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On

Reassessing Solitary Confinement: The Human Rights, Fiscal, and Public Safety Consequences
Hearing Before the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human
Rights

June 19, 2012
Washington, D.C.

On behalf of the Ella Baker Center for Human Rights, we thank Chairman Durbin, Ranking Member Graham and Members of the Committee for holding this historic hearing on solitary confinement in the United States. The Ella Baker Center is based in Oakland, California and organizes people-powered campaigns to transform the state. Through its Books Not Bars campaign, the Ella Baker Center has pursued juvenile justice reforms in California since 2001. Since 2004, Books Not Bars has organized the largest network of families of incarcerated youth to champion alternatives to California’s abusive, expensive youth prison system, the Division of Juvenile Justice (“DJJ”). Our advocacy involves sharing the experiences of those directly impacted by the juvenile justice system, crafting and passing cutting-edge policies, and sharing research to support systems reform. We have achieved numerous reforms over the years to benefit incarcerated youth and families impacted by prisons.

We welcome the opportunity presented by this hearing to address the rampant use of solitary confinement on incarcerated youth. As damaging as solitary confinement is to adult prisoners, the damage to young people, whose mental development has not fully matured, is even more severe. Congress has the opportunity to provide leadership to jurisdictions to eliminate this harmful practice, and we provide recommendations for it to do so.

Just this year, Books Not Bars sponsored California’s first legislation to reduce the use of solitary confinement for youth.¹ Solitary confinement was a central complaint from families in 2004, which in part led to our campaign against DJJ. Then known as the California Youth Authority, DJJ consistently subjected youth to “23-and-1 lockdown,” in which youth are allowed out of their cells for only one hour per day, if at all.² Following minimal improvement whereby youth received a still unacceptable three hours out of their cells per day, complaints from families resurged in late 2010 of 23- to 24-hour lockdown. The Ella Baker Center rallied against the practice throughout 2011, leading to an audit of confinement practices and a protest by families, youth, and other supporters at the notorious Ventura Youth Correctional Facility in Camarillo, California.³ Our advocacy culminated in this year’s bill, which is discussed further below.

Narratives of Youth and Family Members

The following accounts from the Books Not Bars membership illustrate the impact of solitary confinement on youth and families.

Maria Sanchez

Maria Sanchez is a mother from Santa Clarita, California. Her son, Jesse, was beaten by guards and

¹ http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120SB1363&search_keywords=

² Krisberg, Barry. General Corrections Review of the California Youth Authority. December 23, 2003. See <http://www.prisonlaw.com/pdfs/CYA5.pdf>; California, Office of the Inspector General. December 2000. 23 and 1 Program Review. Available at

<http://www.oig.ca.gov/media/reports/BOA/reviews/23%20and%201%20Program,%20California%20Youth%20Authority%20Facilities,%20Review.pdf>

³ Hoops, Stephanie and Scheibe, John. August 21, 2011. Group protests at Ventura Youth Correctional Facility. Available at <http://www.vcstar.com/news/2011/aug/21/group-protests-at-ventura-youth-correctional/>.

spent over five months in solitary confinement at the Ventura Youth Correctional Facility. When Maria visited her son, she observed bruises on his face and lesions from repeated pepper spraying. His nose was broken and he needed surgery on his knee, which was not performed due to his heart condition. As he spent months in solitary, Maria witnessed that her son slowly became a shadow of himself.

Jesse could barely hold a conversation with his mother because he was accustomed to staring at concrete walls all day. His speech slowed and in conversation he appeared distant. He received no education or programming. He wasn't even allowed to attend church.

Before Jesse was incarcerated, he was healthy. But 21-hour and sometimes over 23-hour-a-day isolation made him physically deteriorate. When she hugged him, Maria could feel his bones. He suffered from blackouts in his room. To this day, he has not received knee surgery.

Jesse occasionally commented that he'd be better off in adult prison. Earlier this year, his wish was granted: he was transferred to a California adult prison for charges he incurred while at DJJ. Maria now wonders if her son can ever heal from the trauma of juvenile lockup.

David Roldan, Jr.

According to his mother, David Roldan, Jr. was not prepared for what she terms “the gladiator school called DJJ.” On his first day, he was beaten by other youth. He witnessed guards assaulting and pepper-spraying youth on a daily basis.

