



Growing Up Locked Down

Youth in Solitary Confinement in Jails and Prisons Across the United States

HUMAN
RIGHTS
WATCH





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Youth in Solitary Confinement in Jails and Prisons
Across the United States

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- Summary 1**
- Key Recommendations..... 6**
- Methodology7**
- I. Background: Kids in an Adult System..... 11**
- II. How Solitary Confinement Harms Youth 20**
 - Psychological Harm23
 - Trying to Cope25
 - Anxiety, Rage, and Insomnia 26
 - Cutting and Self-Harm 29
 - Suicidal Thoughts and Attempts: “The death-oriented side of life”30
 - Struggling with Mental Disabilities and Past Trauma32
 - Barriers to Accessing Care35
 - Physical Harm37
 - Lack of Adequate Exercise37
 - Physical Changes and Stunted Growth.....39
 - Social and Developmental Harm 41
 - Denial of Family Contact..... 41
 - Denial of Adequate Education42
 - Struggling with Intellectual Disabilities.....44
 - Failure to Provide for Rehabilitation or Social Development 46
- III. Youth in Solitary Confinement in Adult Facilities: Corrections Practices, Numbers, and Duration 48**
 - Solitary Confinement to Punish Inmates..... 48
 - Solitary Confinement to Manage Inmates53
 - Protective Solitary Confinement.....53
 - Administrative Solitary Confinement.....57
 - Solitary Confinement to Treat Inmates..... 60
 - Quarantine..... 62
 - Seclusion and SAMHSA..... 62
 - Rates of Solitary Confinement63
 - Length of Time Spent in Solitary Confinement65

IV. Violations of Fundamental Rights	70
International Law and Standards	70
Human Rights Violations	76
US Law	78
V. Alternatives to the Solitary Confinement of Youth	81
Getting Kids Out of Adult Facilities	81
Reviewing and Reforming.....	82
Borrowing from Juvenile Facilities	86
Limited Appropriate Uses of Segregation and Isolation	88
Recommendations	91
Acknowledgments	99
Appendix 1: Mapping Youth in Adult Jails and Prisons	101
Appendix 2: State Case Studies	112

Summary

Being in isolation to me felt like I was on an island all alone[,] dying a slow death from the inside out.

—Letter from Kyle B. (pseudonym), from California to Human Rights Watch, May 3, 2012.

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, completely 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 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 doomed 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.

The solitary confinement of adults can cause serious pain and suffering and can violate international human rights and US constitutional law. But the potential damage to young

¹ In the United States, and throughout the report, 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. This report uses various terms, including “youth,” “teenagers,” “children,” “young people,” and “adolescents,” interchangeably to refer to youth under the age of 18. Throughout the report, the term “solitary confinement” is used 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. While solitary confinement is apparently used in juvenile facilities on occasion, this report focuses only on its use in adult jails and prisons.

people, who do not have the maturity of an adult and are at a particularly vulnerable, formative stage of life, is much greater.

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 physically harmful to adolescents' health and well-being.

Human Rights Watch and the American Civil Liberties Union estimate that in 2011, more than 95,000 youth were held in prisons and jails. 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 country 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. The state has a duty to ensure accountability for serious crimes, and to protect the public. 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.

This report describes the needless suffering and misery that solitary confinement frequently inflicts on young people; examines the justifications that state and prison officials offer for using solitary confinement; and offers alternatives to solitary confinement in the housing and management of adolescents. The report draws on in-person interviews and correspondence with more than 125 individuals who were held in jails or prisons while

under age 18 in 19 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.

This report shows that the solitary confinement of adolescents in adult jails and prisons is not exceptional or transient. Specifically, the report finds that:

- Young people are subjected to solitary confinement in jails and prisons nationwide, 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.

Adult jails and prisons 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 hurt themselves and 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 reported being subjected to solitary confinement more than once while they were under age 18. Forty-nine individuals—more than a third—of the seventy-seven

interviewed and fifty with whom we corresponded described spending a total of between one and six months in solitary confinement before their eighteenth birthday.

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 experienced direct physical and developmental harm, a consequence of being denied physical exercise or adequate nutrition. Thirty-eight of those interviewed said they had experienced at least one period in solitary confinement when they could not go outside. A few talked about losing weight and going to bed hungry.

The report finds that young people in solitary confinement are deprived of contact with their families, access to education and to programming, and other services necessary for their growth, development, and rehabilitation. Twenty-one of the young people interviewed said they could not visit with loved ones during at least one period of solitary confinement. Twenty-five said they spent at least one period of time in solitary confinement during which they were not provided any educational programming at all. Sixteen described sitting alone in their cell for days on end without even a book or magazine to read.

But as a number of jail and prison officials 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, 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. In addition, the conditions that compound the harm of solitary confinement (such as lack of psychological care, physical exercise, family contact, and education) 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.

It is time for the United States to abolish the solitary confinement of young people. State and federal lawmakers, as well as other appropriate officials, 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. 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 reenter society.

Key Recommendations

To the US Federal Government and/or State Governments

- Prohibit the solitary confinement of youth under age 18.
- Prohibit the housing of adolescents with adults, or in jails and prisons designed to house adults.
- Strictly limit and regulate all forms of segregation and isolation of young people.
- Monitor and report on the segregation and isolation of adolescents.
- Ratify human rights treaties protecting young people without reservations.

Methodology

This report is the product of a joint initiative—the Aryeh Neier fellowship—between Human Rights Watch and the American Civil Liberties Union to strengthen respect for human rights in the United States.

This report is based on interviews and correspondence undertaken between December 2011 and July 2012 with 127 individuals who were detained in jail or prison while under age 18 in Alabama, California, Colorado, Connecticut, Florida, Illinois, Kansas, Louisiana, Michigan, Mississippi, Missouri, Nebraska, Ohio, Pennsylvania, South Carolina, Texas, Utah, Wisconsin, and Virginia. Of those, Human Rights Watch and the American Civil Liberties Union interviewed in person 77 individuals who, collectively, had been held at more than 50 jails and prisons in Colorado, Florida, Michigan, New York and Pennsylvania while under age 18. Of these, 66 were male and 11 were female; 57 of them were between 18 and 25 years old at the time of the interviews; 20 were under age 18. Of the 50 with whom Human Rights Watch corresponded, all were male; 24 were between the ages of 18 and 25, and 10 were under age 18.

In selecting jurisdictions for focused research, Human Rights Watch and the American Civil Liberties Union prioritized states that consistently report holding youth under age 18 in adult jails and prisons, and charging young people as if they are adults. Human Rights Watch and the American Civil Liberties Union identified individuals who had been subjected to solitary confinement in those jurisdictions through outreach to family members; contact with defense attorneys and advocacy networks; and through an advertisement in *Prison Legal News* (which has broad circulation in jails and in prisons). Human Rights Watch and the American Civil Liberties Union also identified some individuals by writing to or seeking to interview all adolescents under age 18 at a particular facility or within a particular Department of Rehabilitation or Correction; all young people convicted of certain offenses likely to be associated with isolation (such as battery by a prisoner, assault on a corrections officer, or throwing or expelling bodily fluids at or towards a public safety worker); or young people serving particularly long sentences, such as life without parole.

Human Rights Watch and the American Civil Liberties Union were not able to conduct interviews in every state that confines adolescents in adult jails and prisons, nor in every county in the states visited. Human Rights Watch and the American Civil Liberties Union did not seek individual administrative, disciplinary, or medical records for most individuals interviewed.

All individuals interviewed about their experience provided informed consent to participate in this research. Interviews in jails and prisons were conducted in private, with no jail or prison staff within earshot; interviews outside of jails and prisons were also conducted in private. For some of the interviews, the Human Rights Watch/American Civil Liberties Union researcher in charge of the project was accompanied by an attorney (including sometimes the individual's defense attorney), social worker, or NGO partner whose presence as an observer was explained to the interviewee. When accompanied by others, the Human Rights Watch/American Civil Liberties Union researcher led the questioning, using substantially the same semi-structured questionnaire for all interviews with those who had been held in jail or prison. The researcher repeatedly assured interviewees that they could end the interview at any time or decline to answer any and all questions. Also, the researcher gave no incentives to interviewees and took great care to avoid re-traumatizing them. One individual declined to be interviewed, and one individual refused to allow his or her testimony to be used for this research.

Some interviewees asked that their names be used in this report so they could more directly participate in bringing attention to their personal experience. But due to concerns over the safety of the many interviewees who did not want their identity disclosed, Human Rights Watch and the American Civil Liberties Union decided to use pseudonyms to disguise the identity of all interviewees who were held in jail or in prison, and of individuals whose cases Human Rights Watch and the American Civil Liberties Union learned of through attorneys or family members. In most cases, Human Rights Watch has also withheld certain other identifying information to protect an individual's privacy and safety.

Human Rights Watch sent surveys regarding the challenges of detaining and managing youth and the use of isolation to more than 590 county jail facilities and received responses from or interviewed, collectively, more than 98 county jail officials in Colorado, Florida, Kentucky, Massachusetts, Michigan, New York, Ohio, Oregon, Pennsylvania, and

Wisconsin. Human Rights Watch also interviewed or corresponded with state prison officials in Colorado, Florida, Michigan, New York, Ohio, Pennsylvania, and Wisconsin.

The Ohio Department of Rehabilitation and Correction refused Human Rights Watch's request to interview young people under their care due to the department's "long-standing practice not to provide media access to [the department's] incarcerated juveniles" and because "there [were] legal concerns about whether the juveniles can consent to interviews."² It also refused to allow us to privately interview inmates who had entered its care while under age 18 who were now adults, stating that it would only allow interviews of inmates who were screened "to determine if they are eligible and appropriate for participation" if "the Public Information Officer at [each] facility [were] to be present during th[ose] interviews."³ Following our standard research methodology in situations of confinement, we declined to submit to official monitoring or selection of interviews.

The Wisconsin Department of Corrections also denied Human Rights Watch's request to interview individuals in their care. It cited concerns that interviewing young people identified through defense counsel and public records, "may introduce bias" in the results; that, if the intent was to obtain information about county facilities, interviews should be conducted "when the subject is in a county jail facility"; that the department would not permit questioning about experiences in county facilities without "written approval from the respective Jail Administration or Sheriff"; and that it would not permit interviews without prior approval of questions to be asked (about prolonged isolation) and any other "information necessary to take into account possible issues that could lead to any possible negative effects that the interview may have on the subject's mental health status."⁴

Human Rights Watch interviewed officials at the US Department of Justice and state officials charged with collecting data and monitoring compliance with federal law, such as the Juvenile Justice and Delinquency Prevention Act.

Finally, Human Rights Watch and the American Civil Liberties Union interviewed dozens (and had background discussions with scores) of third parties with relevant expertise or

² Human Rights Watch email correspondence with the Ohio Department of Rehabilitation and Corrections, January 10, 2012.

³ Human Rights Watch email correspondence with the Ohio Department of Rehabilitation and Corrections, March 9, 2012.

⁴ Human Rights Watch email correspondence with the Wisconsin Department of Corrections, March 5, 2012.

experience dealing with the consequences of the solitary confinement of adolescents, including prisoner’s family members; victims of crime and their family members; attorneys; as well as medical, corrections, educational, and psychological experts.

This report, especially Appendix 1, contains substantial statistical data. Most of the descriptive statistics utilized in this report were extracted from three Bureau of Justice Statistics (BJS) data sources: the annual Prisoners in [Year] reports; the annual Jail Inmates at Midyear reports; and the raw Survey of Jails data files, which are used to generate the Jail Inmates at Midyear report. Further information on the statistical methodology used may be found in Appendix 1.

I. Background: Kids in an Adult System

[C]hildren are constitutionally different from adults ... [J]uveniles have diminished culpability and greater prospects for reform ... [and] are less deserving of the most severe punishments ... [C]hildren have a lack of maturity and an underdeveloped sense of responsibility[;] ... [c]hildren are more vulnerable . . . to negative influences and outside pressures[;] ... [a]nd ... a child's character is not as well formed as an adult's.

—*Miller v. Alabama, United States Supreme Court, 2012 (No. 10 - 9646, slip op. at 8 (2012)).*

For much of the last century, people under the age of 18 who came into conflict with the law in the United States were detained (when necessary), tried or adjudicated, and held accountable in the juvenile justice system. In rare cases, and if in the best interests of the child and the public, juvenile court judges could waive a delinquency case into the adult criminal justice system. But this was far from common.⁵

Though they have since declined, in the late 1980s and through the mid-1990s, rates of some categories of juvenile crime, particularly serious violent crime, increased significantly.⁶ Concern about this development led to a proliferation of new legal mechanisms for subjecting children to criminal trial and punishment as if they were adults.⁷ The stated goal of most of these policies was deterrence through retributive punishment: “adult time for adult crime.”⁸

⁵ Even when youth crime rates were at their highest, in the early 1990s, judicial waiver never exceeded 2 percent of all delinquency cases. United States General Accounting Office, “Juvenile Justice: Juveniles Processed in Criminal Court and Case Dispositions,” August 1995, <http://www.gao.gov/assets/230/221507.pdf> (accessed June 7, 2012), p. 10. It is also important to note that for many years, some advocates actually pushed to have some youth in conflict with the law tried in the adult system to ensure the availability of constitutional protections that were unavailable in juvenile court.

⁶ Many commentators warned against the rise of the so-called “super-predator” youth. John Dilulio, *How to Stop the Coming Crime Wave* (New York: Manhattan Institute, 1996), p. 1. The analysis of data on crime rates is complicated. See, for example, James P. Lynch, Office of Juvenile Justice and Delinquency Prevention, US Department of Justice, “Trends in Juvenile Violent Offending: An Analysis of Victim Survey Data,” October 2002, <https://www.ncjrs.gov/pdffiles1/ojjdp/191052.pdf> (accessed June 7, 2012).

⁷ For more information about the variety of mechanisms to try youth, see Office of Juvenile Justice and Delinquency Prevention, US Department of Justice, 1999 National Report Series, “Challenging the Myths,” <https://www.ncjrs.gov/pdffiles1/ojjdp/178993.pdf> (accessed June 7, 2012).

⁸ “P.A. Legislature: House to Weigh Bill on Violence,” *The Vindicator*, October 24, 1995. In the summer of 1993, for example, Colorado legislators wrote, debated, and passed a broad overhaul of criminal laws in just 10 days during an extraordinary session, and radically transformed the state's criminal justice system as it related to youth. This was dubbed the “summer of violence.” “Young Guns: Growing Number of States Get Tough,” Associated Press, October 21, 1993; “Summer of Violence

As a result, each year tens of thousands of adolescents are now treated as adults. How young people come to be charged, detained, and punished as adults, however, is a function of a complex thicket of state and federal law and policy. There is no single approach within or among states. Yet the consequences for young people treated the same as adults are profound.

Youth Charged as if Adults

Nationally, young people held in adult facilities are charged and convicted of offenses ranging from drug and property crimes to the most serious violent crimes. The most common mechanisms for imposing “adult time for adult crime” include offense-based exclusion from the juvenile justice system, prosecutorial “direct-file” of youth cases in the adult system, and “once an adult always an adult” laws.⁹ For many young people, entering the adult criminal justice system is a path of no return, as not all states have mechanisms to transfer or waive jurisdiction *back* to the juvenile system, or to impose a blended sentence of punishments in both the juvenile and adult systems.¹⁰ Yet some evidence suggests that many adolescents charged as if adults are not actually sentenced to time in prison.¹¹

Leaves Denver Demanding Answers,” Associated Press, July 29, 1993. Wisconsin and New Hampshire lowered the upper age of juvenile court jurisdiction, deeming adulthood to begin at 17, not 18, for purposes of criminal prosecution. Patricia Torbet et al., Office of Juvenile Justice and Delinquency Prevention, US Department of Justice, “Juveniles Facing Criminal Sanctions: Three States that Changed the Rules,” April 2000, <https://www.ncjrs.gov/pdffiles1/ojjdp/181203.pdf> (accessed June 7, 2012), pp. xi-xii. By 1997, all states but three (Nebraska, New York, and Vermont) had changed their laws to make it easier and more likely that child offenders would stand trial and be sentenced in adult criminal courts. Howard N. Snyder and Melissa Sickmund, Office of Juvenile Justice and Delinquency Prevention, US Department of Justice, “Juvenile Offenders and Victims: 1999 National Report,” September 1999, <http://www.ncjrs.org/html/ojjdp/nationalreport99/toc.html> (accessed June 7, 2012), p. 15.

⁹ Patrick Griffin et al., Office of Juvenile Justice and Delinquency Prevention, US Department of Justice, “Trying Juveniles As Adults: An Analysis of State Transfer Laws and Reporting,” September 2011, <https://www.ncjrs.gov/pdffiles1/ojjdp/232434.pdf> (accessed June 7, 2012). Offense-based exclusion laws subject youth to the original jurisdiction of the adult criminal justice system on the basis of the charged offense (sometimes but not always with an additional age minimum). For example, Pennsylvania charges all homicide cases in adult criminal court, regardless of the age of the offender. Prosecutorial direct-file laws usually give charging officials the (sometimes unlimited) discretion to decide whether to file charges in juvenile court or in adult court (sometimes with age restrictions). Colorado recently raised the age minimum for direct-file eligible offenses (such as homicide) from 14 to 16, but other states, such as Florida, have no minimum age for a broad range of offenses. Finally, in some states, like Florida, once a youth has been convicted of an offense in adult criminal court, all subsequent offenses (even minor ones) are treated as if committed by an adult; for many offenses over which the juvenile court retains original jurisdiction, states have reduced the discretion of judges to prevent the case from being transferred to adult court.

¹⁰ Pennsylvania just created an avenue to transfer youth back to the juvenile justice system; Michigan allows “blended” sentencing of youth.

¹¹ Campaign for Youth Justice, “Jailing Juveniles: The Dangers of Incarcerating Youth in Adult Jails in America,” November 2007, http://www.campaignforyouthjustice.org/documents/CFYJNR_JailingJuveniles.pdf (accessed August 27, 2012), pp. 20-21.

Many of the young people interviewed for this report were accused, tried, or convicted for serious crimes, even homicide. Human Rights Watch and the American Civil Liberties Union interviewed more than a dozen young people serving life without parole for murder or felony murder.¹⁷ But Human Rights Watch and the American Civil Liberties Union also interviewed young people arrested, tried, or convicted of non-violent offenses, drug, and property crimes. For example, of the 26 young people interviewed in Florida prisons, five were convicted of non-violent offenses, such as burglary or drug possession.¹⁸

Yet, regardless of their conduct, it is well established that adolescents have a potential for development and rehabilitation that is distinct from that of adults. In addition, adolescents deprived of their

Racial and socioeconomic disparities are pervasive within the criminal justice system. As Human Rights Watch has documented, in California, Connecticut, and Pennsylvania, black adolescents are significantly more likely to be serving a sentence of life without parole than white adolescents.¹² Other studies have found that minority adolescents receive harsher treatment than similarly-situated white adolescents at every stage of the criminal justice system.¹³ Within the juvenile and adult criminal justice systems, young people of color are disproportionately represented at every stage, from arrest to sentencing.¹⁴

People with scant financial means are also often unable to afford bail, and as a result end up spending lengthy periods in pre-trial detention.¹⁵ Consequently, economically disadvantaged adolescents, including those who are never convicted, can endure substantial adult jail time. These racial and socioeconomic disparities are interconnected: in New York City in 2010, blacks and Hispanics constituted 89 percent of all pretrial detainees held on bail of \$1,000 or less.¹⁶

¹² Human Rights Watch and Amnesty International, *The Rest of Their Lives*, p.5.

¹³ Alex R. Piquero, "Disproportionate Minority Contact," *The Future of Children*, vol. 18, no.2 (2008), p. 66, citing National Council on Crime and Delinquency, *And Justice for Some: Differential Treatment of Youth of Color in the Justice System* (Oakland: National Council on Crime and Delinquency, 2007); Neelum Arya and Ian Augarten, Campaign for Youth Justice, "Critical Condition: African-American Youth in the Justice System," September 2008, http://www.campaignforyouthjustice.org/documents/CFYJPB_CriticalCondition.pdf (accessed August 27, 2012).

¹⁴ Piquero, "Disproportionate Minority Contact," *The Future of Children*, p. 62, citing National Council on Crime and Delinquency, *And Justice for Some: Differential Treatment of Youth of Color in the Justice System*.

¹⁵ Human Rights Watch, *The Price of Freedom: Bail and Pretrial Detention of Low Income Nonfelony Defendants in New York City*, December 3, 2010, http://www.hrw.org/sites/default/files/reports/us1210webwcover_o.pdf, p. 20.

¹⁶ *Ibid.*, p. 48.

¹⁷ As Human Rights Watch has documented elsewhere, some youth convicted of felony murder serving life without parole played a minor role in the crime. Indeed, in some jurisdictions, as many as half of youth offenders serving life without parole were convicted without having physically committed the underlying offense. See Human Rights Watch and Amnesty International, *The Rest of Their Lives: Life without Parole for Child Offenders in the United States*, October 12, 2005, <http://www.hrw.org/reports/2005/10/11/rest-their-lives-0>, pp. 27-28.

¹⁸ A total list of crimes of conviction for these five youth (some of whom were convicted of a combination of these offenses) include burglary, grand theft, property damage/criminal mischief, attempted armed burglary, drug possession, and possession of a concealed weapon.

liberty have significant developmental needs and rights that are distinct from those of adults.

Youth Are Different

The cornerstone principle of the juvenile justice system in the United States is the idea that young people are different from adults. This is a reflection of psychological and physiological facts about how adolescents and their needs grow and change, as they become adults; it is also a principle of international and domestic law. The juvenile justice system seeks to rehabilitate young people and facilitate their development so that they may be reintegrated into society. The adult criminal justice system, with its focus on punishment, does not unequivocally prioritize rehabilitation, though the law of some states and international human rights law mandate it.¹⁹

Young people have needs that differ in nature and degree from those of adults because they are still developing physically and psychologically. These include specific physical needs for exercise and a balanced diet; as well as special psychological, social, and emotional needs. “As a transitional period,” reports one study, “adolescence is marked by rapid and dramatic [individual] change in the realms of biology, cognition, emotion, and interpersonal relationships and by equally impressive transformations in the major contexts in which children spend time.”²⁰

¹⁹ Human Rights Watch has documented the broad failure of adult jails and prisons (as well as shortcomings in the US juvenile justice system) to care for youth and other vulnerable populations, such as the elderly or persons with mental or intellectual disabilities. For examples see: Human Rights Watch, *No Minor Matter: Children in Maryland's Jails*, November 1, 1999, <http://www.hrw.org/legacy/reports/1999/maryland/>; Human Rights Watch and American Civil Liberties Union, *Custody and Control: Conditions of Confinement in New York's Juvenile Prisons for Girls*, September 25, 2006, <http://www.hrw.org/sites/default/files/reports/us0906webwcover.pdf>; Human Rights Watch, *The Rest of Their Lives: Life without Parole for Child Offenders in the United States*, October 11, 2005, <http://www.hrw.org/sites/default/files/reports/TheRestofTheirLives.pdf>; Human Rights Watch, *No Escape: Male Rape in U.S. Prisons*, April 1, 2001, <http://www.hrw.org/legacy/reports/2001/prison/report.html>; Human Rights Watch, *Old Behind Bars: The Aging Prison Population in the United States*, January 28, 2012, http://www.hrw.org/sites/default/files/reports/usprisonso112webwcover_0.pdf; Human Rights Watch and American Civil Liberties Union, *Deportation By Default: Mental Disability, Unfair Hearings, and Indefinite Detention in the US Immigration System*, July 25, 2010, http://www.hrw.org/sites/default/files/reports/usdeportation0710webwcover_1_0.pdf; Human Rights Watch, *Against All Odds: Prison Conditions for Youth Offenders Serving Life without Parole Sentences in the United States*, January 4, 2012, http://www.hrw.org/sites/default/files/reports/us0112ForUpload_1.pdf.

²⁰ Laurence Steinberg et al., “The Study of Developmental Psychopathology in Adolescence: Integrating Affective Neuroscience with the Study of Context,” in Dante Cicchetti and Donald Cohen, eds., *Developmental Psychopathology* (Oxford: John Wiley & Sons, 2006), p. 710.

Physiological Differences and Needs

During adolescence, the body changes significantly, including through the development of secondary sexual 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.²¹ The American Academy of Pediatrics therefore recommends a spectrum of age-differentiated examinations and assessments for adolescents related to physical, dental, and vision care.²² This includes developmental screenings (and health care needs) that differ from early, middle, to late adolescence.²³

Psychological Differences: Impulsivity, Capacity for Change, and Developmental Needs

Recent scientific findings revealing that the human brain goes through dramatic structural growth during teen years have overturned earlier assumptions regarding the completion of brain development at early adolescence.²⁴ These findings have significant implications for our understanding of teenagers' volition and culpability, their capacity to change and develop, and their psychological needs.

The most dramatic difference between the brains of teens and young adults is the development of the frontal lobe.²⁵ The frontal lobe is responsible for cognitive processing, such as planning, strategizing, and organizing thoughts and actions. 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.²⁶ This part of the brain is linked to "the ability to inhibit impulses, weigh

²¹ Sedra Spano, Research Facts and Findings, ACT for Youth Upstate Center for Excellence, "Stages of Adolescent Development," 2004, http://www.actforyouth.net/resources/rf/rf_stages_0504.pdf (accessed August 27, 2012); National Institutes of Health, Medline Plus, "Adolescent Development," <http://www.nlm.nih.gov/medlineplus/ency/article/002003.htm> (accessed August 27, 2012).

²² American Academy of Pediatrics, "Recommendations for Preventive Pediatric Care," 2000, <http://pediatrics.aappublications.org/content/105/3/645.full.pdf+html> (accessed August 27, 2012). The Academy also has issued a detailed set of guidelines for addressing physical and mental health in the context of detention in juvenile facilities. American Academy of Pediatrics, Policy Statement, "Healthcare for Youth in the Juvenile Justice System," 2011, <http://pediatrics.aappublications.org/content/128/6/1219.full.pdf+html> (accessed August 27, 2012).

²³ American Academy of Pediatrics, "Bright Futures: Guidelines for Health Supervision of Infants, Children, and Adolescents," 2008, http://brightfutures.aap.org/pdfs/Guidelines_PDF/1-BF-Introduction.pdf (accessed August 27, 2012).

²⁴ National Institute of Mental Health, National Institutes of Health, "Teenage Brain: A Work in Progress," 2001, <http://wwwapps.nimh.nih.gov/health/publications/teenage-brain-a-work-in-progress.shtml> (accessed November 25, 2007).

²⁵ Steinberg et al., "The Study of Development Psychopathology in Adolescence," p. 710.

²⁶ Jay N. Giedd, "Structural Magnetic Resonance Imaging of the Adolescent Brain," *Annals of the New York Academy of Science*, vol. 1021 (2004), p. 83.

consequences of decisions, prioritize, and strategize.”²⁷ As a result, teens’ decision-making processes are shaped by impulsivity, immaturity, and an under-developed ability to appreciate consequences and resist environmental pressures.

The malleability of an adolescents’ brain development implies that teens through their twenties may be particularly amenable to change and rehabilitation as they grow older and attain adult levels of development.²⁸ This malleability also raises questions about the effects of stress and trauma on adolescent development during this formative period.

As detailed in section II, the particular physical and psychological characteristics of adolescents make solitary confinement particularly detrimental to healthy development and rehabilitation.

Adult Detention Regimes

In the United States, many of those accused or convicted of criminal offenses are held in jails or prisons. Prisons generally hold only those convicted of crimes and sentenced to more than a year of incarceration. Based on the available data, Human Rights Watch and the American Civil Liberties Union estimate that in the last 5 years, more than 93,000 young people under age 18 were held in adult jails and that more than 2,200 young people under age 18 were held in adult prisons every year (see Appendix 1 for detailed information and additional numbers). While some young people turn 18 before they enter prison, others are not sentenced to spend time in prison, making the high numbers of young people held in jail particularly alarming.²⁹

State Law and Practice - Jails

Once charged in the adult criminal justice system, adolescents in many states are taken to adult jails.³⁰ Some states, such as Wisconsin, mandate that all individuals charged in criminal court be detained in adult jail pre-trial.³¹ Once detained in adult facilities, some

²⁷ Ibid.

²⁸ Steinberg et al., “The Study of Development Psychopathology in Adolescence,” p. 710.

²⁹ Campaign for Youth Justice, “Jailing Juveniles,” pp. 20-21.

³⁰ Ibid.

³¹ Wis. Stat. Ann. § 938.18(8) (“When waiver is granted, the juvenile, if held in secure custody, shall be transferred to an appropriate officer or adult facility”); 938.183(1m) (providing for the detention in adult facilities of youth subject to original

states require that young people under 18 be kept separate from adults in pre-trial facilities (often mandating separation by “sight and sound”).³² Other states leave it to individual facilities to sort out how and whether young people need to be protected. Some facilities separate young people of certain ages from adults. In some jails in Michigan (where 17 year olds are considered adults in the criminal justice system), for example, 16 year olds are generally separated from adults while 17 year olds are held with adults.³³

Federal law—the Juvenile Justice and Delinquency Prevention Act (JJDP A)—creates financial incentives for states to treat young people differently from adults, including by diverting young people subject to the jurisdiction of the juvenile justice system (and certain categories of misdemeanants) from adult facilities.³⁴ Adolescents who are protected by the federal law must either never be held in adult facilities (in the case of status offenders³⁵) or be moved from adult facilities within 6 hours (and must be sight and sound separated from adult inmates while there).³⁶ However, this law is not currently interpreted to cover adolescents who are charged with felonies in the adult system, leaving youth protected only by state law.³⁷

State Law and Practice - Prisons

In most states, young people who are convicted as if adults and sentenced to more than a year of incarceration are then sent to prison.³⁸ Some state prison systems have special “youthful offender” facilities that serve some proportion of the youth admitted to prison

criminal jurisdiction); 938.209(3). But see Wis. Stat. Ann. § 938.183(1m) (“If the juvenile is under 15 years of age, the juvenile may be held in secure custody only in a juvenile detention facility or in the juvenile section of a county jail.”).

³² Michigan’s Code of Criminal Procedure, Mich. Comp. Laws Ann. § 764.27a(3); Ohio’s Revised Code, Rev. Code Ann. § 2152.26(f)(1).

³³ Mich. Comp. Laws Ann. § 764.27a(3); Human Rights Watch telephone interview with Ann Russell, Corrections Administrator, Oakland County, Michigan, March 23, 2012; Human Rights Watch telephone interview with Michelle M. Sanborn, Jail Administrator, Macomb County, Michigan, March 9, 2012.

³⁴ Juvenile Justice and Delinquency Prevention Act, 42 USC 5633(a)(11).

³⁵ Status offenses are those that are based solely on a person’s age at the time of certain conduct, such as a curfew violation.

³⁶ Human Rights Watch email correspondence with Elissa Rumsey, Compliance Coordinator, US Department of Justice Office of Juvenile Justice and Delinquency Prevention, June 28, 2012; Substantive Requirements, Code of Federal Regulations, 28 CFR 31.303(d)(1)(i).

³⁷ Human Rights Watch email correspondence with Elissa Rumsey, June 28, 2012; Definitions, US Code, 42 USC 5602 (26) (“the term ‘adult inmate’ means an individual who (A) has reached the age of full criminal responsibility under applicable State law; and (B) has been arrested and is in custody for or awaiting trial on a criminal charge, or is convicted of a criminal charge offense”).

³⁸ As noted above, in most states those sentenced to less than one year of incarceration often serve out their sentences in jails.

who are under a certain age (such as under the age of 22 in Pennsylvania).³⁹ In some states, such as Florida, judges and corrections officials can designate young people as “youthful offenders” for the purposes of admission to these specialized programs; in other states, young people convicted of some serious offenses are sometimes excluded from eligibility.⁴⁰ In some states, a portion of young people under age 18 in the prison system are held in the general adult population.

In some states, adult criminal courts have the authority to blend the sentences of young people convicted of crimes such that they begin their sentence in the state system designed to house juveniles, but can be transferred into adult prison in certain circumstances. The federal government, by contrast, makes arrangements to hold all adolescents post-conviction in facilities overseen by the relevant juvenile justice system.⁴¹

Risks and Harm to Youth in Adult Facilities

Doing time in jails and prisons is hard for anyone. Jails and prisons are often tense and overcrowded facilities in which all prisoners struggle to maintain their self-respect and emotional equilibrium in the face of violence, exploitation, extortion, and lack of privacy; stark limitations on family and community contacts; and few opportunities for meaningful education, work, or other productive activities. But doing time in jail or prison is particularly difficult for young people, who often constitute a very small proportion of the population.

Adult jails and prisons that house adolescents face significant obstacles to keeping adolescents safe and ensuring that they receive developmentally appropriate services—even the limited services that some states mandate by law—when using staff trained and facilities designed to manage adults. Jail and prison recreation yards are designed for adults; doctors and mental health professionals are rarely specialized to treat children. The lack of age-appropriate services and facilities is further compounded by the limited availability of education or rehabilitative programming available in jails and prisons.

³⁹ Human Rights Watch telephone interview with Eric Bush, Superintendent, Secure Correctional Institution Pine Grove, Pennsylvania Department of Corrections, Pine Grove, Pennsylvania, June 21, 2012.

⁴⁰ Youthful Offenders, Florida Statute, Title 47, Ch. 958. 03-04, <http://www.flsenate.gov/Laws/Statutes/2012/Chapter958/All> (accessed August 27, 2012).

⁴¹ Federal Bureau of Prisons, “Statement of Work, Contract Secure Juvenile Facility,” amended February 2004, revised July 2011, http://www.bop.gov/locations/cc/SOW_Secure_Juvie.pdf (accessed August 27, 2012).

Young people held in the same facility as adults face a very high risk of physical or sexual abuse.⁴² Studies suggest that adolescents who enter adult prison while they are still below the age of 18 are “five times more likely to be sexually assaulted, twice as likely to be beaten by staff and fifty percent more likely to be attacked with a weapon than minors in juvenile facilities.”⁴³ Some have argued that the increased exposure of young people to violence in adult facilities may increase the likelihood that they will exhibit violent behavior upon release.⁴⁴ While causation is difficult to establish, some data suggests that recidivism rates are significantly higher when young people are held with adults. A report published by the Centers for Disease Control found that “[a]vailable evidence indicates that transfer to the adult criminal justice system typically increases rather than decreases rates of violence among transferred youth.”⁴⁵

⁴² In 2005, for example, youth under the age of 18 made up less than 1 percent of all inmates in US jails, yet comprised 21 percent of all victims of substantiated incidents of sexual abuse involving inmates. National Prison Rape Elimination Commission, “National Prison Rape Elimination Commission Report,” June 2009, <https://www.ncjrs.gov/pdffiles1/226680.pdf> (accessed August 27, 2012), p. 42, citing Howard N. Snyder and Melissa Sickmund, Office of Juvenile Justice and Delinquency Prevention, US Department of Justice, *Juvenile offenders and victims: 2006 National report* (Washington, D.C.: US Department of Justice, Office of Justice Programs, 2006) and Allen J. Beck and Paige M. Harrison, Bureau of Justice Statistics, US Department of Justice, “Sexual Victimization in Prisons and Jails Reported by Inmates, 2008-09,” August 2010, <http://bjs.ojp.usdoj.gov/content/pub/pdf/svpjrio809.pdf> (accessed August 27, 2012). Youth under 20 experience the highest rates of sexual abuse by staff of any prison age demographic, and the highest rates of sexual abuse by other inmates of any jail age demographic. Beck and Harrison, “Sexual Victimization in Prisons and Jails Reported by Inmates, 2008-2009”; In contrast, approximately 2.6 percent of youth in juvenile facilities reported a sexual incident involving another youth, while 10.3 percent reported an incident involving facility staff. Allen J. Beck, Paige M. Harrison and Paul Guerino, Bureau of Justice Statistics, US Department of Justice, “Sexual Victimization in Juvenile Facilities Reported by Youth, 2008-2009,” January 2010, <http://bjs.ojp.usdoj.gov/content/pub/pdf/svjfry09.pdf> (accessed August 27, 2012), p. 1 (analyzing statistics gathered by the Bureau of Justice Statistics).

⁴³ Jeffrey Fagan, Martin Forst, and T. Scott Vivona, “Youth in Prisons and Training Schools: Perceptions and Consequences of the Treatment-Custody Dichotomy,” *Juvenile and Family Court*, vol. 40 (1989), p. 9. See also Jason Ziedenberg and Vincent Schiraldi, “The Risks Juveniles Face When They Are Incarcerated with Adults,” Justice Policy Institute, July 1997, http://www.justicepolicy.org/images/upload/97-02_REP_RiskJuvenilesFace_JJ.pdf (accessed August 27, 2012).

⁴⁴ Fagan, Forst, and Vivona, “Youth in Prisons and Training Schools,” *Juvenile and Family Court*, p. 10.

⁴⁵ 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 Justice System: A Report on Recommendations of the Task Force on Community Preventive Services,” vol. 56, no. RR-9, November 30, 2007, <http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5609a1.htm> (accessed August 27, 2012).

II. How Solitary Confinement Harms Youth

Jails and prisons across the United States commonly respond to prison or inmate management challenges by segregating individuals from the general population, often through prolonged physical and social isolation, for hours, days, weeks, or even years. Isolation for 22 hours per day or more, and for one or more days, fits the generally accepted definition of solitary confinement, and this term is used throughout this report.⁴⁶

Solitary confinement is not a practice that jails and prisons restrict to adults; the solitary confinement of young people is not exceptional or transient. On the contrary, it is a serious and widespread problem.

Jail or prison officials frequently subject young people to solitary confinement to achieve one of three goals: to punish young people (this is often called disciplinary segregation); to manage them, either because their classification is deemed to require isolation (often called administrative segregation) or because they are considered particularly vulnerable to abuse (often called protective custody); or to treat inmates, such as after a threatened or attempted suicide (this is often called seclusion).

