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From Isolation to Independence: A Comparison Study of Juvenile Solitary Confinement Practices in the United States and Germany

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**FROM ISOLATION TO INDEPENDENCE:
A COMPARISON STUDY OF JUVENILE
SOLITARY CONFINEMENT PRACTICES
IN THE UNITED STATES AND GERMANY**

*Claire Banks**

ABSTRACT

The “tough on crime” mentality originating in the 1980’s resulted in a crackdown of juvenile offenders for categorically non-dangerous crimes, leaving many to fend for themselves in high security prisons. An even more harrowing reality, tens of thousands of juvenile offenders in those state and federal prisons today are placed in solitary confinement for week or months on end. Extensive research indicates that solitary confinement has devastating effects on human development, mental soundness, and emotional coping – effects that, unsurprisingly, are much more devastating for juveniles than adults – signaling a desperate need for change. Looking to Germany as a model for improvement, this comment provides a comparison study of juvenile solitary confinement practices in the United States and Germany. First, my research provides an in-depth history of the origin and development of solitary confinement in the United States and Germany. Next, this comment analyzes the current status of juvenile solitary confinement legislation in the United States and Germany, highlighting important legislative efforts. Third, and most importantly, this comment provides an unapologetic account of the disturbing effects of solitary confinement on juveniles. In conclusion, this comment provides recommendations for the future and a call to action for legislative efforts to set up and protect our most vulnerable population

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I. INTRODUCTION

Dr. Krisberg, an expert on juvenile justice and adult corrections, walked into deplorable conditions when he visited the Onondaga County Justice Center (“the Justice Center”) in 2016.¹ In response to a class action law suit brought by sixteen and seventeen-year-old juvenile detainees, Dr. Krisberg investigated the Segregated Housing Unit (“SHU”), which functions as the Justice Center’s solitary confinement sector, and reported conditions to be among the worst he had ever seen in the decades he has spent touring juvenile facilities around the country.² Not only are juveniles at Onondaga Justice Center housed in SHU denied human contact, the cells in SHU are dark, covered in graffiti, and unhygienic.³ Additionally, Dr. Krisberg noted a smell of human waste emitting from the general SHU area where many juvenile offenders are forced to reside for weeks, and even months at a time.⁴ Furthermore, the sole outlet for recreation in the SHU according to Dr. Krisberg could only be described as a barren, cage-like structure.⁵

Disciplinary policies at the Justice Center draw no distinction between adult and juvenile offenders. Thus, any juvenile detainee can be placed in solitary confinement,⁶ which results in being locked in a minimally furnished eight by ten feet cell for twenty-three hours a day.⁷ Juveniles housed in solitary confinement at Onondaga Justice Center brought a class action suit to challenge the imposition of solitary confinement, which in turn deprived them of educational opportunities while incarcerated, a right guaranteed to them by the

¹ *See* V.W. v. Conway, 236 F. Supp. 3d 554, 569 (N.D.N.Y. 2017).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.* at 566.

⁶ *Id.* at 566-7. Solitary confinement is a blanket term describing three types of solitary housing at the Justice Center: (1) “lock-in,” where an inmate is confined either to their own cell or to cell in the Jail’s Segregated Housing Unit; (2) “administrative segregation,” where an inmate is placed in “lock-in” or the SHU in response to alleged misbehavior pending a disciplinary hearing, which can take up to 15 days to occur; or (3) “punitive segregation,” an additional period of lock-in or SHU time imposed after a disciplinary hearing takes place.

⁷ *Id.* at 567.

Individuals with Disabilities Education Act (“IDEA”).⁸ Under IDEA, detainees are entitled to participate in the Incarcerated Education Program ran at the Justice Center by the Syracuse City School District (“School District”).⁹ However, juveniles housed in solitary confinement are not allowed to participate in even the bare minimum educational opportunity offered by the School District provided by IDEA.¹⁰ Instead, teachers are only authorized to hand out cell packets to the detainees in solitary confinement because they are not permitted direct access to the minors, largely depriving juvenile detainees of educational advancement.¹¹ Perhaps most alarming, minor detainees can find themselves in solitary confinement for even slight misbehavior,¹² and the Justice Center relies heavily on isolation in solitary confinement rather than implementing lesser sanctions that would allow youths to continue participation in the educational opportunities provided by the School District.¹³

The narrative of the Justice Center’s juvenile detainees is not an exception to the general rule of juvenile detention but rather, is more common than society would like to believe. Solitary confinement is typically seen as an adult correctional practice, but in reality, tens of thousands of juvenile offenders are housed in solitary confinement across the United States at any given time.¹⁴ In prisons throughout the country, young adults may spend weeks or even months in solitary confinement. Typically the purpose is to punish detainees who prison guards consider disruptive.¹⁵ Housing youths in solitary confinement

⁸ *Id.* at 566. IDEA is a program guaranteeing special education services and other procedural protections to which detainees are entitled.

⁹ *Id.*

¹⁰ *Id.* at 567.

¹¹ *Id.* Cell packets contain newspaper clippings, crossword puzzles, and problem worksheets. No direct instruction is provided concerning the packets, which are distributed only sporadically and students in solitary confinement “rarely return completed cell packets” for grading, follow-up, or other meaningful evaluation. *Id.* at 578.

¹² *Id.* at 567. Juvenile detainees are placed in solitary confinement for yelling, talking to friends, etc.

¹³ *Id.*

¹⁴ ACLU BRIEFING PAPER: THE DANGEROUS OVERUSE OF SOLITARY CONFINEMENT IN THE UNITED STATES 8 (2014).

¹⁵ *Id.* at 9.

is sometimes in an effort to protect them from other inmates, especially when youths are housed in adult prisons, which are often breeding grounds for abuse of minor detainees.¹⁶ Unfortunately, the alleged goals of deterrence and protection through placement of youthful offenders in solitary confinement are simply not being met by the current solitary confinement practices in place, and are resulting in harmful and lasting consequences for youthful offenders.

The practices in American prisons seem inhumane when compared with Germany's Juvenile Justice system, where solitary confinement is used only as an extreme measure in emergency situations.¹⁷ Germany's Juvenile Justice System focuses on rehabilitation, meditation, restitution, reparation, and social and vocational punishment.¹⁸ Juvenile imprisonment, especially solitary confinement, is seen as an ultimate last resort, with the maximum sentence of imprisonment typically being five years, or ten years for certain serious offenses.¹⁹ Perhaps most importantly, juvenile detainees in the German Justice System retain their humanity and develop their independence, despite being incarcerated, which improves their chances of positively reintegrating into society post release.

The United States' legislature has crafted several bills that would ban solitary confinement for juveniles and in turn, create a disciplinary system focused on rehabilitation and acceptance, similar to Germany's juvenile justice system.²⁰ For years, proposed legislation outlawing solitary confinement for juveniles in the United States continually failed to pass in the Senate. However, in December 2018, a bill mandating the abolishment of juvenile solitary confinement in federal prisons passed in the Senate.²¹ Signaling greater recognition for reform and increased public awareness of juvenile solitary

¹⁶ *Id.*

¹⁷ See Alison Shames et. al., *Sentencing and Prison Practices in Germany and the Netherlands: Implications for the United States*, VERA INSTITUTE OF JUSTICE 38 (2013).

¹⁸ *Id.* at 14.

¹⁹ *Id.*

²⁰ See 115 H.R. 1926; Solitary Confinement and Reform Act of 2018, 115 H.R. 5710; Protecting Youth from Solitary Confinement, 114 Bill Tracking H.R. 2823.

²¹ See First Step Act 115 S. 756, 115th Cong. (2018).

confinement, the bill proves there is hope for positive change in the juvenile justice system in the future and continued legislative efforts.

This comment will provide a comparison study of juvenile solitary confinement practices in the United States and Germany, and identify potential reforms for America's juvenile solitary confinement practices. First, this comment will discuss the history of juvenile solitary confinement and how the practice has evolved to current standards today, both in the United States and Germany. Next, this comment will provide information concerning federal law pertaining to juvenile solitary confinement, including current legislative efforts in the United States and in Germany. Then, the discussion section will provide an extensive review of the effects of solitary confinement on juveniles, the reasons for placing juvenile offenders in solitary confinement, the lack of regulation and arbitrariness of practices, and finally, the path toward reform of juvenile solitary confinement practices in the United States using Germany's system as a model. Lastly, this comment will discuss alternatives to solitary confinement in the U.S. and the future of juvenile solitary confinement.

II. BACKGROUND: THE CREATION AND EVOLUTION OF JUVENILE SOLITARY CONFINEMENT

A. Historical Overview of Solitary Confinement

Solitary confinement in the United States and Germany involves a complex and sordid history for both adult and minor prisoners. Today, solitary confinement practices in the United States still require significant reform, whereas solitary confinement practices in Germany have proven to be effective and rehabilitative, which benefits offenders who will eventually be reintegrated into society upon release from incarceration.

