

**AMERICAN BAR ASSOCIATION**

**CRIMINAL JUSTICE SECTION  
COMMISSION ON YOUTH AT RISK**

**REPORT TO THE HOUSE OF DELEGATES**

**RESOLUTION**

1 RESOLVED, That the American Bar Association urges federal, state, local, territorial  
2 and tribal legislative bodies and governmental agencies to enact laws and adopt policies  
3 prohibiting the use of solitary confinement – the involuntary placement  
4 alone in a cell, room or other area for any reason other than as a temporary response to  
5 behavior that threatens immediate harm and ends when the threat is over and, in no case,  
6 more than 4 hours - of children and youth under age 18.



## REPORT

The principle that children and youth should not be subjected to solitary confinement in any juvenile or adult institution has the nearly unanimous support of individuals, including former President Barack Obama, and a range of organizations.<sup>1</sup> Experts uniformly state that the use of solitary confinement has no place in juvenile confinement or treatment facilities, unless there is a compelling need to separate a child for a limited period of time.<sup>2</sup> Solitary confinement causes the deterioration of the youth's mental health in a number of ways and increases aggressive behavior by youth, and it does not make a facility safer or more secure.<sup>3</sup> However, the use of solitary confinement remains widespread in state and local juvenile justice facilities.<sup>4</sup> The proposed policy urges all federal facilities who house children and youth under age 18 to maintain the current ban on the use of solitary confinement and urges all state, territorial and local jurisdictions to discontinue its use of this practice.

Reports accompanying ABA policy urging implementation of the US Attorney General's Report from the National Task Force on Children's Exposure to Violence, entitled

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<sup>1</sup> President Barack Obama issued a ban in January, 2016, on the use of solitary confinement for juveniles in federal facilities due to the potential for "devastating, lasting psychological conditions" from the use of isolation as punishment. Obama, B., Why We Must Rethink Solitary Confinement, Wash. Post, Jan. 25, 2016. Stop Solitary for Kids is a national campaign organized by the Center for Children's Law and Policy, Georgetown University Center for Juvenile Justice Reform, Justice Policy Institute, and Council of Juvenile Correctional Administrators to end the use of solitary confinement on youth in detention and post-adjudication facilities. It lists the following national and local organizations in support of its position: American Academy of Child and Adolescent Psychiatry, American Correctional Association, American Medical Association, American Psychiatric Association (includes language in position statement against juveniles in adult facilities), American Psychological Association, American Public Health Association, National Council of Juvenile and Family Court Judges, National Commission on Correctional Healthcare, National Lawyers Guild, New England Journal of Medicine Perspective, Substance Abuse and Mental Health Services Administration, <http://www.stopsolitaryforkids.org/organizations-with-positions/>.

<sup>2</sup> The American Academy of Child and Adolescent Psychiatry (AACAP) issued a statement in 2012 opposing the use of solitary confinement in juvenile facilities due to the extreme vulnerability of youth to adverse effects of this practice. (2012, April Solitary Confinement of Juvenile Offenders), American Academy of Child & Adolescent Psychiatry: Policy Statements. [http://www.aacap.org/co/root/policy\\_statements/solitary\\_confinement\\_of\\_juvenile\\_offenders](http://www.aacap.org/co/root/policy_statements/solitary_confinement_of_juvenile_offenders). In 2014, the American Medical Association approved a resolution stating solitary confinement is detrimental to adolescent health and should be prohibited, except for extraordinary circumstances, such as those that involve protection of the juvenile, staff, or other detainees. AMA Interim Meeting, November, 2014, [https://www.ama-assn.org/sites/default/files/media-browser/public/hod/i14-resolutions\\_0.pdf](https://www.ama-assn.org/sites/default/files/media-browser/public/hod/i14-resolutions_0.pdf)

<sup>3</sup> American Psychological Association, Solitary Confinement of Juveniles, <https://www.apa.org/about/gr/issues/cyf/solitary.pdf>.

