . Two days after Christmas in 2005, Kirk was placed in [solitary] confinement, known as “the hole” Kirk requested not to be alone because he was having anxiety. Despite his request for help and regulations requiring one-hour checks on inmates in confinement, Kirk was left alone for approximately two and a half hours. When jail staff finally checked on Kirk, my son was found dead hanging by a blanket from the smoke detector in the cell.

SOURCE: NEELUM ARYA, CAMPAIGN FOR YOUTH JUSTICE, *JAILING JUVENILES: THE DANGERS OF INCARCERATING YOUTH IN ADULT JAILS IN AMERICA* 11 (Nov. 15, 2007), available at http://www.campaignforyouthjustice.org/documents/CFYJNR_JailingJuveniles.pdf.

HOW DOES SOLITARY CONFINEMENT HARM CHILDREN?

Solitary confinement can cause serious psychological, physical, and developmental harm to young people who need age-appropriate services and programming for their healthy growth and development or to be rehabilitated (if found guilty). Solitary is even more harmful for young people with disabilities.

PSYCHOLOGICAL HARM

There is consensus that any isolation of youth should be strictly limited because of the potential for psychological harm. Although research on solitary confinement has focused on adults, the findings of this research reasonably can be applied to youth, particularly given parallels in other related areas and extensive research concerning children’s development and growth. This research has found that adults who are subject to solitary confinement generally exhibit a variety of negative physiological and psychological reactions, including: hypersensitivity to external stimuli;²⁶ perceptual distortions and hallucinations;²⁷ increased anxiety and nervousness;²⁸ revenge fantasies, rage, and irrational anger;²⁹ fears of persecution;³⁰ lack of impulse control;³¹ severe and chronic depression;³² appetite loss and weight loss;³³ heart palpitations;³⁴ withdrawal;³⁵ blunting of affect and apathy;³⁶ talking to oneself;³⁷ headaches;³⁸ problems sleeping;³⁹ confusing thought processes;⁴⁰ nightmares;⁴¹ dizziness;⁴² self-mutilation;⁴³ and lower levels of brain function, including a decline in EEG activity after only seven days in solitary confinement.⁴⁴

Young people are even less psychologically able than adults to handle solitary confinement. Youth are also psychologically different than adults. They experience time differently (a day for a child feels longer than a day to an adult) and have a greater need for social stimulation. Experts, such as the American Academy of Child and Adolescent Psychiatry, believe that, due to their “developmental vulnerability,” adolescents are particularly at risk of adverse reactions.⁴⁶

- Research by Human Rights Watch and the ACLU recently chronicled the experiences of young people in solitary confinement. Many spoke to researchers in harrowing detail about struggling with one or more of a range of serious mental health problems during their time in solitary. They talked about thoughts of suicide and self-harm; visual and auditory hallucinations; feelings of depression; acute anxiety; shifting sleep patterns; nightmares and traumatic memories; and uncontrollable anger or rage.⁴⁷

RISK OF SUICIDE

Prisoners in solitary confinement account for a disproportionate number of suicides among people in custody.⁴⁸ For youth, suicide is very strongly associated with isolation.⁴⁹

- Research published by the Department of Justice found that more than 50% of the suicides of children detained in juvenile facilities occurred while youth were confined alone in their room (a form of solitary confinement) – and that more than 60% of young people who committed suicide had a history of being held in isolation.⁵⁰
- Research by Human Rights Watch and the ACLU recently found that many children consider or attempt suicide while in solitary confinement.⁵¹

PHYSICAL HARM

Adult facilities are generally ill-equipped to provide age-appropriate mental health, medical, or dental services to young people, let alone nutrition adequate to support growing muscles and bones.⁵² The most common deprivation that accompanies solitary confinement, denial of physical exercise, is physically harmful to youth health, well-being, and growth.

- Research by Human Rights Watch and the ACLU recently found that many adult facilities could not provide youth access to medical or mental health professionals trained in adolescent development. Youth told researchers about being denied physical exercise – or only being able to exercise in a small metal cage.⁵³

DEVELOPMENTAL HARM

Adult facilities – even those with a constant population of children – often do not provide a range of programming and services tailored to the needs of young people.⁵⁴ Young people in solitary confinement are generally at an additional disadvantage, as they are denied access to whatever limited resources might be available to other youth as a “privilege” they don’t deserve. This can include educational programming, access to reading materials, and the ability to write, call, or visit with loved ones.

- Research by Human Rights Watch and the ACLU recently found that many facilities fail to provide education to young people, or merely provide an in-cell “study packet,” which is usually only photocopied worksheets, with limited or no access to an educator to ask questions or get feedback. Some youth reported being denied any reading materials whatsoever. Youth also told researchers that being unable to hug or visit with loved ones was torturous.⁵⁵

HARM TO CHILDREN WITH DISABILITIES OR A HISTORY OF TRAUMA AND/OR ABUSE

For many youth in jail or prison, the vulnerabilities of developmental immaturity are compounded by disabilities and/or by histories of trauma and abuse. Youth in the adult system report these vulnerabilities at much higher rates than the general population.⁵⁶ These factors, though experienced differently by different individuals, can significantly exacerbate the harm of solitary confinement. Federal law – the Americans with Disabilities Act, the Rehabilitation Act, and the Individuals with Disabilities Education Act – all require state and local governments to make accommodation for disabilities when they care for young people in custody.⁵⁷

- Research by Human Rights Watch and the ACLU recently found that many jails and prisons have few resources or protocols in place to identify or accommodate youth with disabilities. Because solitary confinement is traumatic, and commonly accompanied by a range of additional deprivations, youth with mental, intellectual, and cognitive or learning disabilities were particularly affected.⁵⁸

For these reasons, every major set of national standards governing age- and developmentally-appropriate practices to manage and care for youth under age 18 in correctional settings strictly regulates and limits all forms of isolation.⁵⁹

HOW ARE CHILDREN DIFFERENT FROM ADULTS?

Young people have needs that differ in nature and degree from those of adults because they are still developing physically and psychologically. The fact that youth are still developing means that they are particularly amenable to rehabilitation and particularly vulnerable to trauma and abuse.

Youth grow and change. Adolescence is transitory. As Elizabeth Scott and Laurence Steinberg, renowned experts in adolescent development, have written, “[t]he period is transitional because it is marked by rapid and dramatic change within the individual in the realms of biology, cognition, emotion, and interpersonal relationships.”⁶⁰

During adolescence, the body changes significantly, including the development of secondary sex characteristics. Boys and girls gain height, weight, and muscle mass, as well as pubic and body hair; girls develop breasts and begin menstrual periods, and boys’ genitals grow and their voices change.⁶¹ The human brain also goes through dramatic structural growth during teen years and into the mid-twenties. The major difference between the brains of teens and those of young adults is the development of the frontal lobe.⁶² The frontal lobe is responsible for cognitive processing, such as planning, strategizing, and organizing thoughts and actions.⁶³ Researchers have determined that one area of the frontal lobe, the dorsolateral prefrontal cortex, is among the last brain regions to mature, not reaching adult dimensions until a person is in his or her twenties.⁶⁴ This part of the brain is linked to “the ability to inhibit impulses, weigh consequences of decisions, prioritize, and strategize.”⁶⁵ As a result, teens’ decision-making processes are shaped by impulsivity, immaturity, and an under-developed ability to appreciate consequences and resist environmental pressures.⁶⁶

The differences between youth and adults make youth more vulnerable to harm, and disproportionately affected by trauma and deprivation.