1. History of Juvenile Solitary Confinement in the United States

As one of the most severe forms of punishments in America, solitary confinement is largely regarded as a punishment reserved for adults, and the most dangerous ones at that. This idea rests on the notion that children are neither at a mental nor physical developmental

level to endure the harsh realities of solitary confinement. In addition, solitary confinement affects youths more intensely and for a much longer amount of time due to their lack of life experience that would otherwise assist them in coping with weeks or months of solitary confinement. Despite these widely accepted notions, children have been housed in solitary confinement for many years. Limited data exists on rates of juvenile solitary confinement because the federal government does not require prison facilities to report the number of juveniles in solitary confinement or the amount of time juveniles spend in solitary.²² Individual states provide some data on juvenile rates of solitary confinement, along with independent institutions, but data remains lacking.²³

The rise of juvenile solitary confinement follows a similar trend to that of the rising rates of adult solitary confinement. In the 1980s and 1990s, during the emergence of super-max institutions, the juvenile crime rate increased greatly, particularly with violent crimes.²⁴ Beginning in 1984, rates of violent crime, specifically homicide, rape, robbery, and aggravated assault, began rising from 386 per 100,000 persons age twelve to seventeen to a peak of 704 per 100,000 persons age twelve to seventeen in 1994.²⁵ In response, new legal mechanisms were adopted that tried and punished children like adults in order to combat the fear that juveniles would become as dangerous and deviant as adult offenders.²⁶ Many of these new policies purported the alleged goals of deterrence and retributive punishment, a combination that amounted to “adult time for adult crime.”²⁷ Ultimately, these tough-on-crime policies resulted in tens of thousands of youths being treated as adults each year, and in turn, being placed in solitary confinement.²⁸

²² See Jessica Lee, *Lonely Too Long: Redefining and Reforming Juvenile Solitary Confinement*, 85 *FORDHAM L. REV.* 845, 855 (2016).

²³ *Id.*

²⁴ HUMAN RIGHTS WATCH & ACLU, *GROWING UP LOCKED DOWN: YOUTH IN SOLITARY CONFINEMENT IN JAILS AND PRISONS ACROSS THE UNITED STATES* 3 (2012).

²⁵ Project, *Understanding the “Whys” Behind Juvenile Crime Trends* 20 (2012).

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

Although interstate and federal laws vary widely, and regulations within individual state prisons at that, the effects of solitary on youthful offenders remain painfully similar.²⁹ For many youths, once they are tried and punished as adults there is no turning back to the juvenile system. In turn, they lose an opportunity to receive a combination of adult and juvenile punishments,³⁰ which would likely reduce the number of minors being placed in solitary confinement because juvenile justice systems typically focus on rehabilitation and reintegration into society instead of punishment.³¹ Historically, juveniles were treated as a special population in need of protection in the prison system,³² especially in adult prisons where they were regularly subject to physical and sexual abuse.

Today, thousands of children are currently being held in solitary confinement in both adult and juvenile correctional facilities across America, often for twenty-two or twenty-three hours a day with no human interaction. Mass incarceration of America's youth and the issue of punishing children by putting them in solitary confinement continues to increase. Despite a growing awareness of the risks of putting children in solitary confinement, the question of when juvenile solitary confinement in America will be abolished remains unanswered.

2. History of Adult Solitary Confinement in Germany

Germany's sordid past with the domination of Adolf Hitler and the Nazi Regime provides an interesting backdrop for the criminal justice gains they have achieved, as Germany has become a leader in prison reform and rehabilitative practices. While America became a world leader in punishing offenders with solitary confinement, German scholars began realizing the troubling effects of prolonged isolation and torture as early as 1854.³³ Indeed, from 1854 to 1909, thirty-seven articles were published in German scientific journals that

²⁹ *Id.*

³⁰ *Id.* at 12.

³¹ *Id.* at 14.

³² *Id.*

³³ Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 WASH. U. J. L. & POL'Y 325, 342 (2006).

documented the psychotic disturbances experienced by prisoners.³⁴ Psychological problems appeared very prevalent among German prisoners, and efforts were made to reform institutions to create more humane prison environments.³⁵ The studies provided varying information on the effects of long term imprisonment and the long term psychological effects,³⁶ but the most harmful punishment remained solitary confinement.³⁷ During the second half of the nineteenth-century, many prisons in Germany developed a model similar to the American Pennsylvania model,³⁸ with an increased focus on isolation and solitary confinement.

Solitary confinement for adults in Germany today is used only in emergency circumstances and is considered a last resort for punishment. German prisons have implemented a wide variety of disciplinary measures that are unique to each offender's needs, instead of relying solely on isolation for disruptive or dangerous prisoners. Today, German prisons impose solitary confinement very sparingly, and only for a few hours or days at the absolute maximum.³⁹ Prison officials have recognized the debilitating effects of solitary confinement and in response, created more humane ways to respond to inmates that misbehave.⁴⁰ One of the most significant consequences of solitary confinement is a feeling of helplessness, as there is typically no outlet for the pain that offenders experience while in solitary, and German prisons recognize the need to alleviate that feeling. Instead of resorting to the harshest option of solitary confinement, many German prisons implement alternative sanctions such as restricted movement in their current housing unit and reduction of other privileges.⁴¹ Tactics such as these reinforce the idea that offenders must obey prison rules but allow them to maintain their dignity and sanity, two things often lost when living in isolation.

³⁴ *Id.* at 432.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

3. History of Juvenile Solitary Confinement in Germany

Following World War II and the Nazi regime, the Federal Republic of Germany adopted the Juvenile Court Act (“JCA”)⁴² to provide legal protection for its’ youth.⁴³ The JCA embodies not only juvenile criminal law but also the juvenile judicature, special proceedings conducted by juvenile courts, and regulations for sentencing procedures and penal sanctions such as confinement and confinement-related measures,⁴⁴ including solitary confinement implementation. In the wake of the horrors of Nazi Germany and the devastation of World War II, Germany presumably intended to reform their juvenile justice system to redefine their past and treatment of youth. On an international level, the JCA also provided a model for other war-torn countries to redefine their own juvenile justice practices and realize the risks of mishandling youthful offenders, as they will eventually be reintegrated into society. The development of the JCA reflects the historical transition of German society between the years of 1923 to 1943, where the country experienced a shift from the nineteenth century civil constitutional state to the social welfare state.⁴⁵ During this time, marking the beginning of the twentieth-century, two contrasting views regarding an independent juvenile justice system developed as to the treatment of young offenders. First, some proponents argued for all forms of antisocial juvenile conduct to be governed by purely educational measures, regardless of whether the youths’ delinquent behavior grew into criminal action or a state of neglect.⁴⁶ The second view purported to retain the criminal law in the case of minor offenders, but also wanted to transform criminal law

⁴² Gunther Kaiser, *The Juvenile Justice System: The Case of Germany*, 18 LEGAL STUD. F. 319, 320 (1994).

⁴³ *Id.*; See generally articles 5 para. 2, 11 para. 2 and 113 para. 3 Constitution of the Federal Republic of Germany. The general term “legal protection for youth” encompasses all those legal policy measures by which legislation strives to protect children and juveniles from danger. This goal has constitutional priority and allows constitutional rights to be restricted.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

into a special penal law by incorporating educational aspects.⁴⁷ Ultimately, the German legislature adopted the second view, creating a dual-track system⁴⁸ governing both criminal and welfare responsibilities for juveniles.

With this transition, the juvenile criminal justice system took the responsibility of socio-educative methodologies, with the primary goal of maintaining justice for youth.⁴⁹ The JCA has been in force in the new federal German states since the accession of the German Democratic Republic to the Federal Republic of Germany on October 3, 1990. Additionally, special provisions were included in the Unification Act, which furthered the efforts of adopting a comprehensive juvenile justice system under the ideologies of the JCA.⁵⁰ The underlying foundation of the juvenile justice system in Germany is education, in the sense of a conversion of classical, retaliatory criminal justice system to a specialized prevention-oriented criminal justice system with an emphasis on a reform of penal regulations relevant to youthful offenders.⁵¹

Juvenile imprisonment under the JCA is the only genuine penalty recognized in German Juvenile Criminal Law, and represents the *ultima ratio*⁵² of juvenile criminal law, meaning imprisonment will only be imposed if all other disciplinary and corrective measures are exhausted whether the measures are designed to combat the offender's predisposition to criminality or as punishment for a very serious crime.⁵³ Indeed, the JCA defines a criminal sentence as "deprivation of liberty in a reformatory," representing a "deliberate evil" imposed for

⁴⁷ *Id.* This design was to keep the juvenile court as a guardianship body in charge of youth welfare administration and to extend responsibilities to non-delinquent juveniles as well.

⁴⁸ *Id.* The Youth Welfare Act was enforced on July 9, 1922 and the Juvenile Court Act was drafted on February 16, 1923.

⁴⁹ *Id.*

⁵⁰ *Id.* Since an independent juvenile criminal law had ceased to exist in the German Democratic Republic in 1968, juvenile courts also had to be established there.

⁵¹ *Id.* at 321-22.

⁵² *Id.* *Ultima ratio* is a Latin term meaning "last resort."

⁵³ *Id.* at 335.

a culpable wrong.⁵⁴ If a sentence is ultimately imposed, the sentence is determined by a judge with a minimum of six months and a maximum of five years, excluding capital offenses for which the maximum is ten years.⁵⁵ Judicial discretion is further narrowed pursuant to section 18 JCA⁵⁶ and the remainder of a juvenile sentence can be suspended after part of it is served,⁵⁷ ensuring the best possible course of reintegration to society for youthful offenders. Instead of imprisonment being the first resort, German officials decided that imprisonment, and the harshest sentence of solitary confinement at that, would be an absolute last resort for juvenile detainees.

Although Germany's juvenile criminal justice system recognizes the need for redressing wrongs through punishment, there is a clear understanding that imprisonment is not the best punishment option to meet the goal of rehabilitation. These ideals are reflected in the lack of solitary confinement in Germany's juvenile prisons. Today, many of the goals purported by the legislature at the beginning of the twentieth-century remain at the center of juvenile detention practices. Youths are given the opportunity to work, spend time with other inmates, continue their education, and perhaps most importantly, retain their humanity while incarcerated.⁵⁸ Instead of locking up inmates in solitary confinement for minor misbehavior, prison guards in Germany emphasize the need for juvenile detainees to understand why they are incarcerated and what they can do to improve their own lives,⁵⁹ ultimately instilling the concept of deterrence through positive reinforcement instead of negative reinforcement achieved through punitive measures. Prisons in Germany retain the option of solitary confinement, likely as a safety precaution, but it is rare that a juvenile inmate will be subjected to the harshness that is isolated imprisonment. Much of Western Europe has adopted a similar mantra in the twenty-first-century when it comes to incarcerating and punishing youths,

⁵⁴ *Id.*

⁵⁵ *Id.* at 336.