<sup>4</sup> DOJ data from 2003 estimates that one-third of youth in custody at that time had been held in isolation with no contact with other residents; more than half were held in solitary confinement for more than 24 hours. Dep't. Justice Office of Juvenile Justice and Delinquency Prevention, Conditions of confinement: Findings From the Survey of Youth in Residential Placement (May 2010), <https://www.ncjrs.gov/pdffiles1/ojdp/227729.pdf>; Council of Juvenile Correctional Administrators Toolkit: Reducing the Use of Isolation, March, 2015, <http://cjca.net/index.php/resources/cuca-publications/107-toolkit-for-reducing-the-use-of-isolation> at 2.

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*Defending Childhood*,<sup>5</sup> and ABA policy supporting trauma-informed legal advocacy<sup>6</sup>, each discuss the need to eliminate the use of solitary confinement in juvenile facilities. However, reports to ABA resolutions are not policy, and this proposed resolution is necessary in order to make crystal clear the position of the American Bar Association.

Furthermore, the ABA developed standards governing the use of solitary confinement in juvenile facilities nearly four decades ago, at a time when the use of solitary confinement was considered an acceptable disciplinary measure in juvenile corrections. The *IJA/ABA Juvenile Justice Standards relating to Corrections Administration* stop short of an absolute prohibition on the practice, permitting the use of room confinement under very restrictive conditions. The commentary to those standards, however, noted that there was a case to be made then for abolition of the practice.<sup>7</sup>

## **What is meant by solitary confinement?**

Solitary confinement is the involuntary placement of a child or youth alone in a cell, room, or other area for any reason other than as a temporary response to behavior that threatens immediate harm to the youth or others and ends when the threat is over and, in no case, more than 4 hours. It's also known as "seclusion", "isolation", "segregation" or "room confinement".<sup>8</sup> One must examine labels that presume to consist of therapeutic practices and instead mean solitary confinement.

According to the American Psychological Association, youth in solitary confinement "may be confined in isolation for days, or even weeks; often have little or no human contact, even with health care providers; are frequently handcuffed or shackled when temporarily released from the cell; are denied the social interaction that plays an integral

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<sup>5</sup> "...many children who have experienced trauma also endure punitive measures, such as solitary confinement, that are still common in our juvenile justice system. The CEV (Children's Exposure to Violence) report highlights that there is no evidence solitary confinement is rehabilitative; in fact, the suicide rate for youth who have been isolated is disproportionately high." ABA Policy, Children Exposed to Violence (Defending Childhood Task Force Recommendations), HOD 111B (August 2013); report to the policy emphasizes the need for all juvenile justice facilities to adopt trauma-informed practices and deliver appropriate services for youth's mental health needs, citing *Defending Childhood*, December 2012, at 178. Report, p. 4. Further, the CEV Report states that use of isolation or solitary confinement for LGBTQ youth to shield them from bullying can serve to exacerbate trauma, and recommends that "consistent therapeutic supervision' should be implemented in all juvenile justice facilities, without resorting to isolation, to ensure the safety of LGBT[Q] youth and thus protect them from further violence." Report, p. 7, citing *Defending Childhood* at p. 183.

<sup>6</sup> ABA Policy, Trauma-Informed Legal Advocacy for System-Involved Children and Youth Exposed to Violence, HOD 109B (February 2014), report p. 3, 9.

<sup>7</sup> See, commentary, IJA/ABA Juvenile Justice Standards relating to Corrections Administration, Standard 7.11(H) governing isolation in secure settings, p. 164, [http://www.americanbar.org/content/dam/aba/migrated/sections/criminaljustice/PublicDocuments/JJ\\_Standards\\_Corrections\\_Administration.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/sections/criminaljustice/PublicDocuments/JJ_Standards_Corrections_Administration.authcheckdam.pdf); see also ABA Criminal Justice Standards on Treatment of Prisoners, Standard 23-2.8 (Feb. 2010) at [www.americanbar.org/publications/criminal\\_justice\\_section\\_archive/crimjust\\_standards\\_treatment\\_prisoners.html#23-2.8](http://www.americanbar.org/publications/criminal_justice_section_archive/crimjust_standards_treatment_prisoners.html#23-2.8)

