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## Solitary Confinement Banned in Federal Juvenile System

Bethany Dixon

In January, President Obama banned solitary confinement – the confinement of a prisoner in a cell for virtually the entire day without environmental stimulation and limited opportunity for social interaction<sup>1</sup> – for juveniles in the federal prison system.<sup>2</sup> In his announcement, he stated that solitary confinement has been overused and has the potential to cause tremendous psychological consequences.<sup>3</sup> His decision came after a review by the Justice Department. The report stated that the practice of solitary confinement reduces the chances that a prisoner can be eventually rehabilitated to society.<sup>4</sup> This article will examine the anticipated impact of the President's executive action and efforts to eliminate solitary at the local level.

### KALIEF BROWDER AND THE TRAUMA OF JUVENILE SOLITARY

In January 2016, the President wrote an opinion editorial that appeared in the *Washington Post*.<sup>5</sup> In this editorial, he detailed the case of Kalief Browder.<sup>6</sup> Browder was a 16-year-old who had been accused of stealing a backpack when he was sent to Rikers Island in New York to await his trial.<sup>7</sup> Browder eventually spent almost two years in solitary confinement.<sup>8</sup> He never stood trial. He was

<sup>1</sup> Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 WASH. U. J.L. & POL'Y 327 (2006), available at [http://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1362&context=law\\_journal\\_law\\_policy](http://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1362&context=law_journal_law_policy).

<sup>2</sup> Juliet Eilperin, *Obama Bans Solitary Confinement for Juveniles in Federal Prisons*, THE WASHINGTON POST, Mar. 15, 2016, [https://www.washingtonpost.com/politics/obama-bans-solitary-confinement-for-juveniles-in-federal-prisons/2016/01/25/056e14b2-c3a2-11e5-9693-933a4d31bcc8\\_story.html](https://www.washingtonpost.com/politics/obama-bans-solitary-confinement-for-juveniles-in-federal-prisons/2016/01/25/056e14b2-c3a2-11e5-9693-933a4d31bcc8_story.html).

<sup>3</sup> *Id.*

<sup>4</sup> Kevin Liptak, *Obama Bans Solitary Confinement for Juveniles in Federal Prison*, CNN.COM, March 15, 2016, <http://www.cnn.com/2016/01/25/politics/obama-bans-juvenile-solitary-confinement/>.

<sup>5</sup> Barack Obama, *Why We Must Rethink Solitary Confinement*, THE WASHINGTON POST, Mar. 15, 2016, [https://www.washingtonpost.com/opinions/barack-obama-why-we-must-rethink-solitary-confinement/2016/01/25/29a361f2-c384-11e5-8965-0607e0e265ce\\_story.html](https://www.washingtonpost.com/opinions/barack-obama-why-we-must-rethink-solitary-confinement/2016/01/25/29a361f2-c384-11e5-8965-0607e0e265ce_story.html).

<sup>6</sup> *Id.*

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

<sup>8</sup> *Id.*

released but never recovered from the psychological trauma of 23 hours a day in solitary confinement.<sup>9</sup>

Browder committed suicide at the age of 22.<sup>10</sup> Of the suicide, Browder's lawyer, Paul V. Prestia, has stated: "[W]hen you go over the three years that he spent [in jail] and all the horrific details he endured, it's unbelievable that this could happen to a teen-ager in New York City. He didn't get tortured in some prison camp in another country. It was right here!"<sup>11</sup>

In his opinion editorial, the President stated that the practice has been "increasingly overused. . . with heartbreaking results."<sup>12</sup> The President went on to state, "how can we subject prisoners to unnecessary solitary confinement, knowing its effects, and then expect them to return to our communities as whole people? It doesn't make us safer. It's an affront to our common humanity."<sup>13</sup> President Obama continued, "the United States is a nation of second chances, but the experience of solitary confinement too often undercuts that second chance."<sup>14</sup>

Indeed, a majority of psychiatrists agree that juveniles placed in solitary confinement can have stunted brain development.<sup>15</sup> Solitary confinement can also intensify and aggravate any underlying mental illnesses and lead to suicide.<sup>16</sup> Most psychiatrists think that solitary confinement should not last longer than four hours. Yet even with the President's executive order, some states, such as Nebraska, continue to hold juveniles in solitary confinement for as long as 90 days at a time.<sup>17</sup>

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<sup>9</sup> Barack Obama, *Why We Must Rethink Solitary Confinement*, The Washington Post, Mar. 15, 2016, [https://www.washingtonpost.com/opinions/barack-obama-why-we-must-rethink-solitary-confinement/2016/01/25/29a361f2-c384-11e5-8965-0607e0e265ce\\_story.html](https://www.washingtonpost.com/opinions/barack-obama-why-we-must-rethink-solitary-confinement/2016/01/25/29a361f2-c384-11e5-8965-0607e0e265ce_story.html).

