



NO CHILD LEFT ALONE

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

SOLITARY CONFINEMENT ISN'T SAFE FOR CHILDREN: The Impact of the Prison Rape Elimination Act

More than 90,000 children (under age 18) were held in adult jails and prisons in the United States in each of the last five years.¹ Holding children in adult facilities puts them in extreme danger because of the high rates of physical and sexual assault.² Unfortunately, too often adult facilities attempt to solve this problem by placing youth in solitary confinement, often for long periods of time. Using solitary confinement to protect children from rape in jails and prisons exposes them to other serious risks. It is therefore imperative that officials protect youth from both dangers by moving them out of adult facilities and by banning solitary confinement for all youth.

Fortunately, new federal regulations developed under the **Prison Rape Elimination Act (PREA)** to help deal with the national problem of sexual abuse in corrections facilities present new tools for corrections officials and the community to ensure safer treatment for youth in adult facilities. These regulations recognize that youth are always at risk of adult sexual abuse when housed together with adults, but at the same time they also recognize that solitary confinement is not the answer and that youth should not be isolated.

WHAT RISKS DO CHILDREN FACE IN ADULT FACILITIES?

The National Prison Rape Elimination Commission, charged with developing national standards for both youth and adult correctional facilities, found that "more than any other group of incarcerated persons, youth incarcerated with adults are probably at the highest risk for sexual abuse."³ Studies suggest that youth in adult facilities are as much as five times more likely to be sexually assaulted than youth in juvenile facilities.⁴

HOW DOES SOLITARY CONFINEMENT HARM YOUTH?

Adult facilities housing children often react to the increased risk of sexual abuse by housing youth in isolated settings, such as solitary confinement – physical and social isolation for 22-24 hours per day.⁵ But this practice, which can harm even healthy adults, is particularly dangerous for growing bodies and minds. Solitary confinement can cause or exacerbate mental health problems and prevent young people from receiving any type of programming or rehabilitation services, including education.⁶ Solitary confinement is also highly correlated with increased risk of suicidal thoughts and attempts.⁷ 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."⁸

PREA PROTECTS YOUTH IN ADULT FACILITIES

In 2003, Congress passed PREA in response to the high rates of sexual assault across all forms of detention facilities in the United States.⁹ The final PREA regulations implementing the law provide a range of protections for young offenders in adult facilities. These regulations are binding on the Federal Bureau of Prisons immediately. States that do not comply with PREA face a 5% reduction in federal corrections

funding unless the Governor certifies that those funds will be used to enable compliance in the future.¹⁰ State Governors must submit the first certification of PREA compliance in August 2013.¹¹

PREA implementation presents an important opportunity to protect youth. The PREA regulations recognize the risks posed by both isolation and sexual assault, and requires that adult facilities make their "**best efforts**" to avoid placing youthful detainees in isolation.¹²

The regulations require that "youthful inmates" (defined as any youth under 18 under adult court supervision and incarcerated or detained in a prison or jail) be housed such that they will not come in **sight, sound, or physical contact** with any adult inmate (anyone 18 and above) through the use of a shared dayroom or other common space, shower area, or sleeping quarters.¹³ Under the regulations, youth placed in isolation in spite of a facility's best efforts cannot – absent exigent circumstances – be denied (1) daily large-muscle exercise or (2) any legally required special education services and must – to the extent possible – be granted access to other programs and work opportunities.¹⁴

HOW SHOULD FACILITIES COMPLY WITH PREA'S REQUIREMENTS FOR YOUTH IN ADULT FACILITIES?

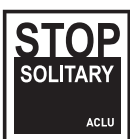
PREA codifies a long-standing recognition that isolation of young people is harmful and counterproductive.¹⁵ The need to separate and protect vulnerable individuals must therefore be balanced against the serious risks involved in isolating youth who are still developing.

