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Constitution, Civil Rights, and Human Rights
Hearing on "Reassessing Solitary Confinement:
The Human Rights, Fiscal, and Public Safety Consequences"

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Thank you Senator Durbin, Ranking Member Graham, and other members of the Subcommittee for holding this hearing today on solitary confinement. I commend this Subcommittee for its inquiry into this issue, but respectfully request that the Subcommittee do not forget the practice of isolation concerning youth in juvenile detention, correctional facilities, and in the adult system.

My name is Kim Brooks Tandy and I write to you as Executive Director of the Children's Law Center (CLC) in Covington, Kentucky. For over 20 years, CLC has focused on issues involving children in custody and advocated for reducing incarceration rates and ensuring humane and constitutional conditions in locked facilities. The juvenile system, unlike the adult system, is based upon the premise that children are different, and that rehabilitation and treatment are key to making positive changes. However, some youth are prosecuted as adults, and may be placed in adult facilities. In either case, the population of young people in these systems should garner special attention in any discussion about the use of solitary confinement because their age, level of maturity, and social, psychological and moral development warrant a

different approach. In my testimony today, I will focus on conditions for youth in juvenile corrections facilities and how the practice of isolating youth can be detrimental to the youth's development and reintegration into our communities.

Conditions in Juvenile Facilities Nationwide and In Ohio

Although I am primarily a litigator, I learned long ago that litigation does not in and of itself bring about best practices; long term institutional changes need government leadership, collaborative efforts, and research driven practices. Most recently, I have litigated conditions cases on behalf of youth in the juvenile delinquency and adult criminal justice systems for the last eight years in Ohio, where large scale reforms in the juvenile justice system have resulted in reducing institutional placements by two-thirds, down from about 1,800 youth in juvenile corrections facilities in 2008 to about 500 youth today. The state closed four of its eight juvenile corrections facilities, and developed a continuum of care within local communities to keep youth close to home and in less restrictive environments. Decision making has been driven in large part by research-informed and evidenced-based programming that can reduce costs, and provide better outcomes for youth, including an impressive initiative to keep youth who are mentally ill out of institutional placement, where they are more likely to have their condition worsen, and less likely to adapt to institutional rules.

In spite of impressive efforts to keep youth in their local communities, the reality in Ohio, and throughout the country, is that many youth remain in secure correctional facilities that are ill-equipped to rehabilitate and improve the lives of these youth people. The reliance by state and local agencies on incarceration as a means to rehabilitate youth and protect community safety is increasingly being questioned as both counterproductive and costly. Reports of pervasive violence and abuse have been widespread, often resulting in years of litigation. A recent study

commissioned by the Annie E. Casey Foundation showed that 57 lawsuits in 33 states plus the District of Columbia had been filed in response to alleged abuse or otherwise unconstitutional conditions in juvenile corrections facilities.¹ Nearly all of these lawsuits included allegations of systemic problems with violence, physical or sexual abuse by facility staff and/or excessive use of isolation or restraint.² An extensive review of recidivism studies compiled from this report suggests that incarceration is no more effective than alternative sanctions, such as probation, in reducing the criminal conduct of youth who have been adjudicated delinquent, and that the use of incarceration actually exacerbates criminality.³ In spite of the proven success of many community-based alternatives and evidence-based programs in lieu of incarceration, states continue to incarcerate youth in programs that are often poorly designed and ill-equipped to provide effective treatment. Treatment is particularly insufficient for youth with severe mental health conditions, learning disabilities, significant substance abuse problems or other acute needs.⁴

It is against this backdrop that I wish to address the issue of solitary confinement among youth in correctional facilities. I have interviewed dozens if not hundreds of youth in the last eight years who have been held in isolation cells, often devoid of anything other than a toilet and sink, mat, blanket, paper and pencil and a book. Some of these cells lack windows to provide any outside light. By design, they are often stark, cold and lack any positive aesthetic qualities for stimulation. Ohio, like a number of states, uses isolation not only for disciplinary purposes

¹ Mendel, Richard A, *No Place for Kids: The Case for Reducing Juvenile Incarceration*, The Annie E. Casey Foundation (Baltimore, Maryland) 2011, p. 5.

² *Id.*

³ *Id.* at 11. Mendel's research was based on an extensive internet search and literature review in addition to interviews and outreach with state corrections agencies. The research conclusions were based upon recidivism analyses in 38 states and the District of Columbia.

⁴ *Id.* at 22.

on a short term basis up to five days, but also operates two special management units that house youth for longer periods – sometimes for years – for more serious behaviors. Not surprisingly, the majority of these youth suffer from mental illness, some severe, before their placement in these units, and then lack adequate programming and services while in isolation. Perhaps also not surprisingly, most of these youth are non-White.