HOW DOES THE LAW SPECIALLY PROTECT CHILDREN?

The developmental differences between youth and adults are reflected in international human rights law and have also been recognized by the U.S. Supreme Court in cases establishing that young people should be afforded greater constitutional protections in the context of crime and punishment.

U.S. CONSTITUTIONAL LAW

The U.S. Constitution protects persons deprived of their liberty, both before and after conviction. The Supreme Court has recognized that these protections apply differently to children and adults in the context of crime and punishment.

The Fifth and Fourteenth Amendment protections against deprivation of liberty without due process of law establish the contours of the protections afforded to pretrial detainees from unconstitutional conditions of confinement.⁶⁷ Pretrial, individuals may be held to ensure that they are “available for trial,”⁶⁸ and during this period may be subjected “to the restrictions and conditions of the detention facility.”⁶⁹ But they may not be subjected to punishment⁷⁰ or to treatment which “shocks the conscience.”⁷¹ The Eighth Amendment governs the protections afforded to convicted prisoners from unhealthy or dangerous conditions of confinement.⁷² Officials have an obligation to “provide humane conditions of confinement”⁷³ to those convicted of a crime. The limits of the prohibition against cruel and unusual punishment are defined by “evolving standards of decency.”⁷⁴ Criminal sanctions also constitute cruel and unusual punishment when they are “grossly disproportionate” and without penological justification.⁷⁵

Although no Court of Appeals has addressed the solitary confinement of children, a number of lower courts have found that the solitary confinement of individuals with serious mental health problems violates the Eighth Amendment because individuals with serious mental health problems are more likely than others to have great difficulty adjusting to and tolerating time in solitary confinement, and solitary confinement can even make the symptoms of mental health problems worse.⁷⁶ Likewise, as explained above, children are especially vulnerable to the negative consequences of solitary confinement.

In a string of recent cases, the Supreme Court has ruled that the Constitution’s protections apply differently to young people who come into conflict with the law because kids are *different* from adults. In cases involving the juvenile death penalty,⁷⁷ juvenile life without parole,⁷⁸ and custodial interrogations,⁷⁹ the Court has stated that treating youth as if they are adults – without acknowledging their age, developmental differences, or individual characteristics – is unconstitutional. The Court has suggested that because “an offender’s age is relevant to the Eighth Amendment ... criminal procedure laws that fail to take defendants’ youthfulness into account at all would be flawed.”⁸⁰ The Court has also repeatedly relied on international law and practice on children’s rights to affirm its reasoning.⁸¹ Given this analysis and the international consensus against the practice, the solitary confinement of children is grossly disproportionate, inconsistent with evolving standards of decency, and shocks the conscience.

INTERNATIONAL HUMAN RIGHTS LAW AND PRACTICE

International law, which identifies anyone below the age of 18 years as a child, recognizes that “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth.”⁸² The International Covenant on Civil and Political Rights (ICCPR), a treaty ratified by the United States, acknowledges the need for special treatment of children in the criminal justice system and emphasizes the importance of their rehabilitation.⁸³ The Convention on the Rights of the Child (CRC) also addresses the particular rights and needs of children who come into conflict with the law.⁸⁴

A number of international instruments and human rights bodies have declared that solitary confinement of children violates human rights laws and standards prohibiting cruel, inhuman or degrading treatment and called for the practice to be banned, such as: the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines),⁸⁵ the Committee on the Rights of the Child,⁸⁶ and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the Beijing Rules).⁸⁷ Based on the harmful physical and psychological effects of solitary confinement and the particular vulnerability of children, the Office of the U.N. Special Rapporteur on Torture has twice called for the abolition of solitary confinement of persons under age 18.⁸⁸

Just as the Supreme Court has found that differences between children and adults make children undeserving of the most severe and punitive sentences, so should children be seen as undeserving of the most severe and punitive conditions of confinement.⁸⁹

HOW CAN THIS PROBLEM BE SOLVED?

Because neither detention in adult facilities nor solitary confinement is safe for children, there is agreement among many corrections and mental health professionals that children should be removed from adult jails and prisons and that solitary confinement of youth under age 18 should be prohibited. No matter where children are held, there are a range of alternatives to manage and care for them safely – without resorting to solitary confinement.

Remove Children From the Adult Correctional System

The first and best option for reform is to remove children from the adult correctional system. Juvenile facilities are better equipped to provide for the needs of youth.

- Young people can be moved out of the adult prison system by statute, or without statutory change, by administrative measures, such as by Memoranda of Understanding between adult and juvenile facilities.
- A growing number of states – including California, Virginia, Texas, Pennsylvania, and Colorado – have enacted legislation permitting or mandating detention in juvenile facilities for youth accused or convicted of an adult crime.⁹⁰
- Another approach to this problem recently adopted by a number of states, such as Connecticut, Illinois, Mississippi, and Rhode Island, is to “raise the age” of juvenile court jurisdiction so that fewer youth are automatically prosecuted in the adult system.⁹¹
- Other states have changed the laws governing transfer of juveniles to adult court to limit such transfers to exceptional cases.⁹²

Strictly Limit Any Isolation of Children and Prohibit Solitary Confinement

Solitary confinement of youth under 18 should be banned. This practice can be ended by state legislators, local officials, and facility administrators. Because physical and social isolation is so harmful and traumatic – and accompanied by other serious deprivations (like denial of education), all isolation practices should be strictly limited and regulated. Children should never be subjected to any practice that involves significant levels or durations of physical or social isolation. Isolation should only be used as an emergency measure. Separation practices to protect, to manage, or to discipline youth should be used sparingly and should never rise to the level of solitary confinement.

A new tool for prison administrators, government officials, and community advocates are the federal regulations implementing the *Prison Rape Elimination Act (PREA)*. The PREA regulations mandate that adult jails and prisons separate children (those under 18) from older prisoners in common areas.⁹³ The regulations also mandate that facilities use their “best efforts” to avoid using isolation to separate youth and to provide certain programming and services to youth in isolation.⁹⁴ The regulations require that youth placed in isolation in spite of a facility’s “best efforts” should not be denied daily large-muscle exercise, or legally required special education services, and should be granted access to other programs and work opportunities.⁹⁵ PREA requires that facilities be audited for PREA compliance every three years and that these audits must be made available to the public.⁹⁶ If a state fails to comply with PREA it risks losing some percentage of federal funds.⁹⁷ PREA thus provides guidance for state and local officials on appropriate policy and provides advocacy opportunities for the public to ensure safer treatment of youth in adult facilities.

