



NO CHILD LEFT ALONE

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

CHILDREN ARE NOT MINIATURE ADULTS

Young people have needs that differ in nature and degree from adults because they are still developing physically and psychologically. These developmental differences mean that, as compared to adults, youth are particularly amenable to rehabilitation and particularly vulnerable to trauma and abuse – and that they should be afforded heightened measures of legal protection. These differences are reflected in recent Supreme Court cases establishing that young people are entitled to greater constitutional protections in the context of crime and punishment.

In a recent line of cases – involving the death penalty,¹ sentences of life without parole,² and custodial interrogations³ – differences between youth and adults, particularly with regard to brain development, have driven the Court to articulate distinct Constitutional standards for youth. These standards recognize that juvenile status is relevant to when a child is considered to be in custody (for *Miranda* purposes) and when a punishment is considered cruel and unusual (as are the juvenile death penalty, life without parole for non-homicide offenses, and mandatory life without parole for homicide offenses).

The differences between youth and adults, and the particular vulnerabilities of individual youth, suggest that subjecting youth to solitary confinement under policies and procedures that fail to take into account the status and vulnerabilities of youth is unconstitutional. And though the Supreme Court has not yet addressed this question, it can be argued that in conjunction with these differences and vulnerabilities, the severity of solitary confinement suggests that the practice is inherently punitive, grossly disproportionate, and uniquely harmful to youth – and thus unconstitutional.

DIFFERENCES BETWEEN YOUTH & ADULTS INCREASE IMPACT OF SOLITARY CONFINEMENT

That children grow and change is no great revelation. But there are a range of physical and psychological changes that are relevant to how solitary confinement particularly affects children. As a result, the negative and debilitating consequences of solitary confinement for youth are even greater than for adults.

- **Physical changes** highlight why denial of recreation, programming, and social and family contact, for example, can be so cruel and disproportionate.

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.⁴

- **Psychological changes** highlight why policies and practices for adults are ill-suited to youth, and why social isolation and denial of programming, education, and contact with family and peers can be so harmful and disproportionate. These changes also show why youth are more receptive to rehabilitation and management practices based on positive reinforcement.

Youth experience time differently from adults and have a special need for social stimulation.⁵ The human brain goes through dramatic structural growth during teen years and into the mid-twenties. The most dramatic difference between the brains of teens and young adults is the development of the frontal lobe.⁶ The frontal lobe is responsible for cognitive processing, such as planning, strategizing, and organizing thoughts and actions.⁷ 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.⁸ This part of the brain is linked to “the ability to inhibit impulses, weigh consequences of decisions, prioritize, and strategize.”⁹ As a result, teens’ decision-making processes are shaped by impulsivity, immaturity, and an under-developed ability to appreciate consequences and resist environmental pressures.¹⁰

Supreme Court Cases Recognizing that Developmental Differences for Youth and Individual Vulnerabilities are Constitutionally Relevant Can be Applied to Challenging the Solitary Confinement of Children.

The Supreme Court has placed great weight on the differences between youth and adults as well as on individual vulnerabilities in analyzing how children’s constitutional rights must be protected in the context of crime and punishment. These arguments can be useful in advocacy to protect youth from solitary confinement. On the reverse side are key findings of the Court that support arguments that placing youth in solitary confinement in the same manner as adults inflicts disproportionate harm on children that cannot be justified under the Constitution.



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A ONE SIZE FITS ALL APPROACH IS INVALID

That youth and adults are developmentally different makes treating them the same (using the same policies, procedures, and practices) legally suspect:

- On the basis of the many legal distinctions (including examples from criminal, contract, property, tort, and family law) made between youth and adults, the Supreme Court has described a “settled understanding that the differentiating characteristics of youth are universal;”¹¹ suggested that, as a matter of law, “children cannot be viewed simply as miniature adults;”¹² and stated that, “criminal procedure laws that fail to take defendants youthfulness into account at all” should be seen as “flawed.”¹³

CHILDREN ACT OUT

Developmental differences may make youth more likely to act in ways that are punished with solitary confinement – or misbehave when in solitary confinement – and thus make the practice particularly disproportionate in the eyes of the law:

- The Supreme Court has acknowledged that the decision-making skills and abilities of youth and adults are different – and that youth are more impulsive than adults – in describing the “susceptibility of juveniles to immature and irresponsible behavior;”¹⁴ their “lack of maturity and [] underdeveloped sense of responsibility;”¹⁵ and that these characteristics “lead[] to recklessness, impulsivity, and heedless risk-taking.”¹⁶
- The Supreme Court has described youth as “more than a chronological fact” – but “a time of immaturity, irresponsibility, impetuousness[,] and recklessness.”¹⁷