⁵⁶ *Id.* Section 18 JCA establishes that the "juvenile sentence is to be determined in a manner as to render possible the necessary educative influence."

⁵⁷ *Id.*

⁵⁸ Rosemary Jenkins, *Comparative Prison Systems: America vs. Germany*, LA PROGRESSIVE (Oct. 25, 2016), <https://www.laprogressive.com/german-prisons/>.

⁵⁹ *Id.*

evidencing a trend away from practices like solitary confinement, largely based on research indicating the troubling effects of solitary confinement, especially for the most vulnerable population.⁶⁰

B. Juvenile Solitary Confinement Legislation in the United States and Germany

In recent years, awareness concerning the serious impact that solitary confinement has on juvenile detainees has grown exponentially. However, several bills proposed by the legislature in the United States have failed to pass in the Senate and House of Representatives. The bills fail for several reasons, which are discussed below, along with the future of legislative action in regard to the juvenile justice system. Conversely, German law provides protection for their juvenile offenders, through the adoption of the United Nations Convention of Rights of the Child and implementation of laws that ensure a minimal opportunity for juvenile imprisonment.⁶¹

1. President Obama's Ban on Juvenile Solitary Confinement

In January 2016, President Barack Obama announced a complete ban on juvenile solitary confinement in federal prisons, evidencing the pressing nature for juvenile justice reform in the United States.⁶² In an op-ed published by the Washington Post concerning his ban on juvenile solitary confinement, Obama noted the serious psychological effects⁶³ of solitary confinement and insisted that the

⁶⁰ *Id.*

⁶¹ *See generally* Convention on the Rights of the Child, U.N. GAOR, 45th Sess., 61st Plen. Mtg., art. 37, U.N. Doc A/RES/44/25 (1989), <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>.

⁶² Juliet Eilperin, *Obama Bans Solitary Confinement for Juveniles in Federal Prisons*, WASH. POST (Jan. 26, 2016) https://washingtonpost.com/politics/obama-bans-solitary-confinement-for-juveniles-in-federal-prisons/2016/01/25/056e14b2-c3a2-11e5-9693-933a4d31bcc8_story.html?noredirect=on&utm_term=.2addf539422c.

⁶³ Michael D. Shear, *Obama Bans Solitary Confinement in Juvenile Prisons*, NY TIMES (Jan. 25, 2016) <https://www.nytimes.com/2016/01/26/us/politics/obama-bans-solitary-confinement-of-juveniles-in-federal-prisons.html>. Former President Obama reported that solitary confinement “has been linked to depression, alienation, withdrawal, a reduced ability to interact with others and the potential for violent behavior.” Additionally, “Some studies indicate that it can worsen existing mental illnesses and even trigger new ones.”

practice was simply not making society safer.⁶⁴ The federal ban outlined executive actions that regulate the implementation of juvenile solitary confinement and prohibit federal prison officials from placing juveniles in solitary confinement for low level offenses.⁶⁵ Six months prior to announcing the ban, President Obama instructed the United States Justice Department to review how solitary confinement is being used by the Federal Bureau of Prisons, and the Justice Department's findings inspired development of the federal ban.⁶⁶ The Justice Department's findings evidenced the overuse of solitary confinement in the United States, particularly for juveniles who are not a danger to other inmates or commit low level infractions while incarcerated. The Justice Department also implemented fifty guiding principles for federal correctional facilities, which are non-negotiable and must be followed.⁶⁷ Additionally, the Justice Department's report recommended that inmates with serious mental illnesses, including juvenile inmates, would be placed in "secure mental health units," a form of less restrictive yet still protective custody.⁶⁸ Awareness of the mental health consequences resulting from solitary confinement was a huge step in the right direction for the American juvenile justice system, and prefaced a movement toward safer practices for juvenile detainees.

Unfortunately, an apparent lack of regulation meant federal prison officials could largely cut corners and refuse to implement the guidelines created by the Justice Department. President Obama's willingness to take a stand against the overuse of punitive measures like solitary confinement for juveniles evidenced the movement away

⁶⁴ Barack Obama, *Barack Obama: Why We Must Rethink Solitary Confinement*, WASH. POST (Jan. 25, 2016), https://www.washingtonpost.com/opinions/barack-obama-why-we-must-rethink-solitary-confinement/2016/01/25/29a361f2-c384-11e5-8965-0607e0e265ce_story.html?utm_term=.85243ef24ddc

⁶⁵ Eilperin, *supra* note 62.

⁶⁶ *Id.*

⁶⁷ *Id.* The guidelines suggested by the Justice Department include increasing the amount of time inmates placed in solitary confinement can spend outside of their cells, housing prisoners in the "least restrictive setting necessary" to ensure their safety and that of others, putting inmates who need to be in protective custody in less restrictive settings and developing policies to discourage putting inmates in solitary confinement during the last 180 days of their terms.

⁶⁸ Shear, *supra* note 63.

from harsh practices in federal prisons, but a serious need for reform continues to exist in the United States. Although an innovative and necessary ban, President Obama's ban on solitary confinement actually did little on a substantive level for juvenile offenders being subjected to solitary confinement. In large part the lack of implementation was because President Obama's ban on juvenile solitary confinement in federal prisons was an executive order and therefore did not hold the power of a statute.⁶⁹ Additionally, the executive ban only applied to federal prisons, and states were thus allowed to wholly disregard the ban and continue to place juvenile offenders in solitary confinement in state prisons across the country. Nevertheless, the federal ban signaled a positive movement for the juvenile justice system toward reform and sparked awareness in society for many Americans who were unaware of the overuse of solitary confinement of juvenile detainees.

2. Juvenile Solitary Confinement and the United States Legislature

At the legislative level, efforts have been put forth to create a bill banning solitary confinement for juveniles; arguably a necessary action because statutory power would require enforcement of the ban. In 2015, a bill amending Title 18 of United States Code was introduced in the House of Representatives.⁷⁰ Section 5039 of Title 18, "Commitment," mandates juveniles who have been committed "shall be provided with adequate food, heat, light, sanitary facilities, bedding, clothing, recreation, counseling, education, training, and medical care including necessary psychiatric, psychological, or other care and treatment," most if not all of which are denied to juveniles who are placed in solitary confinement.⁷¹ Thus, the United States Congress introduced the "Protecting Youth from Solitary Confinement Act," a bill that would ensure juveniles adjudicated in Federal delinquency proceedings are not subject to solitary confinement while committed to juvenile facilities.⁷² A monumental step for the legislature, as the

⁶⁹ Brielle Basso, *Solitary Confinement Reform Act: A Blueprint for Restricted Use of Solitary Confinement across the States*, 48 SETON HALL L. REV. 1601, 1612 (2018).

⁷⁰ Protecting Youth From Solitary Confinement Act, H.R. 2823, 114th Cong. (2015) [hereinafter Protecting Youth Act].

⁷¹ *Id.*

⁷² *Id.*

overuse of juvenile solitary confinement had largely been ignored by federal prison officials, the Protecting Youth Act unfortunately failed at introduction.⁷³ Notably, co-sponsors of the bill were all members of the democratic party, signaling the illogical partisan undertone of the issue of juvenile solitary confinement.⁷⁴ The partisan nature of juvenile solitary confinement legislation seemingly stems from the traditional conservative “tough-on-crime” mentality, a response to the rise in juvenile crime in the 1980’s and 1990’s.⁷⁵ The tough-on-crime wave meant harsher sentences for juveniles, including life without parole and at the most extreme, capital punishment, until the decision in the landmark Supreme Court Case, *Roper v. Simmons*, which held the execution of minors unconstitutional.⁷⁶

Although juvenile crime rates have steadily decreased since the 1990’s, the tough-on-crime ideology still exists in the United States, despite proving to be ineffective in decreasing juvenile crime rates, and continues to be a political issue.⁷⁷ Seemingly, Republican senators that refused to sponsor the Protecting Youth Act did so in an attempt to maintain their tough-on-crime mantras and reassure the public that dangerous children will be kept off the streets. Thus, the 2015 Protecting Youth Act failing at introduction did not come as a surprise to many, but legislative efforts to ban solitary confinement continue.

In 2017, the “Maintaining Dignity and Eliminating Unnecessary Restrictive Confinement of Youths Act” was introduced in the House.⁷⁸ The Confinement of Youths Act seeks to amend Title 18 of the United States Code and purports to place restrictions on the use of solitary confinement for juveniles in federal custody, likely reducing both the number of juveniles in solitary confinement and the

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Youth in the Justice System: An Overview*, JUV. LAW CENT. <https://jlc.org/youth-justice-system-overview>

⁷⁶ *Id.*; *Roper v. Simmons*, 543 U.S. 551 (2005).

⁷⁷ HUMAN IMPACT PARTNERS, *JUVENILE INJUSTICE: CHARGING YOUTH AS ADULTS IS INEFFECTIVE, BIASED, AND HARMFUL* 3 (2017).

