RETHINKING RIKERS:

MOVING FROM A CORRECTIONAL TO A THERAPEUTIC MODEL FOR YOUTH

Proposal for Rule-Making
Report for the NYC Board of Correction

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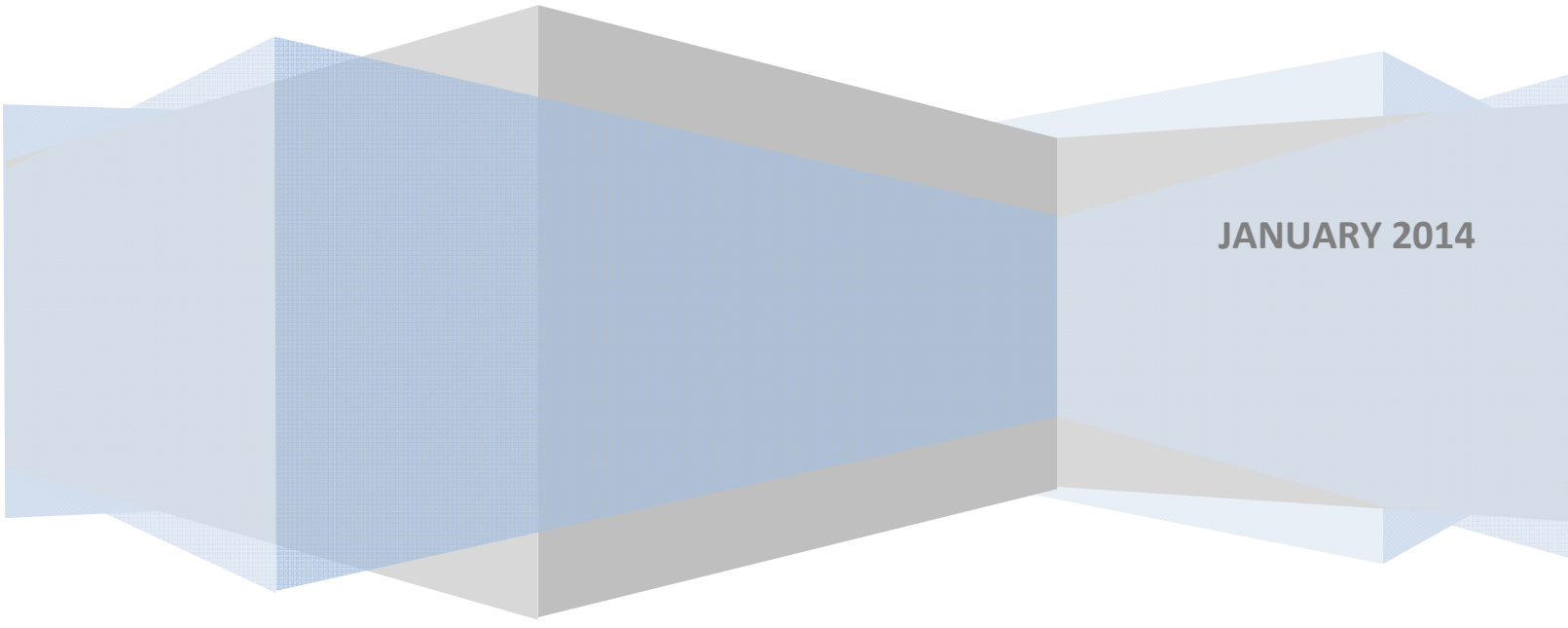

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1. Executive Summary

"Children are not little adults . . . neurological research has made that clear."[1] Consequently, a different system, or a different set of responses, is necessary to address the needs of young adults in the criminal justice system.[2] Yet, New York City has lagged behind other jurisdictions, including New York State, in modernizing its treatment and punishment of youth offenders. Significantly, New York remains one of only two states in the country to treat 16 and 17-year olds as adults in its courts.

More than 500 youth languish in New York City's Department of Correction facility on Rikers Island and over 75% of them are awaiting trial. Such a system of large-scale youth correctional facilities provides little benefit for long-term public safety. On the contrary, it wastes vast sums of taxpayer dollars, and more often than not, harms the well-being and dampens the future prospects of the youth behind bars. Each year, the United States invests 6 billion dollars to incarcerate youth, and within two to three years of their release, 70-80% of these youth are rearrested on a new offense.[3] New York City spends $167,000 per year to hold a young person on Rikers Island.

Instead of existing costly and ineffectual practices, policymakers should be working towards narrowing the pipeline of youth entering the criminal justice system. For those that do enter, New York City should adopt effective charging and bail policies, change case processing methods, and increase alternatives to incarceration and other services to improve outcomes for individuals. These practices would significantly reduce the number of youth in detention. Implementation of these necessary practices, however, is not within the control of the Board of Correction and is beyond the scope of this report.

This report addresses effective practices for those youth who will be detained in secure facilities. Effective policy requires a fundamental shift to a therapeutic approach with practices that are specialized for and dedicated to youth rehabilitation. This begins with the pressing need to eliminate the use of solitary confinement.

Solitary confinement for incarcerated youth across the United States has increasingly captured public attention. Although the definition varies, for purposes of this report, solitary confinement consists of extreme isolation for 22-24 hours a day with minimal human contact. The severe emotional, mental and physical harm caused by such practices is well documented. While isolation might be sparingly utilized for short periods of time in some circumstances,

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[1] Graham Kates, *Getting Youth Out of Adult Court*, THE CRIME REPORT, *available at* http://www.thecrimereport.org/news/inside-criminal-justice/2013-11-getting-youths-out-of-adult-court (*citing* Marian Wright Edelman of Children's Defense Fund, Keynote Speech at the John Jay College of Criminal Justice "Raise the Age: Turn the Page" Conference (Nov.19, 2013)).

[2] *Id.* (*citing* Vincent Schiraldi, Commissioner of New York City's Department of Probation).

[3] Missouri Model, *infra* note 78.

solitary confinement for lengthy periods is detrimental. Moreover, the practice itself has proven to be unnecessarily costly and a substantial contributor to *increased* recidivism rates.

Some states have eliminated solitary confinement altogether. Others, including New York, continue to utilize solitary confinement for adults and children alike, irrespective of the burgeoning scientific data highlighting its harmful effects. Research in the past three decades demonstrates that heavy reliance on solitary confinement and more generally, on punitive-based models for incarceration of youth, is counterproductive. It does not work to reduce aggressive, violent, impulsive, or disobedient behaviors. In fact, solitary confinement increases these behaviors.

Overall, the Rikers Island correctional model is damaging and in need of significant change. Solitary confinement is but the most extreme of the harmful practices. New York's current political climate provides an ideal opportunity to redesign the current youth detention system on Rikers Island. New York City should look to the flourishing success of models and practices in other jurisdictions and follow a fundamentally different approach to its treatment of youth in detention. We must embrace a shift from the traditional and oft-ineffective correctional facility model to the proven success of a residential treatment facility model.

This report examines the emerging research and the characteristics and models adopted by other states that are effective in the treatment of youth. It makes recommendations to change existing practices for youth on Rikers Island. These include placement of youth into closely supervised small groups, access to group therapy and positive behavioral management, extensive staff training and reorientation of staff to a therapeutic approach, alternatives to discipline, procedural safeguards and methods to carefully assess and evaluate the programs.

2. Recommendations at a Glance

This report presumes that by narrowing the school-to-prison pipeline, the population of youth on Rikers Island will be reduced significantly. The following recommendations and strategies, while based on this presumption, can also be implemented and adapted for the current population size.

CHANGE FROM A PUNITIVE TO A THERAPEUTIC MODEL

SMALL GROUPS

Develop small groups that establish mini communities.

- Group youth in teams of approximately 10-12; teams should sleep in a dormitory style room and spend a significant amount of the day together, including during meals, classes, exercise and group therapy.
- Assign a youth specialist to regularly supervise and engage with a particular team.
- Implement group discussions where youth are asked to explore their feelings and address their actions.

THERAPY

Adopt treatment and rehabilitation mechanisms that are proven to reduce future instances of criminal conduct and reform delinquent behavior.

- Establish an environment to promote desirable behaviors. This includes creation of calming living quarters, as well as adopting de-escalation and other techniques that allow staff to reliably predict conduct that precedes a problem behavior.
- Develop individualized profiles for behavior management for each youth.
- Use techniques, such as a token economy, to alter the environment so that undesirable maladaptive behaviors are ignored or punished, and desirable prosocial behaviors are met with positive reinforcement.
- Embrace evidence-based therapeutic approaches, such as cognitive-behavior therapy, in ways that maximize effectiveness. Such approaches have been successfully implemented in post-incarceration settings (e.g., by including the family in therapeutic sessions and post-release planning).
- Initiate skill-building programs, such as communication and job readiness, to equip youthful offenders with adaptive skills to succeed upon release.

ALTERNATIVE DISCIPLINE

In a youth corrections model where youth are placed into closely supervised small groups, with group therapy and behavior management facilitated by trained staff, the most serious types of disciplinary methods can be avoided.

- Ban solitary confinement (absolute social and physical isolation for 22-24 hours per day).
- Individualize the disciplinary policies and procedures by considering factors such as the youth's age and mental health status.
- Employ de-escalation techniques soon after a young person acts out or misbehaves. This includes discussion with the youth to determine the root causes to help identify more appropriate responses.
- Use short-term isolation only as a last resort to interrupt current acting-out behavior or to separate youth in circumstances where the youth poses an immediate threat to others or to him/herself. Isolation should be used only after graduated sanctions and lesser restrictive discipline techniques have proven ineffective. Before separating the youth, explain the reasons why separation is required and that he or she will be released upon regaining self-control. Short-term isolation must end as soon as the youth has regained self-control and **cannot exceed 4 hours.**
- Utilize room confinement only in extreme situations where a major rule violation has occurred and lesser restrictive discipline techniques have been exhausted or proven ineffective. Room confinement of more than 24 hours is reserved for the most serious violations, and **never imposed for more than 72 hours.** Youth in room confinement must receive out-of-cell access to education services and other programming, including physical recreation for at least **4 hours per day.**
- Require supervisory review before isolation or room confinement is used.
- Provide feedback to staff on how to improve incident responses, including supervisory review of incidents with staff to determine if a youth's time in isolation or room confinement could have been shorter or avoided entirely.
- Initiate regular training to facility staff on the appropriate use of, and alternatives to, isolation and room confinement.
- Create access to information about isolation and room confinement to independent oversight boards and staff.

PROCEDURAL SAFEGUARDS

The consequences of solitary confinement on youth are severe; therefore, a jurisdiction utilizing confinement must implement appropriate and necessary procedural safeguards that ensure constitutional due process rights are protected.

- Develop a system where each occurrence of isolation or room confinement is documented, reviewed by facility administrators, and regularly reported publicly.
- Document ground rules for the use of confinement, clearly describing the type of infractions that result in sanctions.
- Provide entering youth with a copy of a rulebook that lists the circumstances that may result in confinement.
- Provide youth with an opportunity to be heard in an administrative hearing within a reasonable period of time.
- Provide additional procedural safeguards where confinement occurs before a hearing.

- Implement rules that encourage informed and adequate representation, especially when the youth is representing him/herself.
- Youth must be afforded an opportunity to appeal any administrative decision.

TRAINING

Changing the culture of a detention facility from a punitive to a rehabilitative one requires attention to four systemic areas: the organizational structure, the institution's policy, job descriptions, and staff training.

- Seek the services of the Missouri Youth Services Institute to aid in the administration of a culture transformation at Rikers Island.
- Transform the traditional corrections officers into rehabilitative-focused youth specialists.
- Require youth specialists to have extensive training and undergo a rigorous interview process.
- Screen youth specialists for a personal commitment to helping youth succeed. The staff needs good listening skills, capacity for empathy, and the ability to command respect.
- Require youth specialists to complete over 200 hours of training, including extensive training in conflict management, positive reinforcement and group facilitation.
- Require supervision of youth specialists until over 100 hours of core training has been completed.
- Require additional in-service training for 40 hours per year to update specialists on the newest concepts and treatment techniques.

EVALUATION AND REPORTING

Reporting and data collection must be systematic.

- Collect and evaluate the disciplinary measures used in youth correctional facilities.
- Prepare annual reports of findings relating to room confinement and use of solitary confinement to be made available to the public.
- Independent and qualified reviewers should routinely monitor and review the use of discipline in correctional facilities housing youth.
- Participate in the Performance-Based Standard Initiative (PBS) by submitting information about the youth facility twice a year.
- Revise practices to better comply with national best-practice standards.

Rikers Island: Proposals for Rule-Making

3. Background and Methodology

> *Imagine that you're locked in a small room like a bathroom 23 hours a day. You're handcuffed when you're moved outside of it. Your food is thrown under the door and you have five books per week. It's noisy outside with some [inmate] or another yelling, screaming, banging on his door at ALL HOURS; it smells worse than the monkey house at the older zoos no matter how hard you clean your own cell… In seg [regation] you either implode or explode; you lose touch with reality, hear voices, hallucinate, and think for hours about killing yourself, others, or both. The anger and hurt gets so intense that you suspect everyone and trust no one and when someone does something nice for you, you don't understand it*.[4]

Cardozo's Youth Justice Clinic initiated this research seeking to address solitary confinement for youth on Rikers Island. Solitary confinement on Rikers is termed "punitive segregation" [5] and is used to punish behavioral infractions. It consists of 23 hour a day confinement in a locked single unit cell, each with a bed and toilet. There is one hour for recreation in a fenced in area of the yard. Food is eaten in the cell. The punitive segregation unit has a shower.[6]

In September 2013, the Clinic toured youth facilities on Rikers Island with Board of Correction staff and representatives of the Department of Correction. Students visited intake facilities, holding cells, health and general facilities and the Robert N. Davoren Complex (RNDC) that houses male youth. Within RNDC, students visited its punitive segregation units, the Restricted Housing Unit (RHU), and the Mental Health Assessment Unit for Infracted Inmates (MHAUII). Clinic students spoke with facility supervisors and staff but had minimal contact with inmates.

> "Even when you do go outside you're in a cage all over again . . . My [cell] is bigger than the cage. So to go outside from my cell to the [recreation cage, you just feel more captive in there."
>
> -Jimmy, age 18, served 200+ days in Rikers punitive segregation
> *BOC Staff Report (Oct. 2013)*

It did not take long to realize that the practice of solitary confinement is merely one aspect of necessary reform to the treatment of youth on Rikers Island. Consequently, after the tour, the Youth Justice Clinic obtained existing data and conducted research about the

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[4] *Growing Up Locked Down*, HUMAN RIGHTS WATCH & AMERICAN CIVIL LIBERTIES UNION 58 (Oct. 2012) [hereinafter *Growing Up Locked Down*] (*citing* Letter from Douglas C. [pseudonym], to Human Rights Watch (April 17, 2012)), *available at* https://www.aclu.org/files/assets/us1012webwcover.pdf.

[5] It is also known as "solitary confinement," "isolated confinement," the "box" or the "bing." CITY OF NEW YORK BOARD OF CORRECTION, STAFF REPORT III (Oct. 2013). It will be referred to herein as solitary confinement. It is to be distinguished from short-term use of "isolation."

[6] Id.

facility. Students undertook a 50 state survey of systems, practices and procedures for youth in correctional facilities.[7] After initial research, the Clinic narrowed its inquiry to about 25 states and, after in depth research and interviews, identified a handful of states with the best practices. This report focuses upon the systems perceived to be the most effective in reducing recidivism and reigning in programmatic costs. Detailed descriptions of these programs are included at the end of this report.

This report begins by focusing on the need to reduce the Rikers Island youth population. It follows with the damage caused by solitary confinement and then, more broadly, identifies programs and strategies in other jurisdictions that have proven successful in assisting youth while also enhancing public safety. Finally, it makes recommendations for the necessary components of systemic reform for New York City.

A. CONTEXT OF REFORM AND DATA

A foundational concept within the criminal justice system is that young people are different from adults and, as such, should be treated differently. The U.S. Supreme Court stated:

> The law has historically reflected the same assumption that children characteristically lack the capacity to exercise mature judgment and possess only an incomplete ability to understand the world around them. Legal disqualifications on children as a class – e.g., limitations on their ability to marry without parental consent – exhibit the settled understanding that the differentiating characteristics of youth are universal.[8]

Nevertheless, our criminal justice system treats youth in punitive ways that exacerbates mental, emotional and physical abuse and increases the likelihood of re-offense. It fails our youth. It fails our City, State and our society. From "zero tolerance" of youth behaviors in schools, to arrest and criminal charges for minor activity and pretrial incarceration for unnecessarily extended periods of time, the system needs fundamental revision.

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[7] The research was significantly aided by the survey of juvenile justice systems in the 50 states conducted by the Lowenstein Sandler law firm in New Jersey. Catherine Weiss, Natalie J. Kraner & Jacob Fisch, LOWENSTEIN SANDLER, *51-Jurisdiction Survey of Solitary Confinement Rules in Juvenile Justice Systems* (Oct. 2013), *available at* http://www.lowensteinprobono.com/files/Uploads/Documents/solitary%20confinement%20memo%20survey%20--%20FINAL.pdf. It was challenging, yet essential, to examine both the juvenile justice and adult systems in other jurisdictions because 48 of them treat 16-18 year olds in juvenile courts.

[8] Petition for Rulemaking from American Civil Liberties Union of New Jersey et. al., to Kevin Brown, Dir., Juvenile Justice Comm'n, 1,4 n.4 (July 15, 2013)[hereinafter ACLU-NJ Petition for Rulemaking] (citing *In re Medley*, 134 U.S. 160, 168 (1890)), *available at* http://www.aclu-nj.org/files/3913/7389/2778/2013_07_15_juve.pdf.

1. REDUCING THE RIKERS YOUTH POPULATION

All stakeholders need to reimagine effective methods and programs so that many 16-18 year olds in New York City are not processed through the criminal justice system. This has been successfully accomplished elsewhere. Illinois reduced its misdemeanor cases significantly by developing alternate programs for youth and working with the police to revise the arrest protocol.[9] Roughly 40% of juvenile arrests in Cook County never go to court and in 2010, 31.8% of the arrests of youth were diverted at the police station.[10] In New York, implementing similar models where police and community groups work together to develop and refer youth to community-based programs in lieu of arrest for a range of minor crimes, would significantly reduce the population of 16-18 year olds in the criminal justice system.

