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Ending "Solitary Confinement" of Youth in California

*Sue Burrell and Ji Seon Song**

I. INTRODUCTION

The United States juvenile justice system has experienced significant changes in the past decade. Nowhere is this transformation more evident than in California.¹ Advocates have succeeded in reversing many punitive measures imposed under the influence of the super-predator mythology of the late 1980s and early 1990s.² The reforms have not been accompanied by increased crime. In fact, juvenile arrests have fallen precipitously since their peak in 1980.³ The population in California's state juvenile prison system has plummeted from over 10,000 in 1996⁴ to 658 in late 2018.⁵

On September 27, 2016, California reached another milestone in juvenile justice when Governor Jerry Brown signed Senate Bill 1143, significantly restricting the use of locked room

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¹ See David Muhammad, *California Is Becoming a Model of Juvenile Justice Reform, Thanks to Progressive Legislation*, JUV. JUST. INFO. EXCHANGE (Jan. 4, 2019).

² The impact of "super-predator" mythology is discussed in Section II, *infra*. In addition to the legislation limiting "room confinement" (the subject of this article), California has now prohibited the direct filing of cases against juveniles in adult court by prosecutors; excluded 14- and 15-year-olds from eligibility for transfer to adult court except in cases of delayed prosecution; excluded children under the age of 12 from prosecution as delinquents except in cases of murder or specified sex cases; banned the practice of incarcerating truants for contempt; required that youth aged 15 and under in police custody be advised by an attorney before interrogation; limited the indiscriminate use of shackling in juvenile courts and in transportation; guaranteed that youth receiving life without parole sentences in adult court will eventually have a parole hearing; and limited fines and fees imposed on families. See CAL. WELF. & INST. CODE § 707(a)(1)(2016)(effective January 1, 2019); CAL. WELF. & INST. CODE § 707(a)(1)-(2)(2016)(effective January 1, 2019); CAL. WELF. & INST. CODE § 602(a)-(b) (2016)(effective January 1, 2019); CAL. WELF. & INST. CODE § 601(b) (2014)(effective January 1, 2019); CAL. WELF. & INST. CODE § 625.6(a) (2017)(effective January 1, 2018); CAL. WELF. & INST. CODE § 210.6(a)(1) (2017)(effective January 1, 2018); CAL. WELF. & INST. CODE §§ 309(d)-(e) (2016) (effective January 1, 2019); CAL. PENAL CODE and CAL. WELF. & INST. CODE (2017). The text of the bills is available on the California Legislative Information website, <http://leginfo.ca.gov/faces/billSearchClient.xhtml>. See also Meredith Desautels & Ji Seon Song, *Righting the Ship on Juvenile Justice*, S.F. DAILY J. (Oct. 27, 2017).

³ Mike Males, CTR. ON JUV. & CRIM. JUST., FACT SHEET: CALIFORNIA'S YOUTH AND YOUNG ADULT ARREST RATES CONTINUE A HISTORIC DECLINE (Aug. 2016), http://www.cjcb.org/uploads/cjcb/documents/ca_youth_and_young_adult_arrest_rates_continue_historic_decline_2015.pdf.

⁴ Dep't of the Youth Auth. Research Div. Info. Sys. Unit, MONTHLY POPULATION REPORT AS OF MARCH 31, 1996, https://www.cdcr.ca.gov/Reports_Research/docs/research/Highest%20Facility%20Population%201995%20-%201996.pdf.

⁵ Cal. Dep't of Corr. & Rehab. Div. of Juv. Just. Corr. & Rehabilitation, FACILITY MOVEMENTS Oct. 1-31, 2018 (Nov. 6, 2018), https://www.cdcr.ca.gov/Juvenile_Justice/docs/FacMov_Monthly_Reports_2018/YOR602B_2018.10_Fac_Mvmt.pdf.

confinement in juvenile facilities.⁶ This article tells the story of the multi-decade saga leading up to the enactment of legislation limiting solitary confinement of youth in state and local juvenile facilities in California. It encompasses the efforts of advocates, litigators, legislators, journalists, youth and family members, and juvenile system professionals over a period of more than thirty years. The history of this legislation in California may provide insights that are useful in addressing other issues and in other jurisdictions.

For advocates, this is a story about persistence, recognizing and seizing opportunities, the importance of understanding the issues, and loyalty to core values. For youth who have experienced the system and their families, it is proof that their voices can be a force for change. For litigators, it demonstrates how the legal process can elevate issues and bring about institutional reform. For journalists, it confirms that words matter and that giving reporters the freedom to do investigative reporting is a worthy endeavor. For facility administrators and staff, this history provides support for re-examining long-held beliefs about locked room confinement and exploring new ways to keep children safe and address misbehavior. For policymakers, it offers a lesson on the importance of listening to the concerns of opposing sides and of problem-solving to reach consensus. For the general public, it demonstrates that transparency in public institutions is important and that meaningful change can happen through legislative action.

We recognize that the story will not end with the passage of the new law. "Solitary confinement" has been used in juvenile and adult corrections facilities for well over a century and is ingrained in institutional practice. While the legislation provides significant guidelines to limit locked-room confinement, there will surely be challenges in implementation. Corrections officials, policymakers, and juvenile advocates will need to find ways to resolve emerging issues that both honor the intent of the legislation and respect the legitimate needs of staff and institutional operations. Nonetheless, the enactment of state law and regulations restricting the use of locked room time represents a remarkable moment in juvenile justice history, reflecting our evolving values about treatment of young people in institutional care.

This article is not specifically about the harms caused by locked room confinement or the general history of the practice. Those subjects are well-covered in other writings⁷ and are addressed here only to the extent they relate to the California reform efforts. We start with the

⁶ S.B. No. 1143, 2016 Leg., Reg. Sess. (Ca. 2016) (an act to add Section 208.3 to the Welfare and Institutions Code, relating to juveniles).

⁷ An excellent California-specific history of juvenile institutions and isolation can be found in DANIEL E. MACALLAIR, *AFTER THE DOORS WERE LOCKED: A HISTORY OF YOUTH CORRECTIONS IN CALIFORNIA AND THE ORIGINS OF TWENTY-FIRST CENTURY REFORM* (2015). Good general historical background on juvenile institutions and isolation of children appears in STEVEN L. SCHLOSSMAN, *LOVE AND THE AMERICAN DELINQUENT* 228, 22–31 (1977); JOSEPH M. HAWES, *CHILDREN IN URBAN SOCIETY: JUVENILE DELINQUENCY IN NINETEENTH-CENTURY AMERICA* 28–29 (1971); ANTHONY M. PLATT, *THE CHILD SAVERS: THE INVENTION OF DELINQUENCY 150-151* (2009); *see generally* Harry Elmer Barnes, *Historical Origin of the Prison System in America*, 12 *J. CRIM. L. & CRIMINOLOGY* 35 (1921); Sanford J. Fox, *Juvenile Justice Reform: An Historical Perspective*, 22 *STAN. L. REV.* 1187 (1970); Peter Scharff Smith, *The Effects of Solitary Confinement on Prison Inmates: A Brief History and Review of the Literature*, 34 *CRIME & JUST.* 441 (2006); Laura Anne Gallagher, *More Than a Time Out: Juvenile Solitary Confinement*, 18 *UC DAVIS J. JUV. JUST. & POL'Y* 244 (2014). Also, early cases and civil rights litigation address the harm from isolation practices in juvenile institutions, for example *Elmore v. Stone*, 355 F.2d 841 (D.C. Cir. 1966); *Lollis v. New York State Dep't. of Soc. Servs.*, 322 F. Supp. 473 (S.D.N.Y. 1970); *Nelson v. Heyne*, 355 F. Supp. 451 (N.D. Ind. 1972); *Inmates of Boys' Training Sch. v. Affleck*, 346 F. Supp. 1354 (D.R.I. 1972); *Pena v. New York State Div. for Youth*, 419 F. Supp. 203 (S.D.N.Y. 1976); *Morgan v. Sproat*, 432 F. Supp. 1130 (S.D. Miss. 1977); *Morales v. Turman*, 562 F.2d 993 (5th Cir. 1977); and *Santana v. Collazo*, 714 F.2d 1172 (1st Cir. 1983).

premise that "solitary confinement" may have devastating effects on the human body and psyche,⁸ and that it has an even more damaging effect on youth who are still in the process of social, psychological, and neurological development.⁹ We recognize the link between locked room confinement and juvenile suicide¹⁰ and its traumatic impact on youth.¹¹ We also recognize that the impact of "solitary" disproportionately affects youth of color, who are more likely to be incarcerated and less likely to have their mental health-related behavior understood and properly treated.¹² In addition, we begin with awareness that youth with nonconforming sexual orientation

⁸ See generally Craig Haney & Mona Lynch, *Regulating Prisons of the Future: A Psychoanalysis of Supermax and Solitary Confinement*, 23 N.Y.U. REV. L. & SOC. CHANGE 477 (1997); Bryan B. Walton, *The Eighth Amendment and the Psychological Implications of Solitary Confinement*, 21 L. & PSYCHOL. REV. 271 (1997); Stuart Grassain, *Prison Reform: Commission on Safety and Abuse in America's Prisons: Psychiatric Effects of Solitary Confinement*, 22 WASH. U. J. L. & POL'Y 325 (2006). See also Jeffrey L. Metzner & Jamie Fellner, *Solitary Confinement and Mental Illness in U.S. Prisons: A Challenge for Medical Ethics*, 38 J. AM. ACAD. PSYCHIATRY & L. 104, 104-05 (2010); ACLU, ALONE AND AFRAID: CHILDREN HELD IN SOLITARY CONFINEMENT AND ISOLATION IN JUVENILE DETENTION AND CORRECTIONAL FACILITIES 4, AT 13–31 (2014) (listing studies and articles documenting the harmful effects of solitary confinement). See generally ACLU & Human Rights Watch, *Growing Up Locked Down: Youth in Solitary Confinement in Jails and Prisons Across the United States* (1st ed., Human Rights Watch 2012), https://www.aclu.org/sites/default/files/field_document/us1012webwcover.pdf

(recounting the stories of young people in adult facilities as they describe the horrors of solitary) [hereinafter *Growing Up Locked Down*].

⁹ Laura Dimon, *How Solitary Confinement Hurts the Teenage Brain*, THE ATLANTIC (June 30, 2014), <https://www.theatlantic.com/health/archive/2014/06/how-solitary-confinement-hurts-the-teenage-brain/373002>; see also Fatos Kaba, et al., *Solitary Confinement and Risk of Self-Harm Among Jail Inmates*, 104 AM. J. PUB. HEALTH 442, 444–45 (2014) (cautioning against the use of solitary confinement as punishment for adolescents in jail based upon research that young age and solitary confinement are among a number of important and independent predictors of self-harm in jails); Robert L. Listenbee, Jr. et al., REPORT OF THE ATTORNEY GENERAL'S NATIONAL TASK FORCE ON CHILDREN EXPOSED TO VIOLENCE 178, 190 (2012).

¹⁰ LINDSAY M. HAYES, U.S. DEP'T OF JUST., OFFICE OF JUV. JUST. & DELINQUENCY PREVENTION, JUVENILE SUICIDES IN CONFINEMENT: A NATIONAL SURVEY 16, 18 (2009), available at <https://www.ncjrs.gov/pdffiles1/ojdp/213691.pdf> ("[d]ata from this national survey of juvenile suicide in confinement appear to show a strong relationship between juvenile suicide and room confinement—62 percent of victims had a history of room confinement before their death and 50 percent of victims were on room confinement status at the time of their death").

¹¹ Carly B. Dierkhising et al., *Victims Behind Bars: A Preliminary Study of Abuse During Juvenile Incarceration and Post-Release Social and Emotional Functioning*, 20 PSYCH. PUB. POL'Y & L. 181, 181-82 (2014) (finding that rates of abuse in facilities, including solitary confinement, are correlated with PTSD symptoms, depression, and future criminal activity); *Solitary Confinement for Juveniles Receiving Renewed Scrutiny*, 20 JUV. JUST. UPDATE 7 (2014) ("[s]olitary confinement itself is potentially horribly traumatic for a child, but when the child has already experienced a traumatic event involving confinement or restraint, the effects are compounded").

¹² JAMES BELL & LAURA JOHN RIDOLFI, W. HAYWOOD BURNS INST., ADORATION OF THE QUESTION: REFLECTIONS ON THE FAILURE TO REDUCE RACIAL & ETHNIC DISPARITIES IN THE JUVENILE JUSTICE SYSTEM 2 (Shadi Rahimi ed., 2008), available at <https://www.burnsinstitute.org/wp-content/uploads/2013/12/Adoration-of-the-Question.pdf> (stating that African American youth are five times more likely to be in juvenile justice custody than white youth, and that Latino youth are twice as likely to be in custody than white youth); Patrick McCarthy et al., *The Future of Youth Justice: A Community-Based Alternative to the Youth Prison Model*, 2 NEW THINKING IN COMMUNITY CORRECTIONS BULL. 1, 16, http://www.aecf.org/m/resourcedoc/NIJ-The_Future_of_Youth_Justice-10.21.16.pdf (confirming that nationally, African American youth are incarcerated 4.7 times the rate of white youth; Native American youth 3.3 times the rate, and Latino youth 1.7 times the rate). A recent report decried the lack of specific data on solitary confinement by race but suggested that in a system rampant with bias and disparities, racial disparities would exist in the use of solitary confinement in juvenile facilities as well. JESSICA FEIERMAN ET AL., JUVENILE LAW UNLOCKING YOUTH: LEGAL STRATEGIES TO END SOLITARY CONFINEMENT IN JUVENILE FACILITIES 4 (1st ed., Juvenile Law Center 2017), available at http://jlc.org/sites/default/files/publication_pdfs/JLC_Solitary_Report-FINAL.pdf. Research indicates that psychiatrically disturbed, or abused and neglected youth of color are channeled into correctional

or gender identity¹³ and those with disabilities have a heightened risk of placement in locked room confinement.¹⁴

The remainder of this section clarifies the scope of the article, provides a roadmap for what follows, and discusses terminology. Section II describes California's past use of "solitary confinement" in state juvenile facilities and its role in general conditions reform, discusses early and evolving advocacy efforts, reviews media and legislative attention, provides a history of the *Farrell* litigation over state facility conditions and audits by the Inspector General, summarizes litigation alleging abuse of locked room confinement in county facilities, and describes California's system for oversight. Section III focuses on the overlapping and simultaneous reform movements in California since 2000. Section IV reviews litigation and local action to limit locked room confinement, which has occurred simultaneously with legislative efforts from roughly 2010-2016. Section V details the five-year history of California's "solitary confinement"/room confinement legislation from 2012-2016 and its outcomes. Finally, section VI provides a cautionary note about the implementation of changed practices for solitary confinement and suggests necessary actions to solidify and sustain progress.

Before continuing, it is necessary to discuss terminology. Institutional policies and practices typically use a variety of neutral sounding terms to describe the practice of locked room confinement, including: "room restriction," "segregation," "isolation," "room lock," "lockdown," "seclusion," "special management housing," "behavior modification unit," "room confinement," "room time," or "time out."¹⁵ Advocates, defense attorneys, mental health professionals, and families calling for conditions reform often use the term "solitary confinement."¹⁶ They use the

facilities while their white counterparts are recognized as in need of help and directed toward therapeutic facilities. M.R. Isaacs, *Assessing the Mental Health Needs of Children and Adolescents of Color in the Juvenile Justice System: Overcoming Institutionalized Perceptions and Barriers*, in *RESPONDING TO THE MENTAL HEALTH NEEDS OF YOUTH IN THE JUVENILE JUSTICE SYSTEM* 153 (2002); Kathleen J. Pottick et al., *Judging Mental Disorder in Youths: Effects of Client, Clinician, and Contextual Differences*, 75 *J. OF CONSULTING & CLINICAL PSYCHOL.* 1, 6-8 (2007); see Will Drakeford & Lili Frank Garfinkel, *Differential Treatment of African American Youth*, 9 *RECLAIMING CHILD. & YOUTH* 51, 51 (2000).

¹³ Shannan Wilber, *A Guide to Juvenile Detention Reform: Lesbian, Gay, Bisexual and Transgender Youth in the Juvenile Justice System*, 11 *ANNIE E. CASEY FOUND.* 2, 12, 30 (2015), <http://www.aecf.org/m/resourcedoc/AECF-lesbiangaybisexualandtransgenderyouthinjj-2015.pdf>; *LGBTQ Youths in the Juvenile Justice System*, OFF. OF JUV. JUST. & DELINQUENCY PREVENTION 1, 6 (updated Aug. 2014), <https://www.ojjdp.gov/mpg/litreviews/LGBTQYouthsInTheJuvenileJusticeSystem.pdf>; CTR. FOR AM. PROGRESS ET AL., *UNJUST: HOW THE BROKEN CRIMINAL JUSTICE SYSTEM FAILS LGBTQ PEOPLE OF COLOR* 29 (Aug. 2016), available at <https://www.lgbtmap.org/file/lgbt-criminal-justice-poc.pdf>.

¹⁴ Feerman et al., *supra* note 12; see also SUE BURRELL & ALICE BUSSIERE, *DIFFICULT TO PLACE: YOUTH WITH MENTAL HEALTH NEEDS IN CALIFORNIA JUVENILE JUSTICE* 8-9 (Youth Law Center 2005), available at <http://www.ylc.org/wp/wp-content/uploads/difficulttoplaceAug2005.pdf> (youth with behavioral or emotional disturbance all too often are locked up in facilities that are ill-equipped to handle their needs and once inside deteriorate further while in custody, only to be subjected to control measures, including isolation and mechanical restraints).

¹⁵ Natalie J. Kraner et al., *Jurisdiction Survey of Juvenile Solitary Confinement Rules in Juvenile Justice Systems*, *LOWENSTEIN CTR. FOR THE PUB. INTEREST* 1, 51 (July 2016); see NELL BERNSTEIN, *BURNING DOWN THE HOUSE: THE END OF JUVENILE PRISON* 131 (2014); Sandra Simkins, et al., *The Harmful Use of Isolation in Juvenile Facilities: The Need for Post-Disposition Representation*, 38 *WASH. U. J. L. & POL'Y* 241, 252 (2012).

¹⁶ See, e.g., *Our Mission*, STOP SOLITARY FOR KIDS, <http://www.stopsolitaryforkids.org/> (advocates); *Solitary Confinement and Isolation in Juvenile Detention and Correctional Facilities*, AMERICAN CIVIL LIBERTIES UNION, https://www.aclu.org/files/assets/4%202%20Juvenile%20Solitary_Two%20Pager.pdf (advocates); *Stop Solitary for Ohio's Youth*, CHILDREN'S LAW CTR., INC., <http://www.childrenslawky.org/stop-solitary-for-ohio-youth/> (lawyers); Feerman, et al., *supra* note 12 (lawyers); American Juvenile Justice Reform Committee, *Solitary Confinement of*

term "solitary" deliberately to emphasize that the imposition of locked room time does not actually improve safety or rehabilitation and that even brief periods of solitary confinement may inflict lasting harm. This tension in naming the practice has been a point of contention in the history of the California legislation,¹⁷ as discussed in section V. The legislation enacted in 2016 uses the term "room confinement" and defines it as the placement of a youth "in a locked sleeping room or cell with minimal or no contact with persons other than correctional facility staff and attorneys."¹⁸ It specifically exempts from the definition situations where confinement is necessary for daily operations and emergencies.¹⁹

In this article, the authors have used the term "solitary confinement" in some places, and elsewhere have used "room confinement," "isolation," or other terms denoting locked room confinement. We have generally used the terminology used by the person or publication discussing the practice.

II. JUVENILE SOLITARY CONFINEMENT IN CALIFORNIA

Although the use of locked room time had long been a feature of juvenile incarceration in California,²⁰ its use greatly expanded in the latter part of the twentieth century when the U.S. experienced a general spike in crime lasting from 1960 to 1980.²¹ Juvenile arrest rates peaked in that period,²² and policymakers responded with "get tough" measures. Although juvenile arrest rates began a long decline after 1980,²³ public perception lagged. For more than a decade after juvenile crime rates began to drop, policy discussions continued to center on fear of gangs and violent juvenile crime, and employed the rhetoric of the past.²⁴

Juvenile Offenders, AM. ACAD. OF CHILD & ADOLESCENT PSYCHIATRY (Apr. 2012), https://www.aacap.org/aacap/Policy_Statements/2012/Solitary_Confinement_of_Juvenile_Offenders.aspx; *Solitary Confinement of Juvenile Offenders*, AM. PSYCH. ASSOC., <https://www.apa.org/advocacy/criminal-justice/solitary.pdf> (mental health professionals); NELL BERNSTEIN ET AL., MOTHERS AT THE GATE: HOW A POWERFUL FAMILY MOVEMENT IS TRANSFORMING THE JUVENILE JUSTICE SYSTEM 18 (2016), <https://ips-dc.org/wp-content/uploads/2016/05/k-dolan-mothers-at-the-gate-5.3.pdf>.

¹⁷ Kelly Davis, *Solitary Confinement—or 'Room Confinement'?*, THE CRIME REPORT (Oct. 12, 2016), <https://thecrimereport.org/2016/10/12/solitary-confinement-or-room-confinement/>.

¹⁸ CAL. WELF. & INST. CODE § 208.3(a)(3) (2016).

¹⁹ CAL. WELF. & INST. CODE § 208.3(e)-(i) (2016).

²⁰ See Macallair, *supra* note 7.