Before entering DJJ, David, Jr. had never presented serious mental health issues. Now he is suicidal: he has attempted to hang himself with a bed sheet, stabbed himself with a fork, and slit his wrist with a razor. He also broke a TV and used the wires to choke himself. In two years, he has attempted suicide six times. Every time David, Jr. attempted suicide, guards stripped him and put him in a small, dirty solitary cell for 21 to 24 hours a day.

After experiencing solitary confinement, violence, and humiliation by guards, David, Jr. suffers from severe depression and hallucinations. David, Jr. was recently transferred from DJJ to a juvenile hall in Los Angeles County. But he is still subject to solitary confinement whenever he is involved in a fight.

Lino Silva

Lino Silva wrote these statements from prison on February 14, 2012:

My name is Lino Silva #90841. I am 23 years of age. I have been incarcerated within the Division of Juvenile Justice for 7 years and 3 months. I am currently detained in what has been determined by my own experiences as the most notorious, non-transparent youth facility in the state, the “Ventura Youth Correctional Facility.” I have been here now for exactly two years, all of which, except for 9 weeks, have been on a Behavior Treatment Program (BTP) unit. These units, better known as “Lock Up” or “The Back” are where the majority of confinement infractions occur. Violations of policy on these units authorized by staff ranging up to the

Superintendent of the facility are well considered the norm on BTP. Refusing wards a decontamination shower, regular shower, education, proper linen, religious services, are all among the many violations. Group punishment, restricting family visits, or the ability to purchase food are constantly used as forms of punishment.

Most recently, on February 1st, 2012, after an isolated incident involving one youth on the unit, the youth allegedly assaulted a staff. Immediately, the youth was moved to another unit. After the incident, based on false pretenses of safety and security, the entire unit (who were locked in their cells during the incident) were put on “lock down” until further notice. I did not receive a shower on this day and was confined to my room for over 38 hours even though I did not have anything to do with any incident, nor did I pose a threat to staff or wards.

Different forms of group punishment, staff decisions clearly based on retaliation, and the manipulative call to uphold safety and security are constant here. And after all that occurred is the fact that not one staff attempted to ask why the youth would assault a staff, instead focusing solely on punishment.

It has become common belief among the wards that adult prison offers a greater chance at going home sooner and certainly offers the chance at escaping such an unbearable situation we have come to find as life in Ventura Youth Prison. I may have the opportunity to be released later this year. I do not advocate for staff assaults or any action that can further incriminate us or potentially prolong our incarceration.

Being in a room over 21 hours a day is like a waking nightmare, like you want to scream but you can't. You want to stretch your legs, walk for more than a few feet. You feel trapped. Life becomes distorted. You shower, eat, sleep, and defecate in the same tiny room. In the same small sink, you “shower,” quench your thirst, wash your hands after using the toilet, and warm your cold dinner in a bag. I developed techniques to survive. I keep a piece of humanity inside myself that can't be taken away by the guards. I've learned to play chess with other youth through a six-inch wall to keep myself occupied. But for others, it breaks them, makes them either violent or suicidal. There's no second chance here. We are being institutionalized so that we can't function anywhere other than adult prison.

Dangers of Solitary Confinement

Solitary confinement is not an evidence-based practice that promotes rehabilitation or therapeutic goals; it is a method to control a correctional environment.⁴ California has used solitary confinement in its adult Security Housing Units (“SHU”) for over 25 years on the premise that it will create a safer environment by reducing gang activity. Yet, California has one of the largest and most dangerous prison systems entrenched with gang culture.

⁴ Finke, Linda M., RN, PhD, “Use of Seclusion is not Evidence-Based Practice,” *Journal of Child and Adolescent Psychiatric Nursing*, Oct.-Dec. 2001, available at http://www.findarticles.com/p/articles/mi_qa3892/is_200110/ai_n8993463/print.

Solitary confinement not only exacerbates safety concerns within the prisons, it endangers communities when prisoners are released. In a report released by the California Department of Corrections and Rehabilitation in 2011, prisoners who had spent time in isolation in the Security Housing Units had a higher rate of recidivism than those who had not.⁵ Solitary confinement debilitates prisoners and severely undermines their ability to transition safely upon their release.

