



No Longer Alone

A Blueprint for Passing a Juvenile Solitary
Confinement Ban in a Red State

Winter 2020–2021

ACLU
Nebraska



Dylan Murphy, depicted on this report's cover, is a solitary survivor whose involvement helped this reform move from a big idea to reality.

“

I was first forced into the mental health industrial complex at the age of 14, when I was institutionalized in a local psychiatric facility for exhibiting symptoms of unhealed early childhood trauma. The intention was to help, but the impact was the opposite. From chemical restraint due to over-medication without proper informed consent to repeated physical isolation in a solitary confinement cell, I was being re-traumatized by the system itself. The tragic reality in my story is not unique; each day, I am joined by countless others forced into these situations. When systems intended to help are built to prioritize capitalistic values, they will inherently re-traumatize the already traumatized.

My own experiences continued until I was 33, when I finally began making my exit from the Western medical paradigm. Shortly thereafter, I joined forces with the ACLU of Nebraska in speaking out against these damaging practices - at the legislature and in the media. While painful at times, this journey has been profoundly important. A “red” state like Nebraska taking steps away from perpetuating these harms is a hopeful sign for our nation’s future, as well as other states’ capacity to follow suit. I am forever grateful to the ACLU for their tireless work to end the harmful practice of solitary confinement, and I look forward to a day when NO person is subject to re-traumatization by the systems intended to help. The time is now for us to abandon these archaic, punitive processes — so that I and so many others will truly be no longer alone.

Executive Summary

For over 50 years in Nebraska, the ACLU has worked in courts, legislatures, and communities to protect the constitutional and individual rights of *all* people. With a nationwide network of offices and millions of members and supporters, we take up the toughest civil liberties fights. Beyond one person, party, or side — we the people dare to create a more perfect union.

The ACLU is committed to challenging the criminalization and incarceration of young people, which disproportionately affects communities of color. One aspect of this work is ending the practice of juvenile solitary confinement, sometimes called room confinement, isolation, or segregation, in which a young person is placed alone in a cell or room for hours, days, and even weeks at a time, often without access to programming, treatment, or family contact.

Solitary confinement of juveniles is constitutionally suspect. The practice potentially violates the prohibition on cruel and unusual punishment found in both the U.S. and Nebraska State Constitutions as well as the due process guarantee of the 14th Amendment and the Nebraska State Constitution.

Aside from being legally suspect, solitary confinement is widely understood to harm even previously healthy adults and it can have an even more profound impact on children, whose brains are not fully developed until they reach their mid-twenties.¹ Isolating young people can cause irreparable psychological damage including severe depression, anxiety, self-mutilation, hallucinations, and increased suicide rates.²

Recognizing the horrifying realities of isolating young people in Nebraska, the ACLU of Nebraska, along with our partners, worked tirelessly from 2016 to 2020 to make progress in restricting Nebraska's deeply troubling overuse of juvenile solitary confinement. After we published a first-of-its-kind report exploring the overuse of the practice in Nebraska in 2016, the ACLU of Nebraska implemented a multifaceted, years-long campaign that culminated in 2020 with the historic passage of LB 230, which has been described as one of the most comprehensive bans on juvenile solitary confinement in the country.

This blueprint outlines a host of effective campaign strategies utilized over a four-year period in a conservative political landscape to ban juvenile solitary confinement.



Author: Scout Richters has been Legal and Policy Counsel at the ACLU of Nebraska since 2017. With a background as a juvenile court attorney at Legal Aid of Nebraska and a legal intern at ACLU National Women's Rights Project during law school, Scout leads the ACLU of Nebraska's juvenile justice, women's rights, and reproductive justice work.

As highlighted in this blueprint, several components were integral to the ultimate passage of LB 230, including committed legislative champions, incremental legislative changes, consistent data analysis that monitored trends in racial disparities and reasons for confinement, measures of public opinion, robust grassroots engagement, and efforts to continuously center and amplify the lived experiences of Nebraskans who have survived solitary confinement.

Even with the passage of this historic legislation, however, we know that our work to unlock the box for young Nebraskans is far from over. Therefore, the ACLU will continue to steadfastly monitor the implementation of this legislation and continue to support new efforts to ensure the promise of a Nebraska where youth are supported and rehabilitated, not isolated, is fully realized.



A Committed Legislative Champion

When I came to the Nebraska Legislature, I was greatly disturbed by the overuse of room confinement in our State's juvenile facilities. I was aware of the clear and overwhelming research that shows that solitary confinement has severe and dangerous consequences for our children. One of the earliest bills I passed created reporting requirements for facilities so that we could better understand the full extent of the use of confinement. Then, with this information in hand, I introduced LB230 to ban the use of room confinement for any reason other than the juvenile being an immediate risk of harm to self or others. The bill also set other significant controls on the use of room confinement. Nebraska is now one of the strictest states in the Nation for limiting its use. I am thankful for each of our child advocates, including the ACLU of Nebraska, who worked fervently to help me achieve this monumental change in our State laws and to help provide greater protections for our children.



State Senator Patty Pansing Brooks

The Evolution of Nebraska Juvenile Solitary Confinement Ban Efforts

2014

- Renewed prison reform efforts take root as Nebraska prisons lead the nation in overcrowding and multiple public safety tragedies and scandals befall the Nebraska Department of Correctional Services (“NDCS”). Nebraska noted as an extreme outlier for its overuse of solitary confinement.³

2015

May 2015: Nebraska Legislature passes LB 598.

