

Children's Rights

Children's Rights

<https://www.childrensrights.org/too-high-a-human-toll-ending-solitary-confinement-for-youth/>

Public Facing Advocacy Writing

By CR Staff Attorney Julia Davis and Paralegal Michelle M. Zhang

You have probably been hearing a lot about solitary confinement recently. You may know the story of Kalief Browder, the young man who took his own life after being released from Rikers Island, having been arrested at sixteen for allegedly stealing a backpack and spending two years in solitary confinement on Rikers. Or, perhaps you have read Justice Kennedy's words about the human toll wrought by extended terms of isolation.¹ You may already suspect that these kinds of conditions are profoundly destructive. What you may not know is how many young people under the age of twenty-one are subjected to this practice.

As of 2013, there were more than 50,000 young people in the United States under the age of twenty-one confined in pre-trial detention, correctional, and residential facilities.² Some of these youth are prosecuted as adults and wind up in adult facilities like Rikers Island in New York, where the age of criminal responsibility is sixteen. The widespread use of incarceration as a response to juvenile delinquency is an extremely poor solution, and extensive research affirms that highly punitive facilities are counterproductive, dangerous, abusive, and wholly ineffective.³

Many young people in adult and juvenile prisons and jails are subjected to solitary confinement, sometimes for weeks or months at a stretch.³ Facilities use solitary to separate youth from the general population for the purpose of punishment, or to manage youth who are classified as dangerous or gang-affiliated. Many young people may also find themselves in prolonged isolation simply because they are deemed fragile or vulnerable to abuse by other inmates like one of our Children's Rights clients who spent months detained in isolation because his developmental disabilities and mental health condition made him difficult to protect.

More often than not, this means spending 22 or more hours a day alone in a cell.⁵ While held in solitary confinement, many are denied access to the mental health, medical, education, and other services and programming that they need.⁶ Not surprisingly, studies have consistently shown that young people are more vulnerable to the harms associated with prolonged isolation than older adults and are thus face severe risks of harm from this practice.⁷ Research on adolescent brain development has shown that solitary can have enormous and long-lasting impact on mental health and growth.⁸ Despite the unanimity of the research and the public positions of organizations like the American Academy of Pediatrics and the United Nations against it, young people are still routinely subjected to solitary confinement.^{9, 10} Twenty states allow punitive solitary confinement in juvenile facilities for periods of time ranging up to 6 hours to 90 days, while 10 states allow for punitive solitary confinement for unlimited amounts of time.¹¹ In addition, the 21 jurisdictions that prohibit punitive solitary confinement still allow for solitary for non-punitive reasons.¹²

To be sure, those who run facilities where youth are detained have a responsibility to ensure the safety and security of the young people in their custody.¹³ But solitary confinement is inconsistent with that duty and instead predictably presents a risk of serious harm, or even death, as revealed by the suicide of Kalief Browder.

Federal class action litigation on behalf of juveniles has continued to expose these systemic harms, and there have also been some important regulatory and legislative efforts to end solitary confinement for youth. Two recent cases in New York and Illinois are helping to sound the death knell for solitary for kids.

Nuez v. City of New York.¹⁴ Filed in 2011 by Legal Aid and then joined by the Department of Justice, the suit challenged the culture of violence in New York City jails, particularly the treatment of adolescents. The case settled in November 2015 and reforms are underway. The Department of Correction has ended solitary confinement for youths 16 and 17 years-old on Rikers Island and also committed to ending the practice for youths 18 to 21 years-old later this year. As of December 31, 2015 there were forty-one 18 to 21 year-olds in solitary confinement on Rikers.¹⁵ The litigation, as well as the work of the City's Board of Correction that oversees the Department of Correction, have set the stage for ending the practice for youth in New York City.

R.J. v. Jones.¹⁶ Filed in 2012 by the ACLU of Illinois, the case alleged unconstitutional conditions, inadequate services and excessive use of solitary confinement.¹⁷ Settled later that year, the most recent court-ordered reforms approved in 2015 require that juvenile inmates spend at least eight hours a day outside their cells, and ensure that those in segregated units receive education and mental health services.¹⁸ These new policies protect all youth in Illinois juvenile facilities.¹⁹

President Obama also just announced in January 2016 that he is adopting the Justice Department's recommendations on reform in the federal prison system. These reforms include banning solitary confinement for juveniles and as a response to low-level infractions, expanding treatment for all mentally ill inmates, and limiting the length of time a federal prisoner can be held in solitary confinement to 60 days, amongst other reforms.²⁰ While these executive actions will affect the approximately 10,000 inmates in federal prisons, only a small group of that population are juveniles who are federal prisoners sentenced to solitary confinement.²¹ From 2014 to 2015, only 13 juveniles were held in solitary confinement in federal prisons.²² Thus, the President stated in his op-ed that he hopes that his executive actions would serve as a model for states and their treatment of the many juveniles in their prison and jail systems. In addition to the President's executive actions, lawmakers in Washington, D.C. are also working to end solitary for youth as part of broader criminal justice

reform nationally. The Sentencing Reform and Corrections Act of 2015, proposed by a bipartisan group of legislators in the Senate, would ban solitary confinement for all juveniles in federal facilities and provide a path for expungement of juvenile criminal records.²³ While the bill is laudable, its scope is narrow. It will have no impact on people held in state or local facilities; rather, it only affects incarcerated people in federal prisons, which account for just 9 percent of the countrys prison and jail population.²⁴ Press reports indicate that the number of juveniles in federal facilities is fewer than 50, with an even smaller number held in prolonged isolation.²⁵ Ending solitary continues to require a jurisdiction-by-jurisdiction approach to address state and local facilities and the conditions of youth confinement.

As the consensus builds among health care providers, researchers, elected officials, courts and corrections administrators themselves, the end of solitary confinement for young people seems increasingly possible. President Obamas critique and call for reform have been described as a tipping point for the issue.²⁶ Solitary confinement has been proven time and time again to be the opposite of rehabilitative for young people. Instead, the practice is often part of systems where the threat of rampant violence, sexual abuse, and deprivation of basic needs is part of the culture. The continued practice of solitary confinement for youth is indeed an extension of that oppressive culture, and not only wastes public resources and money, it harms the most vulnerable young people in our society. The stakes are high but the opportunities for a more informed, just, and compassionate approach to our youth in juvenile facilities are within reach.

[This article was originally published in the Cardozo Alumni magazine.](#)

2022 Childrens Rights. All Rights Reserved.