²¹ *Crime Rates From 1980 to 2014*, CAL. DEP'T OF JUST., <https://openjustice.doj.ca.gov/crimes/overview> (last visited Jan. 6, 2019). After that period, California's violent and property crime rates steadily declined. *Id.*

²² Males, *supra* note 3.

²³ From 1980 to 2016, the California arrest rate among those seventeen or younger dropped by eighty-four percent. MAGNUS LOFSTROM ET AL., NEW INSIGHTS INTO CALIFORNIA ARRESTS: TRENDS, DISPARITIES, AND COUNTY DIFFERENCES 3 (Public Policy Institute of California, Dec. 2018), available at <https://www.ppic.org/publication/new-insights-into-california-arrests-trends-disparities-and-county-difference/>.

²⁴ The public's perceptions about violent juvenile crime were fueled by prominent social scientists' predictions. James A. Fox, a criminologist, warned of "a blood bath of violence" that could soon wash over the land. John J. Dilulio Jr., then a political scientist at Princeton, proclaimed in scholarly articles and television interviews that we were about to be overwhelmed by violent juvenile superpredators. Soon there "would be hordes upon hordes of depraved teenagers resorting to unspeakable brutality, not tethered by conscience." Clyde Haberman, *When Youth Violence Spurred 'Superpredator' Fear*, N.Y. TIMES (Apr. 6, 2014), <https://www.nytimes.com/2014/04/07/us/politics/killing-on-bus-recalls-superpredator-threat-of-90s.html>.

In this climate of fear, the population of California's state facility system ballooned,²⁵ resulting in rampant overcrowding. Longer periods of confinement contributed to population, as new adult-style parole consideration policies pegged length of confinement at the California Youth Authority ("CYA" or "Youth Authority")²⁶ to categories of offenses rather than youths' rehabilitative needs.²⁷ In July 1996, the point of its greatest expansion, the CYA had a population of 10,115 youth in facilities designed for many fewer.²⁸ The system as a whole was at 137% of its capacity and individual institutions were being run at as much as 172% capacity.²⁹

The CYA began to resemble an adult prison system. In fact, the N.A. Chaderjian facility, which opened in 1991, was modeled after an adult high security prison, featuring single cells instead of dormitories and two-tiered living units with glassed-in surveillance decks.³⁰ The evolution of CYA into a prison system was further advanced when a portion of its staff joined the California Correctional Peace Officers Association, the prison guards' union. That affiliation formally exposed CYA staff to the philosophy and hardware of adult corrections.³¹ In this environment, control measures like "solitary confinement" flourished.

²⁵ Aside from the effect of "tough on crime" attitudes, growth in the state facility system was fiscally driven. Earlier financial incentives to serve youth locally had been lost, and it was cheaper for counties to commit youth to the state system than to handle them locally. BARRY KRISBERG ET AL., *A NEW ERA IN CALIFORNIA JUVENILE JUSTICE* 5 (2010), available at http://www.nccdglobal.org/sites/default/files/publication_pdf/a-new-era.pdf.

²⁶ In 2019, California has two government-operated systems of juvenile facilities. The Division of Juvenile Facilities is operated by the state agency that runs adult prisons – the Department of Corrections and Rehabilitation. The Division became a part of the Department of Corrections and Rehabilitation in 2005. See CAL. WELF. & INST. CODE § 1710(a) (2005). For much of the period leading up to the changes discussed in this article, it was called the Department of the Youth Authority, and commonly referred to as "Youth Authority" or "CYA." *Id.* The second system of institutions is run by the 58 counties. Every county is required to have a place for the detention of youth and most achieve this by operating a juvenile hall. See CAL. WELF. & INST. CODE § 850 (1961). In addition, state law provides for the establishment of camps or ranches for post-dispositional commitments, and many counties have one or more. See CAL. WELF. & INST. CODE § 880 (amended 1998).

²⁷ Macallair, *supra* note 7, at 196–97. Also, many youth whose commitment offense would have permitted an earlier release received "time adds" from the Youthful Offender Parole Board that caused them to be held for the maximum jurisdictional time allowed by law.

²⁸ DEP'T OF THE YOUTH AUTH. RESEARCH DIV. INFO. SYS. UNIT, MONTHLY POPULATION REPORT AS OF JULY 31, 1995 (Aug. 2, 1995), available at https://www.cdcr.ca.gov/Reports_Research/docs/research/Highest%20Facility%20Population%201995%20-%201996.pdf. At that point in time, the California Youth Authority ran two reception centers, ten institutions, four camps, and a halfway house.

²⁹ *Id.*

³⁰ See Macallair, *supra* note 7, at 212–13; Barbara Anderson et al., *Hall of Shame: A world of rage locked in a cage*, FRESNO BEE (Feb. 18, 2001), http://www.cachildlaw.org/Misc/Hall_of_Shame.pdf.

³¹ The former head of the Youth Authority, Allen Breed, described this transformation in May 2000: "The entire emphasis shifted from statewide leadership in the entire juvenile justice arena to concentration on the operation of correctional institutions and a parole system with significantly reduced resources . . . Into this void also has moved a very strong prisoner officers' union which has introduced uniforms, philosophy, and procedure normally found in a prison setting." *Joint Oversight Hearing of the Senate and Assembly Committees on Public Safety Regarding the California Department of the Youth Authority* 1999-2000 Leg. Sess. (Ca. 2000) (testimony of Allen Breed), <http://archive.senate.ca.gov/sites/archive.senate.ca.gov/files/committees/2013-14/spsf.senate.ca.gov/jointinformationalhearingonthecaliforniayouthauthoritymay162000/index.html> [hereinafter *Joint Oversight Hearing*]. This hearing on the California Youth Authority was widely publicized. See, e.g., Carl Ingram, *Probe Paints State Youth Authority as a System in Chaos*, L.A. TIMES (May 17, 2000), <http://articles.latimes.com/2000/may/17/news/mn-30918>; Mark Gladstone, *Watchdog finds abuse, absence of training in Youth Authority*, L.A. TIMES (May 17, 2000).

A. Incipient Reform Efforts

As reports of inadequate and abusive conditions in the California Youth Authority surfaced in the 1980s, a small group of advocates worked to bring them to public attention. The National Council on Crime and Delinquency, the Center on Juvenile and Criminal Justice, Youth Law Center, and Commonweal began to meet to discuss strategies to verify the reports and bring about systemic reform.³²

In 1980, Commonweal published a series of books based on investigations of conditions in the Youth Authority.³³ The books' horrific descriptions of violence, lack of programming, and overcrowding helped to spark legislators' interest. In 1988, the Senate Select Committee on Children and Youth held hearings to explore the Commonweal revelations.³⁴ Reform efforts, though, were hindered by opposition from groups espousing the view that youth were to be feared and that punitive measures for youth were justified. Those in opposition included law enforcement organizations, victims' rights groups, the prison guards' union, and the California District Attorneys Association.³⁵

In the late 1990s, advocates collected factual evidence of the troubling conditions at CYA, thus making it increasingly difficult to justify the status quo. Youth Law Center (YLC) sued the state in 1989 for its failure to provide special education services;³⁶ the resulting settlement required the state to post the Center's address on living unit walls.³⁷ In the ensuing years, YLC was inundated with letters from youth and their families detailing abusive practices. The settlement also gave YLC attorneys monitoring access that enabled them to observe conditions directly.³⁸ The letters to YLC and letters of complaint to the administration of Youth Authority formed a record which served as a useful tool in advocacy. For example, a 1999 letter to Acting Youth Authority Director Gregorio Zermeño focused on lockdown units, where youth were held for long periods in "solitary confinement."³⁹ This letter became a part of the record for the May 2000 Joint Informational Hearing on the California Youth Authority.⁴⁰ It described a series of reports from youth and families, including specific abuses at the N.A. Chaderjian facility.⁴¹ The letter set forth

³² Krisberg et al., *supra* note 25, at 12–13.

³³ The Commonweal books included STEVE LERNER, THE CYA REPORT (PART I): CONDITIONS OF LIFE AT THE CALIFORNIA YOUTH AUTHORITY (1982); STEVE LERNER, THE CYA REPORT (PART II): THE PATTERN OF FEAR AND VIOLENCE AT THE CALIFORNIA YOUTH AUTHORITY (1986); STEVE LERNER ET AL., REFORMING THE CYA (PART III): HOW TO END CROWDING, DIVERSIFY TREATMENT AND PROTECT THE PUBLIC WITHOUT SPENDING MORE MONEY (1999); and STEVE LERNER & ALLEN BREED, THE GOOD NEWS ABOUT JUVENILE JUSTICE: THE MOVEMENT AWAY FROM LARGE INSTITUTIONS AND TOWARD COMMUNITY-BASED SERVICES (1990) (a list of these Commonweal Publications is available at <https://www.comjj.org/realignment/resources>).

³⁴ Macallair, *supra* note 7, at 209–12.

³⁵ *Id.* at 213.

³⁶ The case was filed in 1989, settled in 1990, and monitoring of the settlement took place until the case was closed in 2001. University of Michigan Law School, Case Profile: Nick O. v. Terhune, CIV. RTS. LITIG. CLEARINGHOUSE.

³⁷ Stipulation & Order, Nick O. v. Terhune, S-89-0755-RAR-JFM (E.D. Cal. 1989) (No. 89-0755).

³⁸ Krisberg et al., *supra* note 25, at 12–13.

³⁹ Letter from Sue Burrell, Staff Attorney, and Carole Shauffer, Executive Director, Youth Law Ctr., to Gregorio A. Zermeño, Acting Director, Cal. Youth Auth. (Aug. 19, 1999) (on file with authors) [hereinafter Letter to Zermeño].

⁴⁰ *Joint Oversight Hearing*, *supra* note 31.

⁴¹ Letter to Zermeño, *supra* note 39, at 1-4. The specific abuses at N.A. Chaderjian included:

- Taping the cracks around the cell doors and then spraying chemical agents into the room;
- Dragging youth out of their rooms nude and hogtied;
- Handcuffing youth and then beating them, or pepper spraying youth who are cuffed and kneeling;

complaints that youth were relegated to 23-hour lockdowns for many months for reasons such as being a Southern ward transferred to a Northern California facility.⁴² The letter also included complaints that youth with mental illnesses and emotional disturbances were placed in 23-hour lockdown without any mental health services.⁴³ These youth consequently became increasingly depressed and suicidal or angrier and more aggressive.⁴⁴ The letter reported that many youth in the lockdown units failed to receive educational services and that youth who did receive the services did so in metal cages euphemistically referred to as "Special Program Areas," or "SPAs."⁴⁵

Armed with this detailed evidence of abuse, the advocates had a strong factual basis on which to lobby for improved conditions in, and even the closure of some, facilities. Efforts intensified and advocates met frequently to discuss strategies to reform the CYA.⁴⁶

In the late 1990s and early 2000s, abuse at CYA gained traction in the media. Several investigative reporters became actively involved in publicizing the plight of youth and the seeming intransigence of those in charge.⁴⁷ A series of articles in the *Los Angeles Times* (*LA Times*) in 1999 and 2000 revealed horrendous conditions in almost every aspect of institutional life.⁴⁸ The use of

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- Staff beating a severely mentally disturbed ward;
 - Placing youth in stripped rooms in their underwear, often in extremely cold conditions;
 - Restrictions on access to running water, toilet paper, cleaning supplies, and hygiene items;
 - Deprivation of phone calls and writing materials;
 - Lack of educational services, access to religious counselors and sick call;
 - Failure to provide 1 hour of large muscle exercise or forcing youth to perform it in cages;
 - Deprivation of food as a disciplinary measure;
 - Lack of access to the grievance process coupled with retaliation when youth are able to voice concerns; and
 - Group punishment such as turning off the toilet flushing mechanisms because of the acts of one youth.

⁴² *Id.* at 4.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.* The term "SPA" was also sometimes alternatively defined as "Secure Program Area." See, e.g., Jill Leovy and Jia-Riu-Chong, *Cages Used to Educate Youth Prisoners Are Coming Under Fire*, L.A. TIMES (Feb. 5, 2004). At the N.A. Chaderjian facility SPAs were heavy steel boxes standing about three feet wide and six feet tall. Youth were required to sit at metal desks inside the SPA to receive schoolwork while a teacher wearing a flak jacket delivered lessons outside the heavy wire door. At Chaderjian, these were called "the cages." See Anderson et al., *supra* note 30.

⁴⁶ Krisberg et al., *supra* note 25, at 13.

⁴⁷ See, e.g., Nancy Price, *CYA Inquiry Begins: Alleged abuse probed at Stockton complex*, THE RECORD (Oct. 8, 1999); Nancy Price, *Young, violent offenders claim abuse by CYA staff*, THE RECORD (Mar. 22, 1999); David Nelson, *Youth Authority under investigation*, PASO ROBLES GAZETTE (Jan. 13, 2000); Jon Matthews, *CYA problems run deep*, SACRAMENTO BEE (May 17, 2000); *Legislators say state director's job depends on ending misconduct*, ASSOC. PRESS (Sept. 27, 1999); C.J. Schexnayder, *Revamp begins at Chino, other youth prisons*, THE PRESS ENTERPRISE (Sept. 28, 1999).

⁴⁸ Mark Gladstone, *Guards at Youth Prison Accused of Abusing Inmates*, L.A. TIMES (Sept. 26, 1999), <http://articles.latimes.com/1999/sep/26/news/mn-14343>; Mark Gladstone, *Lawmakers Put Pressure on New CYA Chief*, L.A. TIMES (Sept. 27, 1999), <http://articles.latimes.com/1999/sep/27/news/mn-14567>; Mark Gladstone, *Agency's Trouble-Shooter Finds Himself Under Fire*, L.A. TIMES (Oct. 7, 1999), <http://articles.latimes.com/1999/oct/07/news/mn-19728>; Mark Gladstone & James Rainey, *Abuse Reports Cloud Youth Authority*, L.A. TIMES (Dec. 24, 1999), <http://articles.latimes.com/1999/dec/24/news/mn-47028>; Mark Gladstone, *Head of Youth Agency Forced to Resign*, L.A. TIMES (Dec. 24, 1999), <http://articles.latimes.com/1999/dec/24/news/mn-47034>; James Rainey & Mark Gladstone, *Another Try at Youth Justice Reform*, L.A. TIMES (Dec. 25, 1999), <http://articles.latimes.com/1999/dec/25/news/mn-47400>; Jenifer Warren, *Youth Authority Ready to Adopt Sweeping Reforms*, L.A. TIMES (Nov. 17, 2000) <http://articles.latimes.com/2000/nov/17/news/mn-53416>; James Rainey, *Does State Have Will to Reform Youth Prisons?*, L.A. TIMES (Nov. 19, 2000), <http://articles.latimes.com/2000/nov/19/news/mn-54278>.

solitary confinement and conditions in lockdown units repeatedly surfaced in the *LA Times* investigative reports.⁴⁹

It was during this time period that the use of "solitary confinement" grew exponentially. Many familiar with Youth Authority believe that the precipitating event ushering in this era of "solitary confinement" was the 1996 stabbing and strangulation of CYA staff member, Ineasie Baker by a youth at the Heman G. Stark Youth Authority facility.⁵⁰ Youth in the facility were subsequently locked down for two months.⁵¹ One of the units in the facility was on lockdown so often that it was nicknamed "The Rock."⁵²

B. Legislative Interest and Hearings

Concern about Youth Authority and its problems hit critical mass on May 16, 2000 when the Legislature held a Joint Informational Hearing on the California Youth Authority.⁵³ Chaired by Senator John Vasconcellos and Assembly Member Carl Washington, the day-long hearing featured testimony by agency officials, advocates and families of incarcerated youth.⁵⁴

The system's use of locked room confinement was prominently discussed at the hearing. A young person spoke about being detained for ten months in a lockdown unit in which he could come out of his room for only one hour per day:

I spent ten months on the Taft lock-down unit for assaultive wards. I was considered a threat to regular staff. For the first month-and-a-half that I was there, I came out of my room for one hour a day. As soon as the shift came on, which is about 6 o'clock in the morning, I would have my handcuffs removed out of my room to shower. My shower would count as part of my hour, as part of my large muscle exercise. I would sometimes have to eat in my handcuffs in front of the TV. That would be part of my large muscle exercise. That would be it. For a month-and-a-half I did that.⁵⁵

Youth Law Center testimony further detailed the extensive use of locked room time in disciplinary units:

I have had letters from kids...essentially in protective custody, locked down 23 hours a day. They get the wonderful educational services which are basically a sham, to have a teacher come to the crack in your door for ten minutes a day. You

⁴⁹ *Guards at Youth Prison Accused of Abusing Inmates*, *supra* note 48; *Lawmakers Put Pressure on New CYA Chief*, *supra* note 48; *Agency's Trouble-Shooter Finds Himself Under Fire*, *supra* note 48; Gladstone & Rainey, *supra* note 48; *Head of Youth Agency Forced to Resign*, *supra* note 48; *Another Try at Youth Justice Reform*, *supra* note 48; Warren, *supra* note 48; Rainey, *supra* note 48.

⁵⁰ Krisberg et al., *supra* note 25, at 12; James Rainey & Tipton Blish, *Man Guilty in Death of CYA Staffer Court: Jury Convicts Inmate in 1996 Stabbing and Strangulation of Counselor at Youth Prison*, *L.A. TIMES* (Oct. 4, 2000), <http://articles.latimes.com/2000/oct/04/news/mn-31244>.

⁵¹ Ann Griffith, *YTS inmates: they treat us like animals – prison officials deny accusations of abuse*, *DAILY BULLETIN*, 4 (Nov. 22, 1997).

⁵² *Agency's Trouble-Shooter Finds Himself Under Fire*, *supra* note 48.

⁵³ *Joint Oversight Hearing*, *supra* note 31.

⁵⁴ *Id.*

⁵⁵ *Id.*

get out of your cell for maybe an hour in which time you are required to do your showering and your recreational exercise. And at Chaderjian, that happens outside in a cage. And other kids are not there in protective custody, but they're there because they've messed up in other programs. Some of the kids are in what are called 'recalcitrant programs' but it's kind of like the emperor's new clothes because there is no program. You are basically just locked down.⁵⁶

The testimony also noted that, according to federal research, California was among only 4% of state training schools nationally that did not limit the period of time youth could be held in isolation.⁵⁷ Youth Law Center told the Joint Committees that its attorneys had complained to the previous Director of the Youth Authority about a variety of lockdown issues but received an unsatisfactory response.⁵⁸ Senator Vasconcellos noted that a number of the letters were in the hearing binder⁵⁹ and resolved the Committee would follow up with the new Director of Youth Authority.⁶⁰

Shortly after the May 16, 2000 hearing, and in direct response to the lockdown testimony, Senator Vasconcellos directed Jerry Harper, the new Director of the Youth Authority, to go beyond the inadequate response to Youth Law Center's 1999 letter. Vasconcellos asked Harper to provide more information about the use of lockdown and to research the use of lockdown in ten other states.⁶¹ The letter also directed Youth Authority to develop a policy on lockdown if it did not already have one.⁶²

C. The Inspector General's 23-and-1 Program Review⁶³

Following the May 2000 legislative hearing, the Inspector General reviewed the use of "23-and-1" programs at six Youth Authority facilities and issued a report.⁶⁴ At the time of the review, 16.4% of the wards in the six facilities reviewed were assigned to the 23-and-1 program.⁶⁵ At the Heman G. Stark facility, 28.4% of the youth were on 23-and-1 programs.⁶⁶ The Inspector General also found that the 23-and-1 program at two facilities (Stark and Chaderjian) was four

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ The letters in the hearing binder included the 1999 Youth Law Center letter to Acting Director Zermeño, as well as letters to the Youth Authority in the context of the *Nick O. v. Terhune* special education case that spoke prominently about the 23-hour lockdowns and use of cages for education. Letter to Patricia Z. Ostini, Chief Counsel, California Youth Authority, from Sue Burrell & Carole Shauffer, Youth Law Center (Feb. 29, 2000); Letter to Patricia Z. Ostini, Chief Counsel, California Youth Authority from Sue Burrell, Youth Law Center (June 11, 1999).

⁶⁰ *Joint Oversight Hearing*, *supra* note 31.

⁶¹ Letter from Senator John Vasconcellos to Jerry Harper, Director, California Youth Authority (June 13, 2000) (on file with authors).

⁶² *Id.*

⁶³ "23-and-1" refers to statuses in which youth came out of their cells for only one hour per day.

⁶⁴ Steve White, *23-and-1 Program Review: California Youth Authority Facilities*, OFF. OF THE INSPECTOR GEN. 1, 1 (Dec. 2000).

⁶⁵ *Id.* at 2.

⁶⁶ *Id.* at 4.

months long and that many youth were locked down even longer. In some cases, the youth were locked down for longer than eight months.⁶⁷

The report found that more than a third of the youth in 23-and-1 did not even receive the promised one hour per day of large muscle exercise or were forced to experience it in wire cages.⁶⁸ Almost the same percentage were deprived of telephone calls and few youth received visits from religious counselors or members of their treatment team.⁶⁹ Youth were held in cells found to be in disrepair, with graffiti on the walls, inadequate lighting, dirty and clogged vents, and poor temperature control—exacerbated by the fact that youth were dressed only in underwear and socks.⁷⁰ A significant number of rooms lacked writing materials and basic hygiene items, such as soap and toothpaste.⁷¹

The Inspector General proposed a series of changes and time limits to remediate these conditions.⁷²

D. Prison Law Office and the Farrell Litigation

None of this escaped the attention of the Prison Law Office, an experienced civil rights litigation firm with a resume that included several decades of successful challenges to conditions in California's adult correctional system.⁷³ Lawyers Donald Specter and Sara Norman, with the assistance of several law firms, filed a federal class action case against Youth Authority in 2002.⁷⁴ However, after an initial ruling in the case, the plaintiffs decided to change course strategically and obtained a dismissal of the case.⁷⁵

In January 2003, the Prison Law Office and the same co-counsel filed a taxpayer action in state court that became widely referred to as "The *Farrell* Litigation" (*Farrell*).⁷⁶ At the beginning of the litigation, it appeared that Youth Authority would fight the case. The Attorney General asked for millions of dollars for discovery.⁷⁷ However, when it became clear that conditions in the system were as abhorrent as reported, the state decided to forego years of fighting.⁷⁸ The case's resolution

⁶⁷ *Id.* at 4–5.