- Solitary confinement banned as sanction or disciplinary tool in NDCS.
- NDCS required to develop rules for use of "restrictive housing" and create an advisory committee on the subject.



Gathering state-specific information and publishing it widely lets the public know that juvenile solitary confinement **is in fact happening** in your state.

2016

January 2016: ACLU publishes *Growing Up Locked Down*.

- Used open records requests to uncover the extent juvenile solitary is utilized and the reasons Nebraska children were isolated (example: too many books in room). This first-of-its-kind investigation on this topic in Nebraska was labeled both "groundbreaking and heartbreaking".⁴
- Report includes data as well as personal stories from Nebraskans and garners extensive earned media via a sophisticated communications strategy.

April 2016: Nebraska Legislature passes LB 894.

- Along with other juvenile justice provisions, the bill required juvenile facilities to file quarterly reports on their use of room confinement.



Getting incremental changes, such as reporting requirements, passed into law is a victory in and of itself.



Litigation Makes a Difference

While the ACLU's primary focus to reform juvenile solitary confinement centered on legislative changes in order to have an impact on all Nebraska children who were or would be placed in juvenile facilities in the future, the ACLU also directly represented a western Nebraska teen who was removed from her home and placed in solitary confinement only because she tested positive for marijuana and missed a curfew while on juvenile probation. We were able to secure her release from solitary confinement and the juvenile facility because the court did not follow the proper procedures to remove her from her home. By taking on her individual case not only did the ACLU help the individual and her family, but we were also able to demonstrate that we have an array of tools apart from legislative advocacy, including litigation, that we can utilize to change laws and practices that hurt young Nebraskans. Simultaneously, we showed policymakers and the public that the use of solitary confinement on young Nebraskans was not limited to the larger cities of Lincoln and Omaha but impacted young Nebraskans across the state.



ACLU Contract Attorney
Spike Eickholt



Important groundwork can be laid well before the legislature is in session or a bill is introduced to **raise awareness of the issue and create a baseline of understanding** on your own terms.

2018

January 2018: Senator Pansing Brooks introduces LB 870 to end the overreliance on juvenile solitary confinement in Nebraska.

- ACLU campaign included:
 - Blog post from young Nebraskan who experienced solitary confinement
 - Data Analysis
 - Fact Sheet including stories from young Nebraskans, reasons for confinement (the majority of which were rule violations), average duration of isolation by facility, and persistent racial disparities in use of confinement.
 - Organized strong committee hearing including testimony from:
 - Nebraska solitary survivors
 - Child welfare, women's rights, and disability rights advocates
 - Mental health experts (including the president-elect of the Nebraska Psychological Association)
 - Data analysts
 - Faith leaders
 - Former warden of out-of-state youth facility
 - Conducted Robo-poll of Nebraska voters to establish a baseline of understanding regarding public opinion to guide campaign strategy.
- Opposition testimony from juvenile facility administrators.
- Large fiscal note added at the last minute.
- Bill not prioritized for advancement.

July 2018: Nebraska Legislature passes LB 670, clarifying reporting requirements and mandating reports contain individual instances of confinement, not aggregate data, after initial confusion and obfuscation by youth facilities in initial implementation.

Fall 2018: ACLU begins preparation for reintroduction of bill to ban use of juvenile solitary in most instances. Campaign includes:

- Hosting a well-attended lunch and learn with state senators, their staff, and other key stakeholders to raise awareness about the persistent overuse of solitary confinement in juvenile facilities. We conducted individual follow-up meetings and outreach to leverage response.

Elevating the Voices of Survivors

When you hear someone speak their lived experience you feel the loss, the pain, the despair, and the tears that no statistic can breathe life into. And when you give someone that opportunity to use their voice they also have a chance to step through that dark place into hope and healing.



Jason Witmer, *Voices of Resilience* Filmmaker and Nebraska Solitary Confinement Survivor

- Hosting two movie screenings of *Time: The Kalief Browder Story*, that elevated a dialogue led by Kalief's brother, Akeem, and centered the voices and lived experiences of Nebraskans who have survived solitary confinement. We also conducted local political outreach around these events to the mayors, city councils, county board, and local prosecutors. Each screening included an opportunity for the audience to take action by filling out "Stop Juvenile Solitary Confinement" postcards. These were sent to Nebraska state senators prior to the legislative session.
- Updating data analysis through open records requests.
- Facilitating online public opinion poll conducted by experienced university researchers to track progress and refine campaign strategies.



Any event even remotely related to the topic at hand is an important opportunity to **help supporters easily engage with policy makers.**

2019

January 2019: Senator Vargas introduces LB 686; passes in May 2019.

- Ban on solitary confinement for vulnerable populations in Nebraska prisons and includes youth sentenced as adults.

January 2019: Senator Pansing Brooks introduces LB 230 in a second attempt to end the overreliance on juvenile solitary confinement in Nebraska.

- ACLU organizes strong committee hearing including testimony from:
 - Youth and adult survivors of solitary confinement
 - President of Nebraska Psychological Association
 - Data analysts
 - Child welfare advocates and direct service providers
 - A representative from the Nebraska Regional Council of the American Academy of Child and Adolescent Psychiatry
 - A former Nebraska juvenile facility employee



Cast the net widely in reaching out to potential partners who may be willing to **submit written or oral testimony** on a piece of the legislation.

- Op Ed from solitary survivor published
- No opposition testimony from facility administrators
- Bill not prioritized but placed on General File and carried over to 2020 session.

