



## STOP SOLITARY

Ending the Solitary Confinement of Youth  
in Juvenile Detention and Correctional Facilities

### Summary of National Standards Restricting the Solitary Confinement of Youth

There is widespread agreement that isolation and particularly solitary confinement can severely damage youth. As the U.S. Attorney General's National Task Force on Children Exposed to Violence recently described it, "nowhere is the damaging impact of incarceration on vulnerable children more obvious than when it involves solitary confinement."<sup>1</sup> The Task Force accordingly proposed abandoning practices like solitary confinement, which traumatize children and reduce their opportunities to become productive members of society.<sup>2</sup> This is just the latest call to strictly limit youth isolation. Numerous national and international organizations are calling for stricter limitations on this harmful practice:

- **Every set of standards governing age- and developmentally appropriate practices to manage and care for youth under 18 strictly regulates and limits all forms of isolation.**
- The leading set of national standards for managing youth in a correctional setting limits isolation to **4 hours or less, and never for purposes of punishment.**<sup>3</sup>
- The rules implementing the federal Prison Rape Elimination Act (PREA), which regulate all prisons and places of juvenile detention in the country, impose strict limits on juvenile isolation.
- In 2012, the American Academy of Child and Adolescent Psychiatrists adopted an official policy statement proposing a strict limit of **24 hours.**<sup>4</sup>

Below we highlight national standards and best practices for **juvenile justice settings** (including examples from specific systems), as well as **mental health** and **educational** facility standards and best practices, and **international** standards. These standards and best practices, drawn from a range of institutional environments, all apply limitations on the use of solitary confinement for youth.

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<sup>1</sup> 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>.

<sup>2</sup> *Id.* at 114.

<sup>3</sup> JUVENILE DETENTION ALTERNATIVES INITIATIVE (JDAI), A GUIDE TO JUVENILE DETENTION REFORM: JUVENILE DETENTION FACILITY ASSESSMENT 2014 UPDATE 177-80 (2014) (setting forth standards governing many conditions of confinement in juvenile detention and correctional facilities, including the use of "room confinement"), available at <http://www.aecf.org/m/resource/doc/aecf-juvenile-detention-facility-assessment-2014.pdf>.

<sup>4</sup> 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](http://www.aacap.org/cs/root/policy_statements/solitary_confinement_of_juvenile_offenders).

## NATIONAL STANDARD FRAMEWORKS

### Juvenile Detention Alternatives Initiative (JDAI)

JDAI, an initiative of the Annie E. Casey Foundation,<sup>5</sup> is the most widely recognized set of national best practices.<sup>6</sup> JDAI has four goals: “to eliminate the inappropriate or unnecessary use of secure detention; to minimize re-arrest and failure-to-appear rates pending adjudication; to ensure appropriate conditions of confinement in secure facilities; and to redirect public finances to sustain successful reforms.”<sup>7</sup> The Initiative uses a set of standards and facility assessments conducted by local stakeholders to evaluate and improve conditions of confinement.<sup>8</sup>

With regard to isolation, JDAI distinguishes between “room confinement” and “voluntary time outs.”

- **Room confinement is defined as the “involuntary restriction of a youth alone in a cell, room, or other area,” and it may only be used as a temporary response to behavior that threatens immediate harm to the youth or others.<sup>9</sup> It may never be used as a punishment or disciplinary sanction.**
- By contrast, *voluntary time out* is defined as a “brief period of time in a youth’s room or other space at the request of the youth”; youth must be checked on by staff at 10-minute intervals and the door may not be locked during a voluntary time out.<sup>10</sup>

### JDAI ROOM CONFINEMENT STANDARDS

Under JDAI standards, **Room Confinement:**<sup>11</sup>

- must be governed by policies and procedures;
- must be documented by facility staff;
- can only be used if incidents are reviewed regularly by the facility administrator;
- **can only be used if a youth’s behavior threatens imminent physical harm to the youth or to others;**
- **can never be used for purposes of punishment, discipline, administrative convenience, or staffing shortages;**
- can only be used after exhaustion of less restrictive de-escalation techniques;
- can only be used for the amount of time necessary for the youth to regain self-control and no longer pose a threat;
- must be explicitly approved by a unit supervisor, and must be explicitly approved by increasingly senior administrators as the length of time in room confinement increases;
- **can never be used for longer than 4 hours;**
- can only be used if staff provide continuous one-on-one crisis intervention and observation inside the cell or directly outside the cell;

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<sup>5</sup> *JDAI/Detention Reform*, CTR. FOR CHILDREN’S LAW AND POLICY, <http://www.cclp.org/JDAI.php> (last visited Mar. 5, 2013).