Require Public Reporting of Youth Solitary Confinement Practices

Solitary confinement is a terrible secret of our criminal justice system – jails and prisons rarely make data about isolation practices public and there are almost no data about the solitary confinement of young people in adult facilities. Meaningful reform must be accompanied by data reporting and increased accountability to allow the public and elected officials to engage in appropriate oversight. Advocating for legal and policy changes that make solitary confinement practices transparent to the public is a key step to ending this practice and implementing better alternatives.

ENDNOTES

- ¹ ATT'Y GEN.'S NAT'L TASK FORCE ON CHILDREN EXPOSED TO VIOLENCE, REP. OF THE ATT'Y GEN.'S NAT'L TASK FORCE ON CHILDREN EXPOSED TO VIOLENCE, DEFENDING CHILDHOOD: PROTECT, HEAL, THRIVE 178 (2012), *available at* <http://www.justice.gov/defendingchildhood/cev-rpt-full.pdf>.
- ² DOJ researchers note that data from 21 states accounts for at least 14,000 transfers in 2007 (the most recent year for which data is available); that another 175,000 youth under 18 charged as adults are likely accounted for by the 13 states that set the age of criminal majority below 18 in 2007; but that there are many significant gaps in the data. DEP'T OF JUSTICE OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, TRYING JUVENILES AS ADULTS: AN ANALYSIS OF STATE TRANSFER LAWS AND REPORTING (2011), *available at* <https://www.ncjrs.gov/pdffiles1/ojdp/232434.pdf>. *See also* REP. OF THE ATT'Y GEN.'S NAT'L TASK FORCE ON CHILDREN EXPOSED TO VIOLENCE, DEFENDING CHILDHOOD: PROTECT, HEAL, THRIVE, *supra* note 1.
- ³ Human Rights Watch and the American Civil Liberties Union recently estimated that in each of the last 5 years, between 93,000 and 137,000 young people under 18 were held in adult jails and that, in 2011, more than 2,200 young people under age 18 were held in adult prisons. HUMAN RIGHTS WATCH & THE AMERICAN CIVIL LIBERTIES UNION, GROWING UP LOCKED DOWN: YOUTH IN SOLITARY CONFINEMENT IN JAILS AND PRISONS ACROSS THE UNITED STATES 101-107 (appendix 1) (2012), *available at* <http://www.aclu.org/growinguplockeddown>.
- ⁴ EDWARD MULVEY, DEP'T OF JUSTICE OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, TRANSFERS OF JUVENILES TO ADULT COURT: EFFECTS OF A BROAD POLICY IN ONE COURT (2012), *available at* <http://www.ojdp.gov/pubs/232932.pdf>; ROBERT HAHN, ET AL., CENTERS FOR DISEASE CONTROL, EFFECTS ON VIOLENCE OF LAWS AND POLICIES FACILITATING THE TRANSFER OF YOUTH FROM THE JUVENILE TO THE ADULT SYSTEM (2007), *available at* <http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5609a1.htm>.
- ⁵ NAT'L PRISON RAPE ELIMINATION COMM'N, NAT'L PRISON RAPE ELIMINATION COMM'N REP. 42 (2009), *available at* <https://www.ncjrs.gov/pdffiles1/226680.pdf>, *citing* HOWARD N. SNYDER & MELISSA SICKMUND, DEP'T OF JUSTICE OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, JUVENILE OFFENDERS AND VICTIMS: 2006 NAT'L REP. (2006); ALLEN J. BECK & PAIGE M. HARRISON, DEP'T OF JUSTICE BUREAU OF JUSTICE STATISTICS, SEXUAL VICTIMIZATION IN PRISONS AND JAILS REPORTED BY PRISONERS, 2008-09 (2010), *available at* <http://bjs.ojp.usdoj.gov/content/pub/pdf/svpjri0809.pdf>; Jeffrey Fagan, Martin Forst, & T. Scott Vivona, *Youth in Prisons and Training Schools: Perceptions and Consequences of the Treatment-Custody Dichotomy*, J. JUVENILE & FAMILY CT., 40, 49 (1989); JASON ZIEDENBERG & VINCENT SCHIRALDI, JUSTICE POLICY INSTITUTE, THE RISKS JUVENILES FACE WHEN THEY ARE INCARCERATED WITH ADULTS (1997), *available at* http://www.justicepolicy.org/images/upload/97-02_REP_RiskJuvenilesFace_JJ.pdf. *But see* ALLEN J. BECK ET AL., DEP'T OF JUSTICE BUREAU OF JUSTICE STATISTICS, SEXUAL VICTIMIZATION IN PRISONS AND JAILS REPORTED BY INMATES, 2011-12 22 (2013), *available at* <http://www.bjs.gov/content/pub/pdf/svpjri1112.pdf> (Finding that "[t]hese data do not support the conclusion that juveniles held in adult prisons and jails are more likely to be sexually victimized than inmates in other age groups.").
- ⁶ State law regarding charging children as adults varies. Some states designate all youth of a particular age (e.g. 16, 17) as adults. Some charge children who are accused of particular offenses (e.g. murder) as adults. Some jurisdictions make such categorical distinctions by statute; others give the prosecutor the discretion to decide on a case by case basis. REP. OF THE ATT'Y GEN.'S NAT'L TASK FORCE ON CHILDREN EXPOSED TO VIOLENCE, DEFENDING CHILDHOOD: PROTECT, HEAL, THRIVE, *supra* note 1; DEP'T OF JUSTICE OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, TRYING JUVENILES AS ADULTS: AN ANALYSIS OF STATE TRANSFER LAWS AND REPORTING, *supra* note 2; HUMAN RIGHTS WATCH & THE AMERICAN CIVIL LIBERTIES UNION, GROWING UP LOCKED DOWN, *supra* note 3, at 101-107; NEELUM ARYA, CAMPAIGN FOR YOUTH JUSTICE, JAILING JUVENILES: THE DANGERS OF INCARCERATING YOUTH IN ADULT JAILS IN AMERICA 26-37 (2007), *available at* http://www.campaignforyouthjustice.org/documents/CFYJNR_JailingJuveniles.pdf.
- ⁷ HUMAN RIGHTS WATCH & THE AMERICAN CIVIL LIBERTIES UNION, GROWING UP LOCKED DOWN, *supra* note 3, at 101-107 (appendix 1); ARYA, *supra* note 6, at 26-37.
