

The Harmful Use of Isolation in Juvenile Facilities: The Need for Post-Disposition Representation

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September 2009, the first client referral: three guards escorted sixteen-year-old Troy to the interview. Despite years of experience, I was shocked. In leg-irons and with his hands cuffed behind his back, he wore no real clothes and no prison-issued jumpsuit. His body was covered with a sleeveless thigh-length robe, held together by a few

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Velcro strips.¹ It was painful to watch him try to sit in the chair. Just when he seemed to manage the handcuffs and the outfit, one of his flip flops would slide off.

I asked one of the guards if Troy could have his hands cuffed in front of him. The left flank guard, wearing dark sunglasses, complied without speaking. With Troy's arms in front of me, I found it difficult not to stare. Self-mutilation scars, too numerous to count, covered his arms.

Documents later confirmed what Troy told me that first day: he had spent twenty-four hours a day in an isolation-type cell for approximately 180 of the 225 days he had spent in the facility.² The 7' x 7' cell had a mattress (no sheets or blankets), a sink, a toilet, and a small sealed window near the ceiling. Nothing else was permitted in the cell. All meals were eaten in the cell. There was no school or books. There was no exercise. The only time he got out of the cell was to shower.

I filed an emergency court motion for his immediate release. Days later he was transferred to a psychiatric hospital. A federal lawsuit is pending.³

Post-disposition representation has long been recognized as a critical stage in juvenile court proceedings: a stage where zealous advocacy is needed.⁴ The goal of the New Jersey post-disposition

1. We later learned that this was called a "ferguson gown."

2. For additional information see *Troy D. and O'Neill S. v. Mickens et al.*, JUV. L. CENTER, http://www.jlc.org/litigation/troy_d_and_oneill_s_v_mickens_et_al (last visited Oct. 30, 2011).

3. For additional information regarding the federal lawsuit, see *Troy D. v. Mickens, No. 10-2902 (JEL/AMD)*, 2011 WL 3793920 (D.N.J. Aug. 25, 2011); *Troy D. and O'Neill S. v. Mickens et al.*, *supra* note 2.

4. See NAT'L. COUNCIL OF JUVENILE & FAMILY COURT JUDGES, JUVENILE DELINQUENCY GUIDELINES: IMPROVING COURT PRACTICE IN JUVENILE DELINQUENCY CASES 25 (2005) [hereinafter JUVENILE DELINQUENCY GUIDELINES], available at <http://www.ncjfcj.org/images/stories/dept/pced/pdf/JDGjuvntelidelinquencyguidelinescompressed.pdf> (holding delinquency judges responsible for providing children with access to counsel at every stage of the proceedings, from before the initial hearing through post disposition and reentry); JUVENILE DEFENDERS ASS'N OF PA., PERFORMANCE GUIDELINES FOR QUALITY AND EFFECTIVE JUVENILE DELINQUENCY REPRESENTATION 14 (2010), available at http://www.jdap.info/file/juvenile_performance_guidelines.pdf; ROBIN WALKER STERLING ET AL., NAT'L. JUVENILE DEFENDER CTR., ROLE OF JUVENILE DEFENSE COUNSEL IN DELINQUENCY COURT 19 (2009), available at http://www.njdc.info/pdf/njdc_role_of_counsel_book.pdf; NAT'L. JUVENILE DEFENDER CTR., TEN CORE PRINCIPLES FOR PROVIDING QUALITY DELINQUENCY

project⁵ was to fill a systemic gap and provide juveniles with post-disposition access to counsel. The project was intended to focus on reducing recidivism by ensuring that programs are meeting the individual needs of the child and assisting with re-entry. Unfortunately, the project quickly became consumed with the conditions issues experienced by the children in facilities, particularly violence and isolation. This Article focuses on the excessive use of punitive isolation (a practice which has been known for centuries to cause harm in adults), on how isolation type practices harm children, and on strategies that advocates might employ to eliminate this harmful practice.

Part I of this Article describes the components of our post-disposition project, including an outline of the legal parameters of New Jersey juvenile law as it relates to post-disposition representation. Part II addresses the issue of isolation in juvenile facilities. This section looks at the current definition of isolation and available research concerning the harmful effects that isolation has on the juvenile population, featuring the work of clinical psychologist Dr. Marty Beyer. It also reviews the judicial response to the use of isolation in juvenile facilities and examines how isolation is used in New Jersey facilities and the legal structure that permits this. Part II concludes with a review of the national standards of juvenile isolation, and highlights the various investigations conducted across the country.

Part III uses *In Re O.S.*⁶ to illustrate the problems we found in New Jersey's secure juvenile facilities and the challenges we faced when trying to use the existing New Jersey structure to address those problems. Part IV first shows that isolation does not have the purported benefits of safety, punishment, or deterrence in juvenile

REPRESENTATION THROUGH PUBLIC DEFENSE DELIVERY SYSTEMS 3 (2d ed. 2008), available at http://www.njdc.info/pdf/10_Core_Principles_2008.pdf.