For situations requiring criminal charges, case processing needs to be overhauled.[11] First, the bail system needs revision.[12] New York City needs to develop a continuum of options, ranging from a new risk assessment instrument geared specifically to young inmates;[13] followed by supervision programs in every borough; a funded bail expediting process; and a bail fund for those who cannot meet conditions of release in another manner.[14] Such refocus would reduce the jail population significantly, thereby allowing for more individualized programs focusing on rehabilitation for those who are incarcerated.

Moreover, case processing systems need fundamental change.[15] The city, led by the judiciary, needs to engage in a major case expediting effort. Hundreds of millions of dollars can be saved by reducing the average time between arrest and resolution.[16] If NYC were to enact such reforms, better outcomes would ensue for youth and for public safety. Fewer 16-18 year olds would be on Rikers Island. For those who will be incarcerated, this report addresses necessary reforms.

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[9] *Raising the Age of Juvenile Court Jurisdiction*, ILL. JUVENILE JUSTICE COMMISSION, *available at* http://www.dhs.state.il.us/OneNetLibrary/27897/documents/CHP/Reports/JuvenileJustice/IJJC_Raising_the_Age_Report_w_covers.pdf. *See also Arresting Justice: A Report About Juvenile Arrests in Chicago, 2009 & 2010,* ARREST JUSTICE, *available at* http://arrestjustice.wordpress.com/about/#_ftnref1.

[10] Id.

[11] Michael Jacobson, *End Lengthy and Costly Pretrial Imprisonment*, N.Y. TIMES (Aug. 22, 2013), *available at* http://www.nytimes.com/roomfordebate/2013/08/22/how-the-next-mayor-should-deal-with-crime-in-new-york/the-next-mayor-should-help-end-extensive-pre-trial-imprisonment

[12] Russ Buettner, Top Judge Says Bail in NY Isn't Fair or Safe, NY Times, Feb 5, 2013 Lauds

[13] Office of Children and Family Services created such a risk assessment instrument for Family Court along with a network of pretrial supervision/support in both probation and thru CBO contracts. It not only substantially reduced the detention population but rearrests declined in every category (i.e. for high, medium, and low risk youth). http://www.ocfs.state.ny.us/main/rehab/drai/

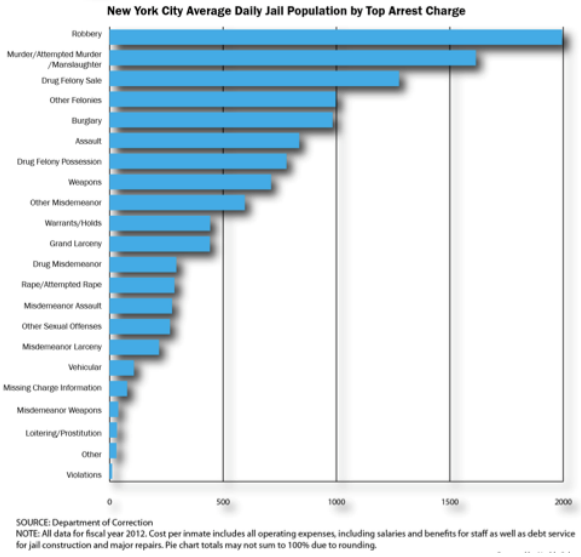
[14] Joel Stashenko, *Lippman Lauds Bronx Group's Non Profit Approach to Bail Defenders*, NY Law Journal, Feb 11, 2013.

[15] Jacobson, *supra* note 11.

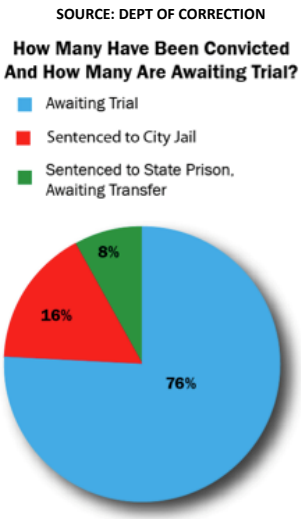
[16] Id.

RIKERS ISLAND DATA

Rikers Island consists of 10 separate jails with an inmate population ranging upwards of 14,000 and a staff of approximately 8,500.[17] Inmates include individuals awaiting trial, those serving sentences of one year or less, and those awaiting transfer to other facilities.



The Independent Budget Office report estimates that annual spending for each inmate on Rikers Island is $167,731.[18] This is about $460 per inmate per day of taxpayer dollars.



Based on 2012's numbers, there are, on average, 12,287 inmates in New York City's correctional system on any given day.[19] Of the total number of individuals within Rikers, approximately 76% are awaiting trial.[20] The remaining inmates have been sentenced to city jail or are awaiting transfer to state prison. About 93% of the inmates are male; 57% black, 33% Hispanic, 7% white and 1% Asian.[21] Of the approximately 12,000 inmates within the entire system, 10,000 of those individuals are incarcerated on Rikers Island.

Youth, in particular, have a substantial presence in New York City's correctional system. As New York is one of only two states that treat 16

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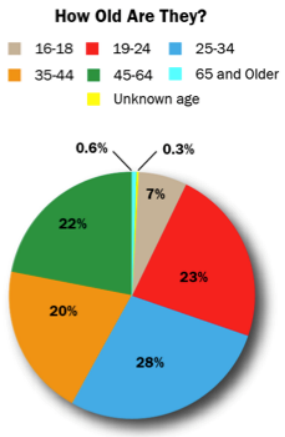
[17] Alan Singer, *Rikers Island – Last Stop on the New York City School-to-Prison Pipeline*, HUFFINGTON POST (Feb. 3, 2012), *available at* http://www.huffingtonpost.com/alan-singer/rikers-island-prison_b_1252325.html.
[18] Jake Pearson, *NYC Inmate Almost as Costly as Ivy League Tuition*, AP NEWS (Sept. 30, 2013), *available at* http://bigstory.ap.org/article/nyc-inmate-almost-costly-ivy-league-tuition.
[19] *New York City by the Numbers,* NEW YORK CITY INDEPENDENT BUDGET OFFICE, (on file with Author).
[20] Id.
[21] Id.

and 17 year olds as adults in the criminal justice system,[22] youth are placed on Rikers Island. In September 2013, there were 496 males and 30 females, ages 16-17 years old, housed in the facility.[23] Data documenting the bail conditions, prior convictions and current charged offense for youth detainees on Rikers is not readily available but it appears that a significant number of the charges that result in detention do not involve any degree of violence.[24]

SOURCE: DEPT OF CORRECTION



More than 12,000 New York City students are incarcerated every year and attend school behind bars.[25] Black and Hispanic youth make up an overwhelming 95% of students in New York City jails.[26] On Rikers Island, school attendance is compulsory and an armed security guard is assigned to every classroom.[27] The average student reads at a fifth-grade level and almost 50 percent of the students are diagnosed as having special educational needs.[28] An estimated 90% of the correctional facility's youth are re-arrested by the time they are 28.[29]

A report issued in September 2013 by New York City's Independent Budget Office provided internal Rikers Island data, specifically pertaining to incidents of violence.[30] As will be discussed herein, one of the most highly cited reasons for placing inmates in solitary confinement is varying levels of involvement in jail "incidents." The NYC Department of Correction ("DOC") Quarterly Report highlights that several high need/risk populations in DOC custody are disproportionately involved in jail incidents.[31] Adolescents, ages 16 to 18 comprise only 7-8% of the daily population, yet make up 24% of those involved in jail incidents. Inmates with a mental health diagnosis comprise 37% of the daily population, and yet make up 51% of those involved in jail incidents.[32]

Unfortunately, Rikers Island-specific data relating to the use of solitary confinement is sparse. It would appear the only data-tracking related to the use of solitary is limited to internal records maintained on-site on Rikers. Consequently, there is a pressing need for increased transparency of the prevalence of its use on Rikers Island. That said, when Cardozo's Youth Justice Clinic visited the jail in September of 2013 the majority of the facility's approximately

[22] North Carolina is the only other state and it is poised to change its laws.
[23] Cardozo's Youth Justice Clinic visited Rikers Island on Friday, September 13, 2013.
[24] Data report prepared by Board of Correction using Department of Correction data (Dec 2013) (on file with author).
[25] Alan Singer, *Rikers Island – Last Stop on the New York City School-to-Prison Pipeline*, HUFFINGTON POST (Feb. 3, 2012), *available at* http://www.huffingtonpost.com/alan-singer/rikers-island-prison_b_1252325.html.
[26] Id.
[27] Id.
[28] Id.
[29] Id.
[30] *Fiscal 2012 Second Quarterly Report*, New York City Dep't of Correction, *available at* http://www.nyc.gov/html/doc/html/about/032812DOC_at_a_Glance_single_page.pdf.
[31] Id.
[32] Id.

15-20[33] solitary confinement cells were occupied by inmates. Notably, of these inmates, several were facing upwards of 130 days in the 23-hour per day lockdown cells.

Of the scant disciplinary data that has been reported by the New York City DOC, 14.4% of adolescents between the ages of 16 and 18 spend part of their pre-trial detention in solitary confinement.[34] Data from fiscal year 2012 has shown that on an average day in 2012, approximately 7% of the Rikers population consisted of 16-18 year olds.[35] This is significant as the department is one of the largest jail systems in the country. The most common disciplinary infraction for adolescents between the ages of 16 and 18 in the New York City Department of Correction is for fighting.[36]

COMPARATIVE CORRECTIONAL SYSTEM COSTS

The annual total operating expenses of the Department of Correction is $2 billion. This includes salaries and staff benefits, payments for judgments and claims, as well as debt service for jail construction and repairs.[37]

About $30.3 million is spent annually on transportation costs alone.[38] Different bus services are used to usher inmates to and from court throughout the five boroughs (261,158 inmates were transported to court in 2012)[39] as well as transportation to bus staff from a central parking lot over the bridge to Rikers and visitors to and around the island. Cost is but one of the reasons why there has been a push towards replacing Rikers Island with jails in each borough that are closer to the corresponding courthouses.[40]

New York's annual costs dwarf the annual per-inmate costs in other big cities.[41] Los Angeles spent $128.94 a day, or $47,063 a year, for 17,400 inmates in fiscal year 2011-12.[42] Chicago spent $145 a day, or $52,925 a year, for 13,200 inmates in 2010, the most recent figures available from that county's sheriff's office.[43] Those costs included debt-service and fringe

[33] This is a rough estimate based on Cardozo Youth Justice Clinic's visit in September 2013.
[34] Growing Up Locked Down, *supra* note 4, at 64
[35] *New York City by the Numbers,* NEW YORK CITY INDEPENDENT BUDGET OFFICE, *available at*http://ibo.nyc.ny.us/cgi-park2/?p=516.
[36] Growing Up Locked Down, *supra* note 4, at 64.
[37] Id.
[38] Pearson, *supra* note 18.
[39] Id.
[40] *Fiscal 2012 Second Quarterly Report*, New York City Dep't of Correction, *available at* http://www.nyc.gov/html/doc/html/about/032812DOC_at_a_Glance_single_page.pdf.
[41] Pearson, *supra* note 18.
[42] Id.
[43] Id.

benefits.[44] Implementation of the reforms proposed in this report would save a significant amount of money.

2. SOLITARY CONFINEMENT

> *I try . . . not to think when I'm in my cell, because when I think I start to stress out because of all my problems . . . Now that I'm here, all the time I'm doing in that cell, 'cause we're boxed in 24/7, everything gets to me. I try not to overthink the situation . . . [punitive segregation is a] jail behind another jail . . . [it] makes me feel like less of a human being.*[45]

Despite conclusive documentation of the damage caused by solitary confinement, New York is one of the many states that continue to utilize it for youth (and adults). Even more detrimental, New York, a state which stands virtually alone[46] in treating 16 and 17-year olds as adults, continues to treat young people accused of committing crimes in the same manner they treat adults, irrespective of burgeoning scientific data highlighting the harmful effects of doing so.

Critique of solitary confinement in jails, specifically of youth in solitary confinement, is not novel. Countless organizations have rallied against the practice and have issued reports replete with persuasive evidence of harm and recommendations for better practices. Human Rights Watch and the American Civil Liberties Union estimate that in 2011, more than 95,000 youth were held in prisons and jails nationally.[47] A significant number of these facilities use solitary confinement—for days, weeks, months, or even years—to punish, protect, house, or treat some of the young people who are held there.

In recent years, legislators and corrections officials in a number of states have begun to reexamine the use of prolonged solitary confinement to manage adult inmates. This change in perspective has emerged after recognition that as the practice of solitary confinement increases, subsequent violence actually *increases*, rather than decreases.[48] As a result, the practice is counterintuitive, harmful to the individual, and not cost-effective. Moreover, it contributes to increased recidivism rates.[49]

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[44] A.P., *NYC's Yearly Cost Per Inmate Almost as Expensive as Ivy League Tuition,* Fox News (Sept. 30, 2013), *available at* http://www.foxnews.com/us/2013/09/30/nyc-cost-per-inmate-almost-equals-ivy-league-education-expenses-tied-to-rikers.

[45] *Staff Report: Three Adolescents with Mental Illness in Punitive Segregation at Rikers Island*, CITY OF NEW YORK BD. OF CORRECTION (Oct. 2013), *available at* http://www.nyc.gov/html/boc/downloads/pdf/reports/Three_Adolescents_BOC_staff_report.pdf.

[46] North Carolina is the only other state that treats 16 and 17 year olds as adults.

[47] Growing Up Locked Down, *supra* note 4, at 2.

[48] Id.

[49] ACLU-NJ Rule Making Petition, *supra* note 8.

Undoubtedly today, solitary confinement of youth is a serious and widespread problem in the United States.[50] Nevertheless, the fact remains: the use of solitary confinement is not only active, but also pervasive, right here in our own backyard on Rikers Island.

REASONS FOR SOLITARY CONFINEMENT

Jail or prison officials frequently subject young people to solitary for a myriad of reasons:

1. To punish a youth when he/she breaks the rules, such as: talking back to guards, possessing contraband, or fighting[51] (this is often called disciplinary segregation).
2. To manage the inmate either because their classification is deemed to require isolation (often called administrative segregation) or because they are considered particularly vulnerable to abuse (often called protective custody).
3. To protect them from adults or from one another.
4. To treat inmates, such as after a threatened or attempted suicide (often called seclusion).[52]
5. To simply seclude the inmate because officials do not know how else to manage them.

NATIONWIDE REDUCTION OF THE USE OF SOLITARY CONFINEMENT

The state of Mississippi recently reduced the population of inmates in long-term administrative solitary confinement by 75.6%, and closed the state's adult super-maximum security prison.[53] The state reduced the segregation population of one institution from 1000 to 150 and eventually closed the entire unit. By diverting the prisoners from solitary confinement, the Mississippi Department of Correction estimates that prison violence decreased significantly by 70%, and about $8 million was saved annually in the process.[54]

Rhode Island, Connecticut, and Maine have also begun taking steps to reduce the number of inmates confined in long-term isolation. State Success Stories: A-D, discussed herein, provides detailed information about reforms in these states.

[50] Growing Up Locked Down, *supra* note 4, at 2.
[51] Id at 3.
[52] Id at 20.
[53] Id at 59.
[54] ACLU-NJ Petition for Rulemaking, *supra* note 8, at 5.

SNAPSHOT OF SOLITARY CONFINEMENT REFORM ACROSS THE COUNTRY[55]	
ALASKA	Blanket prohibition on solitary confinement of juveniles as a disciplinary sanction.
CONNECTICUT	Prohibits the solitary confinement of juveniles by statute.
MAINE	Isolation and solitary confinement may be used as a form of punishment for adults, subject to certain conditions, but is not authorized in juvenile facilities.
OKLAHOMA	Prohibits punitive solitary confinement and places tight limits on other forms of isolation for juveniles.
WEST VIRGINIA	In 2012, the Division of Juvenile Services Director ordered an end to the use of punitive solitary confinement of juveniles.
MISSISSIPPI	Juveniles cannot be held in "disciplinary cell confinement" for periods longer than 72 hours. Those held are entitled to protections to reduce its harms and reporting is required whenever a child is placed in cell confinement.
MISSOURI	Juveniles may not be subjected to room restrictions for more than 24 hours without the approval of the facility superintendent. Whenever solitary confinement exceeds one day, the juvenile has an automatic right to appeal.
MONTANA	Litigation led to limitations on juvenile solitary confinement. The legislature is now considering more comprehensive limitations and broad reporting requirements.

B. EMERGING RESEARCH AROUND THE COUNTRY

Significant scientific research highlights a marked difference between a fully developed adult brain and the brain of an adolescent and between the brains of traumatized children and those who have not experienced trauma. Effective programs for youth require an understanding of the developmental, neurological, and historical causes of their behavior and an incorporation of this knowledge into a comprehensive rehabilitative service-plan designed to provide youth with the skills necessary to become successful, law-abiding adults.

NEURODEVELOPMENT

A smart approach to reforming juvenile offenders requires that those who devise and implement programs understand adolescent brain development and its impact on juvenile conduct. Though they may look, talk, and sometimes act like adults, the brains and personalities of adolescents are distinct from those of adults.

[55] Id at 9.

Emerging research indicates that adolescents undergo significant neurodevelopment in regions of the brain that are responsible for:[56]

1. Executive function: includes conflict resolution, problem solving, planning, and decision making
2. Behavior/Emotion regulation: includes inhibiting impulses and controlling emotions

During the critical years of adolescence, the areas of the brain responsible for impulse control, problem solving and smart decision-making are amidst neurological growth and transformation.[57] These changes correspond to long-standing psychological findings demonstrating that adolescents generally engage in risk-taking behaviors, give disproportionate weight to the possibility of pleasure/reward when making decisions, and are especially susceptible to peer influence.[58] Because adolescents are still developing their ability to self-regulate, they may be impulsive, use poor judgment, or lack mature decision-making ability, especially in emotionally charged settings.[59] As a result, they frequently engage in reckless, ill-advised, often criminal conduct, without recognizing the potential consequences of their actions.[60] Further, because of their developmental immaturity, adolescents are especially vulnerable to peer-pressure that encourages anti-social behavior, a vulnerability that persists at least until youth turn 18 years old.[61] Younger adolescents who have not fully developed the ability to think abstractly or engage in logical reasoning may also exhibit cognitive deficits.

For all of these reasons, the expectation that adolescents just "control" themselves and behave "appropriately" is unrealistic. Moreover, adolescents require assistance in developing the skills and ability to defer gratification, problem-solve, make smart decisions, regulate their emotions, and communicate effectively. Because of their susceptibility to outside influence, acquiring these skills and staying out of trouble is difficult, if not impossible if the adolescent is surrounded by criminal activity (e.g., at home, in school, or in a juvenile detention facility). Luckily, the very factors that make adolescents susceptible to anti-social or criminal behaviors (i.e., ongoing brain development and increased vulnerability to outside influences) also make them more amenable to reform. Thus, it behooves the criminal justice system to capitalize on the malleability of adolescent development and implement programs to actively support adolescents in their acquisition of prosocial behaviors.