<sup>6</sup> COALITION FOR JUVENILE JUSTICE, COALITION FOR JUVENILE JUSTICE BEST PRACTICE BULLETIN (2009), available at [http://juvjustice.org/media/resources/public/resource\\_232.pdf](http://juvjustice.org/media/resources/public/resource_232.pdf).

<sup>7</sup> *Id.*

<sup>8</sup> See A GUIDE TO JUVENILE DETENTION REFORM: JUVENILE DETENTION FACILITY ASSESSMENT 2014 UPDATE, *supra* note 3.

<sup>9</sup> *Id.* at 172, 177.

<sup>10</sup> *Id.* at 172, 181.

<sup>11</sup> See *id.* at 177-80.

JDAI requires that youth held in room confinement in clean, sanitary, suicide-resistant and protrusion-free rooms, with adequate ventilation and at comfortable temperatures and that ensure reasonable access to water, toilet facilities, and hygiene supplies.<sup>12</sup> Youth can never be deprived of:

- a mattress, pillow, blankets, and sheets;
- full meals and evening snacks;
- a full complement of clean clothes;
- parental and attorney visits;
- personal hygiene items;
- daily opportunity for exercise;
- telephone contact with attorney;
- the right to receive and send mail;
- a regular daily education program;
- an opportunity for a daily shower;
- an opportunity to attend religious services and/or obtain religious counseling of the youth's choice;
- access to reading materials.<sup>13</sup>

JDAI mandates that, for any youth placed in room confinement, staff develop a plan that will allow the youth to leave room confinement and return to programming as soon as possible. Procedures must clearly describe how and when staff should involve qualified medical and mental health professionals in treating the out-of-control youth.<sup>14</sup> JDAI requires that if at any time a qualified mental health professional determines that the level of crisis service needed is not available in the current environment, or if, at the end of 4 hours, the youth has not regained self-control, the youth should be transferred to a mental health facility or the medical unit of the facility.<sup>15</sup>

JDAI mandates that youth at risk of self-harm should be encouraged “to participate in activities and programs unless staff cannot manage their behavior safely.”<sup>16</sup> Youth at risk of suicide must be engaged in social interaction—not isolated—and have an opportunity to participate in school and activities, and must be monitored one-on-one on a continuous basis or transferred to a mental health facility.<sup>17</sup>

## Performance-based Standards (PbS)

The PbS initiative, a program of the Council of Juvenile Correctional Administrators, is a national “program for agencies and facilities to identify, monitor and improve conditions and treatment services provided to incarcerated youths using national standards and outcome measures.”<sup>18</sup> It is a voluntary membership organization with more than 100 participating facilities across 29 states.<sup>19</sup> A major focus of the PbS initiative is gathering and disseminating data to promote best practices.<sup>20</sup>

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<sup>12</sup> *Id.* at 178-79.

<sup>13</sup> *Id.* at 177-79.

<sup>14</sup> *Id.* at 177.

<sup>15</sup> *Id.* at 178.

<sup>16</sup> *Id.* at 119.

<sup>17</sup> *Id.* at 119-20.

<sup>18</sup> PBS LEARNING INST., PERFORMANCE-BASED STANDARDS (PBS), <http://pbstandards.org/initiatives/performance-based-standards-pbs> (last visited Feb. 27, 2014).

<sup>19</sup> PBS LEARNING INST., PERFORMANCE-BASED STANDARDS: SAFETY AND ACCOUNTABILITY FOR JUVENILE DETENTION FACILITIES (2012), available at [http://pbstandards.org/uploads/documents/PbS\\_Li\\_MarketingPacket.pdf](http://pbstandards.org/uploads/documents/PbS_Li_MarketingPacket.pdf).