The conditions that inmates experience in solitary confinement vary little between different forms of segregation, and from county to county, prison to prison, or state to state.⁴⁷ The different forms of solitary confinement are discussed in more detail in section III.

⁴⁶ UN Human Rights Council, Interim Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan Mendez, U.N. G.A. Doc. A/66/268, August 5, 2011, <http://daccess-ddsny.un.org/doc/UNDOC/GEN/N11/445/70/PDF/N1144570.pdf?OpenElement> (accessed August 27, 2012). Jail and prison officials do not generally use the term “solitary confinement” to refer to the range of segregation and isolation practices they employ to manage inmates. They are correct in noting that conditions are not exactly like those used in the earliest facilities to employ the practice. But because the conditions and effects of various segregation practices are substantially the same, Human Rights Watch and the American Civil Liberties Union use a single definition based on the degree of deprivation. At the same time, this report’s focus on solitary confinement should not be read to endorse segregation and isolation practices that do not fit this definition. Any use of physical and social isolation, including if it is for a shorter duration, can raise serious human rights concerns. The same is true for the practice of holding two inmates in conditions that would otherwise constitute solitary confinement (Human Rights Watch and mental health professionals have raised serious concerns about this practice). Similarly, this report’s focus on youth under age 18 should not be read to minimize the developmental differences between, for example, an 18 or a 24 year old and a 40 year old, and the corresponding vulnerability to solitary confinement.

⁴⁷ Solitary confinement in general has a long history, and Human Rights Watch has done extensive research on the isolated—and solitary—confinement of adults. See, for example: Written Statement from Human Rights Watch to the Senate Committee on the Judiciary, Subcommittee on the Constitution, Civil Rights, and Human Rights, “US: Look Critically at Widespread Use of

While outside of the scope of this report, public and press reporting suggests facilities in the juvenile justice system also use a range of segregation and isolation practices to detain and manage adolescents, including solitary confinement.⁴⁸ Segregation and isolation practices in juvenile facilities are sometimes divided between short-term, immediate sanctions to interrupt what officials deem to be juveniles' "acting out" behavior and longer-term, administrative or disciplinary isolation. All best practice standards for juvenile facilities propose maximum limits on various forms of isolation that are far below the durations of solitary confinement experienced by young people in adult jails and prisons interviewed by Human Rights Watch and the American Civil Liberties Union.⁴⁹

Yet lengthy solitary confinement still occurs in juvenile facilities. An audit of one California Division of Juvenile Justice facility, completed in 2011, found that of 93 young people placed in restricted housing, 16 were held for a total of 78 days, during which they were only provided an average of 74 out-of-room minutes each day.⁵⁰ The segregation and isolation of young people in juvenile facilities, particularly when it constitutes solitary confinement, also raises serious human rights concerns.⁵¹

Solitary Confinement," June 2012, <http://www.hrw.org/news/2012/06/18/us-look-critically-widespread-use-solitary-confinement>. The earliest form of solitary confinement involved complete isolation, including hooding prisoners, so that during their incarceration inmates never saw (and rarely heard) another human being. Stuart Grassian, "Psychiatric Effects of Solitary Confinement," *Journal of Law and Policy*, vol. 22 (2006), p. 340. Such complete isolation fell out of favor as a jail or prison management technique for many decades, but a range of similar practices are now used worldwide. Interim Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan Mendez, August 5, 2011.

⁴⁸ A detailed description of the use of isolation in juvenile facilities can also be found in Sandra Simkins et al., "The Harmful Use of Isolation in Juvenile Facilities: The Need for Post-Disposition Representation," *Washington University Journal of Law and Policy*, vol. 38 (2012), <http://digitalcommons.law.wustl.edu/cgi/viewcontent.cgi?article=1019&context=wujlp> (accessed September 26, 2012).

⁴⁹ The Juvenile Detention Alternatives Initiative suggests that best practices for juvenile facilities include prohibiting room confinement as a response to current acting out behavior in excess of four hours and prohibiting disciplinary room confinement in excess of 72 hours. "Juvenile Detention Alternatives Initiative (JDAI) Facility Site Assessment Instrument," May 2006, <http://www.cclp.org/documents/Conditions/JDAI%20Standards.pdf> (accessed August 27, 2012). The American Bar Association Task Force on Youth in the Adult Criminal Justice System proposed that room confinement for any purpose should never exceed ten days. American Bar Association (ABA), *Youth in the Criminal Justice System: Guidelines for Policy Makers and Practitioners* (American Bar Association, 2001), <http://www.campaignforyouthjustice.org/documents/natlres/ABA%20-%20Youth%20in%20the%20Criminal%20Justice%20System%20Guidelines%20for%20Policymakers.pdf> (accessed August 27, 2012). The 1980 American Bar Association Guidelines for Juvenile Facilities suggests that best practices for juvenile facilities should include limiting room confinement for suicide risk or protective custody to eight hours; and limiting disciplinary confinement to five days for minor infractions and ten days for major infractions.

⁵⁰ California Department of Corrections and Rehabilitation: Office of Audits and Court Compliance, "Review of Identified Concerns: Ventura Youth Correctional Facility," March 2011, <https://s3.amazonaws.com/s3.documentcloud.org/documents/203430/djj-audit.pdf> (accessed August 27, 2012), p. 5.

⁵¹ Human Rights Watch and the American Civil Liberties Union, *Custody and Control*, pp. 105 - 113.

Young people repeatedly described their experience in solitary confinement in the most haunting of terms, as in the case of one young woman in Michigan:

I think [the cell] would ... look like any other cell. You know, a box. There was a bed—the slab. It was concrete.... There was a stainless steel toilet/sink combo.... The door was solid, without a food slot or window.... It looked like a basement because all I could see was brick walls. There was no window at all ... I couldn't see a clock ... the only way I really associated any kind of time—I broke down time: morning, afternoon, evening. I broke it down: breakfast, lunch, and dinner.... [I felt] doomed, like I was being banished ... like you have the plague or that you are the worst thing on earth. Like you are set apart [from] everything else. I guess [I wanted to] feel like I was part of the human race—not like some animal.⁵²

Another, in Florida, said,

The only thing left to do is go crazy—just sit and talk to the walls.... I catch myself [talking to the walls] every now and again. It's starting to become a habit because I have nothing else to do. I can't read a book. I work out and try to make the best of it. But there is no best. Sometimes I go crazy and can't even control my anger anymore.... I can't even get [out of solitary confinement] early if I do better, so it is frustrating and I just lose it. Screaming, throwing stuff around.... I feel like I am alone, like no one cares about me—sometimes I feel like, why am I even living?⁵³

Solitary confinement, and many of the deprivations that are typically associated with it, has a distinct and particularly profound impact on young people, often doing serious damage to their development and psychological and physical well-being. Because of the special vulnerability and needs of adolescents, solitary confinement can be a particularly cruel and harmful practice when applied to them.

⁵² Human Rights Watch interview with Molly J. (pseudonym), Michigan, March 2012.

⁵³ Human Rights Watch interview with Henry R. (pseudonym), Florida, April 2012.

While subjected to solitary confinement, young people reported to Human Rights Watch and the American Civil Liberties Union that they were deprived of a significant level of access to: physical and mental health care services; recreation or physical exercise; education, reading, or writing materials; visits, calls, correspondence, or contact with family members and loved ones; and other rehabilitative and developmentally-appropriate programming. Young people reported very similar experiences regardless of the purpose for which solitary confinement was imposed.

Psychological Harm

The use of solitary confinement risks causing or exacerbating mental disabilities or other serious mental health problems in adolescents.⁵⁴

Studies have found that numerous adults who have no history of mental health problems develop psychological symptoms in solitary confinement.⁵⁵ While many of those studies are open to questions about the mental health status of individuals before entering solitary confinement, there is agreement that solitary confinement can cause or exacerbate mental health problems.⁵⁶

⁵⁴ Mental health problems refers to a broad spectrum of mental, behavioral, or emotional symptoms described by youth, including both youth with and without identified mental disabilities, as well as experiences and symptoms that may be due to psychological immaturity.

⁵⁵ Craig Haney, "Mental Health Issues in Long-Term Solitary and 'Supermax' Confinement," *Crime & Delinquency*, vol. 49, no.1 (2003), pp. 124-156; Holly A. Miller and Glenn R. Young, "Prison Segregation: Administrative Detention Remedy or Mental Health Problem?" *Criminal Behaviour and Mental Health*, vol. 7, no. 1 (1997), p. 85; Hans Toch, *Mosaic of Despair: Human Breakdown in Prison* (Washington DC: American Psychological Association, 1992); Richard Korn, "The Effects of Confinement in the High Security Unit at Lexington," *Social Justice*, vol. 15, no. 1 (1988), p. 8; Stanley L. Brodsky and Forrest R. Scogin, "Inmates in Protective Custody: First Data on Emotional Effects," *Forensic Reports*, vol. 1, no. 4 (1988), p. 267; Stuart Grassian, "Psychopathological Effects of Solitary Confinement," *American Journal of Psychiatry*, vol. 140 (1983), p. 1450.

⁵⁶ The results of and debate regarding a one-year longitudinal study in Colorado suggest the complexities inherent in measuring and understanding the psychological effects of solitary confinement. Maureen L. O'Keefe et al., Colorado Department of Corrections, "One Year Longitudinal Study of the Psychological Effects of Administrative Segregation," October 31, 2010, <https://www.ncjrs.gov/pdffiles1/nij/grants/232973.pdf> (accessed August 27, 2012); Peter Scharff Smith, National Institute of Corrections, "The effects of solitary confinement: Commentary on One Year Longitudinal Study of the Psychological Effects of Administrative Segregation," June 2011, www.community.nicic.gov/cfs-filesystemfile.ashx/_key/CommunityServer.CommunityServer.Components.PostAttachments/00.00.05.95.22/Supermax_2Doo_-T_-2Soo_-Smith.pdf (accessed August 27, 2012). In addition to increased mental health problems generally, suicide rates and incidents of self-harm are much higher for prisoners in solitary confinement. 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*, Eastern Federal District Court of California/Northern Federal District Court of California, 2008 (Civ S 90-0520 LKK-JFM P, C01-1351 THE (E.D. Cal/N.D. Cal. 2008)).

Human Rights Watch and the American Civil Liberties Union are not aware of any studies that look specifically at the effects of prolonged solitary confinement on adolescents. But many experts on child and adolescent psychology said that prolonged isolation, including in conditions as restrictive as solitary confinement, can cause or exacerbate mental disabilities or other serious mental health problems.⁵⁷

Solitary confinement is stressful.⁵⁸ It “engender[s] significant levels of anxiety and discomfort.”⁵⁹ And young people have fewer psychological resources than adults do to help them manage the stress, anxiety and discomfort they experience in solitary confinement.⁶⁰ For many adolescents in prison, developmental immaturity is compounded by mental disabilities and histories of trauma, abuse, and neglect. These factors, though experienced differently by different individuals, can exacerbate the mental health effects of solitary confinement.

Many of the young people interviewed spoke 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. Some young people, particularly those who reported having been identified as having a mental disability before entering solitary confinement, struggled more than others. Fifteen young people described cutting or harming themselves or thinking about or attempting suicide one or more times while in solitary confinement.

⁵⁷ Human Rights Watch telephone interviews with Louis Kraus, Chief of Child and Adolescent Psychiatry, Rush University Medical Center, and Co-Chair of the American Academy of Child and Adolescent Psychiatry Committee on Juvenile Justice Reform, June 14, 2012; with Richard Barnum, forensic child psychiatrist, May 30, 2012; and with Deborah DePrato, Director, Institute for Public Health and Justice, Louisiana State University Health Sciences Center, and Associate Clinical Professor, School of Public Health, June 6, 2012.

⁵⁸ Congressional Quarterly, “Senate Judiciary Subcommittee on Constitution, Civil Rights, and Human Rights Holds Hearing on Reassessing Solitary Confinement,” June 19, 2012, <http://solitarywatch.files.wordpress.com/2012/06/transcript-of-the-hearing.pdf> (accessed August 27, 2012), panel 1, transcript (“We would say that individuals placed in restricted housing, I would say the stress level is obviously higher.”).

⁵⁹ Human Rights Watch telephone interview with Louis Kraus, June 14, 2012.

⁶⁰ Human Rights Watch telephone interview with Deborah DePrato, June 6, 2012.

Not all young people reported experiencing significant mental health problems in solitary confinement. However, these accounts vividly portray the psychological pain and suffering that can be brought on by time in solitary confinement.

Trying to Cope

Many young people described wishing they could mentally escape from solitary confinement, and using a variety of mechanisms to dissociate from their experience. Some developed imaginary friends; some used make-believe or other imaginings to dissociate.

Alyssa E. spent four months in protective solitary confinement when she was sixteen. She said,

It may sound weird but I had a friend in there that I would talk to. She wasn't there, but it was my mind. And I would talk to her and she would respond.... She [would tell] positive things to me. It was me, my mind, I knew, but it was telling me positive things.... It was a strange experience.⁶¹

Carter P., who entered prison at 14, described using make-believe and games to help himself through the first of many times he was held in punitive solitary confinement:

I felt like I was going mad. Nothing but a wall to stare at. This was my tenth wall to stare at in my detention. I started to see pictures in the little bumps in the walls. Eventually, I said the hell with it and started acting insane. [I] made little characters with my hands and acted out [video] games I used to play on the out[side]—Dragon Ball Z, Sonic, Zelda—stuff like that. The [corrections officers] would stare at me—looking at me like I'm crazy.... I started talking to myself and answering myself. Talking gibberish. I even made my own language—[corrections officers] didn't know what I was talking about.⁶²

⁶¹ Human Rights Watch interview with Alyssa E. (pseudonym), Florida, April 2012.

⁶² Human Rights Watch interview with Carter P. (pseudonym), Michigan, March 2012.

Another common strategy to escape solitary confinement was sleep. Jordan E., who reported spending nearly a year in protective solitary confinement when he was 15, described his focus on trying to sleep:

I daydreamed, I slept a bunch. That's how I would handle 20, 18 hours a day. If I wasn't sleeping, I was in bed trying to sleep. Get up, eat, back to bed—lay there and lay there, trying to sleep.⁶³

In spite of their best efforts, many felt that in the struggle to cope with solitary confinement, they faced a losing battle with themselves. As Marvin Q., who spent a week in protective solitary confinement when he was 17, described it,

I wish I had better words—I was really, really lonely.... I [would] try to put covers on my head—make ... like it's not there. Try to dissociate myself ... I don't think they should do that to a juvenile. It's impossible for any person to cope with anything like that. I couldn't help myself.⁶⁴

Anxiety, Rage, and Insomnia

Young people described a variety of mental health problems associated with their solitary confinement. Some said they had their first anxiety attack in solitary confinement; others said they lost themselves to an uncontrollable rage. Several had trouble sleeping. For some, these problems were all experienced simultaneously. Phillip J., who spent approximately 113 days in solitary confinement (including a single period of 60 days) before his eighteenth birthday, said,

I was stressed. At first I would sleep all day. I would feel myself getting angry or aggressive. I would try to work out or do something, but I was literally going insane in that little spot. The claustrophobia set in and I would feel I was having anxiety attacks and would go over and get water and try and calm down. I would hear the slightest noise and be on guard.⁶⁵

⁶³ Human Rights Watch interview with Jordan E. (pseudonym), Colorado, February 2012.

⁶⁴ Human Rights Watch interview with Marvin Q. (pseudonym), Colorado, February 2012.

⁶⁵ Human Rights Watch interview with Phillip J. (pseudonym), Florida, April 2012.

Another young person described mood swings while in solitary confinement. Rafael O. said, “I [would] get depressed, if anything, then have extreme anxiety and feel like I [was] hyper-active, and then get depressed again.”⁶⁶

Parents explained that their loved ones’ struggle was visible during visits (when they were allowed). One woman described visiting her grandchild, whom she identified as having a mental disability, while he was in solitary confinement:

His mind is going and coming when he is locked up by himself all the time.... He is jumpy. He is startled when you talk to him.... He can’t be still—like a nervous person!... He [wa]s always biting on his hands and wrist the whole time I talked to him. Biting his fingers and wrists [and] both hands. He was also grinding his teeth. You can [sic] see his jaw constantly moving. He never did that before.⁶⁷

Some youth experienced anger or rage that they could not control. As one said, “All I would want to do is fight.”⁶⁸ Another said, “I couldn’t sleep. I was having anger. My anger was crazy. I was having outbursts.”⁶⁹ And a third said, “It makes you worse. It really brings the beast out of you to be in there stressing. You start saying, ‘Fuck everything.’ ... [It] makes you more wild; makes you feel like a lion in a cage.”⁷⁰ Kyle B. wrote,

The loneliness made me depressed and the depression caused me to be angry [sic], leading to a desire to displace the agony by hurting others. I felt an inner pain not of this world.... I allowed the pain that was inflicted upon [me] from [my] isolation placement build up while in isolation. And at the first opportunity of release (whether I was being released from isolation or receiving a cell-mate) I erupted like a volcano, directing violent forces at anyone in my path.⁷¹

⁶⁶ Human Rights Watch interview with Rafael O. (pseudonym), Colorado, February 2012.

⁶⁷ Human Rights Watch interview with Effie H. (pseudonym), Florida, April 20, 2012.

⁶⁸ Human Rights Watch interview with Isaac P. (pseudonym), Colorado, February 2012.

⁶⁹ Interview with Jacob L. (pseudonym), New York, April 2012.

⁷⁰ Interview with Alex A. (pseudonym), Florida, April 2012.

⁷¹ Letter from Kyle B. (pseudonym), from California, to Human Rights Watch, May 3, 2012.

Adolescents who had trouble coping or sleeping were sometimes identified by mental health staff and prescribed medication. A number of young people described being prescribed sleeping medication. Mason P., who had spent the four days before he was interviewed in administrative solitary confinement, said,

I don't sleep. They gave me sleeping pills 'cause I can't sleep. I worry a lot.... I started taking them three days ago. They asked if I felt like killing myself or hurting somebody, I said, "Naw," but they told me if I was worrying they said they were going to give me something.⁷²

A Philadelphia County Prison Official observed that many youth held in solitary confinement in the county jail were prescribed sleeping aids and other prescription medications while in isolation: "It was a way [for them] to cope and reduce anxiety."⁷³

But some experts question the practice of treating sleep problems directly. Dr. Cheryl Wills, a child psychiatrist who has diagnosed youth in juvenile and adult facilities, argues that poor sleep patterns are often indicative of another underlying problem:

I am not a proponent of medicating sleep ... the question is, what is it related to—a symptom of depression? Post-traumatic stress? ADHD? So you figure out what is going on and treat sleep as a part of the picture.... There are medications that help youth if they have issues, but you must treat it as a whole package, as part of a treatable diagnosis.... You don't want to medicate a youth unless he or she really needs it.⁷⁴

Treating sleeplessness associated with mental health problems or disabilities is particularly complicated when those problems may themselves be caused or exacerbated by being held in solitary confinement.

Being alone with their thoughts, and especially thoughts of home, made it difficult for them to sleep:

⁷² Human Rights Watch interview with Mason P. (pseudonym), Florida, April 2012.

⁷³ Human Rights Watch interview with a Philadelphia County Prison (jail) Official, Pennsylvania, February 23, 2012.

⁷⁴ Human Rights Watch telephone interview with Dr. Cheryl Wills, independent medical evaluator and director of child and adolescent psychiatric services, Case Western Reserve University, Ohio, May 24, 2012.

I don't even want to sleep here because I can't wait till I get home. Every night before I go to sleep I think about home and can't sleep. I'm up until at least 5 a.m. which causes other outbursts because I'm just thinking.⁷⁵

Inability to sleep can itself cause or exacerbate other mental health problems, and can also indicate an underlying mental disability.

Cutting and Self-Harm

In addition to the psychological pain and suffering that young people reported experiencing while in solitary confinement, some young people reported that they cut or otherwise physically harmed themselves. Among youth in jails and prisons, evidence suggests that this problem affects girls at an even higher rate than boys.⁷⁶ We found both young men and young women who reported harming themselves in solitary confinement. Melanie H., who spent three months in protective solitary confinement when she was fifteen years old, described how cutting helped her cope with feelings of loss she experienced when alone with her thoughts:

I became a cutter [in solitary confinement]. I like to take staples and carve letters and stuff in my arm. Each letter means something to me. It is something I had lost. Like the first one was a [letter], which is the first letter in my mother's name. And every day I would apologize to her. I don't know—I felt like I had a burden I couldn't carry and it made me feel good.⁷⁷

Other young women described using self-harm as a way to call for help or get the attention of officials. Alyssa E. said,

Me? I cut myself. I started doing it because it is the only release of my pain.

⁷⁵ Human Rights Watch interview with Henry R. (pseudonym), Florida, April 2012.

⁷⁶ Summer J. Robins, Candice L. Odgers, and Michael A. Russell, "Incarcerated Girls' Physical Health: Can the Juvenile Justice System Help to Reduce Long-Term Health Costs," *Court Review*, vol. 46 (2009), <http://aja.ncsc.dni.us/publications/courtrv/cr46-1and2/CR46-1-2Robins.pdf> (accessed August 27, 2012), p. 30; Bruce Jacobs, New Mexico State University, "Adolescents and Self-Cutting (Self-Harm): Information for Parents, Guide I-104," June 2005, aces.nmsu.edu/pubs/_i/i-104.pdf (accessed August 27, 2012). Researchers in the United Kingdom found that while women make up approximately 5 percent of the prison population in the UK, they account for 52 percent of reported incidents of self-harm. SP Inquiry, "An independent public inquiry into the treatment of young women in custody," <http://www.howardleague.org/self-injury/> (accessed August 27, 2012).

⁷⁷ Human Rights Watch interview with Melanie H. (pseudonym), Florida, April 2012.

I'd see the blood and I'd be happy.... I did it with staples, not razors. When I see the blood and it makes me want to keep going. I showed the officers and they didn't do anything.... I wanted [the staff] to talk to me. I wanted them to understand what was going on with me.⁷⁸

Psychological experts with experience monitoring health care in adult and juvenile facilities described self-harm as a typical reaction to isolation and an effort to force interaction with others. One psychological expert said,

I think the biggest detriment [in solitary confinement] is lack of interaction. So typically youth become desperate for any interaction. So you see the incidents of self-harm increase. They find ways to hurt themselves or hurt somebody else. Because it is more difficult to withstand longer periods of isolation than an adult ... they are going to find ways to hurt themselves or somebody else or cause problems.⁷⁹

Suicidal Thoughts and Attempts: "The death-oriented side of life"

Twelve young people told Human Rights Watch and the American Civil Liberties Union in detail about times that they thought about or attempted suicide while in solitary confinement. Experts with experience advising jails and prisons on suicide prevention argue that it is uncontroversial that suicide and solitary confinement are correlated:

[N]o one disagrees that the suicide rate is higher for youth in both juvenile facilities, adult jails, and adult prisons.... I think it is safe to say that youth in an adult jail and prison are at higher risk for suicide and youth in isolation in those facilities would also be at higher risk.⁸⁰

Paul K., who spent 60 days in protective solitary confinement when he was 14, described how he came to want to end his life:

⁷⁸ Human Rights Watch interview with Alyssa E. (pseudonym), Florida, April 2012.

⁷⁹ Human Rights Watch telephone interview with Deborah DePrato, Louisiana, June 6, 2012.

⁸⁰ Human Rights Watch telephone interview with Lindsay Hayes, Project Director, National Center on Institutions and Alternatives, Massachusetts, June 13, 2012.

The hardest thing about isolation is that you are trapped in such a small room by yourself. There is nothing to do so you start talking to yourself and getting lost in your own little world. It is crushing. You get depressed and wonder if it is even worth living. Your thoughts turn over to the more death-oriented side of life.... I want[ed] to kill myself.⁸¹

Twelve young people told Human Rights Watch and the American Civil Liberties Union about having either thought about or attempted suicide while in solitary confinement; some had attempted suicide before they were in jail or prison; some described witnessing attempted or successful suicides. Luz M. said suicidal thoughts came immediately after she went into solitary confinement:

I just felt I wanted to die, like there was no way out—I was stressed out. I hung up [tried to hang myself] the first day. I took a sheet and tied it to my light and they came around.... The officer, when she was doing rounds, found me. She was banging on the window: “Are you alive? Are you alive?” I could hear her, but I felt like I was going to die. I couldn’t breathe.⁸²

Some young people have committed suicide while in solitary confinement.⁸³ According to a national expert on suicides in juvenile facilities, jails, and prisons, the evidence suggests

⁸¹ Human Rights Watch interview with Paul K. (pseudonym), Michigan, March 2012.

⁸² Human Rights Watch interview with Luz M. (pseudonym), New York, April 2012.

⁸³ Media reports discuss at least six suicides of youth under 18 in solitary confinement in adult jails or prisons in recent years, including James Stewart (Colorado): Hector Gutierrez, “Family sues city for \$5 million in teen’s jail death: They say their son fought depression after fatal crash,” *Rocky Mountain News*, November 25, 2008, <http://m.rockymountainnews.com/news/2008/nov/25/family-sues-city-5-million-troubled-teens-suicide/>; Joseph Boven, “Colorado criminally failing youth suspects,” *The Colorado Independent*, March 10, 2010, <http://coloradoindependent.com/48181/colorado-criminally-failing-youth-suspects>; Robert Borrego, Jr. (Colorado): Jeff Tucker, “Kin of teen suicide victim sue Pueblo County sheriff,” *The Pueblo Chieftain*, July 10, 2010, http://www.chieftain.com/news/local/article_8eb6efbc-8bf6-11df-b7e2-001cc4c03286.html; Jonathan McLard (Missouri): Orlando Campbell, The W. Haywood Burns Institute for Juvenile Justice Fairness & Equity, “A Son’s Suicide Inspires Mother To Fight For Juvenile Justice,” April 26, 2010, <http://www.burnsinstitute.org/article.php?id=216>; Bridget DiCosmo, “Tracy McClard given award by Campaign for Youth Justice and the National Juvenile Justice Network,” *Southeast Missourian*, May 5, 2009, <http://www.semissourian.com/story/1536332.html>; Kirk Gunderson (Wisconsin): Jo Anne Killeen, “Onalaska mother still pushing on juveniles in jail issue,” *Onalaska Holmen Courier News*, July 7, 2011, http://lacrossetribune.com/courierlifeneews/news/local/article_fbe60666-a8c6-11e0-88a4-001cc4c002e0.html; Rodney Hulin (Texas): Testimony of Ms. Linda Bruntmyer, Hearing before the Senate Judiciary Committee on The Prison Rape Reduction Act of 2002, July 31, 2002, http://www.judiciary.senate.gov/hearings/testimony.cfm?id=4f1e0899533f7680e78d03281fe329f3&wit_id=4f1e0899533f7680e78d03281fe329f3-2-1; Wikipedia, “Suicide of Rodney Hulin,” http://en.wikipedia.org/wiki/Suicide_of_Rodney_Hulin; and Jasper Simmons (Arizona): Elizabeth Banicki, “Jail Not Liable for Teen’s Suicide, Circuit Says,” *Courthouse News Service*,

that most suicides in juvenile (not adult) facilities occur while youth are confined alone to their room.⁸⁴

Struggling with Mental Disabilities and Past Trauma

Many adolescents face the additional challenge of coping with a mental disability while in solitary confinement.⁸⁵

Studies suggest that youth under age 18 enter the adult criminal justice system with high rates of mental disabilities.⁸⁶ Approximately 48 percent of adolescents between the ages of 16 and 18 in New York City Department of Corrections custody in FY2012, for example, had a diagnosed mental disability.⁸⁷ But some mental disabilities do not manifest until youth reach their teen years.⁸⁸

Some young people in solitary confinement likely struggle to cope simultaneously with the psychological vulnerabilities associated with their developing brains and the onset of mental disabilities, such as schizophrenia or bipolar disorder. As one expert, Dr. Cheryl

June 24, 2010, <http://www.courthousenews.com/2010/06/24/28353.htm>, *Simmons v. Navajo County, Ariz.*, Fifth Circuit Federal Court of Appeals, 2010 (609 F.3d 1011 (5th Circ. 2010)), <http://www.leagle.com/xmlResult.aspx?xmlDoc=in%20ofco%2020100623177.xml&docbase=cslwar3-2007-curr> (all accessed September 27, 2012).

⁸⁴ Human Rights Watch telephone interview with Lindsay Hayes, Project Director, National Center on Institutions and Alternatives, Massachusetts, June 13, 2012.

⁸⁵ As used in this report, mental disabilities include diagnosable mental, behavioral, or emotional conditions that substantially interfere with or limit one or more major life activities; some refer to mental disabilities as “mental illnesses.” Persons with mental disabilities also refer to themselves as having psychosocial disabilities, a term that reflects the interaction between psychological differences and the social/cultural limits for behavior as well as the stigma that society attaches to persons with mental impairments. The Diagnostic and Statistical Manual of Mental Disorders defines a mental disorder as a “clinically significant behavioral or psychological syndrome or pattern that occurs in an individual” which is a “manifestation of a behavioral, psychological, or biological dysfunction in the individual.” American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders DSM-IV-TR Fourth Edition* (Arlington, Virginia: American Psychiatric Association, 2000), p. xxxi. The current revised edition of the DSM-IV, known as the DSM-IV-TR, organizes psychiatric diagnoses into five levels (axes) that include serious clinical disorders like schizophrenia or bipolar disorder (Axis 1), serious personality disorders such as paranoia (Axis 2), and traumatic brain injuries (Axis 3).

⁸⁶ Jason Washburn et al., “Psychiatric Disorders Among Detained Youths: A Comparison of Youths Processed in Juvenile Court and Adult Criminal Court,” *Psychiatric Services*, vol. 59, no. 9 (2008), <http://ps.psychiatryonline.org/data/Journals/PSS/3857/08ps965.pdf>, p. 965 (accessed August 27, 2012).

⁸⁷ That is, a diagnosis of a mental health condition defined by the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association. Human Rights Watch email correspondence with Sharman Stein, Deputy Commissioner, New York City Department of Corrections, July 27, 2012; Human Rights Watch email correspondence with Robin Campbell, Deputy Commissioner, New York City Department of Corrections, September 26, 2012.

⁸⁸ Human Rights Watch telephone interviews with Deborah DePrato, June 6, 2012; and with Dr. Cheryl Wills, May 24, 2012.

Wills, a child psychiatrist with experience diagnosing youth in juvenile and adult facilities, described,

Sometimes youth will have psychosis in flashes. It will come out in the stress of being in [isolation] but not with other youth. I have personally seen youth who were not psychotic and you put them in [isolation] and they are psychotic. Was it going to happen? Yes. Did it happen faster in [isolation]? Possibly.⁸⁹

It is not often possible for young people themselves or corrections professionals to identify adolescents with mental disabilities before they are subjected to solitary confinement because some serious mental disabilities do not manifest until late adolescence.⁹⁰ Some of the young people interviewed by Human Rights Watch and the American Civil Liberties Union had been identified as having a mental disability at an early age. Others reported experiencing various mental health problems throughout their youth and while in solitary confinement, without having been identified as having a mental disability. Some experienced mental health problems and were identified as having a mental disability for the first time during or after a period of solitary confinement.

Landon A., who struggled with auditory and visual hallucinations before going to jail, described his experience in solitary confinement: “I would hear stuff. When no one was around it was harder to control. When I was by myself, I would hear stuff and see stuff *more*.”⁹¹ He said he was usually awake between 10 p.m. and 3 a.m., trying to manage the hallucinations. “I hear the most stuff at night,” he said, “so it’s the hardest time to sleep.”

Young people with mental disabilities interviewed by Human Rights Watch and the American Civil Liberties Union repeatedly described the pain and suffering associated with attempting—and failing—to cope with the mental health problems they experienced in

⁸⁹ Human Rights Watch telephone interview with Dr. Cheryl Wills, May 24, 2012.

⁹⁰ For example, one study found that the mean age for the onset of the mental health problems associated with a diagnosis of schizophrenia was 19 years old. Nitin Gogtay et al., “Age of Onset of Schizophrenia: Perspectives from Neuroimaging Studies,” *Schizophrenia Bulletin*, vol. 37 (2011), <http://schizophreniabulletin.oxfordjournals.org/content/37/3/504.short> (accessed September 26, 2012), p. 504.

⁹¹ Human Rights Watch interview with Landon A. (pseudonym), Florida, April 2012.

solitary confinement. Asked about struggling into the night with his hallucinations, Landon A. said solitary confinement is “not a place that you want to go. It’s like mind torture.”⁹²

Some also reported that solitary confinement triggered memories of past trauma, making it yet more difficult to cope with the experience. Youth in the criminal justice system have histories of trauma and abuse at much higher rates than the general population.⁹³ And there is significant evidence to suggest that girls enter the criminal justice system having suffered physical or sexual abuse at much higher rates than boys, and therefore struggle disproportionately with past trauma.⁹⁴ Melanie H., for example, was held in protective solitary confinement for three months when she was 15 years old. She said, “When I was eleven, I was raped. And it happened [again] in 2008 and 2009.”⁹⁵ When she was isolated, the memories came back: “I was so upset ... and a lot was surfacing from my past.... I don’t like ...feeling alone. That’s a feeling I try to stay away from. I hate that feeling.”⁹⁶

As one defense attorney opined,

If you isolate a kid [for whom] isolation was a form of child abuse, the jail doesn’t know how to deal [with that]. I have represented clients who have locked [their] kids in a closet and go[ne] out all night long—closets are cheap baby sitters. [I] don’t think anyone explores those issues with those kids—there is no difference in protocols, no accommodation [of past trauma].⁹⁷

Thirty-five interviewees spent more than one period in solitary confinement before they turned 18. This repeated isolation, according to experts, “leaves [youth] with a potential for

⁹² Ibid.

⁹³ Washburn et al., “Psychiatric Disorders Among Detained Youths: A Comparison of Youths Processed in Juvenile Court and Adult Criminal Court.”

⁹⁴ Meda Chesney-Lind, *The Female Offender: Girls, Women and Crime* (Thousand Oaks, California: SAGE Publications, 1997), pp. 25-26; Cathy S. Wisdom and Michael G. Maxfield, National Institute of Justice, US Department of Justice, “An Update on the ‘Cycle of Violence,’” 2001, <https://www.ncjrs.gov/pdffiles1/nij/184894.pdf> (accessed August 27, 2012); National Mental Health Association, “Mental Health and Adolescent Girls in the Justice System,” 1999; National Council on Crime and Delinquency, Center for Girls and Young Women, “Getting the Facts Straight about Girls in the Juvenile Justice System,” February 2009, http://www.nccglobal.org/sites/default/files/publication_pdf/fact-sheet-girls-in-juvenile-justice.pdf (accessed August 27, 2012); Robins, Odgers, and Russell, “Incarcerated Girls’ Physical Health,” *Court Review*, p. 30.

⁹⁵ Human Rights Watch interview with Melanie H. (pseudonym), Florida, April 2012.

⁹⁶ Ibid. Melanie H. also reported more than one experience of double-celled isolation.

⁹⁷ Human Rights Watch interview with Shauna Geiger, Defense Attorney, Colorado, February 5, 2012.

a post-traumatic reaction.”⁹⁸ Phillip J., for example, who was first held in solitary confinement for 36 days when he was 16, described how isolation itself became a trigger for traumatic memories of solitary confinement:

Once you are confined the way I was, then any other confinement just triggers that experience—loss of sleep, all these different flashbacks of different bad events. You try to harness it, but you don’t know how or what’s going on or what’s happening.⁹⁹

Barriers to Accessing Care

Young people in solitary confinement do not get the help they need to cope or adequate access to treatment for mental health problems, whether preexisting or newly developed. Because of this lack of adequate care or access, their suffering can be worse than it may otherwise have been.

Human Rights Watch has elsewhere documented the widespread failures of state prison systems to provide access to care for adults experiencing mental health problems, including those with mental disabilities.¹⁰⁰ On the contrary, prison systems sometimes react to prisoners experiencing a crisis by punishing them. Isaiah O., who entered jail at 17, told us,

Sometimes, when I cut, having a razor or using it against myself, they would give me a [disciplinary violation] for making the room unsanitary or, two, for having a weapon.... It felt like I was going against myself and they was [sic] going against me. That’s when I started going crazy. I mean, I felt with the depression and them going against me, that’s when I started catching assaults. I guess I was fighting two wars—myself and then the officers.¹⁰¹

⁹⁸ Human Rights Watch interview with Louis Kraus, Illinois, June 14, 2012.

⁹⁹ Human Rights Watch interview with Phillip J. (pseudonym), Florida, April 2012.

¹⁰⁰ Human Rights Watch, *Ill-Equipped: U.S. Prisons and Offenders with Mental Illness*, October 22, 2003, <http://www.hrw.org/sites/default/files/reports/usa1003.pdf>.

¹⁰¹ Human Rights Watch interview with Isaiah O. (pseudonym), Florida, April 2012.

While some young people, like Isaiah O., described being punished for conduct related to mental health problems, others reported being diverted from one form of solitary confinement to another to protect them from self-harm.¹⁰²

In some facilities, young people felt that the only way to get mental health care was through self-harm:

Sometimes you have to [cut yourself] to go to [medical solitary confinement for suicide watch]... get psychological attention ... because if you have a psychological emergency or you need to talk to somebody they won't let you. [So I] cut myself on my arm ... [when] I be thinking in my head I need to talk to somebody before I do something I don't want to do.¹⁰³

A few young people described corrections staff telling them that they did not believe their cries for help or their requests for mental health care. An extremely complicated and toxic atmosphere can develop when corrections staff feel they need to be gatekeepers to mental healthcare. It is too easy for overworked and under-resourced medical and corrections staff to dismiss as malingering a cry for help. Indeed, some may exaggerate their symptoms precisely *because* the solitary confinement is unbearable.