While many youth are isolated in juvenile facilities for shorter periods of time as a disciplinary action, special units can operate to seclude youth for month or even years in environments that fail to provide adequate means for behavioral health, education, recreation, and positive human interactions generally.

My experience over the last twenty years in examining this issue suggests that while there is a significant void in research on the harmful effects that isolation causes in the adolescent population, even for short term use. However, much of what we know about the devastating effects of solitary confinement with adults is likely to apply to youth, and the harm may well be even greater for many reasons.

To understand one of the crucial differences, one need only look at the myriad of research now available on the study of adolescent brain development that has been recognized by the United States Supreme Court to justify abolishment of the juvenile death penalty and life without parole in certain cases. We know that adolescent brain is more moldable, and continues to be shaped by environmental factors sculpted by the youth's interactions with the outside world. The brain's malleability decreases with age, making it more difficult to reduce psychologically damaging experiences. How likely it is, therefore, that the adverse effects of seclusion on youth are potentially irreversible?

Isolation can Exacerbate a Youth's Underlying Mental Health Issues

The Office of Juvenile Justice and Delinquency Prevention's 2010 Survey of youth in the "deep-end" of the system suggests that 70% of youth confined revealed they had "seen someone injured or killed," and 72% had "something very bad or terrible" happen to them.⁵ Additional research has also shown that a significant proportion of juvenile offenders have a substantiated history of child or adolescent maltreatment,⁶ and that at least three out of four youth in the juvenile justice system have been the victim of traumatic victimization.⁷ Such traumatic victimization has been linked to psychological disorders such as Posttraumatic Stress Disorder and can cause the youth to develop ongoing difficulties with oppositional-defiance and aggression.⁸ Exposure to trauma also slows down development and can cause disturbances of emotional regulation, relationships, and communication. These youth are prone to engage in the type of defiant behavior and rule breaking that result in their placement in punitive isolation.⁹ In addition, research shows that youth who seem aggressive are prone to overreact to actions by correctional officers as a perceived threat, typically because it is reminiscent of past

⁵ Survey for Residential Placement online database, available at http://www.dataexplorer.com/Project/ProjUser/AdhocTableType.aspx?reset_true&ScreenID+40

⁶ Swanston, Heather Y, Parkinson, Patrick N., O'Toole, Brian I., Plunkett, Angela M., Shrimpton, Sandra & R. Kim Oates, Juvenile Crime, Aggression and Delinquency After Sexual Abuse: A Longitudinal Study, 43 Brit. J. Crimnol 729 (2003).

⁷ Julian D. Ford, John Chapman, Judge Michael Mack & Geraldine Pearson, *Pathways from Traumatic Child Victimization to Delinquency: Implications for Juvenile and Permanency Court Proceedings and Decisions*, Juvenile and Family Court Journal 13, Winter 2006. [hereinafter "Pathways"].

⁸ Julian Ford, *Traumatic Victimization in Childhood and Persistent Problems with Oppositional-Defiance*, Journal of Aggression, Maltreatment & Trauma, 6:1, 25-58, p. 26 [hereinafter "Persistent Problems"]

⁹ See Christopher A Cowles & Jason J. Washburn, *Psychological Consultation on Program Design of Intensive Management Units in Juvenile Correctional Facilities*, Professional Psychology: Research and Practice, Vol 36, No. 1, 44-50, p. 45 (2005). ("Consequently, incarcerated juveniles who are disruptive or violent, regardless of their mental health status, may be relegated to a facility's disciplinary unit.")

victimization.¹⁰ These youth do not see their responses as excessive, because they “have little experience expressing their thoughts and resolving their feelings verbally rather than through aggression,” and “may feel helpless about regulating their behavior.”¹¹ Instead of helping youth heal from the victimization that has traumatized them, aggressive juveniles are punished by being placed in isolation for their misbehavior.

Adolescent depression may also cause symptoms that lead to the imposition of isolation. Although several of the symptoms of depression are similar for adults and adolescents, including depressed mood, hopelessness, and helplessness, depression may manifest differently in teenagers.¹² In fact, research indicates that irritability is the most common characteristic of depression in young adults.¹³ The level of irritability a depressed youth exhibits increases as the adolescent becomes more depressed.¹⁴ Adolescent depression can also create anger and hostility, which “increases the likelihood that [depressed youth] will provoke angry responses from other youth (and adults)” and “increase[s] the risk of altercations with other youth.”¹⁵ These behaviors and attitudes often lead facility officials to respond to such behaviors by placing the youth in isolation rather than treating the underlying causes of the behavior through behavioral health programming.