- **Remove Children From the Adult Correctional System**

The first and best option for reform is to remove youth from the adult correctional system. Juvenile facilities are better equipped to provide for the needs of growing children. Young people can be moved out of the adult prison system by statute or 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.¹⁶ A second approach to this problem recently adopted by a number of states, such as Connecticut, Illinois, and Mississippi, is to "raise the age" of juvenile court jurisdiction so that fewer youth are automatically prosecuted in the adult system.¹⁷ Another approach has been to change the laws governing transfer of juveniles to adult court.¹⁸

- **Prohibit Solitary Confinement, and Strictly Limit and Publicly Report Isolation Practices**

Solitary confinement of youth under 18 should be banned. This practice can be abolished 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. Youth should never be subjected to any practice that involves significant levels or durations of physical and social isolation. Isolation should only be used as a short-term emergency measure. Separation practices – to protect, to manage, or to discipline youth – should be used sparingly and must never rise to the level of solitary confinement.



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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ENDNOTES

¹ 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>.

² 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, 9 (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.

³ See NAT'L PRISON RAPE ELIMINATION COMM'N. REP., *supra* note 2, at 18 (2009). See also *id.* at 8 (Finding 3) ("The Commission is concerned that correctional facilities may rely on protective custody and other forms of segregation (isolation or solitary confinement) as a default form of protection. And the Commission learned that desperate prisoners sometimes seek out segregation to escape attackers. Serving time under these conditions is exceptionally difficult and takes a toll on mental health, particularly if the victim has a prior history of mental illness. Segregation must be a last resort and interim measure only."). *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.").

⁴ Fagan et al., *Youth in Prisons and Training Schools*, *supra* note 2. This finding was also explicitly cited by Congress in passing the Act. 42 U.S.C. 15601(4) (2003). See also ZIEDENBERG & SCHIRALDI, THE RISKS JUVENILES FACE WHEN THEY ARE INCARCERATED WITH ADULTS, *supra* note 2.

⁵ See generally HUMAN RIGHTS WATCH & THE AMERICAN CIVIL LIBERTIES UNION, GROWING UP LOCKED DOWN, *supra* note 1, at appendix 1.

⁶ *Id.*

⁷ LINDSAY 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/ojjdp/213691.pdf>.

⁸ 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>.

⁹ See *Prison Rape Elimination Act (Sexual Violence in Correctional Facilities)*, Bureau of Justice Statistics (last visited May 31, 2013), *available at* <http://www.bjs.gov/index.cfm?ty=tp&tid=20> (listing Bureau of Justice Statistics data gathered since the act's passage).

¹⁰ Press Release, U.S. Dep't of Justice, Justice Department Releases Final Rule to Prevent, Detect, and Respond to Prison Rape (May 17, 2012), *available at* <http://www.justice.gov/opa/pr/2012/May/12-ag-635.html>.

¹¹ 42 U.S.C. 15607 (c)(2) (2003). States must also audit state facilities every three years. See 28 C.F.R. §§ 115.93, 115.193, 115.293, 115.393, 115.401, 115.402, 115.403, 115.404, 115.405, 115.501 (2012), *available at* http://www.ojp.usdoj.gov/programs/pdfs/prea_final_rule.pdf.

¹² 28 C.F.R. §§ 115.89, 115.189, 115.289, 115.389 (2012), *available at* http://www.ojp.usdoj.gov/programs/pdfs/prea_final_rule.pdf.

¹³ 28 C.F.R. §§ 115.5, 115.14(a) (2012), *available at* http://www.ojp.usdoj.gov/programs/pdfs/prea_final_rule.pdf.

¹⁴ 28 C.F.R. § 115.14(c) (2012), *available at* http://www.ojp.usdoj.gov/programs/pdfs/prea_final_rule.pdf.

¹⁵ See, e.g., DEP'T OF JUSTICE OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, STANDARDS FOR THE ADMINISTRATION OF JUVENILE JUSTICE 4.52 (1980), *available at* <http://catalog.hathitrust.org/Record/000127687>. ("Juveniles should be placed in room confinement only when no less restrictive measure is sufficient to protect the safety of the facility and the persons residing or employed therein ... Room confinement of more than twenty-four hours should never be imposed.")

¹⁶ 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>.

¹⁷ 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.

¹⁸ 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.