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**AMERICAN CIVIL LIBERTIES UNION
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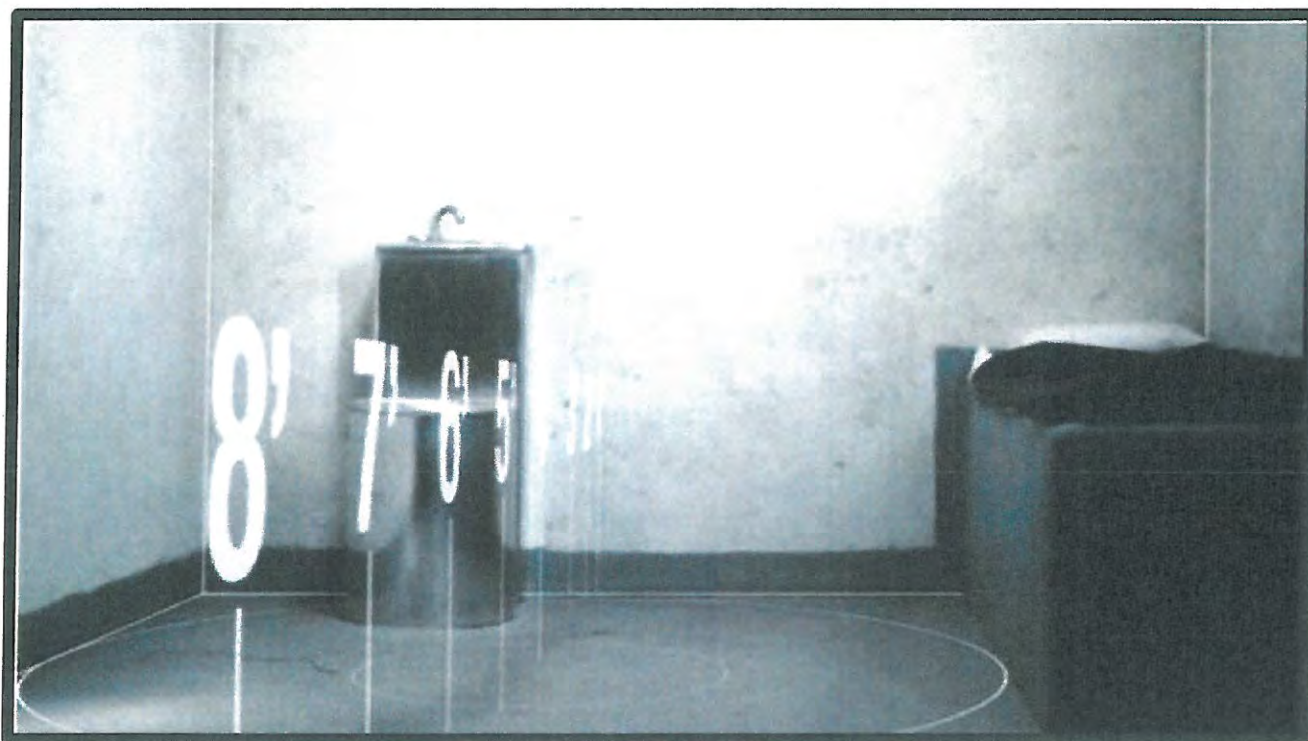
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September 3, 2015 meeting between Governor Sandoval's Chief of Staff Mike Willden, DHHS Director Richard Whitley, and ACLU of NV Legislative & Advocacy Director Vanessa Spinazola

- I. Solitary Confinement of Youth
 - a. ACLU report *Alone & Afraid: Children Held in Solitary Confinement and Isolation in Juvenile Detention and Correctional Facilities* (A more extensive report, co-authored by ACLU and Human Rights Watch and entitled *Growing Up Locked Down: Youth in Solitary Confinement in Jails and Prisons Across the United States* is available here: <https://www.aclu.org/report/growing-locked-down-youth-solitary-confinement-jails-and-prisons-across-united-states>)
 - b. SB 107 as enrolled (2013 Legislative Session)
 - c. Memorandum regarding SB 107 implementation in juvenile facilities (written by UNR Social Work student completing Masters project through ACLU)
 - d. Excerpts from NDOC presentation to Advisory Commission on Administration of Justice on March 5, 2014
- II. Transfer of Youthful Offenders in Lovelock to Summit View
 - a. Letter from ACLU to Board of Prison Commissioners dated September 16, 2014 recommending use of AR 502, including attachments:
 - i. NDOC Administrative Regulation 502
 - ii. Washington State Interagency Agreement between DOC and DSHS
 - iii. Washington State DOC policy regarding transfer of youthful offenders
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 - b. ACLU presentations to AB 202 Task Force (2013-14 Interim):
 - i. Appropriate Housing for Youth in State Custody, March 27, 2014
 - ii. Follow-Up Presentation, June 27, 2014
 - c. Letter from ACLU to Legislative Committee on Child Welfare and Juvenile Justice dated July 14, 2014, recommending development of MOU between NDOC and DCFS for transfer of youthful offenders
 - d. *You're An Adult Now: Youth in Adult Criminal Justice Systems*, US DOJ and National Institute of Corrections report from December 2011
- III. Re-opening of Summit View and Use of Correctional Officers
 - a. Comparison of qualifications/duties of Group Supervisor vs. Correctional Officer
 - b. Two articles on trauma-informed care of youth in commitment facilities
- IV. Missouri Model for Out of Home Placement
 - a. Overview of Missouri Model/Comparison with Youth Prisons
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- V. Reducing Out of Home Placement and Recommendation to Close NYTC in Elko
 - a. May 5, 2015 letter of agreement between National Council on Crime and Delinquency (NCCD) and the Annie E. Casey Foundation (provided to NV S.Ct. Commission on Juvenile Justice and established Sub-Committee)
 - b. Data requested by NCCD of Nevada agencies
 - c. Pew Charitable Trusts brief: *Public Opinion on Juvenile Justice in America*

ALONE & AFRAID:

**Children Held in Solitary Confinement and Isolation in Juvenile Detention
and Correctional Facilities**



November 2013



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Introduction

"Being in a room over 21 hours a day is like a waking nightmare, like you want to scream but you can't."

- Lino Silva, on her experience in solitary confinement as a child

Every day, in juvenile detention and correctional facilities across the United States, children are held in solitary confinement and other forms of isolation. Solitary confinement is the most extreme form of isolation, and involves physical and social isolation in a cell for 22 to 24 hours per day.¹ In addition to solitary confinement, juvenile facilities frequently use a range of other physical and social isolation practices, many distinguishable from solitary confinement only in their duration (stretching for many – but fewer than 22 – hours). Instead of the terms "solitary confinement" or "isolation," juvenile facilities often adopt euphemisms, including "time out," "room confinement," "restricted engagement," or a trip to the "reflection cottage."² These terms mask the fact that, whereas a short amount of alone time may sometimes be necessary to defuse a moment of crisis, hours of isolation can be extremely damaging to young people. Physical and social isolation practices can extend for days, weeks, and even months. Isolation cells often have no window or view of the world outside cell walls. While confined, children are regularly deprived of the services, programming, and other tools that they need for healthy growth, education, and development. Sometimes they are not even provided access to school books. Inside this cramped space, few things distinguish one hour, one day, one week, or one month, from the next.

Solitary confinement can cause serious psychological, physical, and developmental harm, resulting in persistent mental health problems or, worse, suicide. Lengthy periods of isolation can be equally traumatizing and result in the same serious risks to health. These risks are magnified for children with disabilities or histories of trauma and abuse.

Federal government agencies and experts agree that the use of isolation on children can be harmful and counterproductive. The US Department of Justice (DOJ) has stated that the "isolation of children is dangerous and inconsistent with best practices and that excessive isolation can constitute cruel and unusual punishment."³ The US Attorney General's *National Task Force on Children Exposed to Violence* also recently suggested that "nowhere is the damaging impact of incarceration on vulnerable children more obvious than when it involves solitary confinement."⁴ The National Research Council of the National Academies of Sciences has also concluded that "confinement [of children] under punitive conditions may increase recidivism."⁵

Normal human contact and a range of age-appropriate services and programming are essential to a child's development, education, and rehabilitation. The goal of juvenile justice laws as well as the detention of children is both to protect public safety and to promote rehabilitation so that upon return to the community children can become productive and

healthy citizens. Any practice involving physical and social isolation of children can significantly undermine these objectives and should be strictly limited, regulated, closely monitored, and publicly reported. And yet, children across this country are subject to such treatment with little public oversight, knowledge, or legal limits—treatment that undermines healthy child development and, ultimately, community safety.

It is time to abolish the solitary confinement of children and strictly limit and uniformly regulate isolation practices. To this end, state and federal lawmakers, local governments, and administrators of juvenile detention and correctional facilities should immediately embark on a review of the laws, policies, and practices that result in children being held in solitary confinement or prolonged isolation, with the goal of prohibiting all harmful practices.

How Do Solitary Confinement and Isolation Harm Children?

Solitary confinement and other forms of isolation can cause serious psychological, physical, and developmental harm to children who need age-appropriate services and programming for their healthy growth and development or to be rehabilitated (if adjudicated delinquent). Solitary confinement and isolation practices can be even more harmful for children with disabilities.

Children grow and change. Adolescence is transitory. As Elizabeth Scott and Laurence Steinberg, experts in adolescent development, have written, “[t]he period is transitional because it is marked by rapid and dramatic change within the individual in the realms of biology, cognition, emotion, and interpersonal relationships.”⁶

During adolescence, the body changes significantly, including the development of secondary sex 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.⁷ The human brain also goes through dramatic structural growth during teen years and into the mid-twenties. The major difference between the brains of teens and those of young adults is the development of the frontal lobe.⁸ The frontal lobe is responsible for cognitive processing, such as planning, strategizing, and organizing thoughts and actions.⁹ 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.¹⁰ This part of the brain is linked to “the ability to inhibit impulses, weigh consequences of decisions, prioritize, and strategize.”¹¹ As a result, teens’ decision-making processes are shaped by impulsivity, immaturity, and an under-developed ability to appreciate consequences and resist environmental pressures.¹²

The differences between children and adults make young people more vulnerable to harm, and disproportionately affected by the trauma and deprivations of solitary confinement and isolation.

Psychological Harm

Extensive research on the impact of isolation has shown that adult prisoners generally exhibit a variety of negative physiological and psychological reactions to solitary, including: hypersensitivity to external stimuli;¹³ perceptual distortions and hallucinations;¹⁴ increased anxiety and nervousness;¹⁵ revenge fantasies, rage, and irrational anger;¹⁶ fears of persecution;¹⁷ lack of impulse control;¹⁸ severe and chronic depression;¹⁹ appetite loss and weight loss;²⁰ heart palpitations;²¹ withdrawal;²² blunting of affect and apathy;²³ talking to oneself;²⁴ headaches;²⁵ problems sleeping;²⁶ confusing thought processes;²⁷ nightmares;²⁸ dizziness;²⁹ self-mutilation;³⁰ and lower levels of brain function, including a decline in EEG activity after only seven days in solitary confinement.³¹

One can reasonably conclude that, at a minimum, children too experience these negative effects.³² Indeed, given their stage of growth and development, children may be even less able than adults to handle solitary confinement.³³ Psychologically, children are different from adults, making their time spent in isolation even more difficult and the developmental, psychological, and physical damage more comprehensive and lasting. They experience time differently—a day for a child feels longer than a day to an adult—and have a greater need for social stimulation.³⁴ The American Academy of Child and Adolescent Psychiatry has concluded that, due to their “developmental vulnerability,” adolescents are particularly at risk of adverse reactions from prolonged isolation and solitary confinement.³⁵

What is it Like for Children in Solitary Confinement?

The devastating effects of solitary confinement on children have haunting consequences, as shown by this first-hand account from Lino Silva, written about her experience in solitary confinement in a juvenile facility in California:

“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 . . . There’s no second chance here.”

Risk of Suicide

For children, suicide is particularly strongly associated with isolation.³⁶ Research published by the Department of Justice found that more than 50% of the suicides of children detained in

juvenile facilities occurred while young people were isolated alone in their rooms, and that more than 60% of young people who committed suicide had a history of being held in isolation.³⁷

Physical Harm

Given that children are still developing physically, they need age-appropriate mental health, medical, and dental services, as well as nutrition adequate to support growing muscles and bones.³⁸ The most common deprivation that accompanies solitary confinement, denial of out-of-cell physical exercise, is physically harmful to their health, well-being, and growth.

Developmental Harm

Children held in solitary confinement are generally denied access to programming provided to other youth as a “privilege.”³⁹ This can include educational programming, access to reading materials, and the ability to write, call, or visit with loved ones. Denying children access to this programming undermines their ability to develop into healthy adults, able to function in society. In some cases, such as with denial of educational programming, it also violates the law. Holding children in solitary confinement can thus result in long-term harm, undermining their future.

Harm to Children with Disabilities or a History of Trauma and/or Abuse

For many children in the juvenile justice system, the vulnerabilities of developmental immaturity are compounded by disabilities and/or histories of trauma and abuse.⁴⁰ These factors, though experienced differently by different children, can significantly exacerbate the harm of solitary confinement. The Americans with Disabilities Act, the Rehabilitation Act, and the Individuals with Disabilities Education Act all require state and local governments to make accommodation for disabilities when they care for children in custody.⁴¹

Court Challenges to Youth Solitary Confinement

Federal litigation pending in New Jersey challenges the repeated use of solitary confinement and isolation on children who spent weeks and months alone.

In 2011, the Juvenile Law Center filed a lawsuit on behalf of two boys against the New Jersey Juvenile Justice Commission. In the Complaint the boys allege that they were subjected to isolation and room seclusion while detained and that while in isolation, both were frequently without access to education, treatment, or other therapeutic support; denied personal possessions and proper clothing, nutrition and medical care; and allowed no physical recreation or exercise or other interaction with their peers. Both of them were subjected to isolation for days or for weeks at a time for minor behavioral infractions or for their purported protection. In total, they allege that one of them spent 178 days in solitary confinement, the other, 50 days. One of the boys attempted suicide and mutilated himself several times during the ordeal.

This important case seeking to protect children's rights is now pending in federal court.

Source: Second Amended Complaint, Troy D. and O'Neill S. v. Mickens, Civil Action No.: 1:10-cv-02902-JEI-AMD (D. N.J., Dec. 14, 2011), available at <http://www.jlc.org/legal-docket/td-and-os-v-mickens-et-al> (click on "Second Amended Complaint").

Why are Children Held in Solitary Confinement and Isolation?

Department of Justice data suggest that, on any given day, more than 70,000 young people are held in state or federal juvenile detention facilities across the United States⁴² and that the use of isolation, including solitary confinement, in these facilities is widespread.⁴³ Juvenile detention facilities generally justify solitary confinement and other forms of physical and social isolation for one of four reasons:

- **DISCIPLINARY ISOLATION:** Physical and social isolation used to punish children when they break facility rules, such as those prohibiting talking back, possessing contraband, or fighting;
- **PROTECTIVE ISOLATION:** Physical and social isolation used to protect a child from other children;
- **ADMINISTRATIVE ISOLATION:** Physical and social isolation – sometimes for a short period but other times without any limit on duration – used during initial processing at a new facility, because officials do not know how else to manage a child, or when a child is deemed too disruptive to the safe or orderly operation of an institution, such as when they are deemed to be out of control;
- **MEDICAL ISOLATION:** Physical and social isolation to medically treat children, such as for a contagious disease or for having expressed a desire to commit suicide.⁴⁴

Physical and social isolation practices are often accompanied by a range of restrictions and deprivations – limits on everything from reading materials to visitation to exercise.⁴⁵ Children are frequently subjected to these practices repeatedly and sometimes moved between different forms of isolation time and again while detained.⁴⁶

Neither states nor the federal government regularly publish systematic data showing the number of young people subjected to solitary confinement or other isolation practices while held in juvenile detention facilities, and almost no detention facilities make this data available to the public. The available data, however, suggest that children in the juvenile justice system are routinely subject to solitary confinement and other forms of isolation (and show why greater transparency and data-reporting is so desperately needed):

- Department of Justice estimates, based on survey data from 2003, establish that one-third of youth in custody (35 percent and close to 35,000 young people between the ages of 10 and 20) at that time had been held in isolation with no contact with other residents. The vast majority of those young people (87 percent) were held in isolation for longer than 2 hours and more than half (55 percent) were held in solitary confinement for longer than 24 hours. This amounts to more than 17,000 of the approximately 100,000 young people in confinement having been subjected to solitary confinement.⁴⁷
- Data gathered in 2012 by the Performance Based Standards Initiative of the Council of Juvenile Corrections Administrators (from a group of 162 voluntarily participating juvenile detention facilities in 29 states) suggest that, in these facilities (representing fewer than 10 percent of juvenile facilities nationwide), the average duration of isolation was just over 14 hours. The group also reports that the number of youth who reported being held in solitary confinement for longer than 11 days and between 6 and 10 days fell between 2010 and 2012 (though the number of children held in solitary confinement for between 1 and 5 days increased).⁴⁸
- Recent state-level data on the use of solitary confinement and isolation in juvenile detention facilities in California,⁴⁹ Ohio,⁵⁰ and Texas⁵¹ suggest that children spend tens of thousands of hours locked up alone in the United States each year.

How are Solitary Confinement and Other Isolation Practices Currently Regulated?

National standards and policy at the state and federal levels address the use of isolation on children and recommend restrictions on its use.

NATIONAL STANDARDS – Every set of national standards governing age- and developmentally-appropriate practices to manage children in rehabilitative or correctional settings strictly regulate and limit all forms of isolation. The Department of Justice Standards for the Administration of Juvenile Justice limit isolation to a maximum period of 24 hours.⁵² Another leading set of national standards limits isolation to 72 hours or less,⁵³ and yet another recommends that isolation be kept to a few minutes, not hours (and, in all cases, be limited to the shortest duration necessary).⁵⁴ Standards governing the isolation of children in medical and mental health facilities and in educational settings are even more restrictive.⁵⁵

STATE LAW AND POLICY – Reports indicate that state juvenile justice agencies have implemented policy changes in recent years increasingly limiting isolation practices, with a majority of state agencies limiting isolation to a maximum of five days.⁵⁶ Six states—Alaska, Connecticut, Maine, Nevada, Oklahoma, and West Virginia—by statute have prohibited certain forms of isolation, such as solitary confinement, in juvenile detention facilities.⁵⁷

FEDERAL LAW AND POLICY – The *Juvenile Justice and Delinquency Prevention Act (JJDP)* creates financial incentives for states to treat some young people differently from adults, including by deinstitutionalizing status offenders, diverting those subject to the jurisdiction of the juvenile justice system (and certain categories of misdemeanants) from adult facilities, ensuring sight and sound separation between youth and adults in adult facilities, and reducing disproportionate minority contact with the juvenile justice system.⁵⁸ However, no provision of this law – or any other federal law – *prohibits* solitary confinement or isolation of children in juvenile detention facilities. Fortunately, recent comprehensive national regulations implementing the Prison Rape Elimination Act include provisions regulating isolation in juvenile facilities.⁵⁹ The regulations require that any young person separated or isolated as a disciplinary sanction or protective measure must receive daily large-muscle exercise; access to legally-mandated educational programming or special education services; daily visits from a medical or mental health care clinician; and, to the extent possible, access to other programs and work opportunities.⁶⁰ State juvenile facilities had until August 2013 to certify compliance with the regulations or potentially lose certain federal funding and there is not yet clear evidence that state juvenile justice facilities are adequately limiting isolation as required.⁶¹ And while DOJ investigations of state juvenile facilities have repeatedly found patterns and practices of excessive isolation and consistently declared them to be unconstitutional,⁶² there is still no ban on the solitary confinement of children in the custody of the federal government.⁶³

U.S. and Human Rights Laws Provide Specific Protections for Children

The U.S. Supreme Court has repeatedly emphasized that young people should be afforded heightened constitutional protections in the context of crime and punishment. The fact that children are particularly vulnerable and deserving of different treatment than adults is also reflected in human rights laws, which afford special measures of protection to children who come into conflict with the law.

U.S. Constitutional Law

The U.S. Constitution protects persons deprived of their liberty, both before and after conviction. It also provides extra protections for children charged with crimes. In a string of recent cases, the Supreme Court has ruled that the Constitution's protections apply differently to children who come into conflict with the law because *kids are different* from adults. In cases involving the juvenile death penalty,⁶⁴ juvenile life without parole,⁶⁵ and custodial interrogations,⁶⁶ the Court held that punishing or questioning children without acknowledging their age, developmental differences, or individual characteristics is unconstitutional.

The Fifth- and Fourteenth-Amendment protections against deprivation of liberty without due process of law establish the contours of the protections generally applicable to conditions of confinement for children.⁶⁷ Children in confinement have a "liberty interest in safety and freedom from [unreasonable] bodily restraint."⁶⁸ Conditions of confinement are unreasonable when they are "a substantial departure from accepted professional judgment, practice or standards."⁶⁹ The Supreme Court has also held that government conduct violates substantive due process when it "shocks the conscience."⁷⁰ As with evaluation of the most extreme sentences, efforts to determine when extreme isolation practices breach professional standards and shock the conscience must take into account the developmental differences and individual characteristics of children.

Additionally, over the years, a small number of federal courts have ruled that solitary confinement and isolation practices used in juvenile detention facilities are unconstitutional.⁷¹ Few courts have considered the issue recently.⁷² However, a number of federal district courts have recently found that the solitary confinement of adults with serious mental health problems violates the Eighth Amendment because such persons are more likely than others to have great difficulty adjusting to and tolerating time in solitary confinement, and because solitary confinement can even make the symptoms of mental health problems worse.⁷³ Similar to persons with mental disabilities, and because they are still growing and developing, children are especially vulnerable to the negative consequences of solitary confinement and other harmful isolation practices.

Solitary confinement is extreme—well outside of the range of acceptable best practices for caring for and managing children—and it carries a high risk of physical, developmental, and

psychological harm, and even death. Laws and practices that subject children to this inherently cruel and punitive treatment shock the conscience and may violate the Constitution.

Human Rights Law and Practice

U.S. courts, including the Supreme Court, have repeatedly relied on international law and practice on children's rights to affirm their reasoning that certain domestic practices violate the Constitution.⁷⁴ International human rights law, which identifies anyone below the age of 18 years as a child, recognizes that "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth."⁷⁵ The International Covenant on Civil and Political Rights (ICCPR), a treaty ratified by the United States, acknowledges the need for special treatment of children in the criminal justice system and emphasizes the importance of their rehabilitation.⁷⁶ The Convention on the Rights of the Child (CRC), a treaty signed by the United States, also addresses the particular rights and needs of children who come into conflict with the law.⁷⁷

A number of international instruments and human rights organizations have declared that the solitary confinement of children violates human rights laws and standards prohibiting cruel, inhuman or degrading treatment and called for the practice to be banned, including: the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines),⁷⁸ the Committee on the Rights of the Child,⁷⁹ the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the Beijing Rules),⁸⁰ and the Inter-American Commission on Human Rights.⁸¹ Based on the harmful physical and psychological effects of solitary confinement and the particular vulnerability of children, the Office of the U.N. Special Rapporteur on Torture has repeatedly called for the abolition of solitary confinement of persons under age 18.⁸²

The Need to Ban the Solitary Confinement of Children

Solitary confinement and isolation are not safe for children. There are a range of alternatives to manage and care for young people safely – without resorting to harmful physical and social isolation practices. There is broad consensus that the most effective and developmentally appropriate techniques for managing youth and promoting their healthy growth and development while they are detained require abolishing solitary confinement, strictly limiting and regulating the use of other forms of isolation, and emphasizing positive reinforcement over punishment.⁸³

Best practices recognize that it is acceptable to separate individual youth from the general population to accomplish a limited range of legitimate objectives. Youth can be separated from the general population to interrupt their current acting-out behavior; to discipline them; to keep them safe; to manage them; and to medically treat them. But separation policies and practices must further distinguish between practices which do not involve significant levels of

physical and social isolation and those which do. Below we suggest the steps necessary to improve both policy and practice:

- **Prohibit Solitary Confinement and Strictly Limit Any Other Forms of Isolation of Children**

Solitary confinement of children under 18 should be banned. This practice can be ended by state legislators, local officials, and juvenile facility administrators. Other, shorter-term isolation practices should be strictly limited and regulated because of their harmful and traumatic effect on children and because they are often accompanied by other serious deprivations (like denial of education). Children should never be subjected to any practice that involves significant levels or durations of physical or social isolation. Isolation should only be used as an emergency measure and for as short a duration as necessary. Separation practices to protect, manage, or discipline youth should be used sparingly and should never rise to the level of solitary confinement.

- **Require Public Reporting of Solitary Confinement Practices in Juvenile Detention Centers**

Governments rarely systematically collect data on the use of solitary confinement or other isolation on young people in juvenile detention facilities—or make public what is available. Reforms to solitary confinement and isolation practices must be accompanied by monitoring of isolation practices, recording of data, and public reporting about policies and practices as well as data about their use. Such transparency is necessary to give public and elected officials, and the general public, the information required to meaningfully engage in debate and appropriate oversight.

Conclusion

Solitary confinement and isolation of children in juvenile facilities is psychologically, developmentally, and physically damaging and can result in long-term problems and even suicide. Laws, policies, and practices must be reformed to ensure that more effective, safer alternatives are utilized with children in the juvenile system, and that our priority is their proper protection and rehabilitation.

Endnotes

¹ HUMAN RIGHTS WATCH & THE AMERICAN CIVIL LIBERTIES UNION, GROWING UP LOCKED DOWN: YOUTH IN SOLITARY CONFINEMENT IN JAILS AND PRISONS ACROSS THE UNITED STATES (2012), *available at* <http://www.aclu.org/growinguplockeddown>. This is also the definition used by the United Nations Special Rapporteur on Torture. Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Interim Rep. of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, ¶ 26, U.N. Doc. A/66/268 (Aug. 5, 2011) (by Juan Mendez), *available at* <http://solitaryconfinement.org/uploads/SpecRapTortureAug2011.pdf>. Although isolation practices in many facilities do not rise to the level of solitary confinement, because the conditions and effects of various segregation practices are substantially the same, the ACLU uses a single term – solitary confinement – based on the level of social isolation and environmental deprivation to describe the most extreme forms of physical and social isolation.

² Bridget Clerkin, *Trenton-based corrections union pushes for new image of solitary confinement*, NJ.COM (Aug. 19, 2013, 7:15 AM), http://www.nj.com/mercer/index.ssf/2013/08/trenton_pba_union_pushes_for_new_image_of_solitary_confinement.html; Keila Parks, “Reflection Cottages”: The Latest Spa Getaway or Concrete Solitary Confinement for Kids?, ACLU BLOG OF RIGHTS (Apr. 29, 2013), <http://www.aclu.org/blog/prisoners-rights-criminal-law-reform/reflection-cottages-latest-spa-getaway-or-concrete>.

³ Letter from Robert L. Listenbee, Administrator, US Department of Justice, to Jesselyn McCurdy, Senior Legislative Counsel, American Civil Liberties Union 1 (Jul. 5, 2013), *available at* https://www.aclu.org/sites/default/files/assets/doj_ojdp_response_on_jj_solitary.pdf.

⁴ ATTY’ GEN.’S NAT’L TASK FORCE ON CHILDREN EXPOSED TO VIOLENCE, REP. OF THE ATTY’ GEN.’S NAT’L TASK FORCE ON CHILDREN EXPOSED TO VIOLENCE, DEFENDING CHILDHOOD: PROTECT, HEAL, THRIVE 178 (2012), *available at* <http://www.justice.gov/defendingchildhood/cev-rpt-full.pdf>; *see also* Letter from Robert L. Listenbee, *supra* note 4, at 3.

⁵ Letter from Robert L. Listenbee, *supra* note 4, at 3.

⁶ ELIZABETH S. SCOTT & LAURENCE STEINBERG, RETHINKING JUVENILE JUSTICE 31 (2008).

⁷ Sedra Spano, *Stages of Adolescent Development*, ACT FOR YOUTH UPSTATE CENTER FOR EXCELLENCE (May 2004), http://www.actforyouth.net/resources/rf/rf_stages_0504.pdf; *Adolescent Development*, NAT’L INSTS. OF HEALTH, <http://www.nlm.nih.gov/medlineplus/ency/article/002003.htm> (last visited Aug. 26, 2013).

⁸ 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).

⁹ *Id.*; Jay N. Giedd, *Structural Magnetic Resonance Imaging of the Adolescent Brain*, 1021 ANNALS N.Y. ACAD. SCI. 83 (2004), *available at* <http://intramural.nimh.nih.gov/research/pubs/giedd05.pdf>.