⁷⁸ *Maintaining Dignity and Eliminating Unnecessary Restrictive Confinement of Youths Act*, 115 H.R. 901, 115th Cong. (2017) [hereinafter *Confinement of Youths Act*].

amount of time that juveniles can spend in solitary confinement.⁷⁹ More specifically, § 5043 of the Confinement of Youths Act would prohibit the implementation of solitary confinement for juveniles as a form of “discipline, punishment, retaliation, or any reason other than the temporary response to a covered juvenile’s behavior that poses a serious and immediate risk of physical harm.”⁸⁰ The Confinement of Youths Act also requires annual reports⁸¹ from the Attorney General in order to better assess the current status of juvenile solitary confinement in federal prisons, to hold prison officials accountable for their actions and to assess changes that need to be made.⁸² Currently, the Confinement of Youths Act has been introduced in the House but has a low chance of passing the next stage.⁸³ Likely, the low chance of success can be at least somewhat attributed to the political discord in the United States and the tough-on-crime mentality discussed above.

Most recently, in May 2018 “The Solitary Confinement Study and Reform Act of 2018” was introduced to the House.⁸⁴ The Study and Reform Act provides that solitary confinement for juveniles can only be utilized when the safety or security of the facility or another person is at imminent risk.⁸⁵ Although not proposing an outright ban on solitary confinement, the Study and Reform Act is a step in the right direction in combatting the overuse of juvenile solitary confinement because solitary confinement would be reserved solely for juveniles posing immediate risks to other inmates. Similar to German practices, the ban would reduce the number of juveniles in solitary confinement

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.* The act provides that the Attorney General submit a report containing (1) a detailed description of the type of physical force, restraints, and room confinement used at juvenile facilities; (2) the number of instances in which physical force, restraints, or room confinement are used at juvenile facilities, disaggregated by race, ethnicity, and gender; and (3) a detailed description of steps taken, in each instance in which room confinement is used at a juvenile facility to address and remedy the underlying issue that led to behavioral intervention resulting in the use of room confinement, including any positive or negative outcomes.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *See* The Solitary Confinement Study and Reform Act, 115 H.R. 5710, 115th Cong. (2018) [hereinafter Study and Reform Act].

⁸⁵ *Id.*

while still protecting other inmates from violent offenders putting others at risk. However, even the most dangerous offenders should be given larger, normal sized cells with access to recreation and educational opportunities because the conditions of solitary confinement currently are extremely detrimental to inmates.⁸⁶ Additionally, the Study and Reform Act states that solitary confinement for juveniles must be limited to fewer than thirty days in any forty-five day period, with certain exceptions.⁸⁷ Similar to the Protecting Youth from Solitary Confinement Act, the Study and Reform Act also requires mandatory reporting by the Attorney General to the chief executive of each state and the head of the department of juvenile justice of each state.⁸⁸ Not surprisingly, this bill also has a low chance of passing to the next stage, and has only been introduced to the house at this point.⁸⁹ A more moderate approach to the issue of juvenile solitary confinement, the Study and Reform Act may be able to survive the scrutiny of conservative representatives in the House because it does not require a ban on solitary confinement for juveniles. The Study and Reform Act does not go far enough to combat the pressing issue of juvenile solitary confinement because states are not required to follow the act, but is certainly a step in the right direction toward reform.

3. The United Nations Convention of the Rights of the Child

The United Nations Convention on the Rights of the Child (“UN Convention”) is a monumental human rights treaty created to protect human dignity, freedom, and justice in the lives of children.⁹⁰ Adopted and opened for signature in 1989, the treaty lays out fifty-four articles concerning the treatment and protection of children.⁹¹ Perhaps most importantly, the treaty notes that “the child, by reason

⁸⁶ See generally ACLU, *supra* note 14.

⁸⁷ *Supra* note 78. The exceptions noted in the act are: when the head of a correctional facility makes an individualized determination that prolonged solitary confinement of the prisoner or detainee for a serious disciplinary infraction is necessary for the order or security of the institution, or a prisoner or detainee requests such placement.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Supra* note 61.

⁹¹ *Id.*

of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection. . . .”⁹² Juvenile solitary confinement fits squarely in violation of the treaty’s mission and purpose, as the practice restricts many of the liberties the treaty considers fundamental. Accordingly, Article 37 provides protection for juvenile detainees faced with imprisonment.⁹³ Article 37 of the UN Convention is directly applicable to solitary confinement for juveniles because, among other reasons,⁹⁴ the isolationist rationale behind the practice constitutes cruel and inhumane punishment.

Germany signed the United Nations treaty in January 1990 and ratified it in March of 1992.⁹⁵ Germany’s acceptance of the UN treaty signaled their commitment to protecting children and fostering a safe environment through love, happiness, and understanding.⁹⁶ Although Article 37 does not directly address solitary confinement, the guidelines for imprisonment underscore the need for humane imprisonment and only imposing such imprisonment when absolutely necessary.⁹⁷ In 2017, twenty-five years after signing the treaty, officials in Germany

⁹² *Id.*

⁹³ *Id.* Article 37 provides (a) no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment . . . ; (b) . . . the arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time; (c) every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age . . . ; (d) every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty. . . .”

⁹⁴ *Id.* Solitary confinement also tends to deprive juveniles of educational opportunities, human interaction, recreational activities, which ultimately deprives juveniles of fundamental rights guaranteed to them.

⁹⁵ United Nations, *Treaty Series*, vol. 1577, p. 3; depositary notifications C.N.147.1993.TREATIES-5 of 15 May 1993 [amendments to article 43 (2)]¹; and C.N.322.1995.TREATIES-7 of 7 November 1995 [amendment to article 43 (2)]. https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&lang=en.

⁹⁶ Nina Niebergall, *Germany Rediscovered Children’s Rights on UN Convention Anniversary*, DEUTSCHE WELLE (2019), <https://www.dw.com/en/germany-rediscovered-childrens-rights-on-un-convention-anniversary/a-38298303>.

⁹⁷ *Supra* note 61, at art. 37.

reported a change in the way the country's adults understand children, and that compared to twenty-five years ago, no one would say that children should not be taken seriously.⁹⁸ Changes include a better understanding of children's needs and desires, along with the notion that children are simply different than adults, and must be treated in ways reflecting those differences.⁹⁹ The environment for children being fostered in Germany is reflected in their juvenile justice system, as juveniles are treated with dignity and respect even though they may have committed a wrong actionable by law.

The UN Convention was a monumental step in the right direction and a call to action for countries around the world to implement sound policy in regard to their juvenile population. Disappointingly, the United States is the only developed, and the only United Nations member state that has not adopted the treaty arising from the UN Convention.¹⁰⁰ Moreover, the treaty was never sent to the United States Senate for consent and approval.¹⁰¹ Critics argue that refusal to adopt the treaty can in part be attributed to partisan conflict between democrats and republicans, as the Republican party fears implications the treaty may have on United States sovereignty and the concept of federalism.¹⁰² However, potential benefits resulting from adoption of the treaty far outweigh any negative implications that may arise.

The American Civil Liberties Union ("ACLU") correctly notes that the most pronounced area where the United States denies children of their fundamental rights is the criminal justice system, due to the mass incarceration of youths and the lack of rehabilitative measures within prisons.¹⁰³ Rehabilitation was considered one of the foundational goals of the juvenile justice system from its inception.

⁹⁸ *Supra* note 96.

⁹⁹ *Id.*

¹⁰⁰ Sarah Mehta, *There's Only One Country That Hasn't Ratified the Convention on Children's Rights: US*, ACLU BLOG (November 20, 2015, 1:30 PM), <https://www.aclu.org/blog/human-rights/treaty-ratification/theres-only-one-country-hasnt-ratified-convention-childrens>.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

Unfortunately, the juvenile justice system continues to move away from a rehabilitative platform and instead pushes a punitive agenda.¹⁰⁴ Juvenile offenders imprisoned in adult facilities are in extremely vulnerable situations, often at risk of sexual assault and suicide.¹⁰⁵ The threat of suicide is even higher when youths are placed in solitary confinement, and implementing aspects of the UN treaty could mitigate these irreversible effects. Adopting the UN treaty could foster important changes in the American juvenile justice system as it has done in Germany, but the question remains of whether lawmakers will be willing to take that step.

Despite misplaced fears held by Americans, adopting the treaty would not only improve the lives of children but would also improve America's reputation on a global scale. As of 2015, the United States was one of just three countries that had not ratified the Convention on the Rights of the Child, the other two being Somalia and South Sudan, two countries with vastly different juvenile justice practices compared to the United States.¹⁰⁶ For example, children in Somalia can still be executed, some as young as age fourteen.¹⁰⁷ Similarly, a sixteen-year-old boy languished on death row at Juba Central Prison in South Sudan just last year, even though capital punishment for children is prohibited under South Sudan's 2011 Transitional Constitution.¹⁰⁸

Nonetheless, Somalia and South Sudan ultimately ratified the treaty in 2015, evidencing actual effort toward reform, leaving the United States as the sole outlier of countries that have not ratified the UN treaty.¹⁰⁹ Ratification by Somalia and South Sudan suggest the United States has no valid reason not to ratify, since the U.S. has greater means to protect children and should desire to increase that

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Somalia: Halt execution spree of children in Puntland*, AMNESTY INT'L (Apr. 28, 2017), <https://www.amnesty.org/en/latest/news/2017/04/somalia-halt-execution-sprees-of-children-in-puntland/>.

¹⁰⁸ *South Sudan: Execution spree targets even children and threatens nursing mothers*, AMNESTY INT'L (December 7, 2018), <https://www.amnesty.org/en/latest/news/2018/12/south-sudan-execution-sprees-targets-even-children-and-threatens-nursing-mothers/>.