Leveraging Opportunities

At every possible turn during our years-long effort to end juvenile solitary confinement, the ACLU of Nebraska sought opportunities to continue to raise awareness of the issue among elected officials and the public at large — utilizing an aggressive earned media strategy with components for social media, editorial support, and general news coverage in key markets.

For example,

- The Inspector General for Child Welfare publishes comprehensive and independent annual reports on the use of confinement in juvenile facilities. With each annual report, the ACLU leveraged additional earned media by issuing press releases.⁵
- In 2019, Douglas County, the largest county in the state, made plans to build a new \$100+m youth detention facility. With the issue gaining significant public attention in Omaha, the ACLU engaged on the issue in order to re-elevate the persistent overuse of solitary among Nebraska youth especially among youth of color.
- Crisis breaks out in Nebraska juvenile justice facilities regarding conditions of confinement and ACLU of Nebraska springs into action with partners to tee up final push for a full ban.⁶

November 2019: ACLU launches *Voices of Resilience* video series produced by solitary survivor, featuring Nebraska solitary survivors and Nebraska policymakers and includes discussion guide and other campaign assets for Nebraskans to screen the series at house parties.



Create and embrace every opportunity for those most affected to tell their story in their own words.

December 2019: ACLU launches robust grassroots engagement with paid phone canvass, making 40,500 calls with 2,219 live connects asking Nebraskans to contact their senator and/or host a house party to screen *Voices of Resilience*. 142 people requested a house party kit be mailed to them and 1,089 Nebraskans agreed to contact their state senator on the issue. (Phone banking script available upon request.)



Senator Steve Lathrop has been a steadfast advocate for **reforming Nebraska's prison system and solitary confinement practices** in the legislature.



They just put you away instead of trying to solve the problem. They just put you in a box and put a date on when you can come out. [...] There's got to be another solution. - Solitary Survivor Tasha Amerson

Full video series available at youtube.com/aclunebraska.

2020

January 2020: ACLU launches petition to pass LB 230, which remained on General File.

- Leverage Fall 2019 reports of unacceptable conditions at a juvenile facility for girls in Geneva, NE including exposed wires, holes in walls, mold, and prolonged use of room confinement to call for the legislature to pass LB 230 as its first order of business.

February 2020: LB 230 is passed in the legislature by a 44-0-5 vote and signed into law by Republican governor.

November 2020: Provisions of LB 230 go into effect. To ensure appropriate implementation of the law, the ACLU:

- Sent all juvenile facilities a letter about the effective date and requirements of LB 230.
- Continued data analysis to ensure that the instances of solitary confinement are decreasing as anticipated.
- Drafted a sample motion for use by public defenders and other juvenile defenders when a youth facility uses solitary unlawfully.
- Developed and presented a Continuing Legal Education (CLE) program about what lawyers representing young people need to know about LB 230 to protect the rights of their most vulnerable clients. Approximately 20 juvenile court practitioners attended the training live, and the presentation is available to view on the Nebraska State Bar Association's OnDemand Platform. To view the presentation slides and sample motion, visit aclunebraska.org/solitary-resources.



The work does not end with bill passage. Consistent monitoring of a law's implementation is crucial to ensure the law's vision is realized.

Appendix A: Text of Final Version of LB 230

LB230
2020

LB230
2020

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
SECOND SESSION
LEGISLATIVE BILL 230
FINAL READING

Introduced by Pansing Brooks, 28; Hunt, 8.

Read first time January 14, 2019

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to juvenile facilities; to amend sections
- 2 83-4,125, 83-4,126, 83-4,132, and 83-4,134.01, Revised Statutes
- 3 Cumulative Supplement, 2018; to change provisions and provide
- 4 requirements for room confinement for juveniles as prescribed; to
- 5 harmonize provisions; and to repeal the original sections.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 83-4,125, Revised Statutes Cumulative Supplement,
2 2018, is amended to read:

3 83-4,125 For purposes of sections 83-4,124 to 83-4,134.01 and
4 section 5 of this act:

5 (1) Criminal detention facility means any institution operated by a
6 political subdivision or a combination of political subdivisions for the
7 careful keeping or rehabilitative needs of adult or juvenile criminal
8 offenders or those persons being detained while awaiting disposition of
9 charges against them. Criminal detention facility does not include any
10 institution operated by the Department of Correctional Services. Criminal
11 detention facilities shall be classified as follows:

12 (a) Type I Facilities means criminal detention facilities used for
13 the detention of persons for not more than twenty-four hours, excluding
14 nonjudicial days;

15 (b) Type II Facilities means criminal detention facilities used for
16 the detention of persons for not more than ninety-six hours, excluding
17 nonjudicial days; and

18 (c) Type III Facilities means criminal detention facilities used for
19 the detention of persons beyond ninety-six hours;

20 (2) Juvenile detention facility means an institution operated by a
21 political subdivision or political subdivisions for the secure detention
22 and treatment of persons younger than eighteen years of age, including
23 persons under the jurisdiction of a juvenile court, who are serving a
24 sentence pursuant to a conviction in a county or district court or who
25 are detained while waiting disposition of charges against them. Juvenile
26 detention facility does not include any institution operated by the
27 department;

28 (3) Juvenile facility means a residential child-caring agency as
29 defined in section 71-1926, a juvenile detention facility or staff secure
30 juvenile facility as defined in this section, a facility operated by the
31 Department of Correctional Services that houses youth under the age of

1 majority, or a youth rehabilitation and treatment center;

2 (4) Room confinement means the involuntary restriction of a juvenile
3 placed alone in a cell, alone in a room, or alone in another area,
4 including a juvenile's own room, except during normal sleeping hours,
5 whether or not such cell, room, or other area is subject to video or
6 other electronic monitoring; and

7 (5) Staff secure juvenile facility means a juvenile residential
8 facility operated by a political subdivision (a) which does not include
9 construction designed to physically restrict the movements and activities
10 of juveniles who are in custody in the facility, (b) in which physical
11 restriction of movement or activity of juveniles is provided solely
12 through staff, (c) which may establish reasonable rules restricting
13 ingress to and egress from the facility, and (d) in which the movements
14 and activities of individual juvenile residents may, for treatment
15 purposes, be restricted or subject to control through the use of
16 intensive staff supervision. Staff secure juvenile facility does not
17 include any institution operated by the department.