5. "The Juvenile Indigent Defense Action Network (JIDAN) is a Model for Change-supported effort . . . to engage leadership in targeted strategies to improve juvenile indigent defense policy and practice." *Juvenile Indigent Defense Action Network (JIDAN)*, MODELS FOR CHANGE, <http://www.modelsfchange.net/about/Action-networks/juvenile-indigent-defense.html> (last visited Nov. 1, 2011).

6. *New Jersey et rel. O.S.*, No. A-5366-09T1, 2011 N.J. Super. Unpub. LEXIS 955 (Apr. 19, 2011).

facilities, demonstrates that juvenile facilities can manage youth more effectively with treatment instead of isolation, and proposes strategies for the future and suggests how the juvenile defender community might respond.

I. COMPONENTS OF THE POST-DISPOSITION PROJECT AND LEGAL PARAMETERS OF NEW JERSEY POST-DISPOSITION LAW

A. Across a River but a World Apart: New Jersey Juveniles Have Significantly Less Due Process Protections

Prior to coming to New Jersey, I had practiced in Philadelphia,⁷ where there was a legal culture of excellent post-disposition advocacy driven by mandatory six month review hearings.⁸ As a public defender, I was thoroughly taught that some of the most important advocacy happens after the judge makes his disposition ruling. I had seen first-hand how vulnerable children become once they are placed in a facility.⁹ I knew that when judges send children

7. From 2001–2006, I served as the assistant chief of the Juvenile Unit of the Defender Association of Pennsylvania. See LAVAL S. MILLER-WILSON & PATRICIA PURITZ, AM. BAR ASS'N, PENNSYLVANIA: AN ASSESSMENT OF ACCESS TO COUNSEL AND QUALITY OF REPRESENTATION IN DELINQUENCY PROCEEDINGS 64 (2003) [hereinafter PENNSYLVANIA ASSESSMENT], available at <http://www.jdc.org/files/publications/aaassessment.pdf> (“Also impressive is the Defender Association’s post-disposition advocacy for youth in placement. Despite vast geographical separation from their clients, the Defender Association investigates and monitors the treatment of clients placed in out-of-home facilities.”).

8. 42 P.A. CONS. STAT. § 6353 (2011). The statute states, in relevant part:
No child shall initially be committed to an institution for a period longer than four years or a period longer than he could have been sentenced by the court if he had been convicted of the same offense as an adult, whichever is less. The initial commitment may be extended for a similar period of time, or modified, if the court finds after hearing that the extension or modification will effectuate the original purpose for which the order was entered. The child shall have notice of the extension or modification hearing and shall be given an opportunity to be heard. The committing court shall review each commitment every six months and shall hold a disposition review hearing at least every nine months.

Id. § 6353(a).

9. Sandra Simkins, *Road Trip! A Simple Solution for Protecting Girls from Institutional Abuse*, 8 WOMEN GIRLS & CRIM. JUST. 7 (2007); Marty Beyer, Gillian Blair, Sarah Katz, Sandra Simkins, & Annie Steinberg, *A Better Way to Spend \$500,000: How the Juvenile Justice System Fails Girls*, 18 WIS. WOMEN’S L.J. 51, 64, 66–67, 69 (2003); Doron Tausstg, *Restraining Disorder*, PHILA. CITYPAPER (May 19, 2005), <http://archives.citypaper.net/articles/2005-05-19/cover.shtml>.

to facilities to “get help,” an advocate is essential to make sure that (1) the programs are held accountable and (2) that the rehabilitative needs of the child do not fall through the cracks.

New Jersey is different than Pennsylvania in significant ways in terms of providing post-disposition representation to juveniles. In New Jersey, once a juvenile judge orders a disposition:

- (1) There are no automatic, regularly scheduled review hearings, (regardless of the length of sentence);
- (2) The statewide Office of the Public Defender routinely closes their files (unless an appeal is filed or other specific post-conviction relief is sought); and
- (3) Children are rarely, if ever, visited by lawyers in facilities.¹⁰

Recognizing this important systemic gap in children’s access to counsel, the New Jersey statewide Office of the Public Defender and two law school professors submitted a grant proposal to the MacArthur Foundation.¹¹ The goal of the application was to participate in a National Initiative to enhance legal representation for indigent children and expand the capacity of the Office of the Public Defender. Upon receipt of the JIDAN¹² grant, we created the post-disposition pilot project. In order to expand capacity and enhance representation, the idea was to have juvenile public defenders from two pilot counties refer post-disposition cases to law school clinical programs. The clinical programs would assume post-disposition representation and visit the child while they were in placement. As a result of the post-disposition pilot project, New Jersey children in facilities would have access to lawyers for the first time.