<sup>8</sup> See, *Stop Solitary for Kids Position Statement*, <http://www.stopsolitaryforkids.org/wp-content/uploads/2016/04/SSK-Position-Statement-for-Website-3-29-16.pdf>.

role in adolescent psychosocial development; are often denied access to educational materials or opportunities and have little access to recreational activities or recreational spaces.<sup>9</sup> In 2014, Attorney General Eric Holder described the breadth of solitary confinement, as follows:

In a study released last year by the Office of Juvenile Justice and Delinquency Prevention, 47 percent of juvenile detention centers reported locking youth in some type of isolation for more than four hours at a time. We have received reports of young people who have been held in solitary confinement for up to 23 hours a day, often with no human interaction at all. In some cases, children were held in small rooms with windows that were barely the width of their own hands.

This is, to say the least, excessive. And these episodes are all too common.<sup>10</sup>

It is critical to separate solitary confinement from what is best termed temporary confinement, or a time-out. Temporary confinement is sometimes necessary when a youth is out of control and poses an immediate risk of harm to him or herself or others, and de-escalation and other strategies have been ineffective.<sup>11</sup> This can be a reasonable response by facility staff and administrators to a dangerous situation. When the youth regains self-control and is no longer a threat, the staff should return the youth to his or her regular program, but temporary confinement should never last more than 4 hours.<sup>12</sup> A temporary “time out” is not solitary confinement.

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<sup>9</sup> Solitary Confinement of Juvenile Offenders, American Psychological Association <https://www.apa.org/about/gr/issues/cyf/solitary.pdf>,

<sup>10</sup> Attorney General Holder Criticizes Excessive Use of Solitary Confinement for Juveniles with Mental Illness, May 14, 2014, <http://www.justice.gov/opa/pr/attorney-general-holder-criticizes-excessive-use-solitary-confinement-juveniles-mental>.

<sup>11</sup> AACAP statement, *supra*, 2, “Solitary confinement should be distinguished from brief interventions such as ‘time out’, which may be used as a component of a behavioral treatment program in facilities serving children and/or adolescents, or seclusion, which is a short term emergency procedure....seclusion should only be used for the least amount of time possible for the immediate physical protection of an individual, in situations where less restrictive interventions have proven ineffective.” [http://www.aacap.org/aacap/Policy\\_Statements/2012/Solitary\\_Confinement\\_of\\_Juvenile\\_Offenders.aspx](http://www.aacap.org/aacap/Policy_Statements/2012/Solitary_Confinement_of_Juvenile_Offenders.aspx)

<sup>12</sup> *Id.*; see ACLU of Nebraska, Growing Up Locked Down, Jan. 24, 2016, <https://www.aclunbraska.org/en/publications/growing-locked-down>, for an extended discussion of maximum time periods for a time-out. Four hours is the recommended ceiling by the Juvenile Detention Alternatives Initiative, Annie E. Casey Foundation, but proposed federal legislation limits the time limit to 3 hours under the proposed MERCY Act of 2015, a federal act which was reintroduced in February 2017.

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## **Solitary confinement poses a threat to youth mental health and is ineffective in preserving safety and security in an institution.**

Solitary confinement has long-lasting and devastating effects on youth, some of which include trauma, psychosis, depression, anxiety and increased risk of suicide and self-harm.<sup>13</sup> Its use is made worse by the impact of these effects on the developing adolescent brain, and the use of solitary confinement can lead to irreparable harm to youth's physical, psychological and social growth and well-being.<sup>14</sup> Solitary confinement is even more damaging to youth with mental disorders. Research shows that more than half of all suicides in juvenile facilities occurred while young people were held in isolation.<sup>15</sup>

Research also shows that solitary confinement does not reduce behavioral incidents and may actually increase violent behavior in youth.<sup>16</sup> The Director of the Ohio Department of Youth Services, which dramatically reduced use of solitary confinement in 2015, stated that solitary confinement "does not make facilities safer. It does not prevent violence or reduce assaults on staff and youth; instead, as the department's data showed, it increases violence."<sup>17</sup>

Few helpful resources, if any, are available to youth in solitary confinement. There are no education programs, substance abuse treatment sessions or mental health therapies available to youth when held in isolation.<sup>18</sup>

In an ever-decreasing number of states, youth ages 16 to 18 may be prosecuted as adults.<sup>19</sup> And, in a number of states, prosecutors may transfer youth to adult status by

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<sup>13</sup> APA statement, *supra*, note 3.