¹⁰⁹ *Supra* note 100.

protection.¹¹⁰ The disparities between the U.S. and Somalia and South Sudan make it apparent that ratifying the Convention would be a strategic move for the United States on a political and an international relations scale because ratification would evidence a desire for positive change within the juvenile justice system. One justification for the lack of ratification may be that treaties often look good on paper, but fail to be implemented in a practical sense. However, the United States has little to lose by taking the step to ratify the UN treaty, because at the bare minimum, public awareness of the need for protection of juveniles may be increased.

4. German Legislation

In 2015, The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (“CPT”) visited German prisons and offered recommendations for improving their practices, many of which have been implemented in prisons across the country.¹¹¹ Overall, CPT reports conditions to be positive regarding the implementation in place of the fundamental safeguards against ill-treatment, but continues to encourage additional reform to ensure that juveniles are placed in a rehabilitative environment.¹¹² In regard to solitary confinement, although currently used only sparingly, the Committee strongly recommends the complete abolishment of solitary confinement for juveniles, in conformance with the United Nations Minimum Rules on the Treatment of Prisoners.¹¹³ German prison officials are actively working toward this recommended implementation based on the low percentage of German youths currently in solitary confinement. Under the Länder¹¹⁴ prison laws, solitary confinement is considered the most

¹¹⁰ David G. Littman, *Human Rights and Human Wrongs*, NAT’L REV., (Jan. 2017), <https://www.nationalreview.com/2003/01/human-rights-and-human-wrongs-david-g-littman/>.

¹¹¹ See *Generally Report to the German Government on the Visit to Germany Carried Out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)*, CPT/Inf (2017) 13.

¹¹² *Id.* at 5

¹¹³ *Id.* at 7, rule 45 (2).

¹¹⁴ See Deutscher Bundestag, *Competencies of the German Federation and the Länder*, <https://www.bundestag.de/en/parliament/function/legislation/competencies/245>

severe disciplinary sanction, with a maximum sentence of two weeks.¹¹⁵ Although two weeks in isolation can be detrimental to mental and emotional health, Germany's two-week limit is striking in comparison to the potential months or years that juvenile detainees in the United States can potentially spend in solitary confinement.

The Committee further noted the detrimental effects of solitary confinement on the physical and mental well-being of juveniles, warning German prison officials of the potential consequences that accompany the implementation of solitary confinement.¹¹⁶ Expanding on the notion that solitary confinement deprives juveniles of human contact, the Committee recommends that contact with the outside world should not be denied as a form of discipline,¹¹⁷ a practice that occurs more often than necessary to minors housed in American juvenile detention centers. Overall, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment is an instructional tool for Germany, particularly in regard to their juvenile justice system. Although the Committee's recommendations do not equate to legal standards that must be followed, the authoritative nature of the Committee provides a guiding principle for German prison officials.

The Youth Courts Law provides further guidance on the German juvenile justice system, promulgated on December 11, 1974 and most recently updated on July 8, 2008.¹¹⁸ The German Youth Courts Law is designed to recognize the youth of Germany as their own category of offenders, entirely separate from the adult population,

700. The Federal Republic of Germany is a federal state made up of sixteen constituent states, known as the Länder. Land laws may not conflict with Federal laws; ensuring that "equitable living conditions" are present throughout the Federal territory. In fields subject to concurrent legislation, criminal law being one of them, the Länder have the right to adopt legislation provided and in so far as the Federation makes no use of its legislative powers in the same field.

¹¹⁵ *Supra* note 107, at 35.

¹¹⁶ *Id.*

¹¹⁷ *Id.* at 36

¹¹⁸ GERMAN LAW ARCHIVE, YOUTH COURTS LAW, <https://germanlawarchive.iuscomp.org/?p=756#16>.

created with social, psychological, and pedagogical sciences in mind.¹¹⁹ Since its inception, the Youth Courts Law has signaled a movement away from adult criminal law, focusing on diversion, depenalization, and decarceration; ultimately causing a decline in juvenile solitary confinement.¹²⁰ Section sixteen, “Youth Detention,” provides detention of youth during leisure time should be the primary mode of discipline, and short term detention, consisting of two-days as equal to detention of leisure time should be imposed in lieu of detention during leisure time when necessary.¹²¹ In the most extreme circumstances, long-term detention can be imposed for at least one week and at most four weeks.¹²²

III. DISCUSSION: JUVENILE SOLITARY CONFINEMENT TODAY

A. Reasons for Placing Juveniles in Solitary Confinement

Juveniles are placed in solitary confinement for a multitude of reasons, the most common being punishment, management, and treatment.¹²³ In addition, correction officers commonly place juveniles in solitary confinement simply because they are unable or unwilling to deal with the inmates, using solitary confinement as a scapegoat rather than attempting to mitigate problems occurring in juvenile facilities.¹²⁴

1. Punishment

Placing youths in solitary confinement as a form of punishment for violating facility policies is a common practice in the United States to maintain internal order.¹²⁵ Correctional officers rationalize the placement of youths in isolation by insisting the juveniles in solitary are “super predators” and “the worst of the

¹¹⁹ Hans Jorg Albrecht, *Youth Justice In Germany*, 31 CRIME AND JUSTICE, YOUTH CRIME AND YOUTH JUSTICE: COMPARATIVE CROSS-NATIONAL PERSPECTIVES 443 (2004).

¹²⁰ *Supra* note 114.

¹²¹ *Id.*

¹²² *Id.*

¹²³ ACLU, *supra* note 24, at 48.

¹²⁴ *Supra* note 21, at 856.

¹²⁵ ACLU, *supra* note 24, at 48.

worst.”¹²⁶ The logic follows that those juveniles should be deprived of any special consideration based on their behavior and solitary becomes an additional punishment to incarceration in general.¹²⁷ The Human Rights Watch and the ACLU have found that jails and prisons impose solitary confinement in terms of fifteen, thirty, sixty, or ninety days for each infraction committed in a facility and also punish inmates already in solitary confinement with additional days added to their original sentence in isolation.¹²⁸

Once juveniles are accused of committing an infraction, they are typically entitled to a hearing after being served with a notice describing the charges against them.¹²⁹ Juveniles are also entitled to call witnesses for their hearings, a seemingly impossible task in prison culture because it is unsafe for inmates to speak out against other inmates and can lead to severe consequences.¹³⁰ Evidence at hearings is typically minimal but juveniles are almost always found guilty based on testimony of prison officials alone.¹³¹ If a juvenile is found guilty of an infraction, prison officials usually punish him or her with a term of isolation based on a disciplinary code.¹³² Additionally, most facilities impose the same rules and regulations for adults and juveniles, so they are often punished with the same amount of solitary confinement despite the major differences between the two groups.¹³³ In fact, age appears to be an unimportant factor, as youths reported their age was rarely discussed during their disciplinary hearings.¹³⁴ A formal appeal process does exist for disciplinary sanctions but few youths reported appealing the decisions sentencing them to solitary confinement,

¹²⁶ Andrew B. Clark, *Juvenile Solitary Confinement as a Form of Child Abuse*, 45 J. AM. ACAD. PSYCHIATRY LAW 350, 353 (2017).

¹²⁷ *Id.*

¹²⁸ ACLU, *supra* note 24, at 48

¹²⁹ *Id.* at 49.

¹³⁰ *Id.* at 50.

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*

¹³⁴ HUMAN RIGHTS WATCH & ACLU, GROWING UP LOCKED DOWN: YOUTH IN SOLITARY CONFINEMENT IN JAILS AND PRISONS ACROSS THE UNITED STATES 3, 50 (2012).

seemingly because it is difficult for children to understand and navigate the prison grievance system.¹³⁵

The most common disciplinary infraction for juveniles is fighting, either to protect themselves or fit into the culture of violence common in correctional facilities.¹³⁶ Youths also reported being tested by adult inmates when housed in the same facilities and feeling the need to defend themselves in order to avoid more abuse in the future.¹³⁷ Changing the culture of prisons is an enormous task but would likely reduce the number of fights occurring in prisons, meaning less punitive solitary confinement being imposed. Another major issue existing in punitive solitary confinement is the discretion awarded to prison officials in determining the length of time juveniles spend in isolation.¹³⁸ Officials can typically choose whether certain conduct associates with a more or less serious infraction based on a range of penalties, with little to no guidance.¹³⁹ Further, many prisons and jails do not allow officials to reduce terms of solitary confinement, leaving officials tied to strict policies even when they do not necessarily agree with the punishment.¹⁴⁰

Juveniles placed in punitive solitary confinement are typically allowed one hour outside of their cell per day and in some facilities are taken to an outdoor exercise area, usually in the form of a small cage.¹⁴¹ In addition to restricted movement, juveniles in punitive solitary confinement are often not allowed to bring certain items into their cells, such as books.¹⁴² Placing juveniles in solitary for punishment likely does not accomplish the goal of deterrence from fighting because for punishment to be effective, it must be closely linked to the target behavior, which in this scenario, is most commonly fighting between

¹³⁵ *Id.* at 51.

¹³⁶ *Id.*

¹³⁷ *Id.* at 52.

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.* at 53.

