



VIA UPS

December 12, 2013

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

**Re: Ohio Administrative Code Sections 5139-37-15 Juvenile Rights
and 5139-36-16 Juvenile Rights, Control, and Treatment**

AMERICAN CIVIL
LIBERTIES UNION FOUNDATION

PLEASE RESPOND TO:
NATIONAL PRISON PROJECT
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DAVID C. FATHI
DIRECTOR
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*NOT ADMITTED IN DC;
PRACTICE LIMITED TO
FEDERAL COURTS

Dear Ms. Miller:

The National Prison Project (NPP) of the American Civil Liberties Union urges the Ohio Department of Youth Services (DYS) to adopt the change in regulations, proposed by the ACLU of Ohio, which would prohibit the use of extended seclusion or any form of seclusion lasting more than 24 consecutive hours. Specifically, we support the ACLU of Ohio's proposed amendments to Ohio Administrative Code Sections 5139-37-15, Juvenile Rights and 5139-36-16, Juvenile Rights, Control, and Treatment.

The American Civil Liberties Union is a nationwide, nonprofit, non-partisan organization with more than a half million members, countless additional activists and supporters, and 53 affiliates nationwide dedicated to the principles of liberty and equality embodied in our Constitution and our civil rights laws. Consistent with that mission, the ACLU established the National Prison Project in 1972 to protect and promote the civil and constitutional rights of prisoners and youth detainees. Since its founding, the Project has challenged unconstitutional conditions of confinement and over-incarceration at the local, state and federal level through public education, advocacy and successful litigation. In 2011, NPP established the *Stop Solitary* campaign to challenge the over-use of solitary confinement in prisons, jails and juvenile detention facilities across the country, and to advocate for better, more effective and humane alternatives.

According to the DYS website, the Department's mission is "to improve Ohio's future by habilitating youth and empowering families and communities."¹ This is an admirable and important goal. But the Department's current use of extended seclusion—otherwise known as solitary confinement—severely hinders this mission. Under current policy, DYS may hold a child in seclusion for more than 24 hours, with the authorization of the superintendent. DYS should adopt a stronger

¹ See <http://www.dys.ohio.gov/dnm/>, Mission and Vision.

safeguard against this needless infringement on the legal and human rights of children. **DYS should place an outright ban on extended seclusion for the children in its custody.**

Recent numbers indicate that DYS is using seclusion with frequency. In 2012, there were 187,769 reported hours of seclusion system-wide, or an average of 358.1 hours per child over the course of the year.² At Circleville JCF, the average was a staggering 917.7 hours.³ Unfortunately, because these numbers represent an average, they suggest that some children likely experienced many more hours in seclusion over the course of the year. While precise data documenting periods spent in extended seclusion was not available, it seems likely, based on the average overall hours per child in seclusion, that a significant portion of children in the system experienced extended seclusion in 2012. This means that the Department, which seeks to habilitate the state's youth, is apparently condemning them to days at a time of solitary confinement.

Few practices are more inherently damaging to youth than the extreme social and sensory deprivation that go hand-in-hand with solitary confinement. Extensive research on the impact of solitary confinement and other forms of isolation has shown that prisoners in adult prisons and jails generally exhibit a variety of negative physiological and psychological reactions to solitary, including hallucinations, anxiety, severe and chronic depression, blunting of affect, self-mutilation, and lower levels of brain function, including a decline in EEG activity after only seven days in solitary confinement.⁴ Given their stage of growth and development, children may be even less able than adults to handle solitary confinement.⁵ 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. The American Academy of Child and

² See DYS Seclusion Hours: Correctional Institution Inspection Committee.

³ *Id.*

⁴ See Stuart Grassian, *Psychopathological Effects of Solitary Confinement*, 140 AM. J. OF PSYCHIATRY 1450, 1452-53 (1983); Craig Haney, *Mental Health Issues in Long-Term Solitary and "Supermax" Confinement*, 49 CRIME & DELINQ. 124, 130-34 (2003); Holly A. Miller, *Reexamining Psychological Distress in the Current Conditions of Segregation*, 1 J. CORRECTIONAL HEALTHCARE 39, 48 (1994); Holly A. Miller & G. Young, *Prison Segregation: Administrative Detention Remedy of Mental Health Problem?*, 7 CRIM. BEHAV. AND MENTAL HEALTH 85, 91 (1997); Eric Lanes, *The Association of Administrative Segregation Placement and Other Risk Factors with the Self-Injury-Free Time of Male Prisoners*, 48 J. OFFENDER REHABILITATION 529, 539-40 (2009); Paul Gendreau, N.L. Freedman, & G.J.S. Wilde, *Changes in EEG Alpha Frequency and Evoked Response Latency During Solitary Confinement*, 79 J. ABNORMAL PSYCH. 54, 57-58 (1972).