⁶⁸ *Id.* at 5.

⁶⁹ White, *supra* note 64, at 5.

⁷⁰ *Id.* at 5–7.

⁷¹ *Id.* at 7.

⁷² *Id.*

⁷³ See PRISON LAW OFFICE, <http://prisonlaw.com/major-cases>.

⁷⁴ Stevens v. Harper, No. CIV–S–01–0675 DFL PAN (E.D. Cal., 2002), <https://www.clearinghouse.net/chDocs/public/JI-CA-0012-9000.pdf>.

⁷⁵ Memorandum of Opinion and Order, Stevens v. Harper, No. CIV–S–01–0675 DFL PAN P, 213 F.R.D. 358, at 384 (E.D. Cal. 2002), <https://www.clearinghouse.net/chDocs/public/JI-CA-0012-0001.pdf>.

⁷⁶ Complaint for Injunctive and Declaratory Relief, Farrell v. Allen (because of successive Directors, the case name was successively Farrell v. Harper, Farrell v. Allen, Farrell v. Hickman, Farrell v. Tilton, and Farrell v. Cate), Case No. RG 03079344 (Cal. Sup. Ct. 2003), <https://www.clearinghouse.net/chDocs/public/JI-CA-0013-0027.pdf>. Co-counsel in the case included Disability Rights Advocates, and the law firms of Latham & Watkins and Pillsbury Winthrop; see also Farrell Lawsuit Timeline, http://www.cjcj.org/uploads/cjcj/documents/farrell_litigation_timeline_2015.pdf.

⁷⁷ SUE BURRELL, CALIFORNIA JUVENILE JUSTICE REFORM IN THE 21ST CENTURY (SO FAR), CPDA JUV. DEF. SEMINAR, MONTEREY, CALIFORNIA, 2 (Jan. 2006), available at <http://www.ylc.org/wp/wp-content/uploads/CPDA%20California%20JJ%20Reform%2021st%20C%20Jan%2006.pdf>.

⁷⁸ Dean E. Murphy, *California Settles Lawsuit on Juvenile Prisons*, N.Y. TIMES (Nov. 17, 2004); <https://www.nytimes.com/2004/11/17/us/california-settles-lawsuit-on-juvenile-prisons.html>; Mark Martin, *Youth*

was also undoubtedly influenced by the fact that newly-elected Governor Arnold Schwarzenegger had disliked what he'd seen when he visited Youth Authority.⁷⁹ The parties jointly selected experts in key areas to investigate and report on general conditions, health care services, mental health and substance abuse programs, sex offender programs, and education programs.⁸⁰ The experts issued reports in 2003, a consent decree was agreed upon at the end of that year, and additional terms were negotiated until 2004.⁸¹ Remedial plans were drawn up and monitoring in *Farrell* continued through at least thirty-four quarterly reports, ending when the case was dismissed in 2016.⁸²

Farrell played an important role in broad institutional reform. It confirmed the extent of problems at Youth Authority through the voices of experts. The consent decree and use of expert reports saved years of quibbling and enabled remedial efforts to proceed quickly. The ongoing monitoring reports also kept the conditions in the limelight. With continuous prodding by the Prison Law Office,⁸³ the *Farrell* litigation resulted in significant changes to conditions and practices in state facilities.⁸⁴

Authority agrees to oversight / Governor says state agency has failed to rehabilitate wards, S.F. CHRONICLE (Nov. 17, 2004), <https://www.sfgate.com/news/article/Youth-Authority-agrees-to-oversight-Governor-2671527.php>.

⁷⁹ Krisberg et al., *supra* note 25, at 14; Murphy, *supra* note 78.

⁸⁰ *Farrell v. Allen*, *supra* note 76; Case No. RG 03079344, Consent Decree (2004), at 2, <https://www.clearinghouse.net/chDocs/public/JI-CA-0013-0002.pdf>.

⁸¹ The relevant documents include: Michael Puisis & Madie LaMarre, *Review of Health Care Services in the California Youth Authority (CYA)* (Aug. 22, 2003), <https://www.clearinghouse.net/chDocs/public/JI-CA-0013-0022.pdf>; Jerry Thomas, *Evaluation of Sex Offender Programs: The California Youth Authority* (Sept. 23, 2003) <https://www.clearinghouse.net/chDocs/public/JI-CA-0013-0024.pdf>; Consent Decree, *Farrell v. Allen*, Case No. RG 03079344 (Cal. County Super. Ct., 2004); ERIC W. TRUPIN & RAYMOND PATTERSON, REPORT OF FINDINGS OF MENTAL HEALTH AND SUBSTANCE ABUSE TREATMENT SERVICES TO YOUTH IN CALIFORNIA YOUTH AUTHORITY FACILITIES (Dec. 2003), available at <https://www.clearinghouse.net/chDocs/public/JI-CA-0013-0021.pdf>; THOMAS O'ROURKE & ROBERT GORDON, EDUCATION PROGRAM REVIEW OF CALIFORNIA YOUTH AUTHORITY (Dec. 2003), available at <https://www.clearinghouse.net/chDocs/public/JI-CA-0013-0023.pdf>; BARRY KRISBERG, GENERAL CORRECTIONS REVIEW OF THE CALIFORNIA YOUTH AUTHORITY (Dec. 23, 2003), available at http://www.nccdglobal.org/sites/default/files/publication_pdf/ca-youth-authority.pdf. The reports and consent decree are available at <https://www.clearinghouse.net/detailDocument.php?id=12816>. Court documents through 2006 and a history of the case are also available. See *Farrell v. Harper, Major Cases*, PRISON LAW OFFICE, <http://prisonlaw.com/major-cases/>.

⁸² See *Farrell v. Harper*, PRISON LAW OFFICE, http://prisonlaw.com/post_case/farrell-v-harper/.

⁸³ Although the case was settled in 2004, four years later, the state had still not complied with any of the deadlines in the remedial plans, and the Prison Law Office went back to court to procure an order with new deadlines and additional compliance requirements. Order, *Farrell v. Cate*, RG03-079344 (Cal. Sup. Ct. 2008).

⁸⁴ See FARRELL QUARTERLY MONITORING REPORTS, CALIFORNIA DEP'T OF CORR. & REHAB., DIV. OF JUV. JUST., REFORM PLANS & PROGRESS, https://www.cdcr.ca.gov/Juvenile_Justice/Reform_Plans_and_Progress.html (last visited Jan. 6, 2019). The case was dismissed in early 2016. Don Thompson, *California Resolves Long-running Lawsuit over Youth Prisons*, ASSOC. PRESS (Feb. 25, 2016), <https://www.dailydemocrat.com/2016/02/25/california-resolves-long-running-lawsuit-over-youth-prisons/>. Shortly before the case was dismissed, Dr. Barry Krisberg reviewed the changes with respect to locked room confinement, including getting rid of the old 23-and-1 programs; using short term "cool down" periods for youth who may be a danger to themselves or others; use of Treatment Intervention Program (TIP) for specialized attention, usually resulting in return to regular programs within a day; elimination of Temporary Detention that was essentially solitary confinement; and implementation of Behavioral Management Programs for youth engaged in repeated and very serious disciplinary infractions allowing youth to spend most of their waking hours outside their rooms receiving education and treatment, and working toward release to regular housing units. Barry Krisberg, *Reforming the Division of Juvenile Justice: Lessons Learned*, 46 MCGEORGE L. REV. 775, 786-88 (2014).

At the beginning of the *Farrell* litigation, however, Dr. Barry Krisberg's findings in the General Corrections Review revealed serious problems with the use of locked room time. During the period he examined, approximately 10% of young people in Youth Authority were placed in restricted programs where solitary confinement was used. Within the restricted programs 10% of the youth were designated as mental health cases and 8% were identified as special education cases.⁸⁵ He urged that the isolation of troubled wards with minimal social interactions could lead to psychological deterioration.⁸⁶ Adding to these extreme conditions, youth in restricted programs usually received educational, recreational, and counseling services in cages.⁸⁷ Krisberg noted some seventy cages at four facilities.⁸⁸

Youth told Krisberg that they spent most of their day in lockup units sleeping or reading because the noise and chaotic environment kept them up all night.⁸⁹ Some of the youth told him that they began hearing voices and experiencing symptoms of other mental health problems.⁹⁰ A large number of wards reported symptoms of severe depression, including suicidal ideation.⁹¹

Dr. Krisberg described conditions in these lockup units as "deplorable."⁹² One such unit had already been closed and Youth Authority Director Jerry Harper had called another unit a "dungeon."⁹³ Many were poorly lit and had terrible ventilation.⁹⁴ The cells were not well designed to monitor potentially suicidal wards and the video equipment in some rooms was in disrepair.⁹⁵ Dr. Krisberg observed that it was difficult to reach any other conclusion than that these conditions of confinement were designed to punish their inhabitants.⁹⁶

According to Dr. Krisberg, no other juvenile system in the country used this extreme form of solitary confinement.⁹⁷ Further, he noted that "most psychologists and mental health professionals would argue that this severe isolation is antithetical to sound treatment practices. Since the invention of solitary confinement by the Philadelphia Quakers in the eighteenth century, we have learned that this approach produces hostility and illness, not health."⁹⁸ Sadly, within a month of Dr. Krisberg's report, two youth who had been in protracted lockdown hung themselves in their cells at the Preston Youth Authority facility.⁹⁹

⁸⁵ Krisberg, *supra* note 81, at 54.

⁸⁶ *Id.* at 58.

⁸⁷ *Id.* at 63.

⁸⁸ *Id.*

⁸⁹ *Id.* at 59–60.

⁹⁰ Krisberg, *supra* note 81, at 60.

⁹¹ *Id.* at 60.

⁹² *Id.* at 59.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ Krisberg, *supra* note 81, at 59.

⁹⁶ *Id.*

⁹⁷ *Id.* at 65–66.

⁹⁸ *Id.* at 58.

⁹⁹ Karen De Sá, *Scathing Report on Youth Authority*, MERCURY NEWS (Jan. 28, 2004).

E. New Legislative Champions and Expanded Voices in Advocacy (2004-2005)

Reform efforts continued, bolstered by a growing advocacy community and new legislative champions.¹⁰⁰ A news conference was held at the Capitol in early 2004 to discuss the *Farrell* expert reports and to decry the conditions revealed in them.¹⁰¹ Shortly thereafter, the Senate Committee on the California Corrections System held hearings chaired by Senator Gloria Romero.¹⁰² The use of isolation was prominent in discussions, as well as reports about Tamarack Hall, a notorious lockdown unit at the Preston facility.¹⁰³ The very public discussion of these conditions and Senator Romero's unflinching commitment to the issues helped to sustain the pressure for change.¹⁰⁴ When Walter Allen III appeared for his confirmation hearing as the new head of the Youth Authority and was questioned about the use of 23-and-1 lockdown, he committed to ending the practice.¹⁰⁵

In early 2005, Senator Romero introduced legislation aimed at completely revamping the state juvenile justice system.¹⁰⁶ Then, after 18-year-old Joseph Maldonado, committed to CYA for car theft, hung himself in his cell after two months of lockdown at Chaderjian, Senator Romero called for the facility's closure.¹⁰⁷ Her energy and willingness to keep Youth Authority conditions

¹⁰⁰ Over the next period, conditions in the facilities continued to draw a great deal of media attention. *See, e.g.,* Monte Morin & Allison Hoffman, *Youth Jail Hangings Questioned*, L.A. TIMES (Jan. 24, 2004); Clea Benson, *Youth Prison System: CYA Units Plagued by Violence and Lack Services, Reports*, SACRAMENTO BEE (Feb. 3, 2004); Karen De Sá & Mark Gladstone, *Lockup Blasted*, MERCURY NEWS (Feb. 3, 2004); Karen De Sá, *System Hardens Youth*, MERCURY NEWS (Feb. 10, 2004); Jenifer Warren, *Disarray in Juvenile Prisons Jolts Capitol*, L.A. TIMES (Feb. 4, 2004); Jill Leovy & Jia-Rui Chong, *Youth Authority to Review Use of Cages*, L.A. TIMES (Feb. 6, 2004); Jill Leovy, *Revamp of CYA Slow to Occur*, L.A. TIMES (Feb. 16, 2004); Jenifer Warren, *Attack by Prison Dog Revealed*, L.A. TIMES (May 7, 2004); Brandon Bailey & Karen De Sá, *4th Death this Year in Youth Prisons*, MERCURY NEWS (Sept. 6, 2005); Gregory W. Griggs, *CYA Guards Accused of Misconduct*, L.A. TIMES (Dec. 2, 2004); Scott Smith, *Report Critical of CYA: System Called Broken but Useful*, THE RECORD (Dec. 23, 2004); Mark Gladstone & Brandon Bailey, *Governor Set to Announce Deal to Overhaul Youth Authority*, L.A. TIMES (Nov. 16, 2004); Brandon Bailey, *Reform of Youth Prisons to be Difficult*, MERCURY NEWS (Dec. 12, 2004).

¹⁰¹ Clea Benson, *CYA Will Reconsider Cages*, SACRAMENTO BEE (Feb. 4, 2004).

¹⁰² The first hearing was held February 19, 2004, featuring testimony from parents of several youth who had been mistreated in the system, including one whose son committed suicide. Mark Martin, *Officials Being Urged to Reform or Even Ban Youth Authority*, S.F. CHRON. (Feb. 20, 2004), <https://www.sfgate.com/news/article/Officials-being-urged-to-reform-or-even-ban-state-2793519.php>. *See* Krisberg et al., *supra* note 25, at 13–14.

¹⁰³ One article described Tamarack as “a grimy, turn-of-the century building at Preston that resembles something out of a Dickens novel.” Jenifer Warren et al., *A Daily Lesson in Violence and Despair*, L.A. TIMES (Feb. 17, 2004), <http://articles.latimes.com/2004/feb/17/local/me-cya17>. The article went on to describe the conditions: “Chilly and dim with terrible ventilation, its two tiers of cells sometimes emit a startling din as youths shout obscenities, howl and bang on the doors of their cramped, graffiti-covered cells.” *Id.*

¹⁰⁴ When the families of the youth who had died at Preston filed a lawsuit, Senator Romero immediately toured the facility where they had died. Don Thompson, *Claim filed by families of Calif. teens found hanged in cell*, ASSOC. PRESS (Feb. 10, 2004). He also personally visited another facility and spoke to the media about meeting a young man in lockdown who recoiled at meeting her – the first human being he had seen in 200 days. Jenifer Warren et al., *Youth Prisons to Stop Use of Extended Isolation*, L.A. TIMES (Aug. 5, 2004), <http://articles.latimes.com/2004/aug/05/local/me-prison5>.

¹⁰⁵ *Id.*

¹⁰⁶ *See* Krisberg et al., *supra* note 25, at 13–14.

¹⁰⁷ Scott Smith, *Teen commits suicide at youth prison*, THE RECORD (Sept. 2, 2005).

in the limelight played an important role in prompting action by system officials and sparking institutional change.¹⁰⁸

At the same time, the Ella Baker Center for Civil Rights turned its attention to Youth Authority reform and launched its "Books Not Bars" campaign,¹⁰⁹ thereby bringing to the forefront the voices of families of system-involved youth. Beginning in 2004, Books Not Bars staged rallies at the gates of Youth Authority facilities with family members of incarcerated youth and sometimes with the Youth Justice Coalition.¹¹⁰ The campaign forced policymakers to recognize that the systemic abuses were being perpetrated on the children of real people. Allen Feaster, whose son had committed suicide while in solitary confinement at the Preston facility in early 2004, became a vocal advocate for change.¹¹¹

Other advocates continued to take every opportunity to speak out about ongoing problems at the Youth Authority, including the overuse of locked room time. Several of the original advocacy groups repeatedly appeared before the Little Hoover Commission, which provided research and policy recommendations to the state regarding corrections issues.¹¹²

F. More Critical Reports from the Inspector General

A year after the *Farrell* expert reports, and shortly after the 2004 *Farrell* consent decree was signed, the Inspector General's office came out with another blistering report on conditions at Youth Authority institutions.¹¹³ The report addressed a series of ongoing problems in the facilities

¹⁰⁸ See, e.g., Jenifer Warren, *Videotape of Beating by CYA Officers Is Released*, L.A. TIMES (Apr. 2, 2004), <http://articles.latimes.com/2004/apr/02/local/me-cya2>; Jenifer Warren, *Shut Down State Youth Prisons, Experts Say*, L.A. TIMES (Sept. 22, 2004), <http://articles.latimes.com/2004/sep/22/local/me-cya22>; Mark Martin, *State senator wants to revamp youth prisons*, SFGATE (Jan. 25, 2005), <https://www.sfgate.com/bayarea/article/SACRAMENTO-State-senator-wants-to-revamp-youth-2735846.php>; Don Thompson, *Audit says 'fundamental change' needed at Calif. Youth Authority*, ASSOC. PRESS (Jan. 4, 2005), http://legacy.sandiegouniontribune.com/uniontrib/20050104/news_1n4cya.html.

¹⁰⁹ See *Books Not Bars Basics*, ELLA BAKER CTR. FOR HUM. RTS., <http://ellabakercenter.org/books-not-bars/books-not-bars-basics>. Led by Lenore Anderson, Zachary Norris, Jakada Imani, and Sumayyah Waheed, Books Not Bars quickly joined the core group of advocates, but also pursued its own legislative agenda and media strategies. Books Not Bars also served as a place where families of incarcerated youth could receive support. Thus, when Dyron Brewer died at the N.A. Chaderjian facility, Books Not Bars helped his family demand answers from the system. See Tim Reiterman, *Family of CYA Inmate Who Died in Custody Seeks Answers*, L.A. TIMES (Sept. 9, 2004), <http://articles.latimes.com/2004/sep/09/local/me-cya9>.

¹¹⁰ Statements from families of Books Not Bars members La Nita Mitchell and Laura Talkington-Denies in YOUTH FIRST, *BREAKING DOWN THE WALLS: LESSONS LEARNED FROM SUCCESSFUL STATE CAMPAIGNS TO CLOSE YOUTH PRISONS*, 42–43 (2017), available at <http://www.youthfirstinitiative.org/wp-content/uploads/2017/04/Breaking-Down-the-Walls.pdf> [hereinafter *Youth First*].

¹¹¹ Joan Ryan, *Time to Fix the CYA / Radical Plan to Shut Youth Prison System*, SF GATE (Apr. 29, 2004), <http://www.sfgate.com/bayarea/article/Time-to-fix-the-CYA-Radical-plan-to-shut-youth-2763816.php>; see also *Youth First*, *supra* note 110.

¹¹² See, e.g., LITTLE HOOVER COMMISSION, *RECONSTRUCTING GOVERNMENT: A REVIEW OF THE GOVERNOR'S REORGANIZATION PLAN: REFORMING CALIFORNIA'S YOUTH AND ADULT CORRECTIONAL AGENCY*, APPENDIX B 41 (Jan. 27, 2005), <http://www.lhc.ca.gov/sites/lhc.ca.gov/files/Reports/179/Report179.pdf> (representatives from Commonwealth, Youth Law Center and the Prison Law Office invited to testify); LITTLE HOOVER COMMISSION, *SOLVING CALIFORNIA'S CORRECTIONS CRISIS: TIME IS RUNNING OUT*, APPENDIX C 57 (Jan. 2007), <http://www.lhc.ca.gov/sites/lhc.ca.gov/files/Reports/185/Report185.pdf> (representatives from the Center on Juvenile and Criminal Justice, Youth Law Center, and Commonwealth were invited to testify).

¹¹³ MATTHEW L. CATE, INSPECTOR GENERAL, OFFICE OF THE INSPECTOR GENERAL, ACCOUNTABILITY AUDIT

and focused particularly on 23-and-1 lockdown.¹¹⁴ It found that the system still confined a significant number of wards to cells for twenty-three hours per day.¹¹⁵ Other youth received three hours outside their cell but were forced to spend it in a "10' x 16' cyclone-fenced asphalt enclosure with no recreation equipment or toilet facilities and only a small amount of water."¹¹⁶ Some youth had been on administrative lockdown¹¹⁷ for more than thirty days and a few for more than two hundred days.¹¹⁸ The Inspector General made several specific follow-up recommendations for change.¹¹⁹

In December 2005, the Inspector General released its review into the death of Joseph Maldonado earlier that year.¹²⁰ The report found that an emergency institutional lockdown at N.A. Chaderjian in connection with a gang-related attack on staff had initially been justified, but that eight weeks in isolation and denial of mental health services may have contributed to Joseph's suicide.¹²¹ The Inspector General was especially troubled that 23-and-1 lockdown persisted despite the Director's previous statement that it ended.¹²² The report called, again, for an end to 23-and-1 and for significant changes in mental health interventions for youth at risk of self-harm.¹²³

G. The Farrell Remedial Plans on Lockdown Issues (2005)

Prison Law Office documented the ongoing failure to implement the changes set forth in the *Farrell* consent decree and continued to pursue compliance.¹²⁴ In 2005, California's Department of Corrections released a Safety and Welfare Remedial Plan (the Plan).¹²⁵ It called for the state to consult with nationally recognized experts to assist in the design, development, and implementation of additional rehabilitation and treatment interventions in the areas of violence reduction, gang integration, substance abuse and dependence, and normative culture, as well as

REVIEW OF AUDITS OF THE CALIFORNIA YOUTH AUTHORITY 2000-2003 (Jan. 2005), <https://www.oig.ca.gov/media/reports/ARCHIVE/BOA/Audits/2000-2003%20Review%20of%20Audits%20of%20the%20California%20Youth%20Authority.pdf>.