10. New Jersey recognizes that children are entitled to an attorney “at every critical stage” of the delinquency process. N.J. STAT. ANN. § 2A:4A-39(a) (West 2011). Unfortunately, due to the structure of the indigent defense delivery system, public defenders are not contracted to do post-dispositional work. See § 2A:4A-39(a). Most children by their very status are indigent, and most children in the juvenile justice system come from low-income families and qualify for court-appointed counsel. See James Garbarino, *Forward: Pathways from Childhood Trauma to Adolescent Violence and Delinquency*, in TRAUMA AND JUVENILE DELINQUENCY: THEORY, RESEARCH AND INTERVENTIONS, at XIX, XXI–xxiii (Rickly Greenwald ed., 2002).

11. See *infra* app.

12. See *id.*

B. Components of the New Jersey JIDAN Post-Disposition Project

1. Choosing Pilot Counties

As indicated in the grant application chart,¹³ the available data and geographic considerations made Camden County in South Jersey and Essex County in Northern Jersey obvious choices for pilot counties. First, both counties are located in large urban environments. Second, these counties comprise approximately 50 percent of the total juveniles sent to juvenile justice facilities.¹⁴ Third, these two counties contain New Jersey's two state law schools (Rutgers School of Law-Camden and Rutgers School of Law-Newark), and two members of the New Jersey JIDAN team ran clinical programs at these schools.¹⁵

2. Focusing on Secure Care Facilities: Children at the Deep End of the Juvenile Justice System

All juvenile programs in New Jersey are run by the Juvenile Justice Commission (JJC), a statewide agency created in 1995 to reform New Jersey's juvenile justice system.¹⁶ The project's choice of which population to work with was difficult. There was much discussion. Should it focus on the children at the deep end: those in large secure care facilities who tend to have failed a number of prior programs and were generally older? Or should it focus on children who were being sent to their very first juvenile placement in an attempt to prevent them from going any deeper? Both populations present compelling interests. For deep end children, this would be the

13. See *infra* app.

14. *Id.*

15. For information regarding the Rutgers School of Law Newark Urban Legal Clinic see <http://law.newark.rutgers.edu/clinics/urban-legal-clinic> (last visited Feb. 2, 2012). For information regarding the Rutgers School of Law-Camden, Children's Justice Clinic see <http://law.rutgers.edu/childrens-justice-clinic> (last visited Feb. 2, 2012).

16. Act of Dec. 15, 1995, ch. 284, 1995 N.J. Laws 1796 (codified as amended at N.J. STAT. ANN. §§ 52:17B-169 to -178 (West 2011)) (establishing the JJC). The JJC is "responsible for operating State services and sanctions for juveniles involved in the juvenile justice system and responsible for developing a Statewide plan for effective provision of juvenile justice services and sanctions at the State, county and local level. . . ." N.J. STAT. ANN. § 52:17B-169(k) (West 2011); see also *Introduction to the New Jersey Juvenile Justice Commission*, OFF. ATT'Y GEN., http://www.nj.gov/oag/jjc/info_intro.htm (last visited Oct. 26, 2011).

last opportunity to prevent them from going into the adult system. For first placement juveniles, there was an opportunity to prevent further educational and program failure.

Ultimately, the project to begin by representing the juveniles in the large secure care juvenile facilities for the following reasons:

- First, in looking at the data, it was clear that a large number of children in secure care had significant special education needs, mental health issues and prior Division of Youth & Family Services involvement.¹⁷
 - Second, geographically, the facilities were centrally located to both counties and housed many juveniles from each of the pilot counties.¹⁸
 - Third, good programming and effective re-entry are crucial to avoid adult criminal involvement.
 - Finally, national research has revealed that large secure care facilities frequently have problems that negatively impact the juveniles they are designed to serve.¹⁹
3. Leveraging Clinical Resources: Creating a Referral System Between the Office of the Public Defender and Two Law School Clinical Programs

Next, we created a referral system with the Office of the Public Defender. Our goal was to make the process as easy for public defenders as possible. It was important that our project create as little extra work as possible, given the high volume practice in most urban environments.²⁰ We created the program as follows:

17. Data for original grant was provided in 2006 by the New Jersey Administrative Office of the Courts. For current demographics, see <http://www.nj.gov/oag/jjc/stats/01-20-12-Juvenile-Demographics-and-Stats.pdf> (last updated Jan. 20, 2012).

18. See *id.* at 13.

19. AMANDA PETERUTI ET AL., JUSTICE POLICY INST., THE COSTS OF CONFINEMENT: WHY GOOD JUVENILE JUSTICE POLICIES MAKE GOOD FISCAL SENSE 9 (2009), available at http://www.justicepolicy.org/images/upload/09_05_REP_CossoftConfinement_JI_PS.pdf.