<sup>20</sup> *Id.*

With regard to isolation, “PbS standards are clear: isolating or confining a youth to his/her room should be used only to protect the youth from harming himself or others and if used, should be brief and supervised. Any time a youth is alone for 15 minutes or more is a reportable PbS event and is documented;”<sup>21</sup> “isolation . . . should not be used as punishment.”<sup>22</sup> The agency documents that, nationally, “very few state agency policies permit extended isolation time for youths and the majority limit time to as little as three hours and a maximum of up to five days.”<sup>23</sup>

In PbS facilities, aggregated data from between 2008 and 2012 made public by PbS, shows that in long-term juvenile corrections facilities, the average duration of isolation declined to 14.28 hours in 2012, with the percentage of cases ending in four hours or less increasing to 60% in 2012; and that in short-term detention and assessment centers, the average duration of isolation declined to 5.59 hours in 2012, with the percentage of cases ending in four hours or less increasing to 75% in 2012.<sup>24</sup>

There are a range of expected practices and processes that PbS recommends for facilities, including that:

- the facility have a behavior management system that relies on rewards and incentives;
- isolation is used to neutralize out-of-control behavior and redirect it into positive behavior and should not be used as punishment;
- the staff training program includes an adolescent development curriculum that features the value of positive over negative reinforcement in dealing with youths;
- the staff training program presents the negative repercussions and ineffectiveness of long-term isolation and the rationale for shorter brief periods;
- the facility have policies governing the duration of isolation and room confinement;
- the facility review all events and incidents resulting in isolation to determine if isolation could have been avoided or its use shortened;
- the facility review all incidents of isolation routinely for appropriateness, length of isolation and monitoring of youth in isolation;
- the facility require an oversight agency to conduct regular reviews of isolation inclusive of the monitoring of youth while in isolation.<sup>25</sup>

## **American Correctional Association (ACA) Performance-Based Standards for Juvenile Correctional Facilities**

ACA policy recognizes that “children and youths have distinct personal and developmental needs”<sup>26</sup> and calls for all youth deprived of their liberty—even those charged as adults—to be held in specialized juvenile facilities.<sup>27</sup>

The ACA standards permit the removal from general population of juveniles who threaten the secure and orderly management of the facility and their placement in special units.<sup>28</sup> ACA standards distinguish between three types of isolation/removal practices: Disciplinary Room Confinement, Protective Custody, and Special Management.<sup>29</sup>

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<sup>21</sup> PBS LEARNING INST., REDUCING ISOLATION AND ROOM CONFINEMENT 2 (2012), available at [http://pbstandards.org/uploads/documents/PbS\\_Reducing\\_Isolation\\_Room\\_Confinement\\_201209.pdf](http://pbstandards.org/uploads/documents/PbS_Reducing_Isolation_Room_Confinement_201209.pdf).

<sup>22</sup> PBS LEARNING INST., PBS GOALS, STANDARDS, OUTCOME MEASURES, EXPECTED PRACTICES AND PROCESSES 10 (2007), available at <http://sccounty01.co.santa-cruz.ca.us/prb/media%5CGoalsStandardsOutcome%20Measures.pdf>.

<sup>23</sup> PBS LEARNING INST., REDUCING ISOLATION AND ROOM CONFINEMENT, *supra* note 20, at 4.

<sup>24</sup> *Id.* at 4-5.

<sup>25</sup> PBS LEARNING INST., PBS GOALS, STANDARDS, OUTCOME MEASURES, EXPECTED PRACTICES AND PROCESSES, *supra* note 21, at 8-10.

<sup>26</sup> AM. CORR. ASS’N, PUB. CORR. POLICY ON JUVENILE JUSTICE (2007).

<sup>27</sup> AM. CORR. ASS’N, PUB. CORR. POLICY ON YOUTHFUL OFFENDERS TRANSFERRED TO ADULT CRIMINAL JURISDICTION (2009).

### DISCIPLINARY ROOM CONFINEMENT

ACA standards **limit disciplinary room confinement to five days**. Juveniles in room confinement must be checked visually by staff at least every 15 minutes and visited at least once each day by personnel from administrative, clinical, social work, religious, and/or medical units, during which staff must actually enter the room for the purpose of discussion or counseling. The ACA standards require that youth in disciplinary room confinement be afforded living conditions and privileges earned that approximate those available to the general population.<sup>30</sup>

### PROTECTIVE CUSTODY

ACA standards limit protective custody to circumstances where youth need protection from others and then only until alternative permanent housing is found. The ACA standards require that **continued confinement to protective custody should not continue beyond 72 hours without the approval of a facility administrator**. Under the ACA standards, facilities should develop special management plans for youth in protective custody to ensure continuous services and programming.<sup>31</sup>

### SPECIAL MANAGEMENT

ACA standards limit the use of special management to high-risk youth who cannot control their assaultive behavior or present a danger to themselves. The ACA suggests that youth in special management should benefit from an **individualized and constructive behavior management plan** that allows for individualized attention. The ACA standards require that placement in special management must be reviewed within 72 hours.<sup>32</sup>