¹¹⁴ *Id.* at 7–21.

¹¹⁵ *Id.* at 7.

¹¹⁶ *Id.* at 12.

¹¹⁷ The report defined "administrative lockdown" as "the restriction to cells of all wards in a living unit or a facility due to an operational emergency that threatens the safety of wards or staff. Under department policy, administrative lockdown is to continue only as long as necessary to restore the safe operation of the facility or living unit. *Id.* at 8.

¹¹⁸ *Id.* at 111.

¹¹⁹ CATE, *supra* note 113, at 14–19.

¹²⁰ MATTHEW L. CATE, INSPECTOR GENERAL, OFFICE OF THE INSPECTOR GENERAL, SPECIAL REVIEW INTO THE DEATH OF A WARD ON AUGUST 31, 2005 AT THE N.A. CHADERJIAN YOUTH CORRECTIONAL FACILITY (Dec. 2005), <https://www.oig.ca.gov/media/reports/ARCHIVE/BOA/Reviews/N.%20A.%20Chaderjian%20Youth%20Correctional%20Facility,%20Special%20Review%20into%20the%20Death%20of%20a%20Ward%20on%20August%2031,%202005.pdf>.

¹²¹ *Id.* at 1, 10–13.

¹²² *Id.* at 14.

¹²³ *Id.* at 14, 15–29.

¹²⁴ Stipulation Regarding California Youth Authority Remedial Efforts, *Farrell v. Allen*, Case No. RG 03079344 (Cal. Sup. Ct. 2005), <https://www.clearinghouse.net/chDocs/public/JI-CA-0013-0003.pdf>.

¹²⁵ CAL. DEP'T OF CORRECTIONS & REHABILITATION, DIV. OF JUV. JUST., REFORMING CALIFORNIA'S JUVENILE CORRECTIONS SYSTEM: *FARRELL V. HICKMAN*, SAFETY & WELFARE REMEDIAL PLAN 2 (Nov. 30, 2005), https://www.cdcr.ca.gov/Juvenile_Justice/docs/4_safety_welfare.pdf [hereinafter SAFETY & WELFARE REMEDIAL PLAN].

interventions designed to meet the specific needs of female offenders.¹²⁶ The Plan called for replacement of existing special management programs (where lockdown was endemic) with time-limited behavior treatment programs.¹²⁷ Youth were to receive at least eight hours of rehabilitative services in each twenty-four-hour period, including four hours of education, two hours of recreation, and two hours of rehabilitative/treatment interventions.¹²⁸ Temporary detention, or disciplinary lockdown, was to be phased out and replaced with "time outs" for up to six hours on assigned living units.¹²⁹

A second *Farrell* Safety and Welfare Remedial Plan developed by the national experts was released in March 2006.¹³⁰ Much of that Plan focused on creating new treatment modalities, improving classification, using smaller living units, engaging families, and increasing staffing levels, especially for mental health.¹³¹ The *Farrell* Mental Health Remedial Plan was filed in August 2006.¹³² Like the Safety and Welfare Remedial Plan, it focused primarily on big picture reforms such as developing a philosophy of treatment, building a continuum of care, screening and assessment, staffing and staff qualifications, evidence-based treatment, family engagement, and quality assurance.¹³³ It sought to broadly alter the system in ways that would decrease the need for locked room time. It also called for youth with high level inpatient care needs to be returned to the committing court, referred to the Department of Mental Health, or handled in a licensed inpatient care unit,¹³⁴ thus reducing the population that previously wound up in lockdown. In addition, the Mental Health Remedial Plan called for daily schedules to be developed

to maximize out of room time and to ensure structured activity based on evidence-based principles for 40 to 70% of waking hours. The program service day schedule will ensure that youth will be actively engaged in developmentally appropriate and rehabilitative activities with the expectation that they will spend minimal time in their rooms during normal waking hours.¹³⁵

H. The Prelude to Legislation

Compliance with the *Farrell* remedial plans was slow to take hold. Thus, one year after the 2006 remedial plans, the Inspector General released yet another report, this time on the Heman G.

¹²⁶ *Id.* at 2.

¹²⁷ *Id.* at 68.

¹²⁸ *Id.*

¹²⁹ *Id.* at 70.

¹³⁰ CHRISTOPHER MURRAY ET AL., CAL. DEP'T OF CORRECTIONS & REHABILITATION, DIV. OF JUV. JUST., SAFETY AND WELFARE PLAN: IMPLEMENTING REFORM IN CALIFORNIA (Mar. 31, 2006), https://www.cdcr.ca.gov/Juvenile_Justice/docs/SafetyWelfarePlan.pdf. Although most of the Plan focused on broad brush reforms, there were a few specific references to use of locked room time. For example, the Plan called for increased monitoring of the use of restricted housing, temporary detention and use of lockdown, as well as implementation of Performance Based Standards designed to reduce the length of locked room confinement. *Id.* at 83, 87.

¹³¹ SAFETY & WELFARE REMEDIAL PLAN, *supra* note 125, at 9–10, 29, 33–57, 61–65, 70.

¹³² CAL. DEP'T OF CORRECTIONS & REHABILITATION, DIV. OF JUV. JUST., MENTAL HEALTH REMEDIAL PLAN (Aug. 26, 2006), https://www.cdcr.ca.gov/Juvenile_Justice/docs/MentalHealthPlan.pdf.

¹³³ *Id.* at 13–19, 21–39, 46–54, 56–60, 69–71.

¹³⁴ *Id.* at 35–43.

¹³⁵ *Id.* at 30.

Stark facility.¹³⁶ The report found that only seven (2%) of 323 youth on restricted programs were allowed out of their cells for more than three hours a day, and only two (less than 1%) received educational services.¹³⁷ Further, it found that the facility had failed to implement many of the protections needed to protect suicidal youth following the suicide two years earlier at the N.A. Chaderjian facility.¹³⁸ "Nothing has changed," commented Senator Gloria Romero. "We're dealing with an organization that is impervious to change."¹³⁹

In 2008, the Prison Law Office filed a motion in *Farrell* complaining of the state's failure to comply with deadlines or to implement remedial plans, including plans with respect to locked room confinement.¹⁴⁰ In May 2008, the *Farrell* court confirmed that many of the conditions that gave rise to the Consent Decree remained the same and that the state was in gross violation of court orders.¹⁴¹ The court did not appoint a receiver in order to give the new Director of Corrections and Rehabilitation an opportunity to demonstrate his commitment to change. It did, however, order new timelines, and strengthen monitoring of compliance.¹⁴²

The advocacy community took note of the state's slow response and, over the next several years, began to explore other strategies. Advocates also continued to keep the pressure on through rallies and work with the media. A 2011 Books Not Bars press release called for the Youth Authority to stop its rampant use of isolation, citing to a recent monitoring report in the *Farrell* litigation documenting ongoing failures with respect to use of locked room time across the system.¹⁴³

I. Use of Locked Room Time in County Facilities

Although use of locked room time in state juvenile facilities received most of the attention, county facilities also routinely used locked room time and became the subject of several inquiries and lawsuits in the 1980s and 1990s.

In 1984, a class action case was filed against Solano County¹⁴⁴ alleging that children were isolated in their rooms continuously for days or weeks at a time. While in isolation, they were

¹³⁶ MATTHEW L. CATE, INSPECTOR GENERAL, OFFICE OF THE INSPECTOR GENERAL, SPECIAL REVIEW OF THE HIGH RISK ISSUES AT THE HEMAN G. STARK YOUTH CORRECTIONAL FACILITY (Feb. 2007), <https://www.oig.ca.gov/media/reports/ARCHIVE/BOA/Reviews/Heman%20G.%20Stark%20Youth%20Correctional%20Facility,%20Special%20Review%20of%20High-Risk%20Issues%20at%20the.pdf>.

¹³⁷ *Id.* at 1.

¹³⁸ *Id.*

¹³⁹ Mark Martin, *Grim conditions at youth prison: Report calls Chino facility lax, dangerous 2 years after governor vowed to fix system*, S.F. CHRON. (Feb. 28, 2007), <https://www.sfgate.com/news/article/Grim-conditions-at-youth-prison-Report-calls-2614970.php>.

¹⁴⁰ Order to Show Cause: Re Appointment of Special Master and Compliance with Consent Decree and Remedial Plans, 4-40, *Farrell v. Tilton*, RG 03079344 at 2 (Cal. Sup. Ct. 2008).

¹⁴¹ Order at 4-5, *Farrell v. Cate* (2008) Case No. RG03-079344.

¹⁴² Order at 10-21, *Farrell v. Cate* (2008) Case No. RG03-079344.

¹⁴³ Press Release, Ellen Baker Ctr. for Hum. Rts., 24-Hour Lockup of Youth Rampant in California Youth Prisons (June 1, 2011), <http://ellabakercenter.org/in-the-news/books-not-bars/24-hour-lock-up-of-youth-rampant-in-california-youth-prisons>.

¹⁴⁴ *Jane G. v. Solano County*, No. CIVS 81-0080– –RAR at 6-7, (E.D. Cal. 1984), <https://www.clearinghouse.net/chDocs/public/JI-CA-0005-0001.pdf>. An ensuing settlement prohibited youth from being isolated for punitive or disciplinary reasons. Isolation was to be limited to youth who presented an immediate danger to themselves or others, and it was to be strictly time limited to no more than 24 hours. Youth in isolation were to have a clean and sanitary room with adequate lighting, heat, and ventilation, and containing a bed, pillow, blankets

forced to eat all meals in their rooms and frequently could not leave their rooms for showers, exercise, recreation, or education.¹⁴⁵

In 1994, another case was filed against Kern County, alleging that children in county facilities were disciplined by being forced to stay in their room continuously on "room restriction" and "on tag," which amounted to isolation.¹⁴⁶ While on that status, the youth had to eat meals in their room and could not go outside for exercise, recreation, or education.¹⁴⁷ Youth were placed on that status for four-to-forty-eight hours for minor infractions, or three-to-five days for major infractions.¹⁴⁸

A 1990 case involving conditions in San Diego facilities revealed that, because of the crowded conditions and the difficult logistics involved in transporting youth to and from various activities, they were locked in their rooms an average of thirteen-to-fourteen hours a day.¹⁴⁹

In 1991, the United States Department of Justice (Department) assailed the arbitrary use of isolation and inadequate monitoring in San Francisco's Youth Guidance Center.¹⁵⁰ The Department found the situation particularly disturbing because it had previously advised city officials on at least three separate occasions that juveniles housed at the facility were exposed to unconstitutional conditions.¹⁵¹

J. A History of Weak Oversight of Juvenile Facilities

Historically, neither state nor county systems had a rigorous system for oversight. The workings of the California Youth Authority were largely unseen by the outside community.

and sheets; full meals; a full complement of clean clothes, including a change of undergarments and socks; items necessary for personal hygiene, including soap, toothpaste, toothbrush, comb, towels, toilet paper, a shower, and access to a toilet and water fountain as needed; and writing materials, including pen, pencils, paper and a writing surface; 1 hour of out of room exercise; access to attorneys; and the right to send unopened mail and receive mail opened only in their presence. Settlement Agreement and Order Re: Declaratory and Injunctive Relief and Damages, *Jane G. v. Solano County*, No. CIVS-84-0080 RAR (E.D. Cal. 1984), <https://www.clearinghouse.net/chDocs/public/JI-CA-0005-0002.pdf>.

¹⁴⁵ Civil Rights Complaint: Class Action for Injunctive, Declaratory and Equitable Relief and Damages, at 6–7.

¹⁴⁶ *Steven L. v. Kern County*, CIV. Civ. No. CV-F-83-189 EDP (E.D. Cal 1984), First Complaint, at 10, <https://www.clearinghouse.net/chDocs/public/JI-CA-0011-0001.pdf>.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.* The case settlement in *Steven L.* prohibited the use of isolation as treatment or punishment, and allowed it to be used only in cases in which the youth presents a serious and immediate physical threat to him/herself, other detainees or staff members, where prescribed by a psychiatrist, or at the request of the minor, and only after all other less restrictive methods of control have been considered or have been tried and failed. The period of isolation was to be only so long as needed to accomplish the objective of isolation, and in the event *that* a staff mental health professional or nurse is not on duty and the facility determines that a child should not be released from isolation after three hours, then the facility was required to consult with a psychiatrist, psychologist, psychiatric aide, or other mental health professional and appropriate treatment begun. The place of isolation was to be adequately lighted, heated, and ventilated. Room restriction for disciplinary purposes was subject to due process, conditions of confinement, and was not to exceed 48 hours. *Steven L. v. Kern County*, CIV. Civ. No. CV-F-83-189 EDP (E.D. Cal 1984), Settlement Agreement, 7-14 (Mar. 18, 1991).

¹⁴⁹ However, the trial court did not find this arose to a constitutional violation. *Keith G. v. Bilbray* (Cal. 1995) 43 Cal.Rptr.2d 277, 28, *remanded*, 912 P.2d 1147 (Cal. 1996).

¹⁵⁰ Letter from John R. Dunne, Assistant Attorney General, Civ. Rts. Div., U.S. Dep't of Just., to Art Agnos, Mayor 2 (June 12, 1991), <https://www.clearinghouse.net/chDocs/public/JI-CA-0002-0001.pdf> [hereinafter Letter from John R. Dunne].

¹⁵¹ *Id.* at 1.

Although there were internal affairs processes and the Inspector General could be contacted with complaints, there was no ongoing comprehensive system of oversight for the state facilities.

Oddly, given the lack of oversight for its own institutions, the California Youth Authority was given responsibility for promulgating standards and inspecting county juvenile facilities.¹⁵² The early standards for county facilities lacked specificity in key areas, provided no time limits on the use of locked room time, and offered only general principles on discipline and isolation.¹⁵³ Despite this lack of rigor in standards and enforcement, the inspections at least assured that outside eyes observed what was happening in county facilities.¹⁵⁴ But even this modicum of oversight ceased when, as a result of budget cuts in 1992, the state eliminated funding for Youth Authority inspections of county facilities.¹⁵⁵ Instead, counties were instructed to inspect their own facilities and certify compliance with state standards to the Youth Authority.¹⁵⁶ There were no sanctions for failure to comply.¹⁵⁷

More than a decade later, the state reinstated county juvenile facility inspections and placed responsibility for this oversight under the authority of the Board of Corrections, which then became the Corrections Standards Authority in 2004.¹⁵⁸ In 2012, that agency, too, was replaced, becoming the Board of State and Community Corrections (Board).¹⁵⁹ The Board's *Minimum Standards for Juvenile Facilities*, which became effective in 2014,¹⁶⁰ included only brief provisions on "Separation."

The facility administrator shall develop and implement written policies and procedures addressing the separation of youth for reasons that include, but are not be limited to, medical and mental health conditions, assaultive behavior, disciplinary consequences and protective custody. Separated youth shall not be denied normal privileges available at the facility, except when necessary to accomplish the objective of separation. When the objective of the separation is discipline, Title 15 Section 1390 shall apply. Policies and procedures shall ensure a daily review of separated youth to determine if separation remains necessary.¹⁶¹

¹⁵² CAL. WELF. & INST. CODE § 851.

¹⁵³ See, e.g., STATE OF CAL., HEALTH & WELFARE AGENCY, DEPT. OF THE YOUTH AUTHORITY, STANDARDS FOR JUVENILE HALLS (1973). For example, the Standard on "Behavior Control" stated that removal from the group should be resorted to only when a minor is out of control and must be removed for the protection of himself or the protection of others. The duration of restriction shall be determined on an individual basis. Any isolation shall be used in conjunction with effective casework services." *Id.* at 29. The only other reference to isolation was in the standard for Counseling and Casework. It said that "After a minor has been accepted at juvenile hall, showered, and issued clothing, and other essential, he should not be locked in a room with no further explanation and isolated with his own thoughts." *Id.* at 27.

¹⁵⁴ LOREN WARBOYS & SUE BURRELL, YOUTH LAW CENTER, WORKING TOGETHER: BUILDING LOCAL MONITORING CAPACITY FOR JUVENILE DETENTION CENTERS (THE CALIFORNIA JUVENILE HALL SELF INSPECTION PROJECT) 3-4 (1997) [hereinafter WARBOYS & BURRELL].

¹⁵⁵ *Id.* at 3.

¹⁵⁶ *Id.* at 3; CAL. WELF. & INST. CODE § 209(d) (Stats. 1992, c. 695, (S.B. 97), §27).

¹⁵⁷ CAL. WELF. & INST. CODE § 209(d) (Stats. 1992, c. 695, (S.B. 97), §27).

¹⁵⁸ *History of the BSCC*, CAL. GOV., http://www.bscc.ca.gov/s_historyofthebscc.php. That agency became the Corrections Standards Authority in 2004.

¹⁵⁹ *Id.*

¹⁶⁰ BOARD OF STATE AND COMMUNITY CORRECTIONS, TITLE 15 MINIMUM STANDARDS FOR JUVENILE FACILITIES (2014).

¹⁶¹ CAL. CODE OF REGS. 15 § 1354 (2014).

The 2014 regulations on "Discipline Process" eliminated language that had allowed twenty-four hour segregation for both major and minor rule violations and made clear that in major rule violations, "separation" could be achieved through withdrawal of the youth from group activity rather than imposition of locked room confinement.¹⁶² While this was a step forward in the sense of recognizing that youth could be sanctioned for misbehavior using means other than room confinement, the regulations did nothing to encourage the use of alternatives or to guide decision making on the appropriate sanction. Under the 2014 regulations, a facility could still have policies allowing use of locked room confinement as a disciplinary sanction for major rule violations in every case.¹⁶³

III. THE CHANGING NATIONAL LANDSCAPE ON SOLITARY CONFINEMENT

California's experiences with confinement did not occur in a vacuum. Its evolving views on the use of solitary confinement or locked room confinement occurred against the backdrop of a growing national conversation on the issue in the 21st century.¹⁶⁴

A. *The JDAI National Standards on Locked Room Confinement (2014)*

In 2004, the Annie E. Casey Foundation (Foundation) promulgated national standards to be used in its widely acclaimed Juvenile Detention Alternatives Initiative (JDAI).¹⁶⁵ When they were revised in 2006,¹⁶⁶ the standards distinguished "isolation" for behavior that "threatens imminent harm to self or others or serious destruction of property" from "room confinement" for disciplinary reasons.¹⁶⁷ The standards carefully restricted the use of "isolation," providing that

[s]taff may not hold a youth in isolation for longer than four hours. If a qualified mental health professional determines that a youth needs to be in isolation for longer than four hours, staff shall transport the youth to a mental health facility or handle the youth through procedures for youth on suicide watch.¹⁶⁸

¹⁶² CAL. CODE REGS. 15, § 1391(d)-(e) (2014).

¹⁶³ CAL. CODE REGS. 15, § 1391(e) (2014).

¹⁶⁴ Aside from the initiatives directed at youth facilities, the national ACLU launched a Stop Solitary campaign focused primarily on adult jails and prison. See Stop Solitary – Advocacy Campaign Tools, ACLU, <https://www.aclu.org/other/stop-solitary-advocacy-campaign-tools> (last visited Jan. 6, 2019). In June 2013, they published the No Child Left Alone: Advocacy Toolkit, focused on young people held in adult facilities. Many of their materials would prove useful in the juvenile-focused efforts described in this section. ACLU NATIONAL PRISON PROJECT ET AL., NO CHILD LEFT ALONE: ADVOCACY TOOLKIT (June 2013), <https://www.aclu.org/other/no-child-left-alone> (last visited Jan. 5, 2019).

¹⁶⁵ ANNIE E. CASEY FOUND., 2 A GUIDE TO JUVENILE DETENTION REFORM: JUVENILE DETENTION FACILITY ASSESSMENT 1 (2014), <http://www.aecf.org/m/resourcedoc/aecf-juvenile-detention-facility-assessment-2014.pdf> [hereinafter JUVENILE DETENTION FACILITY ASSESSMENT]; Juvenile Detention Alternatives Initiative Self-Inspection Instrument (2004) (on file with authors).

¹⁶⁶ Juvenile Detention Alternatives Initiative Facility Site Assessment Instrument (2006) (on file with authors).

¹⁶⁷ *Id.* at 50.

¹⁶⁸ *Id.* at 51.

The standards on disciplinary "room confinement" provided due process procedures for youth in confinement longer than twenty-four hours,¹⁶⁹ limited room confinement longer than twenty-four hours to the most serious violations, and prohibited continuous imposition of more than seventy-two hours of confinement.¹⁷⁰

Although the 2006 standards reflected best practices prevailing at the time, ideas about locked room confinement were quickly evolving. Armed with heightened awareness of the dangers of the practice and new information on effective alternative behavior management techniques, some facilities around the country had already eliminated or reduced reliance on the use of disciplinary room confinement.¹⁷¹ When the Foundation decided to update its standards around 2012, it focused particular attention on the use of isolation and room confinement.