YOUTH ARE VULNERABLE

The Supreme Court has recognized that youth are marked by “vulnerability and comparative lack of control over their immediate surroundings,”¹⁸ and that they are “more vulnerable or susceptible to negative influences and outside pressures,”¹⁹ “including from their family and peers,”²⁰ and “lack the ability to extricate themselves from horrific, crime-producing settings.”²¹

CHILDREN GROW AND CHANGE

Developmental differences make youth more deserving of rehabilitative treatment and programming, and make the stark isolation and cruel deprivations of solitary confinement particularly disproportionate and punitive:

- The Supreme Court has acknowledged that the transitory nature of adolescence has important consequences for how youth are treated. The Court has described how youth “struggle to define their identity,”²² and have a “capacity for change,” and that they are therefore “in need of and receptive to rehabilitation.”²³ Indeed, the Court has stated that the “signature qualities” of youth are all “transient.”²⁴ The Court recognized that these characteristics make youth particularly receptive to rehabilitation.²⁵

SOME YOUTH ARE PARTICULARLY VULNERABLE

The individual vulnerabilities of certain youth, or subclasses of youth, make the counter-therapeutic and anti-rehabilitative practice of solitary confinement cruel and unusual:

- The Supreme Court has suggested the importance of taking into account, “the family and home environment that surrounds [youth] – and from which [he or she] cannot extricate [his or her] self – no matter how brutal or dysfunctional,”²⁶ in analyzing culpability. The Court has explicitly discussed “physical abuse” and “neglect,”²⁷ as well as “family background” and “immersion in violence”²⁸ as legally significant individual circumstances for youth that are relevant to decision-making in the criminal justice context.
- The Supreme Court has also explicitly discussed “regular use of drugs and alcohol” (in a family environment with a parent who “suffered from alcoholism and drug addiction”)²⁹ as a legally significant individual circumstance relevant to youth decision-making in the criminal justice context.
- While the Supreme Court did not explicitly discuss youth with disabilities in its recent cases on sentencing, the Court has pointed to a history of suicide attempts³⁰ as a legally significant individual circumstance relevant to decision-making in the criminal justice context. This suggests the importance of broader consideration of the individual characteristics of youth with mental health problems and other disabilities.³¹

CONCLUSION

The constitutionality of solitary confinement of youth cannot be considered without reference to the developmental differences between youth and adults and the individual vulnerabilities of young people. The physiological and psychological realities of adolescence have been incorporated into the recent jurisprudence of the Supreme Court in reference to youth. The Court’s reasoning in these cases suggests that strong arguments can be marshaled in support of viewing the solitary confinement of children as a violation of the constitutional protections of procedural and substantive due process and against cruel and unusual punishment.

