



Written Statement of the American Civil Liberties Union and Human Rights Watch before the Inter-American Commission on Human Rights

Hearing on

Incarceration of Youth in U.S. Adult Prisons

Monday, March 11, 2013

The American Civil Liberties Union (ACLU) and Human Rights Watch (HRW) are grateful for this opportunity to submit written testimony to the Inter-American Commission on Human Rights for its hearing on the incarceration of youth in U.S. adult prisons. This is an extremely important issue within the United States, and one on which we hope that the Commission will take action.

Our joint testimony today focuses on the specific topic of the solitary confinement of youth under age 18 in the United States, on which we have recently conducted substantial research. We will be submitting similar testimony to the Commission's upcoming hearing on solitary confinement in the Americas.

This hearing provides an important opportunity for the Commission to engage the United States in dialogue to promote reform and encourage U.S. compliance with international human rights obligations and norms to provide age-appropriate treatment for youth and to protect their humanity and dignity.

Every day, in jails and prisons across the United States, young people under the age of 18 are held in solitary confinement.¹ 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 inmates, with voices distorted, reverberating against concrete and metal. Occasionally, they get a book or a bible, and if they are lucky, study materials. But inside this cramped space, few contours distinguish one hour, one day, week, or one month, from the next.

This bare social and physical existence makes many young people feel hopeless and abandoned, or in some cases, suicidal, and can lead to serious physical and emotional consequences. Adolescents in solitary confinement describe cutting themselves with staples or razors, hallucinations, losing control of themselves, or losing touch with reality while isolated. They talk about only being allowed to exercise in small metal cages, alone, a few times a week; about being prevented from going to school or participating in any activity that promotes growth or change. Some say the hardest part is not being able to hug their mother or father.

Experts assert that young people are psychologically unable to handle solitary confinement with the resilience of an adult. And, because they are still developing, traumatic experiences like solitary confinement may have a profound effect on their chance to rehabilitate and grow. Solitary confinement can exacerbate, or make more likely, short and long-term mental health problems. The most common deprivation that accompanies solitary confinement, denial of physical exercise, is harmful to adolescents' health and well-being.

¹ In the United States, the term "jail" refers to a facility that generally holds individuals awaiting trial in the criminal justice system or sentenced to less than a year of incarceration; "prison" refers to a facility that generally holds individuals sentenced to one or more years of incarceration. We use various terms, including "youth," "teenagers," "children," "young people," and "adolescents," interchangeably to refer to youth under the age of 18. We use the term "solitary confinement" to describe physical and social isolation for 22 to 24 hours per day and for one or more days, regardless of the purpose for which it is imposed.

The ACLU and Human Rights Watch estimate that in 2011, more than 95,000 youth were held in prisons and jails.² A significant number of these facilities use solitary confinement—for days, weeks, months, or even years—to punish, protect, house, or treat some of the young people who are held there. Solitary confinement of youth is, today, a serious and widespread problem in the United States.

This situation is a relatively recent development. It has only been in the last 30 years that a majority of jurisdictions around the United States have adopted various charging and sentencing laws and practices that have resulted in substantial numbers of adolescents serving time in adult jails and prisons. These laws and policies have largely ignored the need to treat young people charged and sentenced as if adults with special consideration for their age, development, and rehabilitative potential.

Young people can be guilty of horrible crimes with significant consequences for victims, their families, and their communities. States have a duty to ensure accountability for serious crimes, and protect public safety. But states also have special responsibilities not to treat young people in ways that can permanently harm their development and rehabilitation, regardless of their culpability.

For the last eighteen months, the ACLU and Human Rights Watch have investigated the solitary confinement of youth under age 18 held in adult jails and prisons across the United States. Our research included in-person interviews and correspondence with more than 125 individuals who were held in jails or prisons while under age 18 in 20 states, and with officials who manage jails or prisons in 10 states, as well as quantitative data and the advice of experts on the challenges of detaining and managing adolescents.³

Our research shows that the solitary confinement of adolescents in adult jails and prisons is not exceptional or transient in the United States. Specifically, we found that:

- Young people are subjected to solitary confinement in jails and prisons across the United States, and often for weeks and months.
- When subjected to solitary confinement, adolescents are frequently denied access to treatment, services, and programming adequate to meet their medical, psychological, developmental, social, and rehabilitative needs.
- Solitary confinement of young people often seriously harms their mental and physical health, as well as their development.
- Solitary confinement of adolescents is unnecessary. There are alternative ways to address the problems—whether disciplinary, administrative, protective, or medical—which officials typically cite as justifications for using solitary confinement, while taking into account the rights and special needs of adolescents.