- ⁸ REP. OF THE ATT'Y GEN.'S NAT'L TASK FORCE ON CHILDREN EXPOSED TO VIOLENCE, DEFENDING CHILDHOOD: PROTECT, HEAL, THRIVE, *supra* note 1; DEP'T OF JUSTICE OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, TRYING JUVENILES AS ADULTS: AN ANALYSIS OF STATE TRANSFER LAWS AND REPORTING, *supra* note 2; HUMAN RIGHTS WATCH & THE AMERICAN CIVIL LIBERTIES UNION, GROWING UP LOCKED DOWN, *supra* note 3, at 101-107 (appendix 1) (2012); ARYA, *supra* note 6, at 26 -37.
- ⁹ HUMAN RIGHTS WATCH & THE AMERICAN CIVIL LIBERTIES UNION, GROWING UP LOCKED DOWN, *supra* note 3, at 17-18.
- ¹⁰ *Id.*
- ¹¹ 42 U.S.C. § 5633(a)(11) (2006); HUMAN RIGHTS WATCH & THE AMERICAN CIVIL LIBERTIES UNION, GROWING UP LOCKED DOWN, *supra* note 3, at 17.
- ¹² 28 C.F.R. § 31.303(d)(1)(i) (2004).
- ¹³ 42 U.S.C. 5633(a)(11) (2006); CAMPAIGN FOR YOUTH JUSTICE, FACT SHEET: JAIL REMOVAL AND SIGHT AND SOUND CORE PROTECTIONS, *available at* <http://www.campaignforyouthjustice.org/documents/FactSheet-JailRemovalandSightandSoundcoreprotections.pdf> (last visited Mar. 5, 2013).
- ¹⁴ 18 U.S.C. 5039 (2012), *available at* <http://www.gpo.gov/fdsys/pkg/USCODE-2011-title18/pdf/USCODE-2011-title18-partIV-chap403-sec5040.pdf>; BUREAU OF PRISONS, PROGRAM STATEMENT 5216.05, JUVENILE DELINQUENTS (1999), *available at* http://www.bop.gov/policy/progstat/5216_005.pdf.
- ¹⁵ REP. OF THE ATT'Y GEN.'S NAT'L TASK FORCE ON CHILDREN EXPOSED TO VIOLENCE, DEFENDING CHILDHOOD: PROTECT, HEAL, THRIVE, *supra* note 1; DEP'T OF JUSTICE OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, TRYING JUVENILES AS ADULTS: AN ANALYSIS OF STATE TRANSFER LAWS AND REPORTING, *supra* note 2.
- ¹⁶ *See, e.g.*, AM. CORR. ASS'N, PUB. CORR. POLICY ON YOUTHFUL OFFENDERS TRANSFERRED TO ADULT CRIMINAL JURISDICTION (2009); AM. JAIL ASS'N, POLICY ON JUVENILES IN JAILS (2008).
- ¹⁷ HUMAN RIGHTS WATCH & THE AMERICAN CIVIL LIBERTIES UNION, GROWING UP LOCKED DOWN, *supra* note 3. This is also the definition used by the United Nations Special Rapporteur on Torture. Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Interim Rep. of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, ¶ 77, U.N. Doc. A/66/268 (Aug. 5, 2011) (by Juan Mendez), *available at* <http://solitaryconfinement.org/uploads/SpecRapTortureAug2011.pdf>.
- ¹⁸ *C.B., et al. v. Walnut Grove Authority*, No. 3:10cv663, ¶ IV(c)(1) (S.D. Miss. filed Feb. 3, 2012) (Consent decree), *available at* http://www.aclu.org/files/assets/68-1_ex_1_consent_decree.pdf; *Doe et al., v. Montana*, No. 6:2010cv00006 (Mont. 1st Dist. Ct. filed Jan. 26, 2010) (Complaint), *available at* <http://www.aclu.org/files/assets/2009-12-16-DoevMontana-Complaint.pdf>; Chris Vogel, *For Their Own Good*, TEX. OBSERVER, (June 9, 2010), *available at* <http://www.texasobserver.org/mollyaward/columns/for-their-own-good>; ARYA, *supra* note 6, at 26 -37 (2007); Letter from Human Rights Watch to L.A. County Sheriff (2003), *available at* <http://hrw.org/press/2003/06/us062503-ltr.htm>.
- ¹⁹ DEP'T OF JUSTICE NAT'L INST. OF CORR., YOU'RE AN ADULT NOW (2011), *available at* <http://static.nicic.gov/Library/025555.pdf>; *Keeping Youth Safe While in Custody: Sexual Assault in Adult and Juvenile Facilities: Hearing Before the H. Subcomm. on Crime, Terrorism and Homeland Security, Comm. on the Judiciary*, 111th Cong. (2010) (statement of Sheriff Gabriel Morgan), *available at* <http://www.gpo.gov/fdsys/pkg/CHRG-111hrrg55066/pdf/CHRG-111hrrg55066.pdf>; DEP'T OF JUSTICE OFFICE OF JUSTICE PROGRAMS, JUVENILE IN ADULT PRISONS AND JAILS: A NATIONAL ASSESSMENT (2000), *available at* <https://www.ncjrs.gov/pdffiles1/bja/182503.pdf>.
- ²⁰ *See generally* HUMAN RIGHTS WATCH & THE AMERICAN CIVIL LIBERTIES UNION, GROWING UP LOCKED DOWN, *supra* note 3; AMERICAN CIVIL LIBERTIES UNION, BRIEFING PAPER ON SOLITARY CONFINEMENT (2012), *available at* http://www.aclu.org/files/pdfs/prison/stop_sol_briefing_paper_july.pdf.
- ²¹ In the last decade, investigations conducted by the US Department of Justice have found youth in solitary confinement in adult facilities, and declared these practices unconstitutional as applied. Letter from Thomas E. Perez, Assistant Att'y Gen., to Andrew J. Spano, Westchester County Executive 27-30 (Nov. 19, 2010), *available at* http://www.justice.gov/crt/about/spl/documents/Westchester_findlet_11-19-09.pdf (noting that the average disciplinary sanction imposed was in excess of 365 days in isolation, with the longest period being 510 days, and noting how the isolation has contributed to the deteriorating mental health of juvenile prisoners); Letter from Wan J. Kim, Assistant Att'y Gen., to Jim Doyle, Governor of Wis. 10-13 (May 1, 2006), *available at* http://www.justice.gov/crt/about/spl/documents/taychedah_findlet_5-1-06.pdf (finding that the facility used administrative segregation and observation status for prisoners with severe mental illness in violation of the Constitution); Letter from Ralph F. Boyd, Jr., Assistant Att'y Gen., to Parris N. Glendenning, Governor of Md. (Aug. 13, 2002), *available at* http://www.justice.gov/crt/about/spl/documents/baltimore_findings_let.php (finding that juveniles were put in isolation cells under "supermax" conditions sometimes for as long as several months).
- ²² HUMAN RIGHTS WATCH & THE AMERICAN CIVIL LIBERTIES UNION, GROWING UP LOCKED DOWN, *supra* note 3, at 63-65.
- ²³ This is because the numbers of girls is generally so small that there might only be one girl in a facility that otherwise regularly has a small population of boys.
- ²⁴ HUMAN RIGHTS WATCH & THE AMERICAN CIVIL LIBERTIES UNION, GROWING UP LOCKED DOWN, *supra* note 3, at 63-65

²⁵ *Id.* at 131-134.