Over the course of nearly eighteen months during 2013 and 2014, the Washington D.C.-based Center for Children's Law and Policy and San Francisco-based Youth Law Center staff reviewed changes in laws and professional standards around the country, consulted with practitioners and experts, and researched best practices and lessons from sites' experiences using the standards.¹⁷² More than thirty experts and practitioners reviewed proposed revisions before they were incorporated into the standards.¹⁷³ As the revision process took shape, the Foundation convened a group of conditions experts, advocates, and institutional administrators to discuss the proposed changes. In conjunction with this work, JDAI consultant Paul DeMuro wrote a monograph about the need to abolish the use of "isolation" and how to accomplish it.¹⁷⁴

The resulting June 2014 standards eliminated the use of the term "isolation" and used the term "room confinement" to describe the involuntary restriction of a youth alone in a cell, room, or other area for any reason.¹⁷⁵ The standards prohibited the use of room confinement for discipline, punishment, administrative convenience, retaliation, staffing shortages, or reasons other than as a temporary response to behavior that threatens immediate harm to a youth or others.¹⁷⁶ Staff members were not to place youth in room confinement for longer than four hours.¹⁷⁷ After that point, staff members were required to return the youth to the general population, develop special individualized programming for the youth, or consult with a qualified mental health professional about whether the youth's behavior required that he or she be transported to a mental health facility.¹⁷⁸ They were to use less restrictive techniques prior to using room confinement, were not to use room confinement for fixed periods of time, and were to engage in ongoing crisis intervention with one-on-one observation while the youth was in the room.¹⁷⁹ There were extensive provisions for administrative approval and involvement of mental health staff¹⁸⁰ and

¹⁶⁹ *Id.* at 53-54.

¹⁷⁰ *Id.* at 55.

¹⁷¹ JUVENILE DETENTION FACILITY ASSESSMENT, *supra* note 165.

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ Paul DeMuro, *Toward Abolishing the Use of Disciplinary Isolation in Juvenile Justice Institutions: Some Initial Ideas* (Revised) (Jan. 22, 2014), available at <https://juvjustice.org/sites/default/files/ckfinder/files/Toward%20Abolishing%20the%20Use%20of%20Disciplinary%20Isolation%20in%20Juvenile%20Justice.pdf>.

¹⁷⁵ *Id.* at 6.

¹⁷⁶ *Id.*; JUVENILE DETENTION FACILITY ASSESSMENT, *supra* note 165, at 177.

¹⁷⁷ JUVENILE DETENTION FACILITY ASSESSMENT, *supra* note 165, at 178.

¹⁷⁸ *Id.*

¹⁷⁹ *Id.* at 177.

¹⁸⁰ *Id.* at 177-78.

protections for youth to access basic services held in appropriate physical conditions.¹⁸¹ There were also requirements for documentation, debriefing, administrative review, and notification of parents and attorneys.¹⁸² The revised standards on discipline¹⁸³ focused on behavioral sanctions other than imposition of locked room time, but retained disciplinary due process requirements for facilities that had not yet eliminated the practice.¹⁸⁴

B. Corrections Organizations and Reducing Room Isolation

National leaders in the juvenile correctional community also expressed concern with the overuse of room isolation. In 2014, the Council of Juvenile Correctional Administrators ("Council" or "CJCA")¹⁸⁵ convened a panel of four state agency directors and the administrator of the Office of Juvenile Justice and Delinquency Prevention (OJJDP) in a dialogue with fifty juvenile correctional leaders.¹⁸⁶ The group discussed the need to address the use of isolation, the barriers to changing facility culture, and strategies that the directors had used to reduce the use of isolation in their facilities.¹⁸⁷ The group also spoke about the need for alternative approaches to managing behavior, and the difficulties they face in changing staff beliefs and attitudes that isolation is a necessary management tool, despite research showing it is counterproductive and harmful.¹⁸⁸

People working closely with the Council recall that concern with room isolation was "in the air" and that, even though much of the media attention centered on adults, the implications were clear for juvenile facilities.¹⁸⁹ With a broad consensus among the membership that corrections should reduce or eliminate room isolation, the Executive Director of CJCA at the time, Edward J. "Ned" Loughran, commissioned a toolkit to compile information about reforms. The purpose was to state CJCA's position on the issue and provide more support for reform efforts around the country.¹⁹⁰

¹⁸¹ *Id.* at 178–79.

¹⁸² JUVENILE DETENTION FACILITY ASSESSMENT, *supra* note 165, at 179–80.

¹⁸³ *Id.* at 181–83.

¹⁸⁴ *Id.* at 181. For additional national standards, *see generally* AMERICAN CIVIL LIBERTIES UNION, SUMMARY OF NATIONAL STANDARDS RESTRICTING THE SOLITARY CONFINEMENT OF YOUTH 1, 8 (2018), *available at* <https://www.aclu.org/files/assets/5%202%20National%20Standards%20Restricting%20the%20Solitary%20Confinement%20of%20Youth.pdf>. As of January 2019, proposed changes to the American Correctional Association standards listed have not yet been finalized.

¹⁸⁵ The Council is a membership organization for youth correctional administrators in state and juvenile corrections systems. *See CJCA Membership*, COUNCIL OF JUVENILE CORRECTIONAL ADMINISTRATORS, <http://cjca.net/index.php/aboutus/membership> (last visited Jan. 6, 2019). The Council holds meetings throughout the year for leaders of correctional institutions to meet and provides best practices, research, and technical assistance. *See About Us*, COUNCIL OF JUVENILE CORRECTIONAL ADMINISTRATORS, <http://cjca.net/about/> (last visited Jan. 6, 2019).

¹⁸⁶ COUNCIL OF JUVENILE CORRECTIONS ADMINISTRATORS TOOLKIT: REDUCING THE USE OF ISOLATION 1 (Mar. 2015), <http://cjca.net/attachments/article/751/CJCA%20Toolkit%20Reducing%20the%20Use%20of%20Isolation.pdf> [hereinafter REDUCING THE USE OF ISOLATION].

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ Interview with Karen Chinn, President, Chinn Planning (Jan. 24, 2018) (on file with author).

¹⁹⁰ Ned Loughran, *Ending the Use of Isolation in Youth Detention and Correctional Facilities*, CJCA BLOG (July 6, 2016), *available at* <http://www.stopsolitaryforkids.org/articles/> (last visited Jan. 6, 2019).

In 2015, the Council released an online toolkit, *Reducing Isolation*, followed by a 2016 *Issue Brief on Room Isolation, Sustaining the Gains*.¹⁹¹ The toolkit defined "isolation" as "[a]ny time a youth is physically and/or socially isolated for punishment or for administrative purposes" and noted that it does not include medical or protective isolation.¹⁹² It provided a general overview of the issue of isolation, a summary of research of the harms of isolation on young people, steps to reduce the use of isolation, and four case studies from jurisdictions that have significantly reduced the use of isolation in their facilities.¹⁹³

The toolkit also responded to arguments that restricting or eliminating the practice of isolation would put staff in danger, put facility security at risk, and remove a much-needed tool from facility operations.¹⁹⁴ The toolkit unequivocally concluded that there is no research supporting these beliefs and that, in fact, facilities that use isolation minimally are safer because they have fewer injuries to youth and staff, less suicidal behavior and overall violence, and healthier staff-youth relationships.¹⁹⁵ The toolkit also set forth the Council's position that "isolating or confining a youth in his [or] her room should be used only to protect the youth from harming him [or] herself or others and if used, should be for a short period and supervised."¹⁹⁶ It recommended that jurisdictions develop written policies that include time limits, staff training, supervision of staff, requirements for documentation, consideration of a youth's mental and medical state, and restrictions on use of isolation as a punitive measure.¹⁹⁷

C. Stop Solitary for Kids

In 2016, the Center for Children's Law and Policy (CCLP)¹⁹⁸ launched Stop Solitary for Kids, a national campaign to end solitary confinement for young people in juvenile and adult facilities.¹⁹⁹ The campaign represented a unique partnership with juvenile justice advocates, juvenile corrections administrators and staff, researchers, and media advocates aimed at bringing an end to the harmful practice of isolation in juvenile justice facilities throughout the country.²⁰⁰

The Stop Solitary for Kids campaign embraced the idea that lasting change must include providing administrators and staff working in the facilities with real strategies to safely operate

¹⁹¹ REDUCING THE USE OF ISOLATION, *supra* note 186; COUNCIL OF JUVENILE CORRECTIONAL ADMINISTRATORS, REDUCING ISOLATION IN YOUTH FACILITIES SUSTAINING THE GAINS: ALTERNATIVE TOOLS TO ISOLATION 1 (2016), [http://cjca.net/attachments/article/921/Issue%20Brief%20RIYF%20Sustaining%20the%20Gains%20%20%20final%20%20June%207%202016.pdf](http://cjca.net/attachments/article/921/Issue%20Brief%20RIYF%20Sustaining%20the%20Gains%20%20final%20%20June%207%202016.pdf) [hereinafter SUSTAINING THE GAINS].

¹⁹² REDUCING THE USE OF ISOLATION, *supra* note 186, at 2.

¹⁹³ *Id.* at 1.

¹⁹⁴ *Id.* at 3.

¹⁹⁵ *Id.* at 3–5.

¹⁹⁶ *Id.* at 5.

¹⁹⁷ *Id.*

¹⁹⁸ The Center for Children's Law and Policy is a public interest law and policy organization based in Washington, D.C. See CTR. FOR CHILDREN'S LAW & POL'Y, <http://www.cclp.org/who-we-are/#our-mission> (last visited Jan. 6, 2019).

¹⁹⁹ *Mission*, STOP SOLITARY FOR KIDS, <http://www.stopsolitaryforkids.org/mission/> (last visited Jan. 6, 2019).

²⁰⁰ The partnership includes the Council of Juvenile Correctional Administrators; the Justice Policy Institute, which researches and analyzes effective justice programs and disseminates its findings to the media, policymakers and advocates; and the Center for Juvenile Justice Reform at Georgetown University, which provides training programs and networking opportunities for public agencies across the country to help them better translate knowledge on "what works" into everyday practice and policy. *Partner Organizations*, STOP SOLITARY FOR KIDS, <http://www.stopsolitaryforkids.org/partner-organizations> (last visited Jan. 6, 2019).

facilities without solitary confinement.²⁰¹ This insider-outsider approach grew out of the decades-long experience of CCLP's Executive Director, Mark Soler, through conditions litigation, training juvenile facility staff, and developing strategies to improve conditions in juvenile facilities.²⁰² Although he and his colleagues understood that litigation is one approach to ending harmful practices, they also believed that it might not be the best or only way to build long term solutions.²⁰³ Thus, CCLP had long worked with a diverse group of stakeholders in the Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative (JDAI),²⁰⁴ and with the Youth Law Center, had co-authored the JDAI Juvenile Detention Facility Assessment Standards.²⁰⁵ Those experiences informed CCLP's strategy in setting up the Stop Solitary campaign.

In addition to working with states on legislative reform, Stop Solitary for Kids compiled the efforts of jurisdictions in solitary confinement reforms to elevate and disseminate successful strategies to other jurisdictions.²⁰⁶ The campaign also field tested a new tool, the Room Confinement Assessment Tool (RCAT), designed to help corrections leaders identify and target drivers of solitary confinement within juvenile facilities.²⁰⁷

D. National Litigation, Media, and Other Attention to Solitary Confinement

The national discussions about locked room confinement continued to be fueled by litigation, policy reports, and high-profile cases. In 2010, the Juvenile Law Center,²⁰⁸ a public interest law firm in Philadelphia, sued New Jersey officials for violating the due process rights of youth who were in a Juvenile Justice Commission Facility.²⁰⁹ Specifically, the suit alleged that officials allowed the indefinite isolation of youth with serious mental health needs and permitted isolation as a disciplinary measure without procedural protections.²¹⁰

²⁰¹ See STOP SOLITARY FOR KIDS, CORE STRATEGIES TO REDUCE ROOM CONFINEMENT IN FACILITIES, <http://www.stopsolitaryforkids.org/wp-content/uploads/2016/09/Website-Core-Strategies.pdf> (last visited Jan. 6, 2019).

²⁰² Interview with Jenny Lutz, Staff Attorney, Center for Children's Law and Policy and Project Manager, Stop Solitary for Kids (Jan. 26, 2018) (on file with author). Soler was the Executive Director of Youth Law Center, and then moved to Washington, D.C. and founded the Center for Children's Law and Policy in 2006. Youth Law Center had been in litigation against juvenile corrections facilities beginning in the 1980s, and then began consulting for the Juvenile Detention Alternatives Initiative in the 1990s. That work continues through the Center for Children's Law and Policy. See CTR. FOR CHILDREN'S LAW & POL'Y, <http://www.cclp.org/team/mark-soler/> (last visited Jan. 6, 2019).

²⁰³ CTR. FOR CHILDREN'S LAW & POL'Y, *supra* note 202.

²⁰⁴ *Id.*

²⁰⁵ JUVENILE DETENTION FACILITY ASSESSMENT, *supra* note 165, at 2.

²⁰⁶ *Room Confinement Assessment Tool*, STOP SOLITARY FOR KIDS (Summer 2018), <https://mailchi.mp/95cd174545df/stop-solitary-for-kids-spring-2018newsletter-1920269?e=cbb312ff03>.

²⁰⁷ Stop Solitary for Kids, THE NAT'L PRESS CLUB, <http://www.press.org/events/stop-solitary-kids> (Apr. 19, 2016, 8:30 AM); JUVENILE DETENTION FACILITY ASSESSMENT, *supra* note 165, at 181-83.

²⁰⁸ The Juvenile Law Center is a nonprofit public interest organization for children. It engages in litigation, appellate advocacy, policy reforms, public education, consulting, training and communication strategies on behalf of children in the child welfare and justice systems. See *Our Mission*, JUV. LAW CTR., <https://jlc.org/about-us> (last visited Jan. 6, 2019).

²⁰⁹ *Troy D. v. Mickens*, 806 F.Supp.2d 758, 765 (D.N.J. 2011).

²¹⁰ Second Amended Complaint at ¶¶ 81-84, *Troy D. v. Mickens*, Civ. No. 1:10-cv-02902-JEI-AMD, https://jlc.org/sites/default/files/case_files/Troy%20Second%20Amended%20Complaint.pdf (last visited Jan. 6, 2019).

In 2012, the American Civil Liberties Union (ACLU) and Human Rights Watch released a report documenting the experiences of young people under eighteen held in solitary confinement in jails and prisons across the country.²¹¹ Although the report focused on youth in adult facilities, many of the findings provided compelling evidence of the harm to young people caused by solitary confinement.²¹²

Even the United States Supreme Court had a word to say about solitary confinement. In *Davis v. Ayala*, Justice Kennedy authored a concurring opinion, not about the legal questions in the case,²¹³ but about the practice of solitary confinement. Ayala, the defendant, had been held in "administrative segregation for most of his 25 years in custody."²¹⁴ Newspapers all over the country covered the opinion, reported the stories of people in solitary, and recounted the harms of solitary confinement.²¹⁵

The suicide of Kalief Browder also came to epitomize the tragedy of youth solitary confinement. Kalief, a sixteen-year-old youth, was arrested for allegedly stealing a backpack.²¹⁶ He spent three years at New York City's infamous Rikers Island, including seventeen months in solitary confinement.²¹⁷ During that time, he tried to kill himself six times using strips of torn sheet from his bed.²¹⁸ His case was ultimately dismissed, but the experience of solitary confinement had caused permanent damage to his already fragile mental state.²¹⁹ His heartbreaking story and subsequent suicide were widely covered in the media and sparked action not only by juvenile justice advocates, but also by celebrities. The artist Jay-Z met Kalief before he died and later produced a docuseries on his life, titled "Time: The Kalief Browder Story."²²⁰ Jennifer Gonnerman, *The New Yorker* journalist who initially wrote about Kalief, came across the story when she read a lawsuit filed by his civil lawyer in 2013.²²¹ She spoke of the importance of covering such issues.

²¹¹ *Growing Up Locked Down*, *supra* note 8.

²¹² For example, the report found that that use of solitary confinement for adolescents compounds the stresses of being in jail or prison—often for the first time—without family support; that it exacerbates mental disabilities and may increase the risk of self-harm; that youth in solitary confinement are often denied physical exercise, adequate nutrition, or the ability to go outside; and that they are often deprived of contact with their families, access to education, programming, and other services necessary for their growth, development, and rehabilitation. *Id.* at 3-4.

²¹³ *Davis v. Ayala*, 135 S.Ct. 2187, 2208-10 (2015) (Kennedy, J., concurring). In *Davis*, the question presented involved a *Batson* challenge in a death penalty case where the prosecution dismissed all black and Hispanic people in the venire from the jury.

²¹⁴ *Id.* at 2208 (Kennedy, J., concurring).

²¹⁵ See, e.g., Ian Keyser, *Ban solitary confinement of children*, TAMPA BAY TIMES (Nov. 6, 2012), <http://www.tampabay.com/opinion/columns/ban-solitary-confinement-of-children/1260210>; *Perils of solitary confinement even greater for young prisoners*, BOS. GLOBE (Jan. 23, 2013); *Too young for solitary*, L.A. TIMES (May 12, 2013), <http://articles.latimes.com/2013/may/12/opinion/la-ed-solitary-confinement-juvenile-20130512>.

²¹⁶ Jennifer Gonnerman, *Before the Law*, THE NEW YORKER (Oct. 6, 2014), <https://www.newyorker.com/magazine/2014/10/06/before-the-law>; see also Jennifer Gonnerman, *Kalief Browder 1993-2015*, THE NEW YORKER (June 7, 2015), <https://www.newyorker.com/news/news-desk/kalief-browder-1993-2015>.

²¹⁷ *Id.*

²¹⁸ *Id.*

²¹⁹ *Id.*

²²⁰ Seth Kelley, *Jay Z, Harvey Weinstein Talk 'Unbelievably Due' Kalief Browder Docuseries*, VARIETY (Mar. 9, 2017), <http://variety.com/2017/tv/news/jay-z-harvey-weinstein-kalief-browder-1202005299/>.

²²¹ Gary Gately, *The Interview: New Yorker's Jennifer Gonnerman on Rikers*, JUV. JUST. INFO. EXCHANGE (Oct. 15, 2014), <http://jjie.org/2014/10/15/the-jjie-interview-journalist-highlights-gross-miscarriage-of-justice-through-teens-eyes/>.

In a lot of the coverage of the criminal justice system in general, it's so difficult to get access to jails and prison systems that often the voices of the folks most directly impacted are left out of the public debate, out of the national conversation. And I was trying in this piece to let us see this world from the point of view of somebody who was going through it himself as a teenager, giving his first-hand account, and I think that can be very powerful to read. And in a lot of ways, these folks are the true experts on everything that is wrong with our criminal justice system, and I feel like anything that we can do as reporters to incorporate their voices, their insights into this larger conversation is going to benefit all of us.²²²

E. Action by the Federal Government

1. The Congressional Hearings on Solitary Confinement (2012 and 2014)

In June 2012, Congress held a hearing on solitary confinement before the Senate Judiciary Committee's Subcommittee on the Constitution, Civil Rights, and Human Rights.²²³ The hearing testimony focused primarily on adult solitary confinement, but juvenile advocates, mental health and developmental experts, faith-based groups, and human rights organizations appeared for the hearing and submitted extensive comments on the particular damage such confinement causes for young people.²²⁴ Accounts of the hearing noted that, although the hearing had been hastily planned, the room was so crowded that an overflow room was set up to hold an additional 180 people watching the hearing on monitors.²²⁵ The hearing room included a full-scale prison cell to convey the physical reality of solitary confinement.²²⁶ Committee Chairman Senator Dick Durbin posed the question, "What do America's prisons say about our nation and its values?"²²⁷ He noted that solitary confinement is increasingly used on vulnerable groups, including children – supposedly for their own protection – and that the tragic consequences have led the American Academy of Child and Adolescent Psychiatry to call for a ban on solitary confinement for all children under the age of eighteen.²²⁸ Solitary Watch, a national nonprofit watchdog group, collected the testimony and made it available online. The testimony became a valuable resource, particularly for research on the harm of locked room confinement.²²⁹

A follow-up hearing was held in December 2014.²³⁰ Senator Durbin again called out solitary confinement as particularly damaging to children: "Let me say a word about an especially

²²² *Id.*

²²³ *Reassessing Solitary Confinement: The Human Rights, Fiscal, and Public Safety Consequences: Hearing Before the Subcommittee on the Constitution, Civil Rights and Human Rights of the S. Comm. on the Judiciary*, 112th Cong. (2012) [hereinafter *Reassessing Solitary Confinement*].

²²⁴ A list of the organizations that made submissions for the record is included in the hearing transcript. *Id.* at III.

²²⁵ NAT'L JUV. JUST. NETWORK, *Congress Holds First-Ever Hearing on Solitary Confinement* (June 28, 2012), <http://www.njjn.org/article/congress-holds-first-ever-hearing-on-solitary-confinement>.

²²⁶ *Id.*

²²⁷ *Id.*

²²⁸ *Reassessing Solitary Confinement*, *supra* note 223, at 3.

²²⁹ *Id.* at 679.

