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Reassessing Solitary Confinement: The Human Rights, Fiscal, and Public Safety Consequences

Hearing Before the Senate Judiciary Subcommittee on the
Constitution, Civil Rights, and Human Rights

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We are grateful to Senator Durbin and the fellow members of the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights, for this opportunity to present written testimony on the impact of solitary confinement on youth in detention centers, jails and prisons in the United States, including the impact we have observed in Illinois.

US reducing reliance on incarceration, as well as on harsh discipline of youth:

The good news is that across the United States there is a rapid shift to deinstitutionalize youth, given the emerging science of adolescent brain development and of the impact of trauma on adolescent brains. States have been rapidly closing juvenile facilities and shifting resources to community based alternatives, based on research documenting better outcomes for positive youth development and for public safety when youth remain at home and are treated within their community.¹ The *Pathways* study concluded that institutional placement actually raised reoffending rates among low-level adolescent offenders. In response, eighteen states have closed over 50 juvenile prisons since 2007.²

¹ *Highlights from Pathways to Desistance, A Longitudinal Study of Serious Adolescent Offenders*, Edward P. Mulvey, March, 2011 [Research funded by the John D and Catherine T. MacArthur Foundation; <https://ncjrs.gov/pdffiles1/ojdp/230971.pdf>

² *No Place for Kids: The Case for Reducing Juvenile Incarceration*, Annie E Casey Foundation; October, 2011;
<http://www.aecf.org/OurWork/JuvenileJustice/JuvenileJusticeReport.aspx>

This shift away from juvenile confinement in the states includes a shift away from the use of solitary confinement for youth, based as well on the research documenting the impact of trauma on adolescent brains. Adolescent brains are particularly sensitive to the traumatic impact of physical isolation, and even a short stay in a confinement setting can have a long-term deleterious impact on an adolescent.

As a result, states are rapidly limiting/ending their use of solitary confinement for youth. For example, the state of West Virginia recently banned the use of solitary confinement for juveniles based on a lawsuit, and the state of Montana recently reached a settlement limiting the use of solitary confinement.³ Another recent example is the prohibition of solitary confinement for youth in Mississippi, again as part of a conditions lawsuit settlement.⁴

Staff training essential to end confinement: Illinois officials in the Department of Juvenile Justice have not yet fully eliminated confinement, but have worked to decrease the length and number of incidents of use of solitary confinement in facilities. Officials in the Cook County juvenile detention center, under federal oversight, have also worked to decrease the length and the number of incidents of use of solitary confinement through staff training in adolescent de-escalation techniques and through clear and consistent guidelines on discipline. In both cases, the challenge and lesson learned is that elimination of solitary confinement for juveniles requires adequate staff training on effective juvenile de-escalation techniques. The ongoing staff training utilized in the Division of Youth Services in Missouri is one example of effective and ongoing staff training in appropriate juvenile de-escalation techniques.

A federal mandate to end the use of solitary confinement for youth would greatly benefit the states in the struggle to shift from a punitive prison culture to the more effective treatment model with youth, particularly if it included resources to the states for staff training on effective adolescent de-escalation techniques. The benefits to the states would include enhanced staff and youth safety from positive de-escalation techniques as discipline.

Solitary Confinement and Harsh Discipline Violates International Law: The use of solitary confinement for juveniles violates international law, embodied in the prohibition against inhumane treatment in the Convention on the Rights of the

³ <http://wvgazette.com/News/201204260017>;
<http://solitarywatch.com/2012/04/18/montana-settlement-limits-solitary-confinement-for-juveniles-and-prisoners-with-mental-illness/>

⁴ <http://www.aclu.org/prisoners-rights/groundbreaking-federal-consent-decree-will-prohibit-solitary-confinement-youth>

Child. Article 40 of the Convention on the Rights of the Child urges nations to ensure that measures used are proportionate and appropriate to the youth's circumstances and to the offense.

Specifically, Article 40 urges use of:

A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.⁵

Regular Inspection and Monitoring Essential: Europe has adopted a set of rules for youth in conflict with the law, interpreting the meaning of treaties, including the Convention on the Rights of the Child.⁶ In addition to stressing the need for humane facilities when youth are removed from home, these rules include a reminder that regular inspection and monitoring of are *indispensable instruments of control* to ensure humane treatment of youth, especially when particular attention is *paid to the use of force, restraints, disciplinary punishments and other restrictive forms of treatment*.

For these reasons, we urge you to encourage the states to end the use of solitary confinement in juvenile detention, jails and prisons. We further encourage you to urge the states to regularly inspect and monitor juvenile facilities, and to urge the states to ensure staff in juvenile facilities are fully trained on appropriate discipline practices for adolescents.

Thank you for this opportunity to comment on your examination of the critical issue of solitary confinement in the United States. Please let us know if you need further information.

Respectfully submitted,

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⁵ <http://www2.ohchr.org/english/law/crc.htm#art40>

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http://www.coe.int/t/DGHL/STANDARDSETTING/PRISONS/Commentary_Rec_2008_11E.pdf