## Department of Justice (DOJ) Standards for the Administration of Juvenile Justice

In 1980, the Justice Department issued Standards related to a broad range of issues in the juvenile justice system.<sup>33</sup>

With regard to isolation, the DOJ Standards provide that **“juveniles should be placed in room confinement only when no less restrictive measure is sufficient to protect the safety of the facility and the persons residing or employed therein. . . . Room confinement of more than twenty-four hours should never be imposed.”**<sup>34</sup> The commentary to the standards states that “[i]solation is a severe penalty to impose upon a juvenile, especially since this sanction is to assist in rehabilitation as well as punish a child. . . . After a period of time, room confinement begins to damage the juvenile, cause resentment toward the staff, and serves little useful purpose.”<sup>35</sup>

The DOJ Standards mandate that juveniles placed in room confinement “should be examined at least once during the day by a physician, be visited at least twice during the day by a child-care worker or other member of the treatment staff, and be provided with educational materials and other services as needed. . . . [J]uveniles placed in room confinement for more than twelve hours should be provided with at least thirty minutes of recreation and exercise outside of the room in which they are confined.”<sup>36</sup>

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<sup>28</sup> AM. CORR. ASS’N, PERFORMANCE BASED STANDARDS JUVENILE CORR. FACILITIES 51 (4th ed. 2009).

<sup>29</sup> *Id.* at 51-52.

<sup>30</sup> *Id.* at 52 (Standards 4-JCF-3C-03; 4-JCF-3C-04).

<sup>31</sup> *Id.* at 51 (Standard 4-JCF-3C-02).

<sup>32</sup> *Id.* at 51 (Standard 4-JCF-3C-01).

<sup>33</sup> DEP’T JUSTICE OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, STANDARDS FOR THE ADMINISTRATION OF JUVENILE JUSTICE (1980), available at <http://catalog.hathitrust.org/Record/000127687>.

<sup>34</sup> *Id.* at Standard 4.52.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

The DOJ Standards state that all youth in residential facilities should have a right to a basic level of services: adequate and varied diet; varied recreation and leisure-time activities; preventive and immediate medical/dental care; remedial, special, vocational, and academic educational services; protection against physical and mental abuse; freedom to develop individuality; opportunity to participate or not participate in religious observances; clean, safe, adequately heated and lighted accommodations; and maximum feasible contact with family, friends, and community.<sup>37</sup> They also require a maximum level of treatment services, including individual and group counseling; psychiatric and psychological services; and casework services.<sup>38</sup>

## FEDERAL LAWS AND REGULATIONS

### Prison Rape Elimination Act (PREA) and Regulations

In 2003, Congress passed PREA in response to the high rates of sexual assault across all forms of detention facilities in the United States.<sup>39</sup> The final PREA regulations implementing the law provide a range of protections for young offenders. States that do not comply with PREA face a 5% reduction in federal corrections funding unless the Governor certifies that those funds will be used to enable compliance in the future.<sup>40</sup> In February 2014, the Department of Justice issued a letter to state governors reminding them of the upcoming first deadline for this required certification, May 15, 2014, and of the Fiscal Year 2014 funds that could be cut off if certification is not received.<sup>41</sup>

The regulations implementing PREA include provisions regulating isolation in places of detention, including juvenile facilities.<sup>42</sup> Recognizing the risks posed by both isolation and sexual assault, the sections of the PREA regulations focusing on juvenile facilities characterize isolation as a measure of “last resort.”<sup>43</sup> Protective or disciplinary isolation may only be used as a “last resort when other less restrictive measures are inadequate to keep them and other residents safe, and then only until an alternative means of keeping all residents safe can be arranged.”<sup>44</sup>

In addition to **the requirement that solitary be used only as a last resort, when alternatives have been exhausted**, the regulations impose other requirements on the use of isolation:

- Young people in disciplinary or protective isolation must receive daily large-muscle exercise;<sup>45</sup>
- They must have access to legally-mandated educational programming or special education services;<sup>46</sup>

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<sup>37</sup> *Id.* at Standard 4.410.

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

<sup>39</sup> Bureau of Justice Statistics data gathered since the Act’s passage is available at <http://bjs.ojp.usdoj.gov/index.cfm?ty=tp&tid=20>.

<sup>40</sup> Press Release, U.S. Dep’t of Justice, Justice Department Releases Final Rule to Prevent, Detect, and Respond to Prison Rape (May 17, 2012), available at <http://www.justice.gov/opa/pr/2012/May/12-ag-635.html>.