²³⁰ *Reassessing Solitary Confinement II: The Human Rights, Fiscal, and Public Safety Consequences: Hearing Before the Subcommittee on the Constitution, Civil Rights and Human Rights of the S. Comm. on the Judiciary*, 113th Cong.

vulnerable group—children. According to the Justice Department, 35% of juveniles in custody report being held in solitary for some time. The mental health effects of even short periods of isolation—including depression and risk of suicide—are heightened in youth.”²³¹

The Congressional hearings had a synchronistic effect on reform efforts in California. Many California advocacy organizations submitted written testimony for one or both hearings;²³² the hearings themselves and the extensive materials submitted by others enhanced California’s efforts. The hearings underlined the importance of the issue and the fact that California was part of a national movement for change.

2. Executive Action by President Obama and a Resolution by the Juvenile Judges

Eventually, President Barack Obama himself stepped into the solitary confinement debate. In January 2016, the *Washington Post* published Obama’s op-ed, which referred to Kalief Browder’s tragic experience and stated that he had directed Attorney General Loretta Lynch to review the overuse of solitary confinement in U.S. prisons.²³³ President Obama announced the completion of that review and that he would be adopting the Department of Justice’s recommendations, which included banning solitary confinement for juveniles.²³⁴ Though the federal policy had very little practical impact—only thirty youth fell under federal jurisdiction²³⁵—it held enormous symbolic importance in underlining the significance of the issues.

Later that year, on August 8, 2016, the National Council of Juvenile and Family Court Judges adopted a resolution on reducing the use of solitary confinement for youth.²³⁶ This was important because the National Council is the largest organization of juvenile judicial officers in the country, with a long record of involvement in juvenile system policy.²³⁷ The resolution referenced President Obama’s January 2016 ban on solitary confinement for youth in federal

(2014), <https://www.judiciary.senate.gov/meetings/reassessing-solitary-confinement-ii-the-human-rights-fiscal-and-public-safety-consequences>.

²³¹ *Id.*

²³² *Id.*

²³³ Barack Obama, *Why we must rethink solitary confinement*, THE 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=.a1c0763309b5; see also Fact Sheet: Department of Justice Review of Solitary Confinement, OBAMA WHITE HOUSE, (Jan. 25, 2016), <https://obamawhitehouse.archives.gov/the-press-office/2016/01/25/fact-sheet-department-justice-review-solitary-confinement>. The U.S. Department of Justice released its report on the use of “restrict housing” in January 2016. U.S. DEP’T OF JUST., REPORT AND RECOMMENDATIONS CONCERNING THE USE OF RESTRICTIVE HOUSING 1 (Jan. 2016), <https://www.justice.gov/archives/dag/file/815551/download>.

²³⁴ *Id.*

²³⁵ Beth Schwartzapfel, *There Are Practically No Juveniles in Federal Prison — Here’s Why*, THE MARSHALL PROJECT (Jan. 27, 2016), <https://www.themarshallproject.org/2016/01/27/there-are-practically-no-juveniles-in-federal-prison-here-s-why>.

²³⁶ NAT’L COUNCIL OF JUV. & FAM CT. JJ., RESOLUTION REGARDING REDUCING THE USE OF SOLITARY CONFINEMENT FOR YOUTH 1 (Aug. 8, 2016), http://www.ncjfcj.org/sites/default/files/Final_SolitaryConfinementResolution_8_6-2016.pdf [hereinafter RESOLUTION REGARDING REDUCING THE USE OF SOLITARY CONFINEMENT FOR YOUTH]. In the resolution, NCJFCJ defined solitary confinement “as the involuntary placement of a youth alone in a cell, room, or other area for any reason *other than* as a temporary response to behavior that threatens immediate harm to the youth or others.” The resolution further noted the other terms used: “seclusion,” “isolation,” “segregation,” and “room confinement.”

²³⁷ See ABOUT NCJFCJ, <http://www.ncjfcj.org/about>.

custody, research regarding the harmful effects of solitary confinement, and the American Academy of Child and Adolescent Psychiatry's 2012 statement opposing the use of solitary confinement in juvenile facilities.²³⁸ The resolution stated that juvenile court judges share a responsibility to "care for and protect youth" in their jurisdiction and supports "a presumptive rule against solitary confinement of youth, except when absolutely necessary for the safety of youth, others, or the facility."²³⁹ The resolution called on judges to be leaders on this issue, and encouraged them to review local policies, review data from local facilities, and to support and promote strategies to reduce the use of solitary confinement.²⁴⁰

IV. MORE LITIGATION IN CALIFORNIA AND THE LOS ANGELES RESOLUTION

Much of the national activity just discussed in Section III, *supra* unfolded contemporaneously with the California legislative efforts to limit locked room confinement that began in 2012 (Section V, *infra*). There were also several California-based developments that helped to create a climate for change and helped to confirm the need for limitations on the use of locked room time.

In 2010, Los Angeles County became the target of litigation involving youth in county detention facilities. Public Counsel, the ACLU of Southern California, and the Disability Rights Center filed *Casey A. v. Robles, et al.*, a class action lawsuit alleging Los Angeles County's failure to provide youth at the Challenger Memorial Youth Center with a basic and appropriate education.²⁴¹ Although the allegations and causes of action focused on the denial of adequate education services, the complaint described one of the plaintiffs, Miguel B., as being held in isolation in the "Special Housing Unit," in a cell containing only a cot, for more than two months.²⁴² During this period, he sometimes received schoolwork shoved under his door, and some days he received no instruction at all.²⁴³ No teachers came to see him, nor did he interact with other students.²⁴⁴ A settlement was reached in March 2011, resulting in the provision of compensatory educational services to class members.²⁴⁵

In 2012, the same lawyers, along with Disability Rights Advocates, investigated similar claims in Contra Costa County in the San Francisco Bay Area.²⁴⁶ The team discovered that youth with mental health diagnoses were being detained in solitary confinement for prolonged periods of time.²⁴⁷ In 2013, they sued the county for violating the constitutional and statutory rights of youth with special education needs and specifically called out the imposition of long periods of

²³⁸ RESOLUTION REGARDING REDUCING THE USE OF SOLITARY CONFINEMENT FOR YOUTH, *supra* note 236.

²³⁹ *Id.*

²⁴⁰ *Id.*

²⁴¹ Complaint in *Casey A. et al. v. Robles et al.*, Case No. CV 10-00192 GHK (FMOx) (C.D. Cal. 2000) https://www.aclu.org/sites/default/files/field_document/2010-1-12-CaseyAvRobles_Complaint.pdf.

²⁴² *Id.* at 20.

²⁴³ *Id.* at 21.

²⁴⁴ *Id.*

²⁴⁵ Notice of Settlement of Class Action Litigation in *Casey A. v. Robles et al.*, Case No. CV 10-00192 GHK (FMOx), ACLU (C.D. Cal. 2011), https://www.aclu.org/sites/default/files/field_document/Casey_A__Class_Notice_post.pdf.

²⁴⁶ Email from Kara Janssen, formerly John W. Carson / LD Access Fellowship Attorney, Disability Rights Advocates, currently Associate Attorney, Rosen Bien Galvan & Grunfeld LLP (Feb. 1, 2018) (on file with author).

²⁴⁷ *Id.*

solitary confinement.²⁴⁸ Plaintiff G.F., a girl with psychiatric problems and learning disabilities, was placed in solitary confinement for one hundred days.²⁴⁹ During that time, she was not allowed to attend school.²⁵⁰ Plaintiff W.B., who had been found incompetent to stand trial and was diagnosed with psychosis and possible schizophrenia, spent ninety days in solitary confinement,²⁵¹ during which time he received no educational services and was marked unexcused from school due to being in solitary confinement.²⁵² On February 13, 2014, the U.S. Department of Education and Department of Justice filed a Statement of Interest in the case, stating that the county officials could not evade their federal statutory obligations.²⁵³ A year later, in 2015, the county settled with the plaintiffs, prompting significant reforms in their education and disciplinary policies.²⁵⁴ Pursuant to the settlement agreement, the county agreed to no longer use solitary confinement for “discipline, punishment, administrative convenience, retaliation, or staffing shortages.”²⁵⁵ Moreover, the county agreed to separate youth for no more than four hours and only in the case where the youth posed an immediate harm to themselves or others.²⁵⁶

In 2016, the Los Angeles County Board of Supervisors took up the issue of solitary confinement in county juvenile facilities.²⁵⁷ Staff from the Board of Supervisors worked with juvenile justice advocates and Los Angeles County Probation on language for a motion that would be acceptable to all stakeholders.²⁵⁸ Interim Chief Probation Officer Cal Remington did not oppose the action,²⁵⁹ stating that the probation department is “absolutely committed to doing away with solitary confinement” and that probation had been moving toward that goal for some time.²⁶⁰ In May 2016, the Los Angeles County Board of Supervisors passed a motion that limited the use of solitary confinement for youth in the county’s juvenile detention facilities.²⁶¹ Written and

²⁴⁸ Complaint at 1-2, *G.F. et al. v. Contra Costa County et al.*, Case No. C 13-3667-SBA, (N.D. Cal. 2013), <http://dralegal.org/case/g-f-et-al-v-contra-costa-county-et-al/#files>. Contra Costa County is located in the San Francisco Bay Area. Contra Costa designed its own long-term programs in its juvenile hall, a maximum-security facility with the capacity for 290 beds. *Id.* ¶ 61. The juvenile hall holds both pre-trial and post-disposition youth. The hall has two disposition programs, the male-only Youthful Offender Treatment Program which was approximately 14 months long and Girls in Motion which generally lasted 4 months. In addition to these programs, Contra Costa County also routinely held youth in the pre-trial units for long periods of time when awaiting placement or competency determinations. *Id.* ¶¶ 62, 64-65.

²⁴⁹ *Id.* ¶198.

²⁵⁰ *Id.* ¶¶ 191-201.

²⁵¹ *Id.* ¶¶ 27-28, 210, 222.

²⁵² *Id.* ¶¶ 225, 227.

²⁵³ U.S. Statement of Interest at 9, *G.F. et al. v. Contra Costa County et al.*, Case No. C 13-3667-SBA 7 (N.D. Cal. 2014), <http://dralegal.org/case/g-f-et-al-v-contra-costa-county-et-al/#files>.

²⁵⁴ Settlement Agreement, *G.F. et al. v. Contra Costa County et al.*, Case No. C 13-3667-SBA 5 (N.D. Cal. 2015), <http://dralegal.org/case/g-f-et-al-v-contra-costa-county-et-al/#files>.

²⁵⁵ *Id.* at 5.

²⁵⁶ *Id.*; see also *Settlement to Ban Solitary Confinement for Youth in Contra Costa County Juvenile Hall*, DISABILITY RIGHTS ADVOCATES (May 19, 2015), <http://dralegal.org/press/settlement-to-ban-solitary-confinement-for-youth-in-contra-costa-county-juvenile-hall/>.

²⁵⁷ Interview with Patricia Soung, Director of Youth Justice and Senior Staff Attorney, Children’s Def. Fund (Jan. 22, 2018) (on file with author).

²⁵⁸ *Id.*

²⁵⁹ *Id.*

²⁶⁰ Brenda Gazzar, *LA County ends solitary confinement for juveniles*, L.A. DAILY NEWS (May 3, 2016, 4:54 PM), <https://www.dailynews.com/2016/05/03/la-county-ends-solitary-confinement-for-juveniles/>.

²⁶¹ Abby Sewell & Garrett Therolf, *L.A. County severely restricts solitary confinement for juveniles*, L.A. TIMES (May 3, 2016), <http://www.latimes.com/local/lanow/la-me-ln-juvenile-solitary-20160503-story.html>.

sponsored by Supervisors Sheila Kuehl and Hilda Solis, the motion stated that only in "very rare situations, when all interventions have been exhausted, a juvenile may be separated from others as a temporary response to behavior that poses a serious or immediate threat of physical harm to any person."²⁶²

V. CALIFORNIA ENACTS LEGISLATION ON ROOM CONFINEMENT

More than a decade of advocacy and litigation built an indisputable record of unacceptable abuses in the use of locked room confinement, and significant reforms were achieved in specific situations. The momentum surrounding solitary confinement in California and across the country helped to create an environment in which it was feasible to call for rules that would protect youth in all juvenile institutions.

A. *Moving Toward a Legislative Solution*

Even after the consent decree in *Farrell*, the Ella Baker Center for Civil Rights staff continued to work with families of incarcerated youth. This gave them a pipeline of information about conditions at the Division of Juvenile Facilities. Around 2011, they began receiving reports that, despite the tremendous efforts in *Farrell*, youth were still held in their rooms for twenty-two or twenty-three hours per day.²⁶³ One mother spoke at a rally in Ventura about her son who had repeatedly attempted suicide each time he was placed in solitary confinement.²⁶⁴

The Ella Baker Center began talking to legislators about the possibility of a bill to limit locked room confinement, but most did not want to touch the issue.²⁶⁵ Eventually, they spoke to Senator Leland Yee, a Democrat and longtime San Francisco Bay area politician. He was a child psychologist and had already distinguished himself by taking on controversial issues and initiatives aimed at protecting children.²⁶⁶ Senator Yee agreed to carry legislation to end solitary confinement

²⁶² Hilda L. Solis & Sheil Kuehl, *Ending Juvenile Solitary Confinement in Los Angeles County* (May 3, 2016), <http://supervisorkuehl.com/wp-content/uploads/2016/05/5.3.16-Solitary-Confinement-Motion-REVISED.pdf>.

²⁶³ Interview with Jennifer Kim, Consultant, California State Assembly (Jan. 12, 2018) (on file with author).

²⁶⁴ *Id.*

²⁶⁵ *Id.*

²⁶⁶ During his tenure as a state legislator, Senator Yee had fought to close loopholes in state public records law and worked for government transparency and whistleblower protection laws. *California state senator Leland Yee arrested during series of FBI raids*, THE GUARDIAN (Mar. 26, 2014), <https://www.theguardian.com/world/2014/mar/26/california-state-senator-arrested-fbi-raids> [hereinafter THE GUARDIAN]. He championed gun control. Yanan Wang, *Ex-Calif. State Sen. Leland Yee, gun control champion, heading to prison for weapons trafficking*, WASH. POST (Feb. 25, 2015), https://www.washingtonpost.com/news/morning-mix/wp/2016/02/25/ex-calif-state-sen-leeland-yee-gun-control-champion-heading-to-prison-for-weapons-trafficking/?utm_term=.3cedb85ef181. He had taken controversial stands such as opposing a bill that would ban the sale of shark fins used for Chinese shark fin soup, saying that it unfairly targeted the Chinese American community. THE GUARDIAN, *supra* note 266. In his work with respect to children and youth, he had opposed his own party when it sought budget cuts to education and social services. *Id.* He successfully passed legislation (later found unconstitutional) that had criminalized the sale of violent videos. Owen Good, *Leland Yee, Who Wrote Unconstitutional Anti-Game Law, Tells Gamers 'Quiet Down'*, KOTAKU (Jan. 25, 2013), <https://kotaku.com/5978958/leland-yee-who-wrote-unconstitutional-anti-game-law-tells-gamers-quiet-down>. He sponsored successful legislation giving youth who received Life without the Possibility of Parole sentences an opportunity to receive parole hearings. *Gov. Brown signs bill giving juveniles second chance*, USA TODAY (Sept. 20, 2012), <https://www.usatoday.com/story/news/nation/2012/09/30/gov-brown-signs-bill-juveniles/1604907/>.

in youth facilities.²⁶⁷

B. Senate Bill 1363 (2012): First Try

In February 2012, Senator Yee introduced S.B. 1363.²⁶⁸ The bill defined solitary confinement as “the involuntary holding of a person in isolation from persons, other than guards, custodial and clinical staff, and an attorney, for sixteen or more hours per day in a room, cell, or area from which the person is prevented from leaving.”²⁶⁹ The bill limited solitary confinement to situations when a youth poses an immediate and substantial risk of harm to others, or the security of the facility and all other less restrictive options had been exhausted, and only for the minimum time required to address the safety risk, not to exceed twenty-four consecutive hours in a one week period absent administrative approval.²⁷⁰ For minors with suicidal or self-harming behavior, the bill required clinician involvement within four hours and removal to an off-site facility if the risk could not be resolved within twenty-four hours.²⁷¹ It protected youth rights to visitation and other basic services.²⁷² Finally, the bill prohibited the use of solitary confinement for the purposes of discipline or punishment.²⁷³

A press release from the Ella Baker Center stated that, although the United Nations had called on all countries to prohibit solitary confinement in juvenile cases, the harsh practice was used rampantly in state and local juvenile facilities throughout California.²⁷⁴ Senator Yee stated that “[t]he use of solitary confinement of a child is wrong and should be used only in the most extreme situations.”²⁷⁵ Speaking as a child psychologist, he noted that “[t]he studies are clear—holding juveniles in solitary increases recidivism rates, exacerbates existing mental illness, and makes youth more likely to attempt suicide. Solitary confinement does nothing to help rehabilitate and thus S.B. 1363 is necessary to limit the cruel practice.”²⁷⁶ Jennifer Kim, from the Ella Baker Center, added that “[s]olitary confinement is torture,” and “has no place in a system that is mandated to provide treatment and rehabilitation.”²⁷⁷ Three family members spoke about the impact of solitary confinement on their children.²⁷⁸ Maria Sanchez recognized that, while her son has made mistakes in his life,

he wasn't sentenced to be tortured. He wasn't sentenced to sit in a cold cell by himself all day with no help. I want him to gain the skills he needs to make the right choices. I want him to breathe some fresh air and to have enough food to eat. I want

²⁶⁷ Interview with Jennifer Kim, *supra* note 263.

²⁶⁸ S.B. 1363, 2011-2012 Leg., Reg. Sess. (Cal. 2012).

²⁶⁹ *Id.*

²⁷⁰ *Id.*

²⁷¹ *Id.*

²⁷² *Id.*

²⁷³ S.B. 1363, 2011-2012 Leg., Reg. Sess. (Cal. 2012).

²⁷⁴ *Legislation Would Limit Use of Solitary Confinement at Juvenile Facilities*, ELLA BAKER CTR. FOR HUM. RTS. (Feb. 24, 2012), <http://ellabakercenter.org/in-the-news/books-not-bars-california-budget-and-legislation/legislation-would-limit-use-of-solitary> [hereinafter ELLA BAKER CTR. FOR HUMAN RTS.].

²⁷⁵ *Id.*

²⁷⁶ *Id.*

²⁷⁷ *Id.*

²⁷⁸ *Id.*

him to get help when he gets hurt. But how can any of this happen if he's sitting in a cell all day?²⁷⁹

S.B. 1363 received immediate formal support from eighteen advocacy groups, faith-based organizations, and clinicians.²⁸⁰ It was immediately opposed by the Peace Officers Research Association of California; California Correctional Peace Officers Association; Chief Probation Officers of California; California State Sheriffs' Association; and the California Probation, Parole and Correctional Association.²⁸¹ The Peace Officers Research Association argued that the bill did "not take into account a ward placed in solitary confinement for their own safety and protection," and would impose costs on counties without providing funding.²⁸² The California Correctional Peace Officers Association asserted that it would "jeopardize the safety and security of wards that are conforming to expected standards of behavior and of staff" and "compromise the programming of the ward population."²⁸³

The bill failed to get out of its first committee.²⁸⁴ At the initial hearing, two Democrats abstained.²⁸⁵ Senator Yee asked for reconsideration but, the following week, the bill went down on a vote of four "Nos" to three "Ayes," with the two Democrats who had abstained voting "No."²⁸⁶

C. Senate Bill 61 (2013): Round Two

Senator Yee was undeterred. In 2013, he introduced S.B. 61, with language almost identical to the previous bill.²⁸⁷ This time, the bill was co-sponsored by the Ella Baker Center for Civil Rights, the Youth Justice Coalition, and the California Public Defenders Association.²⁸⁸ A number of additional groups joined the proponents, and only two probation organizations (California Probation, Parole and Correctional Association and Chief Probation Officers of California) initially expressed opposition.²⁸⁹

This time, those in opposition were more willing to negotiate their concerns instead of simply opposing the bill. Accordingly, S.B. 61 was amended five times to address issues such as the handling of youth who were at risk of self-harm, the timing of mental health involvement, and

²⁷⁹ *Id.*

²⁸⁰ S. COMM ON PUBLIC SAFETY, BILL ANALYSIS OF S.B. 61, at A-B (2013), http://www.leginfo.ca.gov/pub/13-14/bill/sen/sb_0051-0100/sb_61_cfa_20130422_093927_sen_comm.html.

²⁸¹ *Id.*

²⁸² *Id.* at 13.

²⁸³ *Id.* at 16.

²⁸⁴ LEGISLATIVE HISTORY OF S.B. 1363, 2011-2012 (2012), http://leginfo.legislature.ca.gov/faces/billStatusClient.xhtml?bill_id=201120120SB1363.

²⁸⁵ *A Solitary Confinement Solution*, L.A. TIMES (Apr. 24, 2012), <http://articles.latimes.com/2012/apr/24/opinion/la-ed-0424-solitary-20120424>.

²⁸⁶ Interview with Jennifer Kim, *supra* note 263; *Solitary Confinement Bill Fails to Move Out of Committee*, ELLA BAKER CTR. FOR HUM. RTS. (May 16, 2012), <http://ellabakercenter.org/blog/2012/05/solitary-confinement-bill-fails-to-move-out-of-committee>; LEGISLATIVE HISTORY OF S.B. 1363, 2011-2012 (2012), *supra* note 284.

²⁸⁷ LEGISLATIVE HISTORY OF S.B. 61, 2013-2014, at 1 (2013); S.B. 61 2013-2014 Leg., Reg. Sess. (2013) (Compare Versions), http://leginfo.legislature.ca.gov/faces/billVersionsCompareClient.xhtml?bill_id=201320140SB61.