<sup>14</sup> ACLU, [Alone and Afraid: Children Held in Solitary Confinement and Isolation in Juvenile Detention and Correctional Facilities](#), June 2014, pp. 3-5,

<https://www.aclu.org/files/assets/Alone%20and%20Afraid%20COMPLETE%20FINAL.pdf> ,

<sup>15</sup> *Id.*, see also Lindsay M. Hayes, [Juvenile Suicide in Confinement: A National Study](#) (2004)

<sup>16</sup> See, National Research Council. (2013). [Reforming Juvenile Justice: A Developmental Approach](#). Committee on Assessing Juvenile Justice Reform. R.J. Bonnie, R.L. Johnson, B.M. Chemers, and J.A. Schuck (Eds.). Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press, at 134-136. See, Solitary Watch, [Movement to End Juvenile Solitary Confinement Gains Ground, But Hundreds of Kids Remain in Isolation](#), Jan. 5, 2017, <http://solitarywatch.com/2017/01/05/movement-to-end-juvenile-solitary-confinement-gains-ground-but-hundreds-of-kids-remain-in-isolation/>

<sup>17</sup> "What we saw in Ohio was that seclusion was actually making children worse," said panelist Linda James, Assistant Director of the Ohio Department of Youth Services. "The more time they spent in seclusion, the more violent they became. Each act became more intensified and violent than the last. We've seen fantastic results [using alternatives to solitary confinement] in Ohio. We reduced seclusion by 89 percent and, at the same time, violence decreased by 22 percent." OJJDP News at a Glance, OJJDP Joins National Campaign To End Solitary Confinement of Youth, May/June 2016, at [https://www.ojjdp.gov/newsletter/249928/sf\\_3.html](https://www.ojjdp.gov/newsletter/249928/sf_3.html)

<sup>18</sup> AACAP statement, *supra* note 11; ACLU, *supra* note 14.

<sup>19</sup> North Carolina continues to automatically treat 16 and 17 year olds as adults. New York just passed legislation on April 10, 2017, that will raise the age of criminal responsibility from 16 to 18. Texas, Wisconsin, Missouri, Michigan, and Georgia begin adult prosecution at age 17. See, Ames Alexander, [Mecklenburg jailers hold some teens in solitary confinement. Critics call that torture](#), Charlotte Observer, Dec. 28, 2016.

“direct file” and others may certify or transfer certain youth to adult criminal court based on a statutory procedure. Regardless of the setting, no one under the age of 18 should be subjected to solitary confinement, in either a juvenile detention or residential facility, or in an adult holding facility or prison.<sup>20</sup>

One has to ask why solitary confinement is used in youth facilities, and the answer is simple: it is cheap and convenient. Prolonged isolation is often used in facilities where there is insufficient or poorly-trained staff, inadequate resources to respond to disruptive behavior in less restrictive ways, or in situations where staff feel they have no other options.<sup>21</sup> When resources are limited by state budgets, facility administrators and staff often use solitary confinement for youth with unaddressed mental health behaviors.<sup>22</sup>

Because the use of solitary confinement can be harmful and counterproductive, Robert Listenbee, in his role as Administration for the Office of Juvenile Justice and Delinquency Prevention concluded that the “isolation of children is dangerous and inconsistent with best practices and that excessive isolation can constitute cruel and unusual punishment.”<sup>23</sup> The Department of Justice argued in an amicus brief filed in 2017, that expert and scientific evidence on the damage to youth subjected to solitary confinement, together with the particular vulnerability of youth to suffer psychological damage and the nature of the conditions in that case, that solitary confinement caused youth a “substantial risk of harm” to which the defendants were deliberately indifferent, and thus violated the youth’s constitutional rights under the Eighth and Fourteenth Amendment.<sup>24</sup>

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<sup>20</sup> Rikers Island in New York eliminated use of solitary confinement for all inmates 21 years and younger. Michael Winerip and Michael Schwartz, Rikers Setting Stricter Limits for Isolation, N.Y. Times, Jan. 13, 2015, at A1. All New York state prisons have banned solitary confinement for juveniles held in state prisons.