<sup>41</sup> Letter from Karol V. Mason, Assistant Attorney General, Office of Justice Programs, to State Governors (Feb. 11, 2014), available at <http://www.prearesourcecenter.org/sites/default/files/library/preagovlettersigned2-11-14.pdf>.

<sup>42</sup> The regulations include detailed requirements for the prevention, detection, and investigation of sexual abuse in both adult and juvenile correctional facilities. See Press Release, Department of Justice, Justice Department Releases Final Rule to Prevent, Detect and Respond to Prison Rape (May 17, 2012), available at <http://www.justice.gov/opa/pr/2012/May/12-ag-635.html> (summary of regulations).

<sup>43</sup> 28 C.F.R. § 115.342(b) (2012) (protective isolation); 28 C.F.R. § 115.378(b) (2012) (disciplinary isolation), available at [http://www.ojp.usdoj.gov/programs/pdfs/prea\\_final\\_rule.pdf](http://www.ojp.usdoj.gov/programs/pdfs/prea_final_rule.pdf).

<sup>44</sup> 28 C.F.R. § 115.342 (b) (2012).

<sup>45</sup> 28 C.F.R. § 115.342(b) (2012) (protective isolation); 28 C.F.R. § 115.378(b) (2012) (disciplinary isolation).

<sup>46</sup> 28 C.F.R. § 115.342(b) (2012) (protective isolation); 28 C.F.R. § 115.378(b) (2012) (disciplinary isolation).

- They must receive daily visits from a medical or mental health care clinician;<sup>47</sup>
- To the extent possible, they must have access to other programs and work opportunities;<sup>48</sup>
- In cases of protective isolation, the regulations also require **documentation** of the basis of the safety concern, and the reason for a lack of housing alternatives;<sup>49</sup>
- Periodic review of any continuing need for isolation is required.<sup>50</sup>

PREA also requires that juvenile facilities meet **minimum staffing levels to adequately supervise residents**.<sup>51</sup> Because youth may be isolated for protective or administrative reasons, adequate staffing should help facilities avoid placing children in isolation.

## MODEL STATE SYSTEMS

State reforms also provide a model for systemic standards. The state juvenile justice systems that have most effectively reduced their use of isolation have done so by taking an all-inclusive approach to the custody and rehabilitation of youth. In key reform states, instituting better alternatives to isolation often precludes the “need” for isolation of children who have problems that make it difficult for them to comply with facility rules. Some reformers have also recognized that isolation is only appropriate as a temporary response to violent acting-out behavior, and never appropriate as a punishment.

### New York and the Sanctuary Model

The New York State Office of Children and Family Services has become a leader of reform in conditions of confinement for youth, moving away from using isolation by implementing the more therapeutic “Sanctuary Model” in many of its facilities.<sup>52</sup> This model provides a holistic structure for trauma-informed and evidence-based care, and discourages punitive responses to youth misbehavior or aggression. Instead, the model emphasizes restorative practices by health care providers, security staff, administrators, and others involved in the custody of youth. Guided by therapeutic principles, the Sanctuary Model prioritizes treatment and outcomes for youth in custody, instead of treating them like miniature versions of adult prisoners.

### The Missouri Model

Missouri has also played a lead role in reforming juvenile justice practices, including the use of isolation. The “Missouri Model” for juvenile justice focuses on rehabilitation by instituting alternative facilities like smaller group homes and treatment centers that maintain safety through fostering positive relationships among youth and between youth and staff and providing adequate staff supervision, and thus avoiding isolation and other punitive and extreme

<sup>47</sup> 28 C.F.R. § 115.342(b) (2012) (protective isolation); 28 C.F.R. § 115.378(b) (2012) (disciplinary isolation).

<sup>48</sup> 28 C.F.R. § 115.342(b) (2012) (protective isolation); 28 C.F.R. § 115.378(b) (2012) (disciplinary isolation).

<sup>49</sup> 28 C.F.R. § 115.342 (h) (2012).

<sup>50</sup> 28 C.F.R. § 115.342 (i) (2012) (requiring that every 30 days the facility must provide a review to determine whether there is a “continuing need for separation”).

<sup>51</sup> 28 C.F.R. § 115.313 (c) (2012) (requiring 1 security staff member per 8 juvenile residents during waking hours, and 1:16 during sleeping hours).