¹⁰ Clinical Practice in Correctional Medicine, Michael Puisis, ed. Mosby: Philadelphia, 2006, p. 124. *See also* Persistent Problems at 39, (“[T]hese children’s emotions and thought processes reflect a fearful and hypervigilant concern with the possibility of severe danger. It is as if they view their lives as an almost constant effort to be prepared for, and to survive, the reoccurrence of traumatic danger.”)

¹¹ *Id.*

¹² Marie Crowe, Nic Ward, Bronwyn Dunnachie & Morian Roberts, *Characteristics of adolescent depression*, 15 *International Journal of Mental Health Nursing*, 10-18 (2006), at 15. [hereinafter “Adolescent Depression”]

¹³ *Id.* at 10.

¹⁴ *Id.* at 16.

¹⁵ Thomas Grisso, *Adolescent Offenders with Mental Disorders*, *The Future of Children*, Vol. 18, No. 2, Fall 2008, p 145

Isolation can also be especially agitating for youth with Attention Deficit Hyperactive Disorder.¹⁶ While studies have shown that in the general school population only 2% to 10% of youth have ADHD,¹⁷ anywhere from 19% to 46% of youth in the juvenile justice system are thought to have ADHD.¹⁸ The percentage of youth in isolation with ADHD maybe be higher, since juveniles with this disorder are more likely to engage in the types of disruptive and impulsive behavior that are often sanctioned with seclusion time.¹⁹ We know that patients who suffer with ADHD are unable to tolerate the “restricted environmental stimulation” that is found in an isolation unit.²⁰ This intolerance may cause an increased susceptibility to psychopathological reactions while in isolation.²¹ Due to the prevalence of ADHD in the juvenile justice population, one may question whether a significant number of youth who are subjected to isolation may also face a higher risk of developing a psychiatric disturbance.

The majority of youth I have interviewed in long term isolation have self-reported diagnoses of either ADHD and/or Bipolar Disorder. Often they have expressed concerns over the lack medical therapy, or have questioned the types of medication they are given as ineffective or having adverse effects. I have had youth indicate to me that they have been taken off medication altogether, or that the medication that was working for them to treat symptoms of ADHD or Bipolar Disorder were not available at the institution where they were housed. Youth have reported that they receive psychological services “through their door” by a mental health professional, such that even contact by those most highly trained individuals was impersonal and brief. It is not a coincidence that programs which rely upon seclusion

¹⁶ Grassian, *supra* note 119, at 11.

¹⁷ Robert B. Rutherford Jr., Michael Bullis, Cindy Wheeler Anderson, and Heather M. Griller-Clark, *Youth with Disabilities in the Correctional System: Prevalence Rates and Identification Issues*, July 2002 at 18.

¹⁸ *Id.* at 19.

¹⁹ *See id.* at 17-18, listing possible symptoms of ADHD.

²⁰ *Grassian* at 11.

²¹ *Id.* at 12.

for behavioral controls in juvenile facilities also often lack adequate mental health and medical services which could address problem behaviors more effectively.

Youth without Mental Health Diagnoses Prior to Isolation May Experience Psychological Harm²²

Research on the use of isolation on adults suggests that seclusion can cause severe psychiatric harm even when the individual had no history of mental illness.²³ In the most severe cases, adult inmates subject to isolation have displayed “agitation, self-destructive behavior, and overt psychotic disorganization.”²⁴ More than half of the prisoners studied reported an inability to tolerate ordinary stimuli; almost a third heard voices saying frightening things or bizarre noises, and more than half of the inmates interviewed experienced severe panic attacks while in isolation.²⁵ Many also described having difficulties with thinking, concentration and memory, and almost half of the prisoners complained of “intrusive obsessional thoughts, primitive aggressive ruminations and paranoid, persecutory fears.”²⁶

Isolation is presumably even more damaging to juveniles because “the adolescent brain is more highly moldable by experience than the adult brain.”²⁷ Adolescence is a unique period of time for human brain development, during which the circuits that coordinate human behavior are remodeled, shaping who youth will become as adults and how their brains function.²⁸ The majority of this “remodeling” is

²² See generally S. Grassian, Psychopathological Effects of Solitary Confinement, 140 *American Journal of Psychiatry* 1450 (1983) [hereinafter “Grassian”]; C. Haney, *Infamous Punishment: The Psychological Effects of Isolation*, 8 *National Prison Project Journal* 3 (1993); and C. Haney and M. Lynch, *Regulating Prisons of the Future: A Psychological Analysis of Supermax and Solitary Confinement*, *New York Review of Law & Social Change*, 23, 477 (1997) [hereinafter “Haney”].

²³ Grassian, *supra* note 119.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ Aaron M. White, *The Changing Adolescent Brain*, Education Canada, Canadian Education Association at 5. [hereinafter “Adolescent Brain”]

²⁸ *Id.* at 6.