¹⁰ Jay N. Giedd, *Structural Magnetic Resonance Imaging of the Adolescent Brain*, *supra* note 9, at 1021.

¹¹ *Id.*

¹² 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).

¹³ Stuart Grassian, *Psychopathological Effects of Solitary Confinement*, 140 AM. J. OF PSYCHIATRY 1450, 1452 (1983).

¹⁴ *Id.*; Craig Haney, *Mental Health Issues in Long-Term Solitary and "Supermax" Confinement*, 49 CRIME & DELINQ. 124, 130, 134 (2003); *see generally* Richard Korn, *The Effects of Confinement in the High Security Unit at Lexington*, 15 Soc. JUST. 8 (1988).

¹⁵ Grassian, *supra* note 13, at 1452-53; Haney, *supra* note 14, at 130, 133; Holly A. Miller, *Reexamining Psychological Distress in the Current Conditions of Segregation*, 1 J. OF CORRECTIONAL HEALTHCARE 39, 48 (1994). *See generally* Stanley L. Brodsky & Forrest R. Scogin, *Inmates in Protective Custody: First Data on Emotional Effects*, 1 FORENSIC REP. 267 (1988).

¹⁶ Grassian, *supra* note 13, at 1453; Holly A. Miller & G. Young, *Prison Segregation: Administrative Detention Remedy of Mental Health Problem?*, 7 CRIM. BEHAV. AND MENTAL HEALTH 85, 91 (1997); Haney, *supra* note 14, at 130, 134; *see generally* HANS TOCH, MOSAIC OF DESPAIR: HUMAN BREAKDOWN IN PRISON (Am. Psychol. Ass'n., 1992).

¹⁷ Grassian, *supra* note 13, at 1453.

¹⁸ *Id.*; Miller & Young, *supra* note 16, at 92.

¹⁹ *Id.*; Haney, *supra* note 14, at 131.

²⁰ Haney, *supra* note 14, at 130; *see generally* Korn, *supra*, note 14.

²¹ Haney, *supra* note 14, at 131.

²² Miller & Young, *supra* note 16, at 91; *see generally* Korn, *supra* note 14.

²³ *Id.*

²⁴ Haney, *supra* note 14, at 134; *see generally* Brodsky & Scogin, *supra* note 15.

²⁵ Haney, *supra* note 14, at 133.

²⁶ *Id.*

²⁷ Haney, *supra* note 14, at 137; *see generally* Brodsky & Scogin, *supra* note 15.

²⁸ Haney, *supra* note 14, at 133.

²⁹ *Id.*

³⁰ Grassian, *supra* note 13, at 1453; Eric Lanes, *The Association of Administrative Segregation Placement and Other Risk Factors with the Self-Injury-Free Time of Male Prisoners*, 48 J. OF OFFENDER REHABILITATION 529, 539-

40 (2009).

³¹ Paul Gendreau, N.L. Freedman, & G.J.S. Wilde, *Changes in EEG Alpha Frequency and Evoked Response Latency During Solitary Confinement*, 79 J. OF ABNORMAL PSYCH. 54, 57-58 (1972).

³² For detailed narrative descriptions of the experiences of youth who were subjected to solitary confinement, see HUMAN RIGHTS WATCH & THE AMERICAN CIVIL LIBERTIES UNION, *GROWING UP LOCKED DOWN*, *supra* note 1.

³³ The Court has described how youth have a “capacity for change,” and that they are therefore “in need of and receptive to rehabilitation.” *Graham v. Florida*, 130 S.Ct. 2011, 2017 (2010).

³⁴ Laurence Steinberg et al., *Age Differences in Future Orientation and Delay Discounting*, 80 CHILD. DEV. 28 (2009), *available at* <http://www.wispsd.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).

³⁵ AM. ACAD. OF CHILD & ADOLESCENT PSYCHIATRY, *POLICY STATEMENTS: SOLITARY CONFINEMENT OF JUVENILE OFFENDERS* (Apr. 2012), *available at* http://www.aacap.org/cs/root/policy_statements/solitary_confinement_of_juvenile_offenders.

³⁶ LINDSAY M. HAYES, DEP’T OF JUSTICE OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, *JUVENILE SUICIDE IN CONFINEMENT: A NATIONAL SURVEY* (2009), *available at* <https://www.ncjrs.gov/pdffiles1/ojjdp/213691.pdf>; Seena Fazel, Julia Cartwright, et al., *Suicide in Prisoners: A systematic review of Risk Factors*, J. CLIN. PSYCHIATRY 69 (2008); CHRISTOPHER MUOLA, U.S. DEP’T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, *SUICIDE AND HOMICIDE IN STATE PRISONS AND LOCAL JAILS* (2005), *available at* <http://bjs.ojp.usdoj.gov/content/pub/pdf/shsplj.pdf>. Adults in solitary confinement also account for a disproportionate number of suicides among people in prisons. In California, for example, although less than 10 percent of the state’s prison population was held in isolation units in 2004, those units accounted for 73 percent of all suicides. Expert Report of Professor Craig Haney at 45-46, n.119, *Coleman v. Schwarzenegger*, *Plata v. Schwarzenegger*, No. 90-0520 LKK-JFM P, No. C01-1351 TEH (E.D.Cal, N.D. Cal. filed Aug. 15, 2008); for information on adult suicide rates in jails and prisons, see generally MARGARET NOONAN & E. ANN CARSON, U.S. DEP’T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, *PRISON AND JAIL DEATHS IN CUSTODY, 2000-2009 - STATISTICAL TABLES* (2011), *available at* <http://bjs.ojp.usdoj.gov/content/pub/pdf/pjdc0009st.pdf> (providing detailed statistics on suicide rates nationally in adult jails and prisons).

³⁷ DEP’T OF JUSTICE OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, *JUVENILE SUICIDE IN CONFINEMENT: A NATIONAL SURVEY*, *supra* note 36. The study suggests that, “When placed in a cold and empty room by themselves, suicidal youth have little to focus on – except all of their reasons for being depressed and the various ways that they can attempt to kill themselves.” *Id.* at 42, *citing* LISA M. BOESKY, *JUVENILE OFFENDERS WITH MENTAL HEALTH DISORDERS: WHO ARE THEY AND WHAT DO WE DO WITH THEM?* 210 (2002).

³⁸ The US Ctrs. for Disease Control and the US Dep’t of Health and Human Services both recommend that youth between the ages of six and seventeen engage in one hour or more of physical activity each day. Ctrs. for

Disease Control and Prevention, *How Much Physical Activity do Children Need?*, <http://www.cdc.gov/physicalactivity/everyone/guidelines/children.html>; Dep't of Health and Human Services, *Physical Activity Guidelines for Americans*, <http://www.health.gov/paguidelines/factsheetprof.aspx>.

³⁹ *Reassessing Solitary Confinement: The Human Rights, Fiscal, and Public safety Consequences: Hearing Before the Subcomm. on the Constitution, Civil Rights, and Human Rights of the S. Comm. on the Judiciary*, 112th Cong. 4 (2012), available at <http://solitarywatch.com/wp-content/uploads/2012/06/youth-law-center2.pdf>. [statement of Youth Law Center].

⁴⁰ American Academy of Pediatrics, Policy Statement: Health Care for Youth in the Juvenile Justice System, 128 PEDIATRICS 1219, 1223-24 (2011), available at <http://pediatrics.aappublications.org/content/128/6/1219.full.pdf> (reviewing the literature on the prevalence of mental health problems among incarcerated youth). OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, NATURE AND RISK OF VICTIMIZATION: FINDINGS FROM THE SURVEY OF YOUTH IN RESIDENTIAL PLACEMENT 4 (June 2013), available at <http://www.ojjdp.gov/pubs/240703.pdf> (finding that 56 percent of youth in custody experience one or more types of victimization *while in custody*, including sexual assault, theft, robbery and physical assault).

⁴¹ NATIONAL COUNCIL ON DISABILITY, ADDRESSING THE NEEDS OF YOUTH WITH DISABILITIES IN THE JUVENILE JUSTICE SYSTEM: THE CURRENT STATUS OF EVIDENCE-BASED RESEARCH 23-21 (May 2003), available at http://www.ncd.gov/rawmedia_repository/381fe89a_6565_446b_ba18_bad024a59476?document.pdf.

⁴² Press Release, Annie E. Casey Foundation, Youth Incarceration Sees Dramatic Drop in the United States (Feb. 27, 2013), available at <http://www.aecf.org/Newsroom/NewsReleases/HTML/2013/YouthIncarcerationDrops.aspx>. This rate has declined in recent years. Youth Incarceration in the United States, ANNIE E. CASEY FOUNDATION (Feb. 27, 2013), available at <http://www.aecf.org/~media/Pubs/Initiatives/KIDS%20COUNT/R/ReducingYouthIncarcerationInfo/YouthIncarcerationInfographicPrint13.pdf>. Notably, Department of Justice data also suggest that close to 100,000 children are held in *adult* jails and prisons each year. Human Rights Watch and the American Civil Liberties Union recently estimated that in each of the last 5 years, between 93,000 and 137,000 young people under 18 were held in adult jails and that, in 2011, more than 2,200 young people under age 18 were held in adult prisons. HUMAN RIGHTS WATCH & THE AMERICAN CIVIL LIBERTIES UNION, GROWING UP LOCKED DOWN, *supra* note 1.

⁴³ DEP'T OF JUSTICE OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, CONDITIONS OF CONFINEMENT: FINDINGS FROM THE SURVEY OF YOUTH IN RESIDENTIAL PLACEMENT (May 2010), available at <https://www.ncjrs.gov/pdffiles1/ojjdp/227729.pdf>. The study, based on a nationally-representative sample of more than 7,000 young people ages 10-20, finds that in 2003 more than one-third (35 percent) of youth in juvenile facilities reported being isolated as a punishment and that more than half of those children were held for longer than 24 hours –amounting to more than 17,000 young people held in solitary confinement. *Id.* at 9. In response to a 2010 Department of Justice census (the most recent year for which there is data) of close to 4,000 juvenile facilities, more than 850 facilities indicated that they locked young people in their room in certain circumstances and more than 430 facilities reported locking young people alone for more than 4 hours at a time in certain circumstances. JUVENILE RESIDENTIAL FACILITY CENSUS CODEBOOK, US DEP'T OF JUSTICE, INTER-UNIVERSITY CONSORTIUM FOR POLITICAL AND SOCIAL RESEARCH 42, 156-57 (2010), available at http://www.icpsr.umich.edu/cgi-bin/file?comp=none&study=34449&ds=1&file_id=1097802.

⁴⁴ See, e.g., *Reassessing Solitary Confinement: The Human Rights, Fiscal, and Public safety Consequences: Hearing Before the Subcomm. on the Constitution, Civil Rights, and Human Rights of the S. Comm. on the*

Judiciary, 112th Cong. 4 (2012) (statement of Youth Law Center), *supra* note 39.

⁴⁵ *Id.*; *Reassessing Solitary Confinement: The Human Rights, Fiscal, and Public Safety Consequences: Hearing Before the Subcomm. on the Constitution, Civil Rights, and Human Rights of the S. Comm. on the Judiciary*, 112th Cong. (2012) (statement of Center for Children's Law and Policy), *available at* <http://www.cclp.org/documents/Conditions/Testimony%20of%20the%20Center%20for%20Children's%20Law%20and%20Policy%20-%20Reassessing%20Solitary%20Confinement.pdf>. Department of Justice research found that half of young people held in isolation for 2 hours or longer reported that they had not spoken with a counselor or mental health professional while incarcerated (including while in isolation). DEP'T OF JUSTICE OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, *CONDITIONS OF CONFINEMENT: FINDINGS FROM THE SURVEY OF YOUTH IN RESIDENTIAL PLACEMENT*, *supra* note 42, at 19.

⁴⁶ Sandra Simkins, Marty Beyer, & Lisa M. Geis, *The Harmful Use of Isolation in Juvenile Facilities: The Need for Post-Disposition Representation*, 38 WASH. U. J.L. & POL'Y 241, 242 (2012), *available at* <http://digitalcommons.law.wustl.edu/cgi/viewcontent.cgi?article=1019&context=wujlp>.

⁴⁷ DEP'T OF JUSTICE OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, *CONDITIONS OF CONFINEMENT: FINDINGS FROM THE SURVEY OF YOUTH IN RESIDENTIAL PLACEMENT*, *supra* note 42, at 19.

⁴⁸ PERFORMANCE-BASED STANDARDS, *REDUCING ISOLATION AND ROOM CONFINEMENT 4-6* (Sept. 2012), *available at* http://pbstandards.org/uploads/documents/PbS_Reducing_Isolation_Room_Confinement_201209.pdf; PERFORMANCE-BASED STANDARDS, *SAFETY AND ACCOUNTABILITY FOR JUVENILE CORRECTIONS AND DETENTION FACILITIES 10* (2012), *available at* http://pbstandards.org/uploads/documents/PbS_Li_MarketingPacket.pdf.

⁴⁹ In California, many of the revelations have been brought about through litigation in *Farrell v. Cate*. In 2011, the California Office of Audits and Court Compliance issued a report on the Ventura Youth Correctional Facility in response to the Office of the Special Master's concerns related to the *Farrell* case. The report found that from January 1 through January 31, 2011, 184 juveniles were in restricted programs. They reported receiving between thirty minutes and three hours of out-of-room time, with one hour a day being the most commonly reported. From February 1 through February 28, 2011, ninety-three juveniles were placed in a restricted program, with sixteen of them there for three or more days. The average number of out-of-room minutes for these wards was seventy-four, well below the 180 that was required. MICHAEL K. BRADY, OFFICE OF AUDITS AND COURT COMPLIANCE, *REVIEW OF THE OFFICE OF SPECIAL MASTER'S IDENTIFIED CONCERNS: VENTURA YOUTH CORRECTIONAL FACILITY 2*, 5-6 (Mar. 25, 2011), *available at* <https://s3.amazonaws.com/s3.documentcloud.org/documents/203430/djj-audit.pdf>.

⁵⁰ In Ohio, many of the revelations have been brought about through litigation in *S.H. v. Stickrath* (now *S.H. v. Reed*). In 2008, an expert in the case issued a report with data regarding multiple facilities, finding that: at Scioto Juvenile Correctional Facility, from May 1 through June 30, 2007, there were 267 "seclusion intervention events" that added up to 3,485 hours; at Indian River Juvenile Correctional Facility, from May to July of 2007, there were 143 youth in seclusion, each for at least seventy-two hours, for a total of 17,271 hours; at Mohican, which is now closed, four juveniles were in seclusion for more than seventy-two hours, for a total of 383 hours from May to July 2007; at Circleville, "[o]ver a recent, three-month period, only five events resulted in seclusion for over 36 hours and the incident reports show that serious misbehavior precipitated the event." On the system as a whole, Cohen reported that "[f]or DYS as a whole however, the unwarranted and excessive use of force along with questionable isolation/seclusion practices remains of serious concern." FRED COHEN, *FINAL FACT-FINDING REPORT: S.H. v. STICKRATH* 23-24, 29, 30, 38, 40 (Jan. 2008), *available at* <http://www.dys.ohio.gov/DNN/LinkClick.aspx?fileticket=ldovnn7P96A%3D&tabid=81&mid=394>. A settlement in the case was approved on May 21, 2008, which has led to annual reports on compliance with the stipulation. The

most recent report was issued in 2012, which noted the number of “pre-hearing seclusion hours” in each facility: At Indian River, there was an average of 2,500 hours per month; at Circleville, there were 20,000 hours from July through September of 2011 and 6,500 for October through December of the same year; at Scioto, there were 2,300 hours from June through August of 2011 and 6,000 from September through November. WILL HARRELL & TERRY SHUSTER, *S.H. V. REED 2012 ANNUAL REPORT* 3, 7, 32 (Dec. 20, 2012), *available at* http://www.gbfirm.com/litigation/documents/28_S.H.v.Reed2012AnnualReport.pdf.

⁵¹ In Texas, the revelations have come as a result of state records requests. According to the Texas Criminal Justice Coalition, in 2011, juveniles in Texas were secluded more than 37,000 times. These estimates are based on facility registry data provided by the Texas Juvenile Justice Department. While the underlying registry data did not specify the length of seclusion, other data provided suggest that thousands of seclusion events exceed twenty-four hours. BENET MAGNUSON, TEXAS CRIMINAL JUSTICE COALITION, *HEAL THE INVISIBLE WOUNDS OF TRAUMATIZED YOUTH IN THE JUVENILE SYSTEM* 2 & nn.5-6 (2012), *available at* http://texascjc.org/sites/default/files/publications/Healing%20Trauma%20and%20Reducing%20Seclusion%20for%20Youth%202012%20Fact%20Sheet_0.pdf. See also Cat McCulloch, *Youth Solitary Confinement in Texas: A Two-Step in the Right Direction*, ACLU BLOG OF RIGHTS (Apr. 23, 2013), <http://www.aclu.org/blog/prisoners-rights-criminal-law-reform/youth-solitary-confinement-texas-two-step-right-direction>.

⁵² DEP’T JUSTICE OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, *STANDARDS FOR THE ADMINISTRATION OF JUVENILE JUSTICE*, Standard 4.52 (1980), *available at* <http://catalog.hathitrust.org/Record/000127687> (“juveniles should be placed in room confinement only when no less restrictive measure is sufficient to protect the safety of the facility and the persons residing or employed therein ... Room confinement of more than twenty-four hours should never be imposed.”)

⁵³ JUVENILE DET. ALT. INITIATIVE, JUVENILE DETENTION ALTERNATIVES INITIATIVE (JDAI) FACILITY SITE ASSESSMENT INSTRUMENT, Standard VII(E) (2006), *available at* <http://www.cclp.org/documents/Conditions/JDAI%20Standards.pdf>.

⁵⁴ PBS LEARNING INST., *PBS GOALS, STANDARDS, OUTCOME MEASURES, EXPECTED PRACTICES AND PROCESSES* 10 (2007), *available at* <http://sccounty01.co.santa-cruz.ca.us/prb/media%5CGoalsStandardsOutcome%20Measures.pdf>; PERFORMANCE-BASED STANDARDS, *REDUCING ISOLATION AND ROOM CONFINEMENT*, *supra* note 48, at 2 (“PbS standards are clear: isolating or confining a youth to his/her room should be used only to protect the youth from harming himself or others and if used, should be brief and supervised. Any time a youth is alone for 15 minutes or more is a reportable PbS event and is documented”).

⁵⁵ 42 C.F.R. 482.13(e) (2012) (implementing 42 U.S.C. 1395x § 1861(e)(9)(A)), *available at* <http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=5ba18485f8033f30fb496dba3e87c626&rgn=div8&view=text&node=42:5.0.1.1.1.2.4.3&idno=42> (Prohibiting isolation used for coercion, discipline, convenience or retaliation and allowing involuntary isolation only (1) when less restrictive interventions have been determined to be ineffective, (2) to ensure the immediate physical safety of the patient, staff member, or others, and (3) must be discontinued at the earliest possible time. The regulations also limit involuntary isolation to a total maximum of 24 hours and limit individual instances of involuntary isolation to 2 hours for children and adolescents age 9 to 17); NAT’L COMM. ON CORR. HEALTH CARE, *STANDARDS FOR HEALTH SERVICES IN JUVENILE DETENTION AND CONFINEMENT FACILITIES*, Standard Y-E-09 (2011); NAT’L COMM. ON CORR. HEALTH CARE, *STANDARDS FOR HEALTH SERVICES IN JUVENILE DETENTION AND CONFINEMENT FACILITIES*, Standard Y-39 (1995), *available at* <http://www.jdcap.org/SiteCollectionDocuments/Health%20Standards%20for%20Detention.pdf> (Requiring that segregation policies should state that isolation is to be reserved for incidents in which the youth’s behavior has escalated beyond the staff’s ability to control the youth by counseling or disciplinary measures and presents a

risk of injury to the youth or others); DEP'T OF EDUCATION, RESTRAINT AND SECLUSION: RESOURCE DOCUMENT 11-23 (2012), *available at* <http://www2.ed.gov/policy/seclusion/restraints-and-seclusion-resources.pdf> (Stating that isolation should not be used as a punishment or convenience and is appropriate only in situations where a child's behavior poses an imminent danger of serious physical harm to self or others, where other interventions are ineffective, and should be discontinued as soon as the imminent danger of harm has dissipated).

⁵⁶ PERFORMANCE-BASED STANDARDS, REDUCING ISOLATION AND ROOM CONFINEMENT, *supra* note 48. The report states that "very few state agency policies permit extended isolation time for youths and the majority limit time to as little as three hours and a maximum of up to five days." *Id.* at 4.

⁵⁷ These states at a minimum either ban punitive solitary confinement or heavily restrict its use. *See* Alaska Delinquency Rule 13 (Oct. 15, 2012) ("A juvenile may not be confined in solitary confinement for punitive reasons"); Conn. Gen. Stat. Ann. § 46b-133 (2012) ("no child shall at any time be held in solitary confinement"); Me. Rev. Stat. tit. 34-A § 3032 (5) (2006) (including "segregation" in the list of punishments for adults, but not in the list for children); Nev. Rev. Stat. § 62B (2013) ("A child who is detained in a local or regional facility for the detention of children may be subjected to corrective room restriction only if all other less-restrictive options have been exhausted and only [for listed purposes]."); Okla. Admin. Code § 377:35-11-4 (2013) ("Solitary confinement is a serious and extreme measure to be imposed only in emergency situations."); W. Va. Code § 49-5-16a (1998) ("A juvenile may not be punished by . . . imposition of solitary confinement and except for sleeping hours, a juvenile in a state facility may not be locked alone in a room unless that juvenile is not amenable to reasonable direction and control.").

Three other states have placed other limits on solitary confinement, either in adult or juvenile facilities. *See* Consent Decree, *C.B., et al. v. Walnut Grove Corr. Facility*, No. 3:10-cv-663 (S.D. Miss. 2012) (prohibiting solitary confinement of children); Settlement Agreement, *Raistlen Katka v. Montana State Prison*, No. BDV 2009-1163 (Apr. 12, 2012), *available at* <http://www.aclumontana.org/images/stories/documents/litigation/katkasettlement.pdf> (limiting the use of isolation and requiring special permission); Mo. Sup. Ct. Rule 129.04 app. A § 9.5-9.6 (2009) (placing limits on "room restriction" exceeding twenty-four hours).

California, Texas, and New Hampshire also are considering legislation to limit or ban the solitary confinement of children, and Texas is conducting a full review of the practice. *See* 2013 Tex. Sess. Law Serv. Ch. 1184 (S.B. 1003) (West); Cal. S.B. 61 (2013); N.H. H.B. 480-FN (2013). *See also* Appendix 1.

⁵⁸ Coalition for Juvenile Justice, The JJDP: Federal Juvenile Justice and Delinquency Prevention Act, 2007, *available at* www.juvjustice.org/media/.../CJJ%20Hill%20Packet--Handouts.doc.

⁵⁹ The regulations include detailed requirements for the prevention, detection, and investigation of sexual abuse in both adult and juvenile correctional facilities. *See* Press Release, Department of Justice, Justice Department Releases Final Rule to Prevent, Detect and Respond to Prison Rape (May 17, 2012), *available at* <http://www.justice.gov/opa/pr/2012/May/12-ag-635.html> (summary of regulations).

⁶⁰ Compare 28 C.F.R. § 115.342(b) (2012) with 28 C.F.R. § 115.378(b) (2012), *available at* http://www.ojp.usdoj.gov/programs/pdfs/prea_final_rule.pdf.

⁶¹ 42 U.S.C. 15607 (c)(2) (2003). States must also audit state facilities every three years. *See* 28 C.F.R. §§ 115.93, 115.193, 115.293, 115.393, 115.401, 115.402, 115.403, 115.404, 115.405, 115.501 (2012), *available at* http://www.ojp.usdoj.gov/programs/pdfs/prea_final_rule.pdf. States must also audit state facilities every three years. *See* 28 C.F.R. §§ 115.93, 115.193, 115.293, 115.393, 115.401, 115.402, 115.403, 115.404, 115.405, 115.501 (2012), *available at* http://www.ojp.usdoj.gov/programs/pdfs/prea_final_rule.pdf. *See also* 28 C.F.R. § 115.89,

115.189, 115.289, 115.389 [2012], *available at* http://www.ojp.usdoj.gov/programs/pdfs/prea_final_rule.pdf.

⁶² Letter from Robert L. Listenbee, *supra* note 4, at 3; Letter from Thomas E. Perez, Assistant Att’y Gen., to Hon. Mitch Daniels, Governor, State of Indiana, Investigation of the Pendleton Juvenile Correctional Facility 8 (Aug. 22, 2012), *available at* http://www.justice.gov/crt/about/spl/documents/pendleton_findings_8-22-12.pdf. (Finding excessively long periods of isolation of suicidal youth. Stating that, “the use of isolation often not only escalates the youth’s sense of alienation and despair, but also further removes youth from proper staff observation. . . . Segregating suicidal youth in either of these locations is punitive, anti-therapeutic, and likely to aggravate the youth’s desperate mental state.”); Letter from Thomas E. Perez, Assistant Att’y Gen., to Hon. Chairman Moore, Leflore County Board of Supervisors, Investigation of the Leflore County Juvenile Detention Center 2, 7 (Mar. 31, 2011), *available at* http://www.justice.gov/crt/about/spl/documents/LeFloreJDC_findlet_03-31-11.pdf. (Finding that isolation is used excessively for punishment and control, and the facility has unfettered discretion to impose such punishment without process.); Letter from Thomas E. Perez, Assistant Att’y Gen., to Hon. Michael Claudet, President, Terrebonne Parish, Terrebonne Parish Juvenile Detention Center, Houma, Louisiana 12-13 (Jan. 18, 2011), *available at* http://www.justice.gov/crt/about/spl/documents/TerrebonneJDC_findlet_01-18-11.pdf. (Finding excessive use of isolation as punishment or for control – at four times the national average – and that the duration of such sanctions is far in excess of acceptable practice for such minor violations, and violates youths’ constitutional rights. Stating, “Isolation in juvenile facilities should only be used when the youth poses an imminent danger to staff or other youth, or when less severe interventions have failed.”); Letter from Thomas E. Perez, Assistant Att’y Gen., to Hon. Mitch Daniels, Governor, State of Indiana, Investigation of the Indianapolis Juvenile Correctional Facility, Indianapolis, Indiana 21-22 (Jan. 29, 2010), *available at* http://www.justice.gov/crt/about/spl/documents/Indianapolis_findlet_01-29-10.pdf. (Finding that facility subjected youth to excessively long periods of isolation without adequate process. Stating, “generally accepted juvenile justice practices dictate that [isolation] should be used only in the most extreme circumstances and only when less restrictive interventions have failed or are not practicable.”); Letter from Grace Chung Becker, Acting Assistant Att’y Gen., to Yvonne B. Burke, Chairperson, Los Angeles County Board of Supervisors, Investigation of the Los Angeles County Probation Camps 42-45 (Oct. 31, 2008), *available at* http://www.justice.gov/crt/about/spl/documents/lacamps_findings_10-31-08.pdf. (Finding inadequate supervision of youth isolated in seclusion or on suicide watch); Letter from Wan J. Kim, Assistant Att’y Gen., to Marion County Executive Committee Members and County Council President, Marion County Juvenile Detention Center, Indianapolis, Indiana 10-12 (Aug. 6, 2007), *available at* http://www.justice.gov/crt/about/spl/documents/marion_juve_ind_findlet_8-6-07.pdf. (Finding that isolation practices substantially departed from generally acceptable professional standards and that use of isolation was excessive and lacked essential procedural safeguards. Stating, “Regardless of the name used to describe it, the facility excessively relies on isolation as a means of attempting to control youth behavior” and that “Based on the review of housing assignments in January and February 2007, on any given day, approximately 15 to 20 percent of the youth population was in some form of isolation.”); Letter from Bradley J. Scholzman, Acting Assistant Att’y Gen., to Hon. Linda Lingle, Governor, State of Hawaii, Investigation of the Hawaii Youth Correctional Facility, Kailua, Hawaii 17-18 (Aug. 4, 2005), *available at* http://www.justice.gov/crt/about/spl/documents/hawaii_youth_findlet_8-4-05.pdf. (Finding excessive use of disciplinary isolation without adequate process); Letter from Alexander Acosta, Assistant Atty Gen., to Hon. Jennifer Granholm, Governor, State of Michigan, CRIPA Investigation of W.J. Maxey Training School, Whitmore Lake, MI 4-5 (Apr. 19, 2004), *available at* http://www.justice.gov/crt/about/spl/documents/granholm_findinglet.pdf. (Finding excessive use of isolation for disciplinary purposes, often without process and for arbitrary reasons and durations.); Letter from Thomas E. Perez, Assistant Att’y Gen., to Janet Napolitano, Governor, State of Arizona, CRIPA Investigation of Adobe Mountain School and Black Canyon School in Phoenix, Arizona; and Catalina Mountain School in Tuscon, Arizona (Jan. 23, 2004), *available at* http://www.justice.gov/crt/about/spl/documents/ariz_findings.pdf. (Finding that

youth are kept in isolation for extended and inappropriate periods of time that fly in the face of generally accepted professional standards.).