<sup>52</sup> See generally Laura Mirsky, *The Sanctuary Model: A Restorative Approach for Human Services Organizations*, RESTORATIVE PRACTICES FORUM, available at [http://www.sanctuaryweb.com/PDFs\\_new/Mirsky%20The%20Sanctuary%20model%20a%20restorative%20approach.pdf](http://www.sanctuaryweb.com/PDFs_new/Mirsky%20The%20Sanctuary%20model%20a%20restorative%20approach.pdf) (describing the Sanctuary Model approach); *Sanctuary in Juvenile Justice Settings*, THE SANCTUARY MODEL, <http://www.sanctuaryweb.com/juvenile.php> (providing links to resources on New York’s implementation of the Sanctuary Model).



correctional responses.<sup>53</sup> Importantly, the Missouri model discourages youth isolation by imposing reporting requirements on the practice,<sup>54</sup> and the central focus of the model is to provide individual, ongoing attention to youth who act out, instead of repeatedly—and counter-productively—punishing them with isolation.<sup>55</sup>

### Administrative Reform in Massachusetts

Officials in Massachusetts have recently made their state a model in reforming the use of isolation and solitary confinement. Since March 2013, Massachusetts has operated under a statewide agency policy restricting isolation to emergency situations and specifically banning its use for punitive purposes. Massachusetts also requires a series of reports to and permissions from increasingly higher-level administrators as the length of a stay in isolation increases to multiple hours. Today, Massachusetts only uses isolation to separate youth who are out of control in cases of emergency—and rarely for more than a few hours at a time.

## NATIONAL STANDARD FRAMEWORKS – MENTAL HEALTH

### Federal Legislation and Implementing Regulations

The **Children’s Health Act of 2000** protects the rights of residents of any health care facility that receives federal funds.<sup>56</sup> The statute strictly limits the use of involuntary locked isolation (or “seclusion”) by **prohibiting disciplinary isolation or isolation used for the purposes of convenience and allowing locked isolation only (1) to ensure the physical safety of the resident, a staff member, or others and (2) upon the written order of a physician or licensed practitioner** that specifies duration.<sup>57</sup>

Regulations implementing the health and safety requirements of the **Social Security Act** also strictly limit the use of involuntary isolation (or “seclusion”) in medical facilities.<sup>58</sup> The regulations similarly prohibit involuntary isolation used for coercion, discipline, convenience or retaliation and allow involuntary isolation **only (1) when less restrictive interventions have been determined to be ineffective, (2) to ensure the immediate physical safety of the patient, staff member, or others, and (3) must be discontinued at the earliest possible time.**<sup>59</sup> These regulations limit involuntary isolation to a total maximum of 24 hours and limit individual instances of involuntary isolation to 2 hours for children and adolescents age 9 to 17.<sup>60</sup> The regulations mandate that individuals subjected to involuntary isolation be evaluated within 1 hour of the intervention by a medical professional, who must document (1) a description of the patient’s behavior and the intervention used; (2) alternatives or other less restrictive interventions attempted; (3) the patient’s conditions or symptoms that warranted the use of seclusion; and (4) the patient’s response, including the rationale for continued isolation.<sup>61</sup>

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<sup>53</sup> See THE ANNIE E. CASEY FOUNDATION, THE MISSOURI MODEL: REINVENTING THE PRACTICE OF REHABILITATING YOUTHFUL OFFENDERS 2 (2010), available at [http://www.aecf.org/~media/Pubs/Initiatives/Juvenile%20Detention%20Alternatives%20Initiative/MOModel/MO\\_Fullreport\\_webfinal.pdf](http://www.aecf.org/~media/Pubs/Initiatives/Juvenile%20Detention%20Alternatives%20Initiative/MOModel/MO_Fullreport_webfinal.pdf).

<sup>54</sup> *Id.* at 9.

<sup>55</sup> See *id.* at 13.

<sup>56</sup> Children’s Health Act of 2000, Pub. L. 106-310, 114 Stat. 1101 § 591(a) (2000), available at <http://www.gpo.gov/fdsys/pkg/PLAW-106publ310/pdf/PLAW-106publ310.pdf>.

<sup>57</sup> *Id.* at § 591(b).

<sup>58</sup> 42 C.F.R. 482.13 (2012) (implementing 42 U.S.C. 1395x § 1861(e)(9)(A)), available at <http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=5ba18485f8033f30fb496dba3e87c626&rgn=div8&view=text&node=42:5.0.1.1.1.2.4.3&idno=42.>)

<sup>59</sup> 42 C.F.R. 482.13(e) (2012).