18 Sec. 2. Section 83-4,126, Revised Statutes Cumulative Supplement,
19 2018, is amended to read:

20 83-4,126 (1) Except as provided in subsection (2) of this section,
21 the Jail Standards Board shall have the authority and responsibility:

22 (a) To develop minimum standards for the construction, maintenance,
23 and operation of criminal detention facilities;

24 (b) To perform other duties as may be necessary to carry out the
25 policy of the state regarding criminal detention facilities, juvenile
26 detention facilities, and staff secure juvenile facilities as stated in
27 sections 83-4,124 to 83-4,134.01 and section 5 of this act; and

28 (c) Consistent with the purposes and objectives of the Juvenile
29 Services Act, to develop standards for juvenile detention facilities and
30 staff secure juvenile facilities, including, but not limited to,
31 standards for physical facilities, care, programs, and disciplinary

1 procedures, and to develop guidelines pertaining to the operation of such
2 facilities.

3 (2) The Jail Standards Board shall not have authority over or
4 responsibility for correctional facilities that are accredited by a
5 nationally recognized correctional association. A correctional facility
6 that is accredited by a nationally recognized correctional association
7 shall show proof of accreditation annually to the Jail Standards Board.
8 For purposes of this subsection, nationally recognized correctional
9 association includes, but is not limited to, the American Correctional
10 Association or its successor.

11 Sec. 3. Section 83-4,132, Revised Statutes Cumulative Supplement,
12 2018, is amended to read:

13 83-4,132 If an inspection under sections 83-4,124 to 83-4,134.01 and
14 section 5 of this act discloses that the criminal detention facility,
15 juvenile detention facility, or staff secure juvenile facility does not
16 meet the minimum standards established by the Jail Standards Board, the
17 board shall send notice, together with the inspection report, to the
18 governing body responsible for the facility. The appropriate governing
19 body shall promptly meet to consider the inspection report, and the
20 inspection personnel shall appear before the governing body to advise and
21 consult concerning appropriate corrective action. The governing body
22 shall then initiate appropriate corrective action within six months after
23 the receipt of such inspection report or may voluntarily close the
24 facility or the objectionable portion thereof.

25 Sec. 4. Section 83-4,134.01, Revised Statutes Cumulative Supplement,
26 2018, is amended to read:

27 83-4,134.01 (1) It is the intent of the Legislature to establish a
28 system of investigation and performance review in order to provide
29 increased accountability and oversight regarding the use of room
30 confinement for juveniles in a juvenile facility.

31 (2) The following shall apply regarding placement in room

1 confinement of a juvenile in a juvenile facility:

2 (a) Room confinement of a juvenile for longer than one hour during a
3 twenty-four-hour period shall be documented and approved in writing by a
4 supervisor in the juvenile facility. Documentation of the room
5 confinement shall include the date of the occurrence; the race,
6 ethnicity, age, and gender of the juvenile; the reason for placement of
7 the juvenile in room confinement; an explanation of why less restrictive
8 means were unsuccessful; the ultimate duration of the placement in room
9 confinement; facility staffing levels at the time of confinement; and any
10 incidents of self-harm or suicide committed by the juvenile while he or
11 she was isolated;

12 (b) If any physical or mental health clinical evaluation was
13 performed during the time the juvenile was in room confinement for longer
14 than one hour, the results of such evaluation shall be considered in any
15 decision to place a juvenile in room confinement or to continue room
16 confinement;

17 (c) The juvenile facility shall submit a report quarterly to the
18 Legislature on the juveniles placed in room confinement; the length of
19 time each juvenile was in room confinement; the race, ethnicity, age, and
20 gender of each juvenile placed in room confinement; facility staffing
21 levels at the time of confinement; and the reason each juvenile was
22 placed in room confinement. The report shall specifically address each
23 instance of room confinement of a juvenile for more than four hours,
24 including all reasons why attempts to return the juvenile to the general
25 population of the juvenile facility were unsuccessful. The report shall
26 also detail all corrective measures taken in response to noncompliance
27 with this section. The report shall redact all personal identifying
28 information but shall provide individual, not aggregate, data. The report
29 shall be delivered electronically to the Legislature. The initial
30 quarterly report shall be submitted within two weeks after the quarter
31 ending on September 30, 2016. Subsequent reports shall be submitted for

1 the ensuing quarters within two weeks after the end of each quarter; and

2 (d) The Inspector General of Nebraska Child Welfare shall review all
3 data collected pursuant to this section in order to assess the use of
4 room confinement for juveniles in each juvenile facility and prepare an
5 annual report of his or her findings, including, but not limited to,
6 identifying changes in policy and practice which may lead to decreased
7 use of such confinement as well as model evidence-based criteria to be
8 used to determine when a juvenile should be placed in room confinement.
9 The report shall be delivered electronically to the Legislature on an
10 annual basis. ~~;~~ ~~and~~

11 (3) The use of consecutive periods of room confinement to avoid the
12 intent or purpose of this section is prohibited.