<sup>21</sup> Vera Institute of Justice, Solitary Confinement: Common Misconceptions and Emerging Safe Practices, May 2015, at [http://archive.vera.org/sites/default/files/resources/downloads/solitary-confinement-misconceptions-safe-alternatives-report\\_1.pdf](http://archive.vera.org/sites/default/files/resources/downloads/solitary-confinement-misconceptions-safe-alternatives-report_1.pdf)

<sup>22</sup> Stop Solitary for Kids Position Statement, <http://www.stopsolitaryforkids.org/wp-content/uploads/2017/03/Position-Statement-with-Supporters-3-9-17.pdf>

<sup>23</sup> Letter from Robert L. Listenbee, Administrator, US Dep’t of Justice to Jesselyn McCurdy, Senior Legislative Counsel, American Civil Liberties Union (Jul. 5, 2013), as cited in American Civil Liberties Union, Alone and Afraid: Children Held in Solitary Confinement and Isolation in Juvenile Detention and Correctional Facilities (June 2014, revised), at 2, 9-10.

<sup>24</sup> Statement of Interest of the United States, U.S. v. Conway, Civil No. 1:16-cv-1150 (DNH) (DEP) (January 3, 2017), citing the U.S. Supreme Court decisions in *Miller v. Alabama*, 132 S.Ct. 2455, 2467 (2012), *Graham v. Florida*, 560 U.S. 48, 68 (2010), *Roper v. Simmons*, 543 U.S. 551, 569 (2005) on the Court’s recognition of adolescent brain science; *Farmer v. Brennan*, 511 U.S. 825, 834 (1994) on the standard to be used in determining whether there is a violation of the Eighth Amendment; and *H.C. v. Jarrard*, 786 F.2d 1080, 1088 (11<sup>th</sup> Cir. 1986) where the Court considered evidence that isolating juveniles can cause serious harm, and stated that “juveniles are event more susceptible to mental anguish than adult convicts.”

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## **There is national consensus that the use of solitary confinement must be eliminated in all youth facilities.**

Most prominent is the current ban on solitary confinement in federal facilities that house youth, as ordered by President Obama and the Department of Justice in early 2016.<sup>25</sup> The federal Office of Juvenile Justice and Delinquency Prevention strongly supports efforts to end youth solitary confinement.<sup>26</sup> Many professional organizations, including the American Academy of Adolescent and Child Psychiatry, the American Psychological Association, the National Partnership for Juvenile Services and the National Council of Juvenile and Family Court Judges, support the end of solitary confinement for youth.<sup>27</sup> A bi-partisan group of US Senators introduced legislation, the Sentencing Reform and Corrections Act of 2015, which limits the use of solitary confinement for youth in federal custody to situations in which the youth poses a serious and immediate threat of physical harm, and limits isolation to no more than three hours.<sup>28</sup> Senators Rand Paul and Cory Booker also introduced the “Record Expungement Designed to Enhance Employment Act of 2015” or the “REDEEM Act”, which would have prohibited the “use of room confinement at a juvenile detention facility for discipline, punishment, retaliation, staffing shortages, administrative convenience, or any reason other than as a temporary response to the behavior of a juvenile that poses a serious and immediate risk of physical harm to the juvenile, to others, or to the juvenile and others.”<sup>29</sup> And, in February, 2017, Senator Cory Booker re-introduced the “Maintaining dignity and Eliminating unnecessary Restrictive Confinement of Youths Act” or the “MERCY Act”, which would prohibit the use of solitary confinement as stated in the REDEEM Act.<sup>30</sup>

