

Statement of Carmen E. Daugherty, Policy Director, Campaign for Youth Justice
Hearing before the
Senate Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights and Human Rights
"Reassessing Solitary Confinement II:
The Human Rights, Fiscal, and Public Safety Consequences"
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The Campaign for Youth Justice (CFYJ) is a national organization working to end the practice of trying, sentencing and incarcerating youth in the adult criminal justice system. Every state has laws that require some youth to be prosecuted in adult criminal court. These policies place thousands of young people at risk of facing harmful and irreversible consequences, often for minor mistakes. Despite overwhelming research demonstrating that these policies have failed, statutes that permit prosecution of youth in the adult criminal justice system and place them in adult jails and prisons still remain on the books and in force.

Youth in Solitary Confinement in Adult Jails and Prisons

Researchers estimate that roughly 250,000 youth are prosecuted in the adult criminal justice system every year and approximately 100,000 youth are held in adult jails and prisons each year. Although the federal Juvenile Justice and Delinquency Prevention Act (JJDP) requires that youth in the juvenile justice system be removed from adult jails or be sight-and-sound separated from other adults, these protections do not apply to youth prosecuted in the adult criminal justice system.

Youth inside adult prisons and jails often experience a variety of dangers. These include physical and sexual abuse, mental health erosion, and a dearth of drug treatment and educational services, and more. The widespread consensus among correctional, mental health and juvenile detention organizations is that adult facilities are simply not equipped to safely detain youth.

One step taken by corrections staff to protect youth from the physical dangers of an adult corrections facility is to place them in solitary confinement. But solitary confinement puts youth at additional risk. In 2012, the American Academy of Child and Adolescent Psychiatry adopted a policy that states that no child should be placed in solitary confinement,

[t]he potential psychiatric consequences of prolonged solitary confinement are well recognized and include depression, anxiety and psychosis. Due to their developmental vulnerability, juvenile offenders are at particular risk of such adverse reactions'

Furthermore, the majority of suicides in juvenile correctional facilities occur when the individual is isolated or in solitary confinement.

The U.S. Department of Justice has stated,

While confining youth to their cells is the easiest method of protecting them from sexual abuse, such protection comes at a cost. Isolation is known to be dangerous to mental health, especially among youth. Among other things, isolation puts youth at greater risk of committing suicide.ⁱ

The pervasive use of solitary confinement of children in adult facilities is often attributed to the lack of trained staff, inappropriate programming options for youth, and the staff's inability to effectively supervise what is usually a small population of youth in adult facilities. Thus, it is easier to simply place them in solitary confinement rather than worry about what can happen to the youth once outside of the cell. However, adolescent brains are particularly sensitive to the traumatic impact of physical isolation, and even a short stay in solitary confinement can have a long term traumatic impact on an adolescent.

Many children who are placed in solitary confinement experience harmful consequences; for some children this has meant death. Youth in solitary confinement are frequently locked down 23 hours a day in small cells with no natural light. A young person placed in a sterile, cement cell suffers from anxiety, paranoia, and the surroundings exacerbate existing mental disorders that put youth at a high risk of suicide.

Family after family has shared a story with us regarding the unnecessary harm caused to their young ones when placed in solitary confinement in an adult jail or prison. In 2012, this Committee received testimony from several parents who lost their children due to suicide after being placed in solitary confinement for both long and short periods of time.

Recognizing these hazards and choosing to avoid these tragedies, New York state ended the use of solitary confinement for youth and other vulnerable people. In February 2014, the New York Civil Liberties Union and the New York State Department of Community Corrections (DOCCS) announced an unprecedented agreement to reform the way solitary confinement is used in New York State's prisons, with the state taking immediate steps to remove youth, pregnant inmates and developmentally disabled and intellectually challenged prisoners from extreme isolation. With the agreement, New York State becomes the largest prison system in the United States to prohibit the use of solitary confinement as a disciplinary measure against prisoners who are younger than 18.ⁱⁱ

Complete Removal of Youth from Adult Facilities

When youth are placed with adults in adult facilities, they are at risk of physical and sexual assault. According to the Bureau of Justice Statistics, 21% of all substantiated victims of inmate-on-inmate sexual violence in jails in 2005, were youth under the age of 18 (surprisingly high since only 1% of jail inmates are juveniles). Additionally, a recent BJS study stated that two-thirds of youth ages 16 and 17 in adult jails and prisons who had been victimized reported being victimized more than once by other inmates and three-quarters were victimized by staff more than once.ⁱⁱⁱ