13 (4) (e) Any juvenile facility which is not a residential child-
14 caring agency which fails to comply with the requirements of this section
15 is subject to disciplinary action as provided in section 83-4,134. Any
16 juvenile facility which is a residential child-caring agency which fails
17 to comply with the requirements of this section is subject to
18 disciplinary action as provided in section 71-1940.

19 Sec. 5. (1) This section applies to placement of a juvenile in room
20 confinement in the following facilities: A juvenile detention facility,
21 staff secure juvenile facility, facility operated by the Department of
22 Correctional Services, or youth rehabilitation and treatment center
23 operated by the Department of Health and Human Services.

24 (2) A juvenile shall not be placed in room confinement for any of
25 the following reasons:

26 (a) As a punishment or a disciplinary sanction;

27 (b) As a response to a staffing shortage; or

28 (c) As retaliation against the juvenile by staff.

29 (3) A juvenile shall not be placed in room confinement unless all
30 other less-restrictive alternatives have been exhausted and the juvenile
31 poses an immediate and substantial risk of harm to self or others.

1 (4) A juvenile may only be held in room confinement according to the
2 following conditions:

3 (a) A juvenile shall not be held in room confinement longer than the
4 minimum time required to eliminate the substantial and immediate risk of
5 harm to self or others and shall be released from room confinement as
6 soon as the substantial and immediate risk of harm to self or others is
7 resolved; and

8 (b) A juvenile shall only be held in room confinement for a period
9 that does not compromise or harm the mental or physical health of the
10 juvenile.

11 (5) Any juvenile placed in room confinement shall be released
12 immediately upon regaining sufficient control so as to no longer engage
13 in behavior that threatens substantial and immediate risk of harm to self
14 or others.

15 (6) Not later than one business day after the date on which a
16 facility places a juvenile in room confinement, the facility shall
17 provide notice of the placement in room confinement to the juvenile's
18 parent or guardian and the attorney of record for the juvenile.

19 (7) All rooms used for room confinement shall have adequate and
20 operating lighting, heating and cooling, and ventilation for the comfort
21 of the juvenile. Rooms shall be clean and resistant to suicide and self-
22 harm. Juveniles in room confinement shall have access to drinking water,
23 toilet facilities, hygiene supplies, and reading materials approved by a
24 licensed mental health professional.

25 (8) Juveniles in room confinement shall have the same access as
26 provided to juveniles in the general population of the facility to meals,
27 contact with parents or legal guardians, legal assistance, and access to
28 educational programming.

29 (9) Juveniles in room confinement shall have access to appropriate
30 medical and mental health services. Mental health staff shall promptly
31 provide mental health services as needed.

1 (10) Juveniles in room confinement shall be continuously monitored
2 by staff of the facility. Continuous monitoring may be accomplished
3 through regular in-person visits to the confined juvenile which may also
4 be supplemented by electronic video monitoring.

5 (11) The use of consecutive periods of room confinement to avoid the
6 intent and purpose of this section is prohibited.

7 (12) Nothing in this section shall be construed to authorize or
8 require the construction or erection of fencing or similar structures at
9 any facility, nor the imposition of nonrehabilitative approaches to
10 behavior management within any facility.

11 Sec. 6. Original sections 83-4,125, 83-4,126, 83-4,132, and
12 83-4,134.01, Revised Statutes Cumulative Supplement, 2018, are repealed.

Appendix B: Legislative Testimony

ACLU-NE's written testimony in support of LB 230 submitted at the committee hearing on the bill.



Nebraska

134 S. 13th St. #1010
Lincoln, NE 68508
(402) 476-8091
aclunebraska.org

To: Members of the Judiciary Committee

CC: Senator Pansing Brooks

Re: **SUPPORT** for LB 230 Room Confinement of Juveniles

Date: February 14, 2019

Dear Senators:

For over 50 years in Nebraska, the ACLU has worked in courts, legislatures, and communities to protect the constitutional and individual rights of all people. With a nationwide network of offices and millions of members and supporters, we take up the toughest civil liberties fights. Beyond one person, party, or side — we the people dare to create a more perfect union.

The ACLU is committed to challenging the criminalization and incarceration of young people—particularly youth from disenfranchised communities. As part of our efforts to reform the juvenile justice system, we are working to end the use of solitary confinement for all young people in juvenile facilities and in adult jails and prisons.

The ACLU support LB 230 because the existing overreliance on juvenile solitary is suspect from a legal and policy standpoint. Sound alternatives to ensure better outcomes are available and will simultaneously ensure better outcomes for our children and our communities.

Legal and Constitutional Framework

The use of solitary confinement on juveniles is constitutionally suspect as the practice potentially violates the prohibition on cruel and unusual punishment found in both the U.S. and Nebraska State Constitutions as well as the due process guarantee of the 14th amendment and the Nebraska State Constitution.

Recent Supreme Court jurisprudence makes clear that youth and adults must be treated differently in the context of crime and punishment.¹ For example, we no longer permit juveniles to be given the death penalty or sentenced to life without parole. As the United States Supreme Court wrote in an opinion abolishing life without parole for juveniles, “...developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds.”²

¹ See, e.g., *Graham v. Florida*, 560 U.S. 48 (2010); *Roper v. Simmons*, 453 U.S. 551 (2005).