<sup>10</sup> *Id.*

<sup>11</sup> Jennifer Gonnerman, *Kalief Browder, 1993-2015*, THE NEW YORKER, Mar. 16, 2016, <http://www.newyorker.com/news/news-desk/kalief-browder-1993-2015>.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

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

<sup>15</sup> Erin Grace, *Man Who Experienced Solitary Confinement at Age 15 Joins Movement to Limit its Use in Juvenile Justice System*, OMAHA.COM, (March 13, 2016), [http://www.omaha.com/columnists/grace/grace-veteran-of-solitary-confinement-joins-movement-to-limit-its/article\\_8e79e893-ce7d-5b41-98ab-ffa39e64368b.html](http://www.omaha.com/columnists/grace/grace-veteran-of-solitary-confinement-joins-movement-to-limit-its/article_8e79e893-ce7d-5b41-98ab-ffa39e64368b.html).

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

<sup>17</sup> *Id.*

## LITIGATION AROUND SOLITARY CONFINEMENT

The ACLU has litigated the issue of solitary confinement for the past few decades.<sup>18</sup> Five years ago, the ACLU launched their Stop Solitary Campaign, which was based on the decades of research that the ACLU had done.<sup>19</sup> This changed their approach to ending solitary confinement because it was felt that the necessary progress was not forthcoming: solitary confinement was too pervasive in the culture of corrections.<sup>20</sup> According to Amy Fettig, Senior Staff Counsel for National Prison Project and Director of Stop Solitary Campaign at the ACLU, “just litigation wasn’t going to get us where we needed to be.”<sup>21</sup> Instead, the ACLU began state-based campaigns, with the aim of educating the wider public on the practices associated with solitary confinement.<sup>22</sup>

One of the major concerns was the lack of media attention that solitary confinement received.<sup>23</sup> “When we looked at the public coverage in the media, there was almost nothing,” said Fettig. “Reporters had not paid attention to the issue, even though solitary confinement was practiced in every prison and jail and juvenile detention center in the country.”<sup>24</sup> The goal to increase media coverage was to give the public a chance to see and hear what was happening.<sup>25</sup>

President Obama’s Executive Order came with mixed emotions.<sup>26</sup> “While important for those children certainly. . . the actual national impact I believe, is more that the what the federal system does is very important to the states,” Fettig stated. “Part of the challenge surrounding solitary confinement is that it is so deeply embedded in the culture of corrections.”<sup>27</sup>

Of particular concern is that an Executive Order can be undone by the next president:

The Federal System has I think, 108 days to implement changes and the presidency has what 290 days left [at time of interview] and that is certainly an issue to consider. That is why it is so important to have leadership buy in and demonstrate that this is a practice, it is not just an executive order, it is

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<sup>18</sup> Phone interview with Amy Fettig, Senior Staff Counsel for National Prison Project and Director of Stop Solitary Campaign, ACLU, Washington, D.C. (Mar. 29, 2016)

<sup>19</sup> *Id.*

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

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> Fettig, *supra* note 18.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

not just a human rights issue that they may or may not buy into but that it is good practice and good for them.<sup>28</sup>

To that end, this puts the burden on advocacy groups like the ACLU to keep up with their work to ensure that the progress made is not undone.<sup>29</sup> Ultimately, executive orders “on paper” are only as effective as their implementation so long as their directives are not written into law.<sup>30</sup>

### SOLITARY CONFINEMENT AND MENTAL HEALTH

According to Fettig, solitary confinement was used as a tool to deal with prisoners for so long that corrections officers didn't know how to deal without it.<sup>31</sup> If there was a mentally-ill inmate, a juvenile, or someone who did not get along with other inmates or staff, solitary confinement was seen as an easy fix. Part of the challenge now will be providing resources and education to corrections officers so that they have a better handle on how to deal with “problem prisoners.”<sup>32</sup> Eliminating the prevalent practice of solitary confinement would have to involve showing policymakers that just because solitary confinement has been the status quo in resolving conflict in prisons, does not mean that it is the only (or best) response.<sup>33</sup>

Psychiatrist Dr. Stuart Grassian of Harvard has identified a particular syndrome in those who have been held in solitary confinement.<sup>34</sup> The symptoms in this syndrome include symptoms ranging from hyper-sensitivity to external stimuli, hallucinations, panic attacks, difficulty concentrating, paranoia, aggression, impulse control, and the desire to self-mutilate.<sup>35</sup> Additionally, those who have been subjected to extended periods in solitary confinement are prone to focus on one thought and become preoccupied with this thought.<sup>36</sup> This thought is almost always something unpleasant, an annoyance in the room (real or imagined), or some sort of bodily irritation or incident.<sup>37</sup> Once they

<sup>28</sup> Phone interview with Amy Fettig, Senior Staff Counsel for National Prison Project and Director of Stop Solitary Campaign, ACLU, Washington, D.C. (Mar. 29, 2016).

