

Testimony of the Children's Defense Fund – New York

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Briefing on Solitary Confinement of Juveniles

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My name is Beth Powers and I am the Senior Juvenile Justice Policy Associate at The Children's Defense Fund New York. I thank the New York State Advisory Committee to the U.S. Commission on Civil Rights for holding a hearing on the very important topic of whether solitary confinement of youth of color and mentally ill youth results in the unequal treatment of these groups in the administration of justice under the Civil Rights of Institutionalized Persons Act (CRIPA). My testimony will focus on the use of punitive segregation on adolescents in New York City jails.

The Children's Defense Fund (CDF) Leave No Child Behind® mission is to ensure every child a Healthy Start, a Head Start, a Fair Start, a Safe Start and a Moral Start in life and successful passage to adulthood with the help of caring families and communities. CDF provides a strong, effective voice for all the children of America who cannot vote, lobby or speak for themselves. CDF educates the nation about the needs of children and encourages preventive investments before they get sick, into trouble, drop out of school or suffer family breakdown. As part of our advocacy efforts, CDF launched the Cradle to Prison Pipeline® Campaign, a national call to action to stop the funneling of thousands of children, especially poor children and children of color, down life paths that often lead to arrest, conviction, incarceration and even death.

Use of Isolation in New York

New York is one of only two states in the nation that automatically treats all youth ages 16 and over as adults in the criminal justice system. This practice is harmful to young people and bad for public safety, in that young people tried in the adult criminal justice system have significantly higher rates of recidivism than youth tried in juvenile systems. New York State has taken an important step in the development of the Commission on Youth, Public Safety, and Justice. Currently there are about 700 adolescents (ages 16 to 18) incarcerated on Rikers Island on any given day. Although New York State criminal law currently treats 16- and 17-year-olds as adults, youth are developmentally different than adults.

The use of isolation to deal with problematic behavior within jails is harmful and often exasperates the very problems they are attempting to address. Just as punitively prosecuting adolescents as adults does not accomplish the desired effect of decreasing future criminal behavior, the use of solitary confinement does not result in a more controlled jail environment. From 2007 to 2013 the number of punitive segregation beds at Rikers has increased 61%.

Despite this dramatic increase, the jail has not seen a decrease in violence. In the same time period as Rikers instituted a sharp increase in punitive segregation beds, the jail experienced a tripling of use of force incidents despite having a decrease in census. Ultimately, isolation is an unacceptable means of control used by the Department of Corrections in lieu of comprehensive services that have been shown most effective in addressing both the needs of adolescents and the call for public safety.

Harm to Adolescents

The Department of Justice (DOJ) recently released the results of a two year investigation of Rikers Island by the United States Attorney's Office under the Civil Rights of Institutional Persons Act (CRIPA). The investigation revealed that the Department of Corrections (DOC) fails to protect adolescents from harm and subjects them to excessive and unnecessary force. One specific finding revealed that DOC subjects adolescents to punitive segregation in a way that is excessive and inappropriate.

Youth in punitive segregation at Rikers Island are kept alone in a small cell with only a bed and toilet/sink. They are fed through a slot on their door. These youth are allowed outside one hour a day into a cage where they continue to be isolated from others. The DOJ report that many youth choose not to go outside during this one hour "due to depression or because they do not want to submit to being searched and shackled just to be outside in a cage".

The DOJ investigation revealed at length specific problematic elements in the administration of punitive segregation at Rikers Island, in addition to the overarching harms of isolation in itself. The DOJ found that adolescents are given excessive sentences of punitive segregation time. The most common charges that resulted in punitive segregation were for non-violent violations such as "failure to obey orders from staff", "failure to obey orders promptly and entirely" and "shouting abusive-offensive words". These behaviors are not uncommon for adolescents, particularly adolescents living in the environment of an adult jail. And yet, the response of the adults charged with oversight of these young people is not to redirect or teach, but rather to subject these adolescents to often months of isolation. In addition to the excessive lengths of time youth are often sentenced, many youth accrue additional days of punishment while in isolation. Additionally, once youth leave Rikers, time owed in punitive segregation remains owed for 1-2 years post release, resulting in re-arrested youth being placed directly into punitive segregation should they have the misfortune of returning to Rikers Island in the future.

Harm of isolation

Young people in solitary are denied basic elements necessary for positive development: an adequate education, adequate and age appropriate services, appropriate mental health care, contact with family, appropriate nutrition, and adequate physical activity.

The harms of isolation for people of all ages are well documented. The United Nations Committee on Torture and the European Court of Human Rights have both deemed solitary confinement to be forms of torture and a violation of human rights. As a result of a lawsuit brought by the New York Civil Liberties Union (NYCLU), the New York State Department of Corrections and Community Supervision (DOCCS) recently agreed to remove adolescents, pregnant women, and inmates with developmental disabilities from extreme isolation in New York state prisons. In their 2011 report, *Growing up Locked Down: Youth in Solitary Confinement in Jails and Prisons Across the United States*, the American Civil Liberties Union (ACLU) and Human Rights Watch (HRW) examined the detrimental effect isolation has on adolescents and ultimately recommended prohibiting the use of solitary confinement for youth. Adolescents subjected to solitary confinement risk even further damage than the already horrendous effects to adults given their active development. Solitary confinement can hinder the ability of a young person to rehabilitate, can force the emergence of or exacerbate existing mental health concerns, and can be physically harmful due to the denial of necessary physical exercise. According to the ACLU/HRW report, 14 percent of all adolescents were housed in isolation at some point during their detainment at Rikers with an average length of stay of 43 days. In their Report to the New York City Board of Corrections, Drs. James Gilligan M.D. of New York University and Bandy Lee M.D., M.Div. of Yale University report that at the time of their investigation in July of 2013 there were 6 inmates on a punitive segregation until for mentally ill inmates that had been in isolation over 1,000 days and one inmate with a stay of over 3,000 days – roughly 3 and 8 years.