<sup>60</sup> 42 C.F.R. 482.13(e)(2)(8) (2012). The limit for children under 9 is one hour.

<sup>61</sup> *Id.*



## The American Academy of Child and Adolescent Psychiatry (AACAP)

In 2012, AACAP issued a policy statement **opposing the use of solitary confinement for juveniles and urging that any youth isolated for more than 24 hours should be evaluated by a mental health professional.**

The statement recognized the potential **psychiatric consequences of prolonged solitary confinement** (including depression, anxiety, and psychosis) and that, due to their developmental vulnerability, juveniles are at particular risk for such adverse reactions.<sup>62</sup> The statement also distinguishes between **the use of isolation to punish, which is unacceptable**, and the use of brief interventions, which are acceptable (these include “time-outs,” which may be used as a component of a behavioral treatment program and “seclusion,” an emergency procedure which should be used for the least amount of time possible for the immediate protection of the individual).<sup>63</sup>

AACAP also has standards strictly limiting the use of isolation (or “seclusion”) in the context of mental health treatment. In the therapeutic context, AACAP opposes the use of seclusion except (1) to prevent dangerous behavior to self or others, disruption of the treatment program, or serious damage to property; and (2) only after less restrictive options have failed or are impractical.<sup>64</sup> These standards also state that seclusion should never be used as a punishment or for the convenience of the program and should only be implemented by trained staff.<sup>65</sup>

## The National Commission on Correctional Health Care (NCCHC)

For facilities seeking accreditation through the NCCHC, its standards require that medical and administrative staff jointly create segregation policies and that youth in segregation should be evaluated daily by qualified health personnel.<sup>66</sup> NCCHC standards require that these **segregation policies should state that isolation is to be reserved for incidents in which the youth’s behavior has escalated beyond the staff’s ability to control the youth by counseling or disciplinary measures and presents a risk of injury to the youth or others.**<sup>67</sup>

The NCCHC standard is based on its finding that, “segregation is a behavioral control measure (thus subjected to administrative responsibility) which may pose medical danger (thus subject to medical responsibility). This danger increases as segregation is prolonged.”<sup>68</sup> The discussion concludes that, “[i]t is reasonable to assume from these [research] findings and the successful experiences of juvenile detention/confinement programs that have strict, self-imposed limits on isolation, that **the vast majority of segregation events can be limited to minutes or hours**, and the use of segregation for a day or more is unnecessary in all but a very few cases.”<sup>69</sup>

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<sup>62</sup> POLICY STATEMENTS: SOLITARY CONFINEMENT OF JUVENILE OFFENDERS, *supra* note 4.

<sup>63</sup> *Id.*

<sup>64</sup> AM. ACAD. OF CHILD & ADOLESCENT PSYCHIATRY, PRACTICE PARAMETER FOR THE PREVENTION AND MANAGEMENT OF AGGRESSIVE BEHAVIOR IN CHILD AND ADOLESCENT PSYCHIATRIC INSTITUTIONS, WITH SPECIAL REFERENCE TO SECLUSION AND RESTRAINT 55 (2002), available at [http://www.jaacap.com/article/S0890-8567\(09\)60552-9/fulltext](http://www.jaacap.com/article/S0890-8567(09)60552-9/fulltext).

<sup>65</sup> *Id.*

<sup>66</sup> NAT’L COMM. ON CORR. HEALTH CARE, STANDARDS FOR HEALTH SERVICES IN JUVENILE DETENTION AND CONFINEMENT FACILITIES, Standard Y-E-09 (2011); NAT’L COMM. ON CORR. HEALTH CARE, STANDARDS FOR HEALTH SERVICES IN JUVENILE DETENTION AND CONFINEMENT FACILITIES, Standard Y-39 (1995), available at <http://www.jdcap.org/SiteCollectionDocuments/Health%20Standards%20for%20Detention.pdf>.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

## NATIONAL STANDARD FRAMEWORKS – EDUCATION

### Department of Education Guidelines

There are a range of state policies, laws and practices regarding the use of involuntary isolation for young people in educational contexts.<sup>70</sup> But the Department of Education has issued a set of general guidelines for the use of involuntary isolation in schools.<sup>71</sup>