¹⁴¹ *Id.*

¹⁴² HUMAN RIGHTS WATCH & ACLU, GROWING UP LOCKED DOWN: YOUTH IN SOLITARY CONFINEMENT IN JAILS AND PRISONS ACROSS THE UNITED STATES 3, 53 (2012).

inmates.¹⁴³ For behavior change and learning to occur, repeated occurrences of the close link between the target behavior and the punishment must be present.¹⁴⁴ Here, placing juveniles in isolation for indeterminate or prolonged periods has no direct relation to the aversive conditioning goal of teaching youths to restrain themselves from fighting with other inmates.¹⁴⁵ Other forms of punishment could be implemented to teach juveniles the importance of self-control, instead of locking them away in prolonged isolation, a form of aversive conditioning¹⁴⁶ that is suspect ethically and carries an inherent risk of harm.¹⁴⁷

2. Management

Jails and prisons use solitary confinement to manage inmates in two different ways: protective solitary confinement and administrative solitary confinement.¹⁴⁸ First, protective solitary is enforced primarily to protect juveniles from adults while incarcerated, as required by several U.S. states and implemented by policy in some facilities.¹⁴⁹ Another reason for placing juveniles in protective solitary confinement is at request of an inmate, either in fear of continued abuse from other inmates already occurring, or the threat of violence in the general prison population.¹⁵⁰ In fact, some juveniles are in such fear of violence to the point of purposely committing disciplinary violations just to be placed in solitary confinement away from potential perpetrators.¹⁵¹ Youths in detention centers often find themselves choosing between physical or sexual assault and living in isolation.¹⁵² Although there is no easy solution to the realities of violent prison culture, young people should not constantly be faced with such a choice. Young people who identify as lesbian, gay, bisexual,

¹⁴³ Grassian, *supra* note 33, at 379.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.* “Aversive conditioning” is the use of punishment as a means of inducing behavior change.

¹⁴⁷ *Id.*

¹⁴⁸ ACLU, *supra* note 24, at 53.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.* at 55.

¹⁵¹ *Id.*

¹⁵² *Id.* at 56.

transgender, or intersex are also commonly placed in protective solitary confinement as a result of the increased risk of sexual abuse by other inmates.¹⁵³

Juveniles subjected to punitive solitary confinement are typically allowed out of their cell for one to two hours per day, usually alone in an indoor room.¹⁵⁴ Some facilities permit outdoor recreation for youths in punitive solitary confinement, but not all.¹⁵⁵ In addition to restricted movement, punitive solitary confinement also typically means restrictions on what can be brought into cells.¹⁵⁶ Although protective solitary confinement serves an important purpose in protecting vulnerable populations, the negative effects of solitary confinement far outweigh the positive impact of protection. Another measure of protection should be implemented to avoid juveniles who are already feeling scared and alone living in isolation.

The second type of solitary confinement used for management is administrative solitary confinement, which is frequently used to segregate inmates who prison officials cannot manage from the general population.¹⁵⁷ Prison officials rely on an inmate's classification and an evaluation of their perceived dangerousness or future threat of violence in deciding who to place in administrative solitary confinement.¹⁵⁸ Additionally, an inmate's criminal conviction and history, severity of disciplinary infractions, and other characteristics are factors in deciding whether to place someone in administrative solitary confinement.¹⁵⁹ One factor typically not considered is age, so even the youngest inmates can be placed in solitary confinement based on arbitrary distinctions.¹⁶⁰ Like protective solitary confinement, administrative can either be prolonged or short term, a decision largely

¹⁵³ *Id.*

¹⁵⁴ *Id.* at 57.

¹⁵⁵ *Id.*

¹⁵⁶ HUMAN RIGHTS WATCH & ACLU, GROWING UP LOCKED DOWN: YOUTH IN SOLITARY CONFINEMENT IN JAILS AND PRISONS ACROSS THE UNITED STATES 3, 57 (2012).

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.* at 58.

¹⁶⁰ *Id.*

left to prison officials.¹⁶¹ Also similar to protective solitary confinement, inmates in administrative solitary confinement are typically allowed out of their cell for one hour per day and items that can be brought in to cells are strictly limited.¹⁶²

3. Treatment

The final and least common reason for placing juveniles in solitary confinement is to treat psychological emergencies, either perceived or actual.¹⁶³ Historically, lengthy isolation known as seclusion was considered medically beneficial for inmates with mental health problems as a form of therapeutic intervention.¹⁶⁴ Today, medical professionals warn that prolonged isolation is detrimental to those suffering from mental health concerns and can often increase the risk of suicidal thoughts or attempts.¹⁶⁵ Young people are still subjected to medical solitary confinement for several days at a time and sometimes even weeks.¹⁶⁶ Juveniles have reported being placed in medical solitary confinement after threatening or attempting to commit suicide in other forms of solitary confinement, but it remains unclear how medical solitary confinement provides any benefit medically that is not present in other types of solitary or imprisonment in general.¹⁶⁷

Perhaps most surprising compared to other forms of solitary confinement, juveniles in medical solitary confinement, even those on suicide watch, are not permitted outside of their cells at all.¹⁶⁸ Additionally, most facilities allow almost nothing to be brought into medical solitary cells and inmates are typically naked except for a thin paper gown and a tear-resistant blanket.¹⁶⁹ Studies show that youths

¹⁶¹ *Id.*

¹⁶² *Id.* at 60.

¹⁶³ *Id.*

¹⁶⁴ HUMAN RIGHTS WATCH & ACLU, GROWING UP LOCKED DOWN: YOUTH IN SOLITARY CONFINEMENT IN JAILS AND PRISONS ACROSS THE UNITED STATES 3, 60 (2012).

¹⁶⁵ *Id.*

¹⁶⁶ *Id.* at 61.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

placed in solitary confinement are often at the greatest need for close mental health contact, instead of being placed in another type of solitary confinement that makes them feel even more isolated.¹⁷⁰ Young people subjected to medical solitary confinement as a result of mental illness often feel shamed, isolated, and ignored; ultimately exacerbating the effects of mental illness.¹⁷¹

B. Effects of Solitary Confinement

Living in solitary confinement has proven detrimental both physically and mentally to juveniles.¹⁷² The deprivations associated with solitary confinement such as education, recreation, social gatherings, and human interaction in general seriously impact youths' developmental, psychological, and physical well-being.¹⁷³ Further, because juveniles are a more vulnerable population than adults due to their incomplete development both mentally and physically, the effects of solitary confinement on juveniles are more pronounced than for adults.¹⁷⁴

1. Physical Harm

Juveniles housed in solitary confinement experience physical harm primarily in the forms of inadequate nutrition and exercise, leading to delayed physical development.¹⁷⁵ First, inadequate nutrition results from solitary confinement because juveniles are typically denied access to prison commissaries or canteens, opportunities otherwise available for juvenile inmates.¹⁷⁶ Thus, juveniles in solitary confinement are limited to the small amounts of food and often lose alarming amounts of weight.¹⁷⁷ Additionally, some prisons restrict food as a

¹⁷⁰ Clark, *supra* note 126, at 354.

¹⁷¹ *Id.* at 355.

¹⁷² ACLU, *supra* note 24, at 22.

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.* at 37.

¹⁷⁶ *Id.* at 39.

¹⁷⁷ *Id.* The ACLU interviewed multiple juveniles who were housed in solitary confinement at some point during their incarceration period. Caroline I., a minor who spent 41 days in solitary confinement, reported losing fifteen pounds over the

form of additional punishment along with being held in solitary, giving juveniles only a baked nutritional loaf instead of the typical meals provided to youths in prison.¹⁷⁸ Foods lacking nutritional value are detrimental to juveniles, affecting bone development and physical development in general.¹⁷⁹ Juveniles in solitary confinement should be afforded the same diet as juveniles in the general prison population because even if juveniles are placed in solitary as a result of misbehaving, they are still entitled to basic nutrition as wards of the state. Depriving youths of sustenance fails to accomplish any goals, other than stunting development and growth, a goal that should be eliminated entirely.

Second, solitary confinement affects youths physically because they are often deprived of adequate exercise, either by limiting exercise to one hour a day or sometimes, eliminating the opportunity for exercise completely.¹⁸⁰ For instance, youths in Florida prisons reported being denied physical recreation for the entire thirty days they spent in disciplinary solitary confinement.¹⁸¹ Other adolescents reported being denied exercise during weekends due to insufficient numbers of prison staff and still others reported being denied exercise completely, even when the facility allows outdoor recreation for other juvenile inmates.¹⁸² Facilities offering outdoor recreation do not offer much benefit to juveniles in solitary though, as the juveniles allowed to participate are commonly placed in a separate outside area, similar to a fenced in cage and barely bigger than their prison cell.¹⁸³ Denying juveniles necessary exercise is harmful to them because developing youths require exercise for healthy growth and development. The U.S. Department of Health and Human Services and the Center for Disease Control (“CDC”) recommend juveniles under age seventeen engage in

course of her time in solitary. Another juvenile inmate housed in solitary was estimated by family members to have lost fifteen to twenty pounds during his stay.

¹⁷⁸ *Id.* at 40.

¹⁷⁹ *Id.*

¹⁸⁰ HUMAN RIGHTS WATCH & ACLU, GROWING UP LOCKED DOWN: YOUTH IN SOLITARY CONFINEMENT IN JAILS AND PRISONS ACROSS THE UNITED STATES 3, 37 (2012).

¹⁸¹ *Id.*

¹⁸² *Id.* at 38.

¹⁸³ *Id.*

at least one hour of exercise per day, with an emphasis on cardiovascular activity such as running.¹⁸⁴ Additionally, both agencies emphasize the need for a combination of physical activity, incorporating bone and muscle strengthening exercises along with aerobic activity.¹⁸⁵ The combination of reduced or non-existent physical activity along with inadequate nutrition often leads to hair and weight loss, along with slowed development.¹⁸⁶

2. Psychological Harm

A general agreement exists in the scientific community that solitary confinement can result in serious and lasting mental health problems.¹⁸⁷ Adolescents in prolonged solitary confinement experience stress, anxiety, and discomfort as a result of their confinement.¹⁸⁸ Additionally, effects of solitary confinement for youths who suffer from mental disabilities and histories of trauma, abuse, and neglect before entering prison are more pronounced.¹⁸⁹ Youths have reported a multitude of concerning symptoms arising from prolonged solitary confinement, symptoms that are exacerbated with time.¹⁹⁰ Psychological harm resulting from solitary confinement also contributes to physical harm experienced by youths, as many young people report harming or cutting themselves and thinking about or attempting suicide more than once while in solitary confinement.¹⁹¹ A study of 100 completed suicides in juvenile detention facilities found that fifty percent occurred at a time when the juvenile was housed in solitary confinement, with only seventeen percent of the deceased on

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ *Id.* at 39.