Mental Health

According to the ACLU and HRW, more than 48 percent of adolescents at Rikers have diagnosed mental health problems. Adolescents with mental health concerns are disproportionately impacted by the practice of punitive segregation. Drs. Gilligan and Lee cite in their report to the Board of Correction that in July 2013, 73% of adolescents in punitive segregation were diagnosed as either

seriously or moderately mentally ill. This is nearly double the percentage of inmates jail-wide diagnosed as such.

Growing up Locked Down makes clear the damage done to adolescents held in isolation, particularly those with pre-existing mental health concerns. In addition to causing significant harm to those with mental health concerns, the torturous practice of punitive segregation can cause new psychiatric symptoms to occur in previously unaffected individuals. Just as the number of punitive segregation beds dramatically increased from 2007-2012, instances of self mutilation and suicide attempts increased nearly 75%.

Drs. Gilligan and Lee, cite multiple examples of the excessively unsafe and harmful conditions they observed young people exposed to at Rikers Island. The inadequacy of staff to appropriately respond to mental health concerns is portrayed below in an excerpt from Drs. Gilligan and Lee, detailing an incident they observed last summer:

“One incident we observed while visiting the adolescent Restrictive Housing Unit (RHU) was a youth banging on the door of his cell, which grew increasingly louder over twenty minutes or so. One could hear that he was initially using his arms and legs but later his whole body, while personnel walked by him, ignoring him. When he failed to gain attention, we observed him tearing his sheet into strips, wrapping it around his arms and legs, and then his neck (as if preparing to hang himself). When we told the staff what he was doing, they did not call the mental health staff (even though this was supposedly occurring in a mental health-oriented RHU) but security. The security staff’s first response was to arrive as a group and to tell us to step back, as they were going to spray him, and they proceeded to pull out a can of Mace. We insisted that this was not necessary and requested that they call mental health staff, at which time the inmate was asked if he wished to see the psychologist, to which he nodded “yes.”

Lack of Educational Opportunities

Adolescents in solitary confinement have exceptionally limited educational opportunities consisting of workbook pages to be completed on their own with minimal access to teachers via a phone brought to their cell, if any. When one considers the fact that the DOC reports that more than 50% of the students at Rikers read below a 6th grade reading level, it is impossible to imagine adolescents who are so far behind academically already making any educational strides while confined in isolation 23 hours a day and given work sheets to complete on their own without any in-person instruction – in many instances for periods of time that stretch beyond six full weeks.

Disproportionate Harm to Youth of Color

Youth of color are disproportionately affected by New York's criminal justice system from arrest through incarceration. Treating youth as adults within the criminal justice system is an ineffectual policy, the harms of which are disproportionately carried by youth of color with Black and Hispanic youth representing 70% of 16 and 17 year olds arrested in New York State and 80% of youth sentenced to incarceration. This disproportionality is even more extreme in New York City with youth of color representing 88% of arrests and 94% of arrests resulting in incarceration. Statistics aren't needed for anyone that has walked the halls of Rikers. It is clear that youth of color fill the vast majority of beds in NYC jails and the vast majority of cells in punitive segregation.

The above testimony has outlined how the solitary confinement of youth of color and mentally ill youth in New York City jails results in the unequal treatment of these groups in the administration of justice. Both of these groups are disproportionately affected by NYC's use of punitive segregation, a practice recently deemed excessive and inappropriate by the Department of Justice.

Recommendations

New York is one of only two states in the nation that automatically treats all youth ages 16 and over as adults in the criminal justice system. Treating youth in the adult criminal justice system is harmful to youth, harmful to public safety, and harmful to communities. While the harms of isolation to youth are clearly outlined above, it is our recommendation that no youth should be housed in adult jails or prisons. New York needs to raise the age of criminal responsibility to ensure that the legal process responds to all children as children and services and placement options better meet the rehabilitative needs of all youth.

- Raise the age of criminal responsibility to ensure that no youth are processed in the adult criminal justice system.
- No youth should be housed in adult jails or prisons.
- No adolescents or young adults under age 25 should be housed in isolation.
- The DOC should be required to make data public on a regular basis regarding the use of isolation. This data should include frequency of occurrence, duration of stay, and

infraction. This should be disaggregated by age to make transparent the impact on adolescent inmates.

- All DOC staff working directly with teens detained in city jails should receive on-going training including but not limited to adolescent development and best practices for working with detained youth.
- The DOC should fund and implement robust developmentally appropriate interventions to reduce violence and decrease the need for punitive measures. In addition, the DOC should identify alternative punitive strategies that do not include the detrimental and excessively harmful effects of isolation.
- As long as youth remain detained in isolated confinement, The DOC should ensure that youth are no longer denied appropriate educational access
- The DOC should expand programming for adolescents to include all teens, not just those in school programs, and include after school and weekends.
- Once discharged from NYC jails, no one should continue to carry a debt of time owed in solitary confinement to be paid should they return to a NYC jail in the future.

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