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[56] Dustin Wahlstrom et al., *Developmental Changes in Dopamine Neurotransmission in Adolescence: Behavioral Implications and Issues in Assessment*, 72 BRAIN & COGNITION 146, 150-151 (2010), *available at* www.cehd.umn.edu/icd/cnbd/academic/documents/Research/Collaborative%20Publications/2010%20Collaborative%20Pubs/Wahlstrom%20et%20al_Developmental%20changes%20in%20dopamine_2010.pdf.

[57] Id.

[58] Id.

[59] Id.

[60] Id.

[61] Brief for the American Psychological Ass'n, American Psychiatric Ass'n & National Ass'n of Social Workers as Amicus Curiae Supporting Petitioners, *Miller v. Alabama*, 132 S.Ct. 2455 (2012).

CHILDHOOD TRAUMA

Experts estimate that a staggering 25% of children directly experience trauma in the form of interpersonal or community violence before the age of 18.[62] These numbers triple in communities where violence and poverty dominate daily living.[63] In one study of youth aged 10-18 years, 75% of children reported witnessing a murder, robbery, or shooting, and 45% of these children reported witnessing more than one violent incident.[64] The devastating effects of trauma persist long after the threat to the child's well-being is gone, and are evidenced in physiological abnormalities, behavioral reactions, and criminal justice involvement.

Children who live in chronic fear of abuse activate a set of survival responses in the brain that begins to predominate over other less urgent responses. The more unpredictable or ongoing the abuse, the more automatic the defensive response becomes and the more other responses atrophy. As a result, children become hyper-vigilant and may experience psychological and physiological responses including relentless stress, high blood pressure, sleep disruption, anxiety, depression, hyperactivity, and aggression.[65]

Childhood trauma has been linked to the onset of numerous psychological disorders, including:

- Schizophrenia
- Conduct disorders
- ADD/ADHD
- Dissociative disorders
- Personality disorders
- Anxiety disorders
- Substance abuse (often the result of attempted self-medication of PTSD symptoms)
- Post Traumatic Stress Disorder (PTSD)[66]

A study of juvenile offenders on death row found that each adolescent had suffered severe sexual and physical abuse (resulting in brain damage), often of a repetitive nature, and perpetrated by more than one family member.[67] Other studies, like the Rochester Youth Study, indicate that children, who are raised in a home full of violence and hostility, are nearly

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[62] Bruce D. Perry, *Effects of Traumatic Events on Children: An Introduction*, THE CHILD TRAUMA ACADEMY (2003), *available at* http://www.mentalhealthconnection.org/pdfs/perry-handout-effects-of-trauma.pdf.
[63] Id.
[64] Id.
[65] Id.
[66] For some children who have been abused and are now incarcerated, shouting, handcuffs, or solitary confinement can all trigger past traumatic memories and elicit conditioned responses of aggression or disregulated behavior.
[67] J. David Hawkins, et al., *Predictors of Youth Violence*, OJJDP BULLETIN (April 2000), *available at* https://www.ncjrs.gov/pdffiles1/ojjdp/179065.pdf; Terrence P. Thornberry, *The Relationship Between Childhood Maltreatment and Adolescent Involvement in Delinquency*, 33 CRIMINOLOGY 451 (1995).

twice as likely to exhibit serious violent behavior compared to children raised in non-violent homes.[68]

The criminal justice system's overrepresentation of children who have directly experienced a traumatic event obligates our courts and juvenile justice system to actively seek out and implement trauma-informed approaches for treatment. In order to effectively address delinquent behavior, we must first recognize it for what it is. If an adolescent's criminal activity is but a symptom of deeper traumatic turmoil, the trauma must be treated before there can be hope for lasting behavioral change.[69]

C. DAMAGE OF SOLITARY CONFINEMENT

In the field of behavior modification, punishment is a technical term that refers to any consequence of a behavior that results in a future decrease of that behavior.[70] Thus, if a consequence does not result in the decrease or ultimate elimination of the behavior that it is meant to address, it cannot be considered a punishment. From this perspective, current incarceration practices, with their corresponding high recidivism rates, simply cannot be said to be punishing the majority of offenders.

There are a number of factors that influence the likelihood that a given consequence will effectively punish behavior; these include:

- the immediacy of the consequence
- the magnitude of the consequence
- the certainty of the consequence
- whether the consequence is directly contingent on the behavior
- the individual differences of those receiving the consequence[71]

Current incarceration practices can hardly be said to take these factors into account.

Even when implemented correctly, punishment is generally considered to be a last resort in the field of behavior modification because the procedure may evoke unintended psychological side effects.[72] Behavior analysts who rely on punishment procedures, generally exhaust less restrictive treatment alternatives first, and only then implement a punishment program with intensive training and ongoing peer review/supervision.

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[68] Thornberry, *supra* note 67.
[69] Judge Michael L. Howard & Robin R. Tener, *Children Who Have Been Traumatized: One Court's Response,* 59 JUVENILE & FAMILY CT J. 4, 21–34 (2008), *available at* http://www.throughtheeyes.org/files/2012_ncs_materials/A1_handout3.pdf.
[70] RAYMOND G. MILTENBERGER, BEHAVIOR MODIFICATION: PRINCIPLES AND PROCEDURES. (3d ed. 2004).
[71] Id.
[72] Id.

Little research has been conducted on the impact of solitary confinement on adolescent inmates, possibly because such confinement has been condemned as torture by the United Nations and violates international human rights law.[73] Whatever the reason for the lack of data, it stands to reason that research on the effects of solitary confinement in adults should be applicable to youth who are especially vulnerable to social isolation.

The research on adults in jails and prisons across the country that rely on solitary confinement as a means for punishing adult inmates, demonstrates significant dangers of such practices. Research shows that solitary confinement often results in adverse psychiatric effects including:[74]

- Perceptual and cognitive impairments
- Emotional disturbances; depression
- Psychosis characterized by intense agitation, fearfulness, disorganization, confusion, paranoia, hallucinations, and random, impulsive, often self-directed violence

Harm caused by solitary confinement may be long lasting or permanent, and generally exacerbates any existing mental health condition. These effects substantially reduce an inmate's ability to be reintegrated into the general jail/prison environment or into society upon release.

Scholarly literature documents the deleterious effect of solitary confinement upon youth.[75] In a recent extensive report on solitary confinement, the American Civil Liberties Union (ACLU) interviewed over 125 incarcerated juveniles, and reported on the severe psychological impact of solitary confinement. Specifically, they report that juveniles in solitary confinement struggled with: [76]

- Suicidal ideation and self-injurious behaviors
- Acute anxiety and sleep disturbances
- Symptoms of PTSD
- Onset of psychosis, including visual and auditory hallucinations
- Uncontrollable rage

The ACLU reports that juvenile inmates subject to solitary confinement were denied interactions with peers and visits with families – the very supports crucial to proper adolescent

[73] Official Statement of the American Academy of Child & Adolescent Psychiatry, Solitary Confinement of Juvenile Offenders (Apr. 2012), *available at* http://www.aacap.org/AACAP/Policy_Statements/2012/Solitary_Confinement_of_Juvenile_Offenders.aspx

[74] Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 WASH. U. J. L. & POL'Y 325 (2006), *available at* http://digitalcommons.law.wustl.edu/wujlp/vol22/iss1/24.

[75] Richard J. Hazler & Sharon A. Denham, *Social Isolation of Youth at Risk: Conceptualizations and Practical Implications*, 80 JOURNAL OF COUNSELING AND DEVELOPMENT 403 (2002).

[76] Growing Up Locked Down, *supra* note 4.

development.[77] In addition, they were denied access to education, books, exercise, proper nutrition, and mental health services. In fact, the conditions of solitary confinement were such that they incentivized psychopathology. Adolescents were often denied access to a mental health counselor unless they exhibited severe self-harm, and even then, mental health treatment was not always a given. There were reports of at least six instances in recent years of youth who have committed suicide while in solitary confinement.

Simply put, solitary confinement is an ineffective behavioral punisher. This may be because the behaviors that result in solitary confinement are caused by deep-seated trauma responses or normal immature adolescent neurodevelopment. Whatever the reason, solitary confinement does not work to reduce aggressive, violent, impulsive, or disobedient behaviors, and has in fact resulted in an *increase* of these behaviors. Moreover, the solitary confinement of adolescents poses extreme risks to their long-term psychological health and well-being.

Of the juvenile inmates incarcerated on Rikers, 76% are pre-trial detainees (see Rikers Island Data). They are subject to the same disciplinary measures as adjudicated inmates, and are equally subject to solitary confinement. It is unfortunate that youth who are "innocent until proven guilty" should be subjected to a dangerous and ineffective practice that may cause them irreparable damage. It is time for NYC to join other jurisdictions in implementing developmentally appropriate, humane, evidence-based treatments to rehabilitate our youth.

D. OVERVIEW OF PREVAILING MODEL: THE MISSOURI MODEL

The Missouri Model[78] emerged 30 years ago in response to the knowledge that the state's continuing reliance on large youth corrections facilities for inmates under the age of 17 was ineffective, frequently abusive, and unnecessarily expensive. These facilities are routinely found to be unsafe, unhealthy, unconstitutional and unproductive. There is a need for dramatic changes in organization, programs and staffing, including the need to prohibit the use of solitary confinement. Moreover, the average cost per bed per year in correctional facilities throughout the country exceeds $200,000.[79]

The high cost and counterproductive results plaguing Rikers Island should alarm policymakers and propel them to implement policies that better meet the needs of youth and create lasting

[77] For a discussion on the importance of familial and social support to healthy adolescent development, *see* Jennifer A Hall-Lande et al., *Social Isolation, Psychological Health, and Protective Factors in Adolescence*, 42 ADOLESCENCE 166, 265-86 (2007), *available at* http://facweb.northseattle.edu/lchaffee/PSY100/Journal%20Articles/Hall-Lande%20et%20al%202007.pdf.

[78] Richard Mendel, *The Missouri Model: Reinventing the Practice of Rehabilitating Youthful Offenders*, THE ANNIE CASEY FOUNDATION (2010) [hereinafter Missouri Model], *available at* http://www.aecf.org/~/media/Pubs/Initiatives/Juvenile%20Detention%20Alternatives%20Initiative/MOModel/MO_Fullreport_webfinal.pdf.

[79] Id at 2.

changes in their behavior. Thankfully, the Missouri approach offers a promising therapeutic and rehabilitative alternative.

Missouri's interactive approach has garnered excellent results: it has a far lower recidivism rate than other states, an impressive safety record, and positive youth outcomes, all at a modest budget far smaller than that of many states with less-productive outcomes. It has been adopted in varying forms in many states (See infra pp. 51 *et seq*.).

It should be noted, however, that the Missouri Model is one of two complementary changes that should be implemented for youth. The first significant change involves narrowing the pipeline of youth entering the detention system by eliminating inappropriate or unnecessary reliance on secure pretrial detention. This can be accomplished through differing policing practices, effective bail programs, the use of diversion programs, probation adjustments and other alternatives to incarceration. Second, adoption of aspects of the Missouri Model should be aimed at the small minority of youthful offenders who must be removed from their homes to protect public safety.

In pursuing its commitment to helping court-involved youth make deep and lasting changes that enable them to avoid negative behaviors and embark on a pathway to success, the Missouri Model employs six core features:[80]

1. Missouri places youth who require confinement into smaller facilities located near the youths' homes and families, rather than incarcerating delinquent youth in large, far-away, prisonlike training schools. This is similar to the recent Close to Home initiative in New York that is discussed herein.

2. Missouri places youth into closely supervised small groups of 10-12 and applies a rigorous group treatment process offering extensive and ongoing individual attention, rather than isolating confined youth in individual cells or leaving them to care for themselves among a crowd of unfamiliar delinquent peers.

3. Missouri places great emphasis on keeping youth safe from physical aggression, but also from ridicule and emotional abuse through constant supervision and engaged staff as well as supportive peer relationships, rather than through coercive techniques that are commonplace in most youth corrections systems.

4. Missouri helps confined youth develop academic, pre-vocational, and communication skills that improve their ability to succeed following release, along with crucial insights into the roots of their delinquent behavior and new social competence to acknowledge and solve personal problems.

[80] Id at 13.

5. Missouri reaches out to family members and involves them from day one as both partners in the treatment process and as allies in planning for success in the aftercare transition, rather than keeping families at a distance and treating them as a source of the delinquent youths' problems.

6. Missouri provides considerable support and supervision for youth transitioning home from a residential facility by conducting intensive aftercare planning prior to release, monitoring and mentoring youth closely in the first crucial weeks following release, and working hard to enroll them in school, place them in jobs, and/or sign them up for extracurricular activities in their home communities.

Missouri's results utilizing these characteristics have been so positive that Mark Steward, the visionary former director of the Missouri Division of Youth Services, founded the Missouri Youth Services Institute (MYSI) to help other jurisdictions across the country do what Missouri has done.[81] So far, the Missouri Model has been studied and replicated successfully in other cities and states, including Washington, D.C.; San Jose, California; New Mexico; and Louisiana.

The Missouri Model is addressed to post-conviction youth serving specified time periods in custody. The program moves young people through six stages that span a six to nine month time frame. In that model, staff view themselves as youth counselors and are highly trained; facilities are smaller and more like a home environment and everyone in the facility (i.e. maintenance staff, administration cooks etc.) are all part of the "treatment team." Aspects of this program could be implemented on Rikers Island even for the 75% of pretrial youth whose time at the facility is not predetermined.

The remainder of this report will highlight the core features of the Missouri Model, and discuss its potential application on Rikers Island.

E. STRIDES IN NYC: CLOSE TO HOME

Close to Home is part of a juvenile justice reform initiative that began in 2011-12, and was included in Governor Cuomo's 2012-2013 Executive Budget Proposal. The collaborative effort between New York City and New York State provides more appropriate placements for youth who come from New York City.[82] Under the initiative, New York City youth previously placed in the Office of Children and Family Services (OCFS) limited-secure and non-secure facilities, often at a great distance from the youth's home, move to smaller local settings operated by the Administration for Children's Services (ACS). ACS oversees their educational, mental health, substance abuse and other service needs.[83] Youth in close-to-home facilities benefit from the

[81] *Leadership & Staff Development Modules*, MISSOURI YOUTH SERVICES INSTITUTE, http://mysiconsulting.org/training.php (last visited January 30, 2014).
[82] *Close to Home: Plan for Non-Secure Placement*, NEW YORK CITY ADMINISTRATION FOR CHILDREN'S SERVICES (June 8, 2012), *available at* http://ocfs.ny.gov/main/rehab/close_to_home/.
[83] Id at 8.

ability to remain closer to their families while they receive the services and support they need. Seven of the eleven providers with whom ACS contracted with use the Missouri Model.[84]

OCFS, with consultative assistance from the MYSI, developed a therapeutic, rather than punitive, program tailored to New York City adolescents convicted of crimes. The system aims to reinforce and support the ties between a youth and his/her community to foster a positive rehabilitative environment. The program enhances the ability of the adolescent to be connected to a variety of activities and opportunities, to develop vocational skills and to engage in community service close to their homes.[85] The adolescent can remain in school and receive credits from NYC public schools. The New York City Department of Education (DOE) schools they attend upon their release automatically accept those credits; the educational program prepares the student to successfully reenter society post-detainment/incarceration.[86]

A foundational premise of Close to Home is that these restorative measures are likely to reduce recidivism rates, in great measure because youth and their families are given tools to participate in a youth's rehabilitation. Additionally, the program places importance on oversight by government, advocates, families, and communities.[87] First, ACS has developed an Independent Oversight Board, consisting of individuals from diverse backgrounds who are knowledgeable about the issues facing court-involved youth in residential care. The Independent Oversight Board is responsible for reviewing and reporting on conditions throughout the residential placement system. In addition to the Independent Oversight Board, ACS will develop an Office of Residential Care Advocacy, which will oversee all residential placement facilities.[88] The Office of Residential Care Advocacy is responsible for responding to complaints and concerns of youth, identifying systemic issues, and tracking data related to conditions of care.[89]

It stands to reason that if the Close to Home initiative can be used for youth convicted of crimes, such a program should be well suited for 16-18 year old pre-trial detainees. Each of the following aspects of Close to Home could be implemented for youth on Rikers Island.

PLACEMENT ASSESSMENT

Under the Close to Home initiative, objective pre-dispositional risk assessment instruments (RAIs) and processes are used to help guide the family courts in determining proper placement for youth in juvenile delinquency cases.[90] The RAI for New York City is developed by the New York City Department of Probation and is subject to the approval of OCFS. The RAIs are used as part of all probation investigation and diagnostic assessments performed on youth who are

[84] Id.
[85] Id.
[86] Id at 9.
[87] Id.
[88] Id at 51.
[89] *Close to Home: Plan for Non-Secure Placement*, *supra* note 82, at 51.
[90] Id at 8.

adjudicated to be juvenile delinquents.[91] If placement is necessary, the RAI helps the court ascertain what level of care is appropriate for a particular youth based on the risk the youth poses to the community.[92] Family court judges must give the results of the RAI due consideration in determining the appropriate disposition for youth.

GUIDING PRINCIPLES FOR FACILITIES

All of the ACS contracts for services as part of the Close to Home initiative implement programs rely on evidence-based research. A majority of the providers of residential services plan to implement programs based on the Missouri Model.[93] Other programs intend to use models that are based on other best practices and informed by proven outcomes (e.g. Boys Town Model).[94] Every program is required to develop a detailed manual that includes a description of its program model, as well as descriptions of how the provider will comply with various aspects of the Quality Assurance Standards and other policies.[95]

Many youth at Rikers have mental health disorders ranging from conduct disorders to psychotic disorders. Many youth also have substance abuse issues and histories of being in the child welfare system. The Close to Home Initiative adequately addresses these issues and other needs of juvenile delinquent youth who require residential care through the following components: [96]

- Residential care should be part of a continuum of care, providing an effective continuum of diversion, supervision, treatment and confinement to ensure that the most appropriate level of care is provided for all youth, consistent with public safety;
- Facility management should be guided by a coherent approach and/or model of care that has a greater likelihood of achieving positive outcomes. Facilities should provide accountability to ensure that both internal and external oversight is maintained;
- Any implemented programs must be based on evidence-informed practices to ensure that programs and services have improved outcomes for youth, maintained public safety, and reduced recidivism and unwarranted racial/ethnic disparities;
- Comprehensive case management should support successful adjustment to residential care and reintegration to the community;
- Family should be engaged and included in the treatment process, and aftercare should be planned from the point of admission to start as soon as youth can be safely released;
- Facilities should be located in or close to New York City;
- Youth staff and local communities should be safe and focused on common objectives;
- Facilities and programs should be culturally responsive;

[91] Id at 52.
[92] Id at 43.
[93] Id at 84.
[94] Id.
[95] *Close to Home: Plan for Non-Secure Placement*, *supra* note 82, at 42.
[96] Id at 56.

