

May 6, 2013

The Honorable Eric H. Holder, Jr.  
United States Attorney General  
Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530

Dear Attorney General Holder,

We, the undersigned criminal and juvenile justice reform advocacy organizations, are writing to urge you to direct all appropriate Department of Justice agencies to adopt policies prohibiting the solitary confinement of youth in federal custody.

We believe the use of solitary confinement on youth must end, even while the Bureau of Prisons continues its study on solitary confinement for adults. Both law and the science of adolescent development recognize the need to treat juveniles differently from adults in the context of punishment and rehabilitation. The severe psychological and physiological impact of long-term or short-term solitary confinement on youth does not align with the principles of humane treatment and rehabilitation that underpin the American justice system.

The realities of solitary confinement are stark and imposing. Individuals in solitary are physically and socially isolated in a single cell for 22 hours or more each day, with little human contact, few materials to occupy their time, and in some cases, no view of the outside world. In connection with *Growing Up Locked Down*, a recent research report co-published by Human Rights Watch and the American Civil Liberties Union, youth across the country reported spending weeks or months in solitary confinement in adult facilities. Other public reports, including investigations by your Department's Special Litigation Section, have found excessive use of isolation in juvenile facilities.

Solitary confinement is associated with high rates of successful and attempted suicide and serious mental health problems. If allowed to leave their cells for exercise, youth in solitary typically are confined to a small, fenced-in cage, barely larger than a cell. They are also often denied access to programming and services, including medical and mental health care necessary to promote healthy growth and development. The practice is not only cruel, but counterproductive for both rehabilitation and facility security.

International human rights law condemns solitary confinement of anyone under the age of 18 as a form of cruel, inhuman or degrading treatment or punishment and supports a ban on

the practice. International human rights law also requires that governments protect all prisoners from mistreatment and provide especially vulnerable populations, including children and persons with mental disabilities, with heightened measures of protection. Solitary confinement of juveniles clearly violates these requirements. Most recently, the United Nations Special Rapporteur on Torture concluded that the solitary confinement of juveniles violates specific provisions of the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, both of which have been ratified by the United States.

Recent Supreme Court guidance also supports the consensus regarding a ban by making clear that youth should not be subjected to the harshest punishments. In four recent decisions – *Miller v. Alabama*, 132 S. Ct. 2455 (2012), *J.D.B. v. North Carolina*, 131 S. Ct. 2394 (2011), *Graham v. Florida*, 130 S. Ct. 2011 (2010), and *Roper v. Simmons*, 543 U.S. 551 (2005) – the Court has acknowledged that youth are entitled to greater constitutional protections in the context of crime and punishment, and, in three of those decisions, that those under 18 are still developing and therefore less culpable for their actions than adults – and more receptive to rehabilitation. This same logic should be applied to the effect of conditions of confinement and the practice of solitary confinement on young people. Although U.S. constitutional law does not yet unequivocally prohibit the use of solitary confinement, including for young people, your Department’s Special Litigation Section has repeatedly found excessive isolation practices in juvenile facilities to be unconstitutional, for example recently in Shelby County, TN and Terrebonne Parish, LA.

As the report of your National Task Force on Children Exposed to Violence concluded, “*nowhere is the damaging impact of incarceration on vulnerable children more obvious than when it involves solitary confinement.*” The report also recommends an abandonment of correctional practices, like solitary confinement, that “traumatize children and further reduce their opportunities to become productive members of society.” There is no doubt that solitary confinement has a devastating and long-lasting impact on young people. And yet, there is no federal ban on the use of this inhumane and cruel practice. Steps the Department should immediately take to this end include:

- (1) Direct the Bureau of Prisons (BOP) to issue a program statement regarding juveniles that bans solitary confinement and strictly limits isolation practices to be consistent with national evidence-based best practices;
- (2) Amend the Bureau of Prisons Statement of Work for Contract Juvenile Facilities to require that facilities that house youth in BOP custody ban solitary confinement and strictly limit isolation practices to be consistent with national evidence-based best practices;
- (3) Require regular data reporting about isolation practices imposed on youth in federal custody;

- (4) Make public existing and future contracts between the federal government and facilities that house youth in federal custody;
- (5) Make public data about the rates and duration of isolation imposed on youth in federal custody; and
- (6) Provide the public with a report on the implementation of these reforms.

Thank you in advance for your leadership on this important issue. We urge you to direct all appropriate DOJ agencies to adopt policies prohibiting the practice of placing youth in solitary confinement. If you have any additional questions about this issue, please feel free to contact Ian Kysel, ACLU/HRW Aryeh Neier Fellow at [ikysel@aclu.org](mailto:ikysel@aclu.org) or (212) 549-2686 or Jesselyn McCurdy, Senior Legislative Counsel at [jmccurdy@dcaclu.org](mailto:jmccurdy@dcaclu.org) or (202) 675-2307.

Sincerely,

ACLU

Human Rights Watch

AdvoCare

Alice and Staughton Lynd

Campaign for the Fair Sentencing of Youth

Campaign for Youth Justice

Center for Children's Law and Policy

Center for Juvenile Justice Reform, Georgetown University

Center for Public Representation

Children's Law Center, Inc

Correctional Association of New York

Florida Institutional Legal Services Project

Human Rights Defense Center

Human Rights Project for Girls

Justice for Families

Juvenile Law Center

Koob & Magoolaghan  
Lambda Legal  
Mental Health America  
National Juvenile Defender Center  
National Network for Youth  
National Religious Campaign Against Torture  
Prisoners' Legal Services of New York  
Robert F. Kennedy Center for Justice and Human Rights  
Smart on Crime Solutions  
Social Justice Committee, UU Congregation at Shelter Rock  
Susan Hazeldean. Assistant Clinical Professor of Law, Cornell Law School  
T'ruah: The Rabbinic Call for Human Rights  
The American Friends Service Committee  
The National Crittenton Foundation  
The Sentencing Project  
United Church of Christ Justice  
United Methodist Church, General Board of Church and Society  
UNROW Human Rights Impact Litigation Clinic – Washington College of Law  
Urban Justice Center  
Uri L'Tzedek  
Violence Prevention Coalition of Greater Los Angeles  
Washington Lawyers' Committee for Civil Rights and Urban Affairs  
Witness Ministries  
Youth Law Center

cc: Charles E. Samuels, Jr., BOP Director

cc: Robert Listenbee, OJJDP Administrator