¹⁸⁷ *Id.* at 23.

¹⁸⁸ HUMAN RIGHTS WATCH & ACLU, GROWING UP LOCKED DOWN: YOUTH IN SOLITARY CONFINEMENT IN JAILS AND PRISONS ACROSS THE UNITED STATES 3, 24 (2012).

¹⁸⁹ *Id.*

¹⁹⁰ *Id.* Youths interviewed for the 2012 ACLU study on juveniles in solitary confinement described thoughts of suicide and self-harm; visual and auditory hallucinations; feelings of depression; acute anxiety; shifting sleep patterns; nightmares and traumatic memories; and uncontrollable anger or rage.

¹⁹¹ *Id.*

suicide watch at the time of death.¹⁹² In addition, a study performed in New York on jail systems between 2010 and 2012 found that juveniles under age nineteen being held in solitary confinement were the two strongest correlates for self-harming behavior.¹⁹³ Authors of the study speculate that many acts of self-harm were performed in an attempt to avoid being placed in solitary, shedding light on the desperation of youths to avoid isolation.¹⁹⁴

Significantly less data exists surrounding the effects of solitary confinement on juveniles when compared to adults.¹⁹⁵ However, considering the wide range of data available on the mental health impacts of solitary confinement on adults, there is general agreement in the psychiatric community that by virtue of their immaturity, juveniles are more greatly affected in terms of mental health than adults.¹⁹⁶ Adults housed in solitary confinement are at high risk for severe psychological damage as a result of being isolated and juveniles are at an even greater risk of psychological harm because of their vulnerability.¹⁹⁷ Combined with juveniles' inability to cope with intense mental stressors, psychological harm resulting from solitary confinement often means long term mental health effects for many youths housed in solitary confinement.¹⁹⁸ Youths have reported various coping mechanisms employed to deal with the harsh realities of solitary confinement such as dissociation and playing make believe games in attempts to pass the time while in isolation.¹⁹⁹ Unfortunately, coping mechanisms such as the ones noted above often lead to unhealthy mental practices such as youths talking to themselves and feeling like they are losing their sense of reality.²⁰⁰ Many youths

¹⁹² Clark, *supra* note 126, at 352.

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ ACLU, *supra* note 24, at 25.

²⁰⁰ *Id.* A fourteen-year-old youth interviewed described feeling like he “was going mad” and started talking to himself and answering himself, along with talking in gibberish and making up his own language. In turn, corrections officers didn’t know what he was talking about and he eventually said “the hell with it, and started acting insane.”

described the attempts to cope as losing a battle with themselves, as nothing they were capable of doing necessarily distracted from the harsh reality of prolonged isolation.²⁰¹ Often, the inability to cope causes juveniles to become lost in an uncontrollable rage.²⁰² One youth described a constant feeling of claustrophobia while in solitary confinement, causing him to become angry and aggressive, feeling like he was constantly experiencing anxiety attacks.²⁰³

An additional problem existing for juveniles in solitary confinement today is the lack of mental health care or treatment.²⁰⁴ Youths with preexisting mental health conditions as well as those who develop mental health problems while in prison are not provided with adequate care, often causing their mental health to deteriorate at an advanced rate.²⁰⁵ Instead of assisting youths who suffer from mental health problems or providing treatments, some prison officials actually punish youths further for experiencing mental health issues.²⁰⁶ Corrections staff often resort to punishing conduct related to mental health problems or diverting juveniles from one form of solitary confinement to another.²⁰⁷ If mental health problems are already exacerbated in solitary confinement, it is difficult to comprehend that moving juveniles from one form to of solitary confinement to another will somehow help the situation.

Mental health reform is necessary in prisons across the country for both adults and juveniles, especially juveniles who enter prison with a preexisting mental condition to prevent further exacerbation. Denying youths access to adequate mental health care only increases

²⁰¹ *Id.* at 26.

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ *Id.* at 35.

²⁰⁵ *Id.*

²⁰⁶ *Id.* Isaiah O., a seventeen-year-old housed in solitary confinement reported: “when I cut, having a razor or using it against myself, they would give me a [disciplinary violation] for making the room unsanitary or two, for having a weapon . . . It felt like I was going against myself and they was [sic] going against me. That’s when I started going crazy.”

²⁰⁷ HUMAN RIGHTS WATCH & ACLU, GROWING UP LOCKED DOWN: YOUTH IN SOLITARY CONFINEMENT IN JAILS AND PRISONS ACROSS THE UNITED STATES 3, 35 (2012).

the negative effects already occurring in juvenile detention facilities across the country. Juvenile detention facilities and prisons housing juveniles should have mental health care and resources readily available for inmates, along with counseling services in hope of rehabilitating youths before they are released. Corrections officers are not equipped or trained to handle mental health problems, often leading to a complicated and toxic environment because corrections staff feel that they need to be gatekeepers to mental health, an overwhelming task for someone not trained in psychology.²⁰⁸ Even health care professionals are embedded in a foreign culture in correctional facilities because institutional priorities may conflict with, and often override, clinical needs of patients, evidencing the need for an overhaul of current practices and major reform.²⁰⁹ Although costly, improving the current status of mental health care, or lack thereof, will likely contribute to lower suicide rates, higher post-release success, and even increased deterrence rates.

3. Educational Harm

Youths in solitary confinement are often partially or completely deprived of educational resources they would normally receive in public school.²¹⁰ In some jails and prisons, access to education is eliminated completely when juveniles are placed in solitary confinement, regardless of the age of the inmate.²¹¹ Educational resources available to those in solitary are often restricted to packets of educational materials that fail to be graded and inmate questions concerning the material often go unanswered.²¹² In some states, education in jails is provided in consultation by state or local departments of education or school boards.²¹³ However, some jurisdictional laws provide only for limited education and others only

²⁰⁸ *Id.*

²⁰⁹ Clark, *supra* note 126, at 354.

²¹⁰ ACLU, *supra* note 24, at 42.

²¹¹ *Id.*

²¹² *Id.* at 43.

²¹³ *Id.*

allow “cell study” packets that are simply handed to juveniles in their cells with no instruction or guidance.²¹⁴

Not only does the lack of education result in hindered development, diminished reasoning and learning abilities can also occur.²¹⁵ Some youths report feeling mentally slower after solitary confinement, struggling with conversations, math skills, and overall thought processing.²¹⁶ Inmates in solitary confinement should be provided the same education they would receive in public schools to increase the chance of successful re-integration into society once they are released. Reasons for depriving inmates in solitary confinement of educational resources remains unclear, but the effects of doing so are prominent. Additionally, programs for students with intellectual disabilities in prisons is virtually nonexistent, adding to the issues already existing surrounding the state of education in prisons. Some correctional facilities are unable to identify juveniles with intellectual disabilities due to department policies that do not provide for this type of identification, causing officials to rely on reports from parents or schools in the community, which proves difficult or even impossible in some cases.²¹⁷

C. The German Approach

Compared with the United States, German prisons have a greater focus on rehabilitation and humane practices, recognizing that young brains are different and young people are less mentally culpable for their crimes.²¹⁸ In turn, juveniles are more open to rehabilitation and more vulnerable to aggressive exploitation in the culture of prisons.²¹⁹ A major difference between the United States and Germany is that juvenile sentencing laws in Germany apply to all persons under

²¹⁴ *Id.* For example, Colorado only provides for four hours per week of educational teaching for youths in solitary confinement, compared to the average 35 hours per week spent in public schools in the United States.

²¹⁵ *Id.* at 44.

²¹⁶ *Id.*

²¹⁷ *Id.* at 44-45.

²¹⁸ Maurice Chammah, *How Germany Treats Juveniles*, THE MARSH. PROJ. (June 19, 2015), <https://www.themarshallproject.org/2015/06/19/how-germany-treats-juveniles>.

²¹⁹ *Id.*

the age of twenty one, as opposed to eighteen in the United States.²²⁰ Further, juveniles cannot be tried in adult courts and there is no risk of juveniles being incarcerated in adult prisons where they could be subjected to abuse and neglect.²²¹

Solitary confinement for juveniles is used sparingly in Germany and never for more than four weeks at a time.²²² Although violent young people often arrive in German prisons who could put others at risk, correction officers take a different stance toward violent offenders than in the U.S.²²³ Rather than placing violent offenders in solitary confinement, prison officials send youths to therapy in prison and provide outlets for their anger, such as working in a metal shop and learning to weld, a valuable skill in the German economy that will continue to benefit the juveniles post-release.²²⁴ Opportunities such as these help juveniles maintain a sense of independence, despite being incarcerated. Not only will independent living support juveniles' developmental growth, a sense of independence will also benefit them once released because they will be forced to take on new responsibilities after spending time in a controlled environment, often a daunting task for young people.