- Outcomes should be measured on a regular basis, and data should be used to inform program changes; and
- Facilities should provide effective reintegration services to ensure youth remain connected to appropriate educational services and positive behavioral supports and/or treatments when they transition out of placement.

PUBLIC SAFETY CONCERNS

The Close to Home initiative is implemented in a manner that protects community safety and meets the residential services needs of youth. As such, OCFS continues to operate secure facilities to serve youth statewide who are in need of secure placement, as well as the limited secure and non-secure facilities for youth in need of placement with OCFS in settings from counties outside of New York City.[97] Further, RAI's help maintain public safety by requiring the courts to use an objective assessment of the risk a youth poses to the community as a guide post for determining the youth's disposition.

ALTERNATIVES TO PLACEMENT

The Close to Home initiative includes the introduction of new alternatives to residential placement.[98] The following programs are aimed at reducing unnecessary placements and recidivism:

1. **Juvenile Justice Initiative Alternative to Placement (JJI ATP):** Provides intensive, home-centered, evidence-based treatment in lieu of OCFS placement. Services include Multisystemic Therapy – Substance Abuse Adaptation (MST-SA), Multisystemic Therapy-Psychiatric Adaptation (MST-PA), FFT, and Multidimensional Treatment Foster Care (MTFC). Youth who receive JJI ATP services have mental health diagnoses similar to those among youth in placement, including conduct disorder, oppositional defiant disorder, attention deficit hyperactivity disorder, post-traumatic stress disorder, mood disorder, bipolar disorder, and various psychotic disorders.[99]

2. **Juvenile Justice Initiative Intensive Preventative and Aftercare Services (JJI IPAS)**: Provides case management, transitional services, and aftercare to youth in private placement with OCFS' provider agencies.[100]

3. **Esperanza**: Operated by the Department of Probation, provides intensive in-home family-focused therapeutic services, case management, and crisis management for placement-bound youth. Like JJI participants, Esperanza youth are similar to OCFS-

[97] Id at 74.
[98] Id at 20.
[99] Id at 21.
[100] Id at 22.

placed youth in terms of their mental health diagnoses, substance abuse histories, histories of detention, and family strife.[101]

4. **Way Home**: Home-based treatment program designed to work with youth who have caregivers who are reluctant to allow the youth to return back home while a delinquency case is pending, or whose caregivers are not able to provide a viable home without social service support. Following a Family Team Conference, Way Home staff members provide Brief Strategic Family Therapy, an evidence-based therapy for youth involved in juvenile justice.[102]

5. **Boys Town**: Provides for an assessment of the youth's risk and needs to be reported to the court followed by in-home family services to youth and their families using the Boys Town model.[103]

In the first year of Close to Home, the NYC Department of Probation ("Probation") added three other programs, Advocate Intervene Mentor (AIM), Each Child Has An Opportunity to Excel and Succeed (ECHOES) and Pathways to Excellence, Achievement and Knowledge (PEAK)[104] that substantially dropped the population of youth in placement. These programs demonstrate that New York City has been able to create better, decent and rehabilitative programming and still create alternatives that result in fewer young people being deprived of their liberty. Additionally, the Department of Probation created non-mandatory support programs for young adults on probation (ages 16-24). Those are Arches, Young Adult Justice, Young Adult Communities, and Community Education Pathways to Success (CEPS).[105]

COST ANALYSIS

When fully implemented in state fiscal year 2014-15, the initiative is projected to save the State and local governments a combined total of approximately $12 million.[106]

4. Recommendations and Strategies

The Youth Justice Clinic's state survey of correctional facilities identified systems, practices and procedures that are effective in reducing recidivism while controlling programmatic costs. These practices, many of which are based upon the Missouri Model, provide useful guidance for necessary changes on Rikers Island. Even though the Missouri Model is a post-conviction one, it

[101] *Close to Home: Plan for Non-Secure Placement*, *supra* note 82, at 22.
[102] Id at 31.
[103] Id.
[104] *Young Men's Initiative*, NYC DEP'T OF PROBATION, http://www.nyc.gov/html/prob/html/young_men/young_men.shtml (last visited Jan. 30, 2014).
[105] Id.
[106] Id.

can be adapted for pre-trial and most post-trial detainees on Rikers Island. The principles and practices for the Missouri Model are discussed below.

A. REDUCE THE RIKERS ISLAND POPULATION

Many aspects of the Close to Home Initiative, based on the Missouri Model, can be adapted for youth on Rikers Island. Initially, New York City needs to develop risk assessment tools and other mechanisms to assure public safety without incarceration of youth. The existing RAI's in the Close to Home Program that are geared toward post-conviction placements can be readily tailored to the Rikers Island population. Such modifications were made by the NYC Department of Probation. Spurred on by the Close to Home Initiative, Probation adopted similar tools -- the Youth Level of Risk (YLS) tool to guide placement recommendations for juveniles and the Level of Risk Inventory - Revised (LSIR) risk assessment-- to guide probation recommendations for adults. Thus, NYC has essentially already adopted two new *post-conviction*, state-of-the-art risk assessment instruments.

New York City should focus upon a similar pre-trial instrument to assess which youth are a pretrial flight risk, and the system should offer a continuum of options such as supervision, bail expediting and a non-profit bail bond system. Education of all system stakeholders about the utility of the pre-trial risk assessment is essential. These measures, along with a concentrated effort to accelerate court-processing time will significantly reduce the pretrial population of youth. Because pre-trial detainees have yet to be found guilty of any charges, weight should be given to their pre-trial status when making this assessment. The nature of the charges and prior convictions may also be taken into consideration.

Such instruments can effectively downsize the Rikers Island population thereby conserving significant financial resources, some of which can be used for effective programming for youth.

B. SMALL GROUPS

Not all youth need separation from their communities. Where public safety or other concerns necessitate such separation, the most effective model to change conduct and, therefore, reduce recidivism is the "small group model." Establishing such a mini community is frequently cited as valuable in reinforcing positive behavior. The small group model is a critical component of the Missouri Model. [107]

[107] Missouri Model, *supra* note 78, at 20.

BASIC PRINCIPLES FOR THE SMALL GROUPS MODEL

- Youth are grouped in teams of approximately 10-12, who sleep in the same dormitory style room and spend a significant amount of the day together (during meals, education, exercise, and therapy). [108]

- Youth remain under the regular supervision of youth specialists.[109] Part of the benefit of these groups is that the structured consistency does not allow for a young person to withdraw because they receive support from staff and their peers. Youth develop accountability for any inappropriate behavior that is destructive.

- An alternative to isolation or punishment when youth misbehave is that youth discuss their feelings. They are asked to, "explore how the current misbehavior relates to the law breaking that resulted in their incarceration,"[110] while also addressing how their actions have an effect upon other individuals.

- Youth are encouraged to communicate with the other group members.[111] "[A]t any time, youth are free to call a circle - in which all team members [residents] sit or stand facing one another - to raise concerns or voice complaints about the behavior of other group members (or to share good news). Thus, at any moment, the focus can shift from the activity at hand— education, exercise, clean up, a bathroom break—to a lengthy discussion of behaviors and attitudes. Staff members also call circles frequently to communicate and enforce expectations regarding safety, courtesy, and respect, and also to recognize positive behaviors."[112]

C. THERAPY

Facilities that use therapeutic models rather than traditional correctional models have shown more success with incarcerated youth. Specifically, therapeutic models decrease the likelihood of re-offense.[113] Thus, in 2011, violence reduction experts published a resource for policy makers advising them on proper implementation of treatment and rehabilitation for criminal offenders.[114]

"The less [you] treat a young person like a criminal, the less likely he or she will be to feel and behave like a criminal."
- Missouri Model

[108] Id at 21.
[109] Id.
[110] Id at 20.
[111] This is in addition to the structured times throughout the day that they are required to check in with one another.
[112] Missouri Model, *supra* note 78, at 29.
[113] JOEL A. DVOSKIN ET AL., USING SOCIAL SCIENCE TO REDUCE VIOLENT OFFENDING (Oxford Univ. Press 2011). *See* also Using Social Science to Reduce Violent Offending: A Briefing Paper for Public Policymakers, REDUCING VIOLENCE, *available at* http://reducingviolence.com/storage/BriefingPaper.pdf.
[114] Id.

REHABILITATIVE INTERVENTIONS

Several therapeutic interventions have shown success with reforming delinquent behavior. Such therapies include:

1. *Antecedent Manipulations*
   This technique chooses an aspect of the environment that reliably precedes a problem behavior, and alters it in such a way as to make desirable behaviors more likely. Such aspects include:
   - Environmental Designs: calming living environments that maximize warmth, light and openness, and minimize obvious security measures.[115]
   - Assessing inmates for a history of trauma. Avoiding individual trauma triggers.
   - Decreasing the response effort needed for desirable behavior (e.g., having books readily accessible in inmate living quarters).
   - De-escalation procedures (e.g., avoiding touch and using a validating, calming tone). (See Alternative Discipline).

2. *Consequence Manipulations*
   Consequence manipulations alter the environment so that undesirable maladaptive behaviors are ignored or punished, and desirable prosocial behaviors are met with positive reinforcement. Consequence manipulations include:

   - Punishment
     - Response Cost: loss of privileges for engaging in a predetermined list of maladaptive behaviors.
     - Time-out

   - Positive Reinforcement
     - Blended sentence alternatives provide youthful offenders with rehabilitative treatment and the ability to void adult prison sentences if significant progress is demonstrated in treatment.
     - Indeterminate sentencing allows the length of confinement to be determined by youth themselves (i.e., progress in treatment decreases sentence length).
     - Positive management programs reward good behavior with privileges.
     - Token Economies are organizational incentive systems that manage behavior using tokens, points, checkmarks, or other conditioned reinforcers. Participants earn tokens for engaging in targeted prosocial behaviors and lose tokens for engaging in targeted maladaptive behaviors. Tokens can be

[115] Such design was employed at the Ferris School for Boys in Delaware (e.g. through the use of security glass instead of bars and electronic access cards instead of keys) and in Missouri (e.g., through the use of residential housing in the community, replete with artwork, plants, and pets).

traded in for a multitude of backup reinforcers.[116] Rikers is particularly well suited for implementing a token economy, since it already has a large recreational facility that has been shown to be reinforcing for youth. If access to the recreation center were only available in exchange for tokens, staff at Rikers could implement a token economy as a positive means of managing behavior.

3. *Therapy*
   - Trauma-Informed treatment to youth who have survived abuse or other traumatic experiences, before addressing behavioral issues.

   - Cognitive-Behavior Therapy (CBT) is a therapeutic approach based on the principle that by changing the way we react to the world around us we can decrease anger, anxiety, and depression, even if the upsetting events themselves cannot be changed. CBT may be especially helpful for incarcerated youth who have few choices and often feel victimized and wronged.[117]

   - Dialectic Behavior Therapy (DBT) is a modification of CBT that has been particularly effective for individuals with chronic suicidal ideation, as well as those with borderline personality disorder (BPD) who exhibit self-injurious behaviors. Incarcerated youth, especially those who have been subject to solitary confinement, often engage in self-mutilation or suicidal behavior, making them prime candidates for DBT.

   - Family Therapy incorporates families in therapeutic sessions. When youthful offenders are housed in the community, families can easily be integrated into treatment. For youth housed on Rikers, family therapy can be offered on visiting days, and mandated preceding release.

   - Group Therapy provides treatment to multiple youth in one session. Group therapy can be especially important in assisting youth to navigate group-living while incarcerated, and to provide them with important communication skills in preparation for release to the community.

   - 24-7 Therapeutic Environment

[116] RAYMOND G. MILTENBERGER, BEHAVIOR MODIFICATION: PRINCIPLES AND PROCEDURES. (3d ed. 2004) (discussing successful implementation of token economies in prisons, using items sold in the canteen as backup reinforcers).
[117] *What is Cognitive-Behavior Therapy (CBT),* THE COLUMBIA UNIVERSITY CLINIC FOR ANXIETY AND RELATED DISORDERS, www.anxietytreatmentnyc.org/CBT.html (last visited January 30, 2014).

4. *Skill-Building*

Skill-building programs operate on the premise that all youth wish to be "good", and thus, misbehavior is not willful but usually stems from a skill deficit. To this end, programs should equip youthful offenders with the following adaptive skills to succeed in the outside world.

- Communication
- Emotion Regulation/Anger Management
- Collaborative Problem Solving (CPS)
- Education
- Job Readiness

D. ALTERNATIVE DISCIPLINE

The model of closely supervised small groups, with group therapy and behavioral management facilitated by trained staff, can avoid the need for the most serious types of discipline methods. The extensive individual attention afforded by this model and positive behavior management programs often obviate the need for isolation practices entirely.[118]

Rikers Island and other correctional facilities housing youth throughout New York State need to reduce the reliance on harmful isolation practices and follow the lead of youth correctional facilities in other jurisdictions. Other states have standards that strictly regulate the use of isolation; they utilize alternative discipline practices to separate and discipline youth in ways that neither undermine the rehabilitative goals of the facility nor endanger the mental and physical health of youth. Several national initiatives provide a clear framework of standards that represent best practices drawn from extensive research and data submissions from participating youth facilities. The standards supplied by the Juvenile Detention Alternatives Initiative (JDAI) and the Performance-Based Standards Initiative (PbS) have been able to effect widespread youth justice reform, improving outcomes for incarcerated youth.

- The **Juvenile Detention Alternatives Initiative (JDAI)** has created a comprehensive set of standards to reduce reliance on secure detention of youth, ensure appropriate and safe conditions of youth in secure facilities, and redirect taxpayer money to successful reforms.[119] A core JDAI strategy for youth justice reform centers around improving conditions of detention by applying robust and ambitious standards that strictly regulate the use of isolation, recommending that isolation only be used after a graduated system

[118] Missouri Model, *supra* note 78, at 27. Director of Missouri Youth Services, Tim Decker, says that the agency uses isolation cells fewer than 25 times per year statewide.
[119] *Juvenile Detention Alternatives Initiative*, THE ANNIE E. CASEY FOUNDATION, http://www.aecf.org/MajorInitiatives/JuvenileDetentionAlternativesInitiative/CoreStrategies.aspx (last visited Nov. 19, 2013).

of interventions or lesser restrictive techniques have proven ineffective.[120] The requirements to become a JDAI site are rigorous. To be a JDAI site, a youth facility must demonstrate a strong commitment to the initiative's goals and agree to implement all standards of the model.[121] JDAI standards are currently replicated in more than 200 jurisdictions in 39 states, including the District of Columbia.[122] In fact, in New York State, the counties of Albany, Erie, Monroe, Nassau, Onondaga and Orange are currently utilizing JDAI standards.[123]

- The **Performance-Based Standards Initiative (PbS)** is a nationally recognized improvement program of the Council of Juvenile Correctional Administrators that focuses on gathering and disseminating reportable data to promote best practices in youth facilities.[124] PbS provides a strong set of national standards to guide operations in youth facilities and monitors compliance with these standards through a rigorous data reporting process in order to improve conditions and services provided to incarcerated youth.[125] PbS has led to a reduction of incidents of isolation and room confinement in participating facilities.[126]

The disciplinary policies and procedures of any correctional facility housing youth must be individualized and consider factors[127] such as the:

- Youth's age
- Mental health status or the presence of special needs
- History of adjustment in the facility

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[120] Facility Site Assessment Instrument, JUVENILE DETENTION ALTERNATIVES INITIATIVE (JDAI) [hereinafter JDAI Facility Assessment Instrument], *available at* http://www.cclp.org/documents/Conditions/JDAI%20Standards.pdf. This document includes the set of standards and comprehensive facility assessment instrument used to evaluated and improve conditions of youth confinement. The document is commonly referred to as both the "standards" and the "instrument."

[121] *Two Decades of JDAI 11*, JUVENILE DETENTION ALTERNATIVES INITIATIVE 11 (2009), *available at*, http://www.aecf.org/~/media/Pubs/Initiatives/Juvenile%20Detention%20Alternatives%20Initiative/TwoDecadesofJDAIFromDemonstrationProjecttoNat/JDAI_National_final_10_07_09.pdf.

[122] *Sites and Contacts,* JUVENILE DETENTION ALTERNATIVES INITIATIVE, http://www.aecf.org/MajorInitiatives/JuvenileDetentionAlternativesInitiative/SitesAndContacts.aspx (last visited Nov. 7, 2013).

[123] *JDAI Sites*, JDAI HELP DESK, http://www.jdaihelpdesk.org/SitePages/jdai-sites.aspx (last visited Nov. 7, 2013).

[124] *Safety and Accountability for Juvenile Corrections and Detention Facilities,* PBS LEARNING INST. (2012), *available at* http://pbstandards.org/uploads/documents/PbS_Li_MarketingPacket.pdf.

[125] *PbS Goals, Standards, Outcome Measures, Expected Practices and Processes,* PBS LEARNING INST.(2007) [hereinafter *PbS Standards*], *available at* http://sccounty01.co.santa-cruz.ca.us/prb/media%5CGoalsStandardsOutcome%20Measures.pdf.

[126] *Reducing Isolation and Room Confinement,* PBS LEARNING INST.2,4 (2012) [hereinafter *PbS Reducing Isolation and Room Confinement*], *available at* http://pbstandards.org/uploads/documents/PbS_Reducing_Isolation_Room_Confinement_201209.pdf. From October 2008 to April 2012, aggregated data from corrections facilities participating in PbS showed that facilities more than cut in half the average time a youth spent in isolation and room confinement. *Id.* The all-time high in October 2008 was an average time of about 32 hours. *Id.* In April 2012, that average time decreased to 14 hours. *Id.*

[127] ACLU-NJ Petition for Rulemaking, *supra* note 8, at app. A(a).

- Involved youth's account
- Rehabilitative goals set for the youth

Procedural safeguards are required to guarantee youth due process prior to the imposition of any disciplinary management.[128]
The following are the operational standards recommended by both the JDAI and PbS models.