⁶³ Ian Kysel, *Ban Solitary Confinement for Youth in the Care of the Federal Government*, THE HILL (Apr. 11, 2013), available at <http://thehill.com/blogs/congress-blog/judicial/293395-ban-solitary-confinement-for-youth-in-care-of-the-federal-government>.

⁶⁴ *Roper v. Simmons*, 453 U.S. 551 (2005).

⁶⁵ *Graham v. Florida*, 130 S.Ct. 2011 (2010); *Miller v. Alabama*, 132 S.Ct. 2455 (2012).

⁶⁶ *J.D.B. v. North Carolina*, 564 U.S. ____ (2011).

⁶⁷ *Schall v. Martin*, 467 U.S. 253, 269 (1984) (Holding that the state has a legitimate interest in detaining youth prior to delinquency proceedings but that their conditions of confinement must not amount to punishment.). Notably, some courts apply both the Substantive Due Process protections as well as the prohibition against Cruel and Unusual punishment to conditions claims of post-adjudication youth. *Morgan v. Sproat*, 432 F.Supp. 1130, 1135 (S.D.Miss. 1977).

⁶⁸ *Youngberg v. Romeo*, 457 U.S. 307, 323 (1982) (the case, while focused on the treatment of persons held in mental health facilities, has repeatedly been used to evaluate conditions of confinement for youth).

⁶⁹ *Id.*

⁷⁰ *County of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998).

⁷¹ See, e.g., *D.B. v. Tewksbury*, 545 F.Supp. 896, 905 (D.Or.1982) (ruling that “[p]lacement of younger children in isolation cells as a means of protecting them from older children” violates plaintiffs’ Due Process rights under the fourteenth amendment.”); *Inmates of Boys’ Training School v. Affleck*, 346 F.Supp. 1354 (D.C.R.I.1972); *Lollis v. N.Y. State Dep’t of Soc. Servs.*, 322 F.Supp. 473, 480-82 (S.D.N.Y.1970).

⁷² *R.G. v. Koller*, 415 F. Supp. 2d 1129, 1155-56 (D. Haw. 2006) (Concluding that, “The expert evidence before the court uniformly indicates that long-term segregation or isolation of youth is inherently punitive and is well outside the range of accepted professional practices... Defendants’ practices are, at best, an excessive, and therefore unconstitutional, response to legitimate safety needs of the institution.”); *Hughes v. Judd*, 8:12-cv-568-T-23MAP, 2013 WL 1821077 (M.D.Fl. 2013); *Troy D. and O’Neill S. v. Mickens et al.*, Civil Action No.: 1:10-cv-02902-JEI-AMD (D. N.J. 2013).

⁷³ See, e.g., *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); *Langley 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).

⁷⁴ *Graham v. Florida*, 130 S.Ct. at 2034; *Roper v. Simmons*, 543 U.S. at 575 (citing *Trop v. Dulles*, 356 U.S. 86, 102-103 (1958)). These cases start from the supposition that, whether a punishment is “cruel and unusual” is a

determination informed by “evolving standards of decency that mark the progress of a maturing society.” *Trop v. Dulles*, 356 U.S. 86, 101 (1958) [plurality opinion].

⁷⁵ United Nations Declaration on the Rights of the Child, G.A. Res. 1386 (XIV), U.N. Doc. A/4354 (Nov. 20, 1959). Similarly, The American Convention on Human Rights (“Pact of San José, Costa Rica”), Article 19, states, “Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state.” Organization of American States, American Convention on Human Rights, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123 (entered into force July 18, 1978), *reprinted in* Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 25 (1992).

⁷⁶ International Covenant on Civil and Political Rights, Arts. 10, 14(4), *opened for signature* Dec. 16, 1966, S. Exec. Rep. 102-23, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976) (ratified by U.S. June 8, 1992) (“ICCPR”). The Human Rights Committee has interpreted the ICCPR’s provisions on child offenders to apply to all persons under the age of 18. UN Human Rights Comm., 44th Sess., General Comment No. 1, U.N. Doc. HRI/GEN/1/Rev.1 at 155 (1994), *available at* <http://www1.umn.edu/humanrts/gencomm/hrcoim20.htm>. Treaties signed and ratified by the United States are the “supreme Law of the Land.” U.S. CONST. art. VI cl. 2.

⁷⁷ Convention on the Rights of the Child (CRC), *opened for signature* Nov. 20, 1989, 1577 U.N.T.S. 3 (entered into force Sept. 2, 1990) (“CRC”). The United States signed the CRC in 1995 but has not ratified.

⁷⁸ U.N. Guidelines for the Prevention of Juvenile Delinquency, G.A. Res. 45/112, Annex, 45 U.N. GAOR Supp. (No. 49A), U.N. Doc. A/45/49, at 201 (Dec. 14, 1990) (“The Riyadh Guidelines”).

⁷⁹ U.N. Comm. on the Rights of the Child, 44th Sess., General Comment No. 10, Children’s rights in juvenile justice, U.N. Doc. CRC/C/GC/10 (2007).

⁸⁰ U.N. Rules for the Protection of Juveniles Deprived of their Liberty, G.A. Res. 45/113, Annex, 45 U.N. GAOR Supp. (No. 49A), U.N. Doc. A/45/49, ¶ 67 (Dec. 14, 1990) (“The Beijing Rules”).

⁸¹ Press Release, Annex to the Press Release Issued at the Close of the 147th Session (Apr. 5, 2013), *available at* http://www.oas.org/en/iachr/media_center/PReleases/2013/023A.asp (incorporating the definition of the United Nations Special Rapporteur on Torture, Mr. Juan Mendez, into the IACHR *corpus juris*).

⁸² Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Interim Rep. of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, ¶¶ 78–85, Annex (Istanbul Statement on the Use and Effects of Solitary Confinement), U.N. Doc A/63/175 (July 28, 2008) (by Manfred Nowak), *available at* <http://www.unhcr.org/refworld/pdfid/48db99e82.pdf>; Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Interim Rep. of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, ¶ 77, U.N. Doc. A/66/268 (Aug. 5, 2011) (by Juan Mendez), *available at* <http://solitaryconfinement.org/uploads/SpecRapTortureAug2011.pdf>.

⁸³ ATT’Y GEN.’S NAT’L TASK FORCE ON CHILDREN EXPOSED TO VIOLENCE, REP. OF THE ATT’Y GEN.’S NAT’L TASK FORCE ON CHILDREN EXPOSED TO VIOLENCE, DEFENDING CHILDHOOD: PROTECT, HEAL, THRIVE 178 (2012), *available at* <http://www.justice.gov/defendingchildhood/cev-rpt-full.pdf> (“nowhere is the damaging impact of incarceration on vulnerable children more obvious than when it involves solitary confinement.”); DEP’T OF JUSTICE OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, STANDARDS FOR THE ADMINISTRATION OF JUVENILE JUSTICE, Standard 4.52, *supra* note 52 (“[i]solation is a severe penalty to impose upon a juvenile, especially since this sanction is to assist in rehabilitation as well as punish a child ... After a period of time, room confinement begins to damage

the juvenile, cause resentment toward the staff, and serves little useful purpose.”). The most up-to-date national standards are consistent on this point. *See, e.g.,* JUVENILE DET. ALT. INITIATIVE, JUVENILE DETENTION ALTERNATIVES INITIATIVE (JDAI) FACILITY SITE ASSESSMENT INSTRUMENT Standard VII(B) (2006), *available at* <http://www.cclp.org/documents/Conditions/JDAI%20Standards.pdf>.

Appendix 1: The Legal Landscape on Isolation and Solitary Confinement of Children

States Which Prohibit Solitary Confinement by Statute		
State	Status	Text
Alaska	Ban on punitive juvenile solitary confinement	"A juvenile may not be confined in solitary confinement for punitive reasons." Alaska Delinquency Rule 13 (Oct. 15, 2012).
Connecticut	Ban on juvenile solitary confinement	"Any child confined in a community correctional center or lockup shall be held in an area separate and apart from any adult detainee, except in the case of a nursing infant, and no child shall at any time be held in solitary confinement." Conn. Gen. Stat. Ann. § 46b-133 (2012).
Maine	Ban on solitary confinement at juvenile facilities	"A. Punishment at all correctional facilities, except juvenile correctional facilities, may consist of warnings, loss of privileges, restitution, monetary sanctions, labor at any lawful work, confinement to a cell, segregation or a combination of these. B. Punishment at juvenile correctional facilities and any detention facility may consist of warnings, restitution, labor at any lawful work and loss of privileges." Me. Rev. Stat. tit. 34-A § 3032 (5) (2006).
Nevada	Juvenile solitary confinement is only allowed in limited circumstances after alternatives have been exhausted and requires special approval and monitoring	"1. A child who is detained in a local or regional facility for the detention of children may be subjected to corrective room restriction only if all other less-restrictive options have been exhausted and only for the purpose of: (a) Modifying the negative behavior of the child; (b) Holding the child accountable for a violation of a rule of the facility; or (c) Ensuring the safety of the child, staff or others or ensuring the security of the facility." (A substantial amount of additional information is omitted). Nev. Rev. Stat. § 62B (2013).

Oklahoma	Ban on punitive juvenile solitary confinement	(a) Solitary confinement is the involuntary removal of a juvenile from contact with other persons by confinement in a locked room, including the juvenile's own room, except during normal sleeping hours. Solitary confinement is a serious and extreme measure to be imposed only in emergency situations. Staff shall impose solitary confinement only when a juvenile in an OJA institution: (1) is out of control; (2) is a serious and immediate physical danger to himself or others; and (3) has failed to respond to less restrictive methods of control. (b) Solitary confinement shall not be used for punishment at any OJA institution. No juvenile shall remain in solitary confinement in excess of three hours. As soon as the juvenile is sufficiently under control so as to no longer pose a serious and immediate danger to himself or others, the juvenile shall be released from solitary confinement. The use of consecutive periods of solitary confinement to evade the spirit and purpose of this Section shall be prohibited. All rooms used for solitary confinement shall have at least 80 square feet of floor space, and shall have adequate lighting, heating/cooling, and ventilation for the comfort of the juvenile. Juveniles in solitary confinement shall have access to appropriate medical and psychological services." Okla. Admin. Code § 377:35-11-4 (2013).
West Virginia	Ban on punitive juvenile solitary confinement.	"(1) A juvenile may not be punished by physical force, deprivation of nutritious meals, deprivation of family visits or imposition of solitary confinement," and "(3) Except for sleeping hours, a juvenile in a state facility may not be locked alone in a room unless that juvenile is not amenable to reasonable direction and control." W. Va. Code § 49-5-16a (1998).

Other State Legislative Initiatives and Pending Legislation		
State	Status	Text
California	Legislation in committee would ban juvenile solitary confinement except in limited cases.	"This bill would provide that a minor or ward who is detained in, or sentenced to, any juvenile facility or other secure state or local facility shall not be subject to solitary confinement, as defined, unless the minor or ward poses an immediate and substantial risk of harm to others or to the security of the facility, and all other less-restrictive options have been exhausted." Cal. S.B. 61 (2013).

New Hampshire	Legislation in committee would place an absolute ban on solitary confinement of people younger than 18.	"(c) Solitary confinement shall not be used as a form of housing for inmates under the age of 18 years." N.H. H.B. 480-FN (2013).
Texas	Amidst several proposed reforms, Texas passed legislation to review the use of solitary confinement.	"SECTION 2. DUTIES OF TASK FORCE. The task force shall: (1) conduct a comprehensive review of administrative segregation and seclusion policies and practices in facilities in this state." A Review of and Report Regarding the Use of Adult and Juvenile Administrative Segregation in Facilities in this State, 2013 Tex. Sess. Law Serv. Ch. 1184 (S.B. 1003) (West).

CHAPTER.....

AN ACT relating to the administration of justice; restricting the use of corrective room restriction on children who are in confinement in a state, local or regional facility for the detention of children; requiring the Advisory Commission on the Administration of Justice to conduct a study concerning detention and incarceration; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Sections 1 and 2 of this bill authorize the use of corrective room restriction on a child who is detained in a state, local or regional facility for the detention of children only if all other less-restrictive options have been exhausted and only to: (1) modify the negative behavior of the child; (2) hold the child accountable for a violation of a rule of the facility; or (3) ensure the safety of the child, the staff or others or to ensure the security of the facility. **Sections 1 and 2** also: (1) specify certain actions that must be taken with respect to a child subjected to corrective room restriction; (2) provide that if a child is subjected to corrective room restriction, the period of corrective room restriction must be the minimum time required to address the negative behavior, rule violation or threat; and (3) provide that a child must not be subjected to corrective room restriction for more than 72 consecutive hours.

Existing law establishes the Advisory Commission on the Administration of Justice and directs the Commission, among other duties, to identify and study the elements of this State's system of criminal justice. (NRS 176.0123, 176.0125) **Section 7** of this bill requires the Commission to conduct a study concerning certain aspects of detention and incarceration in this State.

EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~omitted material~~ is material to be omitted.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 62B of NRS is hereby amended by adding thereto a new section to read as follows:

1. A child who is detained in a local or regional facility for the detention of children may be subjected to corrective room restriction only if all other less-restrictive options have been exhausted and only for the purpose of:

- (a) Modifying the negative behavior of the child;***
- (b) Holding the child accountable for a violation of a rule of the facility; or***
- (c) Ensuring the safety of the child, staff or others or ensuring the security of the facility.***



2. Any action that results in corrective room restriction for more than 2 hours must be documented in writing and approved by a supervisor.

3. A local or regional facility for the detention of children shall conduct a safety and well-being check on a child subjected to corrective room restriction at least once every 10 minutes while the child is subjected to corrective room restriction.

4. A child may be subjected to corrective room restriction only for the minimum time required to address the negative behavior, rule violation or threat to the safety of the child, staff or others or to the security of the facility, and the child must be returned to the general population of the facility as soon as reasonably possible.

5. A child who is subjected to corrective room restriction for more than 24 hours must be provided:

(a) Not less than 1 hour of out-of-room, large muscle exercise each day, including, without limitation, access to outdoor recreation if weather permits;

(b) Access to the same meals and medical and mental health treatment, the same access to contact with parents or legal guardians, and the same access to legal assistance and educational services as is provided to children in the general population of the facility; and

(c) A review of the corrective room restriction status at least once every 24 hours. If, upon review, the corrective room restriction is continued, the continuation must be documented in writing, including, without limitation, an explanation as to why no other less-restrictive option is available.

6. A local or regional facility for the detention of children shall not subject a child to corrective room restriction for more than 72 consecutive hours.

7. A local or regional facility for the detention of children shall report monthly to the Juvenile Justice Programs Office of the Division of Child and Family Services the number of children who were subjected to corrective room restriction during that month and the length of time that each child was in corrective room restriction. Any incident that resulted in the use of corrective room restriction for 72 consecutive hours must be addressed in the monthly report, and the report must include the reason or reasons any attempt to return the child to the general population of the facility was unsuccessful.



8. As used in this section, "corrective room restriction" means the confinement of a child to his or her room as a disciplinary or protective action and includes, without limitation:

- (a) Administrative seclusion;
- (b) Behavioral room confinement;
- (c) Corrective room rest; and
- (d) Room confinement.

Sec. 2. Chapter 63 of NRS is hereby amended by adding thereto a new section to read as follows:

1. A child who is detained in a facility may be subjected to corrective room restriction only if all other less-restrictive options have been exhausted and only for the purpose of:

- (a) Modifying the negative behavior of the child;
- (b) Holding the child accountable for a violation of a rule of the facility; or
- (c) Ensuring the safety of the child, staff or others or ensuring the security of the facility.

2. Any action that results in corrective room restriction for more than 2 hours must be documented in writing and approved by a supervisor.

3. A facility shall conduct a safety and well-being check on a child subjected to corrective room restriction at least once every 10 minutes while the child is subjected to corrective room restriction.

4. A child may be subjected to corrective room restriction only for the minimum time required to address the negative behavior, rule violation or threat to the safety of the child, staff or others or to the security of the facility, and the child must be returned to the general population of the facility as soon as reasonably possible.

5. A child who is subjected to corrective room restriction for more than 24 hours must be provided:

(a) Not less than 1 hour of out-of-room, large muscle exercise each day, including, without limitation, access to outdoor recreation if weather permits;

(b) Access to the same meals and medical and mental health treatment, the same access to contact with parents or legal guardians, and the same access to legal assistance and educational services as is provided to children in the general population of the facility; and

(c) A review of the corrective room restriction status at least once every 24 hours. If, upon review, the corrective room restriction is continued, the continuation must be documented in



writing, including, without limitation, an explanation as to why no other less-restrictive option is available.

6. A facility shall not subject a child to corrective room restriction for more than 72 consecutive hours.

7. A facility shall report monthly to the Juvenile Justice Programs Office of the Division of Child and Family Services the number of children who were subjected to corrective room restriction during that month and the length of time that each child was in corrective room restriction. Any incident that resulted in the use of corrective room restriction for more than 72 consecutive hours must be addressed in the monthly report, and the report must include the reason or reasons any attempt to return the child to the general population of the facility was unsuccessful.

8. As used in this section, "corrective room restriction" means the confinement of a child to his or her room as a disciplinary or protective action and includes, without limitation:

- (a) Administrative seclusion;*
- (b) Behavioral room confinement;*
- (c) Corrective room rest; and*
- (d) Room confinement.*

Secs. 3-6. (Deleted by amendment.)

Sec. 7. The Advisory Commission on the Administration of Justice created pursuant to NRS 176.0123 shall, during the 2013-2014 interim, conduct a study concerning detention and incarceration in this State. The study must include, without limitation, an evaluation of:

1. Procedures regarding placement in, and release from, protective segregation, administrative segregation, disciplinary segregation, disciplinary detention, corrective room restriction and solitary confinement;

2. Security threat group identification, including, without limitation, any information relating to gang activity;

3. Notification of release and release procedures;

4. Access provided to children, offenders and prisoners confined in protective segregation, administrative segregation, disciplinary segregation, disciplinary detention, corrective room restriction or solitary confinement to:

- (a) Mental health services;
- (b) Audio and visual media for appropriate mental stimulation;
- (c) Daily contact with staff;
- (d) Health care services;
- (e) Substance abuse programs and services;



- (f) Reentry resources and transitional programs and services;
- (g) Programs and services for offenders and prisoners who are veterans;
- (h) Educational programming; and
- (i) Other programs and services that are available to the general population;

5. The amount of specialized training provided to staff who interact with children, offenders and prisoners who are confined in protective segregation, administrative segregation, disciplinary segregation, disciplinary detention, corrective room restriction or solitary confinement;

6. The number of children, offenders and prisoners confined in protective segregation, administrative segregation, disciplinary segregation, disciplinary detention, corrective room restriction or solitary confinement who were referred to mental health professionals;

7. The number of children, offenders and prisoners in the general population who were referred to mental health professionals;

8. The number of children, offenders and prisoners confined in protective segregation, administrative segregation, disciplinary segregation, disciplinary detention, corrective room restriction or solitary confinement who have a mental health diagnosis;

9. The number of children, offenders and prisoners in the general population who have a mental health diagnosis;

10. The number of suicides and suicide attempts during the years of 2010, 2011 and 2012 among children, offenders and prisoners who are confined in protective segregation, administrative segregation, disciplinary segregation, disciplinary detention, corrective room restriction or solitary confinement;

11. The number of suicides and suicide attempts during the years of 2010, 2011 and 2012 among children, offenders and prisoners in the general population;

12. The number of reviews conducted by facilities concerning the placement of a child, offender or prisoner in protective segregation, administrative segregation, disciplinary segregation, disciplinary detention, corrective room restriction or solitary confinement that resulted in the child, offender or prisoner being transferred to the general population;

13. The average length of time children, offenders and prisoners were continuously confined in protective segregation, administrative segregation, disciplinary segregation, disciplinary detention, corrective room restriction or solitary confinement,



categorized by age, race, sexual orientation, gender identity or expression and classification of the offense;

14. The longest and shortest length of time a child, offender or prisoner was continuously confined in protective segregation, administrative segregation, disciplinary segregation, disciplinary detention, corrective room restriction or solitary confinement, categorized by age, race, sexual orientation, gender identity or expression and classification of the offense;

15. A summary of the reasons for which children, offenders and prisoners were placed in protective segregation, administrative segregation, disciplinary segregation, disciplinary detention, corrective room restriction or solitary confinement;

16. The rate of recidivism among children, offenders and prisoners who were confined in protective segregation, administrative segregation, disciplinary segregation, disciplinary detention, corrective room restriction or solitary confinement at any time before release or discharge;

17. The rate of recidivism among children, offenders and prisoners who were never confined in protective segregation, administrative segregation, disciplinary segregation, disciplinary detention, corrective room restriction or solitary confinement;

18. The number of children, offenders and prisoners who were confined in protective segregation, administrative segregation, disciplinary segregation, disciplinary detention, corrective room restriction or solitary confinement immediately before being discharged from detention, including those discharged to parole or mandatory supervision; and

19. A calculation of the cost per day of confining a child, offender and prisoner in protective segregation, administrative segregation, disciplinary segregation, disciplinary detention, corrective room restriction or solitary confinement.



MEMORANDUM

DATE: April 30, 2015

TO: Nevada State Juvenile Justice Commission, Planning and Development Subcommittee

FROM: Katie Hoops (ACLU Intern)

RE: Youth Corrective Room Restriction Report (SB 107)

Purpose of the Report

With the passage of SB 107 in the 2013 legislature, juvenile detention facilities were tasked with state level monthly reporting on "the number of children who were subjected to corrective room restriction...the length of time that each child was in corrective room restriction, [a]ny incident that resulted in the use of corrective room restriction for 72 consecutive hours...[and] the reasons any attempt to return the child to the general population of the facility was unsuccessful." We have agreement in this Subcommittee that corrective room restriction should be used as little as possible not only in order to comply with the mandate of SB 107, but also because of the safety risks room confinement has been shown to have on youth¹.

This report compiles the monthly reporting required in SB 107 from October 2013 through December 2014 and compares the data from the different juvenile detention facilities in Nevada to determine how often corrective room restriction is used and for what reasons. While it is early in the implementation process, we hope these comparisons will highlight how policies and procedures at various facilities differ, and perhaps how they can improve by taking what has "worked" at some facilities.

Corrective Room Restriction Totals: The Big Picture

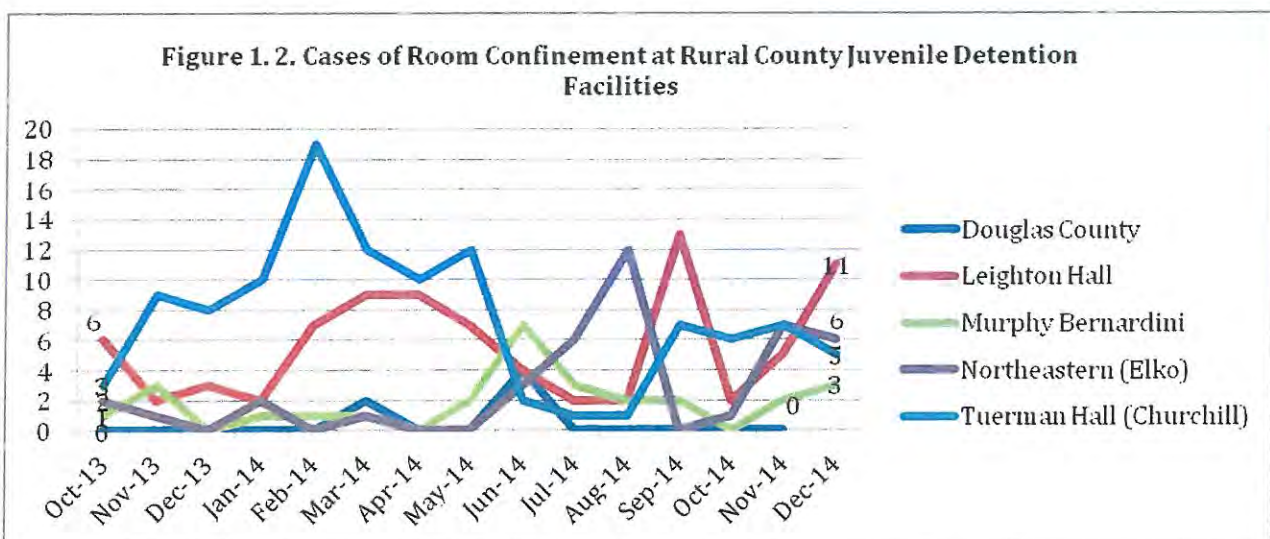
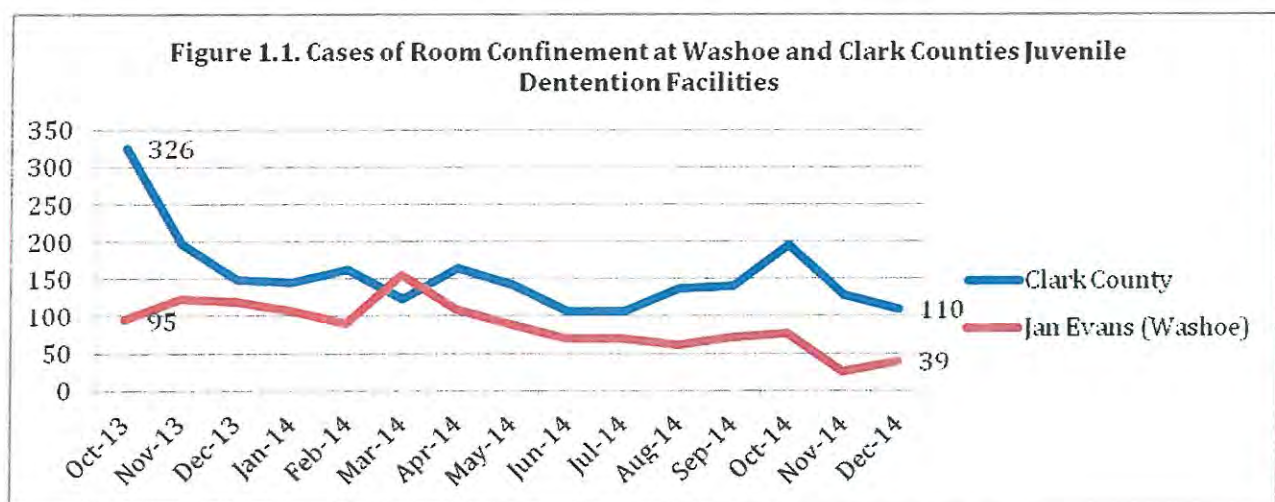
Jan Evans and Clark County Juvenile Detention centers both decreased the use of corrective room restriction over the course of the 14 months. The other detention facilities had fairly consistent use of room restriction.

The correctional facilities: Nevada Youth Training Center, Caliente Youth Center, and Red Rock at Summit View, showed more distinct trends. Nevada Youth Training Center spiked in October and November 2013 and then decreased over the next year, hitting its lowest number of cases in August 2014. Caliente had a steady decrease in use of corrective room restriction from October 2013 to March

¹ As reported in the "Juvenile Suicide in Confinement: A National Survey" by Lindsay Hayes, half of the youths who committed suicide were confined in their rooms for punishment; more than half had a history of room confinement.