20. See PATRICIA PURITZ ET AL., AM. BAR ASS'N JUVENILE JUSTICE CENTER, A CALL FOR JUSTICE: AN ASSESSMENT OF ACCESS TO COUNSEL AND QUALITY OF REPRESENTATION IN

- Developed a referral form²¹
- Trained all juvenile defenders in each pilot county to explain to juvenile public defenders why post-disposition representation was important and the protocol of the post-disposition project
- Explained the referral form, and asked juvenile public defenders to fill out the form and have the child (and parent) sign it whenever a child from the pilot county was sent to the Juvenile Justice Commission
- After the form was filled out and signed, it was faxed to one of the two law school clinics
- The clinic then screens and assigns the case to a clinic student or a JIDAN fellow.²² Either the team or the fellow would then make arrangements to visit the juvenile and begin post-disposition representation.²³

C. *Relevant New Jersey Post-Disposition Law*

The Office of the Public Defender does not routinely engage in post-dispositional advocacy for juveniles,²⁴ however, the plain language of the law appeared to support zealous post-disposition advocacy. There are several statutes in the New Jersey Code of Juvenile Justice (the “Juvenile Code” or “Code”), Court Rules, and caselaw that address juvenile post-disposition.²⁵ I elaborate on a New Jersey statute and court rule below.

DELIQUENCY PROCEEDINGS 46 (1995) (discussing pervasive problem of high caseloads), available at <http://www.njdc.info/pdf/cjfull.pdf>.

21. See *infra* app.
22. For both the JIDAN post-disposition project in North and South Jersey we had a JIDAN fellow. These recent law school graduates worked on the post-disposition project approximately twenty to thirty hours per week.
23. See Chart of Full Protocol, *infra* app. at 287.
24. *Id.* (Unless there is an appeal pending, or other post conviction relief is specifically sought, or if the juvenile is returned to court for a probation violation).
25. See N.J. STAT. ANN. § 2A:4A-43(b)-(c) (West 2011) (giving juvenile judges a wide array of disposition options); § 2A:4A-45 (providing that juvenile judges retain jurisdiction over the case); N.J. CT. R. 5:24-6 (allowing juvenile judges to modify the disposition upon a

1. Juvenile Judges Retain Jurisdiction Throughout Disposition and Can Modify a Disposition At Any Time

New Jersey’s Juvenile Code explicitly states that a juvenile court retains jurisdiction over any case in which it has entered a disposition . . . and may at any time for the duration of that disposition, if after hearing, and notice to the prosecuting attorney, it finds violation of the conditions of the order of disposition, substitute any other disposition which it might have made originally.²⁶

In addition, New Jersey’s Court Rules provide that a juvenile court “may correct, change or modify an order of disposition at any time pursuant to law and may entertain an application for post-disposition relief.”²⁷ Furthermore, the comment to this rule states that “[t]he rule makes clear the court’s power both to modify its disposition and to grant post-conviction relief. *The rule permits modification of the order at any time.*”²⁸

2. The Expansive, Flexible, Overarching Goal of Rehabilitation: The Empowering Language of *In re C.V.*

Statute 2A: 4a-45 was recently interpreted by the New Jersey Supreme Court in *State ex rel. C.V.*²⁹ There, the Supreme Court of New Jersey upheld the adjudication of the Family Part in denying the juvenile’s request to credit her suspended sentence for the time she spent in two residential treatment programs, pursuant to N.J.S.A. 2A:4A-45(b).³⁰ In upholding jurisdiction, the Supreme Court cited the “flexibility” of the Juvenile Code in carrying out its “rehabilitative” purpose.³¹ In particular, the court pointed to the Senate Judiciary Committee’s intention to significantly broaden [the] arsenal of dispositions . . . when sentencing a juvenile offender. Specifically, the legislative history provides:

recall motion); § 2A:4A-44(d)(2) (“[T]he juvenile’s attorney . . . may make a motion . . . for the return of the [incarcerated] child from a juvenile facility prior to his parole.”).

26. § 2A:4A-45.
27. N.J. CT. R. 5:24-6.
28. N.J. CT. R. 5:24-6, cmt. 2281 (2012).
29. 990 A.2d 640 (N.J. 2010).
30. *Id.*
31. *Id.* at 648.