1. BAN SOLITARY CONFINEMENT

Solitary confinement, absolute social and physical isolation for 22-24 hours per day used to punish rule breaking, should be completely banned in facilities housing youth.[129]

This level of isolation for such extended periods of time can cause serious psychological and physical harm to youth.[130] When isolated, youth are deprived of the therapeutic and educational programming they need for healthy growth and development. With regard to isolation, the Department of Justice has stated 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."[131]

Although certain forms of strictly regulated isolation may be acceptable to separate individual youth in extreme circumstances where the youth poses an immediate threat to others or to themselves, youth should never be subjected to isolation practices involving significant levels of prolonged physical and social isolation.[132]

2. ALTERNATIVE FORMS OF DISCIPLINE AND STRICTLY REGULATED ISOLATION PRACTICES

In youth facilities, the most effective youth management techniques rely on positive, rewards-based practices. [133] However, where disciplinary measures are necessary, procedures should always favor sanctions that do not require isolation of youth from the general population.

As a general matter, disciplinary policies must always distinguish between major and minor rule violations with sanctions designed to be immediate and proportionate to the offending

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[128] *See infra* Part 4.E, Procedural Safeguards.
[129] 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) (" the imposition of solitary confinement, of any duration, on juveniles is cruel, inhuman or degrading treatment"), *available at* http://solitaryconfinement.org/uploads/SpecRapTortureAug2011.pdf.
[130] *See supra* Part 3.C, Damage of Solitary Confinement.
[131] *Standards of the Administration of Juvenile Justice*, DEP'T JUSTICE OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION 4.52 (1980), *available at* http://catalog.hathitrust.org/Record/000127687.
[132] JDAI Facility Assessment Instrument, *supra* note 120, at 44.
[133] Missouri Model, *supra* note 78. *See supra* Part 4.C, Therapy.

behavior. A range of disciplinary measures can be employed, that in certain situations, may involve separating youth from others. However, this separation should never constitute the level and duration of social and physical isolation of solitary confinement. Any use of isolation for youth must be strictly regulated, used for the shortest duration possible, and only to the extent absolutely necessary to maintain the safety of the group or individual youth. At all times, the goal of any isolation should be to return the individual youth to the general population as soon as possible.

a. **De-Escalation Techniques**

An important alternative to punitive discipline begins with de-escalation techniques. These include trained staff or peers speaking with volatile youth in an effort to diffuse a tense situation.[134] When a young person acts out or misbehaves, staff should speak to the youth and ask questions to determine the root causes of the issue and help the youth identify more appropriate responses.

An example of a communication skills building approach that serves to de-escalate or preempt a more volatile situation is the Collaborative Problem Solving Approach (CPS). Developed by Dr. Stuart Ablon of Massachusetts General Hospital, CPS is a brainstorming approach where the youth and adult staff identify the youth's concern about an issue, then identify the adult's corresponding concern, and together, discuss how to address both of their concerns.[135] CPS has successfully reduced the use of isolation for youth in a range of institutional environments.[136]

Referral to mental health professionals can also help defuse a situation; the professional can prescribe an appropriate program or treatment regimen.

Staff should encourage youth to take a voluntary time out for a short period of time at the youth's request.[137] In a voluntary time out, youth can choose to remove themselves from programming to "cool off," and return automatically without needing staff permission when they regain control over themselves.

In the Missouri Model, isolation is never used as a punishment. Whenever a young person requires a cooling off period or separation, they are placed into a room with a staff member just outside the door and rarely spend more than an hour or two before rejoining their small group and resuming regular programming.

b. **System Of Graduated Sanctions**

PbS standards require that facilities housing youth should implement a system of graduated sanctions that enable the least restrictive disciplinary response to rule breaking. This may entail

[134] *PbS Standards*, *supra* note 125, at 6; Missouri Model, *supra* note 78, at 27.
[135] Alisha R. Pollastri et al., *The Collaborative Problem Solving Approach Outcomes Across Settings,* 21:4 HARV. REV. OF PSYCHIATRY 190-91 (2013).
[136] Id at 195. After implementation of CPS in the Mountain View Youth Development Center in Maine, the rates of assault and the use of force decreased by more than 50%, and time spent in isolation decreased by 89%.
[137] JDAI Facility Assessment Instrument, *supra* note 120, at 46.

a removal of certain programming opportunities or recreational privileges.[138] For example, in Rikers Island's RNDC complex, which houses males ages 16 to 18, a recreation room has been outfitted with several Nintendo Wii stations. Restricting access to a coveted recreational activity, such as Nintendo Wii, may have a powerful impact on managing youth behavior.

Other examples of sanctions can include:

- Removal of privileges granted from positive behavior management system, such as extra visits, extra telephone calls, or attendance at special events
- Loss of telephone, radio, television privileges
- Loss of certain recreation privileges
- Required restitution or repair for any damage, alteration or destruction of state/city property or the property of another youth prisoner.

However, sanctions should not include deprivation of a youth's meals, regular snacks, mail privileges, court appearances or regular family visits.[139]

c. **Short-Term Isolation**

When graduated sanctions and lesser restrictive discipline techniques have proven ineffective, it may be necessary to separate individual youth to interrupt current acting-out behavior or to address situations where the youth poses an immediate threat to others or to him/herself.[140] However, given the risk of harm posed by any physical and social isolation—the use of isolation must be used as a last resort, strictly limited to address a specific penological objective and subject to oversight.

According to JDAI standards, before separating the youth, staff must explain to the youth the reasons why isolation is required, and that he or she will be released upon regaining self-control.[141] During the time that a youth is in isolation, staff must provide constant, one-on-one observation and interaction as appropriate.[142] The staff member should either be in the room with the youth or directly outside the room.[143]

JDAI and PbS standards require that any use of isolation be carefully monitored. Standards provide that a juvenile inmate subject to isolation shall be assessed in person, face-to-face (not through a cell door) by a mental health professional within thirty minutes after placement. Both JDAI and PbS standards require a medical health professional to monitor any youth in isolation

[138] *PbS Standards*, *supra* note 125, at 8, 24; Missouri Model *supra* note 78, at 27.
[139] JDAI Facility Assessment Instrument, *supra* note 120, at 46.
[140] *PBS Reducing Isolation and Room Confinement*, *supra* note 126, at 2.
[141] JDAI Facility Assessment Instrument, *supra* note 120, at 44.
[142] Id at 45.
[143] Id.

at least every 15 minutes.[144] If a youth is in isolation for longer than one hour, the mental health professional must *directly* monitor the youth at least once every hour.[145]

In JDAI facilities, short-term isolation practices are strictly limited to a maximum of 4 hours.[146] Isolation must end as soon as the youth has regained self-control and no longer poses a threat.[147] As soon as the current need for isolation has concluded, the youth must be immediately released back to regular programming.

If a mental health professional determines that a youth requires isolation for longer than 4 hours, JDAI standards require that staff transport the youth to a medical or mental health unit.[148] When a youth exhibits suicidal behavior or commits acts of self-harm, the youth must be handled through procedures for youth on suicide watch and closely monitored by mental health professionals.[149] If the suicide risk is not resolved or if medical or mental health professionals believe that the services required are not available in the current environment, the youth must be moved to a medical or mental health unit, or a facility where those services can be readily obtained.[150]

d. Room Confinement

In extreme situations of a major rule violation where lesser restrictive discipline techniques, including short-term isolation, have been exhausted or proven ineffective, isolation for longer periods of time may be necessary.[151] However, this type of separation and room confinement must be reserved for the most serious threats to the safety of others and dangerous behavior.

- **Major Rule Violations.** Major rule violations can include murder, attempted murder, non-consensual sexual intercourse, acts of violence likely to result in a serious injury or death to another prisoner or staff, escape, and hostage taking.[152] Facilities should also document situations in which confinement cannot be used. Confinement should never be imposed on youth for the following types of activities: property violations, nuisance contraband, horseplay, gang-related gestures, signs or writings, refusal to obey, lying/willful deceit, disrespect or profanity, and littering.[153] Prior to the imposition of

[144] Id.; *PbS Standards*, *supra* note 125, at 2.
[145] JDAI Facility Assessment Instrument, *supra* note 120, at 45; PbS Standards, *supra* note 125, at 2.
[146] JDAI Facility Assessment Instrument, *supra* note 120, at 45.
[147] Id.; *PbS Standards*, *supra* note 125, at 10.
[148] JDAI Facility Assessment Instrument, *supra* note 120, at 45.
[149] Id at 45.
[150] Id.
[151] Id at 48.
[152] Consent Decree, *C.B., et al. v. Walnut Grove Corr. Auth.*, No. 3:10cv663, (S.D. Miss. Feb. 3, 2012), IV(a)(3), *available at* http://www.aclu.org/files/assets/68-1_ex_1_consent_decree.pdf [hereinafter Mississippi Consent Decree].
[153] Disciplinary Reports and Hearings: Policy 16.5 GEORGIA DEPARTMENT OF JUVENILE JUSTICE III (2012) [hereinafter Policy 16.5], *available at*, http://www.djj.state.ga.us/Policies/DJJPolicies/Chapter16/DJJ16.5DisciplinaryReportsandHearings.pdf.

room confinement, staff must satisfy due process requirements and heightened supervisory review is required.[154]

- **Time Limitations.** Facilities should only reserve room confinement for extreme situations and it should not be routinely imposed.[155] According to the JDAI standards, room confinement for more than 24 hours is reserved for the most serious violations, and never imposed for more than 72 hours.[156]

- **Monitoring.** A youth prisoner subject to room confinement shall be assessed in person, face-to-face (not through a cell door) by a mental health professional within 30 minutes after placement.
    - According to JDAI standards, youth in room confinement must be closely observed by staff, at intervals not to exceed 15 minutes, with one-on-one observation and interaction as appropriate.[157]
    - Where a youth is in room confinement for longer than 24 hours, they must be evaluated by a medical and mental health professional at least once every 24 hours.[158]
    - If a youth exhibits suicidal behavior or commits acts of self-harm, the youth must be handled through procedures for youth on suicide watch and closely monitored by a mental health professional. If the suicide risk is not resolved or where medical or mental health professionals believe that the services required are not available in the current environment, the youth must be moved to a medical or mental health unit or facility where those services can be readily obtained.

- **Mandatory Out-Of-Cell Time.** Youth in room confinement must receive out-of-cell access to education services and other programming, including physical recreation (including the opportunity to recreate outdoors, weather permitting), for at least 4 hours per day.[159]

- **Conditions of Room Confinement.** Notification and consultation with family members, as well as counsel for represented youth must occur when youth are placed in room confinement. Notification must occur within 24 hours of the youth's placement in room confinement. Youth cannot be denied the opportunity for parental and attorney contact through visits, phone calls, and letters.[160] Youth in room confinement must receive the

[154] *See infra* Part 4.E, Procedural Safeguards; JDAI Facility Assessment Instrument, *supra* note 120, at 48.
[155] JDAI Facility Assessment Instrument, *supra* note 120, at 48.
[156] Id.
[157] Id at 49
[158] Id at 48.
[159] Mississippi Consent Decree, *supra* note 152, at IV(c)(1).
[160] Id at IV(c)(2).

same meals, snacks, clothing, access to drinking water, medical treatment, educational services and opportunity to exercise provided to other youth inmates.[161]

- **Programming and Counseling.** Daily assignments and specialized counseling sessions shall be given to a youth in room confinement. Such assignments and group sessions should enable the youth to recognize the behavior in order to develop and reflect upon more appropriate responses.[162] Additionally, upon assignment to room confinement, youth should be provided with an individualized plan outlining specific objectives that must be met to work their way out of room confinement, such as through completing certain programming or activities.[163] Successful completion of the individualized plan would immediately return the youth to the general population.

- **Review.** JDAI standards require that if a youth is in room confinement for longer than 24 hours, the facility administrator or a designee who was not involved in the incident must review and determine whether it is appropriate to authorize release at least once every 24 hours.[164] If a particular youth repeatedly engages in behavior that results in room confinement, staff must convene a multi-disciplinary team in order to develop an individualized behavior plan for the youth with strategies to address underlying reasons for the behavior.[165] A repeated use of room confinement for a particular youth should trigger a review of the existing disciplinary procedures.

3. SUPERVISORY REVIEW

Notification of supervisory staff is required before isolation or room confinement is used. JDAI standards mandate that youth must not be kept in isolation or room confinement for longer than one hour without the explicit approval of the facility administrator or their designee.[166]

According to PbS standards, each occurrence must be documented, consistently reviewed by facility administrators, and publicly reported regularly.[167] The facility administrator, along with the medical and mental health staff, must regularly review all uses of isolation and room confinement to identify violations of policy and to provide feedback to staff on how to improve incident responses. All incidents that result in isolation or room confinement should be

[161] Id at IV(a)-(h); *See also* JDAI Facility Assessment Instrument, *supra* note 120, at 46-48.
[162] *See* COURAGE Program, ALTERNATIVE TREATMENT PROGRAM**,** CPOM 04.11(document on file with author). The Alternative Treatment Program (ATP) is designed for offenders who violate rules specific to the program or policies set forth by the Texas Department of Criminal Justice (TDCJ). *See also supra* Part 4(C), Therapy.
[163] *No Child Left Alone: Campaign to Stop the Solitary Confinement of Youth In Adult Jails and Prisons Model Stop Youth Solitary Act*, AMERICAN CIVIL LIBERTIES UNION §9, *available at* http://www.truah.org/images/stories/No%20Child%20Left%20Alone%20Toolkit.pdf.
[164] JDAI Facility Assessment Instrument, *supra* note 120, at 48.
[165] Id at 49.
[166] Id at 45, 48.
[167] *PbS Standards*, *supra* note 125, at 10.

evaluated to determine whether the isolation or room confinement could have been shorter or avoided entirely.[168]

Facility staff must document all incidents in which a youth is placed in isolation or room confinement. JDAI standards require incident reports to include the following information: [169]

- Name of the youth
- Date and time the youth was placed in isolation or room confinement
- Name and position of the supervisory staff individual authorizing placement of the youth in isolation or room confinement
- Names of the staff involved in the incident
- Description of the circumstances leading to the use of isolation or room confinement
- Description of the lesser restrictive alternative actions attempted and found unsuccessful, or reason that alternatives were not possible
- Contacts with medical and mental health staff, including the date, time and person contacted
- Date and time the youth was released from isolation or room confinement

Medical and mental health staff must document all contacts with youth placed in isolation or room confinement. JDAI standards require reports to include the following information: [170]

- Name and position of medical or mental health staff
- Date and time of initial contact
- Date and times of all subsequent monitoring
- Pertinent findings
- Instructions to staff
- Follow up required after the incident

Facility staff shall receive regular training on the appropriate use of, and alternatives to, isolation and room confinement.

Independent oversight boards, such as the New York City Board of Correction, should be privy to this information as soon as it becomes available to the Facility Administrators. Oversight boards should have full and complete access to all the facility records (including medical and mental health records).

[168] Id.
[169] JDAI Facility Assessment Instrument, *supra* note 120, at 45-46, 48-49.
[170] Id at 46.

E. PROCEDURAL SAFEGUARDS

Solitary confinement has severe consequences for youth. Therefore, a jurisdiction that utilizes confinement must implement appropriate and necessary procedural safeguards to protect constitutional due process rights. First and foremost, detention facilities must provide youth with a list of prohibited behaviors and the sanctions or consequences imposed for such behaviors.[171] Under no circumstance can staff use group punishment as a sanction for the misbehavior of an individual youth.[172] Second, youth must be provided with an opportunity to be heard in an administrative hearing. These hearings must be conducted in a fair and routine manner, providing youth with assistance when requested. Finally, youth must receive a written decision and given the opportunity to appeal any administrative decision.[173]

CONFINEMENT RULES AND NOTICE

Facilities must document the ground rules for the use of confinement and ensure that all youth are aware of the sanctions imposed for disciplinary infractions. Upon entering a facility, all youth should be provided with a rulebook listing prohibited behaviors and their corresponding sanctions. These rules should also be posted in all living units.[174] If a youth is accused of violating a rule, he/she must be provided with written notice of the alleged violation within a reasonable amount of time.[175]

BASIC RIGHTS

All youth are afforded basic rights even if punishment is imposed for a rule violation. Basic rights include:[176]

- A place to sleep (e.g., 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 contacts with attorney
- The right to receive and send mail
- A regular daily education program
- An opportunity for daily shower and access to toilet and drinking water as needed.
- An opportunity to attend religious services and/or obtain religious counseling of the

[171] Id at 46.
[172] Id at 48.
[173] Id at 46.
[174] Id.
[175] JDAI Facility Assessment Instrument, *supra* note 120, at 46.
[176] Id at 47.

youth's choice
- Clean and sanitary living conditions
- Access to reading materials

PRE-HEARING CONFINEMENT

The JDAI standards place an absolute prohibition on pre-hearing confinement.[177] However, some jurisdictions allow for pre-hearing confinement under extremely limited circumstances where misbehavior presents an imminent threat to others or the security of the facility, and other strategies are inappropriate given the seriousness of the rule violation.[178] Youth in pre-hearing confinement must have a disciplinary report filed within a specified time period.[179] It is equally important that a youth placed in pre-confinement is informed of the disciplinary violation. Therefore, a youth in pre-hearing confinement must be provided with a copy of the disciplinary report when it is filed. If the disciplinary report is dismissed for any reason, the youth must be removed from pre-hearing confinement at the time of the dismissal.[180]

DISCIPLINARY INVESTIGATION

An investigation should begin as soon as possible after a report of alleged rule violation. It must begin within 24 hours, unless exceptional circumstances exist for delaying the investigation.[181] The reason for delay must be clearly documented and approved by the facility director.[182]

The facts of the incident must be clearly and completely summarized in an investigation summary report. Moreover, investigators should compile any staff and youth witness statements pertaining to the incident. During the investigation the youth should be given the opportunity to name any witnesses that he/she wishes to be called for the hearing.[183] After the investigation is complete, an investigator may recommend that a disciplinary hearing be held or that the disciplinary report be dismissed. The hearing officer will make the final decision.

Staff should be trained to appropriately investigate matters. A staff member who did not file the report or witness the infraction must conduct the investigation to ensure it is performed in an impartial manner.[184]

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[177] Id.
[178] Disciplinary Reports and Hearings: Policy 16.4 , GEORGIA DEPARTMENT OF JUVENILE JUSTICE II (2013), [hereinafter Policy 16.4] *available at* http://www.djj.state.ga.us/Policies/DJJPolicies/Chapter16/DJJ16.4Pre-HearingConfinement.pdf.
[179] Id at 16.4 III D.1.
[180] Id.
[181] JDAI Facility Assessment Instrument, *supra* note 120, at 47.
[182] Policy 16.4, *supra* note 178, at III D.3.
[183] JDAI Facility Assessment Instrument, *supra* note 120, at 47.
[184] Id.