²⁶ Stuart Grassian, *Psychopathological Effects of Solitary Confinement*, 140 AM. J. OF PSYCHIATRY 1450, 1452 (1983).

²⁷ *Id.*; Craig Haney, *Mental Health Issues in Long-Term Solitary and "Supermax" Confinement*, 49 CRIME & DELINQ. 124, 130, 134 (2003); see generally Richard Korn, *The Effects of Confinement in the High Security Unit at Lexington*, 15 SOC. JUST. 8 (1988).

²⁸ Grassian, *supra* note 26, at 1452-53; Haney, *supra* note 27, at 130, 133; Holly A. Miller, *Reexamining Psychological Distress in the Current Conditions of Segregation*, 1 J. OF CORRECTIONAL HEALTHCARE 39, 48 (1994). See generally Stanley L. Brodsky & Forrest R. Scogin, *Inmates in Protective Custody: First Data on Emotional Effects*, 1 FORENSIC REP. 267 (1988).

²⁹ Grassian, *supra* note 26, at 1453; Holly A. Miller & G. Young, *Prison Segregation: Administrative Detention Remedy of Mental Health Problem?*, 7 CRIM. BEHAV. AND MENTAL HEALTH 85, 91 (1997); Haney, *supra* note 27, at 130, 134; see generally HANS TOCH, MOSAIC OF DESPAIR: HUMAN BREAKDOWN IN PRISON (Am. Psychol. Ass'n., 1992).

³⁰ Grassian, *supra* note 26, at 1453.

³¹ *Id.*; Miller & Young, *supra* note 29, at 92.

³² *Id.*; Haney, *supra* note 27, at 131.

³³ Haney, *supra* note 27, at 130; see generally Korn, *supra*, note 27.

³⁴ Haney, *supra* note 27, at 131.

³⁵ Miller & Young, *supra* note 29, at 91; see generally Korn, *supra* note 27.

³⁶ *Id.*

³⁷ Haney, *supra* note 27, at 134; see generally Brodsky & Scogin, *supra* note 28.

³⁸ Haney, *supra* note 27, at 133.

³⁹ *Id.*

⁴⁰ Haney, *supra* note 27, at 137; see generally Brodsky & Scogin, *supra* note 28.

⁴¹ Haney, *supra* note 27, at 133.

⁴² *Id.*

⁴³ Grassian, *supra* note 26, at 1453; Eric Lanes, *The Association of Administrative Segregation Placement and Other Risk Factors with the Self-Injury-Free Time of Male Prisoners*, 48 J. OF OFFENDER REHABILITATION 529, 539-40 (2009).

⁴⁴ Paul Gendreau, N.L. Freedman, & G.J.S. Wilde, *Changes in EEG Alpha Frequency and Evoked Response Latency During Solitary Confinement*, 79 J. OF ABNORMAL PSYCH. 54, 57-58 (1972).

⁴⁵ Laurence Steinberg et al., *Age Differences in Future Orientation and Delay Discounting*, 80 CHILD. DEV. 28 (2009), available at <http://www.wisspd.org/html/ATPracGuides/Training/ProgMaterials/Conf2011/AdDev/ADFO.pdf>; Jennifer Woolard et al., *Juveniles in Adult Correctional Settings: Legal Pathways and Developmental Considerations*, 4 INT'L J. OF FORENSIC MENTAL HEALTH 1 (2005), available at <http://www.policyarchive.org/handle/10207/bitstreams/20668.pdf>; Deborah Laible et al., *The Differential Relations of Parent and Peer Attachment to Adolescent Adjustment*, 29 J. OF YOUTH & ADOLESCENCE 45(2000), available at <http://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1050&context=psychfacpub>; David E. Arredondo, *Principles of Child Development and Juvenile Justice Information for Decision-Makers*, 5 J. CTR. FOR FAMILIES, CHILD & COURTS 127 (2004).

⁴⁶ AM. ACAD. OF CHILD & ADOLESCENT PSYCHIATRY, POLICY STATEMENTS: SOLITARY CONFINEMENT OF JUVENILE OFFENDERS (Apr. 2012), available at http://www.aacap.org/cs/root/policy_statements/solitary_confinement_of_juvenile_offenders.

⁴⁷ HUMAN RIGHTS WATCH & THE AMERICAN CIVIL LIBERTIES UNION, GROWING UP LOCKED DOWN, *supra* note 3, at 23-37.

⁴⁸ In California, for example, although less than 10 percent of the state's prison population was held in isolation units in 2004, those units accounted for 73 percent of all suicides. Expert Report of Professor Craig Haney at 45-46, n.119, *Coleman v. Schwarzenegger*, *Plata v. Schwarzenegger*, No. 90-0520 LKK-JFM P, No. C01-1351 TEH (E.D.Cal. N.D. Cal. filed Aug. 15, 2008).

⁴⁹ MARGARET NOONAN & E. ANN CARSON, U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, PRISON AND JAIL DEATHS IN CUSTODY, 2000-2009 - STATISTICAL TABLES (2011), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/pjdc0009st.pdf>; LINDSAY M. HAYES, DEP'T OF JUSTICE OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, JUVENILE SUICIDE IN CONFINEMENT: A NATIONAL SURVEY (2009), available at <https://www.ncjrs.gov/pdffiles1/ojdp/213691.pdf>; Seena Fazel, Julia Cartwright, et al., *Suicide in Prisoners: A systematic review of Risk Factors*, J. CLIN. PSYCHIATRY 69 (2008); CHRISTOPHER MUOLA, U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, SUICIDE AND HOMICIDE IN STATE PRISONS AND LOCAL JAILS (2005), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/shsplj.pdf>.

⁵⁰ DEP'T OF JUSTICE OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, JUVENILE SUICIDE IN CONFINEMENT: A NATIONAL SURVEY, *supra* note 49. The study suggests that, "When placed in a cold and empty room by themselves, suicidal youth have little to focus on – except all of their reasons for being depressed and the various ways that they can attempt to kill themselves." *Id.* at 42, citing LISA M. BOESKY, JUVENILE OFFENDERS WITH MENTAL HEALTH DISORDERS: WHO ARE THEY AND WHAT DO WE DO WITH THEM? 210 (2002).

⁵¹ HUMAN RIGHTS WATCH & THE AMERICAN CIVIL LIBERTIES UNION, GROWING UP LOCKED DOWN, *supra* note 3, at 30-32.