This bill recognizes that the public welfare and the best interests of juveniles can be served . . . while broadening family responsibility and the use of alternative dispositions for juveniles committing less serious offenses. Moreover, the provisions of this bill and the other accompanying bills reflect a philosophy which is *pragmatic and realistic in nature rather than bound to any particular ideology*.³²

Additional language in the opinion appears to give the judge vast power in order to achieve the rehabilitative purposes of the New Jersey Code.³³ In addition to *C.V.*, there are other cases which emphasize the purpose of the code and the judge's ability to craft an appropriate disposition.³⁴

II. UNDERSTANDING THE USE OF ISOLATION IN JUVENILE FACILITIES—NATIONAL STANDARDS, PSYCHOLOGICAL RESEARCH, JUDICIAL RESPONSE

*"It's an awful thing, solitary. . . . It crushes your spirit and weakens your resistance more effectively than any other form of mistreatment."*³⁵

Despite a Supreme Court ruling made over one hundred years ago³⁶ that deemed the solitary confinement of adult prisoners unconstitutional, the practice of confining a prisoner "alone and removed from sustained contact with other human beings"³⁷ continues. Many studies, including one dating back to 1787,³⁸ have

32. SENATE JUDICIARY COMM., STATEMENT TO ASSEMBLY, S. 200-641, 1st Sess., at 1 (N.J. 1982).

33. *Id.* at 642 ("New Jersey's Code of Juvenile Justice provides a comprehensive scheme that empowers Family Part judges to tailor dispositions toward aiding and rehabilitating juveniles charged with delinquent acts, while simultaneously ensuring protection of the public from dangerous and/or repetitive juvenile offenders.");

34. *In re R.M.*, 141 N.J. 434, 453 (1995).

35. Atul Gawande, *Hellhole*, NEW YORKER (Mar. 30, 2009), http://www.newyorker.com/reporting/2009/03/30/090330fa_fact_gawande (quoting John McCain).

36. *In re Medley*, 134 U.S. 160 (1890).

37. *Berch v. Stahl*, 373 F. Supp. 412, 420 (W.D.N.C. 1974).

38. *In re Medley*, 134 U.S. at 168; Stuart Grassian, *Psychopathological Effects of Solitary Confinement*, 140 AM. J. PSYCHIATRY 1450 (1983); Craig Haney & Mona Lynch, *Regulating Prisons of the Future: A Psychological Analysis of Supermax and Solitary Confinement*, 23 N.Y.U. REV. L. & SOC. CHANGE 477 (1997).

found that solitary confinement in secure facilities is detrimental to the mental and physical health of prisoners. The United Nations Human Rights Committee has found that isolation of prisoners may be considered torture.³⁹ Courts across the United States have ruled that the use of isolation is debilitating and, in some cases, inhuman. For example, it is uncivilized to deprive a person of his clothes⁴⁰ or to isolate a child in a room stripped of everything but a mattress.⁴¹

If the juvenile justice system is designed to be more rehabilitative and less punitive, then how is the use of solitary confinement, segregation, room restriction, or any other means of isolation permitted? We would be outraged if it was found that a parent was confining her child to a small room for days at a time, with minimal human contact, no educational or medical services, and very limited sensory stimuli. Although this scenario would seem to be child abuse, youth in rehabilitate facilities throughout the country are regularly subjected to this kind of treatment.

A. What is Isolation?

1. Defining Isolation

Juvenile facilities use a variety of terms and acronyms when referring to instances of isolation. Youth placed in secure facilities refer to it as being "put in the box,"⁴² "lockdown," "seg," or "the hole."⁴³ In juvenile facility manuals, removal of a juvenile from his cell and separating him from other residents may be referred to as segregation, pre-hearing confinement, protective custody, seclusion, behavior modification unit, close watch, or room restriction, among other things.⁴⁴ Regardless of what a facility's policy and procedure

39. Interim Rep. of the Special Rapporteur of the Human Rights Council on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 18, 23, U.N. Doc. A/63/175 (July 28, 2008) [hereinafter *Interim Report*].

40. *Berch*, 373 F. Supp. at 421.

41. *Lollis v. N.Y. Dep't of Soc. Servs.*, 322 F. Supp. 473 (S.D.N.Y. 1970).

42. This knowledge is based on more than seventy-five client interviews conducted by Lisa Geis as part of the NJ post-disposition representation program.

43. Interview by Marty Beyer with juvenile clients.

44. STATE OF NEW JERSEY DEP'T OF LAW & PUB. SAFETY, JUVENILE JUSTICE COMM'N, NEW JERSEY TRAINING SCHOOL, HANDBOOK ON RULES, REGULATIONS, AND DISCIPLINE Rev.

guidebook calls such placement, it is, definitively, isolation or solitary confinement.

Isolation is usually described as placing a youth alone in an unfurnished cell for as much as twenty-three hours a day, usually for disciplinary, safety or administrative purposes. Isolation typically includes extensive surveillance and security controls, the absence of ordinary social interaction, and abnormal environmental stimuli (e.g., many isolation units are noisy and cold). Isolated individuals are often allowed only five hours a week of solitary recreation and little, if any, educational, vocational, or other purposeful activities. They may be handcuffed and/or shackled when they leave their cells.⁴⁵