Similarly, solitary confinement does not properly address youth disciplinary issues and more often, it increases these behaviors in youth, especially those with mental conditions.⁶ Research has shown the traumatic toll and mental health breakdown that solitary confinement causes in healthy adult prisoners with no mental illness history. Youth who are still in their development stages, who are emotionally and mentally immature, are at an even greater risk of permanent damage caused by isolation. Youth adolescence extends well into the twenties, when youth find themselves caught somewhere between immaturity and accountability.⁷ Subjecting them to conditions that interrupt and hinder their healthy development will have a lasting impact well into their adulthood.

Solitary confinement causes psychological trauma and psychopathological symptoms including anxiety, nervousness, headaches, troubled sleep, lethargy, heart palpitations, chronic depressions, violent fantasies, hallucinations and perceptual distortions, social withdrawal, acute agitated psychosis, and random acts of violence.⁸ In addition to these dangers, the impact of solitary confinement can result in irreversible consequences. In 1999, the Office of Juvenile Justice and Delinquency Prevention (“OJJDP”) released a study on juvenile facilities across the country that found 50% of youth who committed suicide were in solitary confinement at the time of their suicide.⁹ Further, over 60% of the suicide victims had a history of isolation.¹⁰

International Standards

The United States has consistently fallen behind international norms regarding best practices for detained youth. We have six times more youth in secure custody than any other comparable nation.¹¹ We sentence youth to life without the possibility of parole. And we lock up our youth in cells for 23 hours per day.

While other countries’ juvenile justice systems focus on treating the root causes of delinquency, our system focuses on punishment. In 1990, the United Nations (“UN”) Guidelines for the Prevention

⁵ California Department of Corrections and Rehabilitation. 2011 Adult Institutions Outcome Evaluation Report. November 2011. [http://www.cdcr.ca.gov/Adult_Research_Branch/Research_Documents/ARB_FY_0607_Recidivism_Report_\(11-23-11\).pdf](http://www.cdcr.ca.gov/Adult_Research_Branch/Research_Documents/ARB_FY_0607_Recidivism_Report_(11-23-11).pdf)

⁶ Remarks of Steven H. Rosenbaum, Chief, Special Litigation Section, before the Fourteenth Annual National Juvenile Corrections and Detention Forum, May 16, 1999, available at <http://www.usdoj.gov/crt/split/documents/juvspeech.htm>.

⁷ Coalition for Juvenile Justice. Emerging Concepts Brief: What are the Implications of Adolescent Brain Development for Juvenile Justice? 2006. Available at http://www.juvjustice.org/media/resources/public/resource_134.pdf; see also http://www.act4jj.org/media/factsheets/factsheet_12.pdf

⁸ Comments by Dr. Stuart Grassian, Dr. Craig Haney, and Dr. Terry Kupers to the April 2, 2012 Hearing of the Illinois Legislature Commission on Government Forecasting and Accountability regarding the proposal to close Tamms Correctional Center.

⁹ Hayes, Lindsay M., “Juvenile Suicide in Confinement: A National Survey,” National Center on Institutions and Alternatives, February 2004.

¹⁰ Id.

¹¹ Justice Policy Institute. Finding Direction: Expanding Criminal Justice Options by Considering Policies of Other Nations. April 2011. Available at http://www.justicepolicy.org/uploads/justicepolicy/documents/juvenile_justice.pdf

of Juvenile Delinquency (“The Riyadh Guidelines”) prohibited the use of solitary confinement or any other form of punishment that may compromise the physical or mental health of youth. Within the last year, UN Special Rapporteur on torture, Juan E. Mendez, called for an absolute prohibition of solitary confinement against youth and the mentally ill. In his testimony, he stated, “Considering the severe mental pain or suffering solitary confinement may cause, it can amount to torture or cruel, inhuman or degrading treatment or punishment when used as a punishment...”¹²

National Trends

Although solitary confinement has been widely condemned as torture, it is used in almost every correctional environment in the United States. While the number of prisoners in solitary confinement is not officially tracked, it is widely estimated that more than 80,000 individuals are in solitary confinement in the United States.¹³ This number fails to account for the youth who are also subjected to solitary confinement.

Youth who are incarcerated in county, regional and state-run facilities are vulnerable to this dangerous practice. The United States is home to over 100,000 such facilities, over 1/3 of the youth are in solitary confinement.¹⁴ In addition, more than 7,500 youth are held in adult lockup facilities on any given day in the United States.¹⁵ In adult facilities, youth are typically held in isolation cells apart from the adult population as a “solution” to laws forbidding jurisdictions from mixing minors with adults.