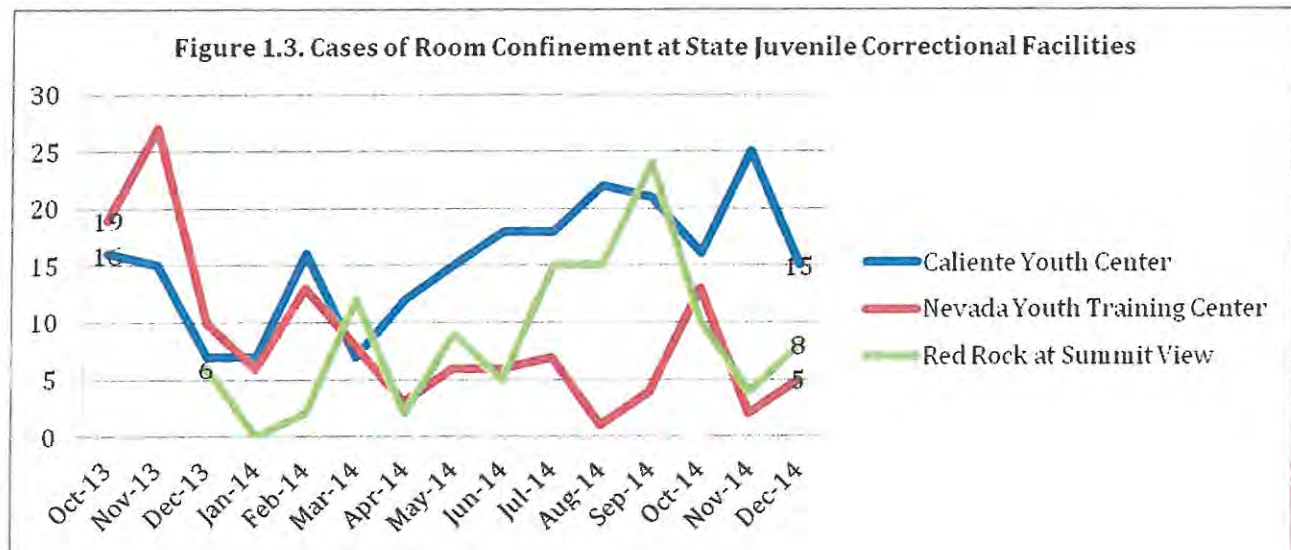
2014, then changed to a steady increase of use from April 2014 to December 2014. Red Rock at Summit View increased its use of room restriction the longer it has been open, spiking in July 2014.

Figures 1.1, 1.2, and 1.3 represent the total number, by month, of cases of room restriction at juvenile detention centers from October 2013 to December 2014. Looking at the total number of cases helps describe the changing trends in the use of corrective room restriction at each facility. Clark County and Washoe County are in separate graphs because of their larger populations. Most of the facilities did not fluctuate much over the course of the 14 months; however, there was a large drop in cases at Clark County from October 2013 to November 2013. Teurman Hall peaked in the number of cases in February 2014 but has since decreased. Most of the rural detention facilities had months where they would have a sharp increase in the number of cases of room confinement followed by downward trends.



The graph below represents the total number, by month, of youth in state youth correctional facilities who were in corrective room restriction from October 2013 to December 2014. NYTC decreased in the

number of cases and Caliente remained about the same. The increase at Red Rock at Summit View can be explained by the increase in its population upon opening.



Time Spent in Corrective Room Restriction

SB 107 has two time requirements. By law, “a review of the corrective room restriction status at least once every 24 hours” and if the restriction continues longer than 24 hours, written documentation is required as to why “not other less-restrictive option is available.” Further, the law requires that “[a] local or regional facility for the detention of children shall not subject a child to corrective room restriction for more than 72 consecutive hours.” In the event that corrective room restriction is used for more than 72 hours, law requires that “any incident that resulted in the use of corrective room restriction for 72 consecutive hours must be addressed in the monthly report, and the report must include the reason or reasons any attempt to return the child to the general population of the facility was unsuccessful.” Despite the regulation of 72-hour holds, four facilities (Nevada Youth Training Center, Red Rock at Summit View, Jan Evans, and Teurman Hall) held youth in corrective room restriction for periods of time exceeding 72 hours between the implementation of SB 107 in October 2013 and December 2014.

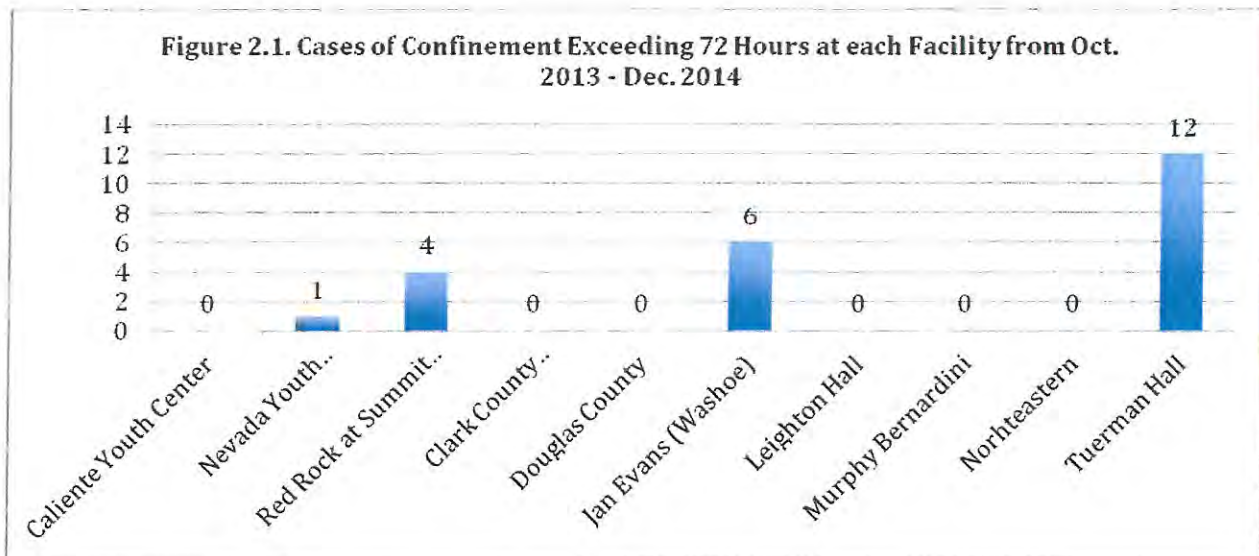
Times are reported in 5-hour increments, because of this we could not infer the number of cases that exceeded 24 hours. However, most facilities reported that the majority of cases of room restriction were for less than 20 hours – except for the Nevada Youth Training Center and Caliente Youth Center which used 20 hours or longer for more than 50% of cases. Teurman Hall used room restriction for more than 72 hours more often than any other facility during this time period.

Table 1.1 outlines the time youth spent in corrective room restriction in each facility between October 2013 and December 2014, the total number of cases where the youth spent more than 20 hours and more than 72 hours. The last column describes the percentage of all cases where room restriction was used for more than 20 hours.

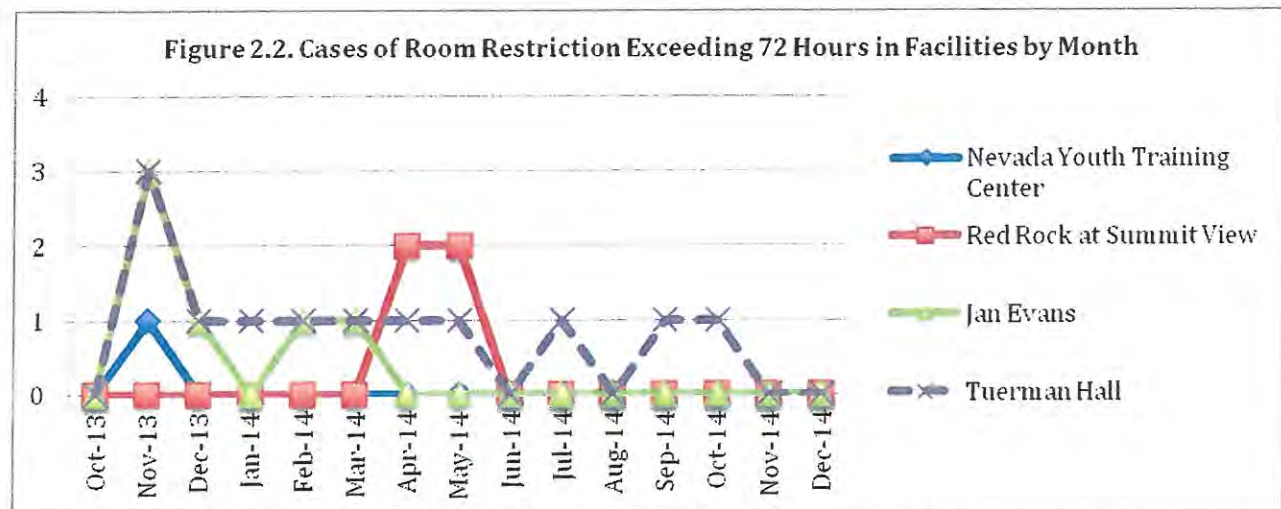
Table 2.1.***Number of cases of corrective room restriction for more than 20 hours and more than 72 hours***

Facility	More than 20 Hours	More than 72 Hours	Total Cases (including less than 20 hours)	Percent of Total Cases that were > 20 hours
Caliente Youth Center	180	0	230	78%
Nevada Youth Training Center	83	1	137	61%
Red Rock at Summit View	49	4	127	39%
Clark County	132	0	2335	6%
Jan Evans	90	6	1302	7%
Teurman Hall	14	12	112	13%
Leighton Hall	19	0	102	19%
Murphy Bernardini	1	0	28	4%
Douglas County	0	0	6	0%
Northeastern Juvenile Facility	0	0	41	0%

Four facilities - Teurman Hall, Jan Evans, Red Rock at Summit View, and Nevada Youth Training Center- reported cases of room restriction for longer than 72 hours between October 2013 and December 2014. Despite being one of the smaller detention facilities, Teurman Hall reported having the most cases of room restriction exceeding 72 hours.



Overall, the use of room confinement has decreased in these four facilities over time. Teurman Hall and Jan Evans peaked in November 2013 both with three cases of room restriction for more than 72 hours. Red Rock had two cases in April 2014 and two cases in May 2014 and then went back down to zero through December 2014. The graph below describes this trend from October 2013 to December 2014.



As mentioned, in the event that corrective room restriction is used for more than 72 hours, law requires that "any incident that resulted in the use of corrective room restriction for 72 consecutive hours must be addressed in the monthly report, and the report must include the reason or reasons any attempt to return the child to the general population of the facility was unsuccessful." Tables 2.1., 2.2, 2.3, and 2.4 describe each case of corrective room restriction lasting more than 72 hours. The reason for room restriction, the time spent in room restriction, and whether or not the ACLU received a copy of the required report is listed for each case. The Planning and Development Committee has received 72 hour reports for each facility; however, the ACLU has not received copies of these reports.

Table 2.2.

Teurman Hall: Individual Cases of Room Restriction over 72 Hours

Reason	Month	Time Spent in Room Restriction	Report Given?
Plotted to attack staff member in classroom	November 2013	73 Hours	Yes
Plotted to attack staff member in classroom/Safety	November 2013	73 Hours	Yes
	November 2013		
Assault	December 2013	143.5 Hours	No
Medical	January 2014	129.5 Hours	Yes
Self-Isolated	February 2014	212.5 Hours	Yes
Suicide Risk	March 2014	166 Hours	Yes
Major Rule Violation/CRR	April 2014	238 Hours	No
Safety Reasons/Isolation	May 2014	96.5 Hours	No
Suicide Alert/Isolation	July 2014	158 Hours	No
	September 2014		No
Rule Violation/CRR	October 2014	131.5 Hours	No

Table 2.3.***Jan Evans: Individual Cases of Room Restriction over 72 Hours***

Reason	Month	Time Spent in Room Restriction	Report Given?
Not following instructions/rules	November 2013	184 Hours	Yes
Continuous not following of instructions/rules	November 2013	96 Hours	Yes
Continuous not following of instructions/rules	November 2013	96 Hours	Yes
Continuously not following instructions/rules	December 2013	120.25 Hours	Yes
Assault on Staff	February 2014	75.75 Hours	Yes
Assault on Staff	March 2014	97 Hours	Yes

Table 2.4.***Nevada Youth Training Center (NYTC): Individual Cases of Room Restriction over 72 Hours***

Reason	Month	Time Spent in Room Restriction	Report Given?
Assault on Staff Member	November 2013	86 Hours, 57 Minutes	Yes

Table 2.1.***Red Rock at Summit View: Individual Cases of Room Restriction over 72 Hours***

Reason	Month	Time Spent in Room Restriction	Report Given?
Staff Assault	April 2014	180.5 Hours	No
Staff Assault	April 2014	156.5 Hours	No
Attempted Staff Assault	May 2014	110.5 Hours	Yes
Threats to Staff	May 2014	118 Hours	Yes * Report time does not match Monthly Corrective Room Restriction Summary

Corrective Room Restriction in Relation to Facility Population

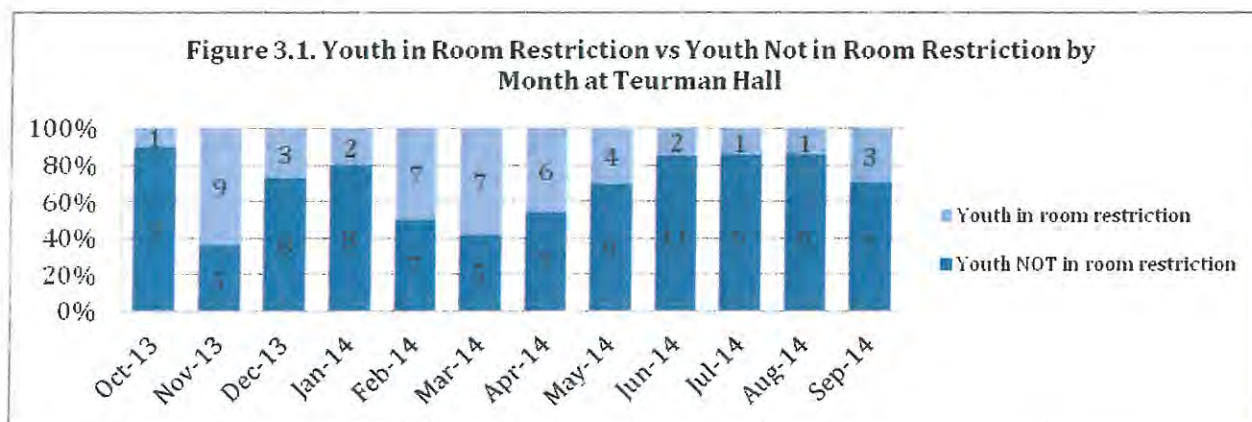
Looking at the use of corrective room restriction in relation the average population of the facilities helped describe how many youth at the facilities were impacted by corrective room restriction. It was

important to take the varying population sizes between the facilities into consideration in order to see how often the facilities use corrective room restriction².

Figures 3.1, 3.2, 3.3, 3.4, and 3.5 describe the total number of youth affected by corrective room restriction each month compared to the total monthly population of each facility. The dark blue in each graph show the number of youth who were never in room restriction during the specified month while the light blue shows the number of youth who were in confinement at some point during the month.

The ACLU received data from Teurman Hall, Caliente and Murphy Bernardini, Clark County and Jan Evans regarding the average monthly populations and the number of unduplicated youth³ in each facility between October 2013 and September 2014. While reporting the total monthly population and number of unduplicated youth is not required by law, it could prove to be helpful in finding alternatives to room restriction in different facilities. These graphs do not represent the total number of cases of room restriction, but the total number of youth in room restriction, meaning some youth were in confinement multiple times, contributing to multiple cases.

Youth at Teurman Hall experience room restriction more often than youth at Caliente in relation to the size of the respective populations. The majority of youth at Clark County and Jan Evans experience corrective room restriction at some point during their time in detention. In fact, there were months where there were more cases of room restriction reported than youth in detention.



² For example, Clark County and Jan Evans report more cases of room restriction, but because of their larger populations it was important to see how many youth were put in corrective room restriction compared to the total population.

³ "Unduplicated youth" refers to the number of youth affected by corrective room restriction, not the number of cases of corrective room restriction. Unduplicated youth takes into consideration that one youth could contribute to multiple cases of corrective room restriction.

Figure 3.2. Youth in Room Restriction vs Youth Not in Room Restriction by Month at Caliente

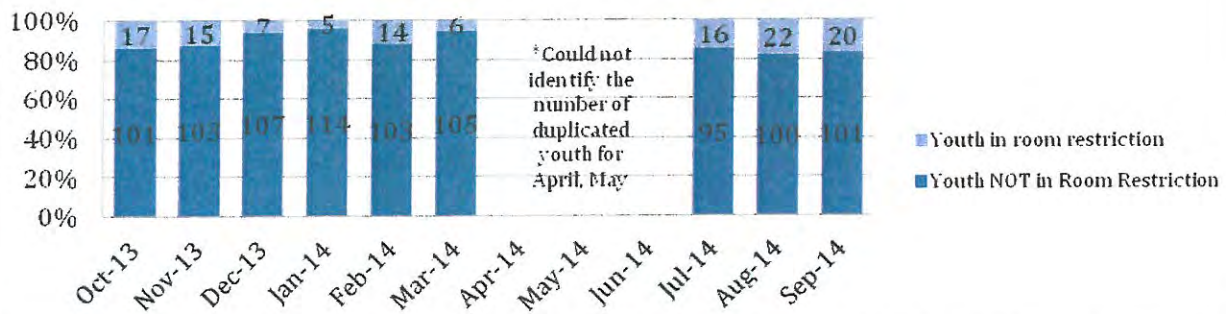


Figure 3.3. Youth in Room Restriction vs Youth Not in Room Restriction by Month at Murphy Bernardini

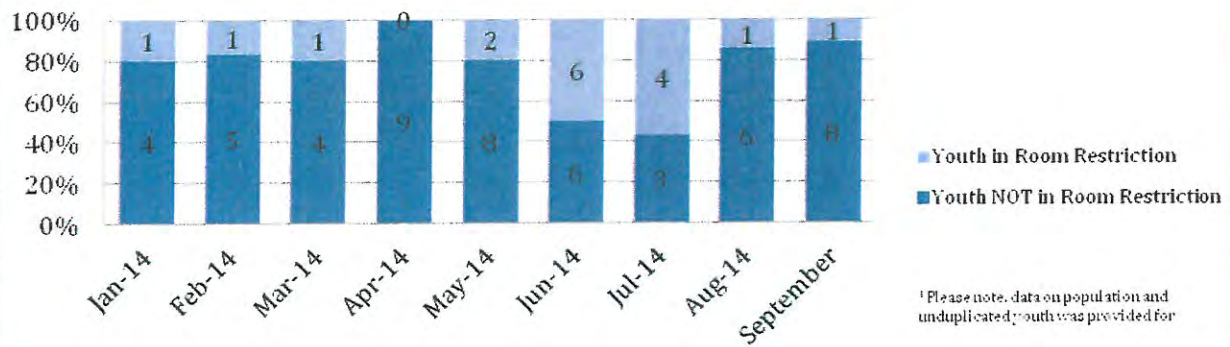
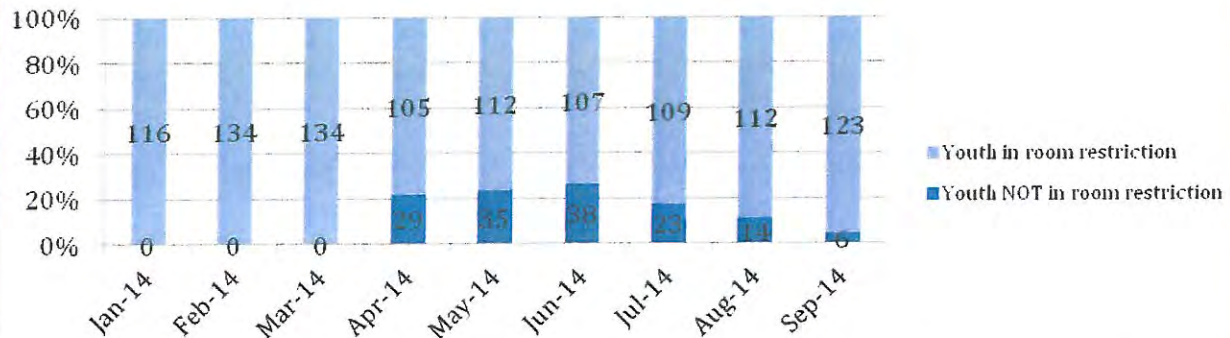
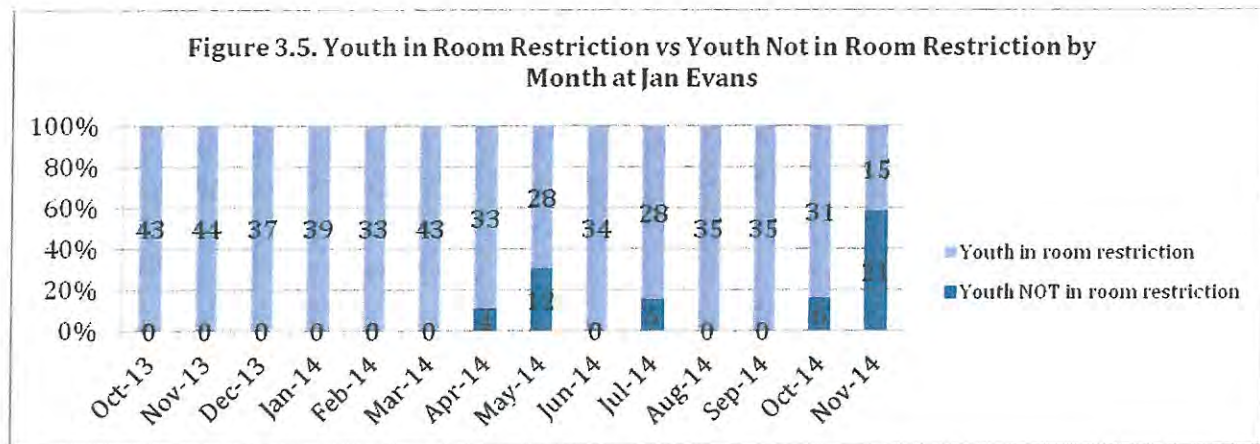


Figure 3.4. Youth in Room Restriction vs Youth Not in Room Restriction by Month at Clark County





Duplicated Youth: Frequency of the Same Youth in Corrective Room Restriction

Figure 4.1, 4.2, and 4.3 show the number of youth who represented multiple cases of room restriction. Duplicated youth refers to cases where the same youth is repeatedly put in room restriction; whereas, unduplicated youth refers to cases where one youth is put in room restriction one time. We received information from Teurman Hall, Caliente and Murphy Bernardini regarding unduplicated youth from October 2014 to September 2014. Again, reporting this information is not required by law; however, this information could help describe the way some facilities use room confinement and, perhaps, how facilities can learn from one another to decrease use.

The dark blue describes the number of youth who were put into room restriction more than one time in the specified month. The light blue represents the number of youth who were placed in room restriction one time in the specified month. Teurman Hall uses room restriction on the same youth more often than Caliente. Caliente and Murphy Bernardini rarely uses room restriction on the same youth.

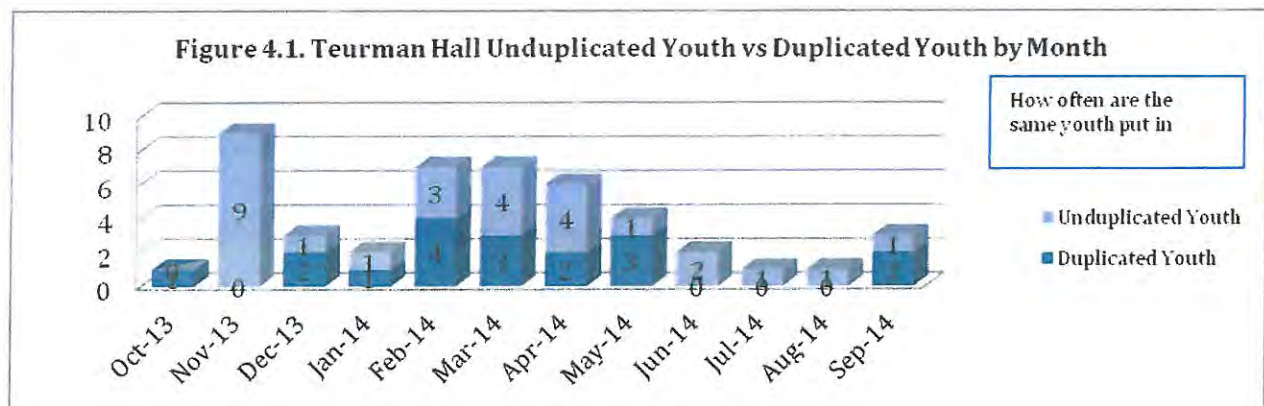


Figure 4.2. Caliente Unduplicated Youth vs Duplicated Youth by Month

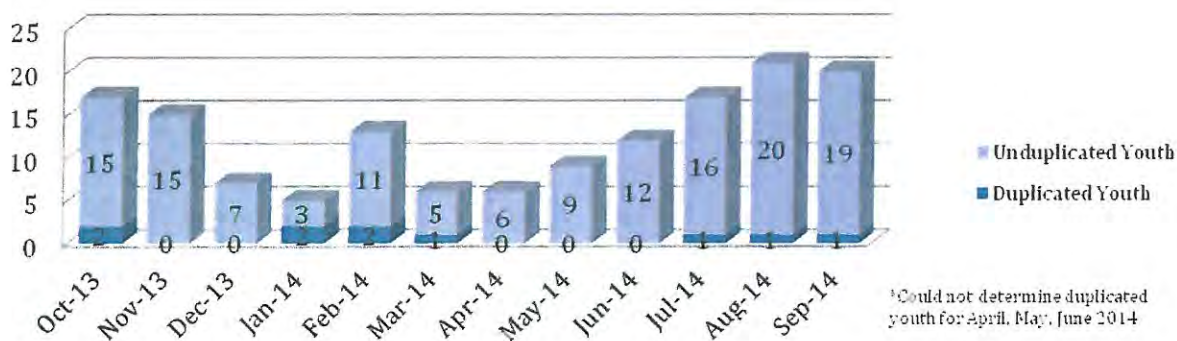
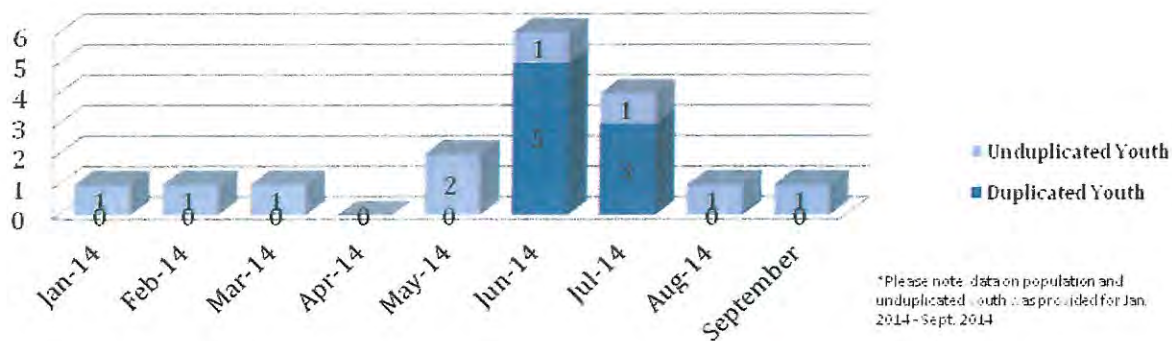


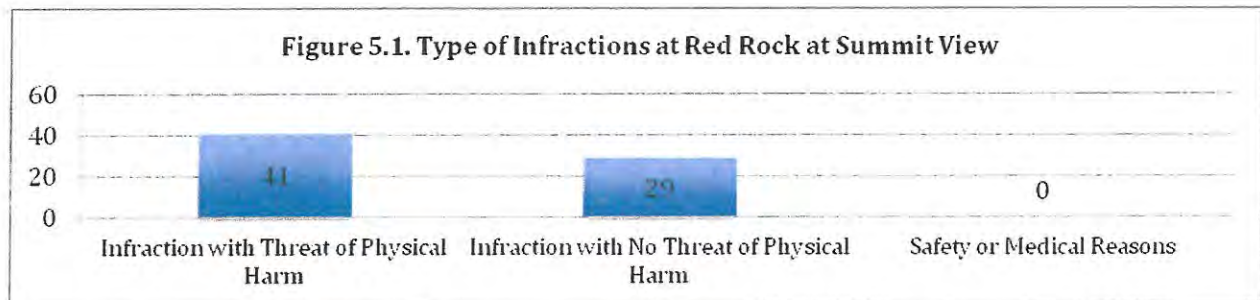
Figure 4.3. Unduplicated Youth vs Duplicated Youth at Murphy Bernardini



Reported Reasons for Corrective Room Restriction

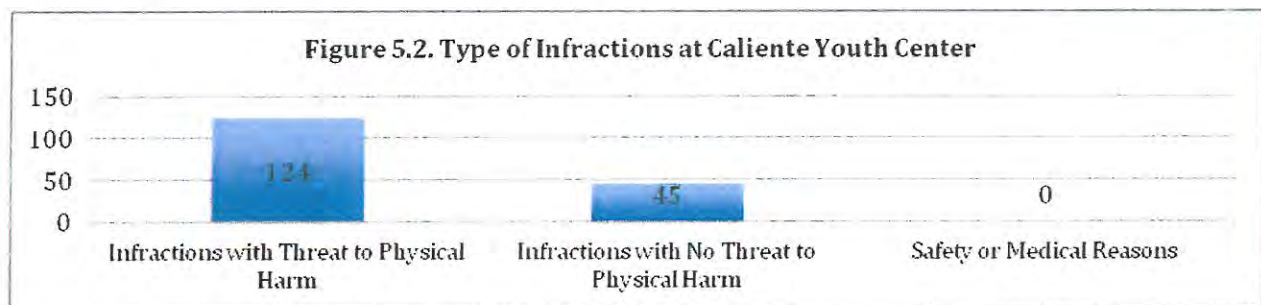
By law, corrective room restriction may only be used when "all other less-restrictive options have been exhausted..." It is therefore important to look at the reasons youth are placed in room restriction across the different facilities to determine if there are better ways to deal with some behaviors than the use of room restriction.