²⁸⁸ S. COMM ON PUBLIC SAFETY, BILL ANALYSIS, *supra* note 280.

²⁸⁹ By the latter part of the 2013 session, the California State Sheriff's Association had formally joined the opposition, and formal support grew to thirty-nine organizations. ASSEMB. COMM. ON PUBLIC SAFETY, BILL ANALYSIS S.B. 61, at 7-9, (2013); LEGISLATIVE HISTORY OF S.B. 61, 2012-2014 at 1 (2014), http://leginfo.legislature.ca.gov/faces/billStatusClient.xhtml?bill_id=201320140SB61.

transfer to other facilities.²⁹⁰ Amendments also clarified that solitary confinement did not include confinement of a ward or minor in a single-person room or cell for brief periods of locked-room confinement necessary for institutional operations such as shift changes, showering, and unit movements.²⁹¹ The bill made it out of the Senate and into the Assembly.²⁹² In the end, however, the Chief Probation Officers of California maintained that the legislation was unnecessary.

The Board of State and Community Corrections (BSCC) already has regulations on juvenile solitary confinement contained in Title 15 and 24. It is unnecessary at this time to incur additional costs of rewriting and training on standards that have already been put in place. Current state regulations, as well as local policies and procedures, authorize the manager or designee to make the determination of who should be removed from the general program as a result of safety and security issues. Further, the definition of solitary confinement would essentially apply to every juvenile within a facility based on its broad application to this population.²⁹³

The ongoing opposition was troubling to Senator Yee and the co-sponsors. They felt that pressure for successive amendments was eviscerating the bill in ways that threatened its underlying purpose.²⁹⁴ Although it received a majority of votes in its last committee, Senator Yee did not press forward, and the bill died in the Assembly.²⁹⁵

D. Senate Bill 970 (2014): Senator Yee's Arrest

In February 2014, Senator Yee introduced the legislation for a third time as S.B. 970.²⁹⁶ His efforts suddenly halted in March 2014 when he was arrested on federal corruption charges alleging bribery and gun trafficking.²⁹⁷ The bill was pulled from committee before its first hearing.²⁹⁸ It died in November 2014 without further action.²⁹⁹

Still reeling from the shock of Senator Yee's arrest, bill sponsors reached out to legislators who might be interested in carrying the bill, but ultimately decided to wait until the next session with the hope of finding a true champion.³⁰⁰ During the summer of 2014, they connected with another Bay Area legislator, Senator Mark Leno, a well-respected politician with extensive

²⁹⁰ S.B. 61, *supra* note 267.

²⁹¹ *Id.*

²⁹² *Id.*

²⁹³ S. COMM ON PUBLIC SAFETY, BILL ANALYSIS, *supra* note 280.

²⁹⁴ Interview with Jennifer Kim, *supra* note 263.

²⁹⁵ *Id.*; *SB-61 Juveniles: solitary confinement*, CALIFORNIA LEGISLATIVE INFORMATION, http://leginfo.legislature.ca.gov/faces/billStatusClient.xhtml?bill_id=201320140SB61 (last visited Jan. 6, 2019).

²⁹⁶ The scheduled committee hearing was postponed March 26, 2013, and the bill was withdrawn from the committee on April 1. LEGISLATIVE HISTORY OF S.B. 970, 2013-2014 at 1 (2014), http://leginfo.legislature.ca.gov/faces/billHistoryClient.xhtml?bill_id=201320140SB970.

²⁹⁷ Marisa Lagos et al., *California state Sen. Yee arrested in corruption case*, SF GATE (Mar. 28, 2014, 9:56 AM), <http://www.sfgate.com/politics/article/California-state-Sen-Yee-arrested-in-corruption-5350602.php>.

²⁹⁸ LEGISLATIVE HISTORY OF S.B. 61, *supra* note 267.

²⁹⁹ *Id.*

³⁰⁰ Interview with Jennifer Kim, *supra* note 263.

progressive credentials.³⁰¹ Senator Leno expressed interest in picking up the bill and making juvenile "solitary confinement" a priority.³⁰² In December 2014, Senator Leno held a press conference at which he announced his intentions to carry the legislation.³⁰³ A banner on the speaker's podium read, "Stop the Torture of Children Act."³⁰⁴

E. Senate Bill 124 (2015): Building Momentum

In 2015, Senator Leno introduced the "solitary confinement" legislation as S.B. 124.³⁰⁵ A press release from the Ella Baker Center for Civil Rights stated that,

[d]espite being widely condemned as torture, solitary confinement remains overused in California state and local juvenile justice systems. For example, 2011 court documents report 249 incidents of solitary confinement during a fourteen-week period at five juvenile facilities. In addition, youth at one facility were only allowed out of solitary confinement for an average of forty minutes per day.³⁰⁶

In the press release, Senator Leno stated that "[d]eliberately depriving incarcerated young people of human contact, education, exercise, and fresh air is inhumane and can have devastating psychological effects for these youth, who are already vulnerable to depression and suicide."³⁰⁷ He urged that

[t]his type of severe segregation, even if temporary, must be reserved for the most extreme cases in which the young people are in danger of jeopardizing their own safety or that of facility personnel. Troubled youth need treatment, not isolation. If we want them to avoid a future life of crime and become productive members of society.³⁰⁸

³⁰¹ Senator Leno had championed gay rights, reform of the prison sentencing system, new warnings on flame-retardant chemicals, single-payer universal healthcare, minimum wage, requiring search warrants to access electronic devices or internet service providers, more probation services for felons and other challenging issues that might take years to win. In 2016, as he was about to leave the legislature because of term limits, he explained his philosophy: "You just chip away, year after year after year... You start getting some cracks in that wall, and then sometimes circumstances change." In 2015, he was the perfect legislator to carry the juvenile "solitary confinement" bill. John Myers, *Even rivals say Mark Leno is one of Sacramento's most accomplished lawmakers. Now, his time is up*, L.A. TIMES (Aug. 29, 2016, 12:05 AM), <http://www.latimes.com/politics/la-pol-sac-mark-lenno-legislature-legacy-20160829-snap-htm1story.html>.

³⁰² Interview with Jennifer Kim, *supra* note 263.

³⁰³ Vic Lee, *Proposed bill aims to limit solitary confinement for juveniles*, ABC7 NEWS (Dec. 1, 2015), <http://abc7news.com/news/proposed-bill-aims-to-limit-solitary-confinement-for-juveniles/1105950/>.

³⁰⁴ *Id.*

³⁰⁵ CALIFORNIA LEGISLATIVE HISTORY OF S.B. 124, 2015-2016 at 1 (2015), http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201520160SB124 (last visited Jan. 6, 2019).

³⁰⁶ Press Release, Ella Baker Center for Human Rights, *New Bill Limits Use of Solitary Confinement in Juvenile Facilities* (Jan. 16, 2015), <http://ellabakercenter.org/in-the-news/new-bill-limits-use-of-solitary-confinement-in-juvenile-facilities>.

³⁰⁷ *Id.*

³⁰⁸ *Id.*

S.B. 124 was co-sponsored by the Ella Baker Center for Civil Rights, Youth Justice Coalition, Children's Defense Fund–California, and the California Public Defenders Association.³⁰⁹ The first committee analysis of the session registered approximately sixty organizations and several individuals in support, with formal opposition from only three groups: California Correctional Peace Officers Association, State Coalition of Probation Organizations, and the Chief Probation Officers of California.³¹⁰ The California Correctional Peace Officers Association stated:

We recognize that many parties believe that solitary confinement was overused in the past within the Department of the Youth Authority and the Division of Juvenile Facilities. However, those issues were addressed by the *Farrell* court and subsequently by DJJ. In our view, the DJJ has adopted a far-reaching set of policies governing the isolation of wards. These policies are specifically designed to keep wards safe and, when necessary, place a ward in a treatment program run by staff who are trained in evidence-based curriculum to address the ward's violent or aggressive behavior [...] SB 124 would complicate the operational aspects of these policies and treatment programs. In addition, the four-hour minimums contained in the SB 124 would jeopardize the safety and security of wards that are conforming to expected standards of behavior, of staff, and would compromise the programming of the general ward population.³¹¹

The State Coalition of Probation Organizations asserted:

Given the on-going regulation of juvenile separation, and the need to ensure the safety of all youth and staff, we believe that [SB 124] will present obstacles to the effective and limited use of separation and programming restrictions. These restrictions will potentially compromise the health and safety of youth and staff alike in juvenile facilities.³¹²

The bill was amended four times.³¹³ It made it out of the Senate and through the Assembly Public Safety Committee, but stalled in the Assembly Appropriations Committee.³¹⁴ Although the ostensible reason was cost, people close to the bill process believe that this was more about politics than money.³¹⁵ Despite the widespread support of the bill, there was still resistance from the institutional players who would be responsible for implementing it.

³⁰⁹ *Leno Bill Limiting Use of Solitary Confinement in Juvenile Facilities Clears Senate*, ELLA BAKER CTR. FOR HUM. RTS. (June 2, 2015), <https://ellabakercenter.org/in-the-news/leno-bill-limiting-use-of-solitary-confinement-in-juvenile-facilities-clears-senate>.

³¹⁰ S. COMM. ON PUB. SAFETY, BILL ANALYSIS OF S.B. 124, at A-B (2015), http://www.leginfo.ca.gov/pub/15-16/bill/sen/sb_0101-0150/sb_124_cfa_20150406_130033_sen_comm.html.

³¹¹ *Id.*

³¹² *Id.*

³¹³ LEGISLATIVE HISTORY OF S.B. 124, *supra* note 305, at 1.

³¹⁴ *Id.*

³¹⁵ Interview with Jennifer Kim, *supra* note 263.

F. Senate Bill 1143 (2016) – Fifth Time is the Charm

Senator Leno and a now familiar group of co-sponsors pressed on.³¹⁶ A placeholder bill was introduced in February 2016³¹⁷ but, on March 29, 2016, the bill was amended to present the intended text.³¹⁸ The March amendments gave the legislation a new tone. The term “solitary confinement” had been replaced with the term “room confinement” in the title and text of the bill.³¹⁹ Remarkably, with the March 2016 amendments, the Chief Probation Officers of California signed on as a co-sponsor of the bill.³²⁰

Significantly, too, when the first committee analysis was prepared in April 2016, there were dozens of supporters and no formal opposition to the bill was recorded.³²¹ By the time the Assembly Committee on Public Safety released its analysis, the Chief Probation Officers of California said:

We believe SB 1143 . . . protects the safety and well-being of the youth and staff by prohibiting the use of room confinement for punishment or coercion, setting parameters around when and how it is used, and taking into account the operational needs of the facilities in order for probation to carry out the mission of ensuring the safety of these youth while in our care.³²²

There was still no formal opposition to the bill³²³ and this continued to be the case even at the time of the final Senate floor analysis.³²⁴

In this fifth effort, the bill went through eight separate votes with not one “No” vote, and only a few members abstaining.³²⁵ The bill was sent to the Governor on August 31, 2016 and signed into law on September 27, 2016.³²⁶

³¹⁶ In 2016, the co-sponsors were the Ella Baker Center for Civil Rights, Pacific Juvenile Defender Center, Children's Defense Fund – California, California Public Defenders Association, Youth Justice Coalition, Bend the Arc: A Jewish Partnership for Justice - Bay Area, National Religious Campaign Against Torture, Pacific Juvenile Defender Center, and as will be discussed, the Chief Probation Officers of California. Laura Dixon & Zaineb Mohammed, *Probation Chiefs and Youth Advocates Partner on Legislation to Address Room Confinement in Juvenile Facilities*, ELLA BAKER CTR. FOR HUM. RTS. (Mar. 30, 2016), <http://ellabakercenter.org/in-the-news/probation-chiefs-and-youth-advocates-partner-on-legislation-to-address-room-confinement>.

³¹⁷ LEGISLATIVE HISTORY OF S.B. 1143, 2015-2016 at 1 (2016), *as introduced* in 2016, http://www.leginfo.ca.gov/pub/15-16/bill/sen/sb_1101-1150/sb_1143_bill_20160218_introduced.htm.

³¹⁸ LEGISLATIVE HISTORY OF S.B. 1143, 2015-2016 at 1 (2016), *as amended* in 2016, http://www.leginfo.ca.gov/pub/15-16/bill/sen/sb_1101-1150/sb_1143_bill_20160329_amended_sen_v98.htm.

³¹⁹ LEGISLATIVE HISTORY OF S.B. 1143, 2015-2016 at 1 (2016), *as compare versions*.

³²⁰ In a March 30, 2016 press release, Chief Probation Officers of California President Mark Bonin said the Chiefs were pleased to announce their co-sponsorship of SB 1143: “We appreciate the dialogue with Senator Leno and all of the stakeholders on this legislation who share our goal of ensuring that youth in our facilities are engaged in education, programming, and pro-social activities in a safe and secure environment. This measure prohibits the use of room confinement for punishment and sets forth requirements for the use of room confinement in a manner that meets the needs, safety and well-being of our youth and staff while continuing to allow for necessary operations within our facilities.” Press Release, *supra* note 286.

³²¹ S. COMM. ON PUBLIC SAFETY, BILL ANALYSIS S.B. 143, at A-B (2016).

³²² *Id.*

³²³ *Id.*

³²⁴ *Id.*

³²⁵ LEGISLATIVE HISTORY OF S.B. 1143, *supra* note 299.

³²⁶ *Id.*

G. What Changed?

What happened to bring about the transformation from staunch opposition to support of the bill? One major factor was the evolving discussion on what constituted "solitary confinement." Many working in juvenile institutions supported limiting solitary confinement but did not think *their* practices constituted solitary confinement. They were concerned that legislation would interfere with daily operations and what they needed to do in exigent circumstances.³²⁷ These views were evident in a 2014 paper prepared by the California Probation Institution Administrators for the Chief Probation Officers of California,³²⁸ toward the middle of the five-year legislative efforts. The paper noted that when the term "solitary confinement" is used,

[i]t immediately evokes images of a person locked away in a dark, dank, brick cell deprived of light and fresh air like a prisoner of war in a foreign country. The practice evoked by the imagery above, is not used in the forty-nine California counties in which probation departments operate Juvenile Detention and Commitment Facilities, nor do those facilities have a definition for solitary confinement.³²⁹

In addition, the paper emphasized that, operationally, there are instances in a juvenile detention and commitment facility where, for the safety and security of the youth residing in the facility, separation from the general population is necessary.³³⁰ At the time the paper was prepared in 2013-2014, the drafters urged that then-existing juvenile facility regulations, which spoke of "separation" rather than "segregation," provided adequate protection to assure infrequent use of the practice.³³¹

The paper went on to catalog the uses of locked room confinement which were considered appropriate. These included medical purposes; self-separation, where the youth declines to participate in programming or asks to be in his or her own room; operational necessity needed for movement of youth; shift change; transition to court, medical, or other facility operation; minor disciplinary consequences, such as losing an hour of free time or earlier bedtime, as would be given by a responsible parent; behavior management tool for major rule violations for something like a fight, where the youth receives a disciplinary hearing and the hearing results in separation, with daily review; and, when needed, to protect other youth from violent behavior.³³²

In preparing the paper, the authors had conducted a survey of county juvenile facility administrators with respect to the use of locked room time for disciplinary purposes. Fifty-three percent of counties responded, 100% of which reported using separation as a disciplinary

³²⁷ Interview with Danielle Sanchez, Legislative Director, Chief Probation Officers of Cal. (Jan. 30, 2018) (on file with authors).

³²⁸ CALIFORNIA ASSOCIATION OF PROBATION INSTITUTION ADMINISTRATORS (CAPIA), SEPARATION IN PROBATION JUVENILE DETENTION AND COMMITMENT FACILITIES IN CALIFORNIA: EXECUTIVE SUMMARY (Apr. 1, 2014).

³²⁹ *Id.* at 1.

³³⁰ *Id.*

³³¹ The paper noted that, under the recently revised Title 15, California Code of Regulations, what was once termed as "segregation" is now called "separation," and that the newly revised regulation defined separation as "limiting a youth's participation in regular programming for a specific purpose." *Id.*

³³² SEPARATION IN PROBATION JUVENILE DETENTION AND COMMITMENT FACILITIES IN CALIFORNIA, *supra* note 308, at 2-3.

consequence, with 80% of reporting counties separating youth for less than twenty-four hours.³³³ A majority of counties also reported conducting status reviews of the youth every shift and providing education, personal hygiene, school, medical care, mental health care, visits, attorney contacts, large muscle exercise, religious services, and correspondence to youth in separation status.³³⁴

The paper concluded by distinguishing county practice from that going on in the state facility system: "There is most certainly a history of solitary confinement being used excessively and punitively in State operated detention. [However] [i]t is important to understand that Probation Juvenile Detention and Commitment Facilities in California use separation as a tool for behavior management purposes and solitary confinement is not used."³³⁵ The paper urged that the existing regulations and inspections by other entities were adequate to protect against abuse, particularly given the survey results that separation for a majority of youth is for fewer than twenty-four hours.³³⁶

The views expressed in the paper surfaced in legislative discussions as the 2016 session opened. In early February 2016, Senator Leno met with stakeholders, including Karen Pank and Danielle Sanchez of the Chief Probation Officers of California and Lee Seale, the Chief Probation Officer of Sacramento (collectively, "Chiefs"); Senate Budget Committee staff; and the Ella Baker Center's Jennifer Kim to stimulate a dialogue.³³⁷ The Chiefs had been considering bringing their own bill, and Senator Leno hoped to avoid that by finding common ground.³³⁸

Over the next several weeks, Senator Leno, whose press conference a year earlier had featured a banner about stopping torture, listened to probation officials who felt insulted at that characterization of their practices. After continued discussion and mutual testing of intent, stakeholders decided to move forward together, with the Chief Probation Officers co-sponsoring the bill.³³⁹ Instead of rehashing old versions of the bill, the stakeholders discussed the elements they wanted in the bill and then moved forward to reach a consensus on operational language.³⁴⁰ When the March 2016 amendments to S.B. 1143 were made, Senator Leno removed the term "solitary confinement" and replaced it with "room confinement."³⁴¹ The bill was also amended several times to refine the process to be used if a child could not be returned to normal programming within a few hours.³⁴² Danielle Sanchez describes this as a process of moving from

³³³ *Id.* at 3.

³³⁴ *Id.*

³³⁵ *Id.* at 3–4.

³³⁶ SEPARATION IN PROBATION JUVENILE DETENTION AND COMMITMENT FACILITIES IN CALIFORNIA, *supra* note 308, at 4.

³³⁷ Interview with Jennifer Kim, *supra* note 263.

³³⁸ *Id.*; Interview with Danielle Sanchez, *supra* note 307.

³³⁹ Interview with Danielle Sanchez, *supra* note 307.

³⁴⁰ *Id.*

³⁴¹ *Id.* *SB-1143 Juveniles: room confinement; compare versions*, LEGIS. COUNS. DIG. (2015-2016), CALIFORNIA LEGISLATIVE INFORMATION, http://leginfo.legislature.ca.gov/faces/billVersionsCompareClient.xhtml?bill_id=201520160SB1143&cversion=20150SB114399 (last visited Jan. 6, 2019).

³⁴² Interview with Danielle Sanchez, *supra* note 307; *SB-1143 Juveniles: room confinement; compare versions*, LEGIS. COUNS. DIG. (2015-2016), CALIFORNIA LEGISLATIVE INFORMATION, http://leginfo.legislature.ca.gov/faces/billVersionsCompareClient.xhtml?bill_id=201520160SB1143&cversion=20150SB114399 (last visited Jan. 6, 2019).

principles to practicalities for institutional staff.³⁴³ They wanted language that would enable them to do what they needed to do in daily operations and also to be able to respond to exigent circumstances that inevitably occur in juvenile facilities.³⁴⁴ Bit by bit, the legislation was amended to provide an agreed-upon definition of “room confinement”; to recognize the legitimate use of locked room confinement for specific purposes; and to include guidelines, time limits, and oversight.

At the same time, the original sponsors of the legislation made it clear that they wanted an end to using locked room confinement for disciplinary purposes—something that was not explicitly banned in the subtle shift to “separation” from “segregation” in state regulations.³⁴⁵ They also wanted clearer guidelines for dealing with children who were at risk of self-harm or who had other serious behavioral issues.³⁴⁶ Further, the proponents wanted the law to set a maximum time for locked room confinement, with strict guidelines to be used when a longer time was necessary.³⁴⁷ The dialogue continued and, by June 2016, Mark Bonini, President of the Chief Probation Officers of California, and Sue Burrell, from co-sponsor Pacific Juvenile Defender Center, penned an opinion piece for the *Sacramento Bee* about the evolution of joint efforts—the timing of which coincided with the Senate floor vote.³⁴⁸

Those close to the legislation have credited Senator Leno for his leadership in providing a safe space for the discussions to occur.³⁴⁹ Jennifer Kim of the Ella Baker Center has observed that it seemed like the first time both sides talked and listened to each other.³⁵⁰ She remembers thinking that these meetings transformed her belief that people on the other side will inevitably resist reform.³⁵¹ Instead, she said, the Chief Probation Officers expressed a shared goal to end lengthy room confinement and, at the same time, articulated the reasons they previously employed it for safety and security.³⁵² They also identified the specific impediments they saw in the legislation as written.³⁵³ The Chief Probation Officers wanted sustainable, practical ways to address the issues that in the past have resulted in the use of locked room confinement.³⁵⁴ They were tired of the standoff and wanted to move on.³⁵⁵

For Jennifer Kim, this process was immensely important. She believed that getting the people who would be responsible for implementing reforms to the table would produce a more practical and less ideological discussion.³⁵⁶ In addition, she noted that, when people “buy in” and actually become a part of designing reforms, the results are much better than when you are “jamming change down their throat[s].”³⁵⁷ Once the Chief Probation Officers joined as co-

³⁴³ Interview with Danielle Sanchez, *supra* note 307.

