



December 11, 2013

Ellen Miller
Legal Services Division
Ohio Department of Youth Services
30 W. Spring Street, 5th Floor
Columbus, OH 43215

Dear Ms. Miller,

This letter serves as the ACLU of Ohio's formal comment to the Ohio Department of Youth Services' amendments to Ohio Administrative Code 5139-37. Specifically, we are providing comments to the following OAC sections:

5139-37-15 Juvenile Rights
5139-36-16 Juvenile Rights, Control, and Treatment

Central to the ACLU of Ohio's mission is the commitment to protect all people from arbitrary loss of liberty and inhumane conditions of confinement. Several years ago, Ohio gained a great deal of criticism for its over-crowded juvenile detention facilities. Today, Ohio is regarded as a national model for reducing its youth detention population.¹

We applaud the efforts made by the Ohio Department of Youth Services (DYS) to reduce the number of detained children. However, serious concerns remain regarding the rights of confined children and the conditions of their confinement. In recognition of the rehabilitative purpose of the juvenile justice system, DYS' duty to protect children in its custody² and the responsibility to maintain a safe environment for both children and staff, we urge the adoption of a Positive Behavior Intervention Support system that protects rights, supports positive behavior, and eliminates the use of all forms of seclusion. The ACLU of Ohio hereby offers three formal comments.

1. DYS should codify the right to be protected from sexual victimization.

There is no question that sexual abuse is destructive. The extremely damaging effects of sexual abuse in detention persist long after release and can include Post Traumatic Stress Disorder and Rape Trauma Syndrome.³ Additional detrimental

¹ See <http://www.njjn.org/our-work/the-comeback-states-reducing-juvenile-incarceration-in-the-united-states>

² *Ross v. Department of Youth Services*, 2006 WL 216637 (Ct. of Claims of Oh. 2006)

³ Dumond, Robert W. & Dumond, Doris A. "The Treatment of Sexual Assault Victims." *Prison Sex Policy and Practice* (Christopher Hensley ed., 2002): 67. Kupers, Terry A. "Mental Health in Men's Prisons." *Prison Masculinities* (Don Sabo, Terry A. Kupers & Willie London eds., 2001):192.

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effects include unresolved anger, drug addiction, as well as other behaviors, and the effects of long periods of isolation.⁴

In a June 2013 report, *Sexual Victimization in Juvenile Facilities Reported by Youth*⁵ the Department of Justice ranked Ohio among the top four states in the country with the highest rate of sexual assault and rape in detention facilities. We are aware that the state created a taskforce to evaluate reforms intended to protect detained children from sexual abuse. DYS must ensure that all youth facilities comply with the federal guidelines issued in the Prison Rape Elimination Act which outline steps to address sexual misconduct prevention, detection, and response. Children under the custody of the State of Ohio who cannot escape must be explicitly guaranteed the right to be free from and protected from sexual victimization.

To achieve this result, we recommend the following language be added to **5139-37-15 Juvenile Rights (A) (1)** and **5139-36-16 Juvenile Rights, Control, and Treatment (B)**:

The right to be free from and protected from sexual assault, sexual abuse, sexual contact, performing sexual acts, or sexual harassment of any kind

2. DYS should ban seclusion.

Growing research and federal government agencies agree that the use of isolation on children is both harmful and counterproductive to the rehabilitative purpose of the juvenile justice system. There is no doubt that Ohio routinely uses the harmful practice of seclusion and isolation on detained children. A recent ACLU report, *Alone & Afraid: Children Held in Solitary Confinement & Isolation in Juvenile Detention and Correctional Facilities*, noted Ohio among three states with a high number of seclusion hours.⁶ A November 2013 Correctional Institution Inspection Committee report, *DYS Seclusion Hours* noted 187,769 hours of seclusion in Ohio's juvenile detention facilities.⁷ A March 2013 CIIC report, *Circleville Juvenile Correctional Facility*, rated the facility "In Need of Improvement" for its high rates of seclusion hours.⁸

The US Department of Justice has stated that, "isolation of children is dangerous and inconsistent with best practices and that excessive isolation can constitute cruel and unusual punishment."⁹ The US Attorney General's National Task Force on Children Exposed to Violence recently suggested that 'nowhere is the damaging impact of

⁴ Dumond, Robert W. & Dumond, Doris A. "The Treatment of Sexual Assault Victims." *Prison Sex: Practice & Policy* (Christopher Hensley ed., 2002): 82.