Figure 5.1 through 5.10 describe the reason for room restriction reported from April 2014 to July 2014. Red Rock at Summit View was the only facility where there were more infractions with threat of physical harm than any other reason. Clark County Juvenile Detention Center have over 1,000 cases of confinement for infractions with no threat of physical harm. Time spent in room confinement for infractions with no threat of physical harm at Clark County ranged from three hours to 28 hours. These graphs show the need for more detailed and more consistent reporting in cases of room restriction.



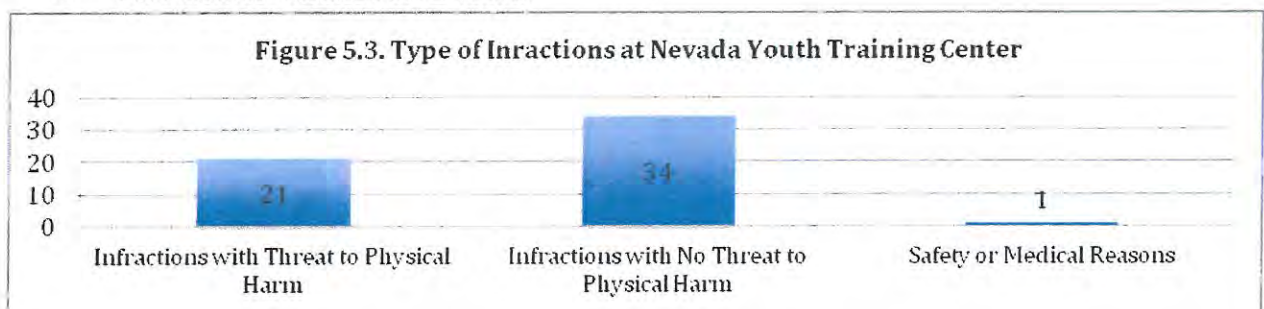
Examples of reasons for restriction at Red Rock at Summit View:

- "Program disruption" resulted in 51 hours, 40 minutes.
- "Attempted Staff Assault" resulted in 110 hours, 30 minutes.
- "Failure to Program" resulted in 48 hours.
- "Threats" resulted in 12 hours, 15 minutes.



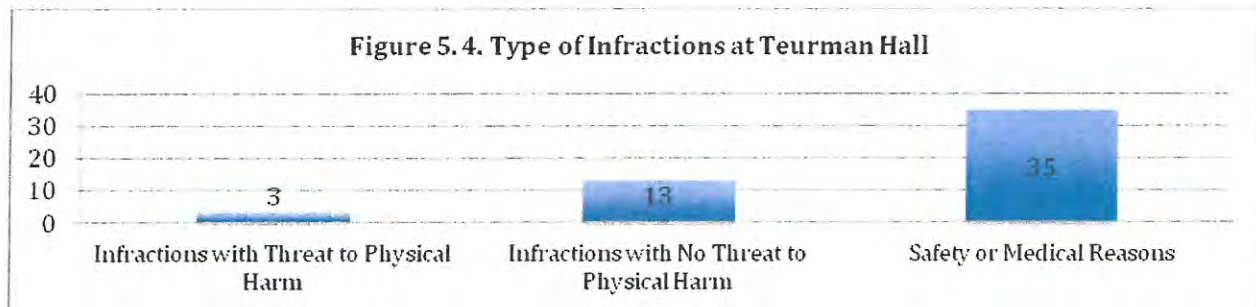
Examples of reasons for restriction at Caliente Youth Center:

- "Fight" resulted in 24 hours.
- "Peer assault" resulted in 24 hours.
- "Destruction of property" resulted in 24 hours.
- "Peer assault" resulted in 72 hours.



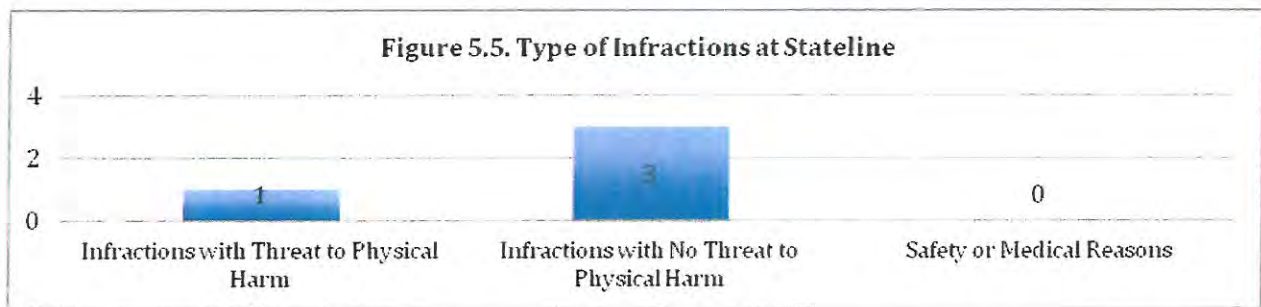
Examples of reasons for restriction at NYTC:

- "Horseplay" resulted in 19 hours, 46 minutes.
- "Horseplay" resulted in 2 hours, 57 minutes.
- "Fight" resulted in 5.8 hours.
- "MDOP/NFI" resulted in 33 hours, 5 minutes.



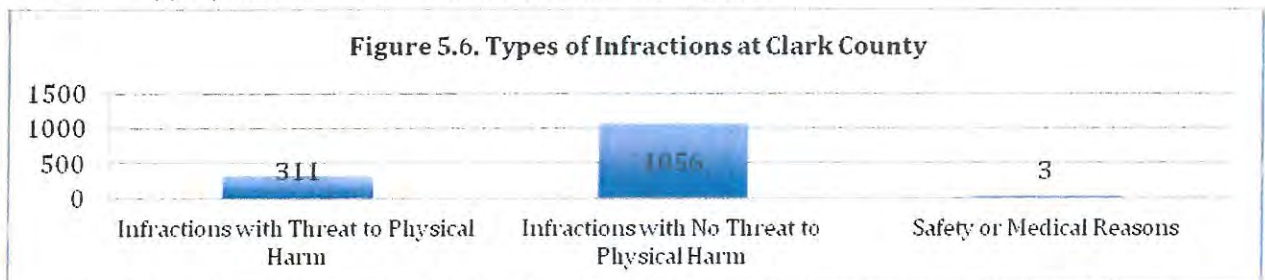
Examples of reasons for restriction at for Teurman Hall:

- "Intake watch/isolation" resulted in 23 hours.
- "Continuous refusal of directives/CRR" resulted in 15.5 hours.
- "Safety Reasons" resulted in 36.5 hours.
- "Major rule violation" resulted in 238 hours.



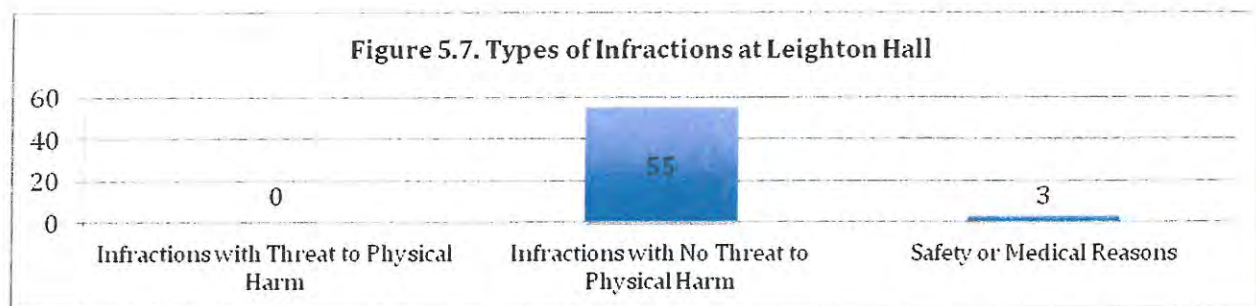
Examples of reasons for restriction at Stateline

- "Arguing with staff" resulted in 1 hour.
- "Inappropriate behavior" resulted in 2 hours 15 minutes.



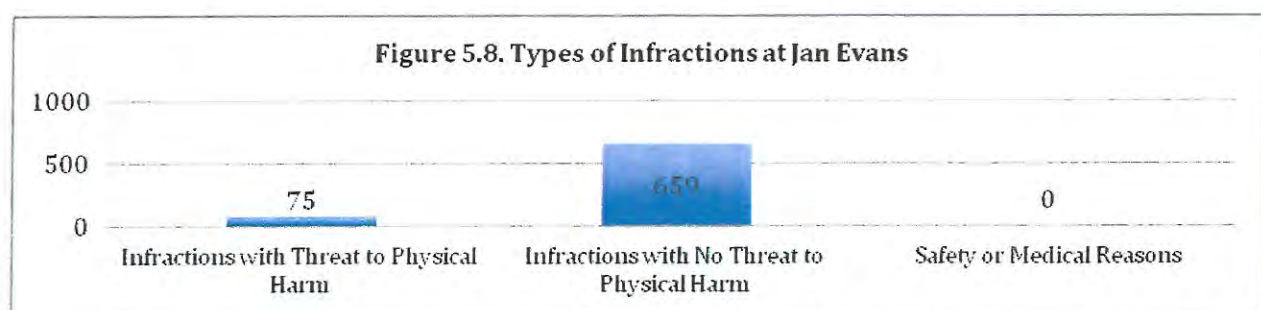
Examples of reasons for restriction at Clark County Juvenile Detention:

- "Disrespect" resulted in 17 hours.
- "School behavior" resulted in 15.50 hours.
- "Gang related behavior" resulted in 7 hours.
- "Other" resulted in 16 hours.



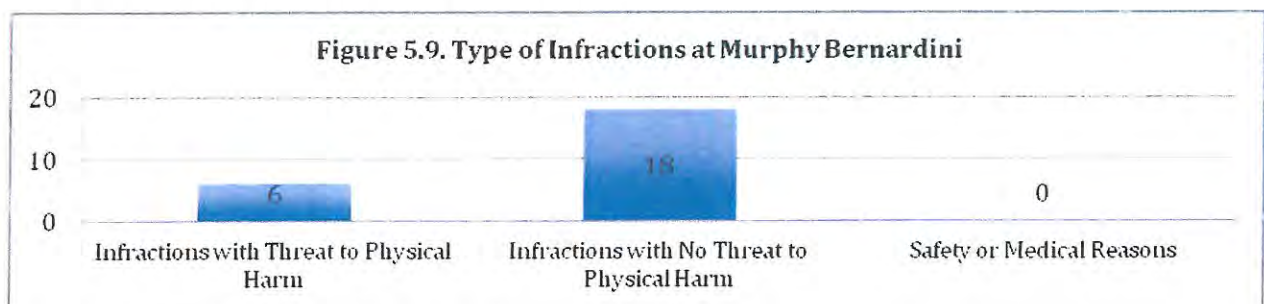
Examples of reasons for restriction at Leighton Hall:

- All 55 cases of infractions with no threat to physical harm were listed as "Rule Infractions."
- The 3 safety reasons were listed as "Safety."



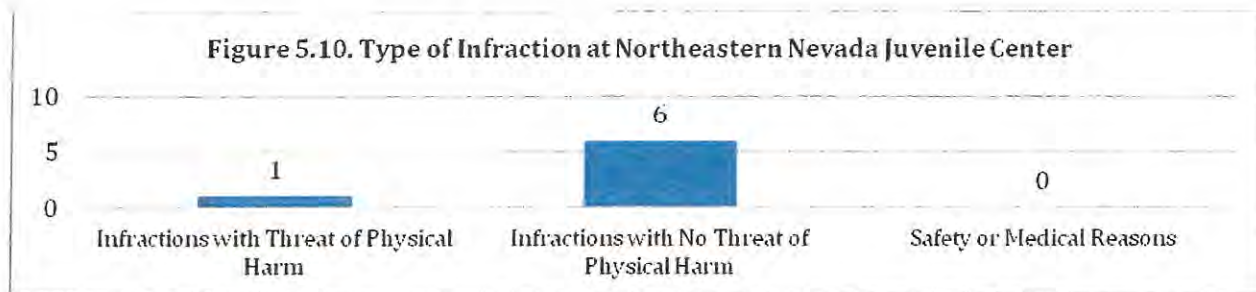
Examples of reasons for restriction at Jan Evans:

- "NFI/Rules" resulted in 2 hours.
- "Poor peer relations" resulted in 21 hours.
- "NFI/Rules" resulted in 23 hours.
- "Poor peer relations" resulted in 2.5 hours.



Examples of reasons for restriction at Murphy Bernardini:

- "Disrespect" led to 30 minutes.
- "Profanity" led to 30 minutes.
- "Room damage" led to 1 hour.



Examples of reasons for restriction at Northeastern:

- "After several warning continued to be loud and obnoxious" resulted in 10 minutes.
- "Became aggressive Threatening to hit Peer in the face" resulted in 10 minutes.

Initial Recommendations

As of October 1, 2014, SB 107 has been in place for one year. Despite this, isolation is still used for over 72 consecutive hours. Our recommendations include suggestions for alternatives to the use of corrective room restriction and alternatives to data collection and reporting.

Alternatives to Room Restriction:

Recommendation 1 – Feedback from Dr. Tomassone: Our first recommendation is for all staff and management to be trained on alternatives to use of isolation. We are hopeful that Dr. Joe Tomassone will guide NYTC, Caliente, and Red Rock in alternatives to the use of isolation and mechanical restraints, particularly because these three facilities use corrective room restriction for more than 20 hours on more than 50% of the cases.

However, Nevada's detention facilities are not included in Dr. Tomassone's scope of work. Because the data shows that across our detention facilities isolation is mostly used in incidents where there is no threat of physical harm, we recommend that management draft policies and train staff in alternatives to isolation. Perhaps the review provided by Dr. Tomassone could be helpful to Nevada's detention facilities.

Recommendation 2 - Mental Health Professionals: The Juvenile Detention Alternatives Initiative (JDAI)⁴ recommends using the mental health professionals who work at each facility to help de-escalate youth as an alternative to room confinement. JDAI also recommends incorporating mental health professionals into the process of deciding to extend the amount of time youth spend in room confinement as well as to create "special individualized programming" for youth with persistent behavior problems.

Recommendation 3 - Positive Behavior Management: JDAI also recommends restricting privileges and programming instead of using room confinement as a form of discipline. They recommend posting institutional rules in all living units and using a points system or similar positive behavior management system to ensure consistency with punishments and restrictions.

⁴ See: *A Guide to Juvenile Detention Reform: Juvenile Facility Assessment 2014 Update. Juvenile Detention Alternatives Initiative: A Project of the Annie E. Casey Foundation*

Recommendation 4 Duplicated Youth: JDAI recommends that facility administrators and qualified mental health staff members have a mechanism for identifying youth who receive multiple periods of room confinement (included on the recommended data collection form) and develop strategies to reduce the use of room restriction. These youth might require individualized programming created in collaboration with the youth, mental health staff, and the youth's family that could include:

- Identification of the causes and purposes of the negative behavior as well as concrete goals that the youth understands that he or she can work toward to be removed from specialized programming.
- This specialized programming should not remove the youth from educational services or interaction with youth in other programming.

Data Collection:

While data collection has improved throughout the year, it has been inconsistent and varied in the ways it is documented at each facility. The unavailability of certain data subsets at different time periods from different facilities made it challenging to analyze. We did find that the reporting on the reason for confinement, and the time spent in confinement, was generally consistent. It was suggested that we provide an example of a data collection form that would encompass our following recommendations in order to gather more complete and consistent data. This form is attached to this report. Our initial recommendations are as follows:

Recommendation 1 - 72 Hour Reports: Provide reports for cases of room restriction of over 72 hours. While there are reasons for restriction listed for cases of confinement over 72 hours, there have not been reports for all of these cases, as is mandated by law.

Recommendation 2 - Average Monthly Populations: Provide average monthly populations for each facility in order to determine how often each facility uses room restriction in relation to its population. Data was provided for Teurman Hall, Caliente, and Murphy Bernardini, Clark County, and Jan Evans.

Recommendation 3 - Unduplicated vs. Duplicated Youth: Provide the number of unduplicated and duplicated youth. Duplicated youth refers to youth who have been put in room restriction multiple times during one reporting timeframe; while unduplicated youth refers to the number of youth who were put in room restriction once during one reporting timeframe. This will inform facilities if they have a high number of incidents of acting-out behavior across the board, or if certain youth are acting out repeatedly, or is it a combination. Data was provided from Teurman Hall, Caliente and Murphy Bernardini. This data helps to describe how many youth are actually affected by room restriction instead of just the number of cases.

- Additionally, documentation addressing whether the facility is addressing the underlying problem when the same youth are being placed in isolation repeatedly would be helpful to narrow down why isolation is being used.

Recommendation 4 - Reasons for Restriction: Provide a more consistent and specific understanding of whether a youth is being isolated as a punishment as opposed to incidents involved behavior that was out of control/emergency isolation. The vast majority of reports indicated that isolation was occurring

due to "rule infractions," which does not explain why a specific incident may be occurring and decreases the ability to analyze the data.

- Northeastern provides a somewhat helpful preliminary model, logging one 12-minute incident for "became emotionally upset and agitated." The length of this isolation, combined with the logged reason, provides more information about the incident than the logs of other facilities. One can reasonably infer that this was a brief isolation for behavior that was difficult to control, the youth cooled off, and then the youth was released.
- Some of the facilities, especially the larger ones with more cases of room restriction, used reasons for restriction that were worded differently but could mean the same thing. For example, Clark County sometimes used "Not following rules" and other times used "Violation of rules" or "Failure to participate in program" and "Not participating in programs." These inconsistencies can complicate data for analysis. While specific information is important, it is also important to be consistent when possible. We have broken down the reasons for restriction on the attached recommended data collection form; however, there is an "Other" box to write in cases that do not fall into a box.
- One concern presented by members during the October subcommittee meeting was regarding how to document infractions that led to room confinement in a way to better describe whether or not there was a threat of harm. In order to avoid confusion, JDAI suggests documenting each instance of room confinement, noting the circumstances that led to the use of confinement and all alternative actions that were used in order to avoid using room confinement. Many facilities in Nevada use broad reasons such as "rule infraction" to describe the events that led to room confinement, providing more detail would, again, narrow down why isolation is being used.
- Clark County occasionally noted the reason for room restriction as "OC Spray" or "Use of Force." While it is helpful to note when restraints and force are used, the actions or behavior of the youth that led to the restraints and force were noted. We have added a component to the recommended data collection form that would gather information on the use of force and restraints, while also gathering information on the events that led to its use.

Recommendation 5 - Demographic Information: Document demographic information on youth who are put in corrective room restriction. JDAI recommends gathering information such as: If the youth had an identified mental health disorder or developmental or intellectual disability

- Race, ethnicity, gender, age, special education status, and limited English proficient status.
- Murphy Bernardini, Jan Evans, Teurman Hall, and Caliente began collecting information on race and ethnicity in October and November of 2014 (Murphy Bernardini was the first facility to begin collecting information on race and ethnicity in July 2014).

Recommendation 6 - 24 Hour Reporting: Law requires a "review of corrective room status at least once every 24 hours." Currently, the data report on length of time in room restriction is 5-hour increments which does not provide information on the number of youth who were in room restriction right up to that 24 hour mark. Providing this information will allow for better data analysis on the use of room restriction.

Overall, we recommend the implementation of a standardized system of reporting that defines parameters for corrective room restriction, including the above measures and any other significant means which would foster accountability on behalf of the known facilities, and allow for rehabilitation for youths in the juvenile justice system. We understand this subcommittee is looking for a way to collect data and we believe it will be helpful to have a uniform process.



Presentation to the Advisory Commission on the Administration of Justice

Senate Bill No. 107
Committee on Judiciary

Nevada Department of Corrections

March 5, 2014



Youthful Offenders

- Unit 9 at Lovelock Correctional Center is used to house Youthful Offenders/Inmates as defined by Federal P.R.E.A. guidelines. These are offenders under the age of 18 but have been adjudicated adults by the Court.
- Youthful Offenders/Inmates may be in General Population, Ad/Seg or in Austere Housing.
- In the event Dis/Seg or Protective Segregation they would be placed in one of four specially designated cells.
- LCC does not have disciplinary detention, corrective room restriction, or solitary confinement.



Mental Health

- **The number prisoners – including 17 years old and under - confined in any type of segregation, who were referred to mental health professionals and who have a mental health diagnosis;**
 - While all NDOC inmates are reviewed/screened by Mental Health professionals, Offender Management Division (OMD) is unable to provide statistics on this question as that information is not tracked in NOTIS. Mental Health staff may be able to obtain this information but that would require a manual review of each inmates medical/mental health file.
 - During the years reviewed (2010 – 2013), there was a total of 5 inmates 17 and under who had been housed in some sort of segregation and who had mental health classification other than "1-1", which is the classification for "No impairment" and "No restrictions".



Placement Reviews

- **The average length of time prisoners were continuously confined in any type of segregation, categorized by age, race, sexual orientation, gender identity or expression and classification of the offense;**
 - NDOC does not currently track sexual orientation and/or gender identity or expression in NOTIS.
 - However, for the current 17 and under inmate population housed at LCC, staff has provided information regarding their inmate's sexual orientation and race.
 - Based upon the time in segregation for these inmates the average time in segregation was 28.81 days.



Placement Reviews inmates 17 & under categorized by race

Minimum Days Served	African American	Caucasian	Hispanic	Grand Total
1-100	4	1	3	8
101-200	1			1
201-300	1		1	2
301-400			1	1
501-600	1			1
601-700			1	1
701-800			1	1
Grand Total	7	1	7	15
Maximum Days Served	African American	Caucasian	Hispanic	Grand Total
5-104	2		2	4
105-204	1	1		2
205-304	3			3
305-404			2	2
405-504			1	1
605-704			1	1
705-804	1		1	2
Grand Total	7	1	7	15



Placement Reviews

- **The longest and shortest length of time prisoners were continuously confined in any type of segregation, categorized by age, race, sexual orientation, gender identity or expression and classification of the offense;**
 - NDOC does not currently track sexual orientation and/or gender identity or expression in NOTIS.
 - However, for the current 17 and under inmate population housed at LCC, staff has provided information regarding their inmate's sexual orientation and race indicating:
 - Longest period in segregation is 89 days
 - Shortest is 0 days.



Placement Reviews inmates 17 & under

Days in Program	Days in Seg.	Reason for Segregation	Age	Race	Sexual Orientation	Offense
81	0	N A	17	Hispanic	Heterosexual	Robbery
202	8	Fighting, Tattooing	17	Black	Heterosexual	Robbery cc battery w intent to commit crime
179	0	N A	17	Black	Heterosexual	Consp. to commit violent crime cc robbery es dwe cc robbery es dwe
202	5	Fighting	16	Hispanic	Heterosexual	Kidnapping ii, assault w a deadly weapon
202	89	Assault, Extortion, Threats	17	Black	Heterosexual	Carry concealed weapon es poss stolen vehicle
202	79	Assault, Threats, Extortion, Gang Activities	17	Hispanic	Heterosexual	Battery causing sbh
202	57	Investigation, Unauthorized use of Phone, Lying to Staff	16	Hispanic	Heterosexual	Murder 2nd degree es udwe
189	2	Fight Investigation	16	Caucasian	Heterosexual	Murder 1st degree
67	0	N A	17	Black	Heterosexual	Assault w a deadly weapon
167	6	Organizing Work Stoppage or Demonstration	17	Hispanic	Heterosexual	Battery w deadly weapon
202	71	PREA Investigation	17	Caucasian	Heterosexual	Att sexual assault



Recidivism

The rate of recidivism of prisoners who were confined in any type of segregation at any time before release or discharge;

- It appears there have only been 2 inmates, age 17 and under, released far enough back to allow for calculations of recidivism (released and returned to prison within 3 years of release).
- NDOC had to use 2009 data to allow for 3 years for the inmate to return to prison, (2009 – 2012) as the 2013 statistics weren't completed at the time of this request.
- Both of these inmates had been housed in segregation at some point during their time with the NDOC.



Segregation & Discharge

- The number of prisoners who were confined in any type of segregation immediately before being discharged from detention, including those discharged to parole or mandatory supervision;
 - To date, only one Youthful Offender has paroled directly from the Youthful Offender Unit. All other Offenders currently in the Unit either have or will reach the age of maturity and be moved to other facilities prior to Paroling or Discharging.



Updates and Follow Up

to ACLU presentation at March 27, 2014 Task Force Meeting

Commingling is OK

In February of 2008, the DOJ Office of Juvenile Justice and Delinquency Prevention (OJJDP) released a memo (provided to Task Force today), stating:

- 1) “Adult inmate” means an individual who has reached the age of full criminal responsibility under state law and has been arrested and in custody for or awaiting trial on a criminal charge or has been convicted of a criminal offense.
- 2) Youth who are transferred, certified or waived to the adult criminal justice system may be held in a juvenile facility until the they reach the maximum age of extended juvenile jurisdiction (age 21 in Nevada).
- 3) Youth with adult criminal charges or convictions may be held with youth with juvenile court adjudications without sight and sound separation.

Model: Washington

Conversation in April with administrators from WA JRA (who are open to speaking with NV legislators and administrators):

- From 300-370 youth in juvenile facilities at one time
- Integrated youthful offenders (from 20-40 youth) from beginning; only difference is that they are on a roster known only to staff
- Generally, youthful offenders are first time commitments, and typically are better behaved than juvenile offenders; initially more transfers back to DOC, but has steadily decreased
- Infraction/disciplinary hearings held at the juvenile facilities
- If youthful offender will transition to adult facility (at age 21), 6 month transition period to prepare
- Funding for juvenile facility from adult corrections is based on caseload (usually an annual forecast), and DOC pays for enhancements like additional security guards, extra legal issues, and extraordinary medical costs

Commingling is OK

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- 3) Youth with adult criminal charges or convictions may be held with youth with juvenile court adjudications without sight and sound separation.

Model: Oregon

All Youth Who Spent Any Time on TROY				
	Average Age at Start	#	% of Total	% of Disposition
DOC	19.7	71	45.5%	
African American	19.5	25		35.2%
Asian	19.2	1		1.4%
Hispanic	19.5	22		31.0%
Native American	19.4	3		4.2%
Other/Unknown	25.0	1		1.4%
White	19.8	19		26.8%
YCF	18.0	85	54.5%	
African American	18.2	14		16.5%
Asian	15.7	1		1.2%
Hispanic	17.7	30		35.3%
Native American	19.0	5		5.9%
White	18.2	35		41.2%
Grand Total	18.8	156		

The Assistant Director of the Oregon Youth Authority, Phillip Cox, provided us with this recent data. He states, "Given that our facility population is about 50% DOC and 50% juvenile, the data shows that DOC youth actually had fewer disciplinary placements in TROY [higher security unit] than juvenile offenders."

Model: Oregon

All Male DOC Youth Who Were Committed to OYA and Released from OYA or DOC to Community from 1/1/2005 through 12/31/2008					
		#	Expected Recidivism Rate (Average ORRA Scores)	Actual 36 Month Recidivism Rate	% Difference
DOC Male Youth Returned to DOC for Problems and Released from DOC	Top 25% (Highest Risk)	33	56.0%	51.5%	-8.0%
	Remaining 75% (Lower Risk)	35	18.3%	37.1%	102.7% ***
	Total	68	36.6%	44.1%	20.5% *
DOC Male Youth Released from OYA Close Custody	Top 25% (Highest Risk)	44	51.7%	36.4%	-29.6% **
	Remaining 75% (Lower Risk)	197	15.8%	15.7%	-0.6%
	Total	241	22.3%	19.5%	-12.6% **

* p < .05; ** p < .01; *** p < .001

Higher Risk DOC youth who returned to DOC for problems recidivated 8% less than expected.
Higher Risk DOC youth who stayed at OYA recidivated 30% less than expected.