But, as one expert psychiatrist who evaluates mental healthcare in detention, Dr. Cheryl Wills, said, mental health crises must be taken seriously:

[Youth] need to be taken seriously whether or not they are malingering. I have heard youth and adults say that [staff told them] that if they were going to do it [kill themselves], don't do it on that staff member's shift. The security staff is not expert in suicide risk assessment and some malingerers also are mentally ill. The psychiatric interview includes an assessment of suicide risk that is used to formulate a treatment plan. All threats of suicide should be assessed, especially in incarcerated individuals who lack

¹⁰² See Section III for a fuller discussion of medical solitary confinement.

¹⁰³ Human Rights Watch interview with Graciela N. (pseudonym), Florida, April 2012.

the flexibility to leave the facility and to seek mental health services at a local emergency room.¹⁰⁴

Physical Harm

Solitary confinement, and practices associated with it, can cause serious physical harm to youth.

Young people held in adult jails and prisons are frequently far from full-grown. Many of the young people we interviewed entered jail or prison inches and pounds away from adulthood. One young man described being unable to fit in his orange jumpsuit: “I believe I was 5’4” or 5’5” ... I weighed maybe 140 ... in [solitary confinement] they gave you the [orange uniform]. It was too big for me. It kept falling off my waist and everything.”¹⁰⁵

Jails and prisons are rarely equipped to appropriately manage or provide for those who are physically immature. Our research showed that solitary confinement in adult facilities resulted in a deprivation of exercise and adequate nutrition.

Lack of Adequate Exercise

One of the defining experiences for youth held in solitary confinement in many facilities is the hour out: one hour, each day, during which adolescents are permitted, whether in a hallway, dayroom, or metal cage, to walk around or exercise. Some facilities allow a few minutes more or less than an hour, but an hour out is standard practice. However, Human Rights Watch and the American Civil Liberties Union found that few facilities actually provide for or encourage physical exercise for youth in solitary confinement. Of the 77 young people we interviewed on their experience in solitary confinement, 15 reported spending at least one period in solitary confinement during which they were allowed no recreation at all. Young people in Florida prisons, for example, reported being denied recreation for the first *thirty days* spent in disciplinary solitary confinement, pursuant to Department of Corrections (DOC) policy.¹⁰⁶

¹⁰⁴ Human Rights Watch email correspondence with Dr. Cheryl Wills, independent medical evaluator and director of child and adolescent psychiatric services, Case Western Reserve University, Ohio, August 13, 2012.

¹⁰⁵ Human Rights Watch interview with Carter P. (pseudonym), Michigan, March 15, 2012.

¹⁰⁶ See Appendix 2 for a discussion of Florida.

Even when held in facilities that allowed outdoor recreation, some adolescents in solitary confinement reported that they were not always able to exercise. Jacob L. described having to wake, without a clock or alarm, to ask to go to recreation:

You go to rec[reation] for an hour, but you have to be up at six in the morning to catch the yard. Before they serve breakfast—you got to catch them before breakfast and [then] they take you after breakfast. So if you don't know how to wake up, you can't go outside. That's supposed to be mandatory [but] they don't ask you—you have to tell them.¹⁰⁷

Due to reduced staffing on weekends, some facilities only offer recreation during the week.

The Centers for Disease Control (CDC) and the US Department 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.¹⁰⁸ Both agencies recommend that youth regularly do a combination of activities, including vigorous aerobic activity, like running, at least three days a week; muscle-strengthening activity, such as gymnastics, at least three days a week; and bone-strengthening activity, such as jumping rope, at least three days a week.¹⁰⁹

Most young people who did get to exercise outdoors, like Jacob L., did so in a small, individual, fenced-in cage, often barely larger than their cell. Almost all young people spent their out-of-cell time alone. It is hard to imagine that these conditions would permit adequate aerobic or muscle-strengthening exercise, let alone an adequate contrast from time in one's cell.

Human Rights Watch and the American Civil Liberties Union did not interview any young people who described a jail or prison recreation regime that ensured or encouraged strenuous aerobic physical activity. Many young people described working out in their

¹⁰⁷ Human Rights Watch interview with Jacob L. (pseudonym), New York, April 2012.

¹⁰⁸ Centers for Disease Control and Prevention, "How much physical activity do children need?," <http://www.cdc.gov/physicalactivity/everyone/guidelines/children.html> (accessed August 27, 2012); US Department of Health and Human Services, "Physical Activity Guidelines for Americans," <http://www.health.gov/paguidelines/factsheetprof.aspx> (accessed August 27, 2012).

¹⁰⁹ Centers for Disease Control and Prevention, "How much physical activity do children need?"; US Department of Health and Human Services, "Physical Activity Guidelines for Americans."

cells to cope with their time in confinement. Jason L. described pacing his cell until he was exhausted:

I kind of talked myself through it. Pace[d] the room. I learned that walking and talking takes you outside. So I would walk and talk for about the first four days until I was dead tired, then sleep for about three and do it over.¹¹⁰

Physical Changes and Stunted Growth

Youth who are physically growing and changing need age-appropriate attention and care. Human Rights Watch and the American Civil Liberties Union found that young people in solitary confinement are sometimes denied access to this care in facilities that provide it, and are denied it altogether in those that do not. A number of young people reported going to sleep hungry night after night. Some told Human Rights Watch and the American Civil Liberties Union that they experienced (or witnessed in other adolescents) other physical changes as a result of the stress of solitary confinement, such as hair or weight loss.

Several facilities reported that there are no differences between the physical health and dental services available for youth and adults.¹¹¹ As one facility reported, “[A youth is] treated as an adult for medical, dental, mental health issues.”¹¹²

Inadequate Nutrition

One of the most common complaints of young people held in solitary confinement was that the food and meal schedule were nutritionally inadequate, and that they were denied the opportunity to supplement their nutrition by purchasing food items from the facility’s commissary or canteen. Some young people described losing weight as a result.

Caroline I., who spent approximately 41 days in punitive solitary confinement while she was under 18, said, “They only give you a little food, so that’s hard. You lose weight... I

¹¹⁰ Human Rights Watch interview with Jason L. (pseudonym), Florida April 2012.

¹¹¹ For example, in Michigan and Wisconsin. Letter from Scott Lamiman, Jail Population Coordinator, Muskegon County, Michigan, to Human Rights Watch, January 24, 2012; and letter from Brian Puent, Trempealeau County Sheriff’s Department, Wisconsin, to Human Rights Watch, January 10, 2012.

¹¹² Letter from Kathy Beauer, Deputy Sheriff, Iron County Sheriff’s Department, Wisconsin, to Human Rights Watch, January 10, 2012.

went in 150 and came out 132. That’s more than 15 pounds!”¹¹³ A grandmother who visited her grandson in solitary confinement observed that he “definitely lost weight—he’s so little [now].” She estimated that he lost 15-20 pounds after he entered solitary confinement.¹¹⁴

Some young people said that, during their time in punitive solitary confinement, their diet was changed to a baked nutritional loaf as a form of additional punishment. Others described being fed a diet that consisted mostly of beans and processed foods.

The US Department of Agriculture and the National Institutes of Health both recommend a balanced diet of nutrient-dense foods, including vegetables, fruits, and whole grains.¹¹⁵ While the overall nutritional needs of youth and adults are similar in regards to caloric intake, youth physical development, including bone development, requires additional amounts of some nutrients to ensure healthy growth.¹¹⁶

Other Physical Effects

Young people interviewed by Human Rights Watch and the American Civil Liberties Union described experiencing other physical changes in solitary confinement. One young person reported, “I saw a guy who lost his hair in [solitary confinement]. He wasn’t like that before he got locked up.”¹¹⁷

One female interviewee described that, during the months she was in solitary confinement, she stopped menstruating. She recalled that she didn’t start again until after she was transferred out of solitary confinement and to a juvenile facility:

You know it is funny to say. I know I was having periods at that time of my life. But I don’t have any memories of having one at the jail. I remember I went through a long period of time at the juvenile facility where I didn’t have them. That was right when I came back [from jail]. I knew it was a

¹¹³ Human Rights Watch interview with Caroline I. (pseudonym), New York, April 2012.

¹¹⁴ Human Rights Watch interview with Effie H., Florida, April 20, 2012.

¹¹⁵ Center for Nutrition Policy and Promotion, United States Department of Agriculture, “Dietary Guidelines for Americans,” 2012, <http://www.cnpp.usda.gov/dietaryguidelines.htm> (accessed August 27, 2012).

¹¹⁶ Ibid.; Aglaee Jacob, Demand Media, “Adult Vs. Teen Nutrition,” *SFGate*, <http://healthyeating.sfgate.com/adult-vs-teen-nutrition-1083.html> (accessed August 27, 2012).

¹¹⁷ Human Rights Watch interview with Ernesto D. (pseudonym), Pennsylvania, January 2012.

number of months because for a long time I was wondering why I wasn't having them. I remember because most women complain about them but when I got mine again I was glad. It made me feel human—or at least functioning the way things were supposed to be.¹¹⁸

Studies have linked changes in menstruation to stress and trauma.¹¹⁹

Social and Developmental Harm

Young people in solitary confinement are frequently deprived of contact with their families and their own children, access to education, and to programming or services necessary for their growth, development, and rehabilitation.

Denial of Family Contact

Limitations on family visits are a common feature of all forms of solitary confinement. Many facilities deny adolescents contact with their families while they are in solitary confinement. For some, this means no visits, no phone calls, and no letters. Facilities often view these things as privileges that young people in solitary confinement can be denied as a result of their classification, or to punish them.

Twenty-one teenagers told us they were denied the ability to visit with loved ones during a period of solitary confinement. Nineteen spent at least one period in solitary confinement during which they were only allowed to visit with loved ones while in a cage, behind glass, or by video-conference. Eleven spent at least one period in solitary confinement during which they were not allowed to write letters to loved ones, having been denied access to pen or pencil and paper.

For some young people, family is the only thing that gives them hope:

I catch myself in the moment, attempting [suicide]. But then I think about my family and everyone on the outs[ide] and I think, if I chose to do that, I

¹¹⁸ Human Rights Watch interview with Molly J. (pseudonym), Michigan, March 2012.

¹¹⁹ Some researchers have identified a link between a range of factors and interruptions of hormonal homeostasis in various contexts. Katarzyna Bisaga et al., "Menstrual Functioning and Psychopathology in a Country-Wide Population of High School Girls," *Journal of the Academy of Child and Adolescent Psychiatry*, vol. 41, no. 10 (October 2002).

can never come home. I think if it weren't for my family, I would have chosen to commit suicide.¹²⁰

Jeffrey J., whom Human Rights Watch and the American Civil Liberties Union interviewed in administrative solitary confinement while he was awaiting a disciplinary hearing, feared losing contact if placed in punitive solitary confinement:

I hope they don't take my visits or call away. Today is going to make the third day I haven't got a call.... My mom really, really cares about me so she wants to know what is going on.... As long as I can talk to my family, I'll be okay. I could be in a room all day if I could talk to my family.¹²¹

In some facilities, young people were allowed visits when in solitary confinement, but denied physical contact with their family members, forced to talk through glass or a metal screen. For some, this was as painful as solitary itself: "The hardest part is being behind glass when your family visits and you can't hold your family."¹²² Young people cited the denial of hugs and kisses as a source of pain and suffering. Another teenager said, "It was very depressing not to be able to give them a hug. I would cry about that."¹²³ Again and again, young people stressed the importance of physical touch. One young woman said, "[Visits] behind glass ... [were] torture—I couldn't touch my family."¹²⁴ A few young parents reported that they were also prevented from receiving visits from their own children while in solitary confinement.

Denial of Adequate Education

Young people in solitary confinement, including adolescents with intellectual disabilities, commonly reported being denied access to adequate education. Youth in some facilities were regularly provided with a packet of educational materials for in-cell self-study, but often their completed work went ungraded and their questions unanswered.

¹²⁰ Human Rights Watch interview with Henry R. (pseudonym), Florida, April 2012.

¹²¹ Human Rights Watch interview with Jeffrey J. (pseudonym), Florida, April 2012.

¹²² Human Rights Watch interview with Craig G. (pseudonym), Pennsylvania, March 2012.

¹²³ Human Rights Watch interview with Sean F. (pseudonym), Michigan, March 2012.

¹²⁴ Human Rights Watch interview with Lauren C. (pseudonym), Florida, April 2012.

For some jails and prisons, access to education ends the moment the solitary confinement cell door slams shut, regardless of the age of the inmate inside.¹²⁵ As Darrell E., who spent approximately 20 days in protective solitary confinement in jail when he was 15, stated bluntly, “No, there was no school for inmates in isolation and there were no exceptions for me.”¹²⁶

Only 31 young people reported receiving educational programming of any type during a period of solitary confinement. Fourteen young people reported spending a period of time in solitary confinement during which they were provided only with a packet of materials to complete in their cell. Twenty-five young people reported spending a period of time in solitary confinement during which they were not provided any educational programming at all; sixteen described spending periods of time in solitary confinement without even a book or magazine to read.

In a few states, education in jails is provided in consultation (or even directly by) state or local departments of education (or school boards). In some of these jurisdictions, the law only provides for limited education, such as four hours per week in Colorado, and allows security exceptions that are applied to youth in solitary confinement.¹²⁷ In other jurisdictions, youth in solitary confinement are taught through “cell study,” packets of materials dropped off at their cells.¹²⁸ Some young people reported eagerly—and quickly—completing any work packets provided by jails or prisons. Others said they refused to study in their cells. Jeremiah I. said,

If you are enrolled in school, they slide a packet under your door. I don’t do it. I don’t feel like doing work in my cell. If they would take me to school I would do it, but ... they just keep giving you work.¹²⁹

¹²⁵ Human Rights Watch telephone interview with Daryl Tyus, Operations Lieutenant, Jackson County Correctional Facility, Florida, April 3, 2012 (“They do not attend [school]—they lose that”). For youth in some facilities, this is true whether or not youth are in solitary confinement.

¹²⁶ Letter from Darrell E. (pseudonym), from Wisconsin, to Human Rights Watch, May 14, 2012.

¹²⁷ Colorado State Division of Criminal Justice, “SB 10-054 Annual Report—2nd Revision,” January 23, 2012.

¹²⁸ Human Rights Watch telephone interviews with Jeff Dunmire, School Principal, Secure Correctional Institution Pine Grove, Pennsylvania Department of Corrections, Pennsylvania, June 21, 2012; and with Dora B. Schriro, Commissioner, New York City Department of Corrections, July 6, 2012.

¹²⁹ Human Rights Watch interview with Jeremiah I. (pseudonym), New York, April 2012.

Some facilities take no further steps after an adolescent, like Jeremiah, refuses education. Sometimes, those who received cell-study materials were able to consult with a teacher. However, usually this was either through the cell door or by phone. One young woman described how “the officer who does cell-study asks if you have anything and want to talk to your teacher and then you talk on the phone.”¹³⁰ Some young people reported interrupted or infrequent contacts with educators.

As discussed above, a number of young people reported experiencing serious mental health problems in solitary confinement. Some of those young people described diminished reasoning and learning abilities as a result of solitary confinement. Jordan E. described feeling mentally slower after solitary confinement:

[Solitary confinement] absolutely slowed down my thinking skills. I would come out of [solitary] and be demonstrably slower. Following conversations, doing math work, my brain slowed down quite a bit. I was far more depressed. There were no real mental health services [in the jail].¹³¹

Struggling with Intellectual Disabilities

While adult facilities, especially jails, struggle to provide *any* educational programming for youth, specialized programming for youth with intellectual disabilities is even rarer.¹³²

Human Rights Watch and the American Civil Liberties Union interviewed 11 young people who reported that before entering jail or prison they had either been taught in special classes, having been identified as having a learning disability, or had an individual education plan.¹³³ Some facilities are unable to identify adolescents with intellectual disabilities, relying on records provided by parents or schools in the community. One prison official reported,

¹³⁰ Human Rights Watch interview with Laura F. (pseudonym), New York, April 2012.

¹³¹ Human Rights Watch interview with Jordan E. (pseudonym), Colorado, February 2012.

¹³² Intellectual disabilities, as used in the report, are permanent developmental limitations. The American Association on Intellectual and Development Disabilities defines intellectual disabilities as “characterized by significant limitations both in intellectual functioning and in adaptive behavior, which covers many everyday social and practical skills. This disability originates before the age of 18.” Intellectual functioning refers to the ability to learn, reason, and problem-solve. American Association on Intellectual and Development Disabilities, “FAQ on Intellectual Disability,” http://www.aaidd.org/content_100.cfm?navID=21 (accessed August 27, 2012).

¹³³ An individual education plan is a tailored plan for meeting educational goals and requirements, developed by educators with input from individuals and their families.

We are not allowed to identify [learning disabilities]. As a department, we don't identify those types of issues. If we get an individual and we think they might be [in need of] special education—if a parent has paperwork—we can do that process. But as far as someone coming in off the street? If we don't have paperwork, we can't do that.¹³⁴

The provision of educational programming to young people with intellectual disabilities can also be complicated by the checkered educational history of many adolescents, even though they may never have been identified as having an intellectual disability.

The Individuals with Disabilities Education Act (IDEA) is a federal law that governs the provision of appropriate special education and related services for youth with disabilities. IDEA was signed into law in 1990 and was significantly amended in 2004. All states receive IDEA funds and are therefore subject to its provisions.¹³⁵ IDEA requires the provision of a free and appropriate public education to youth with disabilities, in the least restrictive environment, according to their individual needs through age 21.¹³⁶ In defining the “least restrictive environment,” IDEA states,

To the maximum extent possible, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or *other removal of children with disabilities from the regular educational environment* [emphasis added] occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.¹³⁷

With regard to detention facilities, IDEA states that governors or other appropriate state officials may assign to any public agency in their state the responsibility of ensuring that

¹³⁴ Human Rights Watch telephone interview with Jeff Dunmire, School Principal, Secure Correctional Institution Pine Grove, Pennsylvania Department of Corrections, Pennsylvania, June 21, 2012.

¹³⁵ Office for Civil Rights, US Department of Education, “Free Appropriate Public Education for Students With Disabilities: Requirements Under Section 503 of the Rehabilitation Act of 1973,” August 2010, <http://www2.ed.gov/about/offices/list/ocr/docs/edlite-FAPE504.html> (accessed August 27, 2012).

¹³⁶ US Code, State Eligibility, 20 U.S.C. § 1412(a).

¹³⁷ US Code, State Eligibility, 20 U.S.C. § 1412(a)(5)(A) (emphasis added).

particular requirements are met with respect to youth with disabilities who are convicted as adults and are incarcerated in adult prisons.¹³⁸

But state law exemptions for adult facilities leave many adolescents with disabilities without the basic educational guarantees set forth in IDEA. Florida, for example, allows for young people with disabilities who are convicted as adults and incarcerated in adult prisons to be exempted from certain IDEA provisions regarding assessment and transition planning.¹³⁹ In addition, for young people with disabilities in Florida’s adult prisons, the team devoted to a student’s Individualized Education Program (IEP) may modify that youth’s program or placement based on certain security or penal interests beyond the restrictions set forth in IDEA.¹⁴⁰ Youth with disabilities in solitary confinement are often prevented from receiving proper educational services, such as basic out-of-cell instruction.

Failure to Provide for Rehabilitation or Social Development

Some of the deprivations that young people confront in solitary confinement differ little from the normal conditions of incarceration. Jails and prisons spend few resources on programming or services, with jails spending even fewer resources than prisons. Human Rights Watch and the American Civil Liberties Union found that it was exceedingly rare that facilities provided programming or services aimed at rehabilitation or social development to young people under age 18 in solitary confinement. While this is a problem for adolescents in adult facilities generally, the problem is acute for those in solitary confinement. Youth enter jails and prisons—and solitary confinement—in the midst of a transition to adulthood.

As one expert with experience in juvenile and adult facilities told Human Rights Watch and the American Civil Liberties Union,

We are raising these kids. We need to teach them.... What we are doing is putting young men [and women] who are forming their identity in a situation where they are learning to do things—not in a good way.... So if we

¹³⁸ US Code, State Eligibility, 20 USC. § 1412(a)(11)(C).

¹³⁹ Provision of Free Appropriate Public Education (FAPE) and Development of Individual Educational Plans for Students with Disabilities, Fla. Admin. Code r. 6A-6.03028(3)(l).

¹⁴⁰ Ibid.

are going to send young men [and women] to prison, we need truly specialized units where they can learn and grow. Because I think we all want them to be better off when they come out. The other thing they need is skills that will help them on the outside.¹⁴¹

Young people who have not had the same life experience as adults need programming to facilitate their development. Those who have been convicted of a crime *also* require rehabilitative programming. All youth deprived of their liberty need programming aimed at reentry into society. The longer young people are held in solitary confinement, the more egregious the deprivation becomes.

Almost all adolescents charged or convicted in the adult criminal justice system are eventually released into the community. Young people, as well as corrections and psychological experts, expressed concerns about the long-term implications for youth, and public safety, of failing to adequately provide for youth development and rehabilitation. Todd D., who entered jail when he was 17, said this about his own experience,

I can't speak for everybody but I know if I was given that opportunity I would be different right now. The good changes in my life, I had to learn by myself. But that road, it scars you in ways—it's bad.¹⁴²

¹⁴¹ Human Rights Watch telephone interview with Deborah DePrato, Louisiana, June 6, 2012.

¹⁴² Human Rights Watch interview with Todd D. (pseudonym), Colorado, February 2012.

III. Youth in Solitary Confinement in Adult Facilities: Corrections Practices, Numbers, and Duration

Jails and prisons generally use solitary confinement for one of three reasons: to punish inmates; to manage them (either to protect others from them, or them from others); or to treat them. Yet the conditions that young people in solitary confinement experience are essentially the same, regardless of the purpose for which it is being used. Young people held in adult facilities across the United States are subjected to all forms of solitary confinement, without accommodation for their age or developmental needs, and often for weeks and months.

Solitary Confinement to Punish Inmates

Jails and prisons often maintain internal order through a system of discipline, with solitary confinement among the most serious in a range of sanctions for violating facility rules. Facilities across the United States—whether they hold youth with adults, with other adolescents, or in isolation—frequently subject young people under age 18 to the same disciplinary rules as adult inmates.¹⁴³ Human Rights Watch and the American Civil Liberties Union have found that jails and prisons impose terms of solitary confinement of 15, 30, 60, 90 days, or longer for *each infraction* committed within a facility, and frequently punish a range of inmate behaviors within isolation with additional terms of solitary confinement.¹⁴⁴

Corrections officials in many county jails reported that youth who violate facility rules can be placed in separation, or segregation, or special management cells.¹⁴⁵ Human Rights

¹⁴³ See Appendix 2; Colorado Department of Corrections, Code of Penal Discipline, IV(B) http://www.doc.state.co.us/sites/default/files/ar/0150_01_09012011.pdf (accessed August 27, 2012) (“All offenders in the custody of the executive director of the DOC should be subject to this code. All violations of this code should be punishable as disciplinary violations.”).

¹⁴⁴ For example, one official stated, “[Isolation] [c]ould be up to 30 days. Depends on what they did. If they have many disciplinary reports in that 30 day span, then it could be extended.” Human Rights Watch telephone interview with Daryl Tyus, Operations Lieutenant, Jackson County Correctional Facility, Florida, April 3, 2012.

¹⁴⁵ We used a range of terminology in corresponding with jail and prison officials to ensure that we obtained information about all practices involving significant levels of isolation. Of the 80 jail officials who responded to Human Rights Watch correspondence on detaining and managing youth, 34 responded to a question about whether youth can be held in separation, segregation, or special management cells; 30 of them indicated that youth could be held in such cells (four said they could not). Officials in this limited sample reported holding 44 youth in separation, segregation, or special management cells in the past year. Human Rights Watch cannot confirm the precise conditions of confinement for these youth, or whether the youth were held in solitary confinement. Letter from Liz O’Neal, Special Management Coordinator, El Paso County

Watch and the American Civil Liberties Union interviewed young people who had been subjected to several— often prolonged—periods of punitive solitary confinement. Of the individuals interviewed by Human Rights Watch and the American Civil Liberties Union, 41 had spent time in at least 1 period of punitive solitary confinement while under age 18; 22 of those young people had spent a total of 2 months or longer in punitive solitary confinement before they turned 18.

One young man who was held in punitive solitary confinement in New York said,

The cell was hell. Hell.... Can't talk to nobody.... I counted the bricks. There was a bed, a desk, a toilet, a sink, and a window. It was small because all the stuff was in there ... [you can] see outside—busses, birds, fields, people in the yard. You could see freedom, but you can't get out. It makes your time hell.... [The] first thing I thought was, damn, I'm going to be here for 60 days.... I felt like shit. Damn! No contact with anyone for 60 days?¹⁴⁶

Following an alleged infraction, placement in punitive solitary confinement frequently begins with a notice describing the charges and a hearing.¹⁴⁷ At this hearing, individuals are generally entitled to call witnesses. However, it was almost unthinkable, among the young people interviewed by Human Rights Watch and the American Civil Liberties Union, to actually call a witness, even when young people asserted their innocence in the

Criminal Justice Center, Colorado, to Human Rights Watch, January 5, 2012 (reporting that one youth was punished in this way in 2011); Letter from Sherry Stanford, Lieutenant, Lewis County Jail, New York, to Human Rights Watch, January 7, 2012 (reporting that the discipline and management policies are the same for youth and adults and that two youth were punished in this way in 2011); Letter from David Hetman, Program/Support Lieutenant, Correction Bureau, Rensselaer County Office of the Sheriff, New York, to Human Rights Watch, April 19, 2012 (reporting that the discipline and management policies are the same for youth and adults and that 12 youth were punished in this way in 2011); Letter from Ken Kochevar, Director of Corrections, Cuyahoga County, Ohio, to Human Rights Watch, January 4, 2012 (reporting that the discipline and management policies are the same for youth and adults and that 28 youth were punished in this way in 2011); and Letter from Louise Hackel, Sergeant, Clark County Jail, Wisconsin, to Human Rights Watch, February 6, 2012 (reporting that the discipline and management policies are the same for youth and adults and that one youth was punished in this way in 2011).

¹⁴⁶ Human Rights Watch interview with Jacob L. (pseudonym), New York, April 2012.

¹⁴⁷ Some youth, however, did not recall having been given any legal or administrative process before being disciplined. On the other hand, disciplinary solitary confinement is often preceded by a period of short-term administrative solitary confinement. In some facilities, Human Rights Watch and the American Civil Liberties Union found that such confinement is automatic, but others require a consideration of risk to other inmates before an individual can be placed in administrative solitary confinement pending a hearing for a disciplinary infraction. In some facilities, time spent in short-term administrative solitary confinement is “credited” when assessing a disciplinary sanction; in other facilities, youth do not receive credit for time spent in administrative confinement. One youth told Human Rights Watch and the American Civil Liberties Union, “They gave me 10 days... [but] there is no credit for time served [and] you have to wait 5 days for your hearing.” Human Rights Watch interview with Mason P. (pseudonym), Florida, April 2012.

matter.¹⁴⁸ One of the rare young men who said he would have liked to call witnesses, told Human Rights Watch and the American Civil Liberties Union, “I could have had witnesses, but you have to know their first and last names and [inmate] numbers.”¹⁴⁹ More commonly, young people reported that it was unsafe to speak out against others to facility staff, so they had no choice but to appear alone. Some young men and women told Human Rights Watch and the American Civil Liberties Union that they had admitted the charges against them during their hearing.¹⁵⁰

Hearings almost always result in a finding of guilt based on the testimony of officials alone, and some interviewees described being punished on the basis of minimal evidence.¹⁵¹ For example, a young man in one facility in Florida described officials punishing a group of inmates for banging on their cell doors because officials could not determine which inmates were responsible:

People were kicking the[ir] door[s] and yelling. Then [the officials] said, “We are going to put you on lockdown! We are going to put you on lockdown!”... I [later] asked the [corrections officer] why we [were] on lockdown if we didn’t kick the door. He said, “Man, you know how it is. There is [sic] a thousand of you in here—I can’t tell who is kicking the door.”¹⁵²

Once a prisoner is found guilty of a disciplinary offense, jail or prison officials usually punish him or her with a term of days based on a structured disciplinary code. Because most facilities subject youth and adults to the same rules and regulations as adults, both young people and adults are usually punished with the same amount of punitive solitary confinement when found to have violated facility rules. As one official told Human Rights Watch and the American Civil Liberties Union, “There is no differentiation. There are the rules. If you violate the rules you’ll go through the process and your hearing and any

¹⁴⁸ Human Rights Watch interview with Corey H. (pseudonym), Florida, April 2012.

¹⁴⁹ Human Rights Watch interview with Jacob L. (pseudonym), New York, April 2012.

¹⁵⁰ Alex A. said he had admitted fighting with another inmate. Human Rights Watch interview with Alex A. (pseudonym), Florida, April 2012.

¹⁵¹ The standard for determining guilt in administrative disciplinary processes is low, often only requiring a preponderance of the evidence.

¹⁵² Human Rights Watch interview with Jeffrey J. (pseudonym), Florida, April 2012. There were not actually one thousand youths in the unit.

potential discipline is the same regardless of age.”¹⁵³ Because jurisdictions often subject individuals to multiple, serial—rather than concurrent—periods of solitary confinement for more than one rule violation stemming from a single incident, periods of solitary confinement can be long.¹⁵⁴

Youth rarely reported that their age was discussed during their disciplinary hearings. A few young people reported that officials noted their age only in passing—“[the officer] just said I was young and very angry”—rather than to suggest mitigating the punishment.¹⁵⁵ One adolescent told Human Rights Watch and the American Civil Liberties Union that a mental health worker at the facility raised his youth at his disciplinary hearing, but that the hearing officer said, “That doesn’t matter. He’s in prison now and needs to learn how to act. It’s his fault.”¹⁵⁶

While a formal appeal process often exists, very few young people reported appealing the decisions sentencing them to solitary confinement.¹⁵⁷ As experts have suggested, it is even more difficult for children to successfully navigate a prison grievance system than for adult prisoners. One expert said, “On average, juveniles are more impulsive, less capable of planning a course of action and taking steps, particularly when there are timelines for taking those steps.... So they’re just less capable, on average, than an adult of doing that.”¹⁵⁸

More than adults, incarcerated teens often act out to protect themselves or to fit into a culture of violence, including by fighting or committing other disciplinary infractions. The New York City Department of Corrections reported that the most common disciplinary infraction for adolescents is fighting.¹⁵⁹ An analysis of data made available to independent researchers by the Florida Department of Corrections suggests that rates of misconduct of

¹⁵³ Human Rights Watch telephone interview with Michael Grover, Police Chief, Cottage Grove, Oregon, April 20, 2012.

¹⁵⁴ See discussion of duration in Section III below.

¹⁵⁵ Human Rights Watch interview with Elizabeth K. (pseudonym), New York, April 2012.

¹⁵⁶ Human Rights Watch interview with Rafael O. (pseudonym), Colorado, February 2012.

¹⁵⁷ Only a few of the 77 youth interviewed by Human Rights Watch and the American Civil Liberties Union described attempting (unsuccessfully) to appeal their disciplinary sentence, with one saying, “[The process] is crazy—there’s no relief!” Human Rights Watch interview with Jacob L. (pseudonym), New York, April 2012.

¹⁵⁸ Human Rights Watch, *No Equal Justice: The Prison Litigation Reform Act in the United States*, June 2009, <http://www.hrw.org/sites/default/files/reports/uso609web.pdf>, citing Human Rights Watch telephone interview with Terry Kupers, M.D., California, November 14, 2008.

¹⁵⁹ Human Rights Watch telephone interview with Dora B. Schriro, Commissioner, New York City Department of Corrections, July 6, 2012.

adolescents under age 18 were significantly greater than adults between the ages of 18 and 20, and many times greater than older adults.¹⁶⁰

Several young people told Human Rights Watch and the American Civil Liberties Union that other adolescents or adults tested them when they arrived at a jail or prison, and that they felt they had to defend themselves to avoid future abuse. Many young people reported that their first period of solitary confinement was soon after they arrived at the facility. Ernesto D. told Human Rights Watch and the American Civil Liberties Union,

[I]f someone puts their hands on you, you must defend yourself. They want to know that you will defend yourself. I seen [sic] people get hit and now everyone hits them. You have to deal with it. Once you set the record straight you can stay out of trouble.¹⁶¹

The rules and regulations governing punitive solitary confinement are often structured such that officials have significant discretion about the length of time youth spend in solitary confinement. When charging, officials can generally choose whether particular conduct corresponds to a more or less serious infraction and choose from a range of penalties. Jordan E., who entered jail when he was 15 years old, told us that officials responded to seemingly any infraction with punitive solitary confinement:

15 days for not making the bed; 15 days for not keeping the cell door open; 20 or 25 days for being in someone else's cell. In the write-up book, they could have suspended privileges or anything. All they did is disciplinary seg[regation]. I would put my ear wax in the toilet in my cell and flush it to watch it spin. I did [solitary confinement] time for that. It was crazy.¹⁶²

Some rules and regulations also give officials discretion to reduce the length of time youth spend in solitary confinement, either at the sentencing phase or before release. But that's

¹⁶⁰ Attapol Kuanliang et al., "Juvenile Inmates in an Adult Prison System: Rates of Disciplinary Misconduct and Violence," *Criminal Justice and Behavior*, vol. 35 (2008), <http://www.sagepub.com/stohrstudy/articles/11/Kuanliang.pdf> (accessed August 27, 2012). The analysis found that rates of all violations per 1,000 inmates were 2,558 for youth under 18; 1,895 for youth between age 18 and 20; and 937 for other adult inmates; rates of all assaultive rule violations were 109 per 1,000 for youth under 18; 61 for youth between age 18 and 20; and 26 for other adult inmates.

¹⁶¹ Human Rights Watch interview with Ernesto D. (pseudonym), Pennsylvania, January 2012.

¹⁶² Human Rights Watch interview with Jordan E. (pseudonym), Colorado, February 2012.

not true for all prison rules, despite the fact that some officials say that, if they had discretion, they would generally be inclined to reduce isolation terms. The rules governing solitary confinement in Pennsylvania, for example, allow officials to reduce periods of solitary confinement imposed, but only for some infractions, not all. Officials in Pennsylvania reported that they feel their hands are tied. “Unfortunately, those are the policies that guide us,” one said. “We try to get them out when we can, but we can’t always get them out.”¹⁶³

Young people in punitive solitary confinement are often entitled to an hour outside of their cell each day, during which they can walk around, alone, in an indoor area, make phone calls, or take a shower. In some facilities they are taken to an outdoor exercise yard, often a small cage.¹⁶⁴ Facilities often severely restrict what can be inside a punitive solitary confinement cell, including for young people. For example, 12 young people across various states and counties told Human Rights Watch and the American Civil Liberties Union that they were unable to have a book in their cells (some facilities made an exception for the Christian bible). As one young man said, “There were no phones, no visits, no books, no newspapers—just the bible.”¹⁶⁵ It was rare for a facility to permit access to any out-of-cell programming to those in punitive solitary confinement.

Solitary Confinement to Manage Inmates

Jail and prison officials most commonly use two forms of administrative solitary confinement to manage inmates, including adolescents, who are at risk of victimization or who are too difficult to manage in the general population.

Protective Solitary Confinement

International law and the laws of a number of US states require that young people be separated from adults when detained.¹⁶⁶ And many facilities also require such separation as

¹⁶³ Human Rights Watch telephone interview with Eric Bush, Superintendent, Secure Correctional Institution Pine Grove, Pennsylvania Department of Corrections, June 21, 2012.

¹⁶⁴ Human Rights Watch interviewed more than a dozen youth held in various facilities that did not permit outdoor recreation.

¹⁶⁵ Human Rights Watch interview with Jordan E. (pseudonym), Colorado, February 2012.

¹⁶⁶ International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by the United States on June 8, 1992, art. 7; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), adopted December 10, 1984, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987, ratified by the United States on October 21, 1994, art. 9.

a matter of policy.¹⁶⁷ Yet, Human Rights Watch and the American Civil Liberties Union found that to achieve this purpose, some facilities resort to holding youth in permanent solitary confinement. In other facilities, where youth and adults are intermingled or where many young people are held together, corrections officials sometimes use solitary confinement to protect particular adolescents. Some facilities use this practice for weeks or months.

A number of corrections officials confirmed that they used solitary confinement to separate adolescents from adults.¹⁶⁸ In states with a lower age of criminal majority, such as Michigan or Wisconsin, where all young people age 17 are charged as adults, some facilities hold all those age 17 and older together with adults, but separate those who are younger.¹⁶⁹ Human Rights Watch and the American Civil Liberties Union interviewed 27 young people across the United States who had been placed in solitary confinement to protect them or to segregate them from adults or other inmates. A recent University of Texas survey of Texas jails found that 25 out of 41 jails that responded to a survey held youth in protective solitary confinement by default.¹⁷⁰

¹⁶⁷ Standard 4-4307, “Youthful Offenders,” in American Correctional Association, *Standards for Adults Correctional Institutions*, 4th Ed. (ACA: January 2003); Standard 4-ALDF-2A-38, “Youthful Offenders,” in American Correctional Association, *Performance-Based Standards for Adult Local Detention Facilities*, 4th Ed. (ACA: June 2004); Standard 1-CORE-2A-20, “Plan for Youthful Offenders,” in American Correctional Association, *Core Jail Standards* (ACA: 2010).