Nevertheless, some progress is being made. Several states, including Connecticut, Arizona, Maine, Oklahoma, West Virginia, Missouri, and Alaska, prohibit the use of isolation for youth as punishment. Last year, a federal civil rights lawsuit was filed in New Jersey by mentally ill youth placed in solitary confinement. This year, a lawsuit in Mississippi resulted in a consent decree that would prohibit the use of solitary confinement on youth.

On the adult side, Colorado passed legislation in 2011 limiting the use of isolation for its adult prisoners and requiring mental health assessments immediately prior to placement in solitary confinement. In California, following a massive hunger strike to protest excessive isolation and other conditions at secure housing units, prisoners filed a federal lawsuit alleging cruel and unusual punishment in the SHU.¹⁶

However, despite the growing momentum against solitary confinement, some states have increased and defended its use. In New York, Rikers Island jail has steadily expanded solitary cells where

¹² Testimony by Juan E. Mendez to the United Nations General Assembly on October 18, 2011. Available at <http://www.un.org/apps/news/story.asp?NewsID=40097>

¹³ <http://solitarywatch.com/2012/02/01/how-many-prisoners-are-in-solitary-confinement-in-the-united-states/>

¹⁴ Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice. Juvenile Justice Bulletin: Conditions of Confinement. May 2011. Available at <https://www.ncjrs.gov/pdffiles1/ojjdp/227729.pdf>

¹⁵ Id.

¹⁶ Elias, Paul. May 31, 2012. Rights group joins lawsuit over solitary CA cells. Available at <http://www.google.com/hostednews/ap/article/ALeqM5hpxHYVoMPDH7VPm2w9deS8oH1dAQ?docId=ff31c54e7add4628a2e5fde86d39901e>.

youth, the mentally ill, and defendants awaiting trial are placed.¹⁷ In Texas, politicians are considering expanding a new block of solitary confinement cells for youth, despite evidence indicating that staffing and structural issues are contributing to the high levels of violence.¹⁸ Given the increased national and international attention to solitary confinement and its harmful effects, and the astounding numbers of youth in solitary confinement in our country, states that insist on and even expand the use of isolation are in dire need of strong leadership in order to abandon this costly, ineffective and harmful practice.

California

In California, as in many other states, solitary confinement of youth occurs under different programmatic titles: temporary detention, separation, isolation, segregation, and behavior treatment program, among others. What they all have in common is that youth can be confined in their cells for over 21 hours per day with little access to education, programming, and meaningful human contact. In California, as in most of the country, youth are placed in solitary confinement for disciplinary issues, mental health concerns, and for suicide watch. In a juvenile justice system where modest estimates indicate that more than 50-75% of youth who are incarcerated have some type of mental condition and more than 90% of the youth are African American or Latino, mentally ill youth and youth of color disproportionately suffer isolation.¹⁹

Reports at the county level juvenile halls and juvenile camps indicate that some youth are isolated for as many as 23 hours a day. Just last month, a 16-year-old female in a juvenile hall was placed in isolation for three days, after she was stripped of all clothing except her underwear and socks.²⁰ Because she was on suicide watch, staff put her in a strait jacket that restrained her physical movements.

Ten years ago at DJJ, 16-28% of youth were in solitary units, and the single hour of programming or exercise they received outside of their cells was in steel cages.²¹ The prevalence of solitary confinement was one of the driving forces behind *Farrell v. Cate*, a lawsuit resulting in a consent decree that required a complete overhaul of the DJJ. While in solitary confinement, youth are often denied legally mandated education hours, exercise, and access to regular programming. Data obtained from a public records request indicate that in 2004, the average length of stay in a program in which youth are isolated for over 21 hours a day was 42 days.²² In 2007, that number jumped to 65 days.²³ In 2010, the average was 59 days in one prison, with one youth spending 246 days in isolation.²⁴ A 2011 internal audit further showed that youth were isolated for 23 or 24 hours a day,

¹⁷ <http://solitarywatch.com/2011/11/21/city-to-sharply-increase-solitary-confinement-cells-on-rikers-island/>

¹⁸ <http://solitarywatch.com/2012/06/08/controversy-over-kids-in-solitary-confinement-in-texas/>

¹⁹ Handle with Care: Serving the Mental Health Needs of Young Offenders, Coalition for Juvenile Justice 2000 Annual Report. Available at http://www.juvjustice.org/media/resources/public/resource_123.pdf

²⁰ Written communication from youth to Books Not Bars. May 17, 2012.