² *Graham v. Florida*, 560 U.S. 48, 68 (2010).



In addition to Supreme Court opinions on the difference between youth and adults in the context of crime and punishment, courts are increasingly considering the constitutional propriety of placing juveniles in solitary confinement. Recently, for instance, two young men who experienced mental health deterioration while held in solitary confinement in juvenile facilities in New Jersey prevailed against the state in a \$400,000 settlement.³ Similarly, the Iowa Appeal Board approved a \$235,000 settlement with Jessica Turner and \$175,000 settlement with Jaquan Bradford both of whom experienced solitary confinement as juveniles.⁴ In January 2019, The City of New York reached a \$3.3 million settlement with the family of Kalief Browder.⁵ Kalief Browder spent nearly two of the three years he spent in jail at Rikers Island in solitary confinement. Kalief was released in 2013 after charges against him were dismissed. Haunted by the trauma he experienced at Rikers, in 2015, he hanged himself in his mother's home.

Harms of Placing Young People in Confinement

Solitary confinement is widely understood to harm even previously healthy adults. Children, whose brains are not fully developed until they reach their mid-twenties⁶, are even more vulnerable to the harms of isolation.

Confining young people can cause irreparable psychological damage including severe depression, anxiety, self-mutilation, hallucinations, and increased suicide rates.⁷ Tellingly, 50% of suicides that occur within juvenile facilities occur while the young person is in confinement.⁸

When young people are placed in confinement, they often do not have access to mental health services, books, education, contact with family members, or programming within the facility.⁹ This lack of access undermines the

³ See Jeff Goldman, *N.J. To Pay Half of \$400K Settlement over Solitary Confinement of Juveniles*, THE STAR-LEDGER, Dec. 10, 2013.

⁴ Jason Clayworth, *Iowa Paid Dearly for Holding this Troubled Teen in Isolation for up to 21 Hours a Day. He's Not the Only One Being Locked Away*, Des Moines Register (May 30, 2018),

<https://www.desmoinesregister.com/story/news/investigations/2018/05/30/iowa-isolation-troubled-children-seclusion-solitary-confinement-punishment/598250002/>.

⁵ *New York City Reaches \$3.3 Million Settlement With Kalief Browder's Family*, NPR (Jan. 29, 2019), <https://www.npr.org/2019/01/25/688501884/new-york-city-reaches-3-3-million-settlement-with-kalief-browders-family>.

⁶ Sara Johnson et al., *Adolescent Maturity and the Brain: The Promise and Pitfalls of Neuroscience Research in Adolescent Health Policy*, 45(3) J. OF ADOLESCENT HEALTH 216 – 221 (2009).

⁷ Craig Haney, *Mental Health Issues in Long-Term Solitary and "Supermax" Confinement*, 49 CRIME & DELINQ. 124, 130, 134 (2003).

⁸ Sandra Simkins, Marty Beyer & Lisa Geis, *The Harmful Use of Isolation in Juvenile Facilities: the Need for PostDisposition Representation*, 38 WASH. U. J.L. & POL'Y 241, 259 (2012).

⁹ Andrea J. Sedlak & Karla S. McPherson, Office of Juvenile Justice & Delinquency Prevention, NCJ 22729, *Conditions of Confinement: Findings from the Survey of*



overarching goal of the juvenile justice system: rehabilitation. Children placed in confinement are not getting the tools they need to become healthy adults. This in turn hurts our communities by releasing young people into communities more damaged than when they entered the facility. In this way, using solitary confinement far in excess of best practices harms Nebraska children as well as the communities these children call home.

Best Practices

As a preliminary matter, it is important to distinguish room confinement or isolation from “time-out.” We are not suggesting a ban on time-outs in which an angry or disruptive child is given a short period to calm down. We are targeting the use of isolation or room confinement that extends for hours, days, weeks, or months at a time.

With regard to such room confinement of juveniles, the consensus among mental health professionals is clear: we should not use isolation of juveniles except when absolutely necessary, and then only for extremely short periods.

Expert consensus says that room restriction or solitary confinement can be used as a temporary response to behavior that threatens immediate harm to the youth or others; staff should never use room confinement for discipline, punishment, administrative convenience or staffing shortages.¹⁰ At most, experts place the outermost limit for isolation at four hours—and during that time, the staff should be actively engaging with the youth with mental health professionals to address the crisis.¹¹

Alternatives to Juvenile Room Confinement Can be Done Safely

There are a range of alternatives to manage and care for young people safely—without resorting to harmful physical and social isolation practices. There is broad consensus that the most effective and developmentally appropriate techniques for managing youth and promoting their healthy growth and development while they are detained require abolishing solitary confinement, strictly limiting and regulating the use of other forms of isolation, and emphasizing positive reinforcement over punishment.¹² Reports indicate that state juvenile justice agencies have implemented policy changes in recent years increasingly limiting isolation practices.¹³ Numerous states have limited or prohibit the use of solitary confinement of juveniles.

Youth in Residential Placement (2010), available at <https://www.ncjrs.gov/pdffiles1/ojdp/227729.pdf>.

¹⁰ *A Guide to Juvenile Detention Reform*, JUVENILE DETENTION ALTERNATIVES INITIATIVE, Page 191 available at <http://www.aecf.org/m/resource/doc/aecf-juviledetentionfacilityassessment-2014.pdf>.

¹¹ *Id.* at page 192.