<sup>29</sup> *Id.*

<sup>30</sup> Fettig, *supra* note 18.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> Ted Conover, *From Gitmo to an American Supermax, the Horrors of Solitary Confinement*, VANITY FAIR, Mar. 15, 2016, <http://www.vanityfair.com/news/2015/01/guantanamo-bay-solitary-confinement>.

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

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

<sup>37</sup> *Id.*

focus in on this annoyance they are unable to stop torturing themselves with thoughts of it.<sup>38</sup>

As early as the nineteenth century mental health professionals were aware of what could happen to inmates' mental state during solitary confinement.<sup>39</sup> Psychologists were aware that those who suffered from a preexisting mental condition had those conditions worsen after confinement.<sup>40</sup> It was also known that those inmates who did not develop a psychiatric illness following their solitary confinement still experienced difficulty adapting back into the regular prison population and felt immense psychological pain during their confinement.<sup>41</sup> Even those who are given relatively short periods of time in solitary confinement are likely to experience a fog like state where their attention and concentration are impaired.<sup>42</sup> It is in this state that sensitivity to stimulation begins.<sup>43</sup>

In the 1890 Supreme Court Case *In re Medley*, the court noted that there was severe psychiatric harm caused by solitary confinement.<sup>44</sup> The Court stated:

A considerable number of the prisoners fell, after even a short confinement, into a semi-fatuous condition, from which it was next to impossible to arouse them, and others became violently insane; others still committed suicide; while those who stood the ordeal better were not generally reformed, and in most cases did not recover sufficient mental activity to be of any subsequent service to the community.<sup>45</sup>

The Court found that the punishment of solitary confinement was too egregious and ordered Medley's release from prison.<sup>46</sup>

In juveniles, the impact of isolation has an extremely negative effect on their developing minds.<sup>47</sup> Emlyn Ricketts, a criminal psychology teacher at Jones College Prep in Chicago and a former staff attorney with First Defense

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<sup>38</sup> Ted Conover, *From Gitmo to an American Supermax, the Horrors of Solitary Confinement*, Vanity Fair, Mar. 15, 2016, <http://www.vanityfair.com/news/2015/01/guantanamo-bay-solitary-confinement>.

<sup>39</sup> Grassian, *supra* note 1.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> Grassian, *supra* note 1.

<sup>46</sup> *Id.*

<sup>47</sup> Interview with Emlyn Ricketts, Criminal Psychology teacher at Jones College Prep, Chicago, Ill. (March 17, 2016).

Legal Aid, has stated that, “children who are held in solitary confinement are at an increased risk of self-harm and suicide. . . [B]eing held in solitary confinement . . . deprives children of being able to access social services and supports that they so desperately need.”<sup>48</sup> Placing juveniles in solitary confinement seems to have the opposite effect of the original intention of the juvenile system which was to be a rehabilitative system.<sup>49</sup> Ricketts further stated, “these children need to be nurtured and supported so that they can lead productive and successful lives. Locking them away and depriving them of human contact is tantamount to torture.”<sup>50</sup>

### SOLITARY REFORM AT THE STATE LEVEL

In Illinois, the recent preliminary approval for a settlement came in the case of *Ashoor Rasho v. John Baldwin*.<sup>51</sup> The final settlement, approved in May 2016 provided for the conversion of the Illinois Youth Center in Joliet into a treatment center designed for mentally-ill inmates.<sup>52</sup> Rasho was admitted to the Illinois prison system in 1996 with an eight-year sentence for burglary.<sup>53</sup> If he had served peacefully, he would have likely been released after four years.<sup>54</sup> Instead, he was convicted of a series of aggravated assaults, and attempted suicide multiple times.<sup>55</sup> Rasho has a projected parole date of 2022.<sup>56</sup> Rasho’s lawyer, Marc R. Kadish, stated that his client’s experience was an example of what happens when the mentally ill are jailed.<sup>57</sup> Kadish explained that “all of his convictions were for shouting at the guards or things that are not pleasant. Throwing feces or urine. But he never stabbed a guard.”<sup>58</sup>

<sup>48</sup> Interview with Emlyn Ricketts, Criminal Psychology teacher at Jones College Prep, Chicago, Ill. (March 17, 2016).

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *IDOC Reaches Agreement in Rasho v John Baldwin*, The Illinois Department of Corrections, (2015), [http://www.illinois.gov/IISNews/15-1093-IDOC\\_Reaches\\_Agreement\\_in\\_Rasho\\_v\\_John\\_Baldwin.pdf](http://www.illinois.gov/IISNews/15-1093-IDOC_Reaches_Agreement_in_Rasho_v_John_Baldwin.pdf).