An increasing number of states have banned solitary confinement and continue to do so. The State of California passed legislation in 2016.<sup>31</sup> North Carolina banned the use of solitary confinement for children and youth that year as well, and youth corrections systems in Alaska, Connecticut, Indiana, Massachusetts, Maine, Mississippi, Nebraska, Nevada, New Jersey, New York, Ohio, Oklahoma, Oregon, West Virginia, and Texas have all reduced the use of solitary confinement.<sup>32</sup> In Massachusetts, the Department of

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<sup>25</sup> US Department of Justice, Report and Recommendations Concerning the Use of Restrictive Housing, March 30, 2016.

<sup>26</sup> The Council of Juvenile Correctional Administrators Toolkit: Reducing the Use of Isolation (2015) and Reducing Isolation in Youth Facilities Training and Technical Assistance Program (RIYA-TTA) programs were the products of grants from OJJDP. RIYA-TTA Program originally consulted with juvenile justice programs in California, Indiana, Massachusetts, Oregon and West Virginia.

<sup>27</sup> See, Resolution to Reduce Use of Solitary Confinement for Youth, Sept 2016 at <https://www.ncjfcj.org/Solitary-Confinement-Resolution>

<sup>28</sup> <http://famm.org/sentencing-reform-and-corrections-act-of-2015/>

<sup>29</sup> S.675 – 114<sup>th</sup> Congress (2015-16), REDEEM Act, Section 5045 (B) (1), at <https://www.congress.gov/bill/114th-congress/senate-bill/675> The REDEEM Act also specified strict conditions under which a juvenile could be placed in temporary confinement, similar to those in the Sentencing Reform and Corrections Act of 2015.

<sup>30</sup> S.1965 – 114<sup>th</sup> Congress (2015-16), MERCY Act, at <https://www.congress.gov/bill/114th-congress/senate-bill/1965/text>; bill was re-introduced by Sen. Booker on Feb. 7, 2017.

<sup>31</sup> Senate Bill 1143 was signed by Governor Jerry Brown on Sept. 27, 2016.

<sup>32</sup> Anne S. Teigen, [States Addressing Solitary Confinement for Juveniles](#), The NCSL Blog, National Council on State Legislatures, Dec. 21, 2015, at <http://www.ncsl.org/blog/2015/12/21/states->

Youth Services rarely uses isolation for more than 2 hours and does not use it as punishment.<sup>33</sup> Many other states and local jurisdictions have taken steps to reform the use of juvenile solitary confinement on youth, sometimes in the form of agency policy change or statewide legislation, and other times in response to investigations and litigation.<sup>34</sup>

In a 2016 study by the Lowenstein Center for the Public Interest, best practice is simply stated: “Prohibit punitive solitary confinement.”<sup>35</sup> The Lowenstein study describes the strategies states are using to eliminate the use of solitary confinement. Stop Solitary for Kids and the Juvenile Detention Alternatives Initiative (JDAI) likewise have identified and posted a number of ways to reduce and ultimately eliminate solitary confinement.<sup>36</sup>

Under JDAI Juvenile Facility Standards, non-punitive room confinement:

- Must be governed by policies and procedures;
- Must be fully documented by facility staff;
- Can only be used if the behavior threatens imminent physical harm to youth or others;
- Cannot be used as punishment or discipline, or for administrative convenience or staffing shortages;
- Can only be used after staff has exhausted less restrictive de-escalation techniques;
- Must be used only for the time necessary for youth to regain control and no longer pose a threat;
- Must be approved by a unit supervisor and senior administrators;
- Cannot be used for more than 4 hours.<sup>37</sup>

JDAI standards also require that the room in which a youth is confined must be clean, sanitary, suicide-resistant, and protrusion-free, with adequate ventilation, a comfortable temperature with reasonable access to water, toilet facilities and hygiene supplies. Staff must also develop a plan that allows youth to leave room confinement and return to