¹² *Report of the Attorney General's National Task Force on Children Exposed to Violence*, DEFENDING CHILDHOOD: PROTECT, HEAL, THRIVE 178 (2012), available at <http://www.justice.gov/defendingchildhood/cev-rpt-full.pdf>.

¹³ *Reducing Isolation and Room Confinement*, PERFORMANCE-BASED STANDARDS 4-6 (Sept. 2012), available at http://pbstandards.org/cjcaresources/185/PbS_ReducingIsolation_201209.pdf.



This has been achieved by the creation of state laws, changes to internal policies, and litigation.

Massachusetts Department of Youth Services (DYS), for example, shifted their policies and practices beginning in 2008 and has sharply reduced the time youth spend in solitary confinement. By April 2016, the average time youth spent in isolation in DHS facilities was less than 1.25 hours. DHS policy prohibits the use of room confinement as discipline. Limited periods of isolation when a youth demonstrates dangerous and disruptive behavior and less restrictive alternatives have been exhausted is permitted. DHS staff are trained to use alternative methods like de-escalation, behavior management, and conflict resolution techniques. Staff also assist youth in isolation in developing a personal “Exit Strategy” to get out of isolation quickly and transition back into regular programming.¹⁴

In Ohio, after litigation commenced, the Ohio Department of Youth Services (ODYS) agreed to eliminate the use of seclusion in its juvenile correctional facilities. ODYS stopped using seclusion as discipline and developed alternatives to such seclusion. In the months after the changes were made, the majority of seclusion episodes ended within 4 hours and the average length of seclusion was 2.83 hours.¹⁵

With the examples from other states as well as a significant reduction in average duration of confinement in some local facilities, Nebraska juvenile facilities have a proven effective roadmap for implementing LB 230.

Nebraska Data

Recognizing the harms of juvenile solitary confinement and the shortage of information on the use of the practice in Nebraska, facilities that house juveniles are now required to provide quarterly reports on each use of room confinement lasting longer than one hour. The initial results of these reports were startling and heartbreaking.

The ACLU of Nebraska hired a Juris Doctorate/Ph.D. student, Julie Wertheimer, to analyze the data provided by the facilities, under the supervision of a University of Nebraska-Lincoln professor, Dr. Richard Wiener. Ms. Wertheimer analyzed data from the seven facilities with significant use of solitary confinement. The facilities include the Youth Rehabilitation and Treatment Centers in Kearney and Geneva, four county juvenile detention facilities, and one youth facility for males who have been convicted as adults that is run by the Nebraska Department of Correctional Services.

Over the last several months, Ms. Wertheimer has analyzed the recent reports and has been able to compare numbers from July 2016-September

¹⁴ <http://www.stopsolitaryforkids.org/massachusetts/>.

¹⁵ <http://www.stopsolitaryforkids.org/ohios-reform-efforts/>.



2017 with those from July 2017-September 2018. Some key takeaways from the data analysis include:

- Overall, between July 2016-September 2017 and July 2017-September 2018, the average length of juvenile solitary confinement placements across Nebraska facilities went down from an average of 42.2 hours (1 day, 18 hours) to 25.5 hours (1 day, 1.5 hours).
- The average duration of hours in confinement at the youth detention facilities in Lancaster, Madison, and Sarpy counties are all under three hours.
- There is a significant overrepresentation of youth of color in solitary confinement incidents.
- Nebraska youth are still being placed in solitary confinement for reasons like violating a behavioral rule.

While there have been marked improvements in the use of juvenile solitary confinement since the reporting requirement was initiated in some facilities, the passage of LB 230 is vital to ensuring the best practices are followed across the facilities in the state. The use of juvenile solitary confinement has been proven time and time again to be both harmful to children and ineffective at changing behavior. We can and must do better for our children. We are happy to answer any questions and we urge the committee to advance LB 230 to general file.

Sincerely,

A handwritten signature in black ink that reads "Scout Richters".

Scout Richters
ACLU of Nebraska
Legal & Policy Counsel

To: Members of the Judiciary Committee

CC: Senator Pansing Brooks, Senator Ebke, Senator Howard, Senator Krist, Senator Morfeld, Senator Quick, and Senator Wishart.

Re: SUPPORT for LB 870 Room Confinement of Juveniles

Date: January 24, 2018

Dear Senators:



134 S. 13th St. #1010
Lincoln, NE 68508
(402) 476-8091
aclunebraska.org

For over 50 years in Nebraska, the ACLU has worked in courts, legislatures, and communities to protect the constitutional and individual rights of all people. With a nationwide network of offices and millions of members and supporters, we take up the toughest civil liberties fights. Beyond one person, party, or side — we the people dare to create a more perfect union.

Legal and Constitutional Framework

The use of solitary confinement on juveniles is constitutionally suspect as the practice potentially violates the prohibition on cruel and unusual punishment found in both the U.S. and Nebraska State Constitutions as well as the due process guarantee of the 14th amendment and the Nebraska State Constitution.

Recent Supreme Court jurisprudence makes clear that youth and adults must be treated differently in the context of crime and punishment.¹ For example, we no longer permit juveniles to be given the death penalty or sentenced to life without parole. As the United States Supreme Court wrote in an opinion abolishing life without parole for juveniles, "...developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds."²

In addition to Supreme Court opinions on the difference between youth and adults in the context of crime and punishment, courts are increasingly considering the constitutional propriety of placing juveniles in solitary confinement. Recently, for instance, two young

¹ See, e.g., *Graham v. Florida*, 130 S.Ct. 2011 (2010); *Roper v. Simmons*, 453 U.S. 551 (2005).