⁵² The US Ctrs. for Disease Control and the US Dep't of Health and Human Services both recommend that youth between the ages of six and seventeen engage in one hour or more of physical activity each day. Ctrs. for Disease Control and Prevention, *How Much Physical Activity do Children Need?*, <http://www.cdc.gov/physicalactivity/everyone/guidelines/children.html>; Dep't of Health and Human Services, *Physical Activity Guidelines for Americans*, <http://www.health.gov/paguidelines/factsheetprof.aspx>.

⁵³ HUMAN RIGHTS WATCH & THE AMERICAN CIVIL LIBERTIES UNION, GROWING UP LOCKED DOWN, *supra* note 3, at 37-41.

⁵⁴ *Concerning Pretrial Detention of Juveniles Prosecuted as Adults: Hearing on HB 12-1139 Before the H. Comm. on Judiciary*, 68th General Assem. (Colo. 2012) (statement of Peg Ackerman, County Sheriffs of Colorado), available at http://podcache-101.granicus.com/pstore1/coloradoga/coloradoga_d0c9ed72-c055-4de2-8a9a-730e8104df44.mp4; DEP'T OF HEALTH AND HUMAN SERVICES, PHYSICAL ACTIVITY GUIDELINES ADVISORY COMM., PHYSICAL ACTIVITY GUIDELINES ADVISORY COMM. REP. (2008), available at <http://www.health.gov/PAGuidelines/Report/pdf/CommitteeReport.pdf>; DEP'T OF AGRICULTURE & DEP'T OF HEALTH AND HUMAN SERVICES, DIETARY GUIDELINES FOR AMERICANS (2010), available at <http://www.cnpp.usda.gov/Publications/DietaryGuidelines/2010/PolicyDoc/PolicyDoc.pdf>; Individuals with Disabilities Education Act, 20 U.S.C. 1400 (2004), available at <http://idea.ed.gov/download/statute.html>; David E. Arredondo, *Principles of Child Development and Juvenile Justice Information for Decision-Makers*, 5 J. CTR. FOR FAMILIES, CHILD & COURTS 127 (2004); CTRS FOR DISEASE CONTROL TASK FORCE ON COMMUNITY PREVENTIVE SERVICES, EFFECTS ON VIOLENCE OF LAWS AND POLICIES FACILITATING THE TRANSFER OF YOUTH FROM THE JUVENILE TO THE ADULT JUSTICE SYSTEM (2007), available at <http://www.cdc.gov/mmwr/pdf/rrr5609.pdf>; BARRY HOLMAN & JASON ZIEDENBERG, JUSTICE POLICY INST., THE DANGERS OF DETENTION (2006), available at http://www.justicepolicy.org/images/upload/06-11_REP_DangersOfDetention_JJ.pdf.

⁵⁵ HUMAN RIGHTS WATCH & THE AMERICAN CIVIL LIBERTIES UNION, GROWING UP LOCKED DOWN, *supra* note 3, at 41-47.

⁵⁶ Jason Washburn et al., *Psychiatric Disorders Among Detained Youths: A Comparison of Youths Processed in Juvenile Court and Adult Criminal Court*, 59 PSYCHIATRIC SERV. 965 (2008), available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2718561/pdf/nihms109770.pdf>. There is also significant evidence of rates of mental health problems, trauma and abuse in system-involved youth generally. MEDA CHESNEY-LIND, THE FEMALE OFFENDER: GIRLS, WOMEN AND CRIME 25-26 (SAGE Pub'n, 1997); CATHY S. WISDOM & MICHAEL G. MAXFIELD, NAT'L. INST. OF JUSTICE, US DEP'T OF JUSTICE, AN UPDATE ON THE 'CYCLE OF VIOLENCE' (2001), available at <https://www.ncjrs.gov/pdffiles1/nij/184894.pdf>; NAT'L. MENTAL HEALTH

ASS'N., MENTAL HEALTH AND ADOLESCENT GIRLS IN THE JUSTICE SYSTEM (1999); NAT'L COUNCIL ON CRIME AND DELINQUENCY CTR. FOR GIRLS AND YOUNG WOMEN, GETTING THE FACTS STRAIGHT ABOUT GIRLS IN THE JUVENILE JUSTICE SYSTEM (2009), available at http://www.nccdglob.org/sites/default/files/publication_pdf/fact-sheet-girls-in-juvenile-justice.pdf; Summer Robins, Candice Odgers & Michael Russell, *Incarcerated Girls' Physical Health*, 46 COURT REV. 30 (2010); Linda A. Teplin et al., *Psychiatric Disorders in Youth in Juvenile Detention* 12 ARCHIVES IN GEN. PSYCHIATRY 1133, 1133 (2002); Angela A. Robertson & Jonelle Husain, *Prevalence of Mental Illness and Substance Abuse Disorders Among Incarcerated Juvenile Offenders*, 35 CHILD PSYCHIATRY & HUMAN DEV. 55 (2001); Patricia Kerig et al., *Posttraumatic Stress as a Mediator of the Relationship Between Trauma and Mental Health Problems Among Juvenile Delinquents*, 38 J. YOUTH ADOLESCENCE 1214 (2008), available at <http://www.psych.utah.edu/people/people/kerig/pub/PosttraumaticStressasaMediator.pdf>; DEP'T OF JUSTICE OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, PSYCHIATRIC DISORDERS OF YOUTH IN DETENTION (2006), available at <https://www.ncjrs.gov/pdffiles1/ojdp/210331.pdf>; DEP'T OF JUSTICE OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, JUVENILE SUICIDE IN CONFINEMENT: A NATIONAL SURVEY, *supra* note 49.

⁵⁷ AMERICAN CIVIL LIBERTIES UNION, KNOW YOUR RIGHTS: LEGAL RIGHTS OF DISABLED PRISONERS (2005), available at http://www.aclu.org/files/images/asset_upload_file735_25737.pdf.

⁵⁸ HUMAN RIGHTS WATCH & THE AMERICAN CIVIL LIBERTIES UNION, GROWING UP LOCKED DOWN, *supra* note 3, at 32-35, 44-46.