¹⁶⁸ Letter from Susan Anderson, Corporal, Pasco County Detention Center, Florida, to Human Rights Watch, January 27, 2012 (reporting that on January 27, 2012, the facility held 12 youth charged as adults in single, separation, segregation, or special management cells; that youth spend less than one hour per day out of their cells; and that youth generally spend three to six months in the facility); Letter from Kent Rachel, Crawford County Justice Center, Ohio, to Human Rights Watch, January 5, 2012 (reporting that the facility rarely holds youth, but that when it does they are held in separation, segregation, or special management cells; that youth spend one to two hours per day out of their cells; and that youth generally spend one week or less in the facility); and Letter from Jacqueline Motter, Deputy Warden, Clinton County Correctional Facility, Pennsylvania, to Human Rights Watch, February 13, 2012 (reporting that the facility generally holds youth charged as adults in single cells near adults; that youth spend between one and two hours per day out of their cells; and that youth spend one to two weeks in the facility).

¹⁶⁹ Human Rights Watch telephone interview with Michelle M. Sanborn, Jail Administrator, Macomb County, Michigan, March 9, 2012.

¹⁷⁰ Michele Deitch, Anna Lipton Galbraith, and Jordan Pollock, Lyndon B. Johnson School of Public Affairs, The University of Texas at Austin, “Conditions for Juveniles in Texas County Jails,” May 2012, <http://www.utexas.edu/lbj/sites/default/files/file/news/Conditions%20for%20Certified%20Juveniles%20in%20Texas%20County%20Jails-FINAL4.pdf> (accessed August 27, 2012) (reporting the use of single-cell confinement for 23 hours per day).

In some circumstances, facilities place young people in protective solitary confinement after they request protection. Several young people described preferring protective solitary confinement to the violence they feared or faced in the general population.

Sean F., for example, told Human Rights Watch and the American Civil Liberties Union that after he had difficulty in protective solitary confinement, the facility moved him:

They moved me to a pod with adults. These guys were much older. They were nowhere near 17. [I was there] about three weeks. Then I couldn't take it. Just the thought, every day, asking, "What's going to happen?" ... Maybe they are coming for me next. I got paranoid ... [they transferred me back to isolation]. It was better. You weren't as scared because [I] knew no one was going to wake up in the middle of the night and harm me.¹⁷⁴

The Prison Rape Elimination Act (PREA) regulations require jails and prisons to keep youth under age 18 separate from adults age 18 and older in all common spaces.¹⁷¹ Although they acknowledge the difficulties that corrections officials face in trying to keep youth segregated from adults, PREA regulations do not prohibit isolation or solitary confinement. Rather, they state that facilities "shall make best efforts to avoid placing youthful inmates in isolation."¹⁷² A separate regulation requires that inmates at high risk of sexual victimization "shall not ordinarily" be placed in involuntary protective custody for more than 30 days.¹⁷³ But it is unclear how the two sets of regulations interact.

In acknowledging that there should be a limit on involuntary protective custody, and that facilities should not use isolation to protect youth, the Department of Justice has recognized that long-term solitary confinement is not an acceptable solution to the challenges of housing and managing vulnerable inmates. Yet, Human Rights Watch and the American Civil Liberties Union found 21 cases in which young people held in protective isolation reported spending months in solitary confinement.

Corrections officials acknowledge that adolescents seeking protection sometimes commit disciplinary infractions so they will be taken out of the general population. Until recently,

¹⁷¹ Youthful Inmates, Prison Rape Elimination Act National Standards, 28 CFR § 115.14(a) ("A youthful inmate shall not be placed in a housing unit in which the youthful inmate will have sight, sound, or physical contact with any adult inmate through the use of a shared dayroom or other common space, shower area, or sleeping quarters.").

¹⁷² 28 CFR § 115.14(c).

¹⁷³ 28 CFR § 115.43(c).

¹⁷⁴ Human Rights Watch interview with Sean F. (pseudonym), Michigan, March 2012.

Colorado did not have any formal mechanism to accommodate inmates in protective custody. Officials reported that administrative solitary confinement was used as a substitute by some: “Sometimes people hang out in Ad[ministrative] Seg[regation] because they are afraid. We have certainly seen that used to manage younger offenders who cannot live in general population without living in fear.”¹⁷⁵

Marcus S., who entered jail when he was 14 and was housed in a cell in a juvenile pod with two older adolescent cell-mates, said he was placed in protective solitary confinement after experiencing sexual abuse:

[My 17 year old cell mate] kept on telling me stuff—like types of stuff you would say to females. And it escalated and when he approached me—I couldn’t defend myself against two of them in the room—and he sexually abused me. I went and told the officer and he said I had to do something to be taken out of the dorm.... [At my disciplinary hearing, when I explained what had happened] the corporal said she didn’t want to give me [a disciplinary violation]. She put me in protective custody.... She told me she was going to give me some help and let me stay in the isolation cell for a while.¹⁷⁶

Marcus S. said he spent six months in protective solitary confinement following the incident. In some facilities, as with Marcus S., young people sometimes feel or are told that they have few options in order to keep themselves safe. Young people are forced into a position where they are choosing between solitary confinement and physical assault.

Some facilities place lesbian, gay, bisexual, transgender, or intersex (LGBTI) inmates, and inmates who are perceived as LGBTI, in protective segregation and isolation, including solitary confinement, to protect them from the increased risk of sexual abuse that these inmates face.¹⁷⁷

¹⁷⁵ Human Rights Watch telephone interview with Tom Clements, Executive Director, Colorado Department of Corrections, Colorado, June 18, 2012.

¹⁷⁶ Human Rights Watch interview with Marcus S. (pseudonym), Florida, May 2012.

¹⁷⁷ Opening Statement of Senator Dick Durbin, “Reassessing Solitary Confinement: The Human Rights, Fiscal and Public Safety Consequences,” Hearing before the Senate Committee on the Judiciary, Subcommittee on the Constitution, Civil Rights and Human Rights, June 19, 2012, <http://www.judiciary.senate.gov/pdf/12-6-19DurbinStatement.pdf> (accessed August 27, 2012). Prisons and jails generally attempt to strictly enforce a gender binary system and categorize inmates as

Like young people in punitive solitary confinement, those in protective solitary confinement were often permitted out of their cell for one or two hours each day, frequently alone in an indoor dayroom. Some, but not all, facilities allowed outdoor recreation. Generally, young people were allowed to make phone calls and take a short shower during their time out of their cells. Two interviewees reported being the only adolescent in a particular unit, and that, for at least part of their detention, they were therefore permitted to spend much of their day in an empty common area, although they were still alone.¹⁷⁸ Facilities regulate what can be inside a protective solitary confinement cell, including for youth. Some facilities permit more privileges for those in protective solitary confinement than for those in punitive solitary confinement.

Administrative Solitary Confinement

Jail and prison officials frequently use solitary confinement to segregate individual inmates who they cannot otherwise manage from the general population. In most facilities, some form of administrative segregation can follow one or more terms of punitive solitary confinement and extend for months, or even indefinitely. It is generally the result of an inmate's "classification" and an evaluation of an inmate's perceived dangerousness or likely future conduct.

Human Rights Watch and the American Civil Liberties Union interviewed 28 young people who had spent a period of time in administrative solitary confinement while under age 18 in adult jails and prisons. Of those young people, six had spent six months or more in administrative solitary confinement. In addition, a number of the young people interviewed by Human Rights Watch and the American Civil Liberties Union entered administrative solitary confinement while under 18, but remained there for many years; at least 2 had spent a total of more than 10 years in administrative solitary confinement after they turned 18.

either male or female. Regina Kunzel, *Criminal Intimacy: Prison and the Uneven History of Modern American Sexuality* (Chicago: University of Chicago Press, 2008). Yet research has consistently demonstrated the increased vulnerability of LGBTI inmates. National Prison Rape Elimination Commission, "National Prison Rape Elimination Commission Report," June 2009, <https://www.ncjrs.gov/pdffiles1/226680.pdf> (accessed August 27, 2012), p. 7. A recent study of California correctional facilities found that approximately 67 percent of non-heterosexual inmates reported being victims of sexual assault, compared with approximately 2 percent of heterosexual inmates. Valerie Jenness et al., Center for Evidence-Based Corrections, "Violence in California Correctional Facilities: An Empirical Examination of Sexual Assault," May 16, 2007, <http://www.ushrnetwork.org/sites/default/files/VJReport2007.pdf> (accessed August 27, 2012), p. 55.

¹⁷⁸ Human Rights Watch interviews with Ethan B. (pseudonym), Colorado, February 2012; and with Sean F. (pseudonym), Michigan, March 2012.

As one young man described in a letter,

Imagine that you're locked in a small room like a bathroom 23 hours a day. You're handcuffed when you're moved outside of it. Your food is thrown under the door and you have five books per week. It's noisy outside with some [inmate] or another yelling, screaming, banging on his door at ALL HOURS; it smells worse than the monkey house at the older zoos no matter how hard you clean your own cell.... In seg[regation] you either implode or explode; you lose touch with reality, hear voices, hallucinate, and think for hours about killing yourself, others, or both. The anger and hurt gets so intense that you suspect everyone and trust no one and when someone does something nice for you, you don't understand it.¹⁷⁹

Long-term administrative solitary confinement is generally imposed on a prisoner as a classification or housing decision. Such decisions to “administratively” isolate prisoners generally consider factors such as the individual’s criminal conviction and history, severity of any disciplinary infractions, and other individual characteristics.¹⁸⁰ However, the criteria used in this “classification” of prisoners rarely include the age of an inmate.¹⁸¹ Because some young people who spend time in state prison systems are convicted of serious offenses, they can be classified in a manner that leads to their direct placement in administrative solitary confinement.¹⁸² Prolonged administrative solitary confinement is less common in pre-trial facilities, but does occur, particularly in larger jails.¹⁸³

¹⁷⁹ Letter from Douglas C. (pseudonym), from Colorado, to Human Rights Watch, April 17, 2012.

¹⁸⁰ National Institute of Corrections, US Department of Justice, “Internal Prison Classification Systems: Case Studies and Their Development and Implementation,” January 2002, <http://static.nicic.gov/Library/017381.pdf> (accessed August 27, 2012).

¹⁸¹ For example, Tom Clements, the Executive Director of the Colorado Department of Corrections, told Human Rights Watch that although the Department of Corrections is in the process of validating a new classification instrument, the final version will not take age into account as a factor in determining classification. Human Rights Watch telephone interview with Tom Clements, June 18, 2012. (“Our classification system really doesn’t factor in age. If there is a person who is 17, 18, 19 years old we apply the same classification system to them. We have been doing some work for the last nine months or so on our classification system. We are piloting a new classification instrument.... Assuming we implement that fully, we will rely less on how much time a person has left to serve and focus more on other attributes and characteristics. But it still will not factor in age as a driving factor.”).

¹⁸² Human Rights Watch interview with Ryan G. (pseudonym), Colorado, February 2012; Human Rights Watch, *The Rest of Their Lives*; Human Rights Watch, *Against All Odds*.

¹⁸³ Human Rights Watch interview with Philadelphia County Prison Official, February 23, 2012.

Another major factor in administrative solitary confinement determinations is conduct within a facility. As noted above, adolescents often misbehave or commit disciplinary infractions to protect themselves or fit into a culture of violence in jail and prison. Repeated disciplinary infractions can lead to administrative segregation, as it did with a number of young people interviewed by Human Rights Watch and the American Civil Liberties Union.

Prison and jail officials sometimes say it is necessary to separate an inmate, or groups of inmates, from others to ensure the security of staff and inmates in the general population. When this happens, some state prison officials said that they have to use solitary confinement, as they are not equipped to manage individual or small groups of prisoners in any other way. But several prison officials often told Human Rights Watch that they would like to have the ability to manage youth differently. As Tom Clements, the executive director of the Colorado Department of Corrections stated, “If I had a wish list, it would be to have the flexibility to have more intensive case management, mental health, and other programming to keep [youth] engaged in something that can build positive self-esteem.”¹⁸⁴ Officials in the Pennsylvania Department of Corrections said that, although they try to divert youth from solitary confinement when possible, generally “4-5 percent of youth [in segregation] are those [who officials] can’t incorporate back into the population.”¹⁸⁵

In recent years, legislators and corrections officials in a number of states have begun to reexamine the use of prolonged solitary confinement to manage inmates. The state of Mississippi recently reduced the population of inmates in long-term administrative solitary confinement by 75.6 percent, and closed the state’s super-maximum security prison.¹⁸⁶ The Mississippi Department of Corrections found that prison violence decreased significantly as a result, and millions of dollars were saved in the process.¹⁸⁷ The Commissioner of

¹⁸⁴ Human Rights Watch telephone interview with Tom Clements, June 18, 2012.

¹⁸⁵ Human Rights Watch telephone interview with Marshall Shirley, Deputy, Secure Correctional Institution Pine Grove, Pennsylvania Department of Corrections, Pennsylvania, June 21, 2012. Note that the Pennsylvania Department of Corrections houses youth as young as 12 and as old as 22 in the same facility.

¹⁸⁶ Written Testimony of Commissioner Chris Epps, Mississippi Department of Corrections, “Reassessing Solitary Confinement the Human Rights, Fiscal, and Public Safety Consequences,” Hearing before the Senate Committee on the Judiciary, Subcommittee on the Constitution, Civil Rights and Human Rights, June 19, 2012, <http://www.judiciary.senate.gov/pdf/12-6-19EppsTestimony.pdf> (accessed August 27, 2012), p. 2.

¹⁸⁷ Erica Goode, “Prisons Rethink Isolation, Saving Money, Lives, and Sanity,” *New York Times*, March 10, 2012, http://www.nytimes.com/2012/03/11/us/rethinking-solitary-confinement.html?pagewanted=1&_r=1 (accessed August 27, 2012); See also Margaret Winter, National Prison Project, American Civil Liberties Union “Rethinking Solitary Confinement in

Corrections, Chris Epps, recently testified before the US Senate that solitary confinement “created a situation where the norm was to be disruptive as there were no incentives to change behavior.”¹⁸⁸ Colorado, Illinois, and Maine have also begun taking steps to reduce the number of inmates confined in long-term isolation.¹⁸⁹ The US Senate Judiciary Committee recently held hearings on the issue for the first time in its history.¹⁹⁰ These reforms may reflect a growing consensus that reliance on solitary confinement to manage inmates is costly, cruel, and unnecessary.

As with the experience of the young people in punitive and protective solitary confinement, those in administrative solitary confinement are often permitted out of their cell for one hour each day. Some, but not all, facilities allow outdoor recreation.¹⁹¹ Facilities often strictly limit what can be inside an administrative solitary confinement cell, including for young people. Some facilities permit more privileges to those in long-term administrative solitary confinement—such as a radio or television, if the prisoner is able to afford to purchase such items from the facility—than they permit to those in punitive solitary confinement. But telephone and visitation privileges are sometimes more restrictive, particularly in prisons.

Solitary Confinement to Treat Inmates

Some adult jails and prisons use a stark form of solitary confinement to manage perceived and actual psychological emergencies.¹⁹² Some years ago, it was considered medically appropriate, in a range of circumstances, to use lengthy isolation, usually called seclusion, as a therapeutic intervention for adults and, sometimes, adolescents. The current medical consensus disfavors the use of stark and prolonged isolation, preferring an approach much more tailored to the mental health needs of individual patients. For example, one

Mississippi and Beyond,” March 12, 2012, <http://www.aclu.org/blog/prisoners-rights/rethinking-solitary-confinement-mississippi-and-beyond> (accessed August 27, 2012).

¹⁸⁸ Written Testimony of Commissioner Chris Epps, pp. 1-2.

¹⁸⁹ Goode, “Prisons Rethink Isolation, Saving Money, Lives, and Sanity,” *New York Times*.

¹⁹⁰ Congressional Quarterly, “Senate Judiciary Subcommittee on Constitution, Civil Rights, and Human Rights Holds Hearing on Reassessing Solitary Confinement,” June 19, 2012, <http://solitarywatch.files.wordpress.com/2012/06/transcript-of-the-hearing.pdf> (accessed August 27, 2012), Panel 1, transcript.

¹⁹¹ Human Rights Watch interviewed more than a dozen youth held in various facilities that did not permit outdoor recreation.

¹⁹² Others have noted that the practice still occurs in many jails and prisons. Jeffrey L. Metzner, “Introduction to: Resource Document on the Use of Restraint and Seclusion in Correctional Mental Health Care,” *Journal of the American Academy of Psychiatry and the Law*, vol. 35 (December 2007), <http://www.jaapl.org/content/35/4/415.full> (accessed August 27, 2012), p. 415.

forensic child psychiatrist told Human Rights Watch and the American Civil Liberties Union, regarding seclusion for suicidal adolescents, “When you are feeling suicidal, [isolation] may well make you feel worse.”¹⁹³

However, several young people, including young people with mental disabilities, told Human Rights Watch and the American Civil Liberties Union that they were subjected to medical solitary confinement for days at a time; in a few cases, young people reported being held in medical solitary confinement for weeks. Some young people also reported being placed in medical solitary confinement after experiencing acute difficulty and having threatened or attempted to commit suicide in other forms of solitary confinement.

Four young people described, in detail, time spent in inpatient mental health facilities within state prison systems. These young people all reported spending long periods in isolation in these facilities, including periods of medical solitary confinement.

Unlike the experience of the young people in other forms of solitary confinement, those in medical solitary confinement were often not permitted out of their cell at all. Facilities often permit almost nothing to be inside a medical solitary confinement cell. Frequently, young people were naked except for a thin paper gown—called a “turtle suit” by some because of its appearance—and were allowed only a single, thick, tear-resistant blanket.

Christopher M. described his experience in medical solitary confinement in a letter:

[I] was put in a pa[dd]ed room for 24 hours with a smock and hard blanket.
[I] was served food in a paper tray[. I] was to eat with hands[. A]fter the meal
[I] was not aloud [sic] to wash my hands[. I] was to shit and piss in the floor
and not able to wipe my but[t] and not able to flush the hole in the ground[I]
was to talk to a person about my sueisideaul [sic] thoughts ... [I] learned
nothing from this person ... was out in 24 hours and put in isolation for 15
days which usually got extended [due] to behavior issues ... that was only

¹⁹³ Human Rights Watch interview with Dr. Peter Ash, Chief, Child and Adolescent Psychiatry, Director, Psychiatry and Law Service, and Associate Professor, Emory University, Georgia, January 9, 2012.

one of some 50 times [I] was put in observation for attempted suicide [sic] or saying [I] was going to kill myself.¹⁹⁴

Quarantine

Some facilities use solitary confinement to quarantine adolescents, often when they first enter a facility. Quarantine practices vary significantly across facilities. Young people in some jails described being held separately at the beginning of their detention, pending the results of a tuberculosis test. In other facilities, young people were not segregated, but held with other incoming inmates. In some facilities, young people reported not spending any time in quarantine upon entry. Inmates who reported being subjected to medical solitary confinement for this purpose generally described being held for one, two, or three days.¹⁹⁵ As Human Rights Watch and the American Civil Liberties Union have argued elsewhere, whether an inmate is placed in a temporary medical quarantine should be based on whether it is medically necessary.¹⁹⁶ There are serious questions about whether medical solitary confinement is overused for quarantine and not actually justified as necessary for public health reasons.

Seclusion and SAMHSA

The Substance Abuse and Mental Health Services Administration (SAMHSA)—an agency of the US Department of Health and Human Services—is devoted to addressing the social and fiscal impacts of mental disabilities and substance abuse. SAMHSA has dedicated significant resources to reducing the use of seclusion and restraint in various forms of mental health treatment. SAMHSA shapes policy through contracts and grants, using various national information and data. SAMHSA has found that the use of seclusion for individuals with mental health issues has resulted in death, psychological trauma, and serious physical injury, including of young people.¹⁹⁷ SAMHSA has further noted that children are at a

¹⁹⁴ Letter from Christopher M. (pseudonym), from Wisconsin, to Human Rights Watch, January 17, 2012.

¹⁹⁵ Human Rights Watch interviews with Lloyd U. (pseudonym), Pennsylvania, January 2012; and with Craig G. (pseudonym), Pennsylvania, January 2012.

¹⁹⁶ Human Rights Watch and the American Civil Liberties Union, *Sentenced to Stigma: Segregation of HIV-Positive Prisoners in Alabama and South Carolina*, April 14, 2010, <http://www.hrw.org/sites/default/files/reports/health0410webwcover.pdf>.

¹⁹⁷ SAMHSA defines seclusion as “the involuntary confinement of a patient alone in an area in which the patient is prevented from leaving.” Interagency Autism Coordinating Committee (IACC) Services and Safety Committee, Administrator’s Office of Policy Planning and Innovation (OPPI) and Substance Abuse and Mental Health Service Administration, “Alternatives to Seclusion and Restraint in Behavioral Health Care,” May 19, 2011, http://iacc.hhs.gov/events/2011/slides_larke_huang_051911.pdf (accessed August 27, 2012). Referencing CMS Hospital Conditions of Participation: SAMHSA National Action Plan on Seclusion and Restraint, Substance Abuse and Mental Health

particularly high risk of death and serious injury, as a result of the use of seclusion and restraint.¹⁹⁸ Through grant programs in a number of states, SAMHSA has worked to eliminate the use of seclusion and restraint in treatment and rehabilitation, except as a safety intervention of last resort, and has formally recognized the detrimental effects of holding individuals in isolation, particularly children and individuals with mental disabilities.¹⁹⁹

Rates of Solitary Confinement

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.²⁰⁰ And it is impossible to determine the precise number of people under age 18 subjected to solitary confinement. But the available data suggest that the practice is prevalent in particular jurisdictions and occurs nationwide.

Human Rights Watch and the American Civil Liberties Union identified facilities that hold 100 percent of youth in solitary confinement; large jail and prison systems that hold more than 10 percent of youth in solitary confinement at any given time; and facilities that avoid or rarely use the practice.

Jail officials in three states reported that all young people under age 18 in their facilities were held in protective solitary confinement.²⁰¹ Human Rights Watch and the American Civil Liberties Union interviewed six young people in other facilities who reported spending the entire period of their pre-trial detention in solitary confinement. Media and other reporting suggest that this practice is widespread in some states.²⁰²

Service Administration, "Seclusion and Restraint: Statement of the Problem and SAMHSA's Response," May 2003, http://www.samhsa.gov/seclusion/sr_handout.aspx (accessed August 27, 2012).

¹⁹⁸ SAMHSA National Action Plan on Seclusion and Restraint, "Seclusion and Restraint: Statement of the Problem and SAMHSA's Response."

¹⁹⁹ IACC Services and Safety Committee, "Alternatives to Seclusion and Restraint in Behavioral Health Care"; SAMHSA National Action Plan on Seclusion and Restraint, "Seclusion and Restraint: Statement of the Problem and SAMHSA's Response."

²⁰⁰ Indeed, there are also no systematic national data on how many adults in jails and prisons or youth in juvenile facilities are subjected to solitary confinement.

²⁰¹ See discussion of protective solitary confinement above. Letter from Susan Anderson, Corporal, Pasco County Detention Center, Florida, to Human Rights Watch, January 27, 2012; Letter from Kent Rachel, Crawford County Justice Center, Ohio, to Human Rights Watch, January 5, 2012; and Letter from Jacqueline Motter, Deputy Warden, Clinton County Correctional Facility, Pennsylvania, to Human Rights Watch, February 13, 2012.

²⁰² Deitch, Galbraith and Pollock, "Conditions for Juveniles in Texas County Jails"; Chris Vogel, "For Their Own Good," *Texas Observer*, June 9, 2010, <http://www.texasobserver.org/mollyaward/columns/for-their-own-good> (accessed August 27, 2012).

Information gathered from one large prison system and one large county jail system suggests that, in those facilities, more than 10 percent of youth held there are subjected to disciplinary solitary confinement.²⁰³ Disciplinary data reported by the New York City Department of Corrections suggests that 14.4 percent of adolescents between the ages of 16 and 18 spend part of their pre-trial detention in solitary confinement.²⁰⁴ This is significant because the department is one of the largest jail systems in the country. The most common disciplinary infraction for adolescents between the ages of 16 and 18 in the New York City Department of Corrections is for fighting.²⁰⁵

Population data reported by the Pennsylvania Department of Corrections, which holds adolescents and young adults in a single facility through age 21, suggest that approximately 10.9 percent of inmates there are held in solitary confinement.²⁰⁶ Like New York City's facility, the department mixes young people under age 18 with young adults, but officials confirmed that approximately 10 percent of adolescents are consistently held in a form of solitary confinement.²⁰⁷ Pennsylvania is among the 15 states that hold the largest number of young people under age 18 in adult prisons.²⁰⁸

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.²⁰⁹ Human

²⁰³ Human Rights Watch email correspondence with Sharman Stein, Deputy Commissioner, New York City Department of Corrections, July 27, 2012; Human Rights Watch telephone interview with Marshall Shirley, Deputy, Secure Correctional Institution Pine Grove, Pennsylvania Department of Corrections, Pennsylvania, June 21, 2012. Note that the Pennsylvania Department of Corrections houses youth as young as 12 and as old as 22 in the same facility. See Pennsylvania Department of Corrections monthly prison data (reporting 10.9 percent of all youth under age 22 at Pine Grove Secure Correctional Institution in administrative or disciplinary solitary confinement as of April 2012), http://www.cor.state.pa.us/portal/server.pt/community/research___statistics/10669/monthly_population_reports/1069959 (accessed September 26, 2012); Human Rights Watch telephone interview with Eric Bush, Superintendent, Secure Correctional Institution Pine Grove, Pennsylvania Department of Corrections, June 21, 2012.

²⁰⁴ New York state law distinguishes between adolescents ages 16 to 18 and adults for purposes of pre-trial and post-conviction detention; data was therefore reported for all adolescents. Human Rights Watch email correspondence with Sharman Stein, Deputy Commissioner, New York City Department of Corrections, July 27, 2012; Human Rights Watch email correspondence with Robin Campbell, Deputy Commissioner, New York City Department of Corrections, September 26, 2012.

²⁰⁵ Human Rights Watch telephone interview with Dora B. Schriro, Commissioner, New York City Department of Corrections, New York, July 6, 2012.

²⁰⁶ Pennsylvania Department of Corrections, "Monthly Population Report," <http://www.portal.state.pa.us/portal/server.pt/document/> (accessed August 27, 2012).

²⁰⁷ Human Rights Watch telephone interview with Marshall Shirley, Deputy, Secure Correctional Institution Pine Grove, Pennsylvania Department of Corrections, Pennsylvania, June 21, 2012.

²⁰⁸ Heather West, Bureau of Justice Statistics, US Department of Justice, "Prison Inmates at Mid-year 2009 – Statistical Tables," June 2010, <http://bjs.ojp.usdoj.gov/content/pub/pdf/pimogst.pdf> (accessed August 27, 2012).

²⁰⁹ Prison officials in Colorado, Michigan, New York, and Pennsylvania all told Human Rights Watch that youth and adults are bound by the same disciplinary rules and that youth are held in punitive segregation. Jail officials in 26 counties in Colorado,

Rights Watch and the American Civil Liberties Union interviewed 36 young people who spent several periods in solitary confinement in jail or prison before they turned 18.

As previously noted, some research suggests that youth in adult prisons may commit disciplinary infractions at a rate that is higher than younger adult prisoners and much higher than older adults.²¹⁰ Disciplinary data made available to independent researchers by the Florida Department of Corrections suggest that approximately one in every ten adolescents in Florida prisons is found guilty of an assaultive rule violation.²¹¹ Florida houses more young people under age 18 in its prisons than any other state. In Florida prisons, as in most other adult facilities, assaultive rule violations can result in a sanction that includes solitary confinement.²¹²

While some large facilities reported high levels of solitary confinement, one facility in Erie County, New York, reported using disciplinary segregation only rarely and as a last resort.²¹³

On the basis of our research and these partial, but suggestive, statistics, Human Rights Watch and the American Civil Liberties Union believe that solitary confinement of young people under age 18 is a serious and widespread problem.

Length of Time Spent in Solitary Confinement

There are also no comprehensive national data on the duration of the solitary confinement of young people under age 18. The limited evidence available suggests that adolescents in a significant number of jails and prisons spend prolonged periods—weeks and months, rather than just hours and days—in solitary confinement.

Human Rights Watch and the American Civil Liberties Union interviewed or corresponded with young people who reported spending lengthy periods in solitary confinement. While

Florida, Michigan, New York, Ohio, Oregon, Pennsylvania, and Wisconsin told Human Rights Watch that youth and adults are bound by the same disciplinary rules.

²¹⁰ Kuanliang et al., “Juvenile Inmates in an Adult Prison System: Rates of Disciplinary Misconduct and Violence.” The analysis suggests that—per year—youth under age 18 are found guilty of “potentially violent rule violations” at a rate of 353.17 per 1,000 and of “assaultive rule violations” at a rate of 109.38 per 1,000.

²¹¹ Ibid. Human Rights Watch and the American Civil Liberties Union have found that youth subjected to disciplinary confinement in Florida are sometimes held two per cell but at other times are held in solitary confinement.

²¹² See discussion of Florida prisons in Appendix 2.

²¹³ Human Rights Watch telephone interview with Jeffrey Hartman, Captain, Erie County Holding Center, New York, March 2, 2012.

not a representative sample, 49 of the 127 young people asked said that they spent between 1 and 6 months in solitary confinement before they turned 18. Twenty-nine reported spending longer than six months in solitary confinement.

Officials in some jurisdictions have reported that youth in the adult criminal justice system are less likely to be released on bail than adults and therefore spend longer periods in pre-trial detention.²¹⁴ Human Rights Watch interviewed or corresponded with some young people who had spent more than one year in detention awaiting trial before turning eighteen. In some cases, this may mean that young people are more likely to be subjected to solitary confinement in jurisdictions where the practice is common.

Table 1: Total time spent in solitary confinement reported by young people

Total Length of Time in Solitary Confinement	1-7 days	8-30 days	31-180 days	181-365 days	365+days	Exact Duration Unknown
Number of Youth	11	11	49	21	8	27

Human Rights Watch and the American Civil Liberties Union interviewed young men and women who had been sentenced to a range of time in punitive solitary confinement. Young people in a few facilities reported being sentenced to less than a week in solitary confinement for fighting; others, to weeks or months.²¹⁵ Human Rights Watch and the American Civil Liberties Union did not independently verify accounts of the precise nature of the disposition, but young people described different penalties for similar infractions in different facilities, such as fights that did not result in bleeding or injury. Many young people spoke about being punished for defending themselves from an assault from another inmate.

Not all interviewees recalled the precise number of days they had spent in punitive solitary confinement in jail or prison as adolescents. Some also said that they spent time in administrative solitary confinement pending their disciplinary hearing. While not a representative sample, for those young people who did report the specific time periods,

²¹⁴ Human Rights Watch telephone interview with Dora B. Schiro, Commissioner, New York City Department of Corrections, New York, July 6, 2012.

²¹⁵ Human Rights Watch interviews with James M. (pseudonym), Florida, April 2012 and April 7, 2012; and with Justin C. (pseudonym), Florida, April 2012.

the most common disciplinary sanctions to which they had been subjected were between 15 and 29 days.

Table 2: Length of punitive solitary confinement sentences young people reported receiving

Length of Each Punitive Solitary Confinement Period	1-6 days	7-14 days	15-29 days	30-59 days	Greater than 60 days
Each Period of Punitive Solitary Confinement	8	26	27	21	20

While most facilities reported subjecting young people to the same lengths of punitive solitary confinement as adults, a representative of one facility in Erie County, New York, said that young people there were sentenced to shorter periods of disciplinary segregation than adults.²¹⁶

Disciplinary rules, and the corresponding durations of solitary confinement, vary from state to state and jail to jail. Sanctions are commonly graduated, with the maximum period of solitary confinement for individual sanctions often increasing with severity, for example, from 7 to 15 to 30 to 60 days, depending on the infraction. Jail and prison officials in many jurisdictions reported that youth are generally subjected to the same length of time in punitive solitary confinement as adults.²¹⁷ Some jurisdictions subject individuals to multiple, consecutive—rather than concurrent—periods of solitary confinement for multiple, one rule violations, stemming from a single incident.²¹⁸ This can significantly increase the duration of solitary confinement when it is imposed as a disciplinary penalty.

The New York City Department of Corrections reported that a typical period of punitive solitary confinement for fighting for adolescents between the ages of 16 and 18 is 20 days.²¹⁹ The median period of punitive solitary confinement for adolescents, overall, is 29

²¹⁶ Human Rights Watch telephone interview with Jeffrey Hartman, Captain, Erie County Holding Center, New York, March 2, 2012.

²¹⁷ No state prison system reported a difference in the formal regulations governing disciplinary solitary confinement for youth and adults. A few jail officials also explicitly stated that youth and adults are subjected to the same periods of solitary confinement. Letter from Bernie Zook, Administrator/Warden, Mifflin County Correctional Facility, Pennsylvania, to Human Rights Watch, January 3, 2012; and Letter from Paul Falduto, Captain of Detentions, Kenosha County Sheriff's Department, Wisconsin, to Human Rights Watch, January 17, 2012.

²¹⁸ Human Rights Watch telephone interview with Dora B. Schriro, Commissioner, New York City Department of Corrections, New York, July 6, 2012.

²¹⁹ Ibid.

days; the average period of punitive solitary confinement is 43.1 days.²²⁰ This suggests that some young people spend very long periods in solitary confinement.²²¹ Furthermore, young people generally spend more time in solitary confinement than adults.²²²

As with punitive solitary confinement, not all young people recalled the precise number of days, weeks, or months they had spent in protective solitary confinement in jail or prison while they were under age 18. While not a representative sample, for those young people who did report the specific time periods, the most common duration was longer than six months. Four of them reported spending longer than one year in protective solitary confinement.

Table 3: Length of protective solitary confinement reported by young people

Length of Each Protective Solitary Confinement Period	1-6 days	7-14 days	15-29 days	30-59 days	60-89 days	90 to 179 days	180 days or longer
Each Period of Protective Solitary Confinement	4	3	3	4	5	11	18

There is rarely any absolute temporal limit on administrative solitary confinement (solitary confinement as an administrative, management, or housing measure). Human Rights Watch and the American Civil Liberties Union interviewed a number of young people who began multi-year periods of administrative solitary confinement in state prison systems while they were under 18.²²³

The use of medical solitary confinement as a therapeutic intervention also varies across facilities. Human Rights Watch and the American Civil Liberties Union interviewed young

²²⁰ This data is from FY 2012. Human Rights Watch email correspondence with Sharman Stein, Deputy Commissioner, New York City Department of Corrections, July 27, 2012; Human Rights Watch email correspondence with Robin Campbell, Deputy Commissioner, New York City Department of Corrections, September 26, 2012.

²²¹ Officials at the New York City Department of Corrections indicated that they hope to reform the management structure at the facility to allow them to impose shorter periods of punishment. Human Rights Watch telephone interview with Dora B. Schriro, Commissioner, New York City Department of Corrections, New York, July 6, 2012.

²²² Human Rights Watch email correspondence with Robin Campbell, Deputy Commissioner, New York City Department of Corrections, September 26, 2012.

²²³ Human Rights Watch interviews with Bradley T. (pseudonym), Colorado, February 2012; and with George T. (pseudonym), Florida, April 2012.

people who described spending a few days in isolation when in the midst of, or immediately following, a mental health crisis. Four young people described spending more than a week in medical solitary confinement. A number of young people who described having great difficulty coping while in different forms of solitary confinement reported spending several periods in medical solitary confinement. Others reported being transferred from medical solitary confinement to another form of solitary confinement.

IV. Violations of Fundamental Rights

International human rights law requires the US government to protect all prisoners from mistreatment and to provide vulnerable inmates, especially children and persons with mental disabilities, with heightened measures of protection. This body of law, as well as international standards developed to guide its implementation, establishes that people under age 18 have a right to be treated in a manner appropriate to their age and development.

While the solitary confinement of adolescents is not yet prohibited under US domestic law, the US Supreme Court has repeatedly suggested that young people in the criminal justice system are entitled to special constitutional protections in the context of crime and punishment because they are developmentally different from adults.

International Law and Standards

In November 1959, the United Nations General Assembly adopted the Declaration on the Rights of the Child, which recognized 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.”²²⁴ The United States was one of the 78 members of the UN General Assembly that voted unanimously to adopt the declaration. While the declaration is not binding law, since that time, the world’s governments, including the United States, have further elaborated, in treaties and other declarations, the rights of children accused of crimes.

The International Covenant on Civil and Political Rights (ICCPR), to which the United States became a party in 1992, specifically acknowledges the need for special treatment of children in the criminal justice system and emphasizes the importance of their

²²⁴ United Nations Declaration on the Rights of the Child, adopted November 20, 1959, G.A. res. 1386 (XIV), 14 U.N. GAOR Supp. (No. 16) at 19, U.N. Doc. A/4354 (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.” The Pact was adopted November 22, 1969, O.A.S. Treaty Series 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).

rehabilitation.²²⁵ Article 10 requires the separation of child offenders from adults and the provision of treatment appropriate to their age and legal status. Article 14(4), which was co-sponsored by the United States, requires that criminal procedures for children charged with crimes “take account of the age and the desirability of promoting their rehabilitation.”²²⁶ The ICCPR emphasizes age-differentiated, positive measures for child offenders and education, rehabilitation, and reintegration over punishment.²²⁷

Both the ICCPR and the Convention against Torture and Other, Cruel, Inhuman or Degrading Treatment or Punishment (CAT) prohibit “cruel, inhuman or degrading treatment or punishment.”²²⁸ In addition, article 10 of the ICCPR stipulates, “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”²²⁹ For treatment to be humane, it must be appropriate to age and legal status.²³⁰ The vulnerability and immaturity of juvenile offenders renders a wider range of treatment potentially cruel, inhuman, or degrading, and such treatment, in turn, can have a much more profound effect on the body and mind of a developing child than on an adult.

It is precisely because imprisonment is such an inherently severe sanction that governmental decisions to impose it are subject to human rights constraints. The ICCPR

²²⁵ International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by the United States on June 8, 1992. 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 Committee, General Comment 1 (Forty-fourth session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 155 (1994), <http://www1.umn.edu/humanrts/gencomm/hrcoim20.htm> (accessed August 27, 2012), para. 13.