Again, according to the U. S. Department of Justice:

Based on the BJS Deaths in Custody Reporting Program, 2000-2007, 36 under-18 inmates held in local jails died as a result of suicide (with the number varying from 3 to 7 each year). The suicide rate of youth in jails was 63.0 per 100,000 under-18 inmates, as compared to 42.1 per 100,000 inmates overall, and 31 per 100,000 inmates aged 18-24. (By contrast, in the general population, the suicide risk is twice as high for persons aged 18-24 than for persons under 18.) The suicide rate of youth was approximately six times as high in jails than among 15- to 19-year-olds in the U.S. resident population with a comparable gender distribution (10.4 per 100,000 in 2007).^{iv}

Professional Association Positions

Jailers and Corrections officials are faced with a “no win” situation when youth are placed in adult facilities: they simply can't keep youth safe and segregating youth in isolation/solitary confinement creates a different, but equally harmful result. All of the major national stakeholder associations that deal with juvenile or adult detention or corrections such as American Correctional Association, Council of Juvenile Correctional Administrators, National Juvenile Detention Association, and the American Jail Association have policies on this issue.

The American Correctional Association’s policy states that, “The ACA supports separate housing and special programming for youths under the age of majority who are transferred or sentenced to adult criminal jurisdiction. [The ACA supports] placing people under the age of majority who are detained or sentenced as adults in an appropriate juvenile detention/correctional system or youthful offender system distinct from the adult system.”

The Council of Juvenile Correctional Administrators’ policy states that, “The juvenile justice system is the most appropriate system to hold youths accountable and receive age-appropriate and effective treatment and rehabilitation opportunities.”

Additionally, prominent national associations agree that placing youth in adult facilities is inappropriate and harmful. For example, the National Association of Counties states, “It is harmful to public safety, as well as young offenders, to confine youth in adult jails, where they are eight

times more likely to commit suicide, five times more likely to be sexually assaulted, and, upon release, much more likely to re-offend than youth in juvenile detention. NACo supports the reform of state laws that inappropriately send far too many youth under the age of 18, including first-time and non-violent offenders into the adult criminal justice system."

Prison Rape Elimination Act

Ten year ago, Congress unanimously passed the Prison Rape Elimination Act (PREA) to stop sexual violence behind bars, and one of its main concerns was the risk youth face when housed in adult jails and prisons. The National Prison Rape Elimination Commission (NPREC), established by the Prison Rape Elimination Act (PREA) in 2003, found that "more than any other group of incarcerated persons, youth incarcerated with adults are probably at the highest risk for sexual abuse" and said that youth must be housed apart from adults.

For the adult facility standards, the Department adopted a new standard, the Youthful Inmate Standard (§115.14), to protect youth from sexual abuse by limiting contact between youth and adults in adult facilities through three specific requirements:

1. Banning the housing of youth in the general adult population.
2. Prohibiting contact between youth and adults in common areas, and ensuring youth are constantly supervised by staff.
3. Limiting the use of isolation which causes or exacerbates mental health problems for youth.

The regulations go a long way in addressing one of the major human rights violations occurring in the United States today. However, in the effort to eliminate sexual violence behind bars, the standards unfortunately promote another dangerous practice: solitary confinement for youth in adult jails and prisons. PREA regulations do not prohibit solitary confinement or isolation; it only encourages the limited use of this practice. While the purpose of PREA is to protect incarcerated individuals from unfair, unjust, and unconscionable treatment, Congress did not intend for the Department to rely on one dangerous practice in an attempt to eliminate another.

Recommendations

Today, we have the benefit of research about the impact of sending kids to the adult criminal justice system that tells us that the vast majority of youth are better served in the juvenile justice system. We now know that youth placed in the adult system are more likely to reoffend, reoffend more frequently, and commit more serious offenses. A 2007 U.S. Centers for Disease Control report found that laws that charge juveniles as adults are counterproductive to reducing juvenile violence and enhancing public safety and "do more harm than good."^v In 2008, the Department of Justice's Office of Juvenile Justice and Delinquency Prevention released a research bulletin which mirrored those in the CDC report: laws that make it easier to transfer youth to the adult criminal court

system have little or no general deterrent effect, meaning they do not prevent youth from engaging in criminal behavior.^{vi}

Over the last decade, we have also learned a tremendous amount about what works to prevent and reduce juvenile delinquency. From the growing body of research on child and youth development, the development of the adolescent brain, and effective programs and practice, we now have more evidence about what works in turning these young lives around and correcting their behavior than we did a decade ago.