Courts use isolation and solitary confinement synonymously and they have been clear in their definition. The District Court in North Carolina in *Berch v. Stahl* aptly defined solitary confinement as “confinement alone and removed from sustained contact with other human beings.”⁴⁶ The court held that solitary confinement’s “severity as punishment is drastically increased when the isolation is accompanied by the ‘sensory deprivation’ which is . . . attached to the isolation.”⁴⁷ The court then explained that sensory deprivation occurs if “visual contact and effective voice communication with others” is barred and if an inmate is prevented from “read[ing], writ[ing], [or] work[ing] on projects,” concluding that the person’s “[m]ental and emotional stability are both threatened, and mental health may be impaired.”⁴⁸

In a report concerning “torture, and other cruel, inhuman or degrading treatment or punishment,” the United Nations General Assembly defined solitary confinement as “the physical isolation of individuals who are confined to their cells for twenty-two to

Feb. 2010); N.J.A.C. 13:92 (2011); N.J.A.C. 13:95-11; N.J.A.C. 13:101-5.3; Interviews with Post-disposition program clients.

45. Marty Beyer addition.

46. *Berch v. Stahl*, 373 F. Supp. 412, 420 (W.D.N.C. 1974).

47. *Id.*

48. *Id.* Because the court in *Morales v. Turman* was aware of the various names applied to isolation in juvenile facilities, it defined solitary confinement as the placement of an “inmate alone in a [room] other than a room in the inmate’s own locked or otherwise secured room or cell dormitory.” *Morales v. Turman*, 364 F. Supp. 166, 177 (E.D. Tex. 1973). The court also defined “dormitory confinement” and “security” in a similar fashion. *Id.*

twenty-four hours a day.”⁴⁹ The same report specifically recommends that the use of isolation should be strictly prohibited for use on children under the age of eighteen and for prisoners with mental illness.⁵⁰

Several years earlier, the General Assembly adopted the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty. Rule 67 prohibits the use of “closed or solitary confinement” of juveniles.⁵¹ The Rule qualifies such punishment as “cruel, inhuman or degrading treatment.”⁵² In 1980, Amnesty International defined solitary confinement in a report on prison conditions as all “forms of incarceration that totally remove a prisoner from inmate society.”⁵³ The organization explained that such confinement removes the prisoner “visually and acoustically” from other inmates resulting in “no personal contact with them.”⁵⁴ International treaty bodies and human rights experts, including the Human Rights Committee, the Committee against Torture, and the U.N. Special Rapporteur on Torture, conclude that long term isolation may amount to cruel, inhuman, or degrading treatment in violation of the International Covenant on Civil and Political Rights and the Convention against Torture and other Cruel, Inhuman, and Degrading Treatment or Punishment.⁵⁵

2. Psychological Effects of Isolation in Secure Facilities

There is limited isolation research pertaining to its use in juvenile detention facilities but extensive research has been done on the use of

49. *Interim Report*, *supra* note 39, at 18.

50. *Id.* at 25.

51. United Nations Rules for the Protection of Juveniles Deprived of Their Liberty, G.A. Res. 45/113, R. 67, U.N. Doc. A/RES/45/113 (Dec. 14, 1990).

52. *Id.*

53. AMNESTY INT’L, AMNESTY INTERNATIONAL’S WORK ON PRISON CONDITIONS OF PERSONS SUSPECTED OR CONVICTED OF POLITICALLY MOTIVATED CRIMES IN THE FEDERAL REPUBLIC OF GERMANY: ISOLATION AND SOLITARY CONFINEMENT 9 (1980), available at <http://www.amnesty.org/en/library/asset/EUR23/001/1980/en/44963516-773f-4a2d-b753-50ab1c34c493/eur230011980en.pdf>.

54. *Id.*

55. Jeffrey L. Metzner & Jamie Felner, *Solitary Confinement and Mental Illness in U.S. Prisons: A Challenge for Medical Ethics*, 38 J. AM. ACAD. PSYCHIATRY & LAW 104-08(2010).

isolation with adult prisoners. Findings show that “[f]isolation can be psychologically harmful to any prisoner, with the nature and severity of the impact depending on the individual, the duration, and particular conditions (e.g., access to natural light, books, or radio). Psychological effects can include anxiety, depression, anger, cognitive disturbances, perceptual distortions, obsessive thoughts, paranoia, and psychosis.”⁵⁶

Craig Haney, in the *From Prison to Home: The Effect of Incarceration and Reentry on Children, Families and Communities* project,⁵⁷ reported that the use of isolation on adults has the following negative results:

- Impaired sense of identity, hypersensitivity to stimuli, confusion, memory loss, irritability, and anger.
- Aggression & rage: attacks on staff, destruction of property, and collective violence.
- Lethargy, helplessness, hopelessness, and depression.
- Self-mutilation, suicidal ideation, and emotional breakdowns.
- Psychosis, hallucinations, and paranoia.
- Overall deterioration of mental and physical health.
- Produces indices of psychological trauma & psychopathic behaviors.⁵⁸

In 1997, Dr. Haney and Mona Lynch published an article that extensively explored the use of isolation in adult prisons.⁵⁹ In compiling their data, they studied the use of isolation in a variety of situations: German wartime prison camps, soldiers stationed in Antarctica, male and female adult prisoners in various facilities

56. *Id.*

57. CRAIG HANEY, THE PSYCHOLOGICAL IMPACT OF INCARCERATION: IMPLICATIONS FOR POST-PRISON ADJUSTMENT 14 (2001), available at <http://aspe.hhs.gov/hsp/prison2home02/haney.pdf>.