The Department of Education guidelines restrict involuntary confinement of a student to a room alone (or “seclusion”) and state that **isolation should not be used as a punishment or convenience** and is appropriate only in situations where a child’s behavior poses an imminent danger of serious physical harm to self or others, where other interventions are ineffective and should be discontinued as soon as the imminent danger of harm has dissipated.<sup>72</sup> The guidelines propose that any use of isolation, but particularly where there is repeated use for an individual child, should trigger a review of strategies in place to address dangerous behavior, and these strategies should address the underlying cause or purpose of the behavior.<sup>73</sup> The guidelines also propose constant visual monitoring of children in isolation, parental notification and documentation.<sup>74</sup>

## INTERNATIONAL STANDARDS

### United Nations Special Rapporteur on Torture

The United Nations Special Rapporteur on Torture, in his 2011 report to the General Assembly, called for an absolute ban on solitary confinement for youth under age 18:

The Special Rapporteur holds the view that the imposition of solitary confinement, of any duration, on juveniles is cruel, inhuman or degrading treatment and violates article 7 of the International Covenant on Civil and Political Rights and article 16 of the Convention against Torture.<sup>75</sup>

This absolute ban reflects an agreement that solitary confinement is an affront to the humanity, dignity, and child status of any youth. And it reflects an interpretation of two treaties—the International Covenant on Civil and Political Rights and the Convention against Torture—which the United States has ratified.<sup>76</sup>

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<sup>70</sup> See generally DEP’T OF EDUCATION, SUMMARY OF SECLUSION AND RESTRAINT STATUTES, REGULATIONS, POLICIES AND GUIDANCE, BY STATE AND TERRITORY (2010) available at [http://www.pbis.org/common/pbisresources/publications/SeclusionRestraint\\_summary\\_ByState.pdf](http://www.pbis.org/common/pbisresources/publications/SeclusionRestraint_summary_ByState.pdf); JESSICA BUTLER, HOW SAFE IS THE SCHOOLHOUSE?:AN ANALYSIS OF STATE SECLUSION AND RESTRAINT LAWS AND POLICIES (Autism National Committee, 2012), available at <http://www.autcom.org/pdf/HowSafeSchoolhouse.pdf>.

<sup>71</sup> DEP’T OF EDUCATION, RESTRAINT AND SECLUSION: RESOURCE DOCUMENT 11-23 (2012), available at [www2.ed.gov/policy/seclusion/restraints-and-seclusion-resources.pdf](http://www2.ed.gov/policy/seclusion/restraints-and-seclusion-resources.pdf).

<sup>72</sup> DEP’T OF EDUCATION, RESTRAINT AND SECLUSION: RESOURCE DOCUMENT 12-13 (2012), available at [www2.ed.gov/policy/seclusion/restraints-and-seclusion-resources.pdf](http://www2.ed.gov/policy/seclusion/restraints-and-seclusion-resources.pdf).

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> 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>. This report reiterates previous statements by the UN Special Rapporteurship regarding juvenile solitary confinement. 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/pdfid/48db99e82.pdf>.

## Other International Standards

Other international human rights laws and standards condemn solitary confinement of children (defined as anyone below 18 years of age)—for any duration—as cruel, inhuman or degrading treatment, and under certain circumstances, torture. The United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) and The United Nations Rules for the Protection of Juveniles Deprived of their Liberty (The Beijing Rules) both describe punitive solitary confinement of children as cruel, inhuman or degrading treatment.<sup>77</sup> The Committee on the Rights of the Child, tasked with monitoring and enforcing the Convention on the Rights of the Child, confirms to this view, interpreting punitive solitary confinement of children as a form of cruel, inhuman or degrading treatment that violates the Convention.<sup>78</sup>

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<sup>76</sup> International Covenant on Civil and Political Rights, Dec. 16, 1966, S. Exec. Rep. 102-23, 999 U.N.T.S. 171 (“ICCPR”) (entered into force Mar. 23, 1976) (ratified by U.S. June 8, 1992); Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85, 113 (“CAT”) (entered into force Jun. 26, 1987) (ratified by U.S. Oct. 21, 1994).

<sup>77</sup> U.N. Guidelines for the Prevention of Juvenile Delinquency, G.A. Res. 45/112, Annex, 45 U.N. GAOR Supp. (No. 49A) at 201, U.N. Doc. A/45/49 (Dec. 14, 1990) (“The Riyadh Guidelines”).

<sup>78</sup> U.N. Comm. on the Rights of the Child, 44<sup>th</sup> Sess., General Comment 10, Children’s rights in juvenile justice, U.N. Doc. CRC/C/GC/10 (2007).