³⁴⁴ *Id.*

³⁴⁵ Interview with Jennifer Kim, *supra* note 263.

³⁴⁶ *Id.*

³⁴⁷ *Id.*

³⁴⁸ See Mark Bonini & Sue Burrell, *A rare consensus on juvenile detention*, THE SACRAMENTO BEE (June 1, 2016, 4:00 PM), <http://www.sacbee.com/opinion/op-ed/soapbox/article81182057.html>.

³⁴⁹ Interview with Jennifer Kim, *supra* note 263; Interview with Danielle Sanchez, *supra* note 307.

³⁵⁰ Interview with Jennifer Kim, *supra* note 263.

³⁵¹ *Id.*

³⁵² *Id.*

³⁵³ *Id.*

³⁵⁴ *Id.*

³⁵⁵ Interview with Jennifer Kim, *supra* note 263.

³⁵⁶ *Id.*

³⁵⁷ *Id.*

sponsors, they helped draft amendments that met concerns of other potential opponents, such as the State Coalition of Probation Organizations.³⁵⁸

In terms of the state level actors, resistance to the legislation had centered on whether it would interfere with what the Division of Juvenile Facilities considered a good resolution in *Farrell*. There had been pressure to drop state facilities from the bill, but the proponents were reluctant to allow that given the ongoing complaints received by the Ella Baker Center, and the fact that court oversight in *Farrell* had ended.³⁵⁹ The state had also expressed concern about the need for an exception to the rules for emergency circumstances (i.e. natural disasters and communicable disease), which was addressed in late session amendments.³⁶⁰ Ultimately, after a series of meetings and discussions with Department of Corrections and Rehabilitation legislative legal staff, the state felt sufficiently satisfied that the legislation would not interfere with the *Farrell* changes or institutional operations to require their opposition to the bill.³⁶¹

H. What Does the New Law Do?

The law that was ultimately signed provides significant guidance on the conditions under which locked room confinement may be imposed in state and local juvenile facilities. It added Welfare and Institutions Code section 208.3³⁶² and defined room confinement:

‘Room confinement’ means the placement of a minor or ward in a locked sleeping room or cell with minimal or no contact with persons other than correctional facility staff and attorneys. Room confinement does not include confinement of a minor or ward in a single-person room or cell for brief periods of locked room confinement necessary for required institutional operations.³⁶³

The law provides that the placement of a youth in room confinement shall be accomplished in accordance with the following guidelines:

- (1) Room confinement shall not be used before other less restrictive options have been attempted and exhausted, unless attempting those options poses a threat to the safety or security of any minor, ward, or staff.
- (2) Room confinement shall not be used for the purposes of punishment, coercion, convenience, or retaliation by staff.
- (3) Room confinement shall not be used to the extent that it compromises the mental and physical health of the minor or ward.³⁶⁴

³⁵⁸ Interview with Danielle Sanchez, *supra* note 307.

³⁵⁹ Don Thompson, *California resolves long-running lawsuit over youth prisons*, CAPITAL PUBLIC RADIO (Feb. 25, 2016), <http://www.capradio.org/articles/2016/02/25/california-resolves-long-running-lawsuit-over-youth-prisons/>.

³⁶⁰ Interview with Jennifer Kim, *supra* note 263; Interview with Danielle Sanchez, *supra* note 307.

³⁶¹ Interview with Jennifer Kim, *supra* note 263; Interview with Danielle Sanchez, *supra* note 307.

³⁶² CAL. WELF. & INST. CODE § 208.3 (2018).

³⁶³ *Id.* § 208.3 (a)(3).

³⁶⁴ *Id.* § 208.3 (b).

The law also provides that youth may be held for up to four hours in room confinement.³⁶⁵ After that, staff shall do one or more of the following:

- (1) Return the minor or ward to general population.
- (2) Consult with mental health or medical staff.
- (3) Develop an individualized plan that includes the goals and objectives to be met in order to reintegrate the minor or ward to general population.³⁶⁶

If room confinement must be extended beyond four hours, staff must do the following:

- (1) Document the reason for room confinement and the basis for the extension, the date and time the minor or ward was first placed in room confinement, and when he or she is eventually released from room confinement.
- (2) Develop an individualized plan that includes the goals and objectives to be met in order to reintegrate the minor or ward to general population.
- (3) Obtain documented authorization by the facility superintendent or his or her designee every four hours thereafter.³⁶⁷

Section 208.3(e) clarifies that the law is “not intended to limit the use of single-person rooms or cells for the housing of youth in juvenile facilities, and does not apply to normal sleeping hours.”³⁶⁸ It does not apply to minors or wards in court holding facilities or adult facilities.³⁶⁹ The law does not apply “during an extraordinary, emergency circumstance that requires a significant departure from normal institutional operations, including a natural disaster or facility-wide threat that poses an imminent and substantial risk of harm to multiple staff, minors, or wards” for a period that is “the shortest amount of time needed to address the imminent and substantial risk of harm.”³⁷⁰ Finally, the law does not apply when the youth is placed in a locked cell or sleeping room in connection with treatment or protection against spread of a communicable disease, or to youth placed in a locked cell or sleeping room for required extended care after medical treatment with the written approval of a licensed physician or nurse practitioner.³⁷¹ The law took effect on January 1, 2018.³⁷²

VI. THE ROAD AHEAD

Implementation of the new law is moving forward in California. As part of the Board of State and Community Corrections 2017 regulations revision process, a working group met to develop implementing regulations for submission to the administrative law process.³⁷³ The final

³⁶⁵ *Id.* § 208.3 (c).

³⁶⁶ *Id.*

³⁶⁷ CAL. WELF. & INST. CODE § 208.3 (d).

³⁶⁸ *Id.* § 208.3 (e).

³⁶⁹ *Id.* § 208.3 (f).

³⁷⁰ *Id.* § 208.3 (h).

³⁷¹ *Id.* § 208.3 (i).

³⁷² *Id.* § 208.3 (j).

³⁷³ See Cal. of State and Cnty. Corrections, *Board Meeting Agenda: February 8, 2018 Meeting* (2018), http://www.bscc.ca.gov/s_mtgbsccboard02082018.php.

regulations took effect January 1, 2019.³⁷⁴ Although the room confinement regulation largely tracks the statute, it actually broadens the definition of what rooms are covered; the statute applies to youth in a "locked sleeping room or cell,"³⁷⁵ but the regulation expands the definition to include any "locked room."³⁷⁶

The new law and regulations reflect a profound change in consciousness about locked room confinement, but it would be naïve to think that implementation will always go smoothly.³⁷⁷ Some of the practices that will now be limited were considered best practices not that long ago. Isolating youth at risk of suicide, for example, was once commonly employed, but is now considered dangerous and counter-productive.³⁷⁸ Other practices, such as imposing room confinement as a disciplinary sanction, often through written policies that the youth will receive "X" number of days in confinement for a fight or for having contraband, have been standard practice in juvenile facilities across the country for decades.³⁷⁹ Replacing those punishments with non-room confinement sanctions and changing behavior management programs from punitive to positive reward systems, will require substantial rethinking and retooling. Fortunately, as evidenced by much of what has been discussed in this article, these efforts will proceed amidst unprecedented national activity and initiatives whose purpose is to provide support for needed changes.

Some juvenile halls are already embracing the new law as an opportunity to transform the way they work with youth. In Sacramento County, confinement in a stark locked room has been replaced by the presence of a pleasant, safe space to take youth in conflict. This multi-sensory de-escalation room (MSDR), called "the Cove" by staff and youth, is designed to be a supportive space where youth can use a feelings chart, or play team-building games to build communications

³⁷⁴ BOARD OF STATE AND COMMUNITY CORRECTIONS, TITLE 15 MINIMUM STANDARDS FOR JUVENILE FACILITIES (2019); CAL. CODE REGS. 15, § 1300-1511 (2019) (eff. Jan. 1, 2019).

³⁷⁵ CAL. WELF. & INST. CODE § 208.3 (a)(3) (2018).

³⁷⁶ CAL. CODE REGS. 15, § 1302. Definitions (2019) (eff. Jan. 1, 2019).

³⁷⁷ These are not just theoretical concerns. After the Los Angeles resolution to end solitary confinement, and years of Department of Justice monitoring, the county resolved to transform its Special Handling Units (SHUs), into HOPE (Healing Opportunity and Positive Engagement) Centers, enlisting youth and the local art community "to reimagine, redesign and reclaim" the SHUs. Initial reports sounded promising: "There were all kinds of positive programs going on up there. People were at different tables working with the kids. The furniture was comfortable. When the kids left, they felt better about themselves. They'd accomplished something while they were up there." One year later, though, officials again visited the facility and were alarmed by what they saw. All of the atmospheric improvements were gone and youth were being held in what amounted to solitary confinement for days at a time. Memo from John Naimo, Auditor-Controller, Cty of Los Angeles Dep't of Auditor-Controller Dep't, to Mark Ridley-Thomas et al., Bd. of Supervisors Dep't 1, 4 (Dec. 6, 2016), http://file.lacounty.gov/SDSInter/auditor/cmr/1020330_2016-12-6ProbationDepartmentJuvenileCamps-ComplianceWithTheDepartmentofJusticeSettlementAgreementReview-JunethroughAugust2016.pdf; Celeste Fremon, *Several Kids Reportedly Kept in Solitary Conditions For Days At LA County's Largest Juvenile Hall*, WITNESS LA (Oct. 10, 2017), <http://www.witnessla.com/several-kids-reportedly-kept-in-solitary-conditions-for-days-at-la-countys-largest-juvenile-hall/>.

³⁷⁸ See Lindsey M. Hayes, *Characteristics of Juvenile Suicide in Confinement*, OFF. OF JUV. JUST. & DELINQ. PREVENTION, OJJDP 1, 6–7, 10 (Feb. 2009), <https://www.ncjrs.gov/pdffiles1/ojjdp/214434.pdf>.

³⁷⁹ For example, when a U.S. Office of Juvenile Justice and Delinquency Prevention national study of juvenile facilities was undertaken in the 1990's, the measure of whether a facility conformed with expected standards was whether disciplinary isolation was limited to 5 days. Dale G. Parent, et al., *Conditions of Confinement: Juvenile Detention and Corrections Facilities – Research Report*, U.S. OFF. OF JUV. JUST. & DELINQ. PREVENTION 158, 174 (1994), <https://www.ncjrs.gov/pdffiles1/ojjdp/7-Chapter7.pdf>. The study found that 47% of detention centers surveyed did not have written policies that met the standard. *Id.* at 182.

skills, or simply talk with a staff member about their struggles.³⁸⁰ The results so far are stunning. In October of 2010, youth spent an average of 28.3 hours in "program restriction" per month (often a euphemism for solitary confinement). By April of 2017, the rate of room confinement was just 1.6 hours per month.³⁸¹ Developing "the Cove" cost only \$5000, and staff painted the underwater themed murals themselves.³⁸² Chief Probation Officer Lee Seale recognizes the critical importance of staff involvement in crafting the new practices: "When you have management that's pushing it from the top down, you're just going to run into friction and it doesn't work."³⁸³ He welcomes the opportunity to work with other counties in developing these kinds of alternatives to locked room confinement.³⁸⁴

The Sacramento program shows how having "buy in" and involvement of line staff can play a critical role in moving away from locked room confinement, but more is needed. Administrators must also assure that staff have the other tools they need. They need to assure that the facility has high quality programming so youth are stimulated in positive ways. They must assure prompt access to mental health intervention to help in crisis situations. They should implement systems of positive behavior management to help reduce the need for punitive measures. And finally, they must assure that staff work in conditions with adequate staffing to proactively intervene in situations that may otherwise result in use of locked room time, and to provide extra support for youth in crisis.³⁸⁵

Staff working in many facilities have spent their whole careers thinking of locked room confinement as the fallback tool for a variety of situations. It will take conscious effort for them to develop a new set of responses to address emergencies, conflict, and discipline in ways that limit confinement. Particularly in the initial implementation phase, staff will need to receive ongoing training to help cement a philosophy of treatment that recognizes the harm of locked room time—even when it is ostensibly imposed for benevolent purposes. They will also need practical training on alternative ways to address misbehavior and situations calling for protection of the young person or others, consistent with the new law.

Those with oversight powers must stay engaged and alert to assure a proper response if problems occur as the new law is implemented. In California, the new regulations will provide much needed guidance for the Board of State and Community Corrections inspections that take

³⁸⁰ Molly McCluskey, *Sacramento's Quest To End Solitary Confinement For Kids*, Pacific Standard (Apr. 5, 2018). This is one of a series of innovations instituted by Chief Probation Officer Lee Seale, who took over in wake of a lawsuit that had alleged "excessive force, deliberate indifference to serious medical and psychological needs, and conscience-shocking conduct." Seale also restored a disused swimming pool, instituted a "Beat the Chief" ping pong tournament, and started a Boys and Girls Club in an used wing of the facility, with a goal of creating a positive environment where youth "feel like they can put it all behind them, go to school, get a degree, get their record sealed, and be successful." Parent et al., *supra* note 379.

³⁸¹ McCluskey, *supra* note 380.

³⁸² *Id.*

³⁸³ *Id.*

³⁸⁴ *Id.*

³⁸⁵ Unfortunately, in the most recent regulation revisions process, California state elected not to adopt the 1:8 juvenile facility staffing ratios called for in the Prison Rape Elimination Act. 28 C.F.R. § 115.313 (c) (2012) (requiring one security staff member per eight juvenile residents during waking hours, and 1:16 during sleeping hours). For the present, California standards require only 1:10 staff ratios during waking hours and 1:30 during sleeping hours. 15 CAL. BOARD OF ST. & COMMUNITY CORRECTIONS, TITLE 15 MINIMUM STANDARDS FOR JUVENILE FACILITIES, 15 CAL. CODE OF REGS. § 1321(h)(1) (2014).

place every two years.³⁸⁶ Judges³⁸⁷ and juvenile justice commissions also have inspection powers.³⁸⁸ They will need to be familiar with the new law and specifically monitor the use of locked room time as they exercise their powers. Juvenile defenders should ask their clients about conditions in confinement and whether they have been subjected to room confinement that exceeds the new limitations.³⁸⁹ If problems arise, they should move to change the placement³⁹⁰ or directly advocate to resolve the issue.

Implementation will also call for advocates, youth, and families of incarcerated youth to remain vigilant. It was their complaints that helped to bring the issue of locked room confinement to public and official attention in the first place and their alertness will continue to provide important feedback about how things are going.

Finally, policymakers must find ways to assure that the limitations on locked room time are realized. They should enact a formal system for independent, ongoing monitoring of the Division of Juvenile Justice facilities. They should require data on locked room time in county facilities to be collected and analyzed.³⁹¹ They should also support funding to train juvenile system professionals and provide them with technical assistance on how to respond to difficult behavioral situations in facilities.³⁹²

Juvenile system stakeholders must embrace the need for broader changes to the practice of detention itself. Studies of juvenile facilities have concluded that overuse of practices such as isolation are endemic in locked institutions.³⁹³ Many of the youth who are subjected to room confinement have mental health diagnoses or behavioral issues that could be better addressed in

³⁸⁶ CAL. WELF. & INST. CODE § 209 (a)(3) (2018).

³⁸⁷ *Id.* § 209 (a)(1).

³⁸⁸ *Id.* Juvenile Justice Commissions are given access to juvenile institutions within the county or region and are mandated to visit these facilities at least once a year. *See* CAL. WELF. & INST. CODE, §229 (2018).

³⁸⁹ Appointed juvenile defenders in California have an obligation to stay in contact even in the post-dispositional phase and to represent the youth until a case is terminated from juvenile jurisdiction. *See* CAL. WELF. & INST. CODE §§ 634.3, 634.6 (2018); Cal. Rules of Court, Rule 5.663. For national standard, *see* Lisa Thurau et al., *National Juvenile Defense Standards*, NAT'L JUV. DEFENDER CTR. §§ 7.1, 7.5, <http://njdc.info/wp-content/uploads/2013/09/NationalJuvenileDefenseStandards2013.pdf>.

³⁹⁰ CAL. WELF. & INST. CODE § 778 (a) (2018).

³⁹¹ The newly reauthorized federal Juvenile Justice and Delinquency Prevention Act calls for states to report annually the incidence of isolation in juvenile facilities in the state. 34 U.S.C. 11117, Public Law No: 115-385, section 207(2)(G) (Dec. 21, 2018). The text of the 2018 reauthorized Act is available at <https://www.congress.gov/bill/115th-congress/house-bill/6964/text?q=%7B%22search%22%3A%5B%22Juvenile+Justice+and+Delinquency+Prevention+Reauthoriza+n+Act+of+2018%22%5D%7D&r=1&s=1>.

³⁹² The newly reauthorized federal Juvenile Justice and Delinquency Prevention Act, *supra* note 391, also requires states to report annually on "...policies, procedures, and training in effect for the staff of juvenile State correctional facilities to eliminate the use of dangerous practices, unreasonable restraints, and unreasonable isolation, including by developing effective behavior management techniques. 34 U.S.C. 11133, Public Law No: 115-385, section 223(a)(28) (Dec. 21, 2018).

³⁹³ *See* RICHARD MENDEL, NO PLACE FOR KIDS: THE CASE FOR REDUCING JUVENILE INCARCERATION 6-8, Annie E. Casey Foundation (2011), *available at* <https://www.aecf.org/m/resourcedoc/aecf-NoPlaceForKidsFullReport-2011.pdf>.

other settings.³⁹⁴ No one knows this better than the people who work in juvenile facilities,³⁹⁵ but they need the involvement of other system players to create sustained change. There is a tremendous need for systemic discussions about what to do so that youth who are most likely to be subjected to room confinement are not detained in the first place.³⁹⁶

The California work is already helping to inspire change elsewhere. For the first time in years, the American Correctional Association is revisiting its standards on isolation/removal for disciplinary room confinement, protective custody, and special management.³⁹⁷ The proposed changes are strikingly similar to the new California law—including a prohibition of separation for discipline or punishment, requiring review by a supervisor if separation exceeds four hours, and providing youth who are in separation for more than four hours with education, treatment, medical, and recreational services.³⁹⁸ The resulting changes are anticipated in 2019.³⁹⁹

VII. CONCLUSION

Thirty years ago, a small group of advocates, youth, and families began to speak out about the frightening use of locked room confinement. Beginning with letters and calls to journalists, legislators, and litigators, their efforts eventually gained traction, resulting in the enormous changes discussed in this article. Evolving consciousness among justice system professionals and the development of practical resources to support change now bring us closer to the end of solitary confinement for youth. This success in addressing what once seemed an intractable practice suggests that there are no limits to what we can do to transform the way young people are treated in the youth justice system.

³⁹⁴ See Karen M. Abram et al., *Suicidal Thoughts and Behaviors Among Detained Youth* 1-11, OJJDP JUV. JUST. BULL., U.S. Dept. of Justice, Wash., D.C. (July 2014); BARRY HOLMAN & JASON ZIEDENBERG, THE DANGERS OF DETENTION: THE IMPACT OF INCARCERATING YOUTH IN DETENTION AND OTHER SECURE FACILITIES 7-8 (2006), available at http://www.justicepolicy.org/images/upload/06-11_rep_dangersofdetention_jj.pdf.

³⁹⁵ See EDWARD COHEN & JANE PFEIFER, COSTS OF INCARCERATING YOUTH WITH MENTAL ILLNESS: FINAL REPORT 10-17, prepared for the Chief Probation Officers of California (2008).

³⁹⁶ The Juvenile Detention Alternative Initiative has extensive materials on how to change systemic practices to prevent unnecessary detention. See *Juvenile Detention Alternatives Initiative Resources*, ANNIE E. CASEY FOUND., http://www.aecf.org/search?title=Juvenile+Detention+Alternatives+Initiative+Resources&fq%5B%5D=initiative_id%3A5&fq%5B%5D=content_type_id%3A138&sort=date+desc&facet%5B%5D=&facet%5B%5D=&facet%5B%5D=report_series%3APathways+to+Juvenile+Detention+Reform+Series (last visited Jan. 6, 2019). Also, the John D. and Catherine T. MacArthur Foundation's Model for Change Initiative has extensive materials on systemic reform, including many on keeping youth with mental health needs out of the system. See *Mental/behavioral health, MODELS FOR CHANGE*, <http://www.modelsforchange.net/publications/listing.html?tags=Mental%2fbehavioral+health> (last visited Jan. 6, 2019).

³⁹⁷ AM. CORR. ASS'N, PERFORMANCE BASED STANDARDS JUVENILE CORR. FACILITIES 51 (4th ed. 2009); Jenny Lutz, *ACA Releases Proposed Changes to Youth Isolation Standards*, STOP SOLITARY FOR KIDS (Dec. 8, 2017), <http://www.stopsolitaryforkids.org/uncategorized/acanewproposedstandards/>.

³⁹⁸ *Use of Separation with Juveniles – Proposed Expected Practices and Definition*, AM. CORRECTIONAL ASS'N, http://www.aca.org/ACA_Prod_IMIS/DOCS/Standards%20and%20Accreditation/Use%20of%20Separation%20with%20Juveniles_Portal.pdf (last visited Jan. 6, 2019).

³⁹⁹ *ACA Releases Proposed Changes to Youth Isolation Standards*, *supra* note 397.