² HUMAN RIGHTS WATCH & THE AMERICAN CIVIL LIBERTIES UNION, GROWING UP LOCKED DOWN: YOUTH IN SOLITARY CONFINEMENT IN JAILS AND PRISONS ACROSS THE UNITED STATES, 101-111 (2012), available at <http://www.aclu.org/growinguplockeddown>.

³ *Id.*

Adult jails and prisons in the United States generally use solitary confinement in the same way for adolescents and adults. Young people are held in solitary confinement to punish them when they break the rules, such as those against talking back, possessing contraband, or fighting; they are held in solitary confinement to protect them from adults or from one another; they are held in solitary confinement because officials do not know how else to manage them; and sometimes, officials use solitary confinement to medically treat them.

There is no question that incarcerating teenagers who have been accused or found responsible for crimes can be extremely challenging. Adolescents can be defiant, and can hurt themselves or others. Sometimes, facilities may need to use limited periods or forms of segregation and isolation to protect young people from other prisoners or themselves. But using solitary confinement harms young people in ways that are different, and more profound, than if they were adults.

Many adolescents we contacted reported being subjected to solitary confinement more than once while they were under age 18. Adolescents spoke eloquently about solitary confinement, and how it compounded the stresses of being in jail or prison—often for the first time—without family support. They talked about the disorientation of finding themselves, and feeling, doubly alone.

Many described struggling with one or more serious mental health problems during their time in solitary confinement and of sometimes having difficulty accessing psychological services or support to cope with these difficulties. Some young people, particularly those with mental disabilities (sometimes called psychosocial disabilities or mental illness, and usually associated with long-term mental health problems) struggled more than others. Several young people talked about attempting suicide when in isolation. Adolescents in solitary confinement also reported experiencing direct physical and developmental harm, a consequence of being denied physical exercise or adequate nutrition. We found that young people in solitary confinement in the United States are deprived of contact with their families, access to education and to programming, and other services necessary for their growth, development, and rehabilitation.

But as a number of jail and prison officials in the United States recognize, solitary confinement is costly, ineffective, and harmful. There are other means to handle the challenges of detaining and managing adolescents. Young people can be better managed in specialized facilities, designed to house them in a less punitive environment, staffed with specially trained personnel, and organized to encourage positive behaviors. Punitive schemes can be reorganized to stress immediate and proportionate interventions and to strictly limit and regulate short-term isolation as a rare exception.

Solitary confinement of youth is itself a serious human rights violation and can constitute cruel, inhuman, or degrading treatment under international human rights law and standards. In addition, we found that conditions of confinement compound the harm of solitary confinement (such as lack of psychological care, physical exercise, family contact, and education) and often constitute independent, concurrent, and serious human rights violations. Solitary confinement cannot be squared with the special status of adolescents under US constitutional law regarding crime and

punishment. While not unusual, it turns the detention of young people in adult jails and prisons into an experience of unquestionable cruelty.

The ACLU and Human Rights Watch have called on the United States to abolish the solitary confinement of young people. In particular, we have called on state and federal lawmakers, as well as other appropriate officials, to 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 and strictly regulating all forms of isolation and segregation of youth. Rather than being banished to grow up locked down in isolation, incarcerated adolescents must be treated with humanity and dignity and guaranteed the ability to grow, to be rehabilitated, and to reintegrate into society.

This is a critical moment for advancing policy reform in the United States that is protective of the human rights of youth in conflict with the law. The United States regularly reaffirms its commitment to strengthening its protection of children in the international context.⁴ But in few ways is the United States more out of step with international and regional human rights law and standards than with regard to its charging, detaining, and sentencing young people in the adult criminal justice system. The serious and widespread practice of subjecting young people to solitary confinement illustrates how completely the adult criminal justice system in the United States fails to ensure that children benefit from heightened measures of protections that reflect their vulnerabilities and status, as required by international human rights law.