HEARINGS

During confinement hearings, youth must receive similar rights afforded to criminal defendants: an opportunity to present information to rebut any allegations, a written statement of findings in the matter and the evidence relied upon by the decision maker, and a right to a final decision before receiving confinement time.[185]

1. **Timing of Hearing**
   When a disciplinary report is filed, the youth should be afforded a disciplinary hearing within 24 hours of the alleged rule violation.[186] Youth in pre-hearing confinement should receive a disciplinary hearing as soon as possible, never exceeding this 24-hour period.

2. **Staff Training**
   All staff should receive training about the disciplinary process, including the rules of conduct prior to supervising.[187]

3. **Youth Advocate**
   Youths should be allowed to request that any staff member represent him/her in the disciplinary process.[188] If the youth is a mental health patient, his/her primary clinician should be present at the hearing to serve as an advocate.[189]

   The advocate must meet the youth at least four hours prior to the disciplinary hearing.[190] If the requested staff member is unavailable, the hearing officer should appoint another staff member to serve as an advocate. Hearing officers should also appoint a staff member to serve as an advocate if it is determined that the youth is unable to understand the proceedings or present a defense because of disability.[191]

4. **Disciplinary Hearing Officers**
   The designated disciplinary hearing officer must receive adequate instruction about the facility's policies and due protections. It is the officer's responsibility to issue recommendations for sanctions based on evidence presented at the hearing.

   Fairness and impartiality are a crucial aspect of any administrative hearing. Therefore, the disciplinary hearing officer should not be a person who filed the report or witnessed the infraction.[192] To prevent a conflict of interest, behavioral health staff, health care

[185] Id.
[186] Id at 47.
[187] Policy 16.4, *supra* note 153, at III B.5.
[188] JDAI Facility Assessment Instrument, *supra* note 120, at 47
[189] Policy 16.4, *supra* note 153, at III F.2.
[190] Id at III F.3.
[191] Id at III F.5.
[192] JDAI Facility Assessment Instrument, *supra* note 120, at 47.

staff and the debriefing facilitator should not be disciplinary hearing officers.[193]

APPEAL

Youth must be advised of the right to appeal the findings of the hearing officer and be given an explanation of the appeals process.[194] The facility director should handle any appeal, and if rejected by the director, youth should be afforded the opportunity to appeal disciplinary sanctions to the highest-ranking administrator at a facility.[195] Youth may request that a staff member assist them in writing an appeal. Any staff member functioning as an advocate must perform this function as well.[196]

F. TRAINING

Any effective and successful model to reduce recidivism requires a fundamental change in the culture of the institution. This begins with significant change in the environment and the quality of interaction between staff and youth. Systemic improvement requires alterations in four major areas: organizational structure, institutional policies, job descriptions for staff, and staff training.

The Missouri Youth Services Institute (MYSI), led by former director of Missouri's Division of Youth Services (DYS) Mark D. Steward, provides extensive consulting services to jurisdictions, including New York, to evaluate their systems, make recommendations for changes, and train their staff to successfully adopt Mississippi's rehabilitative approach.[197] MYSI organizes its programmatic suggestions and training around the needs of youth, rather than staff, adhering to two central principals: (1) invest in youth by training corrections staff rather than focusing on mental health and social workers and (2) indoctrinate the concept that peers are responsible for each other.[198] The Institute implements a structured program that transforms a facility's culture from a disciplinary-centered focus to a rehabilitative atmosphere. First, it breaks down the facility into smaller sub-groups. This transformation then has eleven steps:

1. Pre-assessment phase where consultants meet with leaders, identify the interests, challenges/strengths of the current system, and educate leaders about the Missouri approach;
2. Site visit to conduct interviews with leaders, staff, and youth;
3. Presentation of in-depth overview of MYSI's basic tents and implications;
4. Continual assessment of the system, including meeting weekly with youth to find out

[193] Policy 16.4, *supra* note 153, at III B.1.
[194] JDAI Facility Assessment Instrument, *supra* note 120, at 47.
[195] Policy 16.4*, supra* note 153, at III K.3.
[196] Id at III K.4.
[197] *About MYSI,* MISSOURI YOUTH SERVICES INSTITUTE, http://mysiconsulting.org/about.php (last visited Nov. 19, 2013).
[198] Telephone Interview with Dr. Pili J. Robinson, LPC, Director of Consulting Services, Missouri Youth Services Institute (Nov. 8, 2013).

what parts of the system work and what parts are problematic;[199]
5. Creation of a strategic implementation plan, administering retreats and debriefing with leaders;
6. Implementation of the plan;
7. Final addressing of any critical factors and prompting of any important decisions;
8. Training of representatives from executive leadership, program management, start-up staff team, team leaders, and training team;[200]
9. Continual provision of one-on-one coaching with staff;
10. Stabilization of the start-up site;
11. Continual coaching and stabilization of the next group/dorm.[201]

ALTERATIONS IN ORGANIZATIONAL STRUCTURE AND POLICY

MYSI's services have contributed to the success of New York's Close to Home facilities as well as to the NYC Administration for Children's Services. A team of consultants worked for eight months with Close to Home, dividing a 120-person facility into smaller groups, rearranging the structure of youth, supervision, identifying staff that successfully adjusted to the cultural transformation, and working with management to reorganize and transform the facility. This transformation took eight months.

MYSI's program has also had great success in Washington, D.C.[202] The number of youth in secure facilities was reduced from 240 to 60 individuals.[203] These 60 youth received the care needed in a therapeutic setting. The remaining youth were sent to community-based services where their needs were better served. This and similar programs significantly dropped recidivism rates.[204]

In Washington, D.C., the consulting team worked with organizations and community leaders like the Annie E. Casey Foundation and the then director of Washington, D.C.'s Department of Youth Rehabilitation, Vincent N. Schiraldi. Today, Schiraldi is the Commissioner of New York City's Department of Probation. He has commended the work of MYSI in D.C. stating: "For anyone honestly seeking to transform their juvenile justice system from a correctional model to a positive youth development model, there is no group better than MYSI to help effect that change. MYSI staff truly understood the dynamic of making that kind of huge cultural change in an entrenched system. They handled their technical assistance/training/coaching role with

[199] Id.
[200] *Leadership & Staff Development Modules,* MISSOURI YOUTH SERVICES INSTITUTE, http://mysiconsulting.org/training.php (last visited Nov. 19, 2013).
[201] *Our Process,* MISSOURI YOUTH SERVICES INSTITUTE, http://mysiconsulting.org/process.php (last visited Nov. 19, 2013).
[202] Telephone Interview with Dr. Pili J. Robinson, *supra* note 198.
[203] Id.
[204] Barry Krisberg, *The Long and Winding Road, Juvenile Corrections Reform in California* (May 2011), *available at* http://www.law.berkeley.edu/files/Long_and_Winding_Road_Publication-final.pdf.

great skill and sensitivity. We would be nowhere near as far along in our reform efforts without MYSI."[205]

TRANSFORMATION OF JOB DESCRIPTIONS

Modification of a correctional focus to a rehabilitative focus is attained by changes to the caliber of staff and the focus of staff skills. The program's safety measures for youth are credited to the environment of "trust and respect" fostered by "intensive supervision by highly motivated, highly trained staff constantly interacting with youth to create an environment of trust and respect."[206] Missouri's Division of Youth Services (DYS) replaced the traditional prison guard corrections officers with rehabilitation-focused youth specialists. Not only does DYS require its youth specialists to have extensive training; it also requires its applicants to undergo a rigorous interviewing process. In fact, hires are required to have at least 60 hours of college experience and 84% of its youth specialists have either graduated from college or accumulated over 60 hours of college in addition to having 2 years of DYS experience.[207]

DYS recruits many of its staff from the state's college campuses, screening for personal commitment to helping youth succeed, listening skills, capacity for empathy, clarity and conciseness in conversation, and ability to command respect.[208]

STAFF TRAINING

In their first two years of training in Missouri, youth specialists must complete 236 hours of training. Training includes "multiple sessions on youth development, family systems, and groups facilitation, including extensive practice applying these concepts through role playing and other participatory exercises."[209] Specialists are trained to elicit and validate the feelings of inmates and help them decipher thoughts from emotions, channeling the emotions into constructive behavior and decision-making.[210] Further, specialists are given extensive training in conflict management and are familiarized with multiple techniques to restore a safe environment when conflict arises.[211] They are not even allowed to be alone with youth unsupervised until they have completed 103 hours of the core training.[212] Additional 40 hours per year in-service training is provided 40 hours per year to update specialists on the latest concepts and treatment techniques.[213]

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[205] *What People are Saying,* MISSOURI YOUTH SERVICES INSTITUTE, http://mysiconsulting.org/index.php (last visited Nov. 19, 2013).
[206] Missouri Model, *supra* note 78, at 28.
[207] Id.
[208] Id.
[209] Id at 29.
[210] Id.
[211] Id.
[212] Missouri Model, *supra* note 78, at 29.
[213] Id at 28.

The ACLU's model legislation highlights the importance of proper training. This legislation, geared to ending solitary confinement,[214] recommends at least 40 hours of initial training, in addition to 12 hours of annual training, with an emphasis on being well equipped to work effectively with youth with mental illness or impairment.[215] Training topics include positive reinforcement; adolescent development; health and behavioral effects of solitary confinement; de-escalation techniques; mental illness/impairment detection; management of youth with mental illness/impairment; proper administration of psychotropic medication; suicide detection; suicide intervention; and additional training on correctional care of youth with mental illness/impairment.[216]

The Annie E. Casey Foundation's Juvenile Detention Alternatives initiative (JDAI) standards are even more rigorous, requiring 40 hours of pre-hire training, 120 hours of training during the first year of employment, and 40 hours of annual training after the first year of employment on policies and practices regarding discipline; basic rights of incarcerated youth; crisis intervention services; conflict management and de-escalation techniques; appropriate use of physical force/restraint; suicide prevention; youth victimization prevention; adolescent development; needs of specific populations by race, gender, sexual orientation, language ability, and ethnicity; nondiscrimination; CPR/first aid; safety precautions for HIV, hepatitis and tuberculosis; and emergency procedures pertaining to the facility.[217]

The Rhode Island Training School, a JDAI facility, requires all to staff undergo a criminal background check at the time of hiring and the population is sufficient to provide adequate security and continuous supervision of residents. Each staff member receives 180 hours of pre-service training on topics including "crisis intervention, youth disciplinary policies and procedures, conflict management, first aid, safety precautions for blood borne pathogens, and facility safety and security procedures." In 2011, staff in fact requested the self-inspection team for more training in "adolescent development, counseling techniques, and working with specific populations (ex: gender, race ethnicity, sexual orientation, and disability)," supporting the finding that it is crucial that detention center staff be provided proper training for these salient issues.

Various jurisdictions and advocacy groups emphasize the importance of proper staff training in rehabilitative, conflict-diffusing methods. The Texas Criminal Justice Coalition recommended that Texas amend its staff qualification requirements to ensure staff are (1) able to empathize with youth, foster cooperation among youth, communicate effectively with youth and their families; (2) have basic knowledge of child development and the role of family; (3) have basic knowledge of the causes of juvenile delinquency; (4) have an awareness of current treatment

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[214] *No Child Left Alone*, *supra* note 163 at §8.
[215] Id at § 8(a).
[216] Id.
[217] *Detention Facility Self-Assessment: A Practice Guide to Juvenile Detention Reform, Juvenile Detention Alternatives Initiative*, ANNIE E. CASEY FOUNDATION 64 (2006), *available at* http://www.aecf.org/upload/PublicationFiles/jdai0507.pdf.

methods for juvenile offender; and (5) have a basic understanding of general techniques of communicating with and counseling adolescents.[218]

Connecticut trains its corrections staff in Therapeutic Crisis Intervention (TCI) to deescalate conflicts and maintain a positive organizational culture. TCI stresses the importance of (1) maintaining a calming physical environment; (2) encouraging positive relationships; (3) focusing on each youth as individuals; and (4) equipping youth with methods to cope with stress in a constructive manner.[219]

RESOURCES FOR REFORM IN NEW YORK

We strongly suggest that the New York Department of Correction seek the services of MYSI to aid in the administration of a much-needed cultural transformation on Rikers Island. MYSI has already demonstrated success with systems in New York State, Louisiana, California, New Mexico, and the Cayman Islands.

Other states use various training programs that offer alternatives to the traditional correctional method. For instance, North Dakota uses services and trainings provided by the Mandt Program and the National Institute of Corrections' Effective Communication/Motivational Strategies in Assessing and Overcoming Resistance to Change. For more information about equipping leaders with the necessary resources to implement change in their communities, the Center for Juvenile Justice Reform offers certificate programs that focus on policies, programs, and practices to improve rehabilitation of youth.[220] The Juvenile Corrections Council of the National Partnership for Juvenile Services[221] as well as the National Center for Youth in Custody[222] and The National Juvenile Detention Association (NJDA) offer trainings to help implement rehabilitative goals for the juvenile justice system.

G. EVALUATION AND REPORTING

AGENCY EVALUATION AND REPORTING

Each state or local agency overseeing facilities that house youth prisoners must review all incident data collected and aggregated concerning youth discipline in order to evaluate the use

[218] Jennifer Carreon, *Written Response To the Sunset Advisory Commission Staff Report: The Current Issues of Incarcerated Youth in Texas' Adult Criminal Justice System* 4, *available at* http://www.texascjc.org/sites/default/files/uploads/Written%20Response%20to%20Sunset%20-%20Current%20Issues%20of%20Youth%20in%20TX%20Adult%20CJ%20System%20(June%202012).pdf.
[219] *Therapeutic Crisis Intervention Training* RESIDENTIAL CHILD CARE PROJECT AT CORNELL UNIVERSITY (6th ed. 2009) (on file with Author).
[220] *Certificate Programs*, CENTER FOR JUVENILE JUSTICE REFORM, http://cjjr.georgetown.edu/certprogs/certificates.html (last visited Nov. 19, 2013).
[221] *Corrections*, NATIONAL PARTNERSHIP FOR JUVENILE SERVICES, http://npjs.org/corrections/ (last visited Nov. 19, 2013).
[222] NATIONAL CENTER FOR YOUTH IN CUSTODY, *available* http://npjs.org/ncyc/ (last visited Nov. 19, 2013).

of short-term isolation and room confinement of youth in each facility.[223] Each state or local agency must prepare an annual report of its findings that will be available to the public upon redacting individual identifying information. The report should be made available to the public on the Department of Correction website.

Information available to the public should include: [224]

- All disciplinary rules, policies and procedures related to incarcerated youth
- The dates and duration of any form of short-term isolation and room confinement
- Reasons why youth are subjected to short-term isolation and room confinement

Data evaluation and reporting should also concern changes in policies and practice that may lead to further decreases in the use of short-term isolation and room confinement. The annual report should focus on best practices, with further investigation and review mandated for facilities with high levels of isolation and room confinement usage.

The highest ranking administrator of each facility housing youth should certify by affidavit that no youth prisoner in his or her custody has been subject to solitary confinement and that any use of isolation or room confinement has complied with the appropriate state or local procedures and regulations.

INDEPENDENT EVALUATION AND REPORTING

Independent and qualified reviewers should routinely monitor and review the use of discipline in correctional facilities housing youth.[225] Reviewers should pay particular attention to short-term isolation and room confinement policies, practices, and procedures concerning incarcerated youth. Independent reviewers must have full access to the correctional facilities, correctional data, staff and incarcerated youth.

In addition to identifying critical issues and violations, independent oversight should focus on potential improvements to the discipline system for youth in corrections and identify solutions. Confidentiality may be granted to both staff and incarcerated youth who voice complaints and concerns.

The reports and analysis of data generated from these reviews must be made available to the public. A key program that Rikers Island should join is the PbS initiative described below.

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[223] PbS Standards, *supra* note 125, at 10.
[224] Growing Up Locked Down, *supra* note 4, at 92.
[225] *Resolution 104B: Prison Oversight and Monitoring of Juvenile and Adult Facilities, American Bar Association*, AMERICAN BAR ASSOCIATION (2008), *available at* http://www.abanet.org/crimjust/policy/am08104b.pdf. The American Bar Association (ABA) issued a resolution calling for all governments to establish independent, public bodies to regularly monitor and report publicly on prison and jail conditions within their respective jurisdictions.

PERFORMANCE-BASED STANDARDS (PBS)

PbS 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."[226]

PbS is a voluntary membership program with participants submitting information about the youth facility twice a year.[227] At the end of each data collection period, the information is analyzed and reported back in the form of outcome measures that indicate how well the facilities meet certain best-practice standards.[228] The outcome data identifies what is working in each facility and what needs to be improved. Participants in PbS have the ability to compare themselves to the performance of a facility of similar type, size or population and to other facilities in their jurisdiction.[229] Each facility is assigned a PbS coach to develop a Facility Improvement Plan (FIP) to meet the best-practice standards.[230] To aid implementation, there is a web-based application for self-assessment.[231]

The data measured is both quantitative–measuring performance of staff and youth—and also qualitative from the participation of youth and staff in climate surveys.[232] PbS asks youth about their experiences in the facility, conditions, safety, staff-youth relationships and quality of services in order to provide a comprehensive picture of life in the facility.[233] PbS data collected between 2004 and 2010 continually showed "that the greatest predictors of victimization and safety in facilities are youths' perceptions of the rules, staff, school and reports of whether or not they have been confined due to misbehavior."[234]

Facilities that participate in PbS report that "PbS [is] a tool that helps them chart clear, measurable paths toward improvement and document what occurs in a facility on a daily basis to assess whether services and practices have a positive impact on the youths. PbS enables facilities to improve the quality of the services provided and thereby, improve the outcomes for the youths."[235]

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[226] *Performance-Based Standards (PBS)*, PBS LEARNING INST., http://pbstandards.org/initiatives/performance-based-standards-pbs (last visited Nov. 10, 2013).
[227] *Data Primer*, PBS LEARNING INST. 4 (2013) [hereinafter *PbS Data Primer*], *available at* http://pbstandards.org/cjcaresources/158/PbS_DataPrimer_201303.pdf.
[228] Id.; *Safety and Accountability for Juvenile Corrections and Detention Facilities,* PBS LEARNING INST. (2012), *available at* http://pbstandards.org/uploads/documents/PbS_Li_MarketingPacket.pdf.
[229] Id.
[230] Id.
[231] Id.
[232] *PbS Data Primer*, *supra* note 227, at 1.
[233] *What Youths Say Matters*, PBS LEARNING INST. 2 (2013), *available at* http://pbstandards.org/cjcaresources/158/PbS_What_Youths_Say_Matters_20131030.pdf.
[234] Id at 3.
[235] *Safety and Accountability for Juvenile Corrections and Detention Facilities*, PBS LEARNING INST. (2012), *available at* http://pbstandards.org/uploads/documents/PbS_Li_MarketingPacket.pdf.