²²⁶ The United States co-sponsored this provision together with Great Britain and India, and it was adopted unanimously. See Marc Bossuyt, *Guide to the “Travaux Préparatoires” of the International Covenant on Civil and Political Rights* (The Netherlands: Martinus Nijhoff Publishers, 1987), p. 307. The ICCPR contains three additional provisions related to juvenile justice. Article 6(5) prohibits imposing the death penalty on persons who committed crimes while under the age of 18. Article 10(2), subparagraph b, mandates the separation of accused children from adults and the swift adjudication of their cases. Article 14(1) provides an exception for cases involving children to the general requirement that judgments be made public.

²²⁷ Manfred Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary* (Kehl: N.P. Engel, 1993), p. 266.

²²⁸ ICCPR, art. 7; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), adopted December 10, 1984, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987, ratified by the United States on October 21, 1994, art. 16.

²²⁹ In article 37 of the CRC, the prohibition of both capital punishment and life imprisonment without possibility of release are included in the sub-section banning cruel, inhuman, or degrading punishments. Convention on the Rights of the Child (CRC), adopted November 20, 1989, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force September 2, 1990. The United States signed the CRC in 1995 but has not ratified.

²³⁰ See UN Human Rights Committee, General Comment 9, Article 10 (Sixteenth session, 1982), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI/GEN/1/Rev.1 (1994).

recognizes that all persons (including young people) deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.²³¹

When the United States ratified the ICCPR, it attached a limiting reservation providing that

The policy and practice of the United States are generally in compliance with and supportive of the Covenant’s provisions regarding treatment of juveniles in the criminal justice system. Nevertheless, the United States reserves the right, in exceptional circumstances, to treat juveniles as adults, notwithstanding paragraphs 2 (b) and 3 of article 10 and paragraph 4 of article 14.²³²

The drafting history of this reservation indicates that it should be interpreted narrowly. The reservation was intended to permit—on an “exceptional” basis—the trial of children as adults and the incarceration of children and adults in the same prison facilities.

The United States, as a co-sponsor of Article 14, was keenly aware of the breadth and scope of its language. There is nothing in its reservation to suggest that the United States sought to reserve the right to treat children as harshly as adults on a regular or frequent basis, or to disregard the special needs and vulnerabilities of children. To the extent the reservation is interpreted broadly, it risks creating a loophole for violations of children’s basic rights. To be fully consistent with what it has agreed to elsewhere regarding children’s rights, the United States should withdraw the reservation, and refuse to use it to justify actions that otherwise would violate the ICCPR.

The Convention on the Rights of the Child (CRC), which the United States has signed but not yet ratified, explicitly addresses the particular rights and needs of children.²³³

Underpinning several of the treaty’s provisions is the fundamental recognition of the child’s potential for rehabilitation. The CRC requires that a state’s decision to incarcerate a

²³¹ ICCPR, art. 10(1).

²³² ICCPR, United States of America: Reservations, para. 5 (emphasis added). The United States also included a reservation to the general obligation of rehabilitation.

²³³ Convention on the Rights of the Child (CRC), adopted November 20, 1989, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force September 2, 1990. The United States signed the CRC in 1995 but has not ratified.

child “shall be used only as a measure of last resort and for the shortest appropriate period of time.”²³⁴ A child who has committed a crime is to be treated in a manner that takes into account “the child’s age and the desirability of promoting the child’s reintegration and the child’s assuming a constructive role in society.”²³⁵ States are to use a variety of measures to address the situation of children in conflict with the law, including “care, guidance and supervision orders; counseling; probation; foster care; education and vocational training programmes and other alternatives to institutional care.”²³⁶ The treaty also anticipates the need for regular and accessible procedures in which a child can “challenge the legality of the deprivation of his or her liberty.”²³⁷

International human rights law also affirms the right of family unity.²³⁸ The International Covenant on Economic, Social and Cultural Rights (which the US has signed, but not yet ratified) guarantees all persons a right to education and to the highest attainable standard of physical and mental health.²³⁹

The Convention of the Rights of Persons with Disabilities (CRPD), which the Senate was actively considering for ratification as this report was published, also states that young people with disabilities, including mental disabilities (long-term mental health problems) or intellectual disabilities (sometimes called developmental disabilities), retain the right to full enjoyment “of all human rights and fundamental freedoms, on an equal basis with other [youth],” including when deprived of their liberty.²⁴⁰

Various international standards provide additional detail regarding precisely how governments should ensure that this range of rights be safeguarded in practice.²⁴¹

²³⁴ CRC, art. 37(b).

²³⁵ CRC, art. 40(1).

²³⁶ CRC, art. 40(4).

²³⁷ CRC, art. 37(d).

²³⁸ ICCPR art. 23; International Covenant on Economic, Social and Cultural Rights (ICESCR), G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force January 3, 1976, art. 10. The United States signed the ICESCR in 1977 but has not ratified.

²³⁹ Universal Declaration of Human Rights (UDHR), G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948); ICESCR, art. 13.

²⁴⁰ Convention on the Rights of Persons with Disabilities (CRPD), adopted December 13, 2006, G.A. Res. 61/106, Annex I, U.N. GAOR, 61st Sess., Supp. (No. 49) at 65, U.N. Doc. A/61/49 (2006), entered into force May 3, 2008, arts. 7(1), 14. The United States signed the CRPD in 2009 but has not ratified.

²⁴¹ See for example, a recent report considering the particular vulnerability of persons with disabilities to cruel, inhuman, or degrading treatment, including in the context of detention. UN General Assembly, Torture and other cruel, inhuman or degrading treatment or punishment: Note by the Secretary-General, U.N. Doc. A/63/175, July 28, 2008.

With regard to solitary confinement, the United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines) describe punitive solitary confinement of young people under age 18 as cruel, inhuman, or degrading treatment.²⁴² The Committee on the Rights of the Child, which interprets the CRC, has also suggested that the punitive solitary confinement of young people under age 18 is cruel, inhuman, or degrading treatment.²⁴³ The United Nations Rules for the Protection of Juveniles Deprived of their Liberty reiterates this conclusion.²⁴⁴ A number of treaty and regional bodies have suggested that the prolonged solitary confinement of both adults and children can constitute cruel, inhuman, or degrading treatment.²⁴⁵

Most recently, the special rapporteur on torture, in his report to the General Assembly, called for an absolute ban on solitary confinement for young people under age 18:

The Special Rapporteur holds the view that the imposition of solitary confinement, of any duration, on juveniles is cruel, inhuman or degrading

²⁴² United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines), G.A. Res. 45/112, annex, 45 U.N. GAOR Supp. (No. 49A) at 201, U.N. Doc. A/45/49 (1990).

²⁴³ UN Committee on the Rights of the Child, General Comment 10, Children's rights in juvenile justice, U.N. Doc. CRC/C/GC/10 (2007).

²⁴⁴ UN Rules for the Protection of Juveniles Deprived of their Liberty, G.A. Res. 45/113, annex, 45 U.N. GAOR Supp. (no. 49A) at 205, U.N. Doc. A/45/49, (1990).

²⁴⁵ See, for example, UN Human Rights Committee, General Comment 20, Article 7, Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment (Forty-fourth session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 (1994); UN Committee Against Torture, Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, U.N. Doc. A/63/175, July 28, 2008, para. 80; UN Committee Against Torture, "Consideration of reports submitted by States parties under Article 19 of the Convention: Concluding Observations of the Committee Against Torture," U.N. Doc. CAT/C/MAC/CO/4, November 21, 2008, para. 8. The Committee on the Rights of the Child has repeatedly recommended the practice be banned. UN Committee on the Rights of the Child, "Consideration of reports submitted by States parties under Article 44 of the Convention: Concluding Observations of the Committee on the Rights of the Child," U.N. Doc. CRC/C/15/Add.151, October 7, 2001, para. 41; UN Committee on the Rights of the Child, "Consideration of reports submitted by States parties under Article 44 of the Convention: Concluding observations, Singapore," U.N. Doc. CRC/C/15/Add.220, October 27, 2003, para. 45(d); and UN Committee on the Rights of the Child, "Consideration of reports submitted by States parties under Article 44 of the Convention: Concluding Observations, El Salvador," U.N. Doc. CRC/C/15/Add.232, June 30, 2004, para. 36(a). See also the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment of Punishment (CPT), "The CPT Standards: 'Substantive' sections of the CPT's General Reports," CPT/Inf/E(2002) 1- Rev. 2006, Strasbourg, France, <http://www.cpt.coe.int/en/documents/eng-standards-prn.pdf> (accessed August 27, 2012), para. 56. Human Rights Watch has condemned prolonged solitary confinement of adults as a function of individual characteristics and the particular conditions of confinement. See, for example, Human Rights Watch, *Out of Sight: Super-Maximum Security Confinement in the US*, February 1, 2000, <http://www.hrw.org/reports/2000/02/01/out-sight-super-maximum-security-confinement-us>.

treatment and violates article 7 of the International Covenant on Civil and Political Rights and article 16 of the Convention against Torture.²⁴⁶

This proposed absolute ban reflects an agreement that solitary confinement is an affront to the humanity and vulnerability of any child. The special rapporteur also called for an absolute ban on solitary confinement of those with mental disabilities because the adverse effects are especially significant for persons with serious mental health problems.²⁴⁷ Young people under age 18 with mental disabilities are therefore doubly vulnerable, given both their age and developmental needs and their disability.

With regard to the other deprivations experienced by young people in solitary confinement, international standards similarly provide additional detail. The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), among other international standards, provide that while in custody, adolescents “shall receive care, protection and all necessary individual assistance,” which must extend to psychological, medical, and physical care and be differentiated by age and gender-specific needs.²⁴⁸ These standards emphasize education, family contact, and access to developmentally-appropriate programming aimed at supporting growth and at reintegrating young people into society.

Domestic professional standards suggest that adult facilities should not house young people under age 18.²⁴⁹ These standards also echo international standards with regard to access to physical and mental health care, with the American Correctional Association (ACA) recommending that in jails, “[all] inmates have unimpeded access to a continuum of health care services,” including preventative care, and that inmates should “have access

²⁴⁶ UN Human Rights Council, Interim Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan Mendez, U.N. G.A. Doc. A/66/268, August 5, 2011, <http://daccess-ddsny.un.org/doc/UNDOC/GEN/N11/445/70/PDF/N1144570.pdf?OpenElement> (accessed August 27, 2012), para. 77.

²⁴⁷ *Ibid.*, paras. 67-68, 78.

²⁴⁸ United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”), adopted November 29, 1985, G.A. Res. 40/33, annex, 40 U.N. GAOR Supp. (No. 53) at 207, U.N. Doc. A/40/53 (1985).

²⁴⁹ Standard 4-ALDF-2A-38, “Youthful Offenders,” in American Correctional Association, *Performance-Based Standards for Adult Local Detention Facilities*, 4th Ed. (ACA: June 2004); National Commission on Correctional Health Care, “Position Statement, Health Services to Adolescents in Adult Correctional Facilities,” May 17, 1998, <http://www.ncchc.org/resources/statements/adolseccents.html> (accessed August 27, 2012); American Bar Association (ABA), *Youth in the Criminal Justice System: Guidelines for Policy Makers and Practitioners*, 2001, <http://www.campaignforyouthjustice.org/documents/natlres/ABA%20-%20Youth%20in%20the%20Criminal%20Justice%20System%20Guidelines%20for%20Policymakers.pdf> (accessed August 27, 2012).

to twenty-four hour emergency medical, dental, and mental health services.”²⁵⁰ The ACA also recommends that adult facility classification systems *and programming* should “meet the physical, social, and emotional needs” of young people and explicitly highlights the importance of training and specialization in the areas of “educational programming,” “adolescent development,” “crisis prevention and intervention,” “cognitive-behavioral interventions,” and “social-skills training.”²⁵¹

Human Rights Violations

Our research establishes both that young people under age 18 are subjected to solitary confinement, often for prolonged periods, and that the conditions that accompany solitary confinement frequently fail to meet the psychological, physical, social, and developmental needs of adolescents. These failures constitute violations of fundamental rights in a number of circumstances.

Any prolonged physical and social isolation of young people raises serious human rights concerns. Whether and when a particular case violates international human rights law is based on an individual analysis of the characteristics and needs of a particular young person and the conditions and duration of confinement. The UN Special Rapporteur on Torture and other UN bodies have stated that the solitary confinement (physical and social isolation of 22-24 hours per day for 1 day or more) of young people under age 18, for any duration, constitutes cruel, inhuman, or degrading treatment.

Human Rights Watch and the American Civil Liberties Union recognize that in any particular case, an analysis of the individual circumstances and conditions of confinement may be impractical. Given the nature of incarceration, as well as the needs, characteristics, and vulnerability of young people, we endorse the view that there is no reason—administrative, protective, punitive, or medical—to hold a young person for 22-24 hours per day for 1 day or more in social and physical isolation, even when it is necessary to separate a young person from the general population.

²⁵⁰ American Correctional Association, *Core Jail Standards* (ACA: 2010).

²⁵¹ American Correctional Association, *Standards for Adult Correctional Institutions, 4th Ed* (Virginia: American Correctional Association, 2003). ACA Policy prohibits the confinement of youthful offenders in an adult facility. Comment to Standard 4-4307 in American Correctional Association, *Standards for Adult Correctional Institutions, 4th Ed*.

Such treatment violates the obligation to treat young people deprived of their liberty with humanity and respect for their inherent human dignity and status as children under the ICCPR and the CRC, and can amount to torture or cruel, inhuman, or degrading treatment under the ICCPR, CAT, and the CRC.

Even if the solitary confinement of young people were not considered an inherent violation of the rights of young people under age 18, and even in cases where it may not amount to cruel, inhuman, or degrading treatment, the conditions and deprivations that often accompany it entail violations of other fundamental rights.

Young people told us graphically how they felt solitary confinement aggravated or precipitated anguish and mental health problems. Officials often fail to provide mental health services and care to young people in solitary confinement, whether they are experiencing stress, mental disability, or even acute or repeated crises. They also often fail to intervene in these circumstances to end solitary confinement. These failures constitute violations of the rights of young people to be treated with humanity and respect for the inherent dignity of the human person, the rights of adolescents to the highest attainable standard of physical and mental health, and the rights of young people to be free from torture or cruel, inhuman, or degrading treatment. Failures of officials to maintain adequate preventative, age-differentiated health services, or to intervene to prevent a foreseeable successful suicide, would additionally constitute a violation of the right to life.²⁵²

Young people in solitary confinement are frequently only allowed out of their cell for one hour each day. In some facilities, they are only allowed to “exercise” indoors in a hallway or common area. In other facilities, they have access to a small fenced exercise area outdoors. In a few facilities, young people reported they were unable to access any physical exercise. Young people also reported difficulty accessing adequately nutritious food to support physical development. Young people also reported experiencing a range of physical changes while held in solitary confinement. Failure to foster conditions of confinement that promote healthy growth and physical development, or conditions of confinement which cause deterioration of physical health, can also violate the right of young people deprived of their liberty to be treated with humanity and respect for their

²⁵² The right to life is protected in all major human rights instruments, including the UDHR, the ICCPR, and the Convention against Torture.

inherent dignity, as well as the right to be free from torture or cruel, inhuman, or degrading treatment or punishment.

Young people in many facilities cannot contact their families regularly while in solitary, either literally by touch, or in other ways. Youth are often denied adequate or appropriate education, or sometimes any educational programming at all. Programming to promote social development is also sometimes entirely absent. These deprivations pertain also to young people in solitary who have mental disabilities. These failures on the part of officials can amount to a denial of the rights to be treated with humanity and respect for one's human dignity, the right to family unity, the right to education, and the right to rehabilitation.

US Law

US constitutional law does not currently prohibit solitary confinement, including for young people. Nearly every court to consider the solitary confinement of adults with serious mental disabilities has found the practice to be unconstitutional.²⁵³ The US Department of Justice, when it has investigated the isolation and segregation of adolescents in adult facilities, has suggested that there are constitutional limits related to the physical and social isolation of youth with regard to conditions, duration, and process.²⁵⁴ But there is no jurisprudence that specifically analyzes and finds unconstitutional the solitary

²⁵³ For example, *Ruiz v. Johnson*, Southern Federal District Court of Texas, 1999 (37 F. Supp. 2d. 855, 915 (S.D. Tex. 1999)), rev'd on other grounds, *Ruiz v. Johnson*, Fifth Circuit Federal Court of Appeals, 2001 (243 F.3d 941 (5th Cir. 2001)), adhered to on remand, *Ruiz v. Johnson*, Southern Federal District Court of Texas, 2001 (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*, Eastern Federal District Court of California, 1995 (912 F. Supp. 1282, 1320-21 (E.D. Cal. 1995)); *Madrid v. Gomez*, Northern Federal District Court of California, 1995 (889 F. Supp. 1146, 1265-66 (N.D. Cal. 1995)); *Casey v. Lewis*, Federal District Court of Arizona, 1993 (834 F. Supp. 1477, 1549-50 (D. Ariz. 1993)); *Langley v. Coughlin*, Southern Federal District Court of New York, 1988 (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).

²⁵⁴ Letter from Thomas E. Perez, Assistant Attorney General, to Andrew J. Spano, Westchester County Executive, November 19, 2009, http://www.justice.gov/crt/about/spl/documents/Westchester_findlet_11-19-09.pdf (accessed August 27, 2012), para. 27-30 (noting that the average disciplinary sanction imposed on young people in an adult jail 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 inmates); Letter from Wan J. Kim, Assistant Attorney General, to Jim Doyle, Governor of Wisconsin, May 1, 2006, http://www.justice.gov/crt/about/spl/documents/taycheedah_findlet_5-1-06.pdf (accessed August 27, 2012), para. 10-13 (finding that the adult facility used administrative segregation and observation status for inmates with severe mental illness in violation of the Constitution); Letter from Ralph F. Boyd, Jr., Assistant Attorney General, to Parris N. Glendening, Governor of Maryland, Aug. 13, 2002, http://www.justice.gov/crt/about/spl/documents/baltimore_findings_let.php (accessed August 27, 2012) (finding that juveniles in an adult jail were put in isolation cells under "supermax" conditions, sometimes for as long as several months).

confinement of young people in adult jails and prisons.²⁵⁵ However, in almost all jurisdictions, there are a variety of legal doctrines that distinguish between young people under age 18 and adults. As the Supreme Court has explained,

The law has historically reflected the same assumption that children characteristically lack the capacity to exercise mature judgment and possess only an incomplete ability to understand the world around them. Like this Court’s own generalizations, the legal disqualifications placed on children as a class— *e.g.*, limitations on their ability to alienate property, enter a binding contract enforceable against them, and marry without parental consent—exhibit the settled understanding that the differentiating characteristics of youth are universal.²⁵⁶

In the past decade, the United States Supreme Court has repeatedly acknowledged that in the criminal justice context, youth are entitled to greater constitutional protections than adults. In four recent decisions regarding the death penalty, interrogations, and life without parole, the court has affirmed that people under age 18 are still developing and are inherently less culpable than adults.²⁵⁷ This reasoning applies with equal force in the context of solitary confinement.

²⁵⁵ The few courts to consider isolation of young people have generally done so in the context of a range of claims related to mistreatment in juvenile facilities. For example, *R.G. v. Koller*, Federal District Court of Hawaii, 2006 (415 F.Supp. 1129 (D. Hawaii 2006)); *Santana v. Collazo*, First Circuit Federal Court of Appeals, 1984 (793 F.2d 41 (1st Cir. 1984)) (holding that juvenile detention facilities in Puerto Rico failed to meet burden of showing legitimate interest in confining juveniles in isolation for as long as 20 days on grounds of protecting juveniles from harm, discouraging offender behavior, and preventing escapes); *D.B. v. Tewksbury*, Federal District Court of Oregon, 1982 (545 F. Supp. 896 (D. Or. 1982)) (detaining child pretrial detainees in jail under circumstances, in which there was failure to provide work, exercise, education, recreation or recreational materials or for privacy when showering, using toilets or maintaining feminine hygiene, in which certain children were placed in isolation cells and in which there was failure to provide adequate supervision to prevent harm, to allow contact between children and their families, to provide adequate diet, to train staff to meet children’s psychological needs, to provide written rules and grievance procedure and to provide adequate medical care, constituted “punishment,” and, thus, violated due process clause); *Gary H. v. Leo Hegstrom*, Ninth Circuit Federal Court of Appeals, 1987 (831 F.2d at 1433 (9th Cir. 1987)) (“To the extent that the court ordered due process hearings prior to confinement in excess of 24 hours, . . . the decree was clearly within the power of a federal court to assure minimum constitutional standards taught by Youngberg.”).

²⁵⁶ *J.D.B. v. North Carolina*, United States Supreme Court, 2011 (564 US __ at 10 (2011)) (internal citations omitted).

²⁵⁷ *Roper v. Simmons*, United States Supreme Court, 2005 (543 US __, at 19 (2005)) (“The differences between juvenile and adult offenders are too marked and well understood to risk allowing a youthful person to receive the death penalty despite insufficient culpability.”); *Graham v. Florida*, United States Supreme Court, 2010 (560 US __, at 23 (2010)) (“The differences between juvenile and adult offenders are too marked and well understood to risk allowing a youthful person to receive the death penalty despite insufficient culpability.”); *Miller v. Alabama*, United States Supreme Court, 2012 (No. 10 - 9646, slip op. at 8 (2012)) (“...[C]hildren are constitutionally different from adults.... [J]uveniles have diminished culpability and greater prospects for reform ... [and] are less deserving of the most severe punishments.... [C]hildren have a lack of maturity and an

Federal courts have already recognized that for certain vulnerable populations, such as those with severe mental health problems, solitary confinement constitutes a violation of the Eighth Amendment as a cruel and unusual punishment. There is also a growing body of law stating that young people are such a vulnerable population because of the unique challenges they face when subjected to solitary confinement. And the Supreme Court has already recognized that the punishment of children must take into account their age and special developmental needs and capacity for change. Taking all this into account, solitary confinement should not be inflicted on youth in the same way that it is applied to adults. Failure to take age into account, and subjecting young people to solitary confinement, should therefore be found to violate the constitutional prohibition on cruel and unusual punishment.

underdeveloped sense of responsibility[;] ... [c]hildren are more vulnerable ... to negative influences and outside pressures[;] ... [a]nd ... a child's character is not as well formed as an adult's; his traits are less fixed.").

V. Alternatives to the Solitary Confinement of Youth

Young people in conflict with the law can be among the most complex and demanding group of individuals to house, manage, protect, and care for. The challenge is all the more daunting for officials with limited budgets and in facilities designed, and with staff trained, to house and manage adults. Some officials respond in the same way to every form of misconduct: through punishment. Solitary confinement can sometimes appear to be a simple solution to keeping everyone safe in overcrowded, short-staffed facilities that have little programming to offer inmates. But the imposition of solitary confinement is never necessary in the management of people under age 18 and can have dire consequences.

Human Rights Watch and the American Civil Liberties Union have found accord between the views of some corrections and mental health experts that facilities can, and should, manage and detain adolescents without subjecting them to any form of solitary confinement.

Getting Kids Out of Adult Facilities

A significant number of adult facilities across the United States rely on solitary confinement when detaining and managing young people. An initial important step to reducing the numbers of adolescents harmed by the practice would be to move people under age 18 out of adult facilities and into juvenile facilities.

Although there is evidence to suggest that some facilities in the juvenile justice system still use various forms of prolonged isolation, including solitary confinement, when detaining and managing young people, there are other systems that rarely use prolonged isolation. For example, a recent study of the Missouri juvenile system found that it used isolation hundreds of times less often than juvenile facilities in Ohio.²⁵⁸ Additionally, every

²⁵⁸ The study also found that, when compared with 97 facilities nationwide that confidentially report data to the Council of Juvenile Correctional Administrators Performance-based Standards (PbS) project, the ratio of isolation incidents nationally to those in Missouri was 228:1. Richard Mendel, The Annie E. Casey Foundation, "The Missouri Model: Reinventing the Practice of Rehabilitating Youthful Offenders," 2010, http://www.aecf.org/MajorInitiatives/~media/Pubs/Initiatives/Juvenile%20Detention%20Alternatives%20Initiative/MOModel/MO_Fullreport_webfinal.pdf (accessed August 3, 2012), pp. 9-10. A detailed description of the use of isolation in juvenile facilities can also be found in Sandra Simkins et al., "The Harmful Use of Isolation in Juvenile Facilities: The Need for Post-Disposition Representation," *Washington University Journal of Law and Policy*, vol. 38 (2012), <http://digitalcommons.law.wustl.edu/cgi/viewcontent.cgi?article=1019&context=wujlp> (accessed September 26, 2012).

set of best practice standards for juvenile facilities proposes maximum limits on various forms of isolation that are far below the durations of solitary confinement experienced by the young people interviewed for this report and by young people in adult facilities across the nation.²⁵⁹

The vast majority of facilities in the juvenile justice system are staffed and resourced to provide for adolescent needs in a much more comprehensive way because they are designed to house and manage young people.

Reviewing and Reforming

Managing youth in the juvenile justice system will always be the best option. But in some jurisdictions, where reform of state law is necessary before all young people can be returned to the juvenile justice system, adult facilities can take significant measures to reduce the prevalence, duration, and harmful consequences of solitary confinement without embarking on sweeping reforms.

Jails and prisons can review existing policies and practices, including disciplinary procedures, and modify them to reflect differences in how they apply to youth and adults. Officials can instruct and train staff to view and treat youth differently from adults, including in designing and implementing services and programming, as well as in assessment, diagnosis, and classification.

Training and Staffing

Officials repeatedly described to us the importance of mentorship and adequate supervision to maintain order and protect all inmates. Facilities must have appropriate

²⁵⁹ The Juvenile Detention Alternatives Initiative suggests that best practices for juvenile facilities include prohibiting room confinement in excess of four hours as a response to current misbehavior and prohibiting disciplinary room confinement in excess of 72 hours. “Juvenile Detention Alternatives Initiative (JDAI) Facility Site Assessment Instrument,” May 2006, <http://www.cclp.org/documents/Conditions/JDAI%20Standards.pdf> (accessed August 27, 2012). The American Bar Association Task Force on Youth in the Adult Criminal Justice System proposed that room confinement for any purpose should never exceed 10 days. American Bar Association (ABA), *Youth in the Criminal Justice System: Guidelines for Policy Makers and Practitioners*, <http://www.campaignforyouthjustice.org/documents/natlres/ABA%20-%20Youth%20in%20the%20Criminal%20Justice%20System%20Guidelines%20for%20Policymakers.pdf>. The 1980 American Bar Association Guidelines for Juvenile Facilities suggests that best practices for juvenile facilities should include limiting protective custody to eight hours and prohibiting room confinement for suicide risk, as well as limiting disciplinary confinement to 5 days for minor infractions and 10 days for major infractions.

numbers of properly trained and adequately supervised staff.²⁶⁰ To provide for the full range of the needs and vulnerabilities of young people, staffing must include specialized service providers, like social workers and mental health professionals.

As one corrections official, who manages a prison for youthful offenders in the adult system, described,

If we do what we do and do it well here, we are able to provide some of the mentorship they wouldn't be able to get at another facility because we are staffed heavier. In a typical adult jail, they would have about half of the staff that we do here on a unit. We have enough staff to interact with them as much as possible—to provide that type of mentoring and leadership.... We have twice the complement of case managers. We have treatment specialists; two to three times the amount of corrections officers. One of the things we do well is just the amount [of staff].”²⁶¹

Another stated,

[Youth] are high maintenance. Half the battle [is] you have to know about them; about their family, what kind of history they have. When they understand that, it is half the battle.... Just the fact that you know their name and know something about them, there is no substitute for the rapport building.²⁶²

Programming and Activities

Whether housed in small or large groups, one way to effectively manage young people is by providing significant levels of programming and activities in which they can invest their energy and attention. For example, although officials at the Pine Grove youthful offender

²⁶⁰ For a discussion of staffing ratios in juvenile facilities, see Center for Children's Law and Policy et al., "Protecting Youth in the PREA national standards," April 4, 2011, <http://www.cclp.org/documents/PREA/PREA%20Youth%20Comments.pdf> (accessed August 27, 2012).

²⁶¹ Human Rights Watch telephone interview with Eric Bush, Superintendent, Secure Correctional Institution Pine Grove, Pennsylvania Department of Corrections, Pennsylvania, June 21, 2012.

²⁶² Human Rights Watch telephone interview with Marshall Shirley, Deputy, Secure Correctional Institution Pine Grove, Pennsylvania Department of Corrections, Pennsylvania, June 21, 2012.

facility in Pennsylvania described using solitary confinement to manage some youth, they described high levels of activities as one of the important elements of managing other youth in their facility. As one official stated, “If you don’t create something for them to do, their minds race at 90 miles an hour; they are harder to manage if you don’t keep them busy.”²⁶³

The New York City Department of Corrections has recently announced plans to reform the programming it provides to adolescents held in general population on Rikers Island.²⁶⁴ The Department’s current goal is,

... [T]o create a wrap-around environment. The question is, after the school day, how do we sustain the focus on problem-solving? This is a cognitive skills program ... we have trained members of the school staff. We have also trained our correctional staff and our adolescents so that everyone has the same language and expectations for problem-solving. There are group sessions that happen in the evenings in the housing units so things don’t fester—to develop more pro-social problem-solving skills. The program also features a component on using leisure time wisely. So ... [youth are] learning to make good choices throughout the whole of the day.²⁶⁵

It remains to be seen whether additional reforms at Rikers will address the developmental needs of youth held in solitary confinement there. Young people who had experienced solitary confinement across the United States, and who had spent months or years in adult facilities while under age 18, frequently identified idleness as the primary source of conflict, and hence rule violations, in jails and prisons.

Assessment, Diagnosis, and Planning

Experts stress the importance of assessing youth coming into and staying in adult facilities (and of being able to recognize mental and intellectual disabilities) to provide

²⁶³ Human Rights Watch telephone interview with Eric Bush, June 21, 2012.

²⁶⁴ “New Privately Funded Program to Reduce Reincarceration—ABLE—is part of City’s comprehensive Young Men’s Initiative,” News from the Blue Room, NYC.gov press release, August 2, 2012, http://www.nyc.gov/portal/site/nycgov/menuitem.c0935b9a57bb4ef3daf2f1c701c789a0/index.jsp?pageID=mayor_press_release&catID=1194&doc_name=http%3A%2F%2Fwww.nyc.gov%2Fhtml%2Fom%2Fhtml%2F2012b%2Fpr285-12.html&cc=unused1978&rc=1194&ndi=1 (accessed August 27, 2012).

²⁶⁵ Human Rights Watch telephone interview with Dora B. Schriro, Commissioner, New York City Department of Corrections, New York, July 6, 2012.

appropriately for individual young people and ensure rehabilitation. As one psychiatric expert with experience in adult and juvenile facilities described, this can take the form of repeated re-classification:

“[The] risk and needs [of teenagers] change over time. With teenagers, they need to have a good risk and needs assessment and they need that every six months to a year. Then a behavior plan that matches their risk and needs. What you want to do is target their highest criminal recidivism risk and then target their highest needs. Maybe this kid has an emerging mental illness; maybe they have a low I.Q.; maybe they malingering a lot. If we could do that, then we could really help this person grow and progress.”²⁶⁶

Disciplinary Measures

Solitary confinement is also not necessary as a disciplinary measure, and experts have pointed to alternatives, including through the establishment of a system of graduated sanctions. Such a system would require changes though. As the former Commissioner of Corrections of New York City and the state of Pennsylvania stated,

There aren't a whole lot of tools to deal with adolescents as things stand. So there aren't a whole lot of things to control. If there were activities, then something coveted to participate in, you could take that away.... Restricting a kid from going to the movie tonight may have as powerful an impact on controlling their behavior ... there aren't a sufficient number of activities that are viewed as desirable that could be used as an intermediate sanction where sanctions are necessary.²⁶⁷

To be effective, experts also point out that disciplinary measures must be immediate and proportional to the behavior, and connected to programming. Even officials who described using solitary confinement in some contexts, described being able to avoid it in other contexts. As one state prison official described,

²⁶⁶ Human Rights Watch telephone interview with Deborah DePrato, Director, Institute for Public Health and Justice, Louisiana State University Health Sciences Center, and Associate Clinical Professor, School of Public Health, Louisiana, June 6, 2012.

²⁶⁷ Human Rights Watch telephone interview with Martin Horn, Distinguished Lecturer in Criminal Justice, John Jay College of Criminal Justice, New York, May 24, 2012.

We have trained our staff to go to immediate sanctions, logical sanctions, immediate and programmatic sanctions. What we have found is that if you address the issue immediately and if the consequence is immediate, we can change behavior. We have focused a lot on that with our younger offenders.²⁶⁸

Even some officials who reported frequently using solitary confinement as a disciplinary response identified very different alternatives:

If you can get in quick enough, it would be the equivalent of “go to your room.” A lot of these [conflicts] start small. If you have one youth who is monopolizing the channel-changer [for the housing area television], the option now ... if he does not respond is to infract him [which results in punitive segregation]. What I prefer is “go to your room young man” and then to create a mechanism for review—so every two hours you double back and it wouldn’t go any longer than six hours (so that it doesn’t go beyond a *de facto* punitive segregation in your housing unit). So when you are ready to come out, all is forgiven.²⁶⁹

Borrowing from Juvenile Facilities

The most progressive and innovative alternatives to solitary confinement that respond better to adolescent needs and development come from the juvenile justice system. As one expert describes, “[Corrections officials in adult facilities] haven’t thought about different ways to deal with these acting out behaviors, to realize they are normal behaviors and are teachable moments to teach [youth] to react in a different way to stimuli.”²⁷⁰ Officials feel that some of the best practices from juvenile facilities could work for youth in adult facilities.

²⁶⁸ Human Rights Watch telephone interview with Steve Hager, Director, Youthful Offender System (YOS), Colorado Department of Corrections, Colorado, June 18, 2012.

²⁶⁹ Human Rights Watch telephone interview with Dora B. Schriro, Commissioner, New York City Department of Corrections, New York, July 6, 2012.

²⁷⁰ Human Rights Watch telephone interview with Martin Horn, New York, May 24, 2012.

Rewarding Positive Behavior

One fundamental shift that would help is to move from managing youth solely through punitive disciplinary measures to focus on teaching and reinforcing positive behaviors. As one official at a juvenile facility described,

What we have found in all our programs is that the best way to influence behavior is positive reinforcement. You encourage good behavior by incentivizing. What we have found as part of our philosophy [of] behavior management is that the most important thing is to get kids to accept responsibility for their actions and think about it and change. If you put a kid in isolation of any kind, what you are essentially doing is letting the kid off the hook. He can spend all of his time blaming you.... If you want to get kids to do something that you want them to do, reinforce good behavior.... We don't have any punishments in our program. If you do something bad you are held accountable. That might mean you pay back the community in some way or it might mean that you continue in program longer than you expected because you are not getting it. So the behavior is the report card.... The last thing you want to do to kids who are struggling with some very hard issues is make them be alone. That's just stupid. I don't know any other way to put it. Putting them in a place by themselves is just stupid. And it's harmful.²⁷¹

Another official at an adult jail stated,

If you deal with these teenagers at all, you know that the more you lock them up and the less they have to do, the most trouble they get in. Locking them up becomes counterproductive. So we try to use other, creative ways to exercise discipline, as opposed to locking them up and letting them sit idle.²⁷²

²⁷¹ Human Rights Watch telephone interview with Peter Plant, Senior Vice President for Education and Policy Development, G4S Youth Services, LLC., Florida, November 1, 2011.

²⁷² Human Rights Watch telephone interview with Jeffrey Hartman, Captain, Erie County Holding Center, New York, March 2, 2012.

Small Group Living

One technique that experts often identify as important to reinforce positive behaviors in young people, is to create a small community in which youth can raise concerns and have them addressed. In Missouri, for example, this process is structured around a discussion circle:

[A]t any time, youth are free to call a circle—in which all team members [residents] sit or stand facing one another—to raise concerns or voice complaints about the behavior of other group members (or to share good news). Thus, at any moment, the focus can shift from the activity at hand—education, exercise, clean up, a bathroom break—to a lengthy discussion of behaviors and attitudes. Staff members also call circles frequently to communicate and enforce expectations regarding safety, courtesy, and respect, and also to recognize positive behaviors.²⁷³

Limited Appropriate Uses of Segregation and Isolation

There is no question that corrections officials have a duty to protect the safety and wellbeing—and to safeguard the human rights—of staff and the entire inmate population. In some cases, certain forms of short-term segregation and isolation may be a valid tool for corrections officials to use in pursuing this particular goal. Yet, any use of segregation and isolation of young people must be tightly regulated, monitored, used for the shortest duration possible, and only to the extent strictly necessary to maintain the immediate safety of the young person or others.²⁷⁴

At all times, the goal of any form of protective isolation should be to return an individual to general population. Steps should be taken to limit social and physical isolation. Facilities must ensure that young people are not denied access to developmentally appropriate treatment, services, or programming. Under no circumstances should practices be extreme enough to constitute solitary confinement.

²⁷³ Richard Mendel, “The Missouri Model: Reinventing the Practice of Rehabilitating Youthful Offenders,” http://www.aecf.org/MajorInitiatives/~media/Pubs/Initiatives/Juvenile%20Detention%20Alternatives%20Initiative/MOModel/MO_Fullreport_webfinal.pdf (accessed September 26, 2012), p. 29.

²⁷⁴ For an interesting discussion of why penal isolation should be regulated in the same way as use of force, see Fred Cohen, “Isolation in Penal Settings: The Isolation-Restraint Paradigm,” *Journal of Law and Policy*, vol. 22 (2006), p. 295; and Frank Cohen, “Penal Isolation: Beyond the Seriously Mentally Ill,” *Journal of Criminal Justice and Behavior*, vol. 35 (2008), p. 1017.