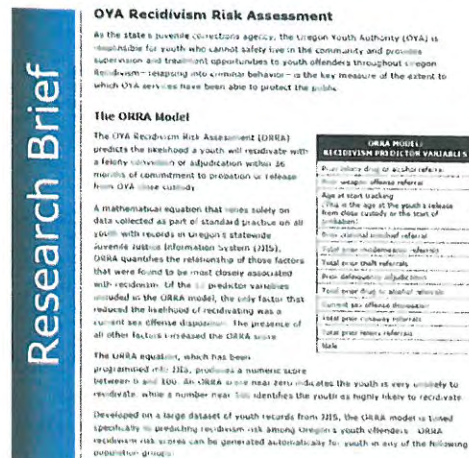
Lower Risk DOC youth who returned to DOC for problems recidivated 103% more than expected.
Lower Risk DOC youth who stayed at OYA recidivated at the expected rate.

Overall, DOC youth who returned to DOC for problems recidivated 21% more than expected.
Overall, DOC youth who stayed at OYA recidivated 13% less than expected.

Model: Oregon

OYA utilizes a two-tiered “Recidivism Risk Assessment” to determine where youth are placed within their facilities, which treatment to engage, and what levels of supervision to provide. Two Research Briefs outlining these assessments have been provided to the Task Force. (There is also a full 26 page study which can be provided to the Task Force upon request.)

OYA does not classify and house youth according to their conviction; rather, they utilize these assessments as a tool to reduce recidivism, increase public safety, and properly place the youth.



Model: Oregon

"Housing youthful inmates in juvenile facilities can be achieved without disruption. Since youth convicted of adult crimes have been housed in Oregon's juvenile detention facilities, the number of fights has decreased, not increased, as some staff had feared." National PREA Resource Center webinar.



Fights and Assaults Since the 2008 Multnomah County Resolution

Year	# Fights/Assaults
2008	53
2009	39
2010	49
2011	34
2012	24

Source: Department of Community Justice, Multnomah County (2013)

Model: Indiana

- “Similarly, in Indiana, although the process has been in place for only a short time [3 months at time of this quote], youth who have been transferred to the juvenile system fit in with the other juveniles at the facility, and are yet to be involved in any serious incidents.” National PREA Resource Center “Youthful Inmate” webinar, June 2013.
- HB 1108 provides judges discretion to suspend an adult sentence imposed on a youthful offender and order instead that the youth be placed in a juvenile facility. (A copy of the bill has been provided.)
- When the youth reaches 18, court holds a review hearing regarding continued placement, discharge from sentence, execution of remainder of sentence in adult facility, home detention, community corrections, probation, or other appropriate alternative sentencing. (Section 5.)

Model: Idaho

Conversation in June with administrator from an ID juvenile detention center (who is open to speaking with NV legislators and administrators):

- Default under ID law is prosecution as a juvenile with waiver provisions permitting adult prosecution (ID Statute 20-508), except for enumerated crimes (20-509)
- If prosecuted as adult, may be held as an adult or, “juveniles being treated as adult offenders...may be housed in a juvenile detention center if so ordered by the court. Such juveniles may be housed in the general juvenile population without sight and sound separation....” (ID Statute 20-518)
- In practice, most judges send all youth to juvenile facilities without formal order or motion
- In 21 years, only 2 cases where juvenile administrator did not want to integrate youthful offender: one deaf/mute youth and one with extreme mental illness (he noted that handling mental illness is a much bigger problem than integration)

Model: Missouri

Information taken from "The Missouri Model: Reinventing the Practice of Rehabilitating Youthful Offenders," The Annie E. Casey Foundation, 2010.

In the Missouri model, youthful offenders (those who have been charged with adult crimes) remain in the custody of Missouri Division of Youth Services.

population overview

1,250+ youth committed to DYS custody each year; over 2,800 served

- 82% male; 18% female
- 45% 16 and over
- 66% from metro areas
- Age of young people served ranges from 10–21
- 75% from single-parent (57%) or step-parent families (18%)

Committing offenses

- 51% felonies*
- 38% misdemeanors
- 11% juvenile offenses

Educational disability and mental health conditions

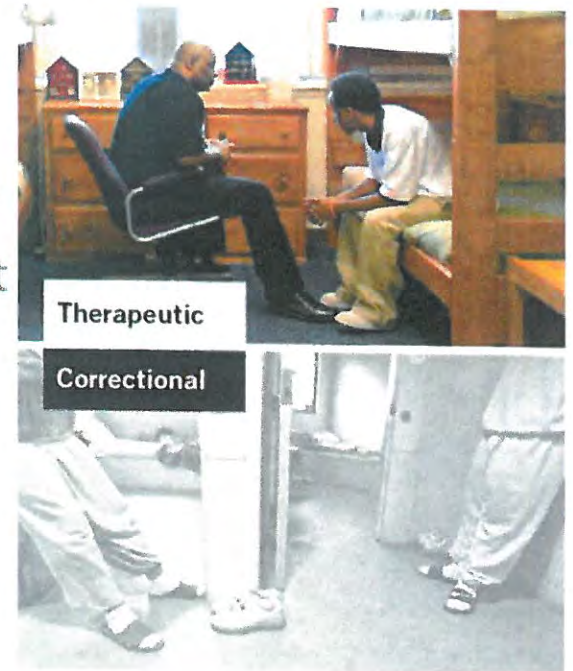
- 34% educational disability
- 49% prior mental health condition; 38% with an active diagnosis

*As detailed in the sidebar on p. 8, many DYS youth whose committing offense is a misdemeanor or juvenile offense have previously been adjudicated for felony offenses. Overall, 64 percent of DYS youth have a history of felony offending.

Model: Missouri

Whereas most youth confined in state juvenile correctional facilities nationwide are housed in institutions with more than 150 beds, the largest of Missouri's 32 residential youth corrections programs has only 50 beds.

Rejects "correctional coercion" in favor of increased staffing ("double coverage" to address needs of secure care facilities) and enhanced staff training. (See excerpt from this 60 page report, relevant to this issue, provided to the Task Force today.)



Clarification: Maryland

Waxter Detention Center in Laurel, MD

Collocated three units, with different levels of offenders segregated into each unit, operated on same site, but with attempt to keep separate rules and policies. Problems:

- Confusion for staff and youth resulting from challenge of keeping different rules and missions straight
- Staffing shortages solved by moving staff between programs without juvenile-appropriate training to adult corrections staff
- Less secure units became heavily influenced with rules of most secure unit

Transferring youth OUT of Baltimore County Detention Center

Fall 2013 proposal to build a new facility for youthful offenders prompted the move of youth FROM this adult jail TO juvenile detention. Concerns about upticks in violence were not warranted; the transferred youth (through consent motion in court) are some of best behaved in the juvenile facility. Casey Foundation prepared a bed report, based on local evidence, so that the facility, if built, would be right-sized.

Illustrative Example: Colorado

Colorado has a program called Youth Offender System that is a medium security prison built in 1994 for 14-17 year olds who have been tried as adults. A 2009 law expanded the YOS to admit young people who were 18 or 19 at the time of the crime and under 21 at the time of sentencing. This legislation was re-enacted in 2013.



The Colorado Juvenile Defender Coalition did a report on YOS and found, among other things, that the facility was offering deficient mental health treatment, lacked evidence-based programming, lacked gender specific programming and lacked stringent recidivism measures.

Data: Bed Space Forecast

As mentioned, Maryland engaged the Annie E. Casey Foundation to prepare a report entitled “Bed Space Forecast for Baltimore Youth Detention Facility.” This 2011 report was provided to the Task Force at the March 27 meeting, but the following points from that report are worth noting:

- The State had conducted a 2007 forecast that was not as inclusive of all data as it should have been; this earlier forecast was found to overestimate the number of beds needed in a new facility.
- This report demonstrates that its own forecast of 117 beds could be reduced by well over 50%, to as low as 44 beds, were reforms were put into place.
- If more than one of these types of reforms were put into place, the size of the new facility could be reduced still further, all while maintaining public safety, reducing costs, and improving outcomes for arrested youth.

Data: Cost Benefit Analysis

A 2014 Vera report, “Advancing the Quality of Cost-Benefit Analysis for Justice Programs,”* concludes with these recommendations, among others:

- Include taxpayer and victim perspectives, at minimum, in an analysis.
- Assess impacts beyond those to the criminal justice system.
- Use appropriate cost figures, being careful to use marginal costs rather than average costs for policies.
- Apply sensitivity analysis; the study should present a range of possible scenarios and explain the likely outcomes.
- Document thoroughly the assumptions, decisions, sources, data, methods, and calculations that went into conducting the study.

* The Task Force has been provided with an excerpt of the 50 page study. Full study is available at the National Juvenile Justice Network web site.

Recommendations

- Engage in thorough and inclusive cost-benefit analysis, considering all current juvenile detention facilities within the state as options, potentially with a technical assistance provider, in tandem with potential reforms.
- Talk with administrators and visit facilities in other states to gain an understanding of policies in application.
- Pursue drafting of a MOU between NDOC and juvenile facilities to allow transfer of youthful offenders out of the custody of the adult corrections system immediately.
- Draft legislation that meets the goal of treating kids like kids and offers more alternatives to detention, lessening our commitment population and impacting our need for future bed space.
- Invest in programming and staff training at a higher rate than infrastructure.



To: Legislative Committee on Child Welfare and Juvenile Justice
Date: July 14, 2014
Re: Support for Recommendations from the Legislative Committee on Child Welfare and Juvenile Justice's Task Force to Study Juvenile Justice Issues

Dear Members of the Legislative Committee on Child Welfare and Juvenile Justice:

I write to provide background and express support for recommendations from the AB 202 Task Force in the Work Session document for the Legislative Committee meeting on July 18, 2014. The ACLU will not have a representative at the meeting, due to scheduling conflicts, but I am available to provide materials and answer questions at any other time.

Regarding A(2), on offender housing, we support the Task Force's recommendation to urge the Supreme Court Commission on Juvenile Justice to develop a Memorandum of Understanding between the Department Corrections and Nevada's juvenile facilities, which would provide for the transfer of youthful offenders from DOC facilities to juvenile facilities. The S. Ct. Commission, through its Regional Facility Planning Subcommittee, is considering relocating the 14 youthful offenders currently housed in NDOC to a juvenile facility, potentially Red Rock Academy. ACLU supports this move and believes that it can be accomplished immediately through the use of an interagency memorandum and accompanying policies on both the adult side and the juvenile side, as in Oregon and Washington.¹ Such an MOU would transfer custody of these youth to DCFS/Rites of Passage, which have the expertise and ability to develop appropriate programming for the rehabilitation of juveniles.

We also believe that this move can be accomplished without building a new facility, on the Red Rock Academy site or elsewhere. While there is some philosophical opposition to "commingling" the juvenile population with the NDOC youthful offender population in the current empty space at Red Rock Academy, there is no real legal barrier to housing, educating, and feeding the two populations together.² Oregon, Washington,

¹ ACLU distributed examples of memorandum and policy materials at the March 27, 2014 meeting of the AB 202 Task Force. Agenda Items VII "Interagency Agreement – State of Washington," "Youthful Offender Program," and "JRA Policy 25 – Transfer of Residential Youth" are available here: <http://www.leg.state.nv.us/interim/77th2013/Committee/StatCom/JuvJustTaskForce/Other/27-March-2014/MeetingPage.cfm?ID=76&d=27-March-2014>.

² In February of 2008, the DOJ Office of Juvenile Justice and Delinquency Prevention (OJJDP) released a memo stating that youth who are transferred, certified, or waived to the adult criminal justice system may be held in a juvenile facility until they reach the maximum age of juvenile court jurisdiction, which in Nevada is age 21. Further, the memo noted that youth with adult criminal charges or convictions may be held with youth with juvenile court adjudications **without sight and sound separation**. This memo was provided to the AB 202 Task Force at the June 27, 2014 meeting and is available here as Agenda Item

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Idaho, and Indiana have successfully commingled and integrated these populations without risking facility security or public safety. Further, commingling these populations does not violate the Prison Rape Elimination Act (PREA).³

Oregon, in particular, utilizes assessments to determine where incarcerated youth should be placed, rather than looking solely at the crime committed as an indicator of facility placement, and have had success with commingling at juvenile facilities for years. Contrarily, Maryland experimented with building a separate building for youthful offenders (youth convicted as adults), run by the adult correctional system, on the same property as a juvenile facility, and found that the adult correctional system and staff overly influenced the juvenile system. The youth in the juvenile facility suffered as a result, due in large part to the differing philosophies for detention of the adult and juvenile systems and the imposition of the adult correctional philosophy.

Regarding (A)(3), topics for further study and the drafting of a letter to the S. Ct. Commission, the ACLU is supportive of all five points outlined in the Work Session document. We especially encourage the visiting of facilities in other states (item (A)(3)(b)) by Nevada's juvenile justice administrators. The ACLU and other juvenile justice advocates in Nevada have spoken with juvenile justice administrators in Oregon, Washington, and Idaho, and they are all receptive to visits and additional inquiries.

We highly encourage further study (item (A)(3)(c)) prior to moving forward with a Capital Improvement Program, whether the CIP requests concern Red Rock Academy or renovating or building facilities in northern Nevada. We fear that building more bed

V(2): <http://www.leg.state.nv.us/interim/77th2013/Committee/StatCom/JuvJustTaskForce/Other/27-June-2014/MeetingPage.cfm?ID=76&d=27-June-2014>.

³ This is because the PREA "juvenile facility" standards do not have any "youthful inmate standard," as is provided for youth housed in the adult prison population. Accordingly, PREA does not require separation of under 18s, and 18 and overs, in "juvenile facilities." The PREA Standards for juvenile facilities is governed by 28 C.F.R. ss. 115.311-393. The definition of "juvenile facility" is "a facility primarily used for the confinement of juveniles pursuant to the juvenile justice system or criminal justice system." 28 C.F.R. s. 115.5. The definition of "juvenile" is "any person under the age of 18, unless under adult court supervision and confined or detained in a prison or jail." Id.

There are two "age-based" separation standards. One is in the set of standards for adult prisons and jails. See 28 C.F.R. s. 115.14. This is known as the "youthful inmate" standard. "Youthful inmates" are defined as "any person under the age of 18 who is under adult court supervision and incarcerated or detained in a prison or jail." 28 C.F.R. s. 115.5. The other "age-based" separation requirement is for lockups. See 28 C.F.R. s. 115.114. This is the "youthful detainee" standard. "Youthful detainee" is defined as "any person under the age of 18 who is under adult court supervision and detained in a lockup." 28 C.F.R. s. 115.5.

Definitions for "prison," "jail," and "lockup" may be found in 28 C.F.R. s. 115.5. Note, there is no corresponding standard among the "juvenile facility" standards. See 28 C.F.R. s. 115.314 ("Reserved").

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space for juveniles may result in a “if you build it, they will come” self-fulfilling prophecy, and are hopeful that technical assistance could be available to the S. Ct. Commission to take into account: 1) the impact of potential legislation that would reduce youth contact with the criminal justice system, lessening the need for beds; 2) the reduction in crime rate in Nevada over the past six years; 3) alternatives to youth incarceration; 4) programming that could be developed and staff that could be hired and trained to work with a commingled population, using the \$15 million proposed for one of the capital projects.⁴

For the record, we are also supportive of (A)(1) amending the direct file statute, (B)(5) amending NRS 392.466 to permit superintendent discretion for expulsion, and (B)(6) removing “language” as a misdemeanor from NRS 392.910. We currently do not have enough information to weigh in on Mark Levin’s recommendations (E), but look forward to reviewing them.

Sincerely,

/s Vanessa Spinazola
Legislative & Advocacy Director
ACLU of Nevada

⁴ When considering the building of a new juvenile detention facility, Maryland engaged the Annie E. Casey Foundation to prepare a report entitled “Bed Space Forecast for Baltimore Youth Detention Facility. The 2011 report demonstrated that, not only had the State’s 2007 forecast overestimated the need for beds, but that the new 117 bed forecast could be reduced by over 50%, to as low as 44 beds, if reforms were put into place, all while maintaining public safety, reducing costs, and improving outcomes for arrested youth. This report was provided to the AB 202 Task Force on March 27, 2014 for Agenda Item V, entitled “National Council on Crime and Delinquency - Bed Space Forecast for Baltimore Youth Detention Facility” and available is at:

<http://www.leg.state.nv.us/interim/77th2013/Committee/StatCom/JuvJustTaskForce/Other/27-March-2014/MeetingPage.cfm?ID=76&d=27-March-2014>.

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To: Board of Prison Commissioners
Date: September 16, 2014
Re: Agenda Item V – Nevada Supreme Court Juvenile Justice Commission;
Transfer of Youthful Offenders to Division of Child and Family Services.

Dear Board of Prison Commissioners:

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I write to ask the Board to investigate and encourage use of Administrative Regulation 502, where transfer of youthful offenders in NDOC custody to the Division of Child and Family Services (DCFS) is listed as the first option for classification of youth 18 and under who are convicted as adults.¹ While this regulation was re-authorized in October 2013, our understanding is that it has not been utilized. We also ask that, if necessary for implementation of AR 502, you approve any agreements that may be required with other governmental agencies, such as DCFS, under NRS 209.141.²

Through our participation in the Nevada Supreme Court Commission on Juvenile Justice, and in particular the Regional Facility Planning Subcommittee, the ACLU has had the opportunity to hear the concerns of multiple agencies, discuss options with juvenile facility administrators, conduct research on best practices nationwide, and visit DCFS commitment housing in Elko and Las Vegas. DCFS balances two sometimes competing concerns. Regionalization – that is, housing kids near their families for purposes of treatment and rehabilitation – is balanced with assessment and classification into one of three in-state facilities or multiple out-of-state facilities that best meets the needs of the child. We believe that the same considerations should apply to NDOC's youthful offender population, but that NDOC does not maintain an infrastructure to meet the age-specific programming needs of this population at the Lovelock Correctional Center, much less across the state at institutions where youth may be housed near their families.

Experts acknowledge that all youth 18 and under are developmentally the same, regardless of the crime for which they are charged.³ In fact, when we spoke with juvenile facility administrators in Oregon, Washington, and Idaho, which are all states where youthful offenders are housed in juvenile facilities with juvenile offenders until the extended age of juvenile jurisdiction, we learned that they commingle and integrate these two populations without risking facility security or public safety. Oregon's experience housing youthful offenders in juvenile facilities has been so successful over the last fifteen years that the Oregon Legislature passed additional reforms this year where youthful offenders

¹ AR 502 is provided to the Board with this letter.

² "The Director may, with the approval of the Board, enter into agreements with other governmental agencies and with private organizations to carry out the purposes of this chapter."

³ See, e.g., "Less Guilty by Reason of Adolescence," MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice Issues, Issue Brief 3.



are now taken directly to juvenile commitment facilities instead of the adult prison.⁴ Because initially these states did not have a regulation similar to AR 502 on the books, they proceeded through state law and accompanying memoranda and agency policies that outline everything from financial reimbursement for custody of the youth to the process for transferring youthful offenders back to the custody of the DOC.⁵ We encourage review and implementation of similar policies in Nevada.

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The number of young people under age 18 held in Nevada Department of Corrections prisons has dropped significantly since 2008.⁶ In 2008, NDOC housed over 50 youthful offenders and today the population hovers around a dozen. With the passage of AB 202 last session, raising the age for direct prosecution of youth in certain cases, that number is likely to continue to decline. Across the country, in not only Oregon, Washington, and Idaho, but also in states like Montana, Idaho, Kentucky, and South Dakota, administrators are declining to house any youth 18 and under in adult facilities. We ask that the BOPC and the NDOC fully exercise your discretion to transfer these youth to appropriate juvenile housing and programming.

Approximately 80% of youthful offenders come from Clark County, and therefore we advocate, as an initial step, that NDOC's youthful offenders be transferred to Red Rock Academy. We have spoken with administrators at Red Rock Academy and they are, by the end of this month, visiting Oregon facilities where these populations have been commingled for years. It is our understanding that Red Rock Academy is willing and, most importantly, able to develop appropriate programming for the rehabilitation of these juveniles, as well as prepare them for the portion of their sentence they will serve in an NDOC facility. It is worth noting that if the BOPC and NDOC move forward with implementation of AR 502 now with Red Rock Academy (either through DCFS or direct MOU with Rites of Passage), we could be laying the groundwork for housing for a female youthful offender, who arguably could be transferred to the co-educational Caliente Youth Center instead of housing her at Florence McClure.

There is no legal barrier to housing, educating, and feeding youthful and juvenile offenders together.⁷ Further, commingling these populations does not violate the Prison

⁴ HB 3183 (2014) requires transport of 16-18 year old adult offenders directly to Oregon Youth Administration intake, rather than DOC intake for initial processing.

⁵ Provided to the Board today is Washington's Memorandum of Understanding between the DOC and the Juvenile Rehabilitation Administration, the DOC implementing policies, and the Juvenile Rehabilitation Administration implementing policies.

⁶ Public Records Act request by ACLU to NDOC, information on file with the ACLU.

⁷ In February of 2008, the DOJ Office of Juvenile Justice and Delinquency Prevention (OJJDP) released a memo stating that youth who are transferred, certified, or waived to the adult criminal justice system may be held in a juvenile facility until they reach the maximum age of juvenile court jurisdiction, which in Nevada is age 21. Further, the memo noted that youth with adult criminal charges or convictions may be held with youth with juvenile court adjudications without sight and sound separation. This memo was



Rape Elimination Act (PREA).⁸ Both youth and public safety are best served by providing youthful offenders with developmentally appropriate programming before the age of 18. Nevada's juvenile facilities, and in particular Red Rock Academy, already have the expertise to work with this population. There is no need for NDOC to re-invent the wheel and develop their own programming when they can simply transfer our dozen youthful offenders to the custody of DCFS.

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I remain available to answer questions, conduct additional research, and locate models for both the BOPC and the NDOC.

Sincerely,

/s Vanessa Spinazola
Legislative & Advocacy Director
ACLU of Nevada

provided to the AB 202 Task Force at the June 27, 2014 meeting and is available here as Agenda Item V(2): <http://www.leg.state.nv.us/interim/77th2013/Committee/StatCom/JuvJustTaskForce/Other/27-June-2014/MeetingPage.cfm?ID=76&d=27-June-2014>.

⁸ This is because the PREA "juvenile facility" standards do not have any "youthful inmate standard," as is provided for youth housed in the adult prison population. Accordingly, PREA does not require separation of under 18s, and 18 and overs, in "juvenile facilities." The PREA Standards for juvenile facilities is governed by 28 C.F.R. ss. 115.311-393. The definition of "juvenile facility" is "a facility primarily used for the confinement of juveniles pursuant to the juvenile justice system or criminal justice system." 28 C.F.R. s. 115.5. The definition of "juvenile" is "any person under the age of 18, unless under adult court supervision and confined or detained in a prison or jail." *Id.*

There are two "age-based" separation standards. One is in the set of standards for adult prisons and jails. See 28 C.F.R. s. 115.14. This is known as the "youthful inmate" standard. "Youthful inmates" are defined as "any person under the age of 18 who is under adult court supervision and incarcerated or detained in a prison or jail." 28 C.F.R. s. 115.5. The other "age-based" separation requirement is for lockups. See 28 C.F.R. s. 115.114. This is the "youthful detainee" standard. "Youthful detainee" is defined as "any person under the age of 18 who is under adult court supervision and detained in a lockup." 28 C.F.R. s. 115.5.

Definitions for "prison," "jail," and "lockup" may be found in 28 C.F.R. s. 115.5. Note, there is no corresponding standard among the "juvenile facility" standards. See 28 C.F.R. s. 115.314 ("Reserved").

**NEVADA DEPARTMENT OF CORRECTIONS
ADMINISTRATIVE REGULATION
502**

YOUTHFUL OFFENDER CLASSIFICATION

Supersedes: AR 502 (06/17/12) and AR 502 (Temporary, 06/05/13)
Effective date: 10/15/13

AUTHORITY: NRS 62.170, 209.301, 42 U.S.C. § 15601, *et seq.* and Federal Register 28 CFR Part 115

RESPONSIBILITY

1. The Offender Management Administrator (OMA) is responsible for the administration of this regulation.
2. The Wardens are responsible for the implementation of this regulation at their specific institutions.

502.01 INITIAL CLASSIFICATION OF YOUNG ADULT & YOUTHFUL OFFENDERS

1. The classification committee will consider placing a young adult or youthful offender in an institution or facility, and programs specifically designated for young offenders.
2. The classification committee should determine the appropriate level of custody for young adult and youthful offenders based on the following case factors:
 - A. The nature and severity of the inmate's offense.
 - B. The characteristics of the inmate's sentence.
 - C. The inmate's criminal history.
 - D. The inmate's age.
 - E. The inmate's mental and physical health.
 - F. The criminal, institutional, and social sophistication of the inmate.
 - G. The inmate's susceptibility to exploitation.

H. The security risk posed by the inmate.

I. PREA Regulations

3. The following represents the hierarchy of placement for young adult and youthful offenders starting with the most susceptible and least sophisticated.

A. Transfer to the Division of Child and Family Services (youthful offenders only).

B. Protective segregation.

C. Youthful offender program.

D. An institution or facility designated for young adult offenders.

E. General population in a conventional institution or facility.

F. Administrative Segregation.

4. Young adult offenders may be retained in youthful offender programs past the age of 18, based on the level of their sophistication and susceptibility to exploitation, but housed according to PREA Regulations.

5. The classification committee should, to the extent possible, designate the assignment of youthful and young adult offenders based on their educational, training, treatment, and protection needs.

6. Youthful offenders will be housed in a unit designated by the Director and in accordance with PREA Regulations.

502.02 CLASSIFICATION APPROVAL AUTHORITY

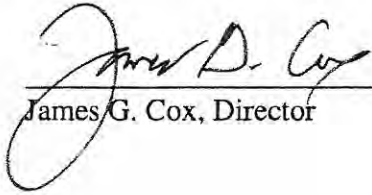
1. The Director, Deputy Director, or the Offender Management Administrator (OMA) must approve the initial classification, and transfers between or custody changes within institutions for a youthful offender.

2. Young adult offenders are approved for classification according to the general classification guidelines provided in the 500 series of the Administrative Regulations.

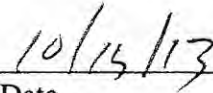
APPLICABILITY

1. This Administrative Regulation requires an Operational Procedure within the Offender Management Division and at each institution and facility.

2. This Administrative Regulation requires an audit.



James G. Cox, Director



Date

INTERAGENCY AGREEMENT

BETWEEN

STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

AND

STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND HEALTH SERVICES

THIS INTERAGENCY AGREEMENT is entered into by and between the STATE OF WASHINGTON, DEPARTMENT OF CORRECTIONS, hereinafter referred to as "DOC," and the STATE OF WASHINGTON, DEPARTMENT OF SOCIAL AND HEALTH SERVICES, by and through the Secretary of DSHS' Juvenile Rehabilitation Administration, hereinafter referred to as "DSHS," for the purpose of exchanging juvenile offenders and juveniles at the various facilities and institutions of the parties hereto.

WHEREAS, pursuant to RCW 72.01.410, any person under the age of eighteen (18) convicted of a felony in this state and committed to DOC for a term of confinement in an adult correctional institution may be transferred to DSHS with the consent of the Secretary of DSHS, for placement in a juvenile correctional institution until age twenty-one (21); and

WHEREAS, pursuant to RCW 13.40.280, a juvenile offender committed to DSHS may be transferred to DOC, with the consent of the Secretary of DOC, for appropriate adult institutional placement for the balance of the juvenile term if it is established at a hearing before a DSHS Administrative Review Panel that continued placement of the juvenile offender in a juvenile institution presents a continuing and serious threat to the safety of others in the institution; and

WHEREAS, pursuant to RCW 13.40.285, a juvenile offender under commitment to DSHS who is subsequently sentenced to a term of confinement at DOC, may be transferred to DOC with the consent of the Secretary of DOC, for the balance of the term of confinement ordered by the juvenile court; and

WHEREAS, DOC and DSHS have previously entered into an Interagency Agreement (DOC CDOP2645 and DSHS #2543-90039) for the exchange of the above-described offenders, at the various facilities and institutions of the parties hereto and desire to continue the programs established thereunder; and

WHEREAS, in consideration of the cooperative relationship herewith undertaken in the confinement, care, treatment, and rehabilitation of offenders on an interagency basis;

NOW THEREFORE, it is mutually agreed as follows:

1. APPLICATION

The sending party to this agreement shall submit a separate application to the receiving party for each individual offender proposed for transfer. Said application shall consist of the copies of all pertinent and available court documents, physical and clinical records, and case history.