⁵ The U.S. Supreme 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).

Adolescent Psychiatry has concluded that, due to their “developmental vulnerability,” adolescents are particularly at risk of adverse reactions from prolonged isolation and solitary confinement. As a result, the Academy opposes the use of solitary confinement on juveniles.⁶

Sadly, solitary confinement of children is particularly strongly correlated with suicide. 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.⁷

Because of these harms, domestic and international human-rights law consistently supports special safeguards against holding children in solitary confinement. The reason for these safeguards is the same as the reason for having a separate Department of Youth Services in the first place: **Children are different from adults**. They are still growing, both physically and emotionally. They may lack the tools to handle difficult situations without acting out. The focus of DYS should be on helping the children in its custody grow into productive citizens, rather than on subjecting them to extreme forms of punishment.

The international human-rights community has long recognized that children in juvenile justice systems require greater protections than do adults. Based on the harmful physical and psychological effects of solitary confinement and the particular vulnerability of children, the Office of the United Nations Special Rapporteur on Torture has repeatedly called for the abolition of solitary confinement of persons under 18.⁸ 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, emphasizing

⁶ 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.

⁷ 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>.

⁸ 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/pd/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>.

the importance of their rehabilitation.⁹ 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.¹⁰

In the United States, federal government agencies and experts agree that the use of isolation on children can be harmful and counterproductive. The U.S. Department of Justice has stated that the “isolation of children is dangerous and inconsistent with best practices and that excessive isolation can constitute cruel and unusual punishment.”¹¹ And, recently, the U.S. Attorney General’s National Task Force on Children Exposed to Violence stated that “nowhere is the damaging impact of incarceration on vulnerable children more obvious than when it involves solitary confinement.”¹² Not only is the practice cruel, it can also be highly counterproductive; the National Research Council of the National Academies of Sciences has concluded that “confinement [of children] under punitive conditions may increase recidivism.”¹³

American courts also recognize the fundamental difference between children and adults—and the urgent need to protect children from overly harsh punishments. The Eighth Amendment to the U.S. Constitution 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 at a heightened standard to children who come into conflict with the law. In cases involving the juvenile death penalty,¹⁴ juvenile life without parole,¹⁵ and custodial interrogations,¹⁶ the Court held that punishing or questioning children without acknowledging their age, developmental differences, or individual characteristics is unconstitutional.

⁹ 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).

¹⁰ 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.

¹¹ 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_ojjdp_response_on_jj_solitary.pdf.

¹² 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>.

¹³ Letter from Robert L. Listenbee, Administrator, US Department of Justice, to Jesselyn McCurdy, Senior Legislative Counsel, American Civil Liberties Union 3 (Jul. 5, 2013), available at https://www.aclu.org/sites/default/files/assets/doj_ojjdp_response_on_jj_solitary.pdf.

¹⁴ *Roper v. Simmons*, 453 U.S. 551 (2005).

¹⁵ *Graham v. Florida*, 130 S.Ct. 2011 (2010); *Miller v. Alabama*, 132 S.Ct. 2455 (2012).

¹⁶ *J.D.B. v. North Carolina*, 564 U.S. ____ (2011).

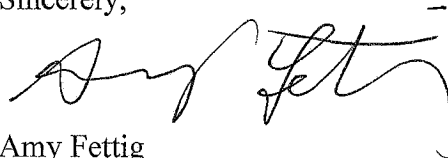
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Widely accepted legal and human-rights principles, as well as DYS's own mission, cannot be reconciled with the practice of holding children in solitary confinement for extended periods of time. We strongly support the ACLU of Ohio in its advocacy for an outright ban on extended seclusion of children in DYS custody. The proposed regulation would make Ohio a leader in a growing national trend against the punitive treatment of children in custody.

For your reference, attached herein is *Alone & Afraid: Children Held in Solitary Confinement and Isolation in Juvenile Detention and Correctional Facilities*, NPP's recent briefing paper on the solitary confinement of children in American juvenile justice systems. Please do not hesitate to reach out to me with any questions you may have about this vital issue.

AMERICAN CIVIL LIBERTIES
UNION FOUNDATION

Sincerely,



Amy Fettig
Senior Staff Counsel
Helen Vera
Legal Fellow
ACLU National Prison Project

Enclosures