ENDNOTES

- ¹ *Roper v. Simmons*, 453 U.S. 551 (2005).
- ² *Graham v. Florida*, 130 S.Ct. 2011 (2010); *Miller v. Alabama*, 132 S.Ct. 2455 (2012).
- ³ *J.D.B. v. North Carolina*, 564 U.S. ___ (2011).
- ⁴ Sedra Spano, ACT for Youth Upstate Center for Excellence, Stages of Adolescent Development (May 2004), available at http://www.actforyouth.net/resources/rf/rf_stages_0504.pdf; Nat'l Insts. of Health, Adolescent Development, <http://www.nlm.nih.gov/medlineplus/ency/article/002003.htm> (last visited August 27, 2012).
- ⁵ Laurence Steinberg et al., *Age Differences in Future Orientation and Delay Discounting*, 80 CHILD. DEV. 28 (2009), available at <http://www.wisspd.org/htm/ATPracGuides/Training/ProgMaterials/Conf2011/AdDev/ADFO.pdf>; Jennifer Woolard et al., *Juveniles in Adult Correctional Settings: Legal Pathways and Developmental Considerations*, 4 INT'L J. OF FORENSIC MENTAL HEALTH 1 (2005), available at <http://www.policyarchive.org/handle/10207/bitstreams/20668.pdf>; Deborah Laible et al., *The Differential Relations of Parent and Peer Attachment to Adolescent Adjustment*, 29 J. OF YOUTH & ADOLESCENCE 45(2000), available at <http://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1050&context=psychfacpub>; David E. Arredondo, *Principles of Child Development and Juvenile Justice Information for Decision-Makers*, 5 J. CTR. FOR FAMILIES, CHILD & COURTS 127 (2004).
- ⁶ Laurence Steinberg et al., *The Study of Development Psychopathology in Adolescence: Integrating affective neuroscience with the study of context*, in DEVELOPMENTAL PSYCHOPATHOLOGY 710 (DANTE CICCHETTI & DONALD J. COHEN Eds., 2nd ed. 2006).
- ⁷ *Id.*; Jay N. Giedd, *Structural Magnetic Resonance Imaging of the Adolescent Brain*, 1021 ANNALS N.Y. ACAD. SCI. 83 (2004), available at <http://intramural.nlm.nih.gov/research/pubs/giedd05.pdf>.
- ⁸ *Id.*
- ⁹ *Id.*
- ¹⁰ Matthew S. Stanford et al., *Fifty Years of the Barratt Impulsiveness Scale: An Update and Review*, 47 PERSONALITY & INDIVIDUAL DIFFERENCES 385(2009); Elizabeth Cauffman & Laurence Steinberg, *(Im)maturity of Judgment in Adolescence: Why Adolescents May Be Less Culpable Than Adults*, 18 BEHAV. SCI. & L. 741, 744-745 (2000).
- ¹¹ *J.D.B. v. North Carolina*, 564 U.S. at ___ (slip op. at 10 n 6) (2011) (including examples from criminal, contract, property, tort, and family law).
- ¹² *Id.*, at 11 (citing *Eddings v. Oklahoma*, 455 U.S. 104, 115-16 (1982)).
- ¹³ *Miller v. Alabama*, 567 U.S. ___ (2012) (citing *Graham v. Florida*, 560 U.S. ___ (2010)).
- ¹⁴ *Roper v. Simmons*, 453 U.S. 551, 569-70 (2005).
- ¹⁵ *Graham*, 560 U.S. at ___ (slip op., at 17) (citing *Roper*, 453 U.S., at 569).
- ¹⁶ *Miller*, 567 U.S. at ___ (slip op., at 9) (citing *Roper*, 453 U.S., at 569).
- ¹⁷ *Id.*, at 13 (citing *Eddings*, 455 U.S., at 115 and *Johnson v. Texas*, 509 U.S. 350, 368 (1993)).
- ¹⁸ *Roper*, 453 U.S., at 570.
- ¹⁹ *Graham*, 560 U.S. at ___ (slip op., at 17) (citing *Roper*, 453 U.S., at 569).
- ²⁰ *Miller*, 567 U.S. at ___ (slip op., at 8) (citing *Roper*, 453 U.S., at 569).
- ²¹ *Id.*
- ²² *Roper*, 453 U.S., at 570.
- ²³ *Graham*, 560 U.S. at ___ (slip op., at 23).
- ²⁴ *Miller*, 567 U.S. at ___ (slip op., at 13) (citing *Johnson v. Texas*, 509 U.S. 350, 368 (1993)).
- ²⁵ *Graham*, 560 U.S. at ___ (slip op., at 23).
- ²⁶ *Miller*, 567 U.S. at ___ (slip op., at 15).
- ²⁷ *Id.*, at 16.
- ²⁸ *Id.*
- ²⁹ *Id.*, at 4.
- ³⁰ *Id.*, at 16.
- ³¹ Of course, with regard to adults, the Supreme Court has already stated that "mentally retardation" – i.e. serious cognitive and intellectual disabilities – is relevant as an individual and class characteristic to analysis of culpability and of cruel and unusual punishment. *Atkins v. Virginia*, 536 U.S. 304 (2002). A host of lower courts have already declared that subjecting persons with serious mental illness to solitary confinement is unconstitutional. See, e.g., *IPAS v. Commissioner* 2012 WL 6738517 (S.D.Ind. 2012); *Jones'El v. Berge*, 164 F. Supp. 2d 1096 (W.D.Wis. 2001) (granting preliminary injunction ordering removal of seriously mentally ill prisoners from supermax prison); *Ruiz v. Johnson*, 37 F. Supp. 2d 855, 915 (S.D. Tex. 1999), rev'd on other grounds, *Ruiz v. Johnson*, 243 F.3d 941 (5th Cir. 2001), adhered to on remand, *Ruiz v. Johnson*, 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*, 912 F. Supp. 1282, 1320-21 (E.D.Cal. 1995); *Madrid v. Gomez*, 889 F. Supp. 1146, 1265-66 (N.D.Cal. 1995); *Casey v. Lewis*, 834 F. Supp. 1477, 1549-50 (D.Ariz. 1993); *Langlely v. Coughlin*, 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).