German prisons also place an emphasis on the importance of outdoor activities, such as riding horses and caring for animals on the premises.²²⁵ The availability of activities such as these likely contribute to the rehabilitation of prisoners, allowing them to maintain their humanity while still considering the mistakes they have made. In addition, housing conditions are much more uplifting than in American facilities, allowing inmates to feel more connected to the outside world instead of being locked in a dark and depressing cell.²²⁶ Cells in Germany are often bright with natural light and decorated with

²²⁰ *Id.*

²²¹ *Id.*

²²² *Id.*

²²³ *Id.*

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ Jeremy Travis & Nicholas Turner, *What We Learned From German Prisons*, N.Y. TIMES (Aug. 6, 2015), <https://www.nytimes.com/2015/08/07/opinion/what-we-learned-from-german-prisons.html>.

personal items such as family photos and items brought from home to motivate prisoners with the idea of being returned to their families.²²⁷ Implementing simple changes such as these would have a positive impact on juveniles in the United States, especially those who are particularly young and likely have a difficult time being away from their families.

Additionally, prisons in Germany contain communal kitchens where inmates are allowed to use utensils to cook their own food, typically purchased with wages from vocational programs.²²⁸ Juveniles are provided with a sense of independence with the opportunity to cook their own meals in a shared space, an activity that fosters a more positive environment for young people. Perhaps the most important difference between correctional facilities in Germany and the United States is the freedom of movement allotted to prisoners in Germany and the ability to exercise judgment about how to spend their time.²²⁹ Juveniles in solitary confinement are wholly deprived of those two notions and unsurprisingly, this deprivation leads to the serious mental and physical effects described above.

Overall, the German prison system's core value can be summarized as protecting human dignity along with the goal of incarceration being to prepare inmates to lead socially responsible and crime-free lives.²³⁰ Instead of focusing on punitive measures like those in the U.S., German facilities focus on rehabilitating juveniles in the hope that they will become productive members of society upon release. Indeed, after visiting the Neustrelitz Youth Prison in Germany, reporters were astonished at the amount of freedom and independence young detainees were granted.²³¹ Of course, fears exist in German society that public safety will be hindered if violent offenders are released after short sentences.²³² However, Germans consider

²²⁷ *Id.*

²²⁸ *Id.*

²²⁹ *Id.*

²³⁰ *Id.*

²³¹ See Vincent Schiraldi, *In Germany, It's Hard to Find a Young Adult in Prison*, THE CRIME REPORT (Apr. 10, 2018), <https://thecrimereport.org/2018/04/10/in-germany-its-hard-to-find-a-young-adult-in-prison/>.

²³² Travis & Turner, *supra* note 226.

recidivism differently, asking themselves what they could have done to better help an inmate that ends up back in prison instead of asking what the inmate did wrong.²³³ This notion could be particularly beneficial for juveniles in the United States because juveniles are impressionable and likely to take into consideration the attitudes and actions of correctional officers. Cultural differences exist between German and American prisons, especially considering the shadow of slavery surrounding the creation of the American juvenile system and eventually creating the trend of mass incarceration.²³⁴ However, German practices continued to evolve positively despite Germany experiencing their own terrible legacy: the Holocaust and the era of Nazi Germany.²³⁵ Thus, German practices can provide guidance for American prisons, particularly in regard to our most vulnerable population.

D. Recommendations for Reform

Current practices of the juvenile justice system are in need of serious reform, particularly in regard to the imposition of solitary confinement. Eliminating solitary confinement for juveniles is the most effective way to mitigate the physical and psychological effects experienced by juveniles while incarcerated. Additionally, adopting more humane practices like those used in German prisons will likely benefit juveniles post-release and have a positive impact on incarcerated youths' futures. Overall, implementing a more humanitarian approach to treatment of juveniles and allowing them to develop their sense of independence will likely result in greater success post-release because juveniles will be more prepared to transition back into society after being incarcerated in a controlled environment.

In terms of legislation, major reform has occurred that will likely change many aspects of the juvenile justice system. In December 2018, the Formerly Incarcerated Reenter Society Transformed Safely Transitioning Every Person Act ("First Step Act") was enacted after the bill passed in the Senate.²³⁶ Passage of the bill under a Republican

²³³ *Id.*

²³⁴ *Id.*

²³⁵ *Id.*

²³⁶ First Step Act 115 S. 756, 115th Cong. (2018).

President and Senate evidences a greater awareness for reform from both political parties, hopefully reducing the partisan undertone of juvenile solitary confinement laws. The First Step Act is a bill hoping to provide relief to thousands of federal inmates and future defendants for federal drug crimes.²³⁷ Most importantly, the First Step Act prohibits solitary confinement for juveniles except as a temporary response to a juvenile's behavior that poses a serious and immediate risk of physical harm to any individual.²³⁸ The provision on juvenile solitary confinement is a major step in the right direction, as it eliminates solitary confinement for discipline, punishment, retaliation or any other reason than the reason provided above, similar to the current practices in German prisons regarding juvenile solitary confinement.²³⁹

Additionally, juveniles who are placed in solitary confinement as a temporary response can only be held for a maximum of three hours, with the ultimate goal being release from solitary confinement as soon as the juvenile regains self-control.²⁴⁰ This alternative provides an outlet for a juvenile to calm down after an altercation with another inmate or a guard, without the risk of prolonged isolation. If the Act passes in the House, which is considered likely, the application of the juvenile solitary confinement provision will enact positive changes in federal institutions and will hopefully encourage states to adopt similar practices.²⁴¹ In addition to implementing the First Step Act, the United States can adopt more humane incarceration practices to create a safer, healthier, and more positive environment for juveniles. Young people are at serious risk of negative effects from incarceration across the board, and even small steps taken by Federal prisons like those in Germany can have a huge impact on the future of our juvenile population.

²³⁷ Johnathan Blanks, *First Step Passes Senate*, CATO INST. (Dec. 19, 2018), https://www.cato.org/blog/first-step-passes-senate?gclid=EAIaIQobChMIxcbahufr3wIVhYzICh2T7wDIEAAYASAAEgIvoPD_BwE.

²³⁸ *Supra* note 231.

²³⁹ *Id.*

²⁴⁰ *Id.*

²⁴¹ Blanks, *supra* note 237.

Another suggestion for reform is an overhaul of current officer practices in facilities and the implementation of more positive and youth centered staff training. Since the current state of institutional policy is extremely arbitrary, changing the culture of prison practices from the core will inevitably create a lasting cultural change that can be passed down for generations to come.²⁴² Implementing solitary confinement for juveniles has become a quick fix, and convincing officers to move away from that tactic and adopt new solutions may result in mistrust and reluctance to participate.²⁴³ Thus, implementing new training should be a long term goal, taking small steps to slowly implement cultural ideals that will eventually grow into every day practice in Federal prisons. Providing staff with concrete skills to better manage youths and create a more safe and humane prison environment is an undoubtedly important step.²⁴⁴ Skills such as conflict resolution, rehabilitative interviewing and counseling, cultural awareness, and trauma informed tactics will create a safer and more productive environment for young people.²⁴⁵ Additionally, providing facilities with mental health staff and adequate care, as mentioned above, is another fundamental step.²⁴⁶ Of course, training programs and increased staffing will require an increased budget, a task that can be realized with outreach to political leaders, non-profit organizations dedicated to criminal justice reform, and union groups.²⁴⁷ The greater their understanding of how youths, especially those who are traumatized, operate, the greater chance officers will make positive changes in juveniles' lives, without taking away their humanity.

Lastly, one of the most important steps moving forward is raising awareness of the serious need to end juvenile solitary confinement. Many Americans are currently unaware that juveniles are being housed in solitary confinement at all, much less at the current rate, largely because the public and media have limited access to institutions where juveniles are housed, and correction officers are

²⁴² See Amy Fettig, *The Movement to Stop Solitary Confinement: Drivers of Success and Remaining Challenges*, 62 S.D. L. REV. 776, 794 (2017).

²⁴³ *Id.*

²⁴⁴ *Id.* at 795.

²⁴⁵ *Id.*

²⁴⁶ *Id.*

²⁴⁷ *Id.*

unwilling to grant that access.²⁴⁸ In turn, the public has turned a blind eye, whether purposely or as a result of the lack of transparency, to the tragic state of juvenile incarceration, particularly with solitary confinement.²⁴⁹ Americans are largely in the dark when it comes to the hard truth about incarceration rates in general, and opening up the conversation to this tough issue is a reasonable starting point to initiate reform, made possible with the cooperation of senators, governors, mayors, and many other influencers in the community. As citizens become more aware, they will be more likely to vote for important legislation, such as the First Step Act,²⁵⁰ a huge stepping stone in the fight for juvenile reform that would not have been possible without public awareness. Lawmakers should step up to continue the fight for juvenile justice reform and encourage their communities to join them.

IV. CONCLUSION

The current practices surrounding juvenile solitary confinement in the United States are in major need of reform, and adopting similar practices to those in Germany will have a lasting impact on juveniles, who are easily the most vulnerable inmates in the United States. Protecting juveniles in Federal prisons must become a priority, or youths will continue to deteriorate while incarcerated instead of being rehabilitated and successfully transitioning back into society. With such extensive research on the physical and mental effects of prolonged isolation, it is time for officials to take action and implement different solutions to the current problems occurring in juvenile facilities.

Using Germany as a model, the United States can implement simple changes such as mental health services and increased positive human contact with prison officials and other inmates to change the culture of prisons. Maintaining humane practices and allowing juveniles to feel like real people, despite their incarceration, will undoubtedly improve the current prison culture. Isolation is not the answer to the complicated question of juvenile crime. Rather, allowing

²⁴⁸ *Id.*

²⁴⁹ *Id.*

²⁵⁰ First Step Act 115 S. 756, 115th Cong. (2018).

juveniles to develop their independence and maintain their humanity will promote positive changes and ultimately, create greater success post-release, which will only benefit society in the long run. Although a major step, eliminating solitary confinement for juveniles will ultimately provide lasting benefits for young people in prison and society as a whole upon their release.