If officials find they are using segregation and isolation frequently for particular adolescents, they should work with them to identify and address the underlying causes and find alternative solutions.

Interrupting Disciplinary Crises

Limited segregation and isolation can also be an appropriate intervention to prevent harm to an individual young person, to other adolescents, or to staff. But experts stress that whenever youth are isolated, there must be a therapeutic goal and intervention. As Dr. Cheryl Wills described,

Once the crisis has been de-escalated, you start the rehabilitation again. So just because [the youth] had a crisis does not justify depriving them of treatment and rehabilitation. The containment serves a purpose of containing the behavior, but then you start again. So the key is the rehabilitation. Whether or not a person has a mental illness, they need rehabilitation. If you just do the restraint and retribution, but not the rehabilitation, they are not going to change their behavior.²⁷⁵

Short-term Protective Segregation and Isolation

Even in specialized facilities designed to hold young people under age 18, some form of short-term segregation and isolation may be necessary to protect individual adolescents from others. But, as Human Rights Watch and the American Civil Liberties Union have stated elsewhere, such isolation must be for as brief a period as possible and not subject to extensions, lasting only until an alternative placement can be arranged.²⁷⁶

Diverting Youth to Specialized Facilities

Psychological experts stressed the importance of identifying the underlying causes of behaviors that lead to misconduct or a need to segregate or isolate. Some experts also

²⁷⁵ Human Rights Watch telephone interview with Dr. Cheryl Wills, independent medical evaluator and director of child and adolescent psychiatric services at Case Western Reserve University, Ohio, May 24, 2012.

²⁷⁶ Human Rights Watch, "Comments on the National Standards to Prevent, Detect, and Respond to Prison Rape proposed by the Department of Justice on Feb. 3, 2011," April 4, 2011, http://www.hrw.org/sites/default/files/related_material/Human%20Rights%20Watch%20Comments%20on%20Prison%20Rape%20Standards.pdf, p. 34.

emphasized that when those causes involve mental health problems or a mental disability, and when facilities cannot manage adolescent behavior, transferring young people to a specialized mental health facility may be appropriate. The American Academy of Child and Adolescent Psychiatrists recently issued a policy statement urging a ban on solitary confinement and promoting the intervention of a qualified mental health professional after 24 hours.²⁷⁷ As one of its drafters told us,

There really should be no reason that a child should be in any type of solitary confinement for any duration. In my opinion, if they are in solitary for more than a day [24 hours] you need to find another facility for them or [implement] some kind of mental health intervention.²⁷⁸

²⁷⁷ Juvenile Justice Reform Committee, American Academy of Child and Adolescent Psychiatry, “Policy Statements: Solitary Confinement of Juvenile Offenders,” April 2012, http://www.aacap.org/cs/root/policy_statements/solitary_confinement_of_juvenile_offenders (accessed August 27, 2012).

²⁷⁸ Human Rights Watch telephone interview with Louis Kraus, Chief of Child and Adolescent Psychiatry, Rush University Medical Center, and Co-Chair of the American Academy of Child and Adolescent Psychiatry Committee on Juvenile Justice Reform, Illinois, June 14, 2012.

Recommendations

The federal government and state governments should end the practice of subjecting young people to solitary confinement. Legislative action is crucial; but even in the absence of legislation, a range of actors, including jail and prison officials, can and should take significant steps towards this goal.

Ending the solitary confinement of young people requires broad reforms in five areas. First, the solitary confinement of people under age 18 should be prohibited in law and policy. Second, young people should not be held in adult jails and prisons or managed with policies and practices designed for adult inmates. Third, all forms of segregation and isolation of young people, even those not long enough to constitute solitary confinement, should be strictly limited and regulated, regardless of where they are held. Fourth, all facilities that detain young people should publicly report on the use of segregation and isolation. Finally, the US government should ratify human rights treaties protecting young people without reservations.

The following detailed recommendations address each of these policy areas:

At the State Level

State Legislatures

- Prohibit the solitary confinement of young people under age 18 in adult and juvenile facilities for any purpose.
- End the practice of trying, sentencing, and incarcerating youth under 18 in the adult criminal justice system; where this is not immediately feasible, mandate that all people under age 18 be held in the juvenile justice system—before trial and after conviction or adjudication—no matter how they are charged; and appropriate funds, as necessary, to provide for changes in population in juvenile facilities.
- Strictly limit segregation and isolation of young people under age 18, even if for periods not long enough to constitute solitary confinement.
- Require that people under age 18 held in any form of segregation and isolation, including solitary confinement, and particularly young people with mental or intellectual disabilities, be treated in a manner consistent with their medical,

psychological, developmental, educational, social, and rehabilitative needs; appropriate funds, as necessary, to provide for changes in services and programming.

- Require periodic monitoring and review of solitary confinement, segregation, and isolation policies, practices, and procedures at every correctional facility by an independent and qualified reviewer; ensure that the reports generated from these reviews are available to the public.
- Require adult and juvenile facilities to monitor and publicly report:
 - The rates and durations of any form of segregation and isolation, including solitary confinement.
 - The reasons why youth are subjected to any form of segregation and isolation, including solitary confinement.
 - Information about the quality and availability of age-differentiated programming and services for young people under age 18, including young people with mental or intellectual disabilities, held in any form of segregation and isolation, including solitary confinement.

State Prison Systems and County Jails

- Prohibit the solitary confinement of young people under age 18 for any purpose.
- Establish specialized facilities or sections of facilities to house young people under age 18, including young people at high risk of victimization, so that they are not held in prolonged segregation and isolation, including solitary confinement.
- Conclude memoranda of understanding or contracts with state juvenile facilities to house young people under age 18; and with state juvenile or other medical or mental health facilities to house young people under age 18 who require specialized medical or psychological care.
- Develop specialized disciplinary rules for young people under age 18 that avoid prolonged segregation and isolation, that expressly take age and needs into account, and that provide a range of behavioral management techniques, including positive behavioral management and differentiated and proportional sanctions.
- Strictly limit the segregation and isolation of young people under age 18, even if for periods not long enough to constitute solitary confinement.

- Ensure that all young people under age 18, and particularly young people with mental or intellectual disabilities, in any form of confinement, including segregation and isolation, have access to:
 - Adequate and age-differentiated medical and mental health services.
 - Adequate physical exercise, including outdoor exercise and aerobic, muscle-strengthening, and bone-strengthening exercise.
 - Meals with adequate and developmentally-appropriate nutritional value.
 - Means of contact with their family, including contact visits, telephone, and written communication.
 - Adequate and age-differentiated educational programming and services.
 - Adequate and age-differentiated social, developmental, and rehabilitative programming and services.
 - Developmentally-appropriate levels of social interaction with other young people and adults.
- Ensure adequate staffing levels to manage young people under age 18.
- Provide specialized training to all staff on managing adolescents, and particularly on the use of verbal de-escalation techniques, and on identifying and assisting young people with mental or intellectual disabilities and histories of trauma and abuse.
- Provide additional training to staff who manage young people in segregation and isolation on identifying and assisting young people with mental or intellectual disabilities and histories of trauma and abuse.
- Provide specialized training to medical and mental health staff who care for young people under age 18.
- Make data on rates and durations, and justifications for the use of segregation and isolation, including solitary confinement, publicly available.
- Publish all disciplinary rules, policies, and procedures related to young people under age 18 in a publicly available forum.
- Conclude memoranda of understanding with state juvenile, medical, and mental health facilities, education systems, and between county and state facilities, to ensure transfer of data regarding physical and mental health histories, identified mental or intellectual disabilities, and histories of trauma and abuse.
- Notify and consult with family members, as well as counsel for represented youth, when young people under age 18 are placed in any form of segregation and isolation, including solitary confinement, or have a significant medical or mental health event.

State Departments of Education

- Issue clear guidance mandating the provision of adequate and age-differentiated educational programming and services to all young people under age 18 in segregation and isolation in adult jails or prisons, including those with mental or intellectual disabilities.

State Departments of Health

- Issue clear guidance mandating the provision of adequate and age-differentiated physical and mental health care, as well as social, developmental, and rehabilitative programming and services to all young people under age 18, particularly those with mental or intellectual disabilities, in segregation and isolation in adult jails or prisons.

State Juvenile and Adult Criminal Court Judges

- Hold a hearing on conditions and use of segregation and isolation, including solitary confinement, in the place of detention when considering transfer of jurisdiction to the adult criminal justice system and before sentencing.
- Decline to transfer young people to the jurisdiction of the adult criminal justice system.
- Affirmatively order that young people be held in the juvenile justice system pre-trial or post-adjudication or conviction.
- Require prosecutors to submit data on the use and duration of segregation and isolation, including solitary confinement, before sentencing.
- Before sentencing, require a medical and mental health evaluation of the effects of any periods of segregation and isolation, including solitary confinement, experienced by young people.

State Prosecutors

- Decline to exercise authority to charge young people as if adults or to request or order detention of young people under age 18 in adult jails or prisons.
- Affirmatively request that young people be held in the juvenile justice system pre-trial or post-adjudication or conviction.

- Seek data from the pre-trial detention facility on the use and duration of segregation and isolation, including solitary confinement, and disclose this information to the court and defense counsel.
- Seek a medical and mental health evaluation of the effects of any periods of segregation and isolation, including solitary confinement, and disclose this information to the court and defense counsel.

Defense Attorneys

- At trial, raise the use of segregation and isolation, including solitary confinement, in the place of pre-trial and post-conviction or post-adjudication detention.
- Challenge the solitary confinement of young people, including through administrative appeals of the imposition of solitary confinement, and conditions litigation.
- File a motion that young people be detained pre-trial and post-conviction or adjudication in the juvenile justice system.
- Request to be notified when young people are placed in any form of segregation and isolation, including solitary confinement.

At the Federal Level

US Congress

- Prohibit the solitary confinement of young people under age 18 for any purpose in federal custody.
- Hold hearings on the solitary confinement of young people.
- Use the appropriations process to encourage standard-setting and capacity-building around the treatment of young people, and to press for prohibitions of solitary confinement of young people under age 18 nationwide.
- Appropriate funds and direct the Department of Justice’s Civil Rights Division to investigate the solitary confinement of young people under age 18 in adult jails and prisons as a violation of US domestic law and US human rights treaty obligations.
- Amend the Juvenile Justice and Delinquency Prevention Act to close the loopholes that leave young people under age 18 charged as if adults without federal protections; define “juvenile” to include any young person under age 18.

- Amend the Juvenile Justice and Delinquency Prevention Act to prohibit the use of solitary confinement for young people under age 18.
- Appropriate funds and direct the Department of Justice’s Office of Justice Programs to monitor the conditions of confinement of young people under age 18 held in any form of segregation and isolation in adult facilities; and to ensure that young people under age 18 are not held in solitary confinement in an effort to comply with the Prison Rape Elimination Act or the Juvenile Justice and Delinquency Prevention Act.
- Appropriate funds, such as through amendments to the Individuals with Disabilities Education Act, and direct the Department of Education to monitor the provision of educational programming to all young people under age 18, and in particular, to young people with mental and intellectual disabilities, held in segregation and isolation in adult jails or prisons.
- Appropriate funds, such as through amendments to the Children’s Health Act, and direct the Department of Health and Human Services to monitor the provision of mental and physical health services to all young people under age 18, and in particular, to young people with mental disabilities, held in segregation and isolation in adult jails or prisons.

US Department of Justice

Bureau of Prisons

- Modify existing contracts with secure juvenile facilities to prohibit the solitary confinement of young people under age 18.

Office of Justice Programs

- Publish a policy document supporting a prohibition of the solitary confinement of young people under age 18 and promoting best practices for the detention and management of young people without use of prolonged segregation and isolation.
- Develop grant-making and capacity-building tools, and particularly those aimed at implementation of the Prison Rape Elimination Act, to assist facilities implementing protections for youth while also limiting segregation and isolation and prohibiting solitary confinement of young people under age 18.
- Expand the scope of information-gathering for state compliance monitoring under the Juvenile Justice and Delinquency Prevention Act to include data about the imposition of segregation or isolation, including solitary confinement, on young people under age 18.

Civil Rights Division

- Declare the solitary confinement of young people under age 18 in adult prisons and jails, as practiced, as unconstitutional and a violation of international human rights law and urge prohibition of the solitary confinement of young people for any purpose.

Bureau of Justice Statistics

- Amend current and future Bureau of Justice Statistics data collections to include questions about when and whether young people are placed in segregation and isolation, including solitary confinement, in adult jails and prisons.

Department of Education

- Issue guidance or rules clarifying the application of the Individuals with Disabilities Act to young people with mental and intellectual disabilities held in segregation and isolation, including solitary confinement.
- Develop grant-making and capacity-building tools to promote facilities providing age-appropriate and out-of-cell educational programming to young people under age 18 held in segregation and isolation, including solitary confinement.

Department of Health and Human Services and the Centers for Disease Control

- Issue guidance clarifying the physical and mental health consequences of segregation and isolation, including solitary confinement, on young people.
- Develop grant-making and capacity-building tools to promote facilities providing age-appropriate and out-of-cell physical and mental health services to young people under age 18 held in segregation and isolation, including solitary confinement.

US Senate and Executive Branch

- The President should submit to the Senate and the Senate should give advice and consent to:
 - The ratification of the Convention on the Rights of Persons with Disabilities without reservation.
 - The ratification of the Convention on the Rights of the Child without reservation

- A formal notification of the withdrawal of reservations to the International Covenant on Civil and Political Rights, including ICCPR Article 10, and to the Convention against Torture.

State and National Medical, Mental Health, Corrections, and Jail Associations and Standard-Setting Bodies

- Issue policy statements supporting a prohibition of the solitary confinement of young people under age 18.
- Amend standards for juvenile and adult facilities to prohibit the solitary confinement of young people under age 18.
- Promote best practices and resources for facilities that detain and manage young people under age 18 focused on the development of specialized policies and procedures that:
 - Avoid prolonged segregation and isolation, that expressly take age and needs into account, and that provide a range of behavioral management techniques.
 - Mandate that young people under age 18 held in any form of segregation and isolation, including solitary confinement, and particularly young people with mental or intellectual disabilities, be treated in a manner consistent with their medical, psychological, developmental, educational, social, and rehabilitative needs; appropriate funds, as necessary, to provide for changes in services and programming.
 - Require monitoring and reporting of the rates and durations of any form of segregation and isolation, including solitary confinement, and the quality and availability of age-differentiated programming and services for young people.

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Most importantly, Human Rights Watch and the American Civil Liberties Union wish to thank each of the individuals who shared their experiences growing up in adult jails and prisons, and who spoke with courage and dignity about the challenges they faced when subjected to solitary confinement. We are deeply indebted to the many who felt, like

Nicholas M., that, “If my story can stop another kid from coming [to solitary confinement], then there’s a small piece of it. Hopefully my pain serve[s] some purpose.”²⁷⁹

Human Rights Watch and the American Civil Liberties Union would like to thank the American Civil Liberties Affiliates in Colorado, Florida, Michigan, New York, Ohio, Pennsylvania, Texas, and Wisconsin for their support and assistance in making this research possible. This report was significantly enhanced by the advice of experts at the Campaign For Youth Justice, and the Center on Children’s Law and Policy. We are also grateful to the Law Offices of Deborah LaBelle, The Colorado Juvenile Defender Coalition, Florida Institutional Legal Services, the Children’s Law Center, Inc.; and to public defenders in Florida, Michigan, New York, Ohio, Pennsylvania, and Wisconsin, who shared their invaluable expertise and time with Human Rights Watch and the American Civil Liberties Union. We particularly appreciate the assistance of family members, social workers, attorneys, and advocates who provided Human Rights Watch with invaluable information, insights, and expertise.

Human Rights Watch would also like to thank those state and local jail and prison officials, corrections experts, and psychological and psychiatric experts and officials who spoke candidly about the challenges they face when managing and detaining young people in adult facilities, and their perspectives on the prevalence and effects of solitary confinement.

²⁷⁹ Letter from Nicholas M. (pseudonym), from Wisconsin, to Human Rights Watch, March 22, 2012.

Appendix 1: Mapping Youth in Adult Jails and Prisons

Neither most states nor the federal government track or report comprehensive data on youth held in adult jails and prisons. In the United States, there are three main criminal detention systems: the local (state) jail system, the state prison system, and the federal prison system. Data from each of these systems is gathered and disseminated separately by the US Bureau of Justice Statistics (BJS).

State Jails

The BJS produces nation-wide estimates of young people under age 18 incarcerated in state and local jails in the Jail Inmates at Midyear report.²⁸⁰ The report provides an estimate of the number of young people under age 18 held in the system on June 30.²⁸¹ In any given year, young people under age 18 make up approximately 1 percent of the inmate population of local jails, according to BJS estimates. The majority of young people held in local jails are being held as if adults, and are subject to charge and trial in the criminal justice system. Typically, only 14 to 25 percent of the young people in local jails are being held as juveniles, pending a delinquency adjudication or transfer to a juvenile facility (see below). While, as discussed below, Human Rights Watch and the American Civil Liberties Union have found that young people under age 18 held as adults typically spend long periods in detention, it is likely that those held as juveniles may spend only very short periods in adult facilities: a few hours or a day.²⁸² 2011 saw the fewest number of young people under age 18 in jails in recent years, with 5,900 young people under age 18 held at midyear.

²⁸⁰ Todd Minton, Bureau of Justice Statistics, US Department of Justice, “Jail Inmates at Midyear 2011—Statistical Tables,” April 26, 2012, <http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=4235> (accessed June 6, 2012).

²⁸¹ The count does not represent the number of people admitted into jail on that day, or any other day. Rather, it is the number of people in jail on the day that sampled jails submitted survey responses. It also provides no information on the length of detention of inmates counted. Inmates may have been admitted the day before the survey or may have been detained for months.

²⁸² As discussed in Section I above, all youth held as juveniles are protected by federal law mandating sight and sound separation for those under age 18.

Table 1: Young people in jail at mid-year

Jail Inmates at Midyear ²⁸³								
	2000	2005	2006	2007	2008	2009	2010	2011 ²⁸⁴
Youth under age 18 ²⁸⁵	7,615	6,759	6,102	6,833	7,703	7,218	7,560	5,900
Held as adults ²⁸⁶	6,126	5,750	4,835	5,649	6,410	5,846	5,647	4,600
Held as juveniles	1,489	1,009	1,268	1,184	1,294	1,373	1,912	1,400

The BJS produces no comprehensive data on the number of young people under age 18 that are admitted to local jail facilities over the course of a year. But based on the best available data, Human Rights Watch has produced estimates of the total number of young people under age 18 that are annually admitted to local jails in the US. We estimate that 93,947 adolescents were admitted into local adult detention facilities in 2011 (See Table 2, Figure 1).²⁸⁷

Table 2: Estimated annual number of young people in jails²⁸⁸

Table : Estimates of Annual Number of Youth under age 18 in Local Jails				
	Number of Youth under age 18 Admitted to Local Jails (Annual)	95% Confidence Interval	Held as adults	Held as Juveniles
2006	93,254	88,783 - 97,608	72,575	20,680
2007	116,322	116,270 - 121,809	94,747	21,541
2008	133,050	127,974 - 138,836	108,488	27,122
2009	120,330	114,841 - 126,733	97,444	22,886
2010	137,445	129,152 - 146,311	96,251	41,211
2011	93,947	88,997 - 99,402	72,230	21,717

²⁸³ Midyear count is the number of inmates held on the last weekday in June.

²⁸⁴ All characteristic data for 2011 adjusted for non-response and rounded to the nearest 100.

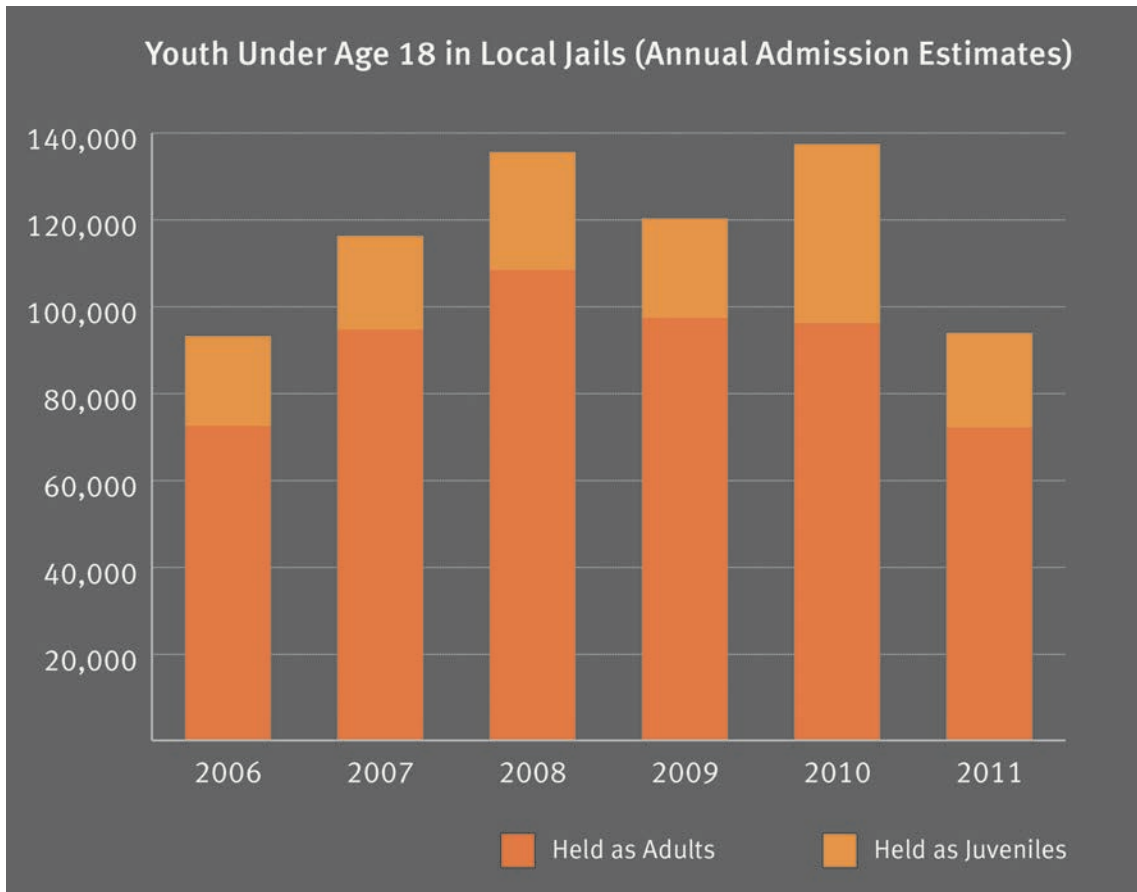
²⁸⁵ Young people are under age 18 as of the data reporting at mid-year.

²⁸⁶ Includes youth under age 18 who were tried or awaiting trial as adults.

²⁸⁷ Others have suggested that, based on the numbers of youth prosecuted as if adults each year, as many as 200,000 young people are at risk of being detained in adult facilities. Campaign for Youth Justice, "Jailing Juveniles: The Dangers of Incarcerating Youth in Adult Jails in America," November 2007, http://www.campaignforyouthjustice.org/documents/CFYJNR_JailingJuveniles.pdf (accessed August 27, 2012); Campaign for Youth Justice, "The Consequences Aren't Minor: The Impact of Trying Youth as Adults and Strategies for Reform," March 2007, http://www.campaignforyouthjustice.org/documents/CFYJNR_ConsequencesMinor.pdf (accessed August 27, 2012).

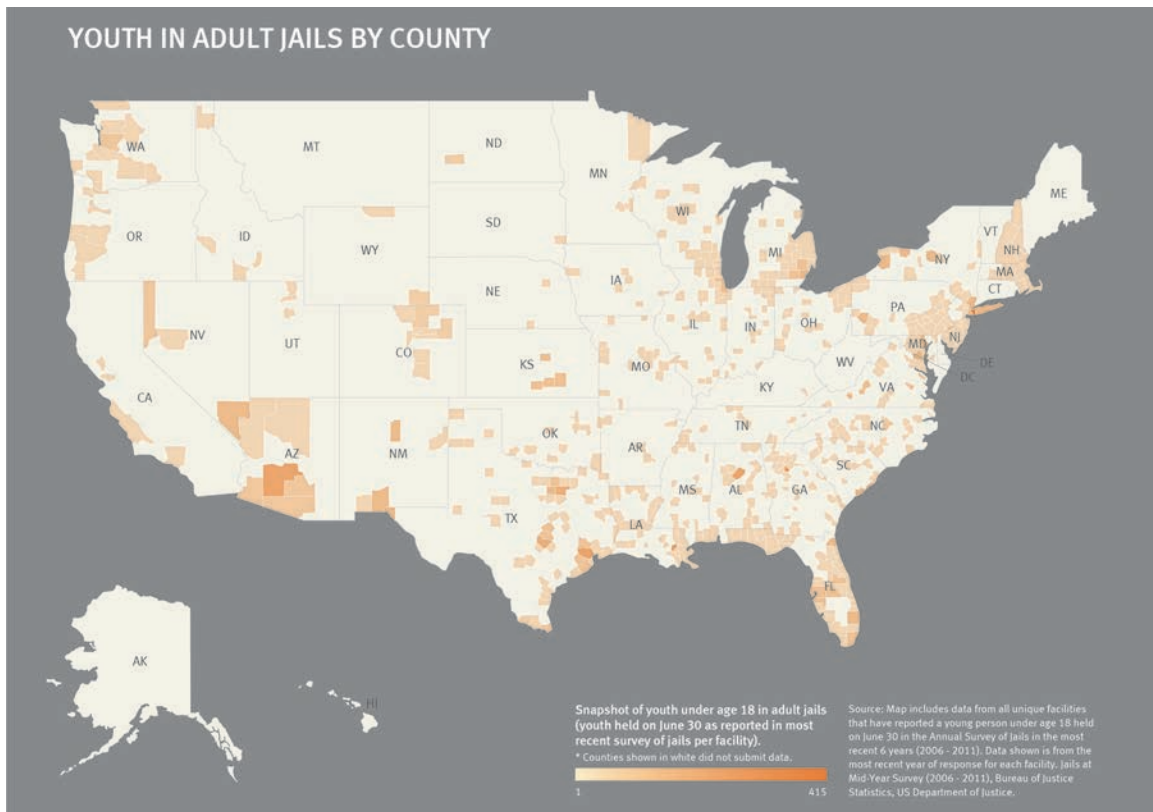
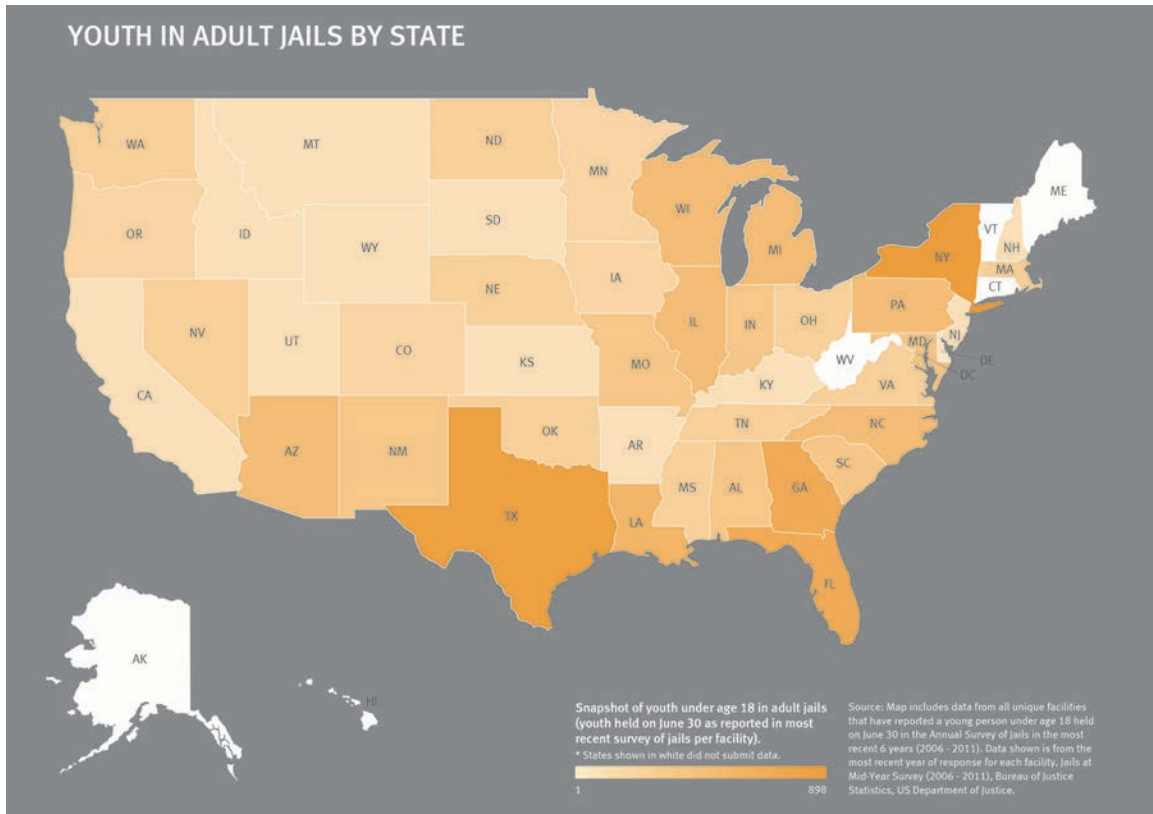
²⁸⁸ Data extracted from annual Jails at Midyear reports. See methodology section for description of calculation methods.

Figure 1: Young people held in adult jails



Maps 1, 2: Youth in adult jails

These maps show the relative distribution of young people under age 18 in adult jails across the United States by state and by county.



The top 15 number of inmates under age 18 held in state prisons, by state, June 30, 2008 -2010			
	2008	2009	2010
Total	2,717	2,778	2,295
Florida	301	393	355
New York	206	190	221
Connecticut ^b	375	332	217
North Carolina ^a	186	215	184
Texas	157	156	150
Arizona	156	157	131
Michigan	140	132	109
South Carolina	96	89	106
Georgia ^a	118	99	96
Ohio	75	86	78
Illinois	77	106	73
Pennsylvania	55	61	58
Maryland	61	58	57
Indiana	63	54	49
Colorado	37	79	38
^a = Counts include those held in privately-operated facilities.			
^b = Prisons and jails form one integrated system.			

Table 3: States that hold the most young people in prison²⁸⁹

Inmates in state prisons serve median sentences of approximately two years and release rates and expected time served are very “stable,” according to the BJS.²⁹⁰ Therefore, the June 30 inmate counts may be used as baseline estimates for the total number of juveniles entering state prisons within the year. Combining these estimates with the annual estimates of juveniles in local jails produces an overall estimate of 139,495 juveniles admitted to adult correctional facilities in 2010.²⁹¹

State Prison Systems

The BJS also produces data on young people under age 18 held in the federal and state prison systems at mid-year (June 30) and disaggregates this data by state and gender.²⁹² In the most recent year for which data is available (2010), 2,295 young people under age 18 were being held

²⁸⁹ Guerino, Harrison, and Sabol, “Prisoners in 2010”; West, “Prison Inmates at Mid-year 2009 – Statistical Tables”; Heather West and William Sabol, Bureau of Justice Statistics, US Department of Justice, “Prisoner Inmates at Midyear 2008,” March 2009, <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=839> (accessed August 27, 2012).

²⁹⁰ Guerino, Harrison, and Sabol, “Prisoners in 2010”; West, “Prison Inmates at Mid-year 2009 – Statistical Tables”; West and Sabol, “Prisoner Inmates at Midyear 2008.”

²⁹¹ To prevent double-counting, this estimate does not include states that have integrated prison-jail systems. It also does not include the 142 juveniles held in the federal prison system in 2010. Additionally, the combined estimates of juveniles entering adult facilities do not include any juveniles detained by Immigration and Customs Enforcement (ICE). Though these detainees are held in administrative or civil detention, they are often housed in criminal detention facilities.

²⁹² The federal Bureau of Prisons does not generally house inmates under the age of 18 in its custody; therefore, additional juveniles incarcerated in adult prisons are held only in state prison systems. However, in 2010, 142 juveniles in the federal system were held in contract facilities. Paul Guerino, Paige M. Harrison, and William Sabol, Bureau of Justice Statistics, US Department of Justice, “Prisoners in 2010,” December 2011, <http://bjs.gov/content/pub/pdf/p10.pdf> (accessed August 27, 2012); Heather West, Bureau of Justice Statistics, US Department of Justice, “Prison Inmates at Mid-year 2009 – Statistical Tables,” June 2010, <http://bjs.ojp.usdoj.gov/content/pub/pdf/pimogst.pdf> (accessed August 27, 2012).

in adult facilities in state prison systems on June 30. Florida and New York held the highest number of young people under age 18, with over 200 juvenile inmates imprisoned in each state (though Florida’s numbers were significantly higher) (Connecticut also held over 200 young people under age 18 in a combined prison-jail system).

Map 3: Youth in adult prisons

This map shows the relative distribution of youth in adult prisons across the United States.

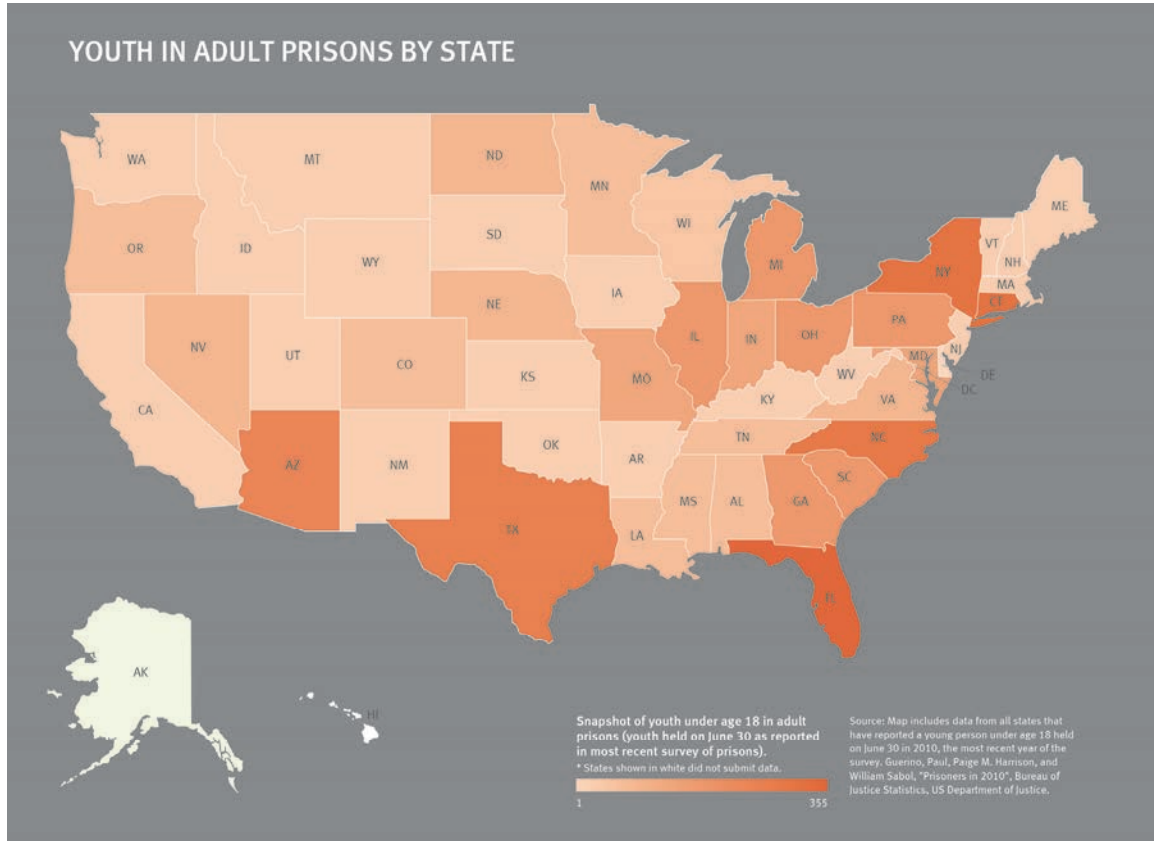


Table 4: Estimated annual number of young people in adult jails and prisons

Table Youth under age 18 Entering Adult Facilities (Estimate)			
	Prison	Jail	Total
2008	2,289	133,050	135,339
2009	2,404	120,330	122,734
2010	2,050	137,445	139,495

The Legal Landscape

As detailed in the report, whether young people are held in solitary confinement depends in part on the legal landscape, and how and at what age youth are charged or held as if adults.

States charge young people under age 18 as if adults through a variety of legal mechanisms. Youth charged as if adults—and held at adult facilities—are sometimes subjected to solitary confinement for a range of reasons discussed throughout the report. Youth detained in states that mandate protection for some young people held in adult facilities (such as sight and sound separation requirements) are sometimes subjected to protective solitary confinement to achieve this goal.

Table 5: State Charging and Detention Regimes

This table shows the states which permit or mandate charging youth as if adults in certain circumstances; and states that mandate or permit detention of youth in adult facilities, including those which have some legal requirements protecting some youth held there.