We urge the Commission to engage in a dialogue with the United States about these practices and to promote reform. We specifically urge the Commission to take up the issue of the youth in the adult criminal justice system in the United States. In particular, we urge the Commission or its Special Rapporteurship on the Rights of the Child to undertake a mission to observe and report on these practices in the United States. Within the scope of any fact-finding, we urge the Commission to request additional information from the United States government (and its states) on these practices, such as the precise number of young people charged or sentenced as adults, or held in adult jails and prison; information about the risk and incidence of physical and sexual assault and suicide for young people held in adult facilities; the rates at which young people are subjected to solitary confinement or other forms of physical and social isolation in adult jails and prisons; and that any such statistics be disaggregated by age, race, gender or gender identity, disability status, and sexual orientation. We hope that the Commission's review of U.S. practices will encourage compliance with international and regional human rights obligations.

⁴ For example, although the U.S. State Department recently described U.S. policy of increasing compliance with the United Nations Convention on the Rights of the Child, with South Sudan and Somalia, it remains a global outlier as a result of its failure to ratify the convention. Harold Hongju Koh, Legal Adviser to the State Dep't, Opening Remarks to the United Nations' Comm. on the Rights of the Child Concerning the Optional Protocols to the Convention on the Rights of the Child (Jan. 16, 2013), *available at* <http://www2.ohchr.org/english/bodies/crc/docs/statements/StatementUSA62.doc> ("As we have noted in response to relevant UPR recommendations, this Administration supports the [CRC]'s goals and intends to review how we can finally move it towards ratification").

About the American Civil Liberties Union and Human Rights Watch

The ACLU is a nation-wide, non-profit, non-partisan organization that has worked daily in courts, communities and legislatures across the United States since 1920 to protect and preserve the fundamental rights and liberties of individuals set forth in the Bill of Rights of the U.S. Constitution, ratified treaties, federal and state law. The ACLU has more than a half million members and an affiliate in every state and Puerto Rico. Consistent with that mission, the ACLU established the National Prison Project in 1972 to protect and promote the civil and constitutional rights of prisoners in the United States. Since its founding, the Project has challenged unconstitutional conditions of confinement and over-incarceration at the local, state and federal level through public education, advocacy and successful litigation. In 2004, the ACLU created a Human Rights Program specifically dedicated to holding the U.S. government accountable to universal human rights principles in addition to rights guaranteed by the U.S. Constitution. ACLU has brought several petitions and testified before the Commission on various human rights issues in the United States.

The ACLU's national Stop Solitary campaign, which was launched in 2010, works to end the pervasive use of long-term solitary confinement and to divert children and persons suffering from mental disabilities and mental illness out of solitary altogether. Due to unprecedented state budget problems that are forcing a second look at the explosive growth in corrections costs, the current focus of the Stop Solitary campaign is to ensure that the public and our leaders know that the monetary cost of solitary confinement, coupled with the human cost of increased psychological suffering and sometimes irreparable harm, far outweigh any purported benefits, and that there are more effective, humane and less costly alternatives.

Human Rights Watch is an independent organization dedicated to promoting and protecting human rights around the globe. We stand with victims and activists to prevent discrimination, to uphold political freedom, to protect people from inhumane conduct in wartime, and to bring offenders to justice. We investigate and expose human rights violations and hold abusers accountable. We challenge governments and those who hold power to end abusive practices and respect international human rights law. We enlist the public and the international community to support the cause of human rights for all. Since 1980, Human Rights Watch has reported on prison conditions within the United States from a human rights perspective, with a special emphasis on the use of solitary confinement.

Over the past 15 years, Human Rights Watch has conducted investigations in numerous prisons, including super-maximum security prisons; spoken with officials and inmates about solitary confinement; published many reports and commentaries on the issue; and advocated against its misuse. Human Rights Watch has also addressed solitary confinement in other nations, such as Tunisia and Japan. Human Rights Watch has also conducted extensive work on the rights of juveniles in the US criminal justice system, including the youth in adult jails and prisons, and juveniles serving sentences of life without parole.