58. *Id.*

59. See Haney & Lynch, *supra* note 38.

throughout the world, and, in some cases, in voluntary research projects.⁶⁰ In these varied settings, the effects of isolation were the same: the prisoners experienced a range of “stress-related, dysfunctional, and destructive behavior.”⁶¹ In interviews with hundreds of prisoners many reported that they experienced “rage, panic, loss of control, breakdowns . . . and a build-up of physiological and psychic tension that led to incidents of self-mutilation.”⁶²

Psychiatrist and noted isolation expert Dr. Stuart Grassian has published research concerning the psychiatric effects of solitary confinement in prisons for the state and federal courts in New York, California, Massachusetts, and Kentucky. Dr. Grassian found that solitary confinement often causes “severe exacerbation or recurrence of preexisting illness, or the appearance of an acute mental illness in individuals who had previously been free of any such illness.”⁶³ After being isolated, many of the prisoners Dr. Grassian studied developed psychiatric syndromes including hypersensitivity to external stimuli; perceptual distortions, illusions, and hallucinations; panic attacks; difficulties with thinking, concentration, and memory; intrusive obsessional thoughts and emergence of primitive aggressive ruminations; overt paranoia; and impulse control problems.⁶⁴

In an earlier article, Dr. Grassian reported that isolation can cause “severe psychiatric harm” to prisoners.⁶⁵

This harm includes a psychiatric syndrome which has been reported by many clinicians in a variety of settings. . . . In more severe cases, this syndrome is associated with agitation, self-destructive behavior, and overt psychotic disorganization. More than half the prisoners [in isolation] reported a progressive inability to tolerate ordinary stimuli Almost a third described hearing voices, often in whispers, often saying frightening things to them. Well over half the inmates

60. *Id.* at 511–25.

61. *Id.* at 525.

62. *Id.* at 518.

63. Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 WASH. U. J.L. & POL’Y 325, 333 (2006).

64. *Id.* at 335–36.

65. Grassian, *supra* note 63.

interviewed described severe panic attacks while in SHU [isolation] . . . Many reported difficulties in concentration and memory . . . Almost half the prisoners reported the emergence of primitive aggressive fantasies of revenge, torture, and mutilation of the prison guards. . . . Almost half the prisoners interviewed reported paranoid and persecutory fears.⁶⁶

Although the level of psychological harm varies and some symptoms may subside upon release from solitary confinement, the damage suffered by prisoners subjected to isolation continues to present itself once the prisoner is released back into the prison population or into society at large. Dr. Grassian concluded:

This harm is most commonly manifested by a continued intolerance of social interaction, a handicap which often prevents the inmate from successfully readjusting to the broader social environment of general population in prison and, perhaps more significantly, often severely impairs the inmate's capacity to reintegrate into the broader community upon release from imprisonment.⁶⁷

Many of these behaviors were demonstrated by sixteen-year-old William, a New Jersey's post-disposition project client:

Case example: William, a fifteen year-old boy at a New Jersey secure juvenile facility, spent approximately 178 of his 225 day commitment in isolation. The cell measured approximately seven feet by seven feet. He had no access to books or other reading materials, auditory stimulation, or substantial conversation. Prior to his commitment, William was diagnosed with mental health issues as well as displaying a history of aggressive behaviors and a need for psychiatric treatment. Within a few days of being placed in the "seg unit", William began to report auditory and visual hallucinations and demonstrated outrageous behaviors such as throwing bodily fluids. Within a week he began to self-mutilate by "cutting."

Soon thereafter, he attempted suicide by hanging himself on five different occasions.⁶⁸

Based on a variety of studies and expert opinions, it is undisputed that the psychological effects of isolation are detrimental to both the mind and the spirit. Although little research has been done on the effects of solitary confinement on juveniles, based on what is known about adolescent development and teen brain studies, isolation is likely to be more damaging to a juvenile than to an adult.

B. The Harmful Effects of Isolation on Juveniles

Because isolation is so detrimental to the mental health of juveniles, mental health and correction professionals generally agree that the use of such measures should be limited to those rare occasions when a young person poses an imminent threat to others' safety.

Isolation, even for brief periods, is harmful for adolescents for two reasons: (1) Youth in isolation cannot participate in programs, including education, designed to rehabilitate them; and (2) Isolation has negative psychological consequences, including increasing risk of suicide, re-traumatizing, depression and agitation. Interactive treatment programs have more success in reducing problem behavior and mental health problems in youth than does isolation, which in fact provokes and worsens these problems.