5. State Success Stories

A. CONNECTICUT

Connecticut is a great example of how juvenile justice systems can evolve to improve the lives of both the juveniles under their supervision and their communities. By statute, Connecticut prohibits the use of solitary confinement.

I. STATE LAW AND POLICY

Connecticut prohibits the use of solitary confinement by statute

- **By Statute, Connecticut prohibits the solitary confinement of juveniles**.[236] The Court Support Services Division of the Connecticut Judicial Branch, effective January of 2010, developed a Juvenile Motivation Program to more positively deal with disciplinary issues for juveniles in detention.[237]

II. MODEL FOR REFORM: THE CSSD JUVENILE DETENTION CENTERS

Behavior Motivation Program

- The Court Support Services Division's (CSSD) Juvenile Detention Centers implemented the use of a Behavior Motivation Program (BMP), which includes a rules system supporting a safe and stable environment for detained juveniles. The BMP was created to make certain that every detention center in CT:
  1) provides juveniles with a safe and stable environment, and
  2) provides opportunities to receive rewards and benefits for positive program participation and behavior.[238]

Gender responsive behavior motivation models for juveniles and training for staff

- Community Residential Programs (CRP) have implemented both the gender responsive Teach, Reach and Inspire (TRI) Behavior Motivation Model, for juveniles, and Therapeutic Crisis Intervention Training (TCI), for staff, to move forward the BMP.

Procedures in Detention Centers

- **General Procedures in Detention Centers**
  Each Detention Center develops a handbook in English and Spanish of local rules, expectations, violations and possible interventions. It is explained and provided to each juvenile as part of his or her admission process. A Juvenile Discipline Log will be kept for all who are disciplined.

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[236] CONN. GEN. STAT. ANN. § 46b-133(e) (what states that "no child shall at any time be held in solitary confinement").
[237] Juvenile Residential Services Behavior Motivation Program, Conn. Judicial Branch Court Support Services Division Policy and Procedures (January 2010) (on file with Author).
[238] Id.

- **Program Orientation Sessions for Juveniles:**
  Upon admission, a juvenile receives a routine orientation. They are assigned an intake officer within one hour and that person explains the BMP.

Program Orientation Sessions for Juveniles

- Within one hour of this meeting (unless the admission occurs in the evening), the Juvenile Detention Officer (JDO) will meet with the juvenile and explain a juvenile point system,[239] how the system works, and how to be successful within the BMP framework.

- In 24 hours, an assigned Classification and Program Officer (CPO) will meet with the newly admitted juvenile. The CPO will assist in individualizing the system to the juvenile's needs.

Intervention Procedures

- **Intervention Procedures:**
  "Are designed to help juveniles understand the impact on themselves and others…these interventions are intended to decrease rule violations from occurring. Staff should utilize skills learned through the TCI training in determining when to begin using the Life Space Interview (LSI)."[240]

Limits to Room Confinement

- **Room Confinement Limits**
  "Confinement to room may only be used when all other interventions have failed or when a Class A or a Class B violation has occurred. The amount of confinement time will be determined on a case-by-case basis and justified by the specific behavior.

- **Room Confinement Procedures**
  Staff recommending confinement to room may place the juvenile in a room immediately if it is a permitted restriction for the violation that is charged.

Room Confinement Procedures

- Upon initiating any disciplinary process, staff will immediately notify the Shift Supervisor/Lead Detention Officer, explain the incident, and discuss potential sanctions. The Shift Supervisor/ Lead Detention Officer will schedule (within one hour of the intervention), an Incident Review with the juvenile. "[241]

[239] Point sheets include evaluations of In Room Behavior, Mealtime behavior, Interactions with staff and peers, Following Directions, Routines, and Programming.
[240] Juvenile Residential Services Behavior Motivation Program, *supra* note 237.
[241] Id.

Ranges of Detention Center Violations and Correlating Restrictions

- **Detention Center Violation/Restriction Ranges**
  Juveniles who commit a Class A Violations/Restrictions are subject to all disciplinary sanctions up to room confinement[242] not to exceed 48 hours. These are the most serious violations including arson, assault, riot and possession of contraband.

  Juveniles who commit Class B Violations/Restrictions are subject to all disciplinary sanctions up to room confinement of 24 hours. These include fighting and refusal to attend school.

  Juveniles who commit a Class C Violation are subject to room time of up to 6 hours contingent upon juveniles first receiving a Verbal Warning, a Time Out, and Loss of Structured Recreation. These include disrespectful interactions with others, disruptive behavior, and possession of unauthorized items.

III: CURRENT DEVELOPMENTS

Reduction of residential commitments

- Over the last decade, Connecticut has reduced residential commitments from 680 in 2000 to 216 in 2011 (nearly 70%), even though most 16 year-olds, who were previously treated as adults, are now handled in the juvenile system.

- The average daily population in Connecticut's pretrial detention centers fell from 132 in 2006 to 94 in 2011, the year after 16-year-olds entered the juvenile system, allowing the state to close one of its three state-operated detention centers.

- The under 18 population in Connecticut's adult prisons fell from 403 in January 2007 to 151 in July 2012.[243]

Evidence Based Non-Residential Programs

- **Evidence Based, Non-Residential Programs**
  In Fiscal Year 2012, 955 youths on probation supervision participated in intensive evidence-based family therapy programs and 652 in evidence-based cognitive behavioral therapy.

Improved Conditions of Juvenile Facilities

- **Improved Conditions of Juvenile Facilities**
  Connecticut vastly improved detention programming, education and mental health services, and physical conditions in detention.

[242] Id. Room Confinement may only be used when all other interventions have been used or when a Class A or B violation has occurred.

[243] JUSTICE POLICY INSTITUTE, JUVENILE JUSTICE REFORM IN CONNECTICUT: HOW COLLABORATION AND COMMITMENT HAVE IMPROVED PUBLIC SAFETY AND OUTCOMES FOR YOUTH (October 2012).

After a series of investigations revealed severe deficiencies in the new $57 million Connecticut Juvenile Training School from 2001-2004, Connecticut permanently closed a high-security unit where violent incidents had been commonplace, temporarily suspended new admissions, provided intensive retraining of staff on behavior management, reformed disciplinary practices, and vastly improved programming and treatment throughout the facility.

Diverted Status Offending Youth From the Court System and Locked Detention Centers

- **Diverted Status Offending Youth From the Court System and Locked Detention Centers**
  Since 2005, Connecticut has eliminated admission of youth to detention centers for status offenses and opened Family Support Centers statewide that offer community based treatment and other services for status-offending youth and their families, rather than probation supervision.

  The state reduced judicial processing (formal petition) of status offender referrals from 50% of those filed in 2006-07 to just 4.5% in 2010 and 2011. Since 2006, the number of youth with a status offense who were rearrested or convicted of crimes fell by more than 70%.

Reduction in Arrests for Youth at School For Routine and Non-Serious Misbehavior

- **Reduction in Arrests for Youth at School For Routine and Non-Serious Misbehavior**
  Nine Connecticut school districts have signed agreements with police limiting the circumstances under which students can be arrested at school.

  In one pilot district (Manchester), by the spring of 2012, arrests and expulsions both fell by more than 60% compared to the prior school year. The School-Based Diversion Initiative (SBDI) also is working in nine sites to promote mental health treatment rather than disciplinary or justice responses to misbehavior by emotionally disturbed students. An independent evaluation found that SBDI decreased the number of students arrested and/or suspended, and reduced subsequent misbehavior.

  In 2011, juvenile courts began rejecting referrals involving youth arrested for minor misbehavior. Of the first 221 cases the courts refused to prosecute, more than half involved school arrests. Connecticut schools have also sharply reduced out-of-school suspensions in the past five years.[244]

[244] Id.

Cost benefits of implementing new programs and procedures

- **Cost Benefits**
  Overall spending on juvenile justice (after adjusting for inflation) has not increased despite the implementation of many new programs and services, and the state's juvenile crime rate has dropped considerably even as confinement rates plummeted. [245]

  The cost for a juvenile to be housed in a detention facility for six months is $133,920. The cost for community intervention programming is $8,210.[246]

B. MAINE

By statute, Maine does not authorize solitary confinement for juveniles. Recidivism is reduced, guards have been re-trained to handle youth effectively, and the system has overhauled its culture and implemented a mentality that better serves youth. Stemming from success in banning the use of solitary in youth settings (specifically in South Portland's Long Creek Youth Development Center), Commissioner Joseph Ponte adopted similar policies and procedures in adult settings.

I. STATE LAW AND POLICY

By Statute, Maine does not allow solitary confinement as a form of punishment for juveniles

Maine's statute, 34-A M.R.S.A. §3032(5), does not allow solitary confinement as a form of punishment for juveniles; rather it employs a "loss of privileges" model.[247]

Maine clearly recognizes a difference between youth and adults. Statutes allow isolation and solitary confinement as a form of punishment for adults, but not for youth.

- **Juveniles:** "*Punishment at juvenile correctional facilities and any detention facility may consist of warnings, restitution, labor at any lawful work and loss of privileges.*"[248]

Maine's regulations allow for punitive room restrictions for up to 30 hours for "major misconduct."[249] Youth in room restriction are allowed to leave their rooms for educational and treatment programs, regularly scheduled visits, and meals.[250]

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[245] Id.
[246] William Carbon, *Reducing Commitment and Improving Outcomes: The Connecticut Experience*, Reducing Commitments and Placements Connecticut Conference (2013).
[247] ME. REV. STAT. ANN. TIT. 34 § 3032(5).
[248] Id.
[249] Catherine Weiss, Natalie J. Kraner & Jacob Fisch, *supra* note 7.
[250] Id.

Appointment of a new commissioner and a study conducted by corrections officials brought about sweeping change for the system	Reforms in Maine came about after a grassroots political campaign and the appointment of Commissioner Ponte.[251] Legislators issued a report about solitary confinement that offers recommendations to reduce its use and make SMUs more humane.

II. INDIVIDUAL MODEL FOR REFORM: LONG CREEK YOUTH DEVELOPMENT CENTER

Much of the reform in Maine is attributable to the changes implemented by Rodney Bouffard, the superintendent of the South Portland Long Creek Youth Development Center.[252]

THE CENTER AT A GLANCE:

- LCYDC has a population capacity of 163 and 195 total staff members.[253]
- Between 15-20% of youth at the Center are youth of color or from minority communities, and ¾ of those are immigrants or refugees.[254]
- Youth held at LCYDC have "indeterminate sentences." The Center has the power to release them whenever they feel it's appropriate.[255]
- 98% come in with major substance abuse issues.[256]
- 30-40% of the youth have major mental illness other than a major behavior disciplinary disorder. 60% are special education students.[257]
- Female youth have an even higher rate of mental illness and trauma.[258]
- Maine juvenile recidivism rates are comprised of mostly property crimes. The second category of recidivism offense was drug and alcohol related offenses.[259]

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[251] Lance Tapley, *Maine's Dramatic Reduction of Solitary Confinement,* THE CRIME REPORT (July 20, 2011), *available at* http://www.thecrimereport.org/news/inside-criminal-justice/2011-07-maines-dramatic-reduction-of-solitary-confinement.

[252] Lance Tapley, *Prison Reforms Under Maine's New DOC Commissioner*, PRISON LEGAL NEWS, https://www.prisonlegalnews.org/(X(1)S(rikzfx45jgwchp5541eua055))/displayArticle.aspx?articleid=24890&AspxAutoDetectCookieSupport=1.

[253] *Long Creek Youth Development Center,* STATE OF MAINE DEPARTMENT OF CORRECTIONS, http://www.state.me.us/corrections/juvenile/Facilities/LCYDC/index.htm (last visited Nov. 21, 2013).

[254] *Long Creek Youth Development Center – Reported Culture Shift Supports Rehabilitation Over Punishment*, ACLU MAINE (August 18, 2010), *available at* http://www.aclumaine.org/long-creek-youth-development-center-reported-culture-shift-supports-rehabilitation-over-punishment.

[255] Id.

[256] Id.

[257] Id.

[258] Id.

Long Creek has sought to bring about an overall culture shift from a correctional facility model to a residential treatment facility model.

The Center focuses on policy, training, practice and programs in its residential treatment facility model

- **Policy:** Maine uses PbS standards. It also revised Behavior Management System that includes a Phase System. This creates opportunities for residents to demonstrate the capacity to function with increased independence.

- **Training:** Staff receives training in Behavior Management System and Motivational Interviewing; staff and youths receive training in Collaborative Problem Solving; and agency leadership participates in training in the "teamwork model."[260] "Leadership is critical."[261]

- **Practice:** Use of isolation operates in the context of the "unit team" and youth cannot be moved away from the staff he has a relationship with. If isolation is necessary, the unit manager accompanies the youth to the isolation unit to understand the events that transpired and work with youth to solve the problem. As soon as all threats are believed to be gone, the resident is returned to programming.[262] "De-escalation" or talking to the youth causing issues is used in lieu of the restraint chair or confinement.[263]

- **Programs:** Units use collaborative problem solving and motivational interviewing techniques. After release from the isolation unit, the team and the resident develop a new program plan.[264]

Long Creek Development Center has seen a one-year recidivism rate drop from 75% to between 15-20%, where at the national average is around 60% for youth

As a result of the changes at Long Creek Youth Development Center, isolation is only used in response to situations where the youth poses a danger to themselves or others and when other forms of de-escalation have failed. It is never used as a form of discipline.

- According to PbS data collected after Maine began its

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[259] THE MAINE JUVENILE JUSTICE TASK FORCE, AN INTEGRATED APPROACH TO TRANSFORMING MAINE'S JUVENILE JUSTICE SYSTEM, UNIVERSITY OF SOUTHERN MAINE, MUSKIE SCHOOL OF PUBLIC SERVICE (June 2010), *available at* http://muskie.usm.maine.edu/justiceresearch/JuvenileJusticeTaskForce/Documents/JJTF_Task_Force_Report.pdf

[260] *Reducing the Use of Isolation: Maine Division of Juvenile Services*, COUNCIL OF JUVENILE CORRECTIONAL ADMINISTRATORS [hereinafter *Reducing the Use of Isolation*] (on file with Author).

[261] Tapley, *supra* note 252.

[262] Reducing the Use of Isolation, *supra* note 260.

[263] Tapley, *supra* note 252.

[264] Reducing the Use of Isolation, *supra* note 260.

campaign to reduce the use of isolation, data shows that Maine's use of isolation is infrequent and only for short periods of time. This is well below the use and duration of isolation compared to other PbS facilities.[265]

- Nationally, recidivism rates for youth are around 60%, whereas statewide Maine reports 20-25%. There was a reduction in two years from 419 to 15 annual instances of increasingly brief solitary confinement.[266] The center, specifically, has seen a one-year recidivism rate drop from 75% to between 15-20%.[267]

III. STATEWIDE REFORMS

As a result of the success of Long Creek, beginning in Spring 2011, the Maine DOC has made sweeping reforms related to isolation and super-max usage.[268] The progress, that addressed system- wide failures for youth and adults alike, has been significant.

Special Management Units used to house inmates in isolation have been slashed in half

- Special Management Units, or SMUs, are used to house inmates in isolation. The number of SMUs was slashed in half, from a consistent 132 to 69, roughly 60%.[269]

  Many inmates were placed in SMU for small infractions, but were subsequently spending increasing periods of time in SMU as a result of lashing out against the isolation.[270] Inmate's rage or mental problems created a vicious cycle after isolation and protests only further added time to super-max stay.

Inmates may not be placed in isolation longer than 72 hours without the Commissioner's approval

- Inmates are not to be placed in isolation longer than 72 hours without Commissioner Ponte's personal approval.[271]
- There is a seven-day limit on super-max stays for inmates being investigated for in-prison crimes.[272]

There has been a stop to the brutal process of "cell extractions"

- Reclassification and movement of out of super-max for many inmates.[273]
- The previously frequent and brutal process of "cell extractions"

[265] Id.
[266] Tapley, *supra* note 251.
[267] Id. *See also FAQ,* SOLITARY WATCH, *available at* www.solitarywatch.com/facts/faq (last visited Jan. 30, 2014).
[268] Tapley, *supra* note 251.
[269] *FAQ,* SOLITARY WATCH, *available at* www.solitarywatch.com/facts/faq (last visited Jan. 30, 2014).
[270] Id.
[271] Tapley, *supra* note 251.
[272] Id.
[273] Id.

for uncooperative and often mentally ill inmates has been eradicated.[274]

- Guards are required to use "informal sanctions" to discipline unruly prisoners as alternatives to isolation. These alternatives to "the hole" include taking away commissary or recreation privileges.[275]

IV. COMBATING IMPEDIMENTS TO CHANGE

Overcoming cost and resistance of re-educating guards

- **Re-educating guards:**[276] There is a cost in re-educating guards and overcoming resistance among the staff. Commissioner Ponte has addressed this with a fearless approach to firing staff that are unable to approach inmates with the newly implemented training techniques and instead resorting to violence and aggression.

Dealing with Resistance in Releasing Inmates with Mental Health Issues

- **Resistance for Mental Health Inmates:** With the decrease in solitary confinement, there is resistance about releasing inmates with isolation-exacerbated behavioral programs back into the general population.

Cost Issues

- **Finances:**[277] Three times as much money is spent annually per-prisoner at Long Creek ($149,000) than at the state prison ($47,000).[278] In part this is attributed to the fact that Long Creek is a smaller institution with higher overhead. Moreover, the psychotherapy and academic coursework that contributes to its success and lower recidivism numbers also contributes to its financial burden. Commissioner Ponte has suggested, however, that (1) reducing super-max incarceration will open up money that can be redirected to the mentally ill, and (2) staff may be redirected to fill different roles.[279] This can circumvent the need to hire new and costly staff.

V. LOOKING FORWARD

Commissioner Ponte has expressed interest in creating a Youthful Offender Program at the Mountain View Youth Center in Charleston, ME. Ponte believes that what works for people under 18 will similarly work for those aged 18 to 25. As a result, this program is intended to house the 60-80 "most challenging" prisoners in that age group.[280] Currently he has asked the legislature to authorize it, but pending new funding sources it cannot be implemented.