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addressing-solitary-confinement-for-juveniles.aspx; [Youth Corrections Leaders and Mother of Kalief Browder Come Together to Stop Solitary Confinement for Kids](#), Press Release, Center for Juvenile Justice Reform, Georgetown University, April 19, 2016, at <http://cjr.georgetown.edu/news/youth-corrections-leaders-and-mother-of-kalief-browder-come-together-to-stop-solitary-confinement-for-kids/>; Martha Stoddard, [Official calls ACLU report on Nebraska's use of juvenile solitary confinement 'groundbreaking and heartbreaking'](#), Omaha World-Herald, Jan. 4, 2016; Mary Read, [Movement to End Juvenile Solitary Confinement Gains Ground, But Hundreds of Kids Remain in Isolation](#), Solitary Watch, Jan. 5, 2017, at <http://solitarywatch.com/2017/01/05/movement-to-end-juvenile-solitary-confinement-gains-ground-but-hundreds-of-kids-remain-in-isolation/>

<sup>33</sup> Listenbee, *supra* note 23.

<sup>34</sup> Natalie J. Kraner, et. al., [51-Jurisdiction Survey of Juvenile Solitary Confinement Rules in Juvenile Justice Systems](#), Lowenstein Center for the Public Interest, July 2016.

<sup>35</sup> *Id.*, at 9.

<sup>36</sup> Annie E. Casey Foundation, [Stop Solitary for Kids Position Statement](#), <http://www.aecf.org/blog/casey-supports-national-campaign-to-stop-solitary-for-kids/s>; Annie E. Casey Foundation, [Juvenile Detention Facility Assessment](#), 2014 (update) at 177-182; see also, Council of Juvenile Correctional Administrators Toolkit: Reducing the Use of Isolation (March 2015);

<sup>37</sup> *Id.*

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programming as soon as possible. Qualified mental and medical health professionals must be involved to treat out-of-control youth and to determine if a youth should be transferred to a mental health facility. Further standards are enumerated to protect and serve youth at risk of self-harm.<sup>38</sup>

It is most important to recognize that an exception to restrict movement by a youth who threatens the safety of himself or another, under specific circumstances and for only as much time as necessary to regain control, should and must not become the rule, whereby a youth is instead confined for automatic periods of 4 hours, in an effort to re-assert punishment and inflict harm. The goal for all children and youth who must be housed in a juvenile facility is treatment and rehabilitation under safe and humane conditions.

## Conclusion

All branches of government – executive, legislative and judicial – express grave concerns about the continued practice of holding youth in solitary confinement for extended periods of time, days on end, for punitive reasons. Medical experts agree there is no medical or scientific justification for continued the use of solitary confinement among youth in juvenile justice facilities. States and counties are gradually altering the practice of solitary confinement in both state post-adjudication residential centers and local detention facilities, but this practice must be eliminated across this country as soon as practicable. Long ago, in its Juvenile Justice Standards, the ABA questioned whether there was any rationale supporting the practice. Based on the overwhelming evidence now available, there is not. The American Bar Association should approve policy to end the use of solitary confinement for children and youth by all branches of government.

Respectfully submitted,

Matt Redle  
Chair, Criminal Justice Section

August, 2017

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<sup>38</sup> *Id.*

GENERAL INFORMATION FORM

Submitting Entity: Criminal Justice Section  
Co-Sponsor: Commission on Youth at Risk

Submitted By: Matt Redle, Chair

1. Summary of Resolution(s).

This resolution urges all governmental entities to end the practice of solitary confinement against juveniles in all detention and post-adjudication facilities. Juvenile solitary confinement has many euphemisms, but it is defined as the involuntary placement of a child or youth alone in a cell, room, or other area for any reason other than as a temporary response to behavior that threatens immediate harm to the youth or others and ends when the threat is over and, in no case, more than 4 hours.

2. Approval by Submitting Entity. This resolution was passed by the Criminal Justice Council at the Spring Meeting in May, 2017.