STATES CHARGING YOUTH AS ADULTS

State Law: ■ Yes ■ No ■ N/A

State	Youngest age at which youth can be charged as if adults in some circumstances	Age at which all youth are charged as if adults	Permits housing youth under age 18 charged as if adults in adult jails in some circumstances	Mandates housing youth under age 18 charged as if adults in adult jails in some circumstances	Mandates a form of separation between youth and adults in adult jails in some circumstances
Alabama	14	18	Y	Y	N
Alaska	no minimum age	18	Y	N	N
Arizona	no minimum age	18	Y	N	Y
Arkansas	no minimum age	18	Y	N	N
California	14	18	Y	N	Y
Colorado	no minimum age	18	Y	N	Y
Connecticut	no minimum age	18	Y	Y	N
Delaware	no minimum age	18	Y	Y	N
District of Columbia	no minimum age	18	Y	N	N
Florida	no minimum age	18	Y	Y	Y
Georgia	no minimum age	17	Y	Y	Y
Hawaii	no minimum age	18	Y	Y	N
Idaho	no minimum age	18	Y	Y	Y
Illinois	13	17	Y	Y	Y
Indiana	10	18	Y	N	N
Iowa	14	18	Y	N	Y
Kansas	10	18	Y	N	N
Kentucky	14	18	Y	N	Y
Louisiana	14	17	Y	Y	N
Maine	no minimum age	18	Y	N	N
Maryland	no minimum age	18	Y	Y	Y
Massachusetts	14	17	Y	Y	Y
Michigan	no minimum age	17	Y	Y	Y
Minnesota	14	18	Y	N	N
Mississippi	13	18	Y	N	N
Missouri	12	17	Y	Y	N
Montana	no minimum age	18	Y	N	Y
Nebraska	no minimum age	18	Y	N	Y
Nevada	no minimum age	18	Y	N	N
New Hampshire	13	17	Y	Y	N
New Jersey	14	18	Y	N	N
New Mexico	14	18	Y	Y	Y
New York	13	16	Y	Y	Y
North Carolina	13	16	Y	N	Y
North Dakota	14	18	Y	N	N
Ohio	10	18	Y	N	Y
Oklahoma	no minimum age	18	Y	Y	Y
Oregon	no minimum age	18	Y	N	N
Pennsylvania	no minimum age	18	Y	N	N
Rhode Island	no minimum age	18	Y	N	Y
South Carolina	no minimum age	17	Y	N	N
South Dakota	no minimum age	18	Y	N	Y
Tennessee	no minimum age	18	Y	Y	Y
Texas	no minimum age	17	Y	N	Y
Utah	14	18	Y	N	Y
Vermont	10	18	Y	N	N
Virginia	14	18	Y	N	Y
Washington	no minimum age	18	Y	N	Y
West Virginia	no minimum age	18	N	N	N/A
Wisconsin	10	17	Y	Y	Y
Wyoming	13	18	Y	N/A	N

Statistical Methodology

Human Rights Watch analyzed six years (2006—2011) of the BJS’s Annual Survey of Jails data to develop quantitative estimates regarding young people in local jail facilities. The Survey of Jails asks facilities to answer three questions regarding young people held on June 30th of each year: number of male inmates under age 18; number of female inmates under age 18; and total number of young people under age 18 held as adults. The BJS then computes a new variable to estimate “Juveniles Held as Juveniles” in this way: “JUVM” + “JUVF” – “ADLTJUV.” The methodology should ensure that every person counted in the “ADLTJUV” variable should also be counted in the “JUVM” or “JUVF” variables, and the sum of those two variables should always be greater than the “ADLTJUV” variable.

However, facilities sometimes incorrectly fill out BJS surveys and do not include young people under age 18 held as adults in their total counts for all inmates under the age of 18. Therefore, in these states, the “Juveniles Held as Juveniles” variable (“JUVM” + “JUVF” - “ADLTJUV”) results in a *negative* number. For these facilities, Human Rights Watch used the larger count of juveniles held as adults (“ADLTJUV”) as the total count. We counted these inmates as males under the age of 18 because we could not determine gender and males account for roughly 94 percent of juvenile jail inmates annually.²⁹³

We also generated annual estimates of young people under age 18 admitted to local jails by using data on the number of young people under age 18 held in jails on June 30th of a given year, as well as admissions data for the last week of June. We multiplied the

²⁹³ Specifically, we adjusted the numbers for the following facilities:

2006: Ville Platte Jail, LA – 9 juveniles held as adults counted as males under age 18.

White County/City Jail, IL – 5 juveniles held as adults counted as males under age 18.

Fairfax County Adult Detention, VA – 2 juveniles held as adults counted as males under age 18.

2007: Union County Jail, PA – 18 juveniles held as adults counted as males under age 18.

2008: Allen County Jail, ID – 4 juveniles held as adults counted as males under age 18.

2009: None

2010: Sherman Walker Correctional Facility, LA – 179 juveniles held as adults counted as males under age 18.

Ascension Parish Jail, LA – 50 juveniles held as adults counted as males under age 18.

Madison County Jail, NE – 30 juveniles held as adults counted as males under age 18.

Washington County Jail, MN – 23 juveniles held as adults counted as males under age 18.

Scotland County Jail, MO – 2 juveniles held as adults counted as males under age 18.

Data for Oakland County, MI was flagged as a likely error and was removed from analysis. In five other years of surveys, the facility reported between 10 and 25 juveniles. However, in 2010, the facility reported 1302 juvenile male (and only 13 adult male) inmates.

2011: None

percentage of all inmates on June 30th that were young people under age 18 by the number of weekly inmate admissions to estimate the number of young people under age 18 admitted during the week. These estimates allowed for additional upper and lower percentages of all inmates that were under age 18. This figure was then multiplied by the number of weeks in the year to estimate the number of annual admissions, as follows:

Percentage of all inmates that are young people under age 18 (on last day of June) times the number of admissions during last week of June equals the estimated number of young people admissions during last week times 365 (days) divided by 7 (days) equals the estimate of the number of young people under age 18 admitted during the year. We produced confidence intervals by using the annual standard error for young people under age 18 to produce upper and lower bounds for the number of young people in jail on June 30th (z-score = 1.96, confidence interval = young people under age 18 count +/- standard error * 1.96).

We are making two major assumptions with this estimate. First, we assume that the percentage of inmates that are young people under age 18 on June 30th of every year are representative of the percentage of inmates that are admitted during the last week of June that are under age 18. There is evidence that the percentage of inmates that are under age 18 does not fluctuate greatly. In the most recent seven years that the BJS has collected this data (from 2005 to 2011) the percentage of inmates under age 18 in the facilities sampled has not fluctuated more than 2/10ths of a percent. Year in and year out, young people under age 18 make up 0.8 to 1.0 percent of inmates on June 30th. Our second assumption is that the data on weekly admissions, which comes from the last week of June, is representative of a typical week and can be used to estimate annual admissions. The BJS used the 2004 Survey of Large Jails to track monthly movements over the course of the year and has determined that June admission data is a reliable source to calculate a nationwide annual admission estimate.²⁹⁴

We also analyzed the Survey of Jails data to gain a greater understanding of the distribution of youth inmates across the United States. We generated the estimates by examining six years (from 2006 to 2011) of Survey of Jails data to identify unique facilities that housed young people under age 18. The Survey of Jails is a nationally-representative

²⁹⁴ Minton, "Jail Inmates at Midyear 2011—Statistical Tables," p. 12.

survey of all local jails, whether they have held youth or not, and is not a sample of only those facilities that have held young people under age 18. Therefore it is possible that in any given year, a jail facility with inmates under age 18 may not have been selected in the sample. Examining only a single year of the survey would therefore skew the distribution of young people under age 18 towards larger facilities, as 268 facilities are included in the sample with certainty (annually) due to the size of their daily population.

Therefore, we examined six years of surveys and extracted counts of young people under age 18 held for the most recent year that each facility was surveyed. We extracted data for 577 unique facilities (312 from 2011, 85 from 2010, 71 from 2009, 43 from 2008, 40 from 2007, and 26 from 2006). It is important to note that *this distribution analysis is not an estimate of the overall distribution of young people under age 18 in jail systems, but a distribution of unique facilities that reported housing inmates under age 18 during the last six years of the Annual Survey of Jails*. The distribution analysis did not utilize the BJS facility-level weighting variable to weight the count of young people under age 18. It examined the distribution of inmates under age 18 reported in surveys by facility, county, and state.

Appendix 2: State Case Studies

STATE CASE STUDIES: COLORADO

Youth in Adult Jails and Youth in Solitary Confinement

Clear Creek County Jail: *"It affected me—mentally, psychologically—shaped how I interact with people today. There's got to be a better way.... It took me a long time to regain a sense of humanity and I don't even know if I'm still alright or normal."*

- Interview with Ethan B. (pseudonym), February 2012, held in jail at age 15

Denver County Jail: *"You are a human being. You want to socialize—talk to somebody. Plus I was just a kid. I felt dead back there...I felt like I was going crazy.... A couple of times I felt like acting out in violent ways just to get communication—you start tripping out."*

- Interview with Todd D. (pseudonym), February 2012, held in jail at age 17

- Facilities that have reported a young person under age 18 held on June 30 in the Annual Survey of Jails in the past 6 years (2006 - 2011) and facilities in which one or more young people identified by Human Rights Watch and the American Civil Liberties Union reported being held in solitary confinement while they were under age 18.

Young people under age 18 are held in adult jails and in solitary confinement across the United States. The facilities shown are not an exhaustive list of all facilities that hold young people under age 18 or that subject them to solitary confinement.

Source: Human Rights Watch interviews and correspondence with young people; Jails at Mid-Year Survey (2006 - 2011), Bureau of Justice Statistics, US Department of Justice.

Human Rights Watch and the American Civil Liberties Union have found that some Colorado jails and prisons use solitary confinement to detain and manage young people under age 18 in a range of circumstances. Human Rights Watch and the American Civil Liberties Union corresponded with or interviewed 20 individuals who reported being subjected to one or more periods of solitary confinement while under age 18 in jails in Adams, Arapahoe, Clear Creek, Denver, El Paso, Jefferson and Park Counties; and in a number of state prisons.²⁹⁵ Though not investigated by Human Rights Watch and the American Civil Liberties Union, officials in Larimer, Pueblo, Washington, and Weld Counties have reported detaining young people under age 18 in the last six years.²⁹⁶ Human Rights Watch also interviewed or corresponded with state jail and prison officials.

The Law and Policy Landscape

Colorado law and policy governing jails and prisons permit holding young people in various forms of prolonged isolation or segregation that can constitute solitary confinement.²⁹⁷

Colorado Jails

By statute, young people under age 18 charged as if adults by prosecutorial “direct file” *can* be held in jails, though under legal changes that took effect after Human Rights Watch and the American Civil Liberties Union visited the state, the default place of detention is in juvenile facilities.²⁹⁸ Young people under age 18 can be detained in adult jails only if a state district court finds that an adult jail is the appropriate place of confinement after weighing a number of factors, including whether the youth would be deprived of contact with others in order to separate him or her from adults.²⁹⁹ The state requires that youth

²⁹⁵ Two of the individuals interviewed by Human Rights Watch were age 21 or younger when interviewed.

²⁹⁶ Jails at Mid-Year Survey (2006 - 2011), Bureau of Justice Statistics, US Department of Justice.

²⁹⁷ Throughout the report, “solitary confinement” is used to refer to physical and social isolation that extended for more than 22 hours each day and lasted for one or more days. See UN Human Rights Council, Interim Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan Mendez, U.N. G.A. Doc. A/66/268, August 5, 2011, <http://daccess-ddsny.un.org/doc/UNDOC/GEN/N11/445/70/PDF/N1144570.pdf?OpenElement> (accessed August 27, 2012). This report does not address the practice of holding two individuals in prolonged segregation, but Human Rights Watch and mental health experts have raised serious concerns about this practice as well.

²⁹⁸ This is the result of legislative reforms enacted in 2012. Colorado Revised Statutes, Colorado Rev. Stat. Code 19-2-508(3)(c)(II).

²⁹⁹ Colorado Rev. Stat. 19-2-508(3)(c)(III).

held in adult jails be physically segregated from adults.³⁰⁰ But there is no prohibition in state law against holding young people in solitary confinement in adult jails.³⁰¹

Between July 2010 and June 2011, Colorado jails reported holding 42 young people under age 18 in 7 jails for an average period of 116 days.³⁰² Jail officials in Denver, El Paso, and Adams counties reported that youth are subject to the same disciplinary rules as adults when confined in their facilities.³⁰³ Officials in El Paso and Denver Counties told Human Rights Watch that young people under age 18 can be sentenced to time in segregation for disciplinary infractions, during which they are permitted out of their cell for one hour each day.³⁰⁴ Such conditions constitute solitary confinement.

Colorado Prisons

The Colorado Department of Corrections (CO DOC) holds young people who are convicted of criminal offenses and sentenced while under age 18. Youth and adults under age 21 who have been sentenced as “youthful offenders” are detained in the Youthful Offender System (YOS); some youth—including many of those sentenced for particularly serious offenses—are held in mainline prisons.³⁰⁵ There is no prohibition in state law against holding youth in solitary confinement in Colorado prisons. While the CO DOC code of penal discipline does provide for consideration of “mitigating factors” in findings of guilt for purposes of disciplinary segregation, it does not require consideration of age, mental disability, or other special needs, in evaluating guilt or in assessing sanctions.³⁰⁶

CO DOC officials reported that, while they sometimes try to avoid placing young people in

³⁰⁰ Colorado Rev. Stat. § 19-2-508(4)(a)

³⁰¹ The various forms of solitary confinement are discussed in Section III of the report.

³⁰² Colorado State Division of Criminal Justice, SB 10-054 Annual Report—2nd Revision, January 23, 2012.

³⁰³ Human Rights Watch interview with Chief Elias Diggins, Denver Sheriff Department, Colorado, February 9, 2012; Human Rights Watch telephone interview with Liz O’Neil, Special Management Coordinator El Paso County Sheriff’s Office, Colorado, April 9, 2012; Human Rights Watch telephone interview with Kurt Ester, Captain, Adams County Detention Facility, Colorado, March 29, 2012.

³⁰⁴ Human Rights Watch interview with Chief Elias Diggins, February 9, 2012; Human Rights Watch telephone interview with Liz O’Neil, Special Management Coordinator El Paso County Sheriff’s Office, Colorado, April 9, 2012.

³⁰⁵ Human Rights Watch telephone interview with Tom Clements, Executive Director, Colorado Department of Corrections, June 18, 2012. The limits of the youthful offender system are provided by statute at Colorado Rev. Stat. 18-1.3-407.

³⁰⁶ Colorado Department of Corrections, Regulation Code of Penal Discipline, AR# 150-01 at (IV)(E)(o), effective September 1, 2011, http://www.doc.state.co.us/sites/default/files/ar/0150_01_09012011.pdf (accessed June 4, 2012).

punitive solitary confinement, it is still used as a sanction.³⁰⁷ Regarding YOS, officials reported:

We do everything we can not to place young offenders in solitary confinement or disciplinary segregation. At YOS, we have the code of penal discipline available to us. But we have trained our staff to go to immediate sanctions, logical sanctions, immediate and programmatic sanctions. What we have found is that if you address the issue immediately and if the consequence is immediate, we can change behavior. We have focused a lot on that with our younger offenders. To punish—certainly there is a need to punish. The longest time we can put someone in segregation is 60 days for a class 1 offense. We try not to use it; there are reviews every 28 days. The goal is to get them back to programming.³⁰⁸

Research Findings

Colorado Jails

Human Rights Watch and the American Civil Liberties Union interviewed or corresponded with 15 young people who reported being held in protective solitary confinement while in pre-trial detention in Colorado jails. A number of those young people reported spending the significant periods—or the entire period of their pre-trial detention—in protective solitary confinement. Ten young people said they had spent five months or longer in protective solitary confinement while under age 18. Human Rights Watch and the American Civil Liberties Union interviewed three young people who reported being held in punitive solitary confinement while in pre-trial detention in Colorado jails. Two of those young people said they spent more than one period in punitive solitary confinement of 15 days or more.

Young people held in solitary confinement in Colorado jails generally described being allowed out of their cell one hour each day into a day room or common space, generally alone, during which they could shower and sometimes make phone calls to loved ones. Young people reported being able to receive visits from loved ones, but four young people

³⁰⁷ Human Rights Watch telephone interview with Steve Hager, Director, Youthful Offender System (YOS), Colorado Department of Corrections, Colorado, June 18, 2012.

³⁰⁸ Human Rights Watch telephone interview with Steve Hager, Director, Youthful Offender System (YOS), Colorado Department of Corrections, Colorado, June 18, 2012.

told us they were unable to have contact visits. Three young people said they were unable to access any reading materials and one youth reported being unable to access writing materials in his or her cell while in solitary confinement. Three young people said they had considered suicide; two reported having attempted suicide while in solitary confinement.

Colorado Prisons

Human Rights Watch and the American Civil Liberties Union interviewed or corresponded with nine young people who reported being held in punitive or administrative solitary confinement while in state prison in Colorado. A number of those young people told us they had spent significant periods in administrative solitary confinement, with three young people reporting having spent four months or longer in administrative solitary confinement while under age 18. Human Rights Watch and the American Civil Liberties Union interviewed six young people who told us they were held in punitive solitary confinement while in Colorado prisons. Three of those young people reported spending more than one period in punitive solitary confinement of 20 days or more.

Young people held in solitary confinement in Colorado prisons while under age 18 generally described being allowed out of their cell one hour each day, generally into an indoor recreation room, and being permitted a daily shower. Young people reported being able to receive non-contact visits from loved ones. One young person told us he or she was classified directly into long-term solitary confinement while under age 18; others reported beginning periods of administrative solitary confinement while under age 18 that continued for many years. Young people in long-term administrative solitary confinement said they were never permitted outdoors.

Avenues for Reform

In spite of these challenges, the legal and policy landscape in Colorado is shifting in a positive direction. In 2012, Colorado enacted legislation requiring that youth charged as if adults be held in juvenile facilities, unless a judge orders otherwise.³⁰⁹ The state has not yet reported on how this has affected the population of youth in adult facilities. The

³⁰⁹ House Bill 12-1139, Concerning Pretrial Detention of Children Prosecuted as Adults, signed March 15, 2012, http://cjd.c.org/wp/wp-content/uploads/2012/08/HB-1139_Final.pdf (accessed August 27, 2012); “Colorado: Assembly Acts to Protect Youth Accused of Crimes,” Human Rights Watch and American Civil Liberties Union news release, March 6, 2012, <http://www.hrw.org/news/2012/03/06/colorado-assembly-acts-protect-youth-accused-crimes>.

director of the CO DOC has also ordered a review of those in prolonged solitary confinement in prison, resulting in a significant reduction of numbers held.³¹⁰ The CO DOC acknowledges that youth are different, and has signaled openness to additional reform:

The challenge for us is, as we manage [inmates] when they are younger, how do we manage them ... in a way that takes into consideration where they are at in terms of their age, their impulsivity, their mental health issues.... Our true goal is to manage inmates so they behave differently because 97 percent are going to walk out the door and be somebody's next door neighbor.... If I had a wish list, it would be to have the flexibility to have more intensive case management, mental health, and other programming to keep [youth] engaged in something that can build positive self-esteem and positive values. At that young age, it is important to develop a positive view and see a light at the end of the tunnel.³¹¹

To continue down the road to reform, Colorado must ensure that young people under age 18 are never subjected to solitary confinement in jails or in prisons.³¹²

³¹⁰ Colorado Department of Corrections, Report of the Colorado Department of Corrections on Administrative Segregation, January 2012, http://www.aclu.org/files/assets/co_adseg_rept_jan2012.pdf (accessed August 27, 2012).

³¹¹ Human Rights Watch telephone interview with Tom Clements, June 18, 2012.

³¹² For detailed recommendations, see recommendations section above.

STATE CASE STUDIES: FLORIDA

Youth in Adult Jails and Youth in Solitary Confinement

Pinellas County Sheriff's Office: *"There are lights on but it is dark for me. It is like being sunk in a hole—it is a dark place—you know the jacket where your arms are tied and you are in a sponge room? That's how it feels.... What would you do if you were in a place by yourself? You wouldn't feel strange?"*

- Interview with Alyssa E. (pseudonym), April 2012, held in jail at age 16

Turner Guilford Knight Correctional Center: *"The only thing left to do is go crazy—just sit and talk to the walls. A lot of people in here go on [suicide watch].... I catch myself [talking to the walls] every now and again. It's starting to become a habit because I have nothing else to do. Sometimes I go crazy and can't even control my anger anymore.... See, they say it's to make you better but really it didn't change me, it just gave me a worsser [sic] attitude. I feel like I am alone, like no one cares about me. Sometimes I feel like, why am I even living?"*

- Interview with Henry R. (pseudonym), April 2012, held in jail at age 16

- Facilities that have reported a young person under age 18 held on June 30 in the Annual Survey of Jails in the past 6 years (2006 - 2011) and facilities in which one or more young people identified by Human Rights Watch and the American Civil Liberties Union reported being held in solitary confinement while they were under age 18.

Young people under age 18 are held in adult jails and in solitary confinement across the United States. The facilities shown are not an exhaustive list of all facilities that hold young people under age 18 or that subject them to solitary confinement.

Source: Human Rights Watch interviews and correspondence with young people; Jails at Mid-Year Survey (2006 - 2011), Bureau of Justice Statistics, US Department of Justice.

Human Rights Watch and the American Civil Liberties Union have found that some Florida jails and prisons use solitary confinement to manage young people under age 18 in a range of circumstances. Human Rights Watch and the American Civil Liberties Union corresponded with and interviewed 38 individuals who had been subjected to solitary confinement while under age 18 in jails in Bay, Citrus, Clay, Duval, Escambia, Highlands, Hillsboro, Jackson, Lee, Leon, Miami, Okaloosa, Okeechobee, Orange, Palm Beach, Pinellas, Polk, and St. Lucie Counties; and in a number of state prisons. Though not investigated by Human Rights Watch and the American Civil Liberties Union, officials in Alachua, Brevard, Broward, Charlotte, Collier, Franklin, Gadsen, Hamilton, Hernando, Lake, Levy, Manatee, Marion, Monroe, Osceola, Pasco, Putnam, Volusia, Walton, Sarasota, Seminole, St. Johns, and Wakulla Counties have reported detaining young people under age 18 in the last six years.³¹³ Human Right Watch also interviewed or corresponded with jail and prison officials in the state.

The Law and Policy Landscape

Florida law and policy governing jails and prisons permit holding young people in various forms of prolonged isolation or segregation that can constitute solitary confinement.³¹⁴

Florida Jails

By statute, young people under age 18 charged as if adults *must* be held in adult jails.³¹⁵ The state requires that young people held in adult jails be prevented from having sight and sound contact with adults and be held in a separate section of the jail.³¹⁶ A recent legal change, signed into law in 2011, also allows young people under age 18 *not* charged as if adults to be held in Florida jails, though few jails have yet to exercise this authority.³¹⁷ But

³¹³ Jails at Mid-Year Survey (2006 - 2011), Bureau of Justice Statistics, US Department of Justice.

³¹⁴ Throughout the report, “solitary confinement” is used to refer to physical and social isolation that extended for more than 22 hours each day and lasted for one or more days. UN Human Rights Council, Interim Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan Mendez, U.N. G.A. Doc. A/66/268, August 5, 2011, <http://daccess-ddsny.un.org/doc/UNDOC/GEN/N11/445/70/PDF/N1144570.pdf?OpenElement> (accessed August 27, 2012). This report does not address the practice of holding two individuals in prolonged segregation, but Human Rights Watch and mental health experts have raised serious concerns about the practice.

³¹⁵ Fla. Stat. Ann. § 985.265.

³¹⁶ Fla. Stat. Ann. § 985.265.

³¹⁷ Florida law SB2112 on Juvenile Detention Facilities, effective July 1, 2011; David J. Utter, Southern Poverty Law Center, “One Florida County Wisely Says No to Putting Children in Adult Jails,” May 8, 2012, <http://www.splcenter.org/get-informed/news/one-florida-county-wisely-says-no-to-putting-children-in-adult-jails> (accessed August 27, 2012).

there is no prohibition in state law against holding young people in solitary confinement in adult jails.³¹⁸

In January 2012, Florida jails reported holding 579 young people under age 18 statewide.³¹⁹ Jail officials in Hernando, Pinellas, and St. Lucie counties reported that youth are subject to the same disciplinary rules as adults when confined in their facilities.³²⁰ Officials in Duval county told Human Rights Watch that young people under age 18 can be sentenced to time in segregation for disciplinary infractions, during which they are permitted out of their cell for less than two hours each day.³²¹ Such conditions constitute solitary confinement.

Florida Prisons

The Florida Department of Corrections (FL DOC) holds young people who have been convicted of criminal offenses and sentenced while under age 18. Youth and adults under age 21 who have been sentenced or designated as “youthful offenders” are detained in the youthful offender facilities (where young people and adults under age 19 are separated from older youthful offenders); some youth—including many of those sentenced for particularly serious offenses—are held in mainline prisons.³²² In fiscal year 2010-2011, the FL DOC reported holding 276 young people under age 18 (although 398 young people under age 18 were admitted to FL DOC custody) and 1,640 youthful offenders; the youngest was 14 years old and serving a sentence for robbery with a gun or deadly weapon.³²³ There is no prohibition in state law or FL DOC policies or regulations against holding young people in solitary confinement in Florida prisons.

³¹⁸ The various forms of solitary confinement are discussed in Section III of the report.

³¹⁹ Florida Department of Corrections, “Florida County Detention Facilities Average Inmate Population January 2012,” January 2012, <http://www.dc.state.fl.us/pub/jails/2012/01/FCDF.PDF> (accessed August 27, 2012).

³²⁰ Letter from Dan Carriveau, Classification Sergeant, Hernando County Detention Center, Florida, to Human Rights Watch, January 6, 2012; Letter from David Robinson, Lieutenant, Pinellas County Sheriff’s Office, Florida, to Human Rights Watch, February 2, 2012; and Letter from F. Patrick Tighe, Major, St. Lucie County Jail, Florida, to Human Rights Watch, January 4, 2012.

³²¹ Human Rights Watch telephone interview with Daryl Tyus, Operations Lieutenant, Jackson County Correctional Facility, Florida, April 3, 2012.

³²² Florida Statutes Title 47, Ch. 958.04, 958.11; Human Rights Watch email correspondence with Ann Howard, Communications Director, Florida Department of Corrections, July 31, 2012.

³²³ 2010-2011 Agency Annual Report, Florida Department of Corrections, “Inmate Population,” <http://www.dc.state.fl.us/pub/annual/1011/ar-im-population.html> (accessed August 27, 2012); 2010-2011 Agency Annual Report, Florida Department of Corrections, “Inmate Admissions,” <http://www.dc.state.fl.us/pub/annual/1011/ar-im-admissions.html> (accessed August 27, 2012); 2010-2011 Agency Annual Report, Florida Department of Corrections, “Youthful Offenders,” <http://www.dc.state.fl.us/pub/annual/1011/ar-additional-facts-youth.html> (accessed August 27, 2012).

FL DOC officials reported that both youthful offenders and non-youthful offenders can be placed in confinement, including for disciplinary and other management purposes.³²⁴ Inmates in FL DOC custody who are held in disciplinary confinement (DC) or administrative confinement (AC) are entitled out of their cell three times per week to take a shower and—but only after *thirty* days—an additional three hours per week to exercise.³²⁵ Inmates in “Close Management, Level I” status (CM-1) are entitled out of their cell three times per week to take a shower and an additional six hours per week to exercise.³²⁶ Conditions in AC, DC, and CM-1 constitute solitary confinement. FL DOC officials confirmed that there are no differences between the disciplinary rules for managing the behavior of young people under age 18 and those for managing the behavior of adults over age 18; that there are no age-specific limits on the use of close management, AC, or DC for young people under age 18; and that there are no restrictions on housing young people alone in AC, DC, or close management in DOC facilities.³²⁷

Research Findings

Florida Jails

Human Rights Watch and the American Civil Liberties Union interviewed or corresponded with four young people who reported being held in protective solitary confinement while in pre-trial detention in Florida jails. All of these young people reported spending three or more months in protective solitary confinement while under age 18. Human Rights Watch and the American Civil Liberties Union interviewed 21 young people who reported being held in punitive solitary confinement while in pre-trial detention in Florida jails. Seven of those young people said they spent more than one period in punitive solitary confinement of 15 days at a time or longer. Fourteen young people reported being held in administrative solitary confinement, generally when accused of committing a disciplinary infraction, while in pre-trial detention in Florida jails. Five young people reported spending one or more period in medical solitary confinement, three of them after they attempted or spoke about having considered attempting suicide.

³²⁴ Human Rights Watch email correspondence with Ann Howard, July 31, 2012.

³²⁵ Regulation 33-602.222, Florida Department of Corrections, “Disciplinary Confinement,” <https://www.flrules.org/gateway/ruleno.asp?id=33-602.222&Section=0> (accessed August 27, 2012), Sections 2(e) and 2(p); Regulation 33-602.220, Florida Department of Corrections, “Administrative Confinement,” <https://www.flrules.org/gateway/ruleno.asp?id=33-602.220&Section=0> (accessed August 27, 2012), Sections 5(e) and 5(p).

³²⁶ Regulations 33-601.800, Florida Department of Corrections, “Close Management,” <https://www.flrules.org/gateway/ruleno.asp?id=33-601.800> (accessed August 27, 2012).

³²⁷ Human Rights Watch email correspondence with Ann Howard, August 28, 2012.

Young people held in solitary confinement in Florida jails generally described being allowed out of their cell one hour each day, or for two hours, two or three times per week. Generally, young people were permitted to shower regularly and sometimes make phone calls to loved ones. Ten young people described spending a period of time in solitary confinement during which they were only allowed out of their cell for showers; seven reported being unable to call or visit with loved ones. Seven young people said they spent a period in solitary confinement during which they were unable to access any reading or writing materials in their cell. Four young people said they had attempted suicide while in solitary confinement.

Florida Prisons

Human Rights Watch and the American Civil Liberties Union interviewed or corresponded with six young people who reported being held in administrative solitary confinement while under age 18 in state prison in Florida. Three of those young people reported having spent three months or longer in administrative solitary confinement (in either CM-1 and AC status) while under age 18. Human Rights Watch and the American Civil Liberties Union interviewed six young people who told us they were held in punitive solitary confinement while in Florida prisons. Human Rights Watch and the American Civil Liberties Union also interviewed seven young people who told us they spent time in DC with a cell-mate.³²⁸

Young people in solitary confinement in Florida prisons reported spending prolonged periods (sometimes longer than 30 days) without any out-of-cell exercise. Those who did get out-of-cell exercise described being able to exercise alone in a small fenced-in area. Young people reported being able to shower regularly, but not every day. Some young people under age 18 with intellectual disabilities reported receiving in-cell study packets; other young people under age 18 reported receiving no educational programming while in solitary confinement.

³²⁸ This report does not address the practice of holding two individual in prolonged segregation but Human Rights Watch, mental health experts, and advocates have raised serious concerns about the practice.

STATE CASE STUDIES: MICHIGAN

Youth in Adult Jails and Youth in Solitary Confinement

Kent County Jail: "Being in isolation in jail made me feel stressed out. Nobody cares. No one to talk to. I was getting cruel and unusual punishment. When I was in isolation in jail it changed me. It messed my head up."

- Interview with Adam B. (pseudonym), March 2012, held in jail at age 15

Calhoun County Jail: "[There] was a stone bed with a blue mattress with a built-in pillow...a very disgusting slot that they slide food in. The light [was] on 24/7 so you couldn't sleep at all. They don't give you a blanket. It smelled really bad.... I was scared to death."

- Interview with Carter P. (pseudonym), March 2012, held in jail at age 14

- Facilities that have reported a young person under age 18 held on June 30 in the Annual Survey of Jails in the past 6 years (2006 - 2011) and facilities in which one or more young people identified by Human Rights Watch and the American Civil Liberties Union reported being held in solitary confinement while they were under age 18.

Young people under age 18 are held in adult jails and in solitary confinement across the United States. The facilities shown are not an exhaustive list of all facilities that hold young people under age 18 or that subject them to solitary confinement.

Source: Human Rights Watch interviews and correspondence with young people; Jails at Mid-Year Survey (2006 - 2011), Bureau of Justice Statistics, US Department of Justice.

Human Rights Watch and the American Civil Liberties Union have found that some Michigan jails and prisons use solitary confinement to detain and manage young people under age 18 in a range of circumstances. Human Rights Watch and the American Civil Liberties Union corresponded with or interviewed 15 individuals who reported being subjected to one or more periods of solitary confinement while under age 18 in jails in Berrien, Calhoun, Ingham, Kent, Oakland, Wayne, and Saginaw counties; and in a number of state prisons. Though not investigated by Human Rights Watch and the American Civil Liberties Union, officials in Alcona, Bay, Branch, Cass, Clinton, Genesee, Jackson, Kalamazoo, Macomb, Roscommon, Washtenaw, and Wexford Counties have reported detaining young people under age 18 in the last six years.³²⁹ Human Right Watch also interviewed or corresponded with state jail and prison officials.

The Law and Policy Landscape

Michigan law and policy governing jails and prisons permit holding young people in various forms of prolonged isolation or segregation that can constitute solitary confinement.³³⁰

Michigan Jails

Most Michigan young people under age 18 who are charged as if adults are treated this way because criminal majority begins at 17 (although younger young people can also be charged as adults).³³¹ Young people under age 17 *maybe* detained in adult jails with the permission of the county sheriff (this includes both young people charged as if adults *and*, for up to 30 days, certain juvenile delinquents who violate probation).³³² The state requires that young people under age 17 held in adult jails be held physically separate from 17 year

³²⁹ Jails at Mid-Year Survey (2006 - 2011), Bureau of Justice Statistics, US Department of Justice.

³³⁰ Throughout the report, “solitary confinement” is used to refer to physical and social isolation that extended for more than 22 hours each day and lasted for one or more days. UN Human Rights Council, Interim Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan Mendez, U.N. G.A. Doc., <http://daccess-ddsny.un.org/doc/UNDOC/GEN/N11/445/70/PDF/N1144570.pdf?OpenElement> (accessed August 27, 2012). This report does not address the practice of holding two individuals in prolonged segregation, but Human Rights Watch and mental health experts have raised serious concerns about the practice.

³³¹ Mich. Comp. Laws Ann. § 712A.2 (restricting exclusive jurisdiction of the juvenile court to youth under age 17); Mich. Comp. Laws Ann. § 712A.2d (permitting the filing of criminal charges—and trial as if adults—for certain youth under age 17).

³³² Mich. Comp. Laws Ann. § 764.27a(3) (permitting the detention of youth under age 17 charged as adults in adult facilities); Mich. Comp. Laws Ann. § 771.7(2)(f) (permitting the detention of certain juvenile delinquents who violate probation).

olds and adults.³³³ But there is no prohibition in state law against holding young people in solitary confinement in adult jails.³³⁴

Jail officials in Bay, Benzie, Cass, Cheboygan, Gladwin, Houghton, Lapeer, and Oakland counties reported that young people under age 18 are subject to the same disciplinary rules as adults when confined in their facilities.³³⁵ Officials in Cheboygan, Gladwin, Houghton, Muskegon, and St. Joseph counties told Human Rights Watch that young people under age 18 can be sentenced to time in segregation for disciplinary infractions, during which they are permitted out of their cell for less than two hours each day.³³⁶ Officials in Oakland and Macomb counties reported that while young people age 17 are housed with adults, young people under age 17 are generally held in medical cells to keep them separate from adults; officials in Oakland County reported that such young people spend less than two hours per day outside of their cell.³³⁷ Such conditions constitute solitary confinement.

Michigan Prisons

The Michigan Department of Corrections (MI DOC) holds young people who are convicted of criminal offenses and sentenced while under age 18. Young people and adults between age 17 and 20 can be sentenced as “youthful trainees,” except those who commit certain, generally serious, offenses.³³⁸ By policy, young people under age 17 and youthful trainees are held in specialized facilities (either at the Thumb Correctional Facility or the Women’s

³³³ Mich. Comp. Laws Ann. §764.27a.

³³⁴ The various forms of solitary confinement are discussed in Section III of the report.

³³⁵ Human Rights Watch telephone interview with Troy Stewart, Administrator Bay County Jail, Michigan, March 23, 2012; and with Ann Russell, Corrections Administrator, Oakland County, Michigan, March 23, 2012; Letter from Jeffrey Conquest, Lieutenant/Jail Administrator, Benzie County Jail, Michigan, to Human Rights Watch, January 11, 2012; Letter from Joseph Underwood, Sheriff, Cass County Sheriff’s Office/Correctional Facility, Michigan, to Human Rights Watch, January 30, 2012; Letter from David Deeter, Jail Administrator, Cheboygan County Sheriff Department, Michigan, to Human Rights Watch, January 4, 2012; Letter from Carl Gruzhit, Corrections Officer, Gladwin County Jail, Michigan, to Human Rights Watch, January 31, 2012; Letter from Marjorie Chandonais, Captain Houghton County Sheriff’s Office, Michigan, to Human Rights Watch, January 4, 2012; and Letter from Duane Engelhardt, Jail Administrator, Lapeer County Sheriff’s Office, Michigan, to Human Rights Watch, February 1, 2012;

³³⁶ Letter from David Deeter, Jail Administrator, Cheboygan County Sheriff Department, Michigan, January 4, 2012; Letter from Carl Gruzhit, Corrections Officer, Gladwin County Jail, Michigan, January 31, 2012; Letter from Marjorie Chandonais, Captain Houghton County Sheriff’s Office, Michigan, January 4, 2012; Letter from Scott Lamiman, Jail Population Coordinator, Muskegon County Jail, Michigan, to Human Rights Watch, January 24, 2012; and Letter from Tim Schuler, Captain, St. Joseph County Sheriff’s Office, Michigan, to Human Rights Watch, January 5, 2012.

³³⁷ Human Rights Watch telephone interview with Ann Russell, Corrections Administrator, Oakland County, Michigan, March 23, 2012; and with Michelle M. Sanborn, Jail Administrator, Macomb County, Michigan, March 9, 2012.

³³⁸ Mich. Comp. Laws Ann. §762.11.

Huron Valley Correctional Facility).³³⁹ Young people under age 17 are, to the extent practicable, kept sight and sound separated from 17 year olds and adults.³⁴⁰ However, the department can designate any young person under age 18 for housing and placement at a mainline prison (including if the person is deemed to pose a risk to others, or if requires psychiatric care).³⁴¹ There is no prohibition in state law or MI DOC policies or regulations against holding young people in solitary confinement in Michigan prisons.