Juveniles under the age of eighteen (18) and sentenced to DOC will be automatically reviewed for transfer to DSHS. If accepted, the transfer application referenced in the preceding paragraph must be completed prior, or simultaneous to this transfer.

Transfer of juveniles sentenced as juveniles from DSHS to DOC will be deferred until approved by the Secretary of DOC or his or her designee. If the requested transfer is denied, DOC shall set forth in writing the reasons for the denial.

The receiving party may agree:

- To continue placement until such time as the offender arrives at the age of twenty-one (21); or
- To continue placement until the end of the maximum term of confinement imposed by the committing court; or
- To have the offender returned to the sending party.

The sending party may order the return of an offender to the sending facility at any time.

2. TRANSPORTATION OF THE OFFENDER

Upon approval by the receiving party, the sending party, at its expense, will deliver the offender to the receiving institution or facility designated by the receiving party, together with a legible copy of his/her commitment order, and any other official papers or documents authorizing confinement.

Whenever there is to be a mutual exchange of offenders between the parties to this contract, the authorities of one of the parties may transfer offenders for both parties so that the expenses to both parties may be minimized. The sending party will provide transport services unless otherwise agreed upon by both parties.

If the offender is to be returned to the original sending party, the original sending party will provide transportation from the institution or facility designated by the original receiving party.

For DSHS offenders housed in DOC facilities DOC will provide all transports to court, funeral/death bed visits, medical, and any other off-site trips.

For those DOC offenders housed in DSHS facilities, DOC will provide transport pursuant to any court trips. DSHS will provide transport to funeral/death bed visits, medical

appointments, and other community appointments unless DOC elects, with consultation from DSHS, to perform the transport instead and/or DSHS requests DOC provide the escort for transport.

Notice of such transfers to the clerk of the committing court and the parents, guardian, or next of kin of the juvenile (if known) as per RCW 72.01.410 shall be the responsibility of the DOC.

3. TRANSFER OF OFFENDER FUNDS

Funds due to transferred offenders will be provided by the sending party to be credited to the account of the transferred offender by the receiving party; the receiving party shall provide funds to the original sending party in the amount due the offender at the time of return to the original sending party.

For offenders who are released from a receiving facility directly to the community, the receiving facility will issue any funds due from the resident's/inmate's account directly to the offender, consistent with all applicable policies and procedures.

For offenders transferred under this agreement, the receiving authority shall deduct any fees, legal financial obligations, or restitution required in accordance with court orders.

4. RESPONSIBILITY FOR OFFENDER'S CUSTODY

It shall be the responsibility of the administration of the facility of the receiving party to confine transferred offenders; to give them care and treatment, including the furnishing of subsistence and all necessary medical and hospital services and supplies; to provide for their physical needs; to make available to them the programs of training and treatment which are consistent with their individual needs; to make available agency contracted legal consultation; to retain them in safe custody; to supervise them; to maintain proper discipline and control; and to faithfully execute the sentences and orders of the committing court. Nothing herein contained shall be construed to require the receiving facility to provide treatment, facilities, or programs for any offender confined pursuant to this agreement that it does not provide for its own similar offenders.

The case of each offender transferred under authority of this agreement shall be reviewed by both parties at least every six (6) months through the standard DOC/DSHS classification process. DOC or DSHS may review whether an offender transferred under this agreement would benefit from a return to the sending facility. In most cases DOC offenders should be transferred to DOC within six (6) months after they turn eighteen (18) years of age. Any recommendations will be forwarded to the DOC HQ/Classification Unit. DOC staff will be part of the classification/decision/review process for all DOC offenders housed in DSHS facilities.

Offenders transferred from DOC to DSHS shall not be moved to any other facility within DSHS without prior approval of the DOC Chief of Classification and Treatment or his or her designee.

When the purpose of the transfer is to stabilize the offender for security/safety reasons, DOC will hold DSHS offenders only until they complete their juvenile sentence or turn 21, whichever comes first. Upon a determination by the Secretary of DOC or his/her designee that the offender is stabilized, DOC will notify the DSHS Secretary of its evaluation that the juvenile offender could reasonably be expected to function in a DSHS facility.

For DSHS offenders housed in DOC, juvenile sentence release dates will be determined by DSHS, within the range established by the committing court and with input or consultation from DOC.

Background checks for visitors of DOC offenders housed in DSHS are not required unless requested by either party.

→ Offenders transferred from DOC to DSHS pursuant to this interagency agreement are bound by all applicable DSHS policies and procedures.

Offenders transferred from DSHS to DOC pursuant to the interagency agreement are bound by all applicable DOC policies and procedures.

5. EDUCATION, TRAINING, OR EMPLOYMENT

→ Transferred offenders shall be afforded the opportunity and shall be required to participate in programs of basic education, occupational training, and industrial or other work on the same basis as offenders of the receiving party.

For those offenders under the age of eighteen (18), the receiving facility is responsible for providing appropriate education services.

The receiving party shall have the right to dispose of all products produced by an offender, and shall retain all proceeds of any sale of his or her work in accordance with applicable state laws and regulations.

6. REPORTS, RECORDS, AND FILE TRANSFERS

The receiving facility will provide, upon written or oral request from the sending agency, any reports generated during the current incarceration regarding the sending facility's offender.

DSHS will provide copies of all incident reports to DOC regarding DOC offenders as soon as they are available. DOC will determine on a case-by-case basis whether or not to return those offenders to a DOC facility and write infractions on them based upon the

behavior exhibited. If DOC determines a DOC offender should be returned from DSHS to a DOC facility for an infraction hearing, DSHS will limit disciplinary action to only those steps required to maintain safety and security of the facility. DOC offenders will be provided with the DOC policy regarding infractions. The decision to return a DOC offender from DSHS to a DOC facility for an infraction hearing should be made within five days from when the suspected infraction is reported to DOC.

DSHS will provide copies of the case file, the medical file, and case notes, generated while the offender is serving his or her adult sentence in DSHS, to DOC upon the transfer of an offender back to DOC custody. For those DOC offenders who return to DOC for what is anticipated to be a temporary stay, DSHS will provide only those documents relative to the reason for transfer, as well as any and all updated medical information.

DOC will provide copies of the case file, the medical file, other case management notes, and all infraction information, generated while the offender is serving his or her juvenile sentence in DOC, to DSHS upon request.

Upon transfer of an offender between facilities, the sending agency will provide a supply of any and all current medications to the receiving facility.

7. VICTIM/WITNESS NOTIFICATION

DSHS will provide current and updated information to DOC regarding victim/witness issues for DSHS offenders who are housed with DOC under this contract. DOC will provide current and updated information to DSHS regarding victim/witness issues for DOC offenders who are housed with DSHS under this contract. DOC will be responsible for all notifications to victims/witnesses for juvenile and adult offenders transferred under this contract, regardless of whether said offender is housed in DOC or DSHS.

8. ESCAPE

If a transferred offender escapes from the custody of the receiving party, the receiving party will use all reasonable means to recapture the offender as outlined in agency policies and procedures. The receiving party shall have the primary responsibility for and authority to direct the retaking of the offender. Any costs in connection therewith shall be chargeable to and born by the receiving party.

In the event a DOC offender housed in DSHS escapes from DSHS and/or is recaptured after an escape, the following notifications will be made:

During Normal Business Hours
(Monday–Friday 8a.m.—5p.m.)

- Local Law Enforcement
- DOC HQ (360-753-6868)
- DOC Victim/Witness Unit (360-753-6211)

Any Other Time, to include Holidays

- Local Law Enforcement
- WCC Shift Lieutenant (360-427-4622)

In the event a JRA offender housed in DOC escapes from DOC and/or is recaptured after an escape, DOC procedures shall be followed, and the following additional notification will be made:

- JRA Division Director – Institution Programs (First by pager @ 360-455-6394, then by voice mail @ 360-902-8082)

9. SUBSEQUENT SENTENCES

If any juvenile offender under commitment to DSHS receives a subsequent sentence to a DOC institution, such offender shall be received at and processed in accordance with DOC procedures. Upon completion of the DOC processing, the offender shall be returned to the custody of DSHS to complete the original juvenile term, unless agreement has been reached pursuant to Section 1 of this agreement to transfer the offender to DOC for completion of the juvenile term. Pursuant to RCW 13.40.285, DSHS offenders committed to DOC with outstanding unserved juvenile sentences will complete the juvenile sentences first and the adult sentence will be served consecutively.

10. RELEASE PLANNING, END OF SENTENCE REVIEW (EOSR), AND SUPERVISION

The sending party shall notify the receiving party of pending release of an offender in writing at least sixty (60) days prior to the established release date of the transferred offender. Such notice will verify the release date and will include instructions or arrangements regarding the release. The parties agree to cooperate in release planning by providing the sending party with access to the offender and offender records.

DSHS EOSRs will be conducted in accordance with DSHS administrative policy #8.08. DOC EOSRs will be conducted in accordance with DOC policy #350.500.

Community custody or parole shall be the responsibility of the party with jurisdiction of the offender following release.

11. DURATION AND TERMINATION

This contract shall be effective upon the authorized signatures of the parties hereto and continue until terminated in accordance with the procedures herein, and shall supercede the aforementioned Interagency Agreement (DOC Contract No. CDOP2645 and DSHS #2543-90039) and any Memorandum of Understanding developed to supplement the previous Interagency Agreement.

This agreement may be terminated for any reason by written notice of either party. The termination shall become effective ninety (90) calendar days after receipt of said notice. Within a reasonable time after receipt of such notice, the sending party shall accept delivery of its offenders at an institution or facility so designated.

12. COST AND REIMBURSEMENT

There shall be no charge to either party for expenses incurred by the receiving party for the usual and customary care, custody and maintenance of offenders transferred pursuant to this agreement.

The cost of any special or extraordinary services, medication, equipment, surgical, or nursing care shall be charged to the sending agency. Excluding emergencies, the receiving party should obtain prior approval in writing from the sending facility for extraordinary or special services.

The DOC and JRA may jointly agree to other specific costs which would be included in an Exhibit and attached to this agreement.

In the event of a request for accounting and reimbursement, the receiving party shall submit invoices using State Form A-19 Invoice Voucher, or such other form as designated by the sending party. Consideration for services rendered shall be payable upon receipt and acceptance of properly completed invoices which shall be submitted to the sending party by the receiving party not more often than monthly and shall be submitted within 60 days of the receiving party incurring the cost. The invoices shall describe and document to the sending party's satisfaction the services provided under this contract. Payment shall be considered timely if made by the receiving party within thirty (30) days after receipt and acceptance by the sending party of the properly completed invoices. The sending party shall pay the receiving party through the state journal voucher process or as otherwise agreed.

13. DISPUTES

If a dispute should arise regarding the terms of this agreement or duties imposed herein, the dispute shall be resolved as follows:

DSHS will appoint a representative to the dispute panel; DOC will appoint a representative to the dispute panel; then together, the DOC and DSHS representatives will mutually agree on a third person to chair the dispute panel.

The dispute panel shall thereafter decide the dispute by majority rule and render a written decision within seven (7) days.

Neither party shall have recourse to the courts in regard to a matter governed by this agreement absent a showing of compliance with this section or waiver by both parties. In the event a matter proceeds to court, venue shall be in Olympia, Washington.

14. NON-DISCRIMINATION

DOC and DSHS will not discriminate because of race, color, creed or national origin, sex, sexual orientation, marital status, age, or the presence of any sensory, mental, or physical handicap in carrying out the terms of this agreement.

15. INDEMNIFICATION

DSHS shall indemnify DOC against any and all such claims, suits, or actions arising from any neglect or deliberate act or omission of DSHS' employees, contract employees, or agents while performing under the terms of this agreement.

DOC shall indemnify DSHS against any and all such claims, suits, or actions arising from any neglect or deliberate act or omission of DOC's employees, contract employees, or agents while performing under the terms of this agreement.

16. ALTERATIONS AND AMENDMENTS

This Interagency Agreement may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

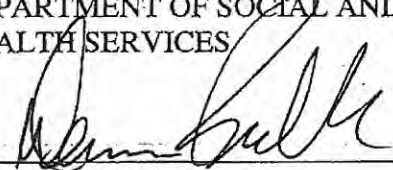
17. ORDER OF PRECEDENCE

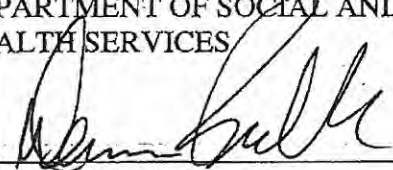
The items listed below are incorporated by reference herein. In the event of an inconsistency in this Interagency Agreement, the inconsistency shall be resolved by giving precedence in the following order:

1. Applicable Washington State Statutes and Regulations;
2. The Terms and Conditions contained within this agreement;
3. Any other provisions incorporated by reference or otherwise into the contract.

IN WITNESS THEREOF, the parties have affixed their signatures in execution thereof.

STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND
HEALTH SERVICES


Dennis Braddock, Secretary

 1/26/05
Date

STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS


Joseph Lehman, Secretary

 1/24/05
Date

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Assistant Attorney General

Date

Pete Berney

Assistant Attorney General

1/21/05

Date

EXHIBIT A

Pursuant to interagency agreement DOC # CDOC6528/DSHS #0561-65721 (Agreement) between the Department of Social and Health Services (DSHS) and the Department of Corrections (DOC) the following agreement defines the terms of reimbursement for extra expenses incurred by the DSHS for the security and legal services for DOC youth being housed in a DSHS Juvenile Rehabilitation Administration (JRA) facility.

The term of this agreement shall be effective from January 1, 2005 through December 31, 2005.

DOC agrees to reimburse Green Hill School, a JRA facility, for the costs of 3.4 FTE security staff, not to exceed a maximum compensation of \$12,268 per month.

DOC agrees to reimburse Echo Glen Children's Center, a JRA facility, for the costs of 2.6 FTE security staff, not to exceed a maximum compensation of \$9,645 per month.

DOC agrees to reimburse DSHS for the provision of legal services to the DOC offenders housed in JRA facilities. Said legal services shall be provided by the legal services contractor under contract to DSHS to provide legal services to JRA offenders. Reimbursement for the legal services shall be in addition to the reimbursement for the security staff and shall not exceed \$3,000 per month.

Total maximum reimbursement by DOC to DSHS and its' JRA facilities in support of the above named services shall not exceed \$298,956 per year.

DSHS shall amend the contract with their JRA legal services provider to include the provision of legal services to the DOC offenders who are confined in JRA facilities. The amendment shall include language submitted by the contracts department of DOC.

The DSHS shall submit invoices monthly. Payment to the DSHS and its' JRA facilities for properly completed and accurate invoices will be made by warrant or account transfer by the DOC within 30 days of receipt of the invoice. Upon expiration of the Agreement, any claim for payment not already made shall be submitted within 30 days after the expiration date or the end of the fiscal year, whichever is earlier.

In witness whereof, the parties have executed this Exhibit A to the Agreement.

DEPARTMENT OF CORRECTIONS



Gary Banning, Contracts Administrator

DEPARTMENT OF SOCIAL AND
HEALTH SERVICES



Denise Livingston, JRA Contracts Manager

State of Washington



Department of Corrections
Contract No. CDOC6528
Amendment No. 1

This Amendment is made by the state of Washington, Department of Corrections, hereinafter referred to as DOC, and the state of Washington State Department of Social and Health Services, hereinafter referred to as DSHS, for the purpose of amending the above-referenced Contract, heretofore entered into between DOC and DSHS.

WHEREAS the purpose of this contract amendment is to replace Exhibit A;

NOW THEREFORE, in consideration of the terms and conditions contained herein, or attached and incorporated and made a part hereof, DOC and DSHS agree as follows:

Exhibit A is hereby replaced in its entirety with Exhibit A-1, attached hereto and incorporated herein.

All other terms and conditions remain in full force and effect. The effective date of this amendment is January 1, 2006.

THIS CONTRACT AMENDMENT, consisting of one (1) page and one (1) attachment, is executed by the persons signing below who warrant that they have the authority to execute the contract.

DEPARTMENT OF SOCIAL AND
HEALTH SERVICES

Denise Livingston
(Signature)
Denise Livingston
(Printed Name)
Grants & Contracts Manager
(Title)
6/23/06
(Date)

DEPARTMENT OF CORRECTIONS

Gary Banning
(Signature)
Gary Banning
(Printed Name)
Contracts Administrator
(Title)
6/29/06
(Date)

Approved as to Form:

This contract amendment format was approved as to form by Tom Young, AAG, of the Office of the Attorney General, on April 14, 1998.
Approval on file.

RECEIVED
DSHS ASSISTANT SEC.

JUL 5 2006

JUVENILE REHABILITATION
ADMINISTRATION

EXHIBIT A-1

Pursuant to interagency agreement DOC #CDOC6528/DSHS #0561-65721 (Agreement) between the Department of Social and Health Services (DSHS) and the Department of Corrections (DOC) agrees to the following terms of reimbursement for extra expenses incurred by the DSHS for the security and legal services for DOC youth being housed in a DSHS, Juvenile Rehabilitation Administration (JRA) facility.

The term of this Exhibit to the Agreement shall be effective from January 1, 2006 through June 30, 2007.

DOC agrees to reimburse Green Hill School, a JRA facility, for the costs of 3.6 FTE security staff. Reimbursement shall be \$14,475 per month for the months of January through June 2006, and \$15,085 per month for the months of July 2006 through June 2007.

DOC agrees to reimburse Echo Glen Children's Center, a JRA facility, for the costs of 2.6 FTE security staff. Reimbursement shall be \$10,400 per month for the months of January 2006 through June 2006, and \$10,850 per month for the months of July 2006 through June 2007.

DOC agrees to reimburse DSHS for the provision of legal services to the DOC offenders housed in JRA facilities. Said legal services shall be provided by the legal services contractor under contract to DSHS to provide legal services to JRA offenders. Reimbursement for the legal services shall be in addition to the reimbursement for the security staff. The Contractor shall be paid at the rate of \$93.50 per hour for licensed attorney services for DOC client contact and other hours of licensed attorney services directly attributable to work for DOC clients. The Contractor shall be paid at a rate of \$46.75 per hour for legal assistant services directly attributable to work for DOC clients. DOC shall reimburse Contractor for travel time. The Contractor must contact DOC if the number of DOC client hours exceeds the average of 15 per month. The DSHS contract shall include a clause that requires contact of DOC by the legal services provider if the number of DOC client hours exceed the average of 15 hours per month. The maximum amount of hours shall not exceed 20 hours per month and not exceed the average of \$1870 per month. Maximum consideration for legal services for this contract period is \$33,660.

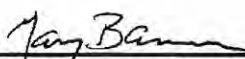
Total maximum reimbursement by DOC to DSHS and its' JRA facilities in support of the above named services shall not exceed \$494,130 for the period of this Exhibit A.

DSHS shall amend the contract with their JRA legal services provider to include the provision of legal services to the DOC offenders who are confined in JRA facilities. The amendment shall include language submitted by the contracts department of DOC.

The DSHS shall submit invoices monthly. Payment to the DSHS and its' JRA facilities for properly completed and accurate invoices will be made by warrant or account transfer by the DOC within 30 days of receipt of the invoice. Upon expiration of the Agreement, any claim for payment not already made shall be submitted within 30 days after the expiration date or the end of the fiscal year, whichever is earlier.

In witness whereof, the parties have executed this Exhibit A-1 to the Agreement.

DEPARTMENT OF CORRECTIONS



Gary Banning, Contracts Administrator

DEPARTMENT OF SOCIAL AND
HEALTH SERVICES



Denise Livingston, JRA Contracts
Manager

State of Washington



Department of Corrections
Contract No. CDOC6528
Amendment No. 2

This Amendment is made by the state of Washington, Department of Corrections, hereinafter referred to as DOC, and the state of Washington State Department of Social and Health Services, hereinafter referred to as DSHS, for the purpose of amending the above-referenced Contract, heretofore entered into between DOC and DSHS.

WHEREAS the purpose of this contract amendment is to replace Exhibit A-1;

NOW THEREFORE, in consideration of the terms and conditions contained herein, or attached and incorporated and made a part hereof, DOC and DSHS agree as follows:

Exhibit A-1 is hereby replaced in its entirety with Exhibit A-2, attached hereto and incorporated herein.

All other terms and conditions remain in full force and effect. The effective date of this amendment is January 1, 2007.
July 10 13

THIS CONTRACT AMENDMENT, consisting of one (1) page and one (1) attachment, is executed by the persons signing below who warrant that they have the authority to execute the contract.

DEPARTMENT OF SOCIAL AND
HEALTH SERVICES

[Signature]
(Signature)
DEL HONTANOSAS
(Printed Name)
GRANTS CONTRACT MANAGER
(Title)
9/28/07
(Date)

DEPARTMENT OF CORRECTIONS

[Signature]
(Signature)
Gary Banning
(Printed Name)
Contracts Administrator
(Title)
10/10/07
(Date)

Approved as to Form:

This contract amendment format was approved as to form by Tom Young, AAG, of the Office of the Attorney General, on April 14, 1998.
Approval on file.

Pursuant to interagency agreement DOC #CDOC6528/DSHS #0561-65721 (Agreement) between the Department of Social and Health Services (DSHS) and the Department of Corrections (DOC) the DOC agrees to the following terms of reimbursement for extra expenses incurred by the DSHS for the security and legal services for DOC youth being housed in a DSHS, Juvenile Rehabilitation Administration (JRA) facility.

The term of this Exhibit to the Agreement shall be effective from July 1, 2007 through June 30, 2009.

DOC agrees to reimburse Green Hill School, a JRA facility, for the costs of 3.6 FTE security staff. Reimbursement shall be \$15,626 per month for the months of July 2007 through June 2008, and \$15,934 per month for the months of July 2008 through June 2009.

DOC agrees to reimburse Echo Glen Children's Center, a JRA facility, for the costs of 2.6 FTE security staff. Reimbursement shall be \$11,508 per month for the months of July 2007 through June 2008, and \$11,728 per month for the months of July 2008 through June 2009.

DOC agrees to reimburse DSHS for the provision of legal services to the DOC offenders housed in JRA facilities. Said legal services shall be provided by the legal services contractor under contract to DSHS to provide legal services to JRA offenders. Reimbursement for the legal services shall be in addition to the reimbursement for the security staff. The Contractor shall be paid at a rate of \$93.50 per hour for licensed attorney services for DOC client contact and other hours of licensed attorney services directly attributable to work for DOC clients. The Contractor shall be paid at a rate of \$46.75 per hour for legal assistant services directly attributable to work for DOC clients. DOC shall not reimburse Contractor for travel time. The Contractor must contact DOC if the number of DOC client hours exceeds 15 per month. The maximum amount shall not average more than 20 hours per month and not exceed the average of \$1870 per month. Maximum consideration for legal services for this contract period is \$44,880.

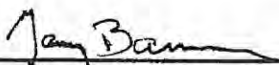
Total maximum reimbursement by DOC to DSHS and its' JRA facilities in support of the above named services shall not exceed \$702,432 for the period of this Exhibit A.

The DSHS shall submit invoices monthly. Payment to the DSHS and its' JRA facilities for properly completed and accurate invoices will be made by warrant or account transfer by the DOC within 30 days of receipt of the invoice. Upon expiration of the Agreement, any claim for payment not already made shall be submitted within 30 days after the expiration date or the end of the fiscal year, whichever is earlier.

In witness whereof, the parties have executed this Exhibit A-2 to the Agreement.

DEPARTMENT OF CORRECTIONS

DEPARTMENT OF SOCIAL AND
HEALTH SERVICES



Gary Banning, Contracts Administrator



Del Hontanosas, JRA Contracts
Manager

State of Washington



Department of Corrections
Contract No. CDOC6528
Amendment No. 3

This Amendment is made by the state of Washington, Department of Corrections, hereinafter referred to as DOC, and the state of Washington State Department of Social and Health Services, hereinafter referred to as DSHS, for the purpose of amending the above-referenced Contract, heretofore entered into between DOC and DSHS.

WHEREAS the purpose of this contract amendment is update Contract information and to replace Exhibit A-2;

NOW THEREFORE, in consideration of the terms and conditions contained herein, or attached and incorporated and made a part hereof, DOC and DSHS agree as follows:

The following paragraphs and sections in the Contract are amended in part, as follows:

Page 1, paragraph 3:

WHEREAS, pursuant to RCW 13.40.280, a juvenile offender committed to DSHS may be transferred to DOC, with the consent of the Secretary of DOC, for appropriate adult institutional placement for the balance of the juvenile term if it is established at a hearing before a DSHS Administrative Review ((Panel)) Board that continued placement of the juvenile offender in a juvenile institution presents a continuing and serious threat to the safety of others in the institution;

Section 1. APPLICATION, Page 2, paragraph 1 and 2:

The sending party to this agreement shall submit a separate application to the receiving party for each individual offender proposed for transfer. Said application shall consist of the copies of all pertinent and available court documents, physical and clinical records, and case history.

Juveniles under the age of eighteen (18) and sentenced to DOC will be automatically reviewed for transfer to DSHS. If accepted, the transfer application referenced in the preceding paragraph must be completed prior, or simultaneous to this transfer.

Section 3. TRANSPORTATION OF THE OFFENDER, Page 3, paragraph 2:

~~((Notice of such transfers to))~~ It is the responsibility of DOC to notify the clerk of the committing court and the parents, guardian, or next of kin of the juvenile (if known) of such transfers as per RCW 72.01.410. ~~((shall be the responsibility of the DOC))~~.

Section 4. RESPONSIBILITY FOR OFFENDER'S CUSTODY. Page 3, paragraph 7:

The case of each offender transferred under authority of this agreement shall be reviewed by both parties at least every six (6) months through the standard DOC/DSHS classification process. DOC or DSHS may review whether an offender transferred under this agreement would benefit from a return to the sending facility. ~~((In most cases DOC offenders should be transferred to DOC within six (6) months after they turn eighteen (18) years of age.))~~ Any

recommendations will be forwarded to the DOC HQ/Classification Unit. DOC staff will be part of the classification/decision/review process for all DOC offenders housed in DSHS facilities.

Section 5. EDUCATION, TRAINING, OR EMPLOYMENT, Page 4, paragraph 7 and 8:

Transferred offenders shall be afforded the opportunity and shall be required to participate in programs of basic education, occupational training, and industrial or other work on the same basis as offenders of the receiving party. The receiving facility is responsible for providing appropriate education services.

~~For those offenders under the age of (18), the receiving facility is responsible for providing appropriate education services.~~

Section 6. REPORTS, RECORDS, AND FILE TRANSFERS. Page 5, paragraph 4 deleted:

~~Upon transfer of an offender between facilities, the sending agency will provide a supply of any and all current medications to the receiving facility.~~

Section 8. ESCAPE, Page 5, paragraph 2, update notification information:

During Normal Business Hours
(Monday–Friday 8 a.m.—5p.m.)

- Local Law Enforcement
- DOC HQ Warrants Unit ~~((360-753-6868))~~ (360) 725-8888
- DOC Victim/Witness Unit (360) 725-8686
~~(360-753-6211)~~
- DOC HQ Classification (360) 725-8618

In the event a JRA offender housed in DOC escapes from DOC and/or is recaptured after an escape, DOC procedures shall be followed, and the following additional notification will be made:

- JRA Division Director – Institution Programs ~~((First by))~~
Ppager @ 360-455-6394, ~~((then by))~~ Voice mail @ 360-902-8082)

Exhibit A-2 is hereby replaced in its entirety with Exhibit A-3, attached hereto and incorporated herein.

All other terms and conditions remain in full force and effect. The effective date of this amendment is July 1, 2009.

THIS CONTRACT AMENDMENT, consisting of three (3) pages and one (1) attachment, is executed by the persons signing below who warrant that they have the authority to execute the contract.

DEPARTMENT OF SOCIAL AND
HEALTH SERVICES


(Signature)
TEL ANTARES
(Printed Name)
GRAND + CONTRACTS MANAGER
(Title)
9/11/09
(Date)

Approved as to Form:

This contract amendment format was approved
as to form by Tom Young, AAG, of the Office of
the Attorney General, on April 14, 1998.
Approval on file.

DEPARTMENT OF CORRECTIONS

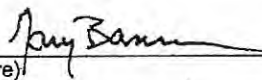

(Signature)
Gary Banning
(Printed Name)
Contracts Administrator
(Title)
9/23/09
(Date)

EXHIBIT A-3

Pursuant to interagency agreement DOC #CDOC6528/DSHS #0561-65721 (Agreement) between the Department of Social and Health Services (DSHS) and the Department of Corrections (DOC) the DOC agrees to the following terms of reimbursement for extra expenses incurred by the DSHS for the security and legal services for DOC youth being housed in a DSHS, Juvenile Rehabilitation Administration (JRA) facility.