3. Has this or a similar resolution been submitted to the House or Board previously?  
No

4. What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?

Reports accompanying ABA policy urging implementation of the US Attorney General's Report from the National Task Force on Children's Exposure to Violence, entitled *Defending Childhood*, and ABA policy supporting trauma-informed legal advocacy, each discuss the need to eliminate the use of solitary confinement in juvenile facilities. However, reports to ABA resolutions are not policy, and this proposed resolution is necessary in order to make crystal clear the position of the American Bar Association.

Furthermore, the ABA developed standards governing the use of solitary confinement in juvenile facilities nearly four decades ago, at a time when the use of solitary confinement was considered an acceptable disciplinary measure in juvenile corrections. The IJA/ABA Juvenile Justice Standards relating to Corrections Administration stop short of an absolute prohibition on the practice, permitting the use of room confinement under very restrictive conditions. The commentary to those standards, however, noted that there was a case to be made then for abolition of the practice.

5. If this is a late report, what urgency exists which requires action at this meeting of the House?

Not applicable

6. Status of Legislation. (If applicable)  
None.

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7. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.

Adoption of the policy will allow the ABA to support efforts in all branches of government that are working to end the practice of solitary confinement in juvenile facilities.

8. Cost to the Association. (Both direct and indirect costs)

None

9. Disclosure of Interest. (If applicable)

Not applicable.

10. Referrals. Concurrent with the filing of this resolution and Report with the House of Delegates, the Criminal Justice Section is sending the resolution and report to the following entities and/or interested groups:

Standing Committee on Legal Aid & Indigent Defense

Commission on Disability Rights

Commission on Hispanic Legal Rights & Responsibilities

Commission on Homelessness and Poverty

Center for Human Rights

Commission on Immigration

Center on Racial & Ethnic Diversity

Young Lawyer's Division

Section on Civil Rights and Social Justice

Government and Public Sector Lawyers Division

International Law Section

National Conference of Federal Trial Judges

National Conference of State Trial Judges

Law Practice Division

Section on Science & Technology

Health Law Section

Section of Litigation

Solo, Small Firm and General Practice Division

Center on Children and the Law

11. Contact Name and Address Information. (Prior to the meeting. Please include name, address, telephone number and e-mail address)

Sara Elizabeth Dill

American Bar Association

1050 Connecticut Ave NW, 4<sup>th</sup> Floor

Washington, DC 20036

202-662-1511

Sara.dill@americanbar.org

Linda Britton  
American Bar Association  
1050 Connecticut Ave NW, 4<sup>th</sup> Floor  
Washington, DC 20036  
202-662-1730  
[Linda.Britton@americanbar.org](mailto:Linda.Britton@americanbar.org)

12. Contact Name and Address Information.

Stephen Saltzburg  
2000 H Street, NW  
Washington, D. C. 20052  
T: 202-994-7089  
E: [ssaltz@law.gwu.edu](mailto:ssaltz@law.gwu.edu)

Neal Sonnett  
2 South Biscayne Blvd., Suite 2600  
Miami, Florida 33131-1819  
T: 305-358-2000  
Cell: 305-333-5444  
E: [nrslaw@sonnett.com](mailto:nrslaw@sonnett.com)

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## EXECUTIVE SUMMARY

### 1. Summary of the Resolution

This resolution urges all governmental entities to end the practice of solitary confinement against juveniles in all detention and post-adjudication facilities. Juvenile solitary confinement has many euphemisms, but it is defined as the involuntary placement of a child or youth alone in a cell, room, or other area for any reason other than as a temporary response to behavior that threatens immediate harm to the youth or others and ends when the threat is over and, in no case, more than 4 hours.

### 2. Summary of the Issue that the Resolution Addresses

Concern over the circumstances under which children and youth are held in locked facilities has been evident for years to the point where all three branches of government have weighed in on this issue and its deleterious impact on children and youth. Many feel that the use of this practice violates the Eighth Amendment proscription against cruel and unusual punishment.

### 3. Please Explain How the Proposed Policy Position Will Address the Issue

The proposed position will allow lawyers and the ABA to continue to work with other jurisdictional officials to end this practice in all juvenile facilities.

### 4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified.

None.