²¹ Krisberg, Barry. General Corrections Review of the California Youth Authority. December 23, 2003.

<http://www.prisonlaw.com/pdfs/CYA5.pdf>. In 2005, the California Youth Authority was renamed the Division of Juvenile Justice.

²² Data received from a public records request served on May 6, 2011 to the California Department of Corrections and Rehabilitation.

²³ Id.

²⁴ Id.

with one youth receiving only one hour out of his cell over the course of 10 days.²⁵ Incredibly, the practices from 10 years ago persist today, as youth languish in windowless 8.5 x 11 feet cells.²⁶

As mentioned above, the Ella Baker Center sponsored legislation this year, authored by State Senator Leland Yee, to address these abuses. SB 1363 aimed to create minimum standards to govern the practice of solitary confinement, with the goal of discouraging its use. Among its modest provisions, the bill would require mental health reviews by clinical staff to monitor the condition of the youth placed in solitary confinement, and place limitations on isolation of suicidal youth.²⁷ Despite the high volume of documented abuses, pressure from the state prison guards' union caused the bill to fail in the Senate Public Safety Committee by one vote.

Recommendations for Congress

This Committee's action is urgently needed in order to address the national epidemic of solitary confinement. We urge the Committee to consult with juvenile justice advocates and adolescent mental health experts to establish and enforce a comprehensive set of policies aimed at eliminating solitary confinement of both youth and adults, and to establish standards that minimize the dangers of solitary confinement. We recommend that the following provisions apply to youth²⁸ detained in any juvenile or adult facility:

1. Provide a common definition for solitary confinement such as, "The involuntary confinement of a person alone in a room or cell from which the person is prevented from leaving in isolation from persons other than guards, facility staff, attorneys, during hours other than facility sleep hours." Provide that this definition encompass other programmatic titles in which youth are isolated in their cells including, but not limited, to the following: temporary detention, room confinement, segregation, separation, time out, special management programming, behavioral treatment programming, etc.
2. Prohibit solitary confinement in excess of four hours per day, to be applied only after other appropriate, less restrictive methods have been exhausted. This standard is established by the Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative ("JDAI").
3. Limit solitary confinement to be used only for the minimum amount of time required to address the safety or security basis for which the youth is placed in solitary confinement, provided that such time does not compromise the mental and physical health of the youth.
4. Require face-to-face assessments by licensed clinicians to manage youths' mental, emotional, and physical health within the first hour of placement in solitary confinement. At a minimum, require hourly check-ins thereafter with licensed clinical staff. Additional guidelines on the treatment of youth placed in solitary confinement can be borrowed from existing federal guidelines for mental health hospitals found in 42 C.F.R. §482 Condition of participation: Patients' rights. Title 42-Public Health.

²⁵ California Department of Corrections and Rehabilitation, Office of Audits and Compliance. "Review of Identified Concerns, Ventura Youth Correctional Facility." March 2011.

²⁶ California Youth Authority Warehouses: Failing Kids, Families & Public Safety. An Issue Briefing from Books Not Bars and The Center on Juvenile and Criminal Justice. 2005.

²⁷ http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120SB1363&search_keywords=

²⁸ As states use disparate definitions for "youth," these provisions should apply, at a minimum, to all those under the age of 18, regardless of whether the young person was adjudicated as an adult or a juvenile.

5. If a youth is placed in solitary confinement for suicide risk and the risk is not resolved within 24 hours, require that the youth be moved to a treatment hospital.
6. Prohibit the use of chemical agents against youth in solitary confinement. Any other physical restraints shall be used in accordance with 42 C.F.R. §482 Condition of participation: Patients' rights. Title 42-Public Health.
7. Provide youth in solitary confinement with access to the same meals, clothing, access to drinking water, hygiene, medical treatment, educational services, exercise, visitation, phone and letter privileges, legal assistance, religious services, counseling, time credits, and other rights and privileges that apply to youth in general housing assignments.