<sup>52</sup> *Id.*

<sup>53</sup> Roy Strom, *Settlement May Help Resolve One Prison Problem*, CHICAGO DAILY LAW BULLETIN, Mar. 19, 2016), <http://www.chicagolawbulletin.com/Archives/2016/01/05/prisons-01-05-16.aspx>.

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

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

The acting director of the Illinois Department of Corrections (IDOC) stated in a press release, “Illinois prisons were not intended to be psychiatric hospitals but the reality is, they have become holding places for people who suffer from serious mental illness.”<sup>59</sup> *Ashoor Rasha v. John Baldwin* had been lingering in the court system since 2007 when an inmate at Pontiac Correctional Center filed suit over the delivery of mental health services in IDOC.<sup>60</sup> As part of the settlement, the IDOC will release any prisoners from solitary who have serious mental illnesses and are there for non-violent offenses.<sup>61</sup> This settlement will also consider mental health before segregation sentencing, which means that mentally ill inmates may get some time out of their cells to lessen the risk of fog states and other mental breakdowns.<sup>62</sup>

In Tennessee, a federal judge declined to issue an injunction that would bar the use of solitary confinement for juveniles detained in the state.<sup>63</sup> This stemmed from a lawsuit that sought to release a 15-year-old from solitary confinement.<sup>64</sup> The boy had been placed in confinement for five days with limited human contact and the possibility of a prolonged confinement.<sup>65</sup> The lawsuit states that the practice of placing children in solitary confinement violates the Constitution and cites President Obama’s Executive Order to end the practice for juveniles in federal prisons.<sup>66</sup>

The state legislature of Colorado is currently considering a bill that would limit the use of solitary confinement for juveniles.<sup>67</sup> Colorado does currently have an existing law that bans seclusion, but independent investigations have shown that the Colorado Department of Youth Corrections has put juveniles in isolation numerous times.<sup>68</sup> Elise Logemann, executive director of the Colorado Juvenile Defender Center, has stated: “We can’t rely on the division to

<sup>59</sup> IDOC, *supra* note 51.

<sup>60</sup> *Id.*

<sup>61</sup> Strom, *supra* note 53

<sup>62</sup> *Id.*

<sup>63</sup> Anita Wadhvani, *Legal Challenge to Child Solitary Confinement to Proceed*, THE TENNESSEAN, June 3, 2016, <http://www.tennessean.com/story/news/crime/2016/05/05/legal-challenge-child-solitary-confinement-proceed/83971234/>

<sup>64</sup> *Id.*

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

<sup>66</sup> *Id.*

<sup>67</sup> Eric Galatas, *Bill to Limit Juvenile Solitary Confinement Advances in Colorado House*, PUBLIC NEWS SERVICE, June 3, 2016, <http://www.publicnewsservice.org/2016-04-28/juvenile-justice/bill-to-limit-juvenile-solitary-confinement-advances-in-colorado-house/a51637-1> <http://gazette.com/juvenile-solitary-confinement-bill-partly-inspired-by-gazette-reporting-headed-to-governors-desk/article/1575730>

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



regulate itself. We really need a statute in place to ensure that we don't backslide the way that we did after this law was initially passed. By 2010, we had an illegal policy and by 2013 we were isolating kids for days and weeks at a time in violation of the law."<sup>69</sup>

### CONCLUSION

President Obama's executive order only affects juveniles in federal prisons, but states such as Illinois and Nebraska are beginning to discuss the issue.<sup>70</sup> The practice of solitary confinement has been widely criticized for over a century.<sup>71</sup> Psychiatrists agree that the practice of solitary confinement is harmful to the mental state of those who experience it and that the practice is even more detrimental to brains that are still developing.<sup>72</sup> Children who are incarcerated are likely to have experienced abuse, neglect, and other kinds of trauma, and many children who are incarcerated have mental health issues. These children need to be nurtured and supported so that they can lead productive and successful lives rather than be locked away alone.<sup>73</sup>

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<sup>69</sup> Eric Galatas, *Bill to Limit Juvenile Solitary Confinement Advances in Colorado House*, Public News Service, June 3, 2016, <http://www.publicnewsservice.org/2016-04-28/juvenile-justice/bill-to-limit-juvenile-solitary-confinement-advances-in-colorado-house/a51637-1><http://gazette.com/juvenile-solitary-confinement-bill-partly-inspired-by-gazette-reporting-headed-to-governors-desk/article/1575730>.

<sup>70</sup> Eilperin, *supra* note 2.

<sup>71</sup> Grassian, *supra* note 1.

<sup>72</sup> Ricketts, *supra* note 47.

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