⁵⁹ See, e.g., AM. CORR. ASS'N, PERFORMANCE BASED STANDARDS JUVENILE CORR. FACILITIES (4th ed. 2009); PBS LEARNING INST., PBS GOALS, STANDARDS, OUTCOME MEASURES, EXPECTED PRACTICES AND PROCESSES (2007), available at <http://sccounty01.co.santa-cruz.ca.us/prb/media%5CGoalsStandardsOutcome%20Measures.pdf>; JUVENILE DET. ALT. INITIATIVE, JUVENILE DETENTION ALTERNATIVES INITIATIVE (JDAI) FACILITY SITE ASSESSMENT INSTRUMENT (2006), available at <http://www.cclp.org/documents/Conditions/JDAI%20Standards.pdf>; DEP'T OF JUSTICE OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, STANDARDS FOR THE ADMINISTRATION OF JUVENILE JUSTICE (1980), available at <http://catalog.hathitrust.org/Record/000127687>; NAT'L COMM. ON CORR. HEALTH CARE, STANDARDS FOR HEALTH SERVICES IN JUVENILE DETENTION AND CONFINEMENT FACILITIES standard Y-39 (1995), available at <http://www.jdcap.org/SiteCollectionDocuments/Health%20Standards%20for%20Detention.pdf>; AM. ACAD. OF CHILD & ADOLESCENT PSYCHIATRY, POLICY STATEMENTS: SOLITARY CONFINEMENT OF JUVENILE OFFENDERS, *supra* note 46. See also Linda M. Finke, RN, PhD, *Use of Seclusion is not Evidence-Based Practice*, J. CHILD & ADOLESCENT PSYCHIATRIC NURSING (2001), available at http://www.findarticles.com/p/articles/mi_qa3892/is_200110/ai_n8993463/print; Steven H. Rosenbaum, Chief, Special Litigation Section, Remarks before the Fourteenth Annual National Juvenile Corrections and Detention Forum (May 16, 1999), available at <http://www.usdoj.gov/crt/split/documents/juvspeech.htm>.

⁶⁰ ELIZABETH S. SCOTT & LAURENCE STEINBERG, RETHINKING JUVENILE JUSTICE 31 (2008).

⁶¹ Sedra Spano, ACT for Youth Upstate Center for Excellence, Stages of Adolescent Development (May 2004), http://www.actforyouth.net/resources/rf/rf_stages_0504.pdf; Nat'l Insts. of Health, Adolescent Development, <http://www.nlm.nih.gov/medlineplus/ency/article/002003.htm> (last visited May 2, 2013).

⁶² Steinberg et al., *The Study of Development Psychopathology in Adolescence: Integrating affective neuroscience with the study of context*, in DEVELOPMENTAL PSYCHOPATHOLOGY 710 (DANTE CICCHETTI & DONALD J. COHEN EDS., 2nd ed. 2006)

⁶³ *Id.*; Jay N. Giedd, *Structural Magnetic Resonance Imaging of the Adolescent Brain*, 1021 ANNALS N.Y. ACAD. SCI. 83 (2004), available at <http://intramural.nlm.nih.gov/research/pubs/giedd05.pdf>.

⁶⁴ Jay N. Giedd, *Structural Magnetic Resonance Imaging of the Adolescent Brain*, *supra* note 63, at 1021.

⁶⁵ *Id.*

⁶⁶ Matthew S. Stanford et al., *Fifty Years of the Barratt Impulsiveness Scale: An Update and Review*, 47 PERSONALITY & INDIVIDUAL DIFFERENCES 385 (2009); Elizabeth Cauffman & Laurence Steinberg, *(Im)maturity of Judgment in Adolescence: Why Adolescents May Be Less Culpable Than Adults*, 18 BEHAV. SCI. & L. 741, 744-745 (2000).

⁶⁷ *Bell v. Wolfish*, 441 U.S. 520 (1979). The Eighth Amendment's prohibition of cruel and unusual punishment regulates conditions of confinement for convicted adult inmates. The rights of pre-trial adult detainees are at least as great as the rights of convicted offenders. *City of Revere v. Mass. Gen. Hosp.*, 463 U.S. 239, 44 (1983).

⁶⁸ *Bell v. Wolfish*, 441 U.S. 520, 534, 536-37 (1979).

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Bell v. Wolfish*, 441 U.S. 520 (1979). In some Federal Circuits, courts have looked to the Eighth Amendment to determine when conditions constitute 'punishment.' Although the Supreme Court has not addressed this specific question, the Court has made clear that these prohibitions are at least coextensive. See, e.g., *City of Revere v. Mass. Gen. Hosp.*, 463 U.S. 239, 44.

⁷² *Brown v. Plata*, 536 U.S. ___ Slip Op. at 12-13 (2011) ("Prisoners retain the essence of human dignity inherent in all persons. Respect for that dignity animates the Eighth Amendment prohibition against cruel and unusual punishment ... To incarcerate, society takes from prisoners the means to provide for their own needs. Prisoners are dependent on the State for food, clothing, and necessary medical care. A prison's failure to provide sustenance for inmates may actually produce physical 'torture or a lingering death ... Just as a prisoner may starve if not fed, he or she may suffer or die if not provided adequate medical care. A prison that deprives prisoners of basic sustenance, including adequate medical care, is incompatible with the concept of human dignity and has no place in civilized society) (Internal citations omitted). See also *Farmer v. Brennan*, 511 U.S. 825 (1994).

⁷³ *Brown v. Plata*, 536 U.S.; *Farmer v. Brennan*, 511 U.S. at 825, 832.

⁷⁴ *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981) ("These principles apply when the conditions of confinement compose the punishment at issue. Conditions must not involve the wanton and unnecessary infliction of pain, nor may they be grossly disproportionate to the severity of the crime warranting imprisonment."). See also *Farmer v. Brennan*, 511 U.S. at 825, 832; *Estelle v. Gamble*, 429 U.S. 97 (1976).

⁷⁵ *Rhodes v. Chapman*, 452 U.S. at 337, 46; *Hutto v. Finley*, 437 U.S. 678, 685-86 (1979); *Peoples II*, 2012 WL 2402593 at *4 (2d. Cir. 2012); *Smith v. Coughlin*, 748 F.2d 783, 87 (2d. Cir. 1984). See also *LeBron v. Artus*, No. 9:05-CV-0534 (LEK/DEP) 2007 WL 2765046 at 7 (N.D.N.Y. 2007) (finding that sanction of loss of two years good time for assault might violate Eighth Amendment if "grossly disproportionate," but finding no violation, citing *Fortuna v. Coughlin*, 222 A.D.2d 588, 588, 636 N.Y.S.2d 640 (2d Dep't 1995) (finding that penalties of 180 days in the SHU and one year's loss of good time were not so disproportionate to the offense . . . as to shock one's sense of fairness) (emphasis added)). This theory has a long history in the context of analyzing the constitutionality of sentences under the Eighth Amendment. See, e.g., *Weems v. United States*, 217 U.S. 349 (1910), cited by *Miller v. Alabama*, 132 S.Ct. 2455 (2012). See also Marsha Levick et al., *The Eighth Amendment Evolves: Defining Cruel and Unusual Punishment Through the Lens of Childhood and Adolescence*, 15 U. PA. J. L. & SOC. CHANGE 285, 293 (2012); Alex Reinert, *Eighth Amendment Gaps: Can Conditions of Confinement Litigation Benefit from Proportionality Theory?*, 36 FORDHAM URB. L.J. 53 (Jan. 2009).