“influenced by an individual’s interactions with the outside world.”²⁹ In other words, an adolescent’s brain is essentially “sculpted by his or her interactions with the outside world.”³⁰ Because adolescence is a critical time in a youth’s brain development, using isolation on juveniles may have a profound psychological impact on their entire lives. In fact, because the brain’s malleability decreases with age, making it increasingly more difficult to heal, the adverse psychological effects of seclusion on juveniles are potentially irreversible.³¹

Interviews I have conducted with youth in long term seclusion suggest that they lack a sense of hope that they can change or improve their condition. One young person, when asked to tell me something good about himself, replied, “lady, I’ve been locked up so long, there is nothing good about me anymore.” He was 15. Others have expressed to me the fear of being around people and knowing how to interact with them after being secluded for long periods of time. I have witnessed other youth who shut out what little contact they have with the world outside of their room by placing paper on their window because they no longer want to know what happens outside of their room or are fearful. I am not a psychologist or psychiatrist, but having worked with youth in the delinquency system for more than 30 years, there have been few interviews that have affected me so profoundly as those done with youth in long term isolation.

Youth Held in Isolation May Not Receive Adequate Education, Recreation or Necessary Services

Youth in isolation are frequently denied education or other services to which they are entitled. Restricting the ability of youth to participate in education, recreation, group or social skills, programs, or other interactions with youth can have a negative impact on their overall progress in the facility. Requiring youth to miss school or other activities can also increase

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

depression and suicidal ideation and attempts.³²

As with mental illness, the prevalence of learning disabilities and other education disabilities is similarly disproportionate among confined youth.³³ Educational achievement and school success is also lower among youth who are incarcerated, with studies suggesting that these youth perform, on the average, four (4) years below grade level, have a history of being suspended from school, and have frequently been held back at least one grade.³⁴ A significant percentage of youth in detention and corrections facilities have disabilities that substantially affect their education, and either have or should have been identified for special education. For those youth already identified, up-to-date Individualized Education Plans under the Individuals with Disabilities in Education Act (IDEA) should be in place. A child with a disability does not lose the entitlement for special education and related services, even if excluded from school by being housed in isolation. Nothing in the IDEA excludes from coverage, or diminishes the rights of, children with education-related disabilities who are detained or incarcerated in delinquency facilities. Taking any young person out of school in a detention or long-term incarceration setting is inconsistent with care and rehabilitation, as well as a state statutory right to education.

Yet the reality exists that many youth in isolation do not receive adequate educational programming. Many of my own clients, including a high percentage of those who have learning disabilities or other educational disabilities, have been denied educational services while in seclusion or given paperwork under their door that they were expected to complete on their own

³² Clinical Practice in Correctional Medicine, Michael Puisis, ed. Mosby: Philadelphia, 2006, p. 139.

³³ Quinn, Mary Magee, Rutherford, Robert B., and Leone, Peter E., Osher, David, and Poirier, Jeffrey M., "Youth with Disabilities in Juvenile Corrections," *Exceptional Children*, Vol. 71, No. 3 (2005).

³⁴ Krezmein, Michael P., Mulcahy, Candace A., & Leone, Peter E., "Detained and Committed Youth: Examining Differences in Achievement, Mental health Needs and Special Education Status, *Education and Treatment of Children*, Vol. 31, No 4, (2008)

without the assistance of teachers.

Recreation and other services are also more limited or non-existent. Youth clients have expressed to me that “out of room” large muscle activity consists of pushups in their room or being moved to another cell with a push up bar. Physical activity is critical to all individuals who are incarcerated, but it is particularly important for adolescents who are still growing and maturing physically as well as emotionally.

Conclusion

We do not ultimately know how youth are damaged by the unnecessary use of isolation or the extent of this damage. Correctional facilities are not likely to open their doors to researchers to prove the harm caused by practices which are utilized because programming and services are inadequate. This issue has received little attention because youth in juvenile facilities have less of a voice, and they more than likely lack access to counsel that can provide that voice for them.

There are many changes which can be made to policies and practices which can eliminate this harmful practice. Facility closures and “right-sizing” our approach to incarceration – meaning only youth who pose a significant threat to themselves or our community based on an individualized risk assessment – are important steps. However, for those youth who are incarcerated, including those who because of mental illness or other circumstances are more likely to be held in isolation, we need to take steps to eliminate the harmful impact such practices instill. Youth sentences are shorter than adults in most cases. The use of isolation practices neither improves their condition, nor enhances public safety in the communities to which they return.

Thank you on behalf of the young people I represent for your attention and your willingness to examine this important issue.