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[274] Id.
[275] Id.
[276] Id.
[277] Tapley, *supra* note 251.
[278] Id.
[279] Id.
[280] Tapley, *supra* note 252.

C. RHODE ISLAND

The Rhode Island Training School (hereinafter "RITS") has been a Juvenile Detention Alternatives Initiative (JDAI) site since 2009.

I. STATE LAW AND POLICY:

Rhode Island's statutes and administrative codes provide special protections for youth in detention settings

- **Children's Bill of Rights (Gen. Laws 1956, § 42-72-15):** calls for specific regulations and reporting mechanisms by corrections facilities concerning correspondence allowance, seclusion, restraint, education, as well as the right to visit with family, religious officials, and family members. It provides the claim for children aggrieved by violations of the bill to petition to family court for "appropriate equitable relief."[281]

- **The Children's Right to Freedom From Restraint Act (Gen. Laws 1956, § 42-72.9):** addresses use of restraints, seclusion, recording, training and policies, penalties, and rules and regulations for young inmates. Involuntary placement of a child in seclusion is prohibited with the exception of an "emergency intervention to prevent immediate or imminent risk of injury to the physical safety of the child, staff, or other individuals in the facility and may not be used for discipline, convenience, or as a substitute for a less restrictive alternative."[282]

- **Rhode Island Administrative Code—Lock Up Procedures (R.I. Admin. Code 14-2-1200.1307):** The Rhode Island Administrative Code also details an extensive set of rules for the RITS, which includes policies on Lock Up, which is the equivalent to solitary confinement. As mandated by the Children's Right to Freedom From Restraint Act, segregation is considered a last resort, used in a limited fashion with limits imposed by many due process measures. Physical restraints are never used for purposes of punishment but are only used to ensure the safety of students, staff and the public. They are used only when transporting residents on or off grounds.[283] The procedures also provide detailed expectations and prohibitions for staff when disciplining inmates.[284]

[281] R.I. GEN. LAWS § 42-72-15(m) (1956).
[282] R.I. GEN. LAWS § 42-72.9-5(a) (1956).
[283] R.I. ADMIN. CODE §14-2-1200.0832.
[284] R.I. ADMIN. CODE §14-2-1200.1300(E).

II. INDIVIDUAL MODEL FOR REFORM: THE RHODE ISLAND TRAINING SCHOOL

The current Training School is housed in a building that was built in 2008 and is subject to a 160-inmate cap.[285]

JDAI mandates inspection of facilities by teams made up of local volunteers from various professional backgrounds to ensure that all JDAI standards are met. In 2011, the team conducted a self-inspection visit over two days where they reviewed records and documentation, were given unlimited access to the facility, and were able to observe the facilities and interview inmates. [286] *The information below reflects the team's findings on this visit.*[287]

Proper medical, mental health, and dental treatment for residents

Opportunity to reach out to family and advocates

Opportunity to work towards GED, finish high school, and continue education through community college

- **Healthcare:** RITS hosts an on-site health facility for its residents. All youth are given a brief medical and mental health screening upon their arrival, and medical attention continues to be readily available throughout their stay in addition to dental treatment every six months. Within their first week of admission, youth are screened for medical, dental, and mental health assessment.

- **Access:** Inmates have unlimited access to sending and receiving mail, and mail is only screened if there is a reasonable suspicion of criminal activity or a security threat. They also have "adequate" access to legal counsel, the courts, and public officials, and have a right to privately contact attorneys, guardians, clergy member, or representatives of the Office of the Child Advocate (who also have an office on site). Telephone access and visitation right are determined by an incentive program, but JDAI has minimum standards that every inmate is entitled to.

- **Programming:** Residents are screened for school status, special education status, and grade level and begin attending school as soon as they arrive at RITS. Youth may choose from three educational programming tracks: secondary education, GED preparation, and post-secondary education provided by the local Community College. Physical education or recreational activity is mandated for two hours per day in the gym, weight room, or outdoor area. Inmates have a right to attend religious services and access clergy members of their religious faith.

- **Environmental Issues:** The facility is in operable and clean condition. Although the physical structure RITS appears to be a detention center, staff and administration try to create a non

[285] Lynn Arditi, *Fewer Youths at Training School,* Providence Journal, *available at* http://www.jdaihelpdesk.org/News/Fewer%20Youths%20at%20Training%20School%20(Providence%20Journal).pdf.
[286] Telephone Interview with John Neubauer, LICSW, Policy Analyst, Rhode Island KIDS COUNT (Oct. 10, 2013).
[287] Id.

Casual clothes, personalized living spaces, and functioning facilities

penal environment by taking steps such as wearing casual clothes rather than law-enforcement or military-style uniforms; allowing youth to decorate their rooms based on their level status; celebrating important holidays and birthdays; and providing most youth with causal uniform sweat suits.

Safety from staff and residents

- **Safety:** Youth reported to being safe from physical assault, sexual assault, and harassment by staff. The female unit is kept separate from the male unit, with limited interaction between the two sexes. Female residents reported that they did not feel in any way threatened or harassed by male residents.

III. STATE-WIDE APPLICATION

RITS accommodates all youth inmates under 18 (with the exception of juveniles who have been waived into the adult system), which include both pre-trial and post-trial inmates.

IV. FUTURE AND CURRENT DEVELOPMENTS

PROGRESS TO DATE:

Inmate population decreased

- **Reduction in the population of detained youth:** Between 2009 and 2012, the population of youth detained in RITS has declined by 32%.[288] Of the 606 youth who stayed at RITS at some point in 2012, 16% were admitted at least twice that same year and 2% were admitted three or more times.[289] In fact, a wing in one of the buildings has been closed due to the decline in inmates overall.[290]

Community involvement increased

- **Engagement of system stakeholders and community-based partners:** Stakeholders including the Family Court; Department of Children, Youth and Families; Attorney General's Office; Public Defender's Office; Providence Police Department; the Child Advocate; the state's juvenile justice advisory group; and community-based program providers participate in the transformation efforts initiated by the JDAI.[291]

Alternatives to detention facilities on the rise

- **Costs prompting the formation of alternatives to secure detention:** While there has been a 47% decrease in the population of inmates over the past 5 years, the cost of running the training

[288] *2013 Rhode Island Kids Count Factbook*, RHODE ISLAND KIDS COUNT (2013), *available at* http://www.rikidscount.org/matriarch/documents/13_Factbook_Indicator_40.pdf.
[289] Id.
[290] Arditi, *supra* note 285.
[291] Telephone Interview with John Neubauer, LICSW, Policy Analyst, Rhode Island KIDS COUNT (Oct. 10, 2013).

school has only declined 6%, resulting in a cost of $201,572 per occupant.[292] This high cost serves as a deterrent for unnecessarily detaining youth who have not committed serious crimes, leading to the emergence of more appropriate alternatives to secure detention.

More community-based detention alternatives

FURTHER REFORM:

Less racial disparity

- **Further expand alternatives to detention and incarceration:** The overall perception that incarceration is effective for youth, as a deterrent for the crime rate must be dispelled. Over-reliance on incarceration leads to higher rates of recidivism than proper community-based alternatives to incarceration, and is unnecessary when many inmates do not pose a danger to public safety[293] Continuing to expand these alternatives is crucial for continuing to promote the downward trend of incarcerated youth.

Better risk assessment instruments

- **Address racial disparities:** Rhode Island KIDS COUNT is also concerned about the wide racial disparity between inmates and the state's demographics—last year, Black youth, who make up 6% of the child population in Rhode Island, accounted for 29% of the population in the training school.[294]

- **Risk assessment instruments to ensure appropriate detention:** Appropriate detention is a concern. Under the JDAI standard, a Risk Assessment Instrument should be used to limit detention eligibility to youth who are likely to commit a serious offense pending resolution for their case, likely to fail to appear in court, and those held pursuant to a court order. This will take the collaboration of the judicial system, police department, and community service providers.

[292] Arditi, *supra* note 285.
[293] 2013 Rhode Island Kids Count Factbook, *supra* note 288.
[294] Id.

D. MISSISSIPPI

I. CLASS ACTION LITIGATION

As a result of class action litigation settled via consent decree in February 2012, the Mississippi Department of Correction (MDOC) profoundly changed its policies for incarcerated youth, including a prohibition on solitary confinement of youth and strict regulation of all forms of isolation.[295]

The February 2012 consent decree provides a model for regulations of incarcerated youth, as well as an illustration of collaboration between government agencies and plaintiffs in class-action lawsuits. In fact, Plaintiffs'' expert witnesses in a prior class action lawsuit challenging solitary confinement in Mississippi's adult supermax were appointed as monitors of the 2012 youth consent decree, working with the MDOC as consultants to promote compliance with terms of the consent decree.[296] *The MDOC Commissioner Epps has stated "the smartest decision I made was utilizing recognized corrections experts provided by the National Institute of Corrections and the American Civil Liberties Union. My staff and I began to collaborate with the plaintiffs' attorneys to cease a previous attitude of conflict and discord and jointly determine strategies that would achieve a common goal of improved conditions while providing safety and security."*[297]

II. CONSENT DECREE

Establish a Youthful Offender Unit	• The MDOC agreed to establish a Youthful Offender Unit (YOU) to house all youth ages 17 and under diverted from adult MDOC facilities.[298] The MDOC Commissioner has discretion to house 18 and 19 year olds in the YOU who have been classified as vulnerable.[299]
Prohibit the Solitary Confinement of Youth	• Cell confinement for more than 20 hours a day is prohibited.[300]

[295] Consent Decree, *C.B., et al. v. Walnut Grove Corr. Auth.*, No. 3:10cv663, (S.D. Miss. Feb. 3, 2012) at IV(a)(3) [hereinafter Consent Decree].*available at* http://www.aclu.org/files/assets/68-1_ex_1_consent_decree.pdf [hereinafter Consent Decree]. The lawsuit was filed by the American Civil Liberties Union and the Southern Poverty Law Center.
[296] Id at V(1).
[297] *Reassessing Solitary Confinement the Human Rights, Fiscal, and Public Safety Consequences*, *Public Hearing Before the S. Comm. on the Judiciary, Subcomm. on the Constitution Civil Rights and Human Rights* 2 (June 19, 2012) (written Testimony of Mississippi Commissioner of Corrections, Christopher B. Epps), *available at* http://www.judiciary.senate.gov/pdf/12-6-19EppsTestimony.pdf.
[298] Consent Decree, *supra* note 295, at III.
[299] Id at IV(A)(2).
[300] Id at IV(C)(1).

- Every effort must be made to avoid the placement of youth in cell confinement and whenever possible, staff must first use less restrictive techniques.[301] The consent decree allows only two exceptions:

Strictly Regulate All Forms of Isolation

  - **Emergency Cell Confinement:** Youth presenting an immediate, serious threat to the safety of others may be placed on emergency cell confinement until the youth has regained self control.[302] Emergency Cell confinement is strictly limited to a time period not to exceed **24 hours**.[303]
  - **Disciplinary Cell Confinement:** Youth who violate a major facility rule may be placed on Disciplinary Cell Confinement for a period of time not to exceed **72 hours.**[304] Under no circumstances can Disciplinary Cell Confinement last longer than 72 hours unless an extension is approved by the Deputy Commissioner or their designee, and only granted in extraordinary circumstances when a youth presents a continuous direct threat to the safety of others.[305]

- Youth in either form of cell confinement must receive at least 4 hours a day of out-of-cell programming in any 24 hour period.[306]

- In either form of cell confinement, youth must be visually checked by staff at least 4 times an hour, not more than 15 minutes apart, and interviewed by medical and mental health staff at least every 24 hours.[307]

- Youth cannot be subject to Disciplinary Cell Confinement without due process protections.[308]

- Youth in either form of cell confinement cannot be denied basic educational programming, the opportunity for daily

[301] Id at IV(C)(7).
[302] Id at IV(C)(4).
[303] Id at IV(C)(2).
[304] Consent Decree, *supra* note 295, at IV(C)(2).
[305] Id at IV(C)(6).
[306] Id at IV(A)(3).
[307] Id at IV(C)(8).
[308] Id at IV(C)(6).

out-of-cell and outdoor exercise (at least one hour of large muscle exercise), or opportunity for weekly contact with family through visits, phone calls and letters.[309]

- Youth in either form of cell confinement must be provided the same meals, clothing, access to drinking water, medical treatment, educational services, exercise, correspondence, privileges, contact with parents and legal guardians, and legal assistance provided to other youth in the facility.[310] Visitation will not be restricted as a form of punishment and will not be withheld from youth unless the Warden determines that such a visit will seriously compromise security.[311]

Strict Regulation Concerning the Use of Force

- Mechanical, physical or chemical restraints will not be used to punish youth.[312] If any use of force is necessary, the force must be the minimum amount required to safely contain the youth and removed as soon as no longer necessary.[313] Force will not be used unless staff first attempted verbal de-escalation techniques, except in emergency situations.[314] Except in emergency situations, the Shift Commander or Warden will be notified and their consent obtained prior to the use of force.[315]

  A log will be maintained recording efforts made to obtain consent and presence of the Shift Commander or Warden or mental health professional prior to the use of force.[316]

Implement Incident Review Procedures

- MDOC will implement procedures for generating monthly reports on the use of force.[317] Incident documentation will include a detailed description of alternative intervention and de-escalation attempts that occurred prior to the use of force.[318] An Incident Review Committee ("IRC") will be developed to conduct review of incidents in order to analyze

[309] Id at IV(C)(3).
[310] Consent Decree, *supra* note 295, IV(C)(3).
[311] Id at IV(H)(1).
[312] Id at IV(B)(3).
[313] Id at IV(B)(3), (4).
[314] Id at IV(B)(3), (4).
[315] Id at IV(B)(6).
[316] Consent Decree, *supra* note 295, at IV(B)(6).
[317] Id at IV(B)(5), (7).
[318] Id at IV(B)(7).

patterns of the use of force to reduce incidents.[319]

Institute Age-Appropriate Programming and Positive Behavior Management	• MDOC will provide youth with the opportunity for the appropriate mix of interactive and structured rehabilitative and educational programming.[320] Programming will be tailored to the developmental needs of youth. MDOC will not institute programming that could be considered "paramilitary" or contain elements of a "boot camp."[321] MDOC will develop a system of positive behavior management, including guidelines for imposing graduated sanctions for rule violations and positive incentives for good behavior.[322]
Adopt Suicide Prevention Policy	• MDOC will develop a suicide prevention policy that includes a prohibition on placing youth on suicide watch in isolation.[323] To the extent clinically allowed, youth on suicide watch should engage in normal programming.[324]
Enforcement and Monitoring	• Monitors have been appointed as responsible for tracking MDOC's compliance with the terms of the consent decree and submitting reports to counsel every 4 months.[325] The monitors will have full and complete access to the YOU, as well as all facility records (medical and mental health records included), and to staff.[326]

[319] Id at IV(B)(8).
[320] Id at IV(D)(1).
[321] Id at IV(D)(1).
[322] Consent Decree, *supra* note 295, at IV(D)(1).
[323] Id at IV(F).
[324] Id at IV(F).
[325] Id at V(1).
[326] Id at V(2).

III. CURRENT DEVELOPMENTS

Since signing the consent decree in February 2012, Plaintiffs' class counsel and the court-appointed monitors have indicated that the MDOC has made a clear good faith effort to comply with the terms of the consent decree.[327] *In fact, the first monitoring report documented a number of "very positive achievements" in a relatively short time frame.*[328]

Youthful Offender Unit opened on December 12, 2012

- The YOU opened on December 12, 2012.[329] As of July 9, 2013, 34 youths were housed at the YOU, 14 of which have mental health diagnoses.[330] MDOC is currently renovating a permanent location for the YOU that will provide improved security and safety for the youth, as well as more robust compliance with the consent decree's provisions.[331]

A positive behavior management system is in place

- A positive behavior management system is in place.[332] Youth can "purchase" items with good behavior points from the canteen and can earn privileges such as extra phone calls.[333]

Most behavioral issues resolved without resorting to room confinement[334]

- The YOU staff is committed to limiting the use and duration of disciplinary isolation consistent with the consent decree.[335] The monitor reported that security and program staff handle most behavioral issues without resorting to room confinement.[336]

The majority of disciplinary measures was the loss of good behavior points or earned incentives.[337] Youth who are

[327] Youth Justice Clinic telephone call with Margaret Winter, Plaintiff Counsel, The National Prison Project of the ACLU Foundation, Inc., October 30, 2013.
[328] First Monitoring Report To the Court Re: YOU Consent Decree, at 3, *C.B., et al. v. Walnut Grove Corr. Auth.*, No. 3:10cv663, (S.D. Miss. April 4, 2013) [hereinafter First Monitoring Report] (on file with Author). *See also* Second Monitoring Report To the Court Re: YOU Consent Decree, at 3, *C.B., et al. v. Walnut Grove Corr. Auth.*, No. 3:10cv663, (S.D. Miss. Nov. 1, 2013) [hereinafter Second Monitoring Report] (on file with Author).
[329] Press Release, Mississippi Department of Corrections, MDOC Opens Youthful Offender Unit, (Dec.12, 2012), *available at* http://www.mdoc.state.ms.us/PressReleases/2012NewsReleases/New%20MDOC%20Youthful%20Offender%20Unit.pdf.
[330] Second Monitoring Report, *supra* note 328, at 1.
[331] Id at 1.
[332] Id at 4.
[333] Id.
[334] Id at 2, 3.
[335] Id.
[336] Second Monitoring Report, *supra* note 328, at 2, 3.
[337] Id at 4, 5.

charged with a major disciplinary infraction have a formal due process hearing before any disciplinary action takes place.[338] As of February 15, 2013, all YOU youth who had been held in room confinement for a major disciplinary infraction, had received a due process hearing and no youth spent more than 24 hours total in room confinement.[339]

An Incident Review Committee has been established

- An Incident Review Committee (IRC) has been established to review and analyze the use of force and restraint, and incidents events.[340] Minutes of the meetings are recorded.

- The YOU has implemented an effective grievance system that youth can readily access.[341]

[338] Id at 4.
[339] First Monitoring Report, *supra* note 328, at 6.
[340] Youthful Offender (YOU) Monitoring Checklist, at 4, *C.B., et al. v. Walnut Grove Corr. Auth.*, No. 3:10cv663, (S.D. Miss. April 4, 2013) (on file with Author).
[341] Second Monitoring Report, *supra* note 328, at 3.