⁷⁶ See, e.g., *Ruiz v. Johnson*, 37 F. Supp. 2d. 855, 915 (S.D. Tex. 1999), *rev'd on other grounds*, *Ruiz v. Johnson*, 243 F.3d 941 (5th Cir. 2001), *adhered to on remand*, *Ruiz v. Johnson*, 154 F. Supp. 2d 975 (S.D. Tex. 2001) ("Conditions in TDCJ-ID's administrative segregation units clearly violate constitutional standards when imposed on the subgroup of the plaintiff's class made up of mentally-ill prisoners); *Coleman v. Wilson*, 912 F. Supp. 1282, 1320-21 (E.D. Cal. 1995); *Madrid v. Gomez*, 889 F. Supp. 1146, 1265-66 (N.D. Cal. 1995); *Casey v. Lewis*, 834 F. Supp. 1477, 1549-50 (D. Ariz. 1993); *Langley v. Coughlin*, 715 F. Supp. 522, 540 (S.D.N.Y. 1988) (holding that evidence of prison officials' failure to screen out from SHU "those individuals who, by virtue of their mental condition, are likely to be severely and adversely affected by placement there" states an Eighth amendment claim).

⁷⁷ *Roper v. Simmons*, 543 U.S. 551 (2005).

⁷⁸ *Graham v. Florida*, 130 S.Ct. 2011 (2010); *Miller v. Alabama*, 132 S.Ct. 2455 (2012).

⁷⁹ *J.D.B. v. North Carolina*, 564 U.S. ___ (2011).

⁸⁰ *Graham v. Florida*, 130 S.Ct. at 2031.

⁸¹ *Id.* at 2034; *Roper v. Simmons*, 543 U.S. at 575 (citing *Trop v. Dulles*, 356 U.S. 86, 102-103 (1958)). These cases start from the supposition that, whether a punishment is

"cruel and unusual" is a determination informed by "evolving standards of decency that mark the progress of a maturing society." *Trop v. Dulles*, 356 U.S. 86, 101 (1958) (plurality opinion).

⁸² United Nations Declaration on the Rights of the Child, G.A. Res. 1386 (XIV), U.N. Doc. A/4354 (Nov. 20, 1959). Similarly, The American Convention on Human Rights ("Pact of San José, Costa Rica"), Article 19, states, "Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state." Organization of American States, American Convention on Human Rights, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123 (entered into force July 18, 1978), *reprinted in* Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 25 (1992).

⁸³ International Covenant on Civil and Political Rights, Arts. 10, 14(4), *opened for signature* Dec. 16, 1966, S. Exec. Rep. 102-23, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976) (ratified by U.S. June 8, 1992) ("ICCPR"). The Human Rights Committee has interpreted the ICCPR's provisions on child offenders to apply to all persons under the age of 18. UN Human Rights Comm., 44th Sess., General Comment No. 1, U.N. Doc. HRI/GEN/1/Rev.1 at 155 (1994), *available at* <http://www1.umn.edu/humanrts/gencomm/hrcoim20.htm>.

⁸⁴ Convention on the Rights of the Child (CRC), *opened for signature* Nov. 20, 1989, 1577 U.N.T.S. 3 (entered into force Sept. 2, 1990) ("CRC"). The United States signed the CRC in 1995 but has not ratified.

⁸⁵ U.N. Guidelines for the Prevention of Juvenile Delinquency, G.A. Res. 45/112, Annex, 45 U.N. GAOR Supp. (No. 49A), U.N. Doc. A/45/49, at 201 (Dec. 14, 1990) ("The Riyadh Guidelines").

⁸⁶ U.N. Comm. on the Rights of the Child, 44th Sess., General Comment No. 10, Children's rights in juvenile justice, U.N. Doc. CRC/C/GC/10 (2007).

⁸⁷ U.N. Rules for the Protection of Juveniles Deprived of their Liberty, G.A. Res. 45/113, Annex, 45 U.N. GAOR Supp. (No. 49A), U.N. Doc. A/45/49, ¶ 67 (Dec. 14, 1990) ("The Beijing Rules").

⁸⁸ Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Interim Rep. of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, ¶¶ 78-85, Annex (Istanbul Statement on the Use and Effects of Solitary Confinement), U.N. Doc A/63/175 (July 28, 2008) (by Manfred Nowak), *available at* <http://www.unhcr.org/refworld/pdfid/48db99e82.pdf>; Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Interim Rep. of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, ¶ 77, U.N. Doc. A/66/268 (Aug. 5, 2011) (by Juan Mendez), *available at* <http://solitaryconfinement.org/uploads/SpecRapTortureAug2011.pdf>.

⁸⁹ Marsha Levick et al., *The Eighth Amendment Evolves: Defining Cruel and Unusual Punishment Through the Lens of Childhood and Adolescence*, 15 U. PA. J. L. & SOC. CHANGE 285, 293 (2012).

⁹⁰ Cal Welf. & Inst. Code § 207.1 & § 208 (West 2006); S.B. 259, 2010 Gen. Assemb., Reg. Sess. (Va. 2010); S.B. 1169, 2010 Gen. Assemb., Reg. Sess. (Pa. 2010); S.B. 1209, 82nd Leg. Sess. (Tex. 2011); H.B. 12-1139, 2012 Gen. Assemb. Reg. Sess. (Colo. 2012). *See also* SARAH ALICE BROWN, NATIONAL CONFERENCE OF STATE LEGISLATURES, TRENDS IN JUVENILE JUSTICE STATE LEGISLATION, 2001-2011 (June 2012), *available at* <http://www.ncsl.org/documents/cj/TrendsInJuvenileJustice.pdf>.

⁹¹ NEELUM ARYA, CAMPAIGN FOR YOUTH JUSTICE, STATE TRENDS: LEGISLATIVE CHANGES FROM 2005-2010 REMOVING YOUTH FROM THE ADULT CRIMINAL JUSTICE SYSTEM 29 (2011), *available at* http://www.campaignforyouthjustice.org/documents/CFYJ_State_Trends_Report.pdf.

⁹² For example, Arizona and Utah made it easier for youth who were tried as adults to get reverse waiver hearings so that they may be allowed to return to juvenile court. Arizona, Colorado, and Nevada have also refined age eligibility for adult prosecution to keep more youth out of adult courts. Indiana, Virginia, and Washington have limited the applicability of their "once an adult, always an adult" laws, which mandate that juveniles tried once as an adult will be tried as an adult on any subsequent charges regardless of the nature of the offense. *Id.* at 33.

⁹³ 28 C.F.R. § 115.5, 14(a) (2012), *available at* http://www.ojp.usdoj.gov/programs/pdfs/prea_final_rule.pdf.

⁹⁴ *Id.*

⁹⁵ *Id.*, § 115.5, 14(c).

⁹⁶ *Id.*, §§ 115.93, 115.193, 115.293, 115.393, 115.401, 115.402, 115.403, 115.404, 115.405, 115.501.

⁹⁷ 42 U.S.C. 15607 (c)(2) (2003).