The term of this Exhibit to the Agreement shall be effective from July 1, 2009 through June 30, 2011.

DOC agrees to reimburse Green Hill School, a JRA facility, for the costs of 3.6 FTE security staff for a monthly reimbursement rate of \$15,934.00 per month from July 1, 2009 to June 30, 2011.

DOC agrees to reimburse Echo Glen Children's Center, a JRA facility, for the costs of 2.6 FTE security staff for a monthly reimbursement rate of \$11,728.00 per month from July 1, 2009 to June 30, 2011.

DOC agrees to reimburse DSHS for the provision of legal services to the DOC offenders housed in JRA facilities. Said legal services shall be provided by the legal services contractor under contract to DSHS to provide legal services to JRA offenders. Reimbursement for the legal services shall be in addition to the reimbursement for the security staff. The Contractor shall be paid at a rate of \$93.50 per hour for licensed attorney services for DOC client contact and other hours of licensed attorney services directly attributable to work for DOC clients. The Contractor shall be paid at a rate of \$46.75 per hour for legal assistant services directly attributable to work for DOC clients. DOC shall not reimburse Contractor for travel time. The Contractor must contact DOC if the number of DOC client hours exceeds 15 per month. The maximum amount shall not average more than 20 hours per month and not exceed the average of \$1870 per month. Maximum consideration for legal services for this contract period is \$44,880.

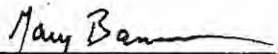
Total maximum reimbursement by DOC to DSHS and its' JRA facilities in support of the above named services shall not exceed \$708,768.00 for the time period per Exhibit A-3.

The DSHS shall submit invoices monthly. Payment to the DSHS and its' JRA facilities for properly completed and accurate invoices will be made by warrant or account transfer by the DOC within 30 days of receipt of the invoice. Upon expiration of the Agreement, any claim for payment not already made shall be submitted within 30 days after the expiration date or the end of the fiscal year, whichever is earlier.

In witness whereof, the parties have executed this Exhibit A-3 to the Agreement.

DEPARTMENT OF CORRECTIONS

DEPARTMENT OF SOCIAL AND
HEALTH SERVICES



Gary Banning, Contracts Administrator



Del Hontanosas, JRA Contracts
Manager

State of Washington



Department of Corrections
Contract No. CDOC6528
Amendment No. 4

This Amendment is made by the state of Washington, Department of Corrections, hereinafter referred to as Department, and Department of Social and Health Services, hereinafter referred to as the DSHS, for the purpose of amending the above-referenced Contract, heretofore entered into between the Department and the Contractor.

WHEREAS the purpose of this contract amendment is to provide updated contract information and to replace Exhibit A-3;

NOW THEREFORE, in consideration of the terms and conditions contained herein, or attached and incorporated and made a part hereof, the Department and Contractor agree as follows:

Section 8, ESCAPE, is amended, in part, as follows:

.....Any Other time, to include Holidays

- Local Law Enforcement
- For males: WCC Shift Lieutenant (360-427-4622)
- For females: WCCW Shift Lieutenant (253-858-4200x370)

Exhibit A-3 is hereby replaced in its entirety with Exhibit A-4, attached hereto and incorporated herein.

Additions to this text are shown by underline and deletions by ~~((strikeout))~~. All other terms and conditions remain in full force and effect. The effective date of this amendment is July 1, 2011

THIS CONTRACT AMENDMENT, consisting of one (1) page and one (1) attachment, is executed by the persons signing below who warrant that they have the authority to execute the contract.

CONTRACTOR

[Signature]
(Signature)
DEL GUSTANOSAS
(Printed Name)
GRANTS + CONTRACTS MANAGER
(Title)
1/24/12
(Date)

DEPARTMENT OF CORRECTIONS

[Signature]
(Signature)
Gary Banning
(Printed Name)
Contracts Administrator
(Title)
2/8/12
(Date)

Approved as to Form:
This amendment format was approved
by the office of the Attorney General.
Approval on file.

EXHIBIT A-4

Pursuant to Interagency Agreement DOC #CDOC6528/DSHS #0561-65721 (Agreement) between the Department of Social and Health Services (DSHS) and the Department of Corrections (DOC) the DOC agrees to the following terms of reimbursement for extra expenses incurred by the DSHS for the security and legal services for DOC youth being housed in a DSHS, Juvenile Rehabilitation Administration (JRA) facility.

The term of this Exhibit to the Agreement shall be effective from July 1, 2011 through June 30, 2013.

DOC agrees to reimburse Green Hill School, a JRA facility, for the costs of 3.6 FTE security staff for a monthly reimbursement rate of \$15,491.00 per month from July 1, 2011 to June 30, 2013.

DOC agrees to reimburse Echo Glen Children's Center, a JRA facility, for the costs of 2.6 FTE security staff for a monthly reimbursement rate of \$11,846.00 per month from July 1, 2011 to June 30, 2013.

DOC agrees to reimburse DSHS for the provision of legal services to the DOC offenders housed in JRA facilities. Said legal services shall be provided by the legal services contractor under contract to DSHS to provide legal services to JRA offenders. Reimbursement for the legal services shall be in addition to the reimbursement for the security staff. The Contractor shall be paid at a rate of \$93.50 per hour for licensed attorney services for DOC client contact and other hours of licensed attorney services directly attributable to work for DOC clients. The Contractor shall be paid at a rate of \$46.75 per hour for legal assistant services directly attributable to work for DOC clients. DOC shall not reimburse Contractor for travel time. The Contractor must contact DOC if the number of DOC client hours exceeds 15 per month. The maximum amount shall not average more than 20 hours per month and not exceed the average of \$1870 per month. Maximum consideration for legal services for this contract period is \$44,880.

Total maximum reimbursement by DOC to DSHS and its' JRA facilities in support of the above named services shall not exceed \$708,768.00 for the time period per Exhibit A-4.

The DSHS shall submit invoices monthly. Payment to the DSHS and its' JRA facilities for properly completed and accurate invoices will be made by warrant or account transfer by the DOC within 30 days of receipt of the invoice. Upon expiration of the Agreement, any claim for payment not already made shall be submitted within 30 days after the expiration date or the end of the fiscal year, whichever is earlier.

In witness whereof, the parties have executed this Exhibit A-4 to the Agreement.

DEPARTMENT OF CORRECTIONS



Administrator

DEPARTMENT OF SOCIAL AND
HEALTH SERVICES



JRA Contracts Manager



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REVIEW/REVISION HISTORY:

Effective: 8/7/00
Revised: 7/22/03
Revised: 2/28/05
Revised: 12/5/06
Revised: 2/4/08
Revised: 9/1/08
Revised: 5/2/11
Revised: 2/13/12
Revised: 12/10/12

SUMMARY OF REVISION/REVIEW:

Added I.A.1.c. that youthful offenders will be under direct supervision by 2 custody employees whenever they leave their cells

APPROVED:

Signature on file

BERNARD WARNER, Secretary
Department of Corrections

11/20/12

Date Signed



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REFERENCES:

DOC 100.100 is hereby incorporated into this policy; [RCW 72.01.410](#); [ACA 4-4306](#); [ACA 4-4307](#); [ACA 4-4308](#); [ACA 4-4309](#); [ACA 4-4310](#); [ACA 4-4311](#); [ACA 4-4312](#); [DOC 200.000 Trust Accounts for Offenders](#); [DOC 300.380 Classification and Custody Facility Plan Review](#); [DOC 310.150 Reception, Initial Classification, and Custody Facility Plan](#); [DOC 350.200 Offender Transition and Release](#); DOC 420.100 Transportation Standards; [DOC 440.000 Personal Property for Offenders](#); [Offender Health Plan](#); Interagency Agreement Between the State of Washington, Department of Corrections and the State of Washington, Department of Social and Health Services, CDOC6528; PREA Standards 115.14(a)-(c)

POLICY:

- I. A youthful offender is any person under the age of 18 who is tried, convicted, and sentenced as an adult. Youthful offenders under Department jurisdiction will be housed at a Department of Social and Health Services' Juvenile Rehabilitation Administration (JRA) facility to ensure their medical, mental health, and developmental needs are addressed, and they are provided a safe and secure environment. [4-4310]
- II. Adjudicated delinquent offenders and/or youths not charged with adult crimes will not be housed in Department facilities. [4-4306]
- III. To the extent possible, based on legitimate penological constraints, the Department will make escorts and programming space available to youthful offenders housed in Department facilities. [4-4310]
- IV. The Department and the JRA have an interagency agreement to coordinate the transfer and sharing of information regarding youthful offenders.

DIRECTIVE:

- I. Admission
 - A. [4-4311] Youthful offenders sentenced to the Department will be received at Washington Corrections Center (WCC) or Washington Corrections Center for Women (WCCW) Reception Diagnostic Center.
 1. Offenders admitted to WCC or WCCW will be housed to ensure direct supervision, safety, and security requirements are met. [4-4307] [4-4308]
 - a. Pending transfer to a JRA facility, the youthful offender will be assigned a cell separate from adult offenders, within an intensive management or segregation unit or infirmary. [4-4307] [4-4308]

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- b. The youthful offender will not be housed or participate in a program/ activity (e.g., recreation, visiting) with any adult offender.
- c. The youthful offender will be under direct supervision by 2 custody employees whenever s/he leaves his/her cell.
- d. Sight or sound contact with adult offenders will be minimal and brief, and conform to applicable legal requirements while the youthful offender is housed at Department facilities.

B. Upon the youthful offender's arrival at WCC or WCCW Reception Diagnostic Center, records employees will notify:

- 1. Appropriate facility employees,
- 2. Headquarters Classification Correctional Program Manager,
- 3. Headquarters Youthful Offender Program (YOP) Counselor III, and
- 4. Headquarters Corrections Specialist for Records.

C. The YOP Counselor III/designee will make appropriate arrangements to provide educational services if the youthful offender is expected to remain or is unexpectedly detained at the facility more than 3 working days.

D. The YOP Counselor III/designee will create an initial Custody Facility Plan per DOC 310.150 Reception, Initial Classification, and Custody Facility Plan.

II. Transfer to Juvenile Rehabilitation Administration

A. Unless there are documented safety, security, and/or program reasons to retain in a Department facility, the YOP Counselor III/designee will review youthful offenders for possible placement at a JRA facility.

B. If the YOP Counselor III's review indicates the youthful offender is suitable for transfer to the JRA, the case will be referred to the Offender Programs and Classification Program Administrator/designee, who will review case facts and, upon concurrence, make a formal referral to the JRA.

C. Upon notification of acceptance by the JRA, the YOP Counselor III/designee will coordinate with appropriate transportation employees to transfer the youthful offender to a JRA facility.

D. The YOP Counselor III/designee will give notice of the transfer to the:

- 1. Committing court clerk, and
- 2. Offender's parent(s), guardian(s), or next of kin.



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III. Management

- A. Youthful offenders housed with the JRA will be subject to JRA directives for programs, including:
 - 1. Classification,
 - 2. Housing,
 - 3. Security,
 - 4. Deductions,
 - 5. Property,
 - 6. Visiting,
 - 7. Legal access, and
 - 8. Grievances.
- B. If the youthful offender's health care needs exceed services provided by the JRA, the standards of the Department Offender Health Plan will apply.
- C. Youthful offenders are prohibited from having sexually explicit materials.
- D. The YOP Counselor III will be familiar with:
 - 1. JRA documents and instructions regarding the criteria for transferring JRA offenders to the Department after the age of 18, and
 - 2. The criteria the JRA uses to retain juvenile offenders after the age of 21.
- E. The YOP Counselor III will work with the JRA and assist to ensure youthful offenders are housed and cared for appropriately.
- F. The YOP Counselor III/designee will be responsible for maintaining the youthful offender's classification and Custody Facility Plans per DOC 300.380 Classification and Custody Facility Plan Review while the youthful offender is at a JRA facility.

IV. Retention/Transfers/Returns

- A. [4-4309] If the decision is made not to transfer the youthful offender to a JRA facility, initial classification must be completed by the YOP Counselor III/designee.
 - 1. [4-4307] Classification will address the specific reasons for continuing to house the youthful offender at a Department facility (e.g., crime, length of sentence, security concerns).
 - 2. [4-4309] The YOP Counselor III/designee will complete a:

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- a. Department Offender Needs Assessment.
- b. Custody Facility Plan per DOC 300.380 Classification and Custody Facility Plan Review, including program needs developmentally appropriate for adolescents, based on the youthful offender's physical, mental, social, and educational maturity.
- B. The YOP Counselor III/designee will determine if JRA or Department Transport Officers will provide transportation for escorted leaves.
 1. Transport Officers will follow use of force guidelines per DOC 420.100 Transportation Standards during escorted leaves.
- C. For temporary returns to the Department, the YOP Counselor III/designee will coordinate with Department Transport Officers to move the youthful offender from the JRA facility to a Department secured housing unit at WCC, WCCW, or a Special Offender Unit.
 1. The YOP Counselor III/designee will:
 - a. Notify the receiving facility of the reason the youthful offender is being returned to the Department and any services the youthful offender requires. [4-4307]
 - b. Complete documentation for any disciplinary and Administrative Segregation requirements and provide them to the receiving facility. [4-4307]
 - c. Make appropriate arrangements to provide educational services if the youthful offender is expected to remain at the facility more than 3 working days.
 2. The Administrative Segregation Hearing Officer will:
 - a. Document the specific reasons for placement outside a JRA facility.
 - b. Work with the YOP Counselor III/designee to complete a plan specifying behavior changes required and how the youthful offender may return to a JRA facility.
 3. The YOP Counselor III/designee will coordinate a youthful offender's return to a JRA facility.
- D. A youthful offender under 18 may be permanently returned to the Department at the request of the Department or the JRA. The YOP Counselor III/designee will:



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1. Initiate classification and complete a Custody Facility Plan on the offender, including program needs developmentally appropriate for adolescents, based on the youthful offender's physical, mental, social, and educational maturity, prior to the youthful offender transferring to secure Department housing at WCCW, WCC, or a Special Offender Unit. [4-4309]
 2. Coordinate with the receiving facility to provide services to the youthful offender.
- E. Prior to a youthful offender turning 18 years and 6 months old, the JRA and the Department will determine if the youthful offender's needs and correctional goals could be better met by the programs and housing environment of the JRA or the Department.
1. A youthful offender will not remain at a JRA facility past his/her 21st birthday.
 2. If the youthful offender is returned to the Department, Classification will assign custody per DOC 300.380 Classification and Custody Facility Plan Review. [4-4309]
 3. In collaboration with JRA staff, a Department employee will complete a Custody Facility Plan to address the youthful offender's education, medical, mental health, and developmental needs. [4-4309]
- F. Upon return to a Department facility, the:
1. Youthful offender will be assigned a custody level per DOC 300.380 Classification, and Custody Facility Plan Review. If the youthful offender's offense is Murder 1, the 4 years on Close Custody will be counted, beginning on the original Department admission date.
 2. Youthful offender's property will comply with DOC 440.000 Personal Property for Offenders.
 3. Funds transferred from the youthful offender's JRA account to a Department account will be subject to deductions per DOC 200.000 Trust Accounts for Offenders.
- V. Transition to the Community
- A. Prior to the youthful offender's release from a JRA facility, the YOP Counselor III/ designee will:
1. Complete an Offender Release Plan,



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2. Coordinate with Headquarters and the JRA to obtain offender funds, transportation arrangements, and any gate monies for which the youthful offender is eligible, and
3. Notify Headquarters Corrections Record Specialist to:
 - a. Complete the release process, including notification to Victim Services and law enforcement, if applicable, and
 - b. Archive the central and medical files, if appropriate.
- B. Youthful offenders will release from Department facilities per DOC 350.200 Offender Transition and Release.

VI. Violators

- A. When a violator under the age of 18 is incarcerated at a Department facility, s/he will be placed in segregation. The Community Corrections Officer (CCO) will ensure the Violator Desk is notified of the violator's arrival so arrangements can be made for appropriate housing.
- B. The Counselor/CCO and the YOP Counselor III/designee will coordinate transfer of the youthful offender to WCC, WCCW, or a Special Offender Unit for services.
- C. Based on the individual needs of the youthful offender, the CCO or YOP Counselor III/designee may request transfer to the JRA.

VII. Training

- A. [4-4312] The YOP Counselor III, or another employee designated to work with youthful offenders within a specialized housing unit, will attend training related to the specific needs of youthful offenders as designated by the Offender Programs and Classification Program Administrator/designee. The training will be completed prior to beginning the assignment or as soon as possible thereafter. The training will be coordinated with JRA and should include, but will not be limited to:
 1. Adolescent development,
 2. Educational programming,
 3. Cultural awareness,
 4. Crisis prevention and intervention,
 5. Legal issues,
 6. Housing and physical plant,
 7. Policies and procedures,



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8. Sex offender management and programming,
9. Substance abuse services,
10. Cognitive behavioral interventions, including anger management, social skills training, problem solving, and resisting peer pressure,
11. Suicide prevention,
12. Nutrition,
13. Mental health issues,
14. Gender specific issues,
15. Case management planning and implementation, and
16. JRA overview.

DEFINITIONS:

The following words/terms are important to this policy and are defined in the glossary section of the Policy Manual: Sexually Explicit. Other words/terms appearing in this policy may also be defined in the glossary.

ATTACHMENTS:

None

DOC FORMS:

None

**DEPARTMENT OF SOCIAL AND HEALTH SERVICES
JUVENILE REHABILITATION ADMINISTRATION
JRA POLICY 25**

SUBJECT: **TRANSFER OF RESIDENTIAL YOUTH BETWEEN THE
DEPARTMENT OF CORRECTIONS AND THE JUVENILE
REHABILITATION ADMINISTRATION**

**INFORMATION
CONTACT:**

Don Mead, Ed.D
33010 SE 99th Street, MS: B17-41
Snoqualmie, WA 98065
Phone: (425) 831-2700, FAX: (425) 831-2720

**AUTHORIZING
SOURCE:**

**RCW 13.40.210(4)(c) RCW 13.40.280
RCW 13.40.285 RCW 72.01.410
Chapter 388-740-0070(1) WAC
Chapter 388-745 WAC
Interagency Agreement between Department of Corrections and
Department of Social and Health Services (CDOC6528)
Juvenile Justice and Delinquency Prevention Act of 2002**

EFFECTIVE DATE: November 1, 2009

APPROVED BY:

J. C. 11-09

John Clayton, Assistant Secretary
Juvenile Rehabilitation Administration

**SUNSET REVIEW
DATE:**

November 1, 2011

25-100

PURPOSE

This policy establishes procedures regarding transfers of youth committed to the Juvenile Rehabilitation Administration (JRA) to the Department of Corrections (DOC), and of DOC inmates to the Department of Social and Health Services, JRA and supplements the Interagency Agreement between DOC and JRA.

25-200

SCOPE

This policy applies to JRA organizational units and contracted programs.

25-300

DEFINITIONS

1. **Administrative Review Board.** A board chaired by a JRA Director or designee and two other Juvenile Rehabilitation Administrators

appointed by the chairperson. This board conducts a hearing to determine if a recommendation should be made to the JRA Assistant Secretary to transfer a JRA youth to DOC.

2. **Department of Corrections (DOC) Liaison:** JRA Central Office staff designated to manage and provide direction and oversight of JRA and DOC agreements and protocols.
3. **Dual Sentence Commitment:** A circumstance when a youth has both a JRA and a DOC sentence.
4. **Residential Review Committee.** A committee appointed by a Superintendent or Regional Administrator to conduct an informal review. An administrator at the Community Programs Administrator/ Associate Superintendent level or above will chair the Committee.

25-400

POLICY

1. **JRA and DOC may transfer residents to the custody of the other department with the consent of each Department's Secretary.**

- A. An Interagency Agreement will be maintained to govern the transfer, custody, care, and management of identified DOC and JRA offenders.
- B. JRA and DOC will incorporate or consider federal mandates and national standards in implementing this Agreement and Policy.

2. **Transfers between JRA and DOC require a review.**

- A. **DOC to JRA transfers:**

DOC may transfer DOC inmates to JRA custody. Youth convicted under the age of 18 and sentenced to DOC may be transferred to JRA for a period of time as agreed upon between JRA and DOC, based on national rules and standards. The length of stay must not continue beyond the youth's 21st birthday. DOC inmates remain under the jurisdiction of DOC, and JRA is responsible for DOC inmates in JRA custody pursuant to the Interagency Agreement. JRA policies will apply with the exception of classification, transportation, and security policies identified by DOC. DOC and JRA representatives may determine application of DOC and JRA policies.

- B. **JRA to DOC Dual Sentence Transfers:**

- 1) JRA youth with dual sentences may be transferred to DOC custody based on safety, security, resource, or programmatic reasons. In making the decision, consideration should be given to placing the youth in the least restrictive setting consistent with programmatic needs, resources, and safety or security

concerns. The "DOC Transfer Process, JRA Youth with a Dual Sentence Commitment" (Attachment A) will be followed.

- 2) These transfers may be initiated and take place during the diagnostic process or before the youth is transferred to a JRA residential facility.
- 3) When it is known that a youth has a dual sentence or pending dual sentence, designated regional or diagnostic staff will notify the DOC Liaison or designee as soon as reasonable.
- 4) Regional or institutional staff will notify the Regional Administrator or Superintendent or designee when it is known a youth has a dual sentence or one is pending so they can determine if they want to initiate the next step of the transfer review process through the JRA Division Director.
- 5) Dual sentence youth in residential programs who pose a continuing and serious threat to the safety of others will be reviewed by a Residential Review Committee to assist the Superintendent, Regional Administrator, or designee to determine if a recommendation should be made to the JRA Division Director for transfer to DOC.
- 6) An Administrative Review board hearing is not required for dual sentence transfers. Any transfer request to DOC will be made by the JRA Assistant Secretary to the DSHS Secretary, who will communicate the request to the DOC Secretary.

C. JRA to DOC transfers for youth who only have JRA commitment(s) and who pose a continuing and serious threat to the safety of others in the institution:

JRA youth in residential programs who only have a sentence to JRA may be transferred to DOC custody if it is determined that they present a continuing and serious threat to the safety of others in the facility and JRA. The "DOC Transfer Process, JRA Youth without DOC Sentence" (Attachment B) will be followed.

- 1) Residential youth who pose a continuing and serious threat to the safety of others in the facility will be reviewed by a Residential Review Committee to assist the Superintendent or designee to determine if a recommendation should be made to the JRA Division Director for transfer to DOC.
- 2) The Superintendent or designee will initiate the transfer review process, when appropriate, through contacting the JRA Division Director or designee.
- 3) The JRA Division Director or designee will determine if an Administrative Review Board hearing should be held and convene one if appropriate, followed by the process outlined in

“DOC Transfer Process, JRA Youth without DOC Sentence,”
(Attachment B).

D. JRA to DOC transfers for youth who only have JRA commitment(s) and have committed staff assault or youth who have Custodial Assault adjudications while in JRA custody.

- 1) A Residential Review Committee review is required if there appears to be a staff assault or there is an adjudication for Custodial Assault against JRA staff. (See JRA Policy 45, “Staff Assault Review and Reporting”).
- 2) The Superintendent or designee will review the recommendation and determine if a recommendation should be made to the JRA Director/designee for transfer to DOC, following the process outlined in “DOC Transfer Process, JRA Youth without DOC Sentence,” (Attachment B).
- 3) Custodial Assault adjudications, per RCW 9A.36.100, require a second Residential Review Committee review (if the youth has not been previously transferred to DOC) within five working days of receiving the disposition order. The review is to determine if a recommendation should be made to the Superintendent before referring to the JRA Division Director or designee to transfer the youth to DOC.
- 4) The JRA Division Director or designee will determine if an Administrative Review Board hearing should be held, following the process outlined in “DOC Transfer Process, JRA Youth without DOC Sentence,” (Attachment B). If a hearing is held based on a staff assault allegation, the hearing must be held within 14 days of the law enforcement referral.

E. An Administrative Review Board hearing must take place as a step in the process of transferring a JRA youth to DOC when the youth has only a JRA commitment(s) as described in 25-400, 2. (C) and (D).

- 1) The JRA Division Director/designee will review the recommendation to determine whether to pursue a transfer. If the Division Director or designee decides to pursue a transfer, s/he must convene an Administrative Review Board hearing. The Administrative Review Board hearing will be conducted based on the requirements in Chapter 388-745 WAC and this policy.
The Administrative Review Board hearing must be held within 14 days of a referral to law enforcement for an alleged staff assault of Custodial Assault.
- 2) Youth must be notified in writing at least five days in advance of any Administrative Review Board hearing to consider transfer of the youth to DOC. Such written notice must include

the reasons the transfer is being considered and a copy of the rules pertaining to the hearing. Prior to any hearing, the youth or the youth's attorney has the right of access to records of the department pertaining to the proposed transfer, consistent with Policy 29, "Confidentiality of Juvenile Records."

- 3) Youth being considered in an Administrative Review Board hearing for transfer to DOC will be afforded access to legal counsel during the administrative review hearing process. Youth may waive any rights available under this policy only with the advice of an attorney.
 - 4) Attendance at the Administrative Review Board hearing will be limited to parties directly concerned. The chairperson may exclude unauthorized persons unless the parties agree to their presence. Parties have the right to present evidence, cross-examine witnesses, and make recommendations to the hearing panel. All relevant and material evidence is admissible which, in the opinion of the chairperson, is the best evidence reasonably obtainable, having due regard for its necessity, availability, and trustworthiness.
 - 5) At the conclusion of the hearing, the Administrative Review Board will consider all evidence presented and make a decision whether continued placement of the juvenile offender in an institution for juvenile offenders presents a continuing and serious threat to the safety of others in the institution.
 - 6) The chair of the Administrative Review Board will prepare a written record of the decision and reasons for the decision. The Board hearing must be recorded manually, or by mechanical, electronic, or other device capable of transcription.
 - 7) Transfer requests will be made by the JRA Assistant Secretary to the DSHS Secretary, who will communicate the request to the DOC Secretary.
3. **The decision not to transfer a youth may be made at any step in the review process.**
4. **Documentation and tracking is required.**
- A. Superintendents and Regional Administrators are responsible for designating staff to track, monitor, and document transfers to and from DOC and jails, changes in release dates, and releases from JRA sentences.
 - B. Residential Review Committee recommendations approved by the Superintendent or Regional Administrator or designee and Administrative Review Board decisions under this policy will be

documented in a "Record of Official Actions" (ROA) in the Automated Client Tracking (ACT) computer system.

- C. JRA youth in DOC or jail must have a JRA No Bail Administrative Hold and/or Request for Notification form (Attachment C) completed and sent to the DOC Liaison for youth in DOC, or directly to the jail depending on where the youth is held. A copy will be placed in the youth's Case File.

5. Release dates may be adjusted for JRA youth transferred to DOC or jail.

- A. Youth under JRA jurisdiction will be assigned their maximum release date prior to being transferred to DOC or jail. An exception to this requirement may be granted by the Superintendent or Regional Administrator or designee.
- B. Youth transferred to DOC will have the opportunity to earn time off their maximum JRA release date, but not less than their minimum release date.
- C. At least 60 days before the release date, the designated JRA residential facility staff should notify DOC in writing of a pending release from a JRA sentence.

6. JRA youth in DOC confinement may need to serve JRA parole upon release from DOC.

- A. JRA youth transferred to DOC with remaining sex offender, Basic Training Camp, or auto theft parole obligations, who are under the age of 21 upon release from DOC, must serve parole through JRA. These youth will not be discharged from JRA until they complete their parole obligation or turn 21 years of age.
- B. JRA parolees who possess a firearm or use a deadly weapon on parole will be revoked and confined for at least 30 days. If they have served at least 30 days' confinement in the Department of Corrections for the same act, JRA will consider their confinement obligation satisfied and no additional confinement is required upon release from DOC. See Parole Standards Memo Counting Parole Revocation Time in DOC Confinement for specific procedures.
- C. JRA youth serving only a JRA sentence in DOC may have a JRA parole obligation.

7. Notification of transfer is required.

The Superintendent or Regional Administrator or designee will notify the parents or legal guardians, committing court, and JRA Regional Office of assignment of a youth being transferred to DOC under this

policy. Notification must comply with JRA Policy 29, "Confidentiality and Release of Juvenile Records and Operations Records"

Attachment A: DOC TRANSFER PROCESS JRA Youth with a Dual Sentence Commitment
Attachment B: DOC TRANSFER PROCESS JRA Youth without DOC Sentence
Attachment C: "No Bail Administrative Hold and/or Request for Notification" form