In the past eight years, state policymakers have appeared to be less devoted to “tough on crime” policies, choosing to substitute them with policies that are instead “smart on crime.” Given the breadth and scope of the changes, these trends are not short-term anomalies but evidence of a long-term restructuring of the juvenile justice system. In the past eight years, nearly thirty states have changed their state policies. These changes are occurring in all regions of the country spearheaded by state and local officials of both major parties and supported by a bipartisan group of governors.^{vii}

Despite the trends towards keeping kids out of the adult criminal justice system, there are still too many kids placed in adult jails and prisons without proper care, mental health services, educational services, or opportunities for rehabilitation. Solitary confinement of these youth have been used as a tool to prevent them from being harmed by others, however, it has had the opposite effect. Youth in solitary have a higher risk of suicide. Youth with mental health disorders see their symptoms exacerbated when placed in a cell for upwards for 23 hours a day. The psychological effects are often irreversible.

The vast majority of these youth will be back in the communities and we must ask, at what cost? Incarcerating youth in adult jails and prisons and holding them in solitary confinement is the most expensive option that consistently produces the worst results. These harsh measures do more harm than good and cost the community much more in real dollars in incarceration costs and future crime.

Fortunately, public opinion overwhelming supports major policy reforms to remove youth from automatic prosecution in adult criminal court and placement in adult jails and prisons. In a recent poll conducted by GBA Strategies, it was found that the public supports independent oversight to ensure youth are protected from abuse while in state or local custody (84%); and the public rejects placement of youth in adult jails and prisons (69%).

Therefore, I urge the committee to:

- (1) Update the Juvenile Justice & Delinquency Prevention Act (JJDP A) to ban the placement of youth in adult jails and adult prisons;
- (2) Restore federal juvenile justice block grants for states and localities to incentivize their use of best practices and evidence-based approaches that rely on the least restrictive setting for youth in conflict with the law;
- (3) Support increased federal oversight, monitoring, transparency, and funding for alternatives for solitary confinement by requiring Federal, state, and local prisons, jails, detention centers, and juvenile facilities to report to the Bureau of Justice Statistics who is held in solitary confinement and for what reason and how long, as well as the impact of the practice on cost, facility safety, incidents of self-harm, and recidivism.
- (4) Hold a hearing to monitor the progress of PREA implementation, including the Youthful Inmate Standard after the May 15th Governor certification of compliance deadline;
- (5) Ensure that the U.S. Department of Justice provide concrete recommendations and best practices on implementing PREA's Youthful Inmate Standard with an emphasis on eliminating the use of solitary confinement; and
- (6) Call for rulemaking by the U.S. Department of Justice to create the development of smart, humane and evidence-based national best practices and regulations that will limit the use of all forms of isolation and solitary confinement.

Thank you again for holding today's hearing and focusing on such a critically important issue.

ⁱ National Standards to Prevent, Detect, and Respond to Prison Rape, 28 CFR Part 115 (2012).

ⁱⁱ "NYCLU Lawsuit Secures Historic Reforms to Solitary Confinement," at <http://www.nyclu.org/node/4783> (Feb. 2014).

ⁱⁱⁱ Beck, A.J., Berzofsky, M., (2012, May). *Sexual Victimization in Prisons and Jails Reported by Inmates, 2011-12*, Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics.

^{iv} National Standards to Prevent, Detect, and Respond to Prison Rape, 28 CFR Part 115 (2012).

^v Department of Health and Human Services, Centers for Disease Control and Prevention, *Effects on Violence of Laws and Policies Facilitating the Transfer of Youth of From the Juvenile to Adult Justice System* p. 8 (2007)

^{vi} Richard E. Redding, *Juvenile transfer laws: An effective deterrent to delinquency?* (Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention) (June 2010)

^{vii} Daugherty, Carmen (2013). *State Trends: Legislative Victories from 2011-2013 Removing Youth from the Adult Criminal Justice System*, Washington, DC: Campaign for Youth Justice.