MI DOC officials declined to comment on MI DOC disciplinary policies with regard to young people under age 18, though the officials did indicate that the MI DOC classification system does not consider age as a factor in inmate classification.³⁴² Inmates in MI DOC custody who are held in temporary, punitive, or administrative segregation are entitled out of their cell three times per week to take a shower and shave and a minimum of one hour per day, five days per week, to exercise.³⁴³ Such conditions constitute solitary confinement.

Research Findings

Michigan Jails

Human Rights Watch and the American Civil Liberties Union interviewed or corresponded with seven young people who reported being held in protective solitary confinement while in pre-trial detention in Michigan jails. Five young people said they had spent two months or longer in protective solitary confinement while under age 18. Human Rights Watch and the American Civil Liberties Union interviewed or corresponded with six young people who reported being held in punitive solitary confinement while in pre-trial detention in Michigan jails. Three of those young people said they spent ten days or more in punitive solitary confinement while under age 18. One young person reported being held in administrative solitary confinement for approximately one month while under age 18.

³³⁹ Policy Directive 05.01.140, Michigan Department of Corrections, “Prisoner Placement and Transfer,” October 2011, http://www.michigan.gov/documents/corrections/0501140_365947_7.pdf (accessed August 27, 2012), at CC-EE.

³⁴⁰ *Ibid.*, at EE.

³⁴¹ *Ibid.*, at DD-GG.

³⁴² Human Rights Watch email correspondence with Russell Marlan, Administrator, Executive Bureau, Michigan Department of Corrections, June 19, 2012.

³⁴³ Policies in place governing youth in Department custody suggest that the segregation of youth is regulated in the same way as the segregation of adults. Michigan Department of Corrections, “Prisoner Placement and Transfer,” at DD; Policy Directive 04.05.120, Michigan Department of Corrections, “Segregation Standards,” September 2010, http://www.michigan.gov/documents/corrections/0405120_333436_7.pdf (accessed August 27, 2012), at V.9 and V.21.

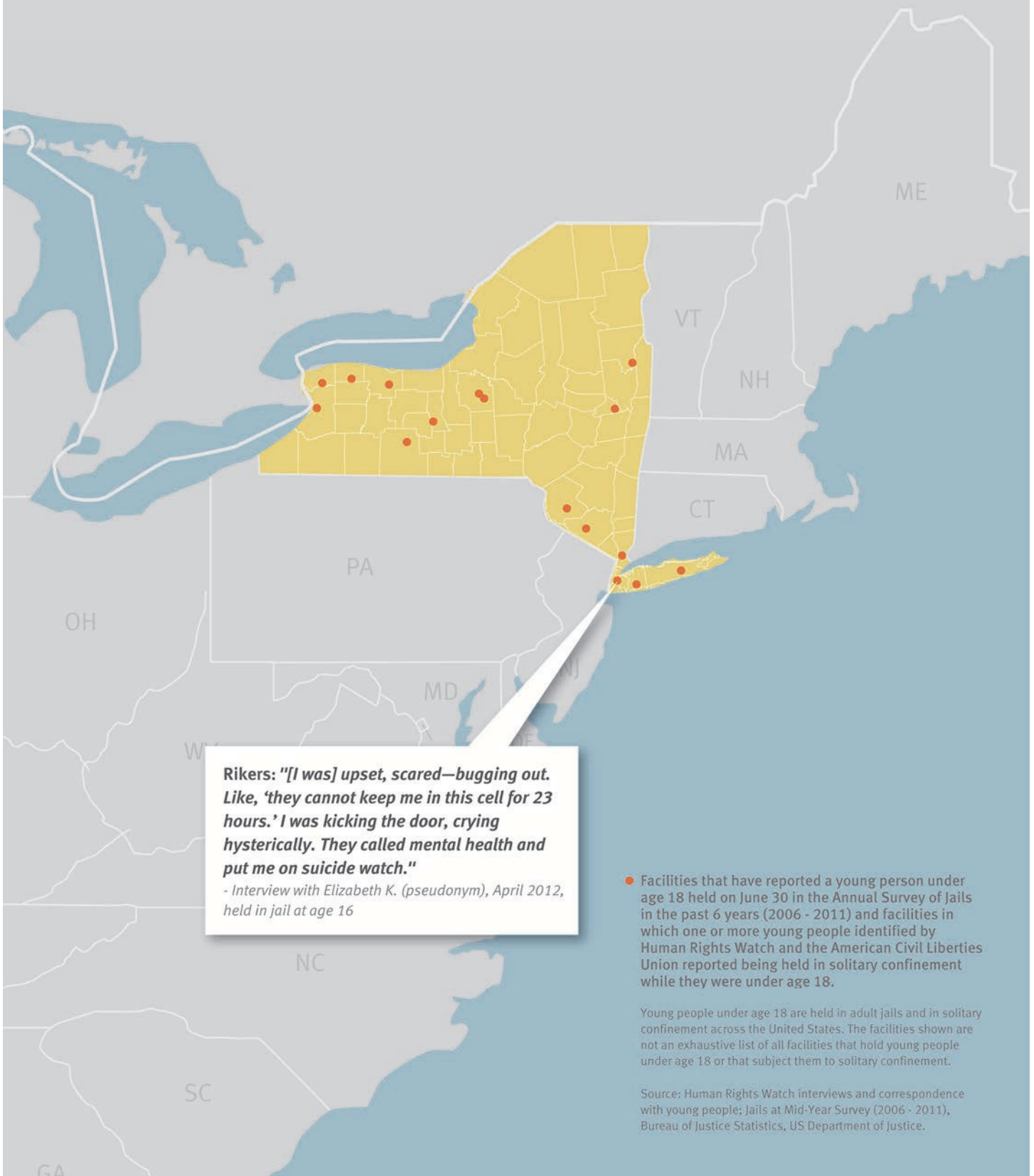
Young people held in solitary confinement in Michigan jails generally described being allowed out of their cell one hour each day, or for one-and-a-half or two hours a few times each week, in a day room or common space, generally alone, during which they could shower and sometimes make phone calls to loved ones. Young people generally reported being able to receive visits from loved ones, but four young people told us they were unable to have contact visits. Young people generally said they were able to access reading materials. One young person said he or she was only able to receive reading materials sent by others directly from the publisher. Two young people said they received a Christian bible and no other reading materials while in solitary confinement. Three young people reported receiving no educational materials or programming while in solitary confinement. Two young people said they had considered suicide while in solitary confinement.

Michigan Prisons

Human Rights Watch and the American Civil Liberties Union interviewed or corresponded with eight young people who reported being held in solitary confinement while in state prison in Michigan. Human Rights Watch and the American Civil Liberties Union interviewed five young people who told us they were held in punitive solitary confinement while in Michigan prisons. Three of those young people reported spending more than one period in punitive solitary confinement of one month or longer.

STATE CASE STUDIES: NEW YORK

Youth in Adult Jails and Youth in Solitary Confinement



Human Rights Watch and the American Civil Liberties Union have found that some New York jails and prisons use solitary confinement to detain and manage young people under age 18 in a range of circumstances. Human Rights Watch and the American Civil Liberties Union interviewed seven individuals who reported being subjected to one or more periods of solitary confinement while under age 18 in jails at Rikers Island. Though not investigated by Human Rights Watch and the American Civil Liberties Union, officials in Albany, Erie, Madison, Monroe, Nassau, Niagara, Onandaga, Orange, Orleans, Seneca, Steuben, Suffolk, Sullivan, Washington, and Westchester Counties have reported detaining young people under age 18 in the last six years.³⁴⁴ Human Rights Watch also interviewed or corresponded with state jail and prison officials.

The Law and Policy Landscape

New York law and policy governing jails and prisons permit holding young people in various forms of prolonged isolation or segregation that can constitute solitary confinement.³⁴⁵

New York Jails

Most New York young people under age 18 who are charged as if adults are treated this way because criminal majority begins at 16 (although younger adolescents can also be charged as adults).³⁴⁶ Young people under age 18 who are charged as if adults can be held in adult jails.³⁴⁷ The state requires that adolescents under age 19 held in adult jails be held

³⁴⁴ Jails at Mid-Year Survey (2006 - 2011), Bureau of Justice Statistics, US Department of Justice.

³⁴⁵ Throughout the report, “solitary confinement” is used to refer to physical and social isolation that extended for more than 22 hours each day and lasted for one or more days. UN Human Rights Council, Interim Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan Mendez, U.N. G.A. Doc. A/66/268, August 5, 2011, <http://daccess-ddsny.un.org/doc/UNDOC/GEN/N11/445/70/PDF/N1144570.pdf?OpenElement> (accessed August 27, 2012).. This report does not address the practice of holding two individuals in prolonged segregation, but Human Rights Watch and mental health experts have raised serious concerns about the practice.

³⁴⁶ The defense of infancy can only be invoked by youth under age 16 (and in certain circumstances). New York Penal Law § 30. See also Remarks of Chief Judge Lippman to the New York Citizens Crime Commission, September 21, 2011, <http://www.nycrimecommission.org/pdfs/Lippman110921.pdf> (accessed August 27, 2012). There is a procedure for sentencing such youth as “youthful offenders” in particular circumstances, though this is distinct from treating them as “juveniles” under New York law. New York Criminal Procedure Law § 720.

³⁴⁷ All youth between 16 and 18 are generally held in adult jails, and youth under 16 can be held there in certain circumstances. N.Y. Crim. Proc. Law § 510.15(1) (McKinney2006).

physically separate from adults age 19 and older.³⁴⁸ But there is no prohibition in state law against holding young people in solitary confinement in adult jails.³⁴⁹

Between 45,000 and 50,000 young people under age 18 are arrested each year in New York and prosecuted as if adults.³⁵⁰ A significant proportion of those young people are held in adult jails: in 2010, 16 jails reported to the US Department of Justice that on a single day in June, they held 942 young people; New York City alone held 786 adolescents in fiscal year 2012.³⁵¹ Jail officials in Erie, Fulton, Lewis, Monroe, Orange, and Rensselaer counties and in New York City reported that adolescents are subject to the same disciplinary rules as adults when confined in their facilities.³⁵² Officials in Orange county and New York City told Human Rights Watch that young people under age 18 can be sentenced to time in segregation for disciplinary infractions, during which they are permitted out of their cell for less than two hours each day.³⁵³ Such conditions constitute solitary confinement.

New York Prisons

The New York Department of Corrections and Community Supervision (NY DOCCS) holds young people who are convicted of criminal offenses and sentenced while under age 18. Young people under age 18 and adults under age 21 in DOCCS custody are detained in

³⁴⁸ The statute reads, “No person under nineteen years of age shall be placed or kept or allowed to be at any time with any prisoner or prisoners nineteen years of age or older, in any room, dormitory, cell or tier of the buildings of such institution unless separately grouped to prevent access to persons under nineteen years of age by prisoners nineteen years of age or older.” N.Y. Correct. Law § 500-b(4). The New York City Board of Corrections, which separately regulates New York City jails, refers to this population as “adolescents.” NYC Board of Correction (BOC), “Variances Granted by the Board of Correction, Minimum Standards for New York City Correctional Facilities,” Section 1-02, “Classification of Prisoners,” March 1989, <http://www.nyc.gov/html/boc/html/rules/variances.shtml> (accessed August 27, 2012).

³⁴⁹ The various forms of solitary confinement are discussed in Section III of the report.

³⁵⁰ Remarks of Chief Judge Lippman, September 21, 2011. This data is hard to estimate because New York State does not publish age-disaggregated felony arrest statistics. See New York State Division of Criminal Justice Services, “Adult Arrests: 2002-2011,” <http://www.criminaljustice.ny.gov/crimnet/ojsa/arrests/index.htm> (accessed August 27, 2012).

³⁵¹ See Appendix 1 above; New York City data is drawn from City of New York Department of Corrections, “Adolescents: Overview,” http://www.nyc.gov/html/doc/html/adolescent/doc_stats_adol.shtml (accessed August 27, 2012).

³⁵² Human Rights Watch telephone interviews with Jeffrey Hartman, Captain, Erie County Holding Center, New York, March 2, 2012; with Dora B. Schriro, Commissioner, New York City Department of Corrections, New York, July 6, 2012; and with Dominick Orsino, Corrections Administrator, Orange County Correctional Facility, New York, April 9, 2012; and letter from Randy Benedict, Captain/Jail Administrator, Fulton County Correctional Facility, New York, to Human Rights Watch, January 10, 2012; Letter from Sherry Stanford, Lieutenant, Lewis County Jail, New York, to Human Rights Watch, January 7, 2012; Letter from Jason Tripoli, Corporal, Monroe County Jail New York, to Human Rights Watch, January 23, 2012; and Letter from David Hetman, Program/Support Lieutenant, Correction Bureau, Rensselaer County Office of the Sheriff, New York, to Human Rights Watch, April 19, 2012.

³⁵³ Human Rights Watch telephone interviews with Dominick Orsino, Corrections Administrator, Orange County Correctional Facility, New York, April 9, 2012; and with Dora B. Schriro, Commissioner, New York City Department of Corrections, New York, July 6, 2012.

specialized facilities.³⁵⁴ On January 1, 2012, the NY DOCCS held 181 young people under age 18; 11 of them were 16 years old.³⁵⁵ There is no prohibition in state law or NY DOCCS policies or regulations against holding young people in solitary confinement in New York prisons. Young people under age 18 in NY DOCCS facilities are subjected to the same disciplinary rules as adults.³⁵⁶

Young people under age 18 in NY DOCCS custody can be held in Special Housing Units (SHUs), a form of segregated isolation, for disciplinary or administrative purposes; however, between a third and half of all people held in SHUs are held two per cell (or “double-celled”).³⁵⁷ Officials confirmed that in certain circumstances, young people under age 18 are held in conditions that constitute solitary confinement.³⁵⁸ On January 1, 2012, the NY DOCCS held 83 young people between age 16 and 18 in SHUs.³⁵⁹

Research Findings

New York Jails

Human Rights Watch and the American Civil Liberties Union interviewed seven young people who reported being held in solitary confinement while in pre-trial detention in jail in New York City. A number of those adolescents reported spending significant periods in punitive solitary confinement. Five young people said they had spent a total of longer than thirty days in solitary confinement while under age eighteen; two of those adolescents said they had spent longer than six months in solitary confinement.

³⁵⁴ Human Rights Watch telephone interview with Jeff McKoy, Deputy Commissioner for Program Services, New York Department of Corrections and Community Supervision, June 28, 2012.

³⁵⁵ Human Rights Watch email correspondence with Peter Cutler, Director of Public Information, New York Department of Corrections and Community Supervision, July 20, 2012.

³⁵⁶ Human Rights Watch email Correspondence with Peter Cutler, June 15, 2012.

³⁵⁷ In a recent op-ed, New York Department of Corrections and Community Supervision (NYDOCCS) Commissioner Brian Fischer stated that of the 4,300 inmates in disciplinary segregation in DOCCS facilities as of August 19, 2012, 1,400 (or approximately one-third) live in two-man cells. Brian Fischer, “Safety has to come first in N.Y.’s prisons,” *Times Union*, August 19, 2012, <http://www.timesunion.com/default/article/Safety-has-to-come-first-in-N-Y-s-prisons-3798859.php> (accessed August 27, 2012). This report does not address the practice of holding two individual in prolonged segregation, but Human Rights Watch, mental health experts, and other advocates have raised serious concerns about the practice. See for example, New York Civil Liberties Union, “Boxed In: The True Cost of Extreme Isolation in New York’s Prisons,” October 2012, <http://www.nyclu.org/BoxedIn>.

³⁵⁸ Human Rights Watch telephone interview with Jeff McKoy, June 28, 2012 (“As with any other offender, when they go to SHU they are double-celled unless it is determined that they shouldn’t be double celled.”).

³⁵⁹ Human Rights Watch email correspondence with Peter Cutler, July 20, 2012.

New York City jail officials reported to Human Rights Watch that 14.4 percent of adolescents between age 16 and 18 at Rikers Island spend at least one period of time in punitive segregation.³⁶⁰ Officials also reported that in FY2012, 48 percent of all adolescents had been identified as having a mental disability (or “a diagnosed mental disorder,” as defined in the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders).³⁶¹ Officials confirmed that young people in punitive segregation spend less than two hours per day outside of their cell; thus, the practice constitutes solitary confinement.³⁶²

Officials also provided data that shows that adolescents are held in solitary confinement as the result of a range of disciplinary infractions.³⁶³

Table 1: Infractions leading to a term of punitive segregation in New York City

Disciplinary Infraction	Percent of Punitive Segregation Terms Involving Each Infraction
Fighting resulting in injury	19%
Assault on inmate	18%
Assault on staff	14%
Fighting	11%
Contraband-weapon	7%
Physically resisting staff members	6%
Assault with a weapon	3%
Destruction of city property	3%
Making threats to staff	3%
Assault—spitting/throwing	2%
Other	14%

³⁶⁰ Human Rights Watch email correspondence with Sharman Stein, Deputy Commissioner, New York City Department of Corrections, July 27, 2012; Human Rights Watch email correspondence with Robin Campbell, Deputy Commissioner, New York City Department of Corrections, September 26, 2012.

³⁶¹ As discussed in the report, Human Rights Watch and the American Civil Liberties Union use the term “mental disability” to refer to this population. The Department of Corrections did not provide data about what percentage of youth subjected to punitive segregation had a mental disability. Human Rights Watch email correspondence with Sharman Stein, Deputy Commissioner, New York City Department of Corrections, July 27, 2012; Human Rights Watch email correspondence with Robin Campbell, Deputy Commissioner, New York City Department of Corrections, September 26, 2012.

³⁶² Human Rights Watch telephone interview with Dora B. Schriro, Commissioner, New York City Department of Corrections, New York July 6, 2012.

³⁶³ This data is for FY2012. Human Rights Watch email correspondence with Sharman Stein, Deputy Commissioner, New York City Department of Corrections, July 27, 2012; Human Rights Watch email correspondence with Robin Campbell, Deputy Commissioner, New York City Department of Corrections, September 26, 2012.

Officials provided data that suggests that adolescents are subjected to longer periods of time in solitary confinement than adults; and generally spend longer than a month in solitary confinement, with some adolescents spending significantly longer periods in solitary.³⁶⁴

Table 2: Time spent in punitive segregation in New York City

Punitive Segregation Durations for Adolescents	
Average Length of Stay	43.1 days
Median Length of Stay	29 days
Modal Length of Stay	20 days
Punitive Segregation Durations for Adults	
Average Length of Stay	42.3 days
Median Length of Stay	27.3 days
Modal Length of Stay	18 days

Finally, officials provided data that suggests that adolescents subjected to solitary confinement are broadly representative of the general population of adolescents in terms of the offense with which they are charged.³⁶⁵

Table 3: Charges of adolescents in segregation in New York City compared to general population

Adolescents in Punitive Segregation		All Adolescents	
Charged Offense	% of Total	Charged Offense	% of Total
Robbery	45.4%	Robbery	43.7%
Murder/attempted murder/manslaughter	16.1%	Murder/attempted murder/manslaughter	14.2%
Weapons	9.5%	Weapons	8.2%
Assault	8.2%	Assault	7.0%
Other felonies	4.7%	Burglary	6.9%

³⁶⁴ This data is for FY2012. Human Rights Watch email correspondence with Sharman Stein, Deputy Commissioner, New York City Department of Corrections, July 27, 2012; Human Rights Watch email correspondence with Robin Campbell, Deputy Commissioner, New York City Department of Corrections, September 26, 2012.

³⁶⁵ Note that the data, which is for FY2012, is not completely parallel between the two groups. Human Rights Watch email correspondence with Sharman Stein, Deputy Commissioner, New York City Department of Corrections, July 27, 2012; Human Rights Watch email correspondence with Robin Campbell, Deputy Commissioner, New York City Department of Corrections, September 26, 2012.

Young people held in solitary confinement in New York City jails described being allowed out of their cell for one hour each day in a caged recreation area, but two young people told us that they were only allowed exercise if they woke up before breakfast and requested it. They also reported being let out of their cell for a short shower once per day. Young people reported being able to receive regular visits from loved ones. Three young people said they were able to access reading and writing materials while in solitary confinement, but that the only educational programming they were permitted were in-cell study packets. One young person said he or she had attempted suicide while in solitary confinement.

Avenues for Reform

In spite of these challenges, the legal and policy landscape in New York is shifting in a positive direction. New York lawmakers have introduced legislation that would raise the age of criminal majority to 18.³⁶⁶ New York City recently announced a new program that may deliver additional services to young people held in solitary confinement; and a new disciplinary approach to minor infractions, involving short-term disciplinary room confinement.³⁶⁷ Jail officials in Erie County and New York City have acknowledged that young people are different, and have signaled openness to additional reform. Captain Hartman, of Erie County, told us,

[I] [c]an tell you with absolute certainty that there is a point with everybody, but with these minors that point is much sooner, when solitary confinement goes from being an effective management tool and goes to being counterproductive. And when it goes to being counterproductive, it gets very rapidly, rapidly worse.... Teenagers live for now and today and don't take consequences into account. Whether it's hormonal, emotional—

³⁶⁶ New York State Bill A9424-2011/S7020-2011, <http://open.nysenate.gov/legislation/bill/A9424-2011> (accessed August 27, 2012).

³⁶⁷ “New Privately Funded Program to Reduce Reincarceration—ABLE—is part of City’s comprehensive Young Men’s Initiative,” August 2, 2012, News from the Blue Room, NYC.gov press release, http://www.nyc.gov/portal/site/nycgov/menuitem.c0935b9a57bb4ef3daf2f1c701c789a0/index.jsp?pagelD=mayor_press_release&catID=1194&doc_name=http%3A%2F%2Fwww.nyc.gov%2Fhtml%2Fom%2Fhtml%2F2012b%2Fpr285-12.html&cc=unused1978&rc=1194&ndi=1 (accessed August 27, 2012); Human Rights Watch telephone interview with Dora B. Schriro, Commissioner, New York City Department of Corrections, New York, July 6, 2012; New York City Board Of Corrections Letter to Commissioner Dora Schriro, September 20, 2012, http://www.nyc.gov/html/boc/downloads/pdf/Variance_Documents/2012o8/CELL%2oRESTRICTION%2oAPPROVAL%2oLTR.pdf (accessed October 2, 2012).

regardless of the reason—fact is fact. [There] [n]eeds to be [an] environment that understands that and takes that into account—and channels all that stuff so it’s not coming out violently.... Inmates who are successful in managing [their] own behavior in jail should be rewarded and provided incentives for continuing. There should be tangible consequences for not doing that, but something to look forward to if they do, but [by] using different amounts of privilege, living conditions, all that sort of stuff.³⁶⁸

Commissioner Schriro of the New York City Department of Corrections told us,

If you can get in quick enough, [the ideal] would be the equivalent of ‘go to your room.’ A lot of these [conflicts] start small. If you have one youth who is monopolizing the channel-changer [for the housing area television], the option now [] if he does not respond is to infract him [which results in punitive segregation]. What I prefer is ‘go to your room young man’ and then to create a mechanism for review—so every two hours you double back and it wouldn’t go any longer than six hours—so that it doesn’t go beyond a *de facto* punitive segregation in your housing unit. So when you are ready to come out, all is forgiven.³⁶⁹

To continue down the road to reform, New York must ensure that young people under age 18 are never subjected to solitary confinement in jails or in prisons.³⁷⁰

³⁶⁸ Human Rights Watch telephone interview with Jeffrey Hartman, Captain, Erie County Holding Center, New York, March 2, 2012.

³⁶⁹ Human Rights Watch telephone interview with with Dora B. Schriro, Commissioner, New York City Department of Corrections, New York, July 6, 2012.

³⁷⁰ For detailed recommendations, see recommendations section above.

STATE CASE STUDIES: PENNSYLVANIA

Youth in Adult Jails and Youth in Solitary Confinement

Allegheny County Jail: "We didn't do anything wrong to be put in isolation. They say it's to protect us but I think it puts us in more danger. ...[H]ow could we be charged as men but be separated from men. It makes no sense. If that's the case, keep our cases at juvenile if they want to protect us."

- Written correspondence with Charles O. (pseudonym), April 10, 2012, held in jail at age 15

Philadelphia Industrial Correctional Center: "The hardest part is being behind glass when your family visits and you can't hold your family."

- Interview with Craig G. (pseudonym), January 2012, held in jail at age 15

- Facilities that have reported a young person under age 18 held on June 30 in the Annual Survey of Jails in the past 6 years (2006 - 2011) and facilities in which one or more young people identified by Human Rights Watch and the American Civil Liberties Union reported being held in solitary confinement while they were under age 18.

Young people under age 18 are held in adult jails and in solitary confinement across the United States. The facilities shown are not an exhaustive list of all facilities that hold young people under age 18 or that subject them to solitary confinement.

Source: Human Rights Watch interviews and correspondence with young people; Jails at Mid-Year Survey (2006 - 2011), Bureau of Justice Statistics, US Department of Justice.

Human Rights Watch and the American Civil Liberties Union have found that some Pennsylvania jails (also called county prisons) and prisons use solitary confinement to detain and manage young people under age 18 in a range of circumstances.³⁷¹ Human Rights Watch and the American Civil Liberties Union interviewed or corresponded with 11 individuals who reported being subjected to one or more periods of solitary confinement while under 18 in jails in Alleghany, Dauphin, Lackawanna, Lebanon, Lehigh, and Philadelphia Counties; and in state prison. Though not investigated by Human Rights Watch and the American Civil Liberties Union, officials in Beaver, Blair, Berks, Bucks, Carbon, Chester, Crawford, Cumberland, Delaware, Erie, Fayette, Franklin, Juniata, Lancaster, Luzerne, Monroe, Montgomery, Northampton, Schuylkill, Union, Westmoreland and York, Counties have reported detaining young people under age 18 in the last six years.³⁷² Human Rights Watch also interviewed or corresponded with state jail and prison officials.

The Law and Policy Landscape

Pennsylvania law and policy governing jails and prisons permit holding young people in various forms of prolonged isolation or segregation that can constitute solitary confinement.³⁷³

Pennsylvania Jails (also called county prisons)

By statute, young people under age 18 charged as if adults *may* be held in jails.³⁷⁴ Under a legislative reform passed in 2010, young people charged as if adults can be “transferred” back into the juvenile justice system.³⁷⁵ But even young people awaiting transfer may be held in adult jails. The state requires that young people under age 18 held in adult jails be

³⁷¹ In Pennsylvania, county detention facilities are called “county prisons.” However, because the term “jail” is used throughout the report, it is retained here for the sake of consistency.

³⁷² Jails at Mid-Year Survey (2006 - 2011), Bureau of Justice Statistics, US Department of Justice.

³⁷³ Throughout the report, “solitary confinement” is used to refer to physical and social isolation that extended for more than 22 hours each day and lasted for one or more days. UN Human Rights Council, Interim Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan Mendez, U.N. G.A. Doc. A/66/268, August 5, 2011, <http://daccess-ddsny.un.org/doc/UNDOC/GEN/N11/445/70/PDF/N1144570.pdf?OpenElement> (accessed August 27, 2012). This report does not address the practice of holding two individuals in prolonged segregation, but Human Rights Watch and mental health experts have raised serious concerns about the practice.

³⁷⁴ Pa. Cons. Stat. § 6327(c)-(d). Youth under age 18 are charged as adults through the operation of statutory language excluding certain crimes from the definition of “delinquent acts.” Pa. Const. Stat. § 6302.

³⁷⁵ Pa. Cons. Stat. § 6322.

separated by sight and sound from adults.³⁷⁶ But there is no prohibition in state law against holding young people in solitary confinement in adult jails.³⁷⁷

Pennsylvania jails reported—in a daily snapshot—holding 215 young people under age 18 in 66 jails on January 31, 2012.³⁷⁸ Jail officials in Carbon, Chester, Clinton, and Mifflin counties reported that adolescents are subject to the same disciplinary rules as adults when confined in their facilities.³⁷⁹ Officials in Clinton and Chester Counties told Human Rights Watch that young people under age 18 can be sentenced to time in segregation for disciplinary infractions, during which they are permitted out of their cell for less than two hours each day.³⁸⁰ Such conditions constitute solitary confinement.

Pennsylvania Prisons

The Pennsylvania Department of Corrections (PA DOC) holds young people who are convicted of criminal offenses and sentenced while under age 18. Young people and adults under age nineteen-and-a-half are housed at Secure Correctional Institution Pine Grove (SCI Pine Grove) when entering department custody and participate in the Young Adult Offender Program through age 21.³⁸¹ As of July 31, 2012, there were 899 inmates under age 22 at SCI Pine Grove.³⁸² There is no prohibition in state law or PA DOC policies or regulations against holding young people in solitary confinement in Pennsylvania prisons.

³⁷⁶ Pa. Cons. Stat. § 6327(c)(3).

³⁷⁷ The various forms of solitary confinement are discussed in Section III of the report.

³⁷⁸ Pennsylvania jails report detention data to the State Department of Corrections. It is available at http://www.portal.state.pa.us/portal/server.pt/document/1259638/2012_county_statistics_xls (accessed September 26, 2012).

³⁷⁹ Human Rights Watch telephone interview with Jack Healy, Director of Inmate Services, Chester County Prison, Pennsylvania, February 29, 2012; Letter from Bernie Zook, Administrator/Warden, Mifflin County Correctional Facility, Pennsylvania, to Human Rights Watch, January 3, 2012; Letter from Joseph Gross, Warden, Carbon County Correctional Facility, Pennsylvania, to Human Rights Watch, January 6, 2012; and Letter from Jacqueline Motter, Deputy Warden, Clinton County Correctional Facility, Pennsylvania, to Human Rights Watch, February 13, 2012.

³⁸⁰ Human Rights Watch telephone interview with Jack Healy, Director of Inmate Services, Chester County Prison, Pennsylvania, February 29, 2012; Letter from Jacqueline Motter, Deputy Warden, Clinton County Correctional Facility, Pennsylvania, to Human Rights Watch, February 13, 2012.

³⁸¹ Human Rights Watch telephone interview with Eric Bush, Superintendent, Secure Correctional Institution Pine Grove, Pennsylvania Department of Corrections, June 21, 2012; Policy 11.2.1, Pennsylvania Department of Corrections, “Reception and Classification,” http://www.portal.state.pa.us/portal/server.pt/document/916502/11_02_01_reception___classification_pdf (accessed August 27, 2012), section 8(A).

³⁸² Pennsylvania Department of Corrections, Monthly Population Report, <http://www.portal.state.pa.us/portal/server.pt/document/> (accessed August 27, 2012).

PA DOC officials reported that, while they seek to avoid placing young people in punitive or administrative solitary confinement, young people are housed in this way.³⁸³ Officials reported that the inmates at SCI Pine Grove are held in administrative or disciplinary confinement at high rates: “It has historically been about 10 percent of the population; about 4-5 percent are those we can’t incorporate back into the population.... So that drives our average in the [Restrictive Housing Unit] 4-5 percent higher than [other prisons].”³⁸⁴ On April 30, 2012, 10.9 percent of inmates under 22 at SCI Pine Grove were held in either administrative or disciplinary confinement.³⁸⁵ However, officials report that they try to exercise their authority—when possible—to reduce the length of time young people spend in disciplinary confinement. Eric Bush, the superintendent at SCI Pine Grove, told us,

The facility manager can reduce the time. And we use that tool. If we have an opportunity to reduce their DC [Disciplinary Confinement] status we try to do that. Unfortunately, some of them get into gang issues and they can’t be put back into population. There [are] also mandatory issues that we can’t reduce [under the Inmate Discipline Policy]—like assaulting a staff member.³⁸⁶

Research Findings

Pennsylvania Jails (also called county prisons)

Human Rights Watch and the American Civil Liberties Union interviewed or corresponded with six young people who reported being held in protective solitary confinement while in pre-trial detention in Pennsylvania jails. Five of those young people reported spending more than a month in protective solitary confinement. Human Rights Watch and the American Civil Liberties Union interviewed five young people who reported being held in punitive solitary confinement while in pre-trial detention in Pennsylvania jails. Three of those young people said they spent more than one period in punitive solitary confinement of 15 days or more. Human Rights Watch and the American Civil Liberties Union interviewed

³⁸³ Human Rights Watch telephone interview with Marshall Shirley, Deputy, Secure Correctional Institution Pine Grove, Pennsylvania Department of Corrections, Pennsylvania, June 21, 2012.

³⁸⁴ *Ibid.*

³⁸⁵ Pennsylvania Department of Corrections, Monthly Population Report, <http://www.portal.state.pa.us/portal/server.pt/document/>.

³⁸⁶ Human Rights Watch telephone interview with Eric Bush, June 21, 2012; See also Policy DC-ADM 801, Pennsylvania Department of Corrections, “Inmate Discipline,” http://www.portal.state.pa.us/portal/server.pt/document/916568/801_inmate_discipline_pdf (accessed August 27, 2012), section 4(B)(7).

three young people who reported spending two or more days in medical solitary confinement to quarantine them when they first entered jail.

Young people held in solitary confinement in Pennsylvania jails generally described being allowed out of their cell one or two hours each day into a day room or common space, generally alone, during which they could shower and sometimes make phone calls to loved ones. Young people reported being able to receive visits from loved ones, but one young person told us he or she was unable to have contact visits. Three young people said they were unable to access any reading materials and one young person reported being unable to access writing materials in his or her cell while in solitary confinement. One young person said he or she had considered suicide while in solitary confinement.

Pennsylvania Prisons

Human Rights Watch and the American Civil Liberties Union corresponded with two young people who reported being held in punitive solitary confinement while in state prison in Pennsylvania. One of those young people reported having spent eight-and-a-half months in punitive solitary confinement while under age 18.

Pennsylvania prison regulations mandate that young people in punitive or administrative solitary confinement receive only one hour of recreation each day, five days a week.³⁸⁷ Officials confirmed that young people receive an in-cell study packet, meet weekly with a counselor, and with a psychological expert “regularly,” but, “other than that they are pretty much in their cell.”³⁸⁸

³⁸⁷ Inmates in PA DOC custody who are placed in administrative confinement are subject to periodic review from the Program Review Committee, his or her counselor, and the Unit Management Team. A qualified psychologist or psychiatrist is to personally interview and conduct an assessment of any inmate remaining in administrative confinement for longer than 30 calendar days. For inmates kept further in administrative confinement for an extended period, a mental health assessment is to be completed every 90 calendar days. Policy DC-ADM 802, Pennsylvania Department of Corrections, “Administrative Custody Procedures,”

www.portal.state.pa.us/portal/server.pt/document/919463/802_administrative_custody_procedures_pdf+&hl=en&g (accessed August 27, 2012), section (2)(D). Inmates in administrative confinement are permitted only non-contact visits and are permitted exercise one hour per day, five days per week. *Ibid.*, section (3)(D)(6).

³⁸⁸ Human Rights Watch telephone interview with Jeff Dunmire, School Principal, Secure Correctional Institution Pine Grove, Pennsylvania Department of Corrections, Pennsylvania, June 21, 2012.

Avenues for Reform

The legal and policy landscape in Pennsylvania is shifting, and must move further if it is to adequately protect young people. The 2010 reform that permits young people charged as if adults to be transferred to the juvenile justice system is a promising change.³⁸⁹ But the state must change its approach to detaining and managing young people. Fortunately, officials within the PA DOC acknowledge that young people are different, and that solitary confinement is not an effective way to manage young people. Eric Bush put it this way:

I most definitely think there is a heightened risk for young adults. They are so impulsive and sometimes they “act out” out of anger rather than an intention to hurt themselves—or attention-seeking behaviors.... [Prolonged isolation] is detrimental to the youth. Unfortunately, we have people confined.... [O]ver the years we have learned that they don’t get anything out of that. They really don’t. My personal opinion is that it is a detriment to them to keep them in restrictive housing for any length of time. Unfortunately, those [Departmental rules] are the policies that guide us.... There is not enough to be gained on an individual basis for them to prepare themselves for release in restrictive housing.³⁹⁰

To continue down the road to reform, Pennsylvania must ensure that young people under age 18 are never subjected to solitary confinement in jails or in prisons.³⁹¹

³⁸⁹ See Campaign for Youth Justice, “The Pennsylvania Success Story: Pennsylvania Allows for Youth Sentenced as Adults to be Served by Juvenile Facilities,” March 2011, http://www.campaignforyouthjustice.org/documents/PA_SB_1169.pdf (accessed August 27, 2012).

³⁹⁰ Human Rights Watch telephone interview with Eric Bush, June 21, 2012

³⁹¹ For detailed recommendations, see recommendations section above.

Growing Up Locked Down

Youth in Solitary Confinement in Jails and Prisons Across the United States

Every day in jails and prisons across the United States, large numbers of young people under age 18 are held in solitary confinement. They spend 22 or more hours each day physically and socially isolated in a small cell, often for weeks or even months on end. Adolescents in solitary confinement are routinely denied access to needed treatment, services, and programming. The practice is serious and widespread.

The solitary confinement of adults can cause severe pain and suffering and can violate international human rights and US constitutional law. But the potential damage to young people, who do not have the maturity of an adult and are at a particularly vulnerable stage of life, is much greater. Yet, solitary confinement of young people is not necessary; there are alternative ways to address the problems that officials cite as justifications for using solitary confinement.

Human Rights Watch and the American Civil Liberties Union call on US federal and state governments to prohibit the solitary confinement of young people under age 18; prohibit the housing of adolescents with adults or in adult jails and prisons; strictly limit and regulate all forms of segregation and isolation; and monitor and report on the segregation and isolation of young people, whenever they are deprived of their liberty.



A cell at the Pinellas County jail, an adult facility where young people are held in solitary confinement. One girl interviewed for the report said she spent four months in isolation there.

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