⁵ See <http://www.bjs.gov/content/pub/pdf/svjfry12.pdf>

⁶ See <https://www.aclu.org/files/assets/Alone%20and%20Afraid%20COMPLETE%20FINAL.pdf>

⁷ See <http://ciic.state.oh.us/download-document/548-dys-seclusion-2013.html>

⁸ See <http://ciic.state.oh.us/download-document/513-circleville-juvenile-correctional-facility-2013.htm>

⁹ Letter from Robert L. Listenbee, Administrator, US Department of Justice, to Jesselyn McCurdy, Senior Legislative Counsel, American Civil Liberties Union 1 (Jul. 5, 2013), see https://www.aclu.org/sites/default/files/assets/doj_ojdp_response_on_jj_solitary.pdf

incarceration on vulnerable children more obvious than when it involves solitary confinement.¹⁰

DYS rules **5139-37-15 Juvenile Rights** and **5139-36-16 Juvenile Rights, Control, and Treatment** both indicate that 'discipline policies and procedures of the detention center shall incorporate the philosophy that discipline is to be both constructive and educational in nature.' Given the injurious physical and developmental effects of seclusion noted by the Department of Justice and the ACLU, it is clear that seclusion is neither constructive nor educational in nature.

We recommend the following language be added to **5139-37-15 Juvenile Rights (4)** and **5139-36-16 Juvenile Rights, Control, and Treatment (J)** in order to align with DYS philosophy:

Prohibit extended seclusion or any form of seclusion beyond 24 consecutive hours¹¹

3. DYS should respect civil rights.

DYS must recognize the distinction between rights and privileges. The U.S. Court of Appeals for the Sixth Circuit has held that the Eighth Amendment's prohibition on cruel and unusual punishment applies to detained children.¹² Additionally, Ohio Revised Code § 2921.45 prohibits public servants from interfering with a person's civil rights. Both federal and state laws grant detained children civil rights. These rights *cannot* be suspended or restricted. However, privileges such as telephone, television, radio, or recreational activities *can* be temporarily suspended or restricted in order to support positive behavior and maintain safety. To that end, we recommend the following clarifying language to **5139-36-16 Juvenile Rights, Control, and Treatment**:

(D) The CCF shall have a written policy and procedure that allows the CCF Director to enforce any restrictions or temporary suspension upon the juvenile's rights privileges.

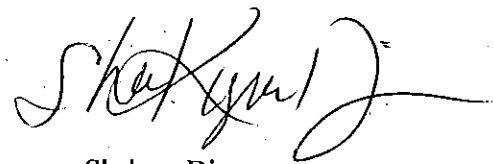
(D) (1) Inform the juvenile of the condition of and reason for restriction or temporary suspension of his/her rights privileges.

In conclusion, we hope our input is constructive and supports recent improvements made at the Department of Youth Services. Should you have any questions or concerns please do not hesitate to contact the undersigned.

Sincerely,



Chris Link
Executive Director



Shakyra Diaz
Policy Director

¹⁰ See <http://www.justice.gov/defendingchildhood/cev-rpt-full.pdf>

¹¹ Defined as Extended Seclusion: Seclusion beyond 24 hours, authorized by the superintendent
See <http://ciic.state.oh.us/download-document/548-dys-seclusion-2013.html>

¹² See, e.g. Horn by Parks v. Madison County Fiscal Court, 22 F. 3d 654 (6th Cir. 1994)