As is evidenced in adult prisoners, isolation can exacerbate a young person's emotional crisis.⁶⁹ Isolation practices can have the following negative consequences on juveniles. First, isolation causes depression. Often, youth in isolation are denied reading materials, programming (including school and therapy), and exercise. Being alone and having nothing to do gives youth too much time to ruminate, which can lead to the onset of depression. "Depression is common but often not diagnosed in delinquent youth. Their behavioral problems become the focus rather than their underlying sadness, isolation and loss. Irritability is a frequent symptom of

66. *Id.* at 1-4.

67. Grassian, *supra* note 63.

68. See *supra* text accompanying notes 2, 3.

69. NAT'L ADVISORY COMM. FOR JUVENILE JUSTICE & DELINQUENCY PREVENTION, U.S. DEP'T OF JUSTICE, STANDARDS FOR THE ADMIN. OF JUVENILE JUSTICE § 4.52 (1980).

adolescent depression, and annoys staff and peers and makes it more difficult to involve the adolescent in positive activities."⁷⁰ Adolescents may not be able to see the temporariness of isolation and, as a result, cannot pull themselves out of their depression. Youth in isolation are deprived of whatever socialization is available to youth in the general population. They usually eat their meals alone in the cells. Recreation and exercise activities are solitary. They may have no one to talk with other than by yelling through the cell door. Isolation prevents youth from meeting their social needs, which further contributes to depression. Depression in adolescents can cause a variety of behavioral problems, which usually result in more punishment. Whether or not a youth is depressed before being isolated, usually he/she will feel disturbed from being alone and having nothing to do.

Second, isolating juveniles causes agitation. During adolescence, young people gradually define their moral values—and tend to be moralistic—and insistent upon what should be and are intolerant of anything that seems unfair. Juveniles view isolation as unfair. Adolescents do not have the adult cognitive abilities to say, "This is not unfairness directed at me personally; isolation is the consequence for certain behaviors for all residents." Especially for youth of color, isolation may be perceived as degrading and racist; girls may also object to isolation as discriminatory. It is normal for youth to protest unfairness, and when their protest does not get attention, they are likely to become more agitated. Their trust in adults, on whom they remain dependent and who they expect to be fair and kind, is violated when they are isolated and their protests of the perceived unfairness of their confinement are unheard. Youth may believe that "confinement is an overt attempt by authorities to 'break them down' psychologically . . . [and] the product of an arbitrary exercise of power, rather than the fair result of an inherently reasonable process."⁷¹

Third, isolation causes juveniles to feel victimized, which can be re-traumatizing. Many youth in juvenile facilities experience abuse,

neglect, significant loss, exposure to violence, and other trauma. Some youth in delinquency facilities are previously known to child protective services agencies and may have had multiple placements in foster care. Trauma slows down development and can cause disturbances of emotional regulation, relationships, and communication.⁷² The depression, difficulties trusting others, fearfulness, aggression, substance abuse, and concentration problems common in delinquent youth are often caused by untreated trauma. Abuse of power by an adult can provoke in traumatized youth a combination of self-blame and a sense of betrayal, which can lead to self-destructiveness or aggression. For those who have been abused and/or neglected, isolation is likely to activate painful memories and may be experienced as re-victimization. Isolation could make a traumatized youth feel once again that they cannot control hurtful things that happen to them. Such powerlessness is damaging and can undermine the progress the youth has made in recovering from earlier trauma.⁷³

Fourth, isolation causes an increased risk of suicide. In 1999, the Office of Juvenile Justice and Delinquency Prevention released a national study of suicides in public and private juvenile facilities. The study found that 50 percent of youth who committed suicide were in isolation at the time of their suicide and 62 percent had previously been in isolation. Even youth who had not previously expressed thoughts of harming themselves can become desperate, hopeless and suicidal in isolation. For youth who are already talking about or who have previously attempted suicide, isolation is a dangerous practice that should be prohibited. While regularly checking on a suicidal teen in isolation may prevent death, the young person's mental health deteriorates. Suicidal youth must spend most of each day in activities and interacting with peers and staff. Further, isolation is not the only means of staff observation of troubled teens; they can just as easily be observed outside of isolation without the negative psychological consequences of isolation.

70. Michael D. Cohen et al., *Health Services for Youth in Juvenile Justice Programs*, in CLINICAL PRACTICE IN CORRECTIONAL MEDICINE, 120, 124 (Michael Pustis ed., 2d ed. 2006).

71. Grassian, *supra* note 63, at 333.

72. Marty Beyet, *A Developmental View of Youth in Juvenile Justice System*, in JUVENILE JUSTICE: ADVANCING RESEARCH, POLICY, AND PRACTICE (Francine Sherman & Francine Jacobs eds., 2011).

73. *See id.*