² *Graham v. Florida*, 560 U.S. 48, 68 (2010).



men who experienced mental health deterioration while held in solitary confinement in juvenile facilities in New Jersey prevailed against the state in a \$400,000 settlement.³

Harms of Placing Young People in Confinement

Solitary confinement is widely understood to harm even previously healthy adults. Children, whose brains are not fully developed until they reach their mid-twenties⁴, are even more vulnerable to the harms of isolation.

Confining young people can cause irreparable psychological damage including severe depression, anxiety, self-mutilation, hallucinations, and increased suicide rates.⁵ Tellingly, 50% of suicides that occur within juvenile facilities occur while the young person is in confinement.⁶

When young people are placed in confinement, they often do not have access to mental health services, books, education, contact with family members, or programming with the facility.⁷ This lack of access undermines the overarching goal of the juvenile justice system: rehabilitation. Children placed in confinement are not getting the tools they need to become healthy adults. This in turn hurts our communities by releasing young people into communities more damaged than when they entered the facility. In this way, using solitary confinement far in excess of best practices harms Nebraska children as well as the communities these children call home.

Best Practices

As a preliminary matter, it is important to distinguish room confinement or isolation from “time-out.” We are not suggesting a ban

³ See Jeff Goldman, *N.J. To Pay Half of \$400K Settlement over Solitary Confinement of Juveniles*, THE STAR-LEDGER, Dec. 10, 2013.

⁴ Sara Johnson et al., *Adolescent Maturity and the Brain: The Promise and Pitfalls of Neuroscience Research in Adolescent Health Policy*, 45(3) J. OF ADOLESCENT HEALTH 216 – 221 (2009).

⁵ Craig Haney, *Mental Health Issues in Long-Term Solitary and “Supermax” Confinement*, 49 CRIME & DELINQ. 124, 130, 134 (2003).

⁶ Sandra Simkins, Marty Beyer & Lisa Geis, *The Harmful Use of Isolation in Juvenile Facilities: the Need for PostDisposition Representation*, 38 WASH. U. J.L. & POL'Y 241, 259 (2012)

⁷ Andrea J. Sedlak & Karla S. McPherson, Office of Juvenile Justice & Delinquency Prevention, NCJ 22729, *Conditions of Confinement: Findings from the Survey of Youth in Residential Placement* (2010), available at <https://www.ncjrs.gov/pdffiles1/ojjdp/227729.pdf>



on time-outs in which an angry or disruptive child is given a short period to calm down. We are targeting the use of isolation or room confinement that extends for hours, days, weeks, or months at a time.

With regard to such room confinement of juveniles, the consensus among mental health professionals is clear: we should not use isolation of juveniles except when absolutely necessary, and then only for extremely short periods.

Expert consensus says that room restriction or solitary confinement can be used as a temporary response to behavior that threatens immediate harm to the youth or others; staff should never use room confinement for discipline, punishment, administrative convenience or staffing shortages.⁸ At most, experts place the outermost limit for isolation at four hours—and during that time, the staff should be actively engaging with the youth with mental health professionals to address the crisis.⁹

Alternatives to Juvenile Room Confinement Can be Done Safely

There are a range of alternatives to manage and care for young people safely—without resorting to harmful physical and social isolation practices. There is broad consensus that the most effective and developmentally appropriate techniques for managing youth and promoting their healthy growth and development while they are detained require abolishing solitary confinement, strictly limiting and regulating the use of other forms of isolation, and emphasizing positive reinforcement over punishment.¹⁰

Reports indicate that state juvenile justice agencies have implemented policy changes in recent years increasingly limiting isolation practices.¹¹ Six states—Alaska, Connecticut, Maine, Nevada, Oklahoma, and West Virginia—have recently passed legislation limiting certain forms of isolation in juvenile detention facilities.

⁸ “A Guide to Juvenile Detention Reform” from the Juvenile Detention Alternatives Initiative, Page 191. *available at* <http://www.aecf.org/m/resourcedoc/aecf-juviledetentionfacilityassessment-2014.pdf>.

⁹ *Id.* at page 192.

¹⁰ *Report of the Attorney General’s National Task Force on Children Exposed to Violence*, DEFENDING CHILDHOOD: PROTECT, HEAL, THRIVE 178 (2012), *available at* <http://www.justice.gov/defendingchildhood/cev-rpt-full.pdf>.

¹¹ *Reducing Isolation and Room Confinement*, PERFORMANCE-BASED STANDARDS 4-6 (Sept. 2012), *available at* http://pbstandards.org/cjcaresources/185/PbS_ReducingIsolation_201209.pdf.



These reforms range from substantive bans on punitive isolation, bans on isolation for periods longer than 72 hours, and strict reporting requirements to monitor the system-wide use of isolation. Some states have adopted more systemic models that eliminate the need for isolation. New York, for instance, has moved completely away from using isolation by implementing the “Sanctuary Model,” which emphasizes trauma-informed care in lieu of punitive responses to youth misbehavior.¹²

Reporting Under 83-4,134.01.

Recognizing the harms of juvenile solitary confinement and the shortage of information on the use of the practice in Nebraska, facilities that house juveniles are now required to provide quarterly reports on each use of room confinement lasting longer than one hour. The results of these reports are startling and heartbreaking.

The ACLU of Nebraska hired a Juris Doctorate/Ph.D. student to analyze the data provided by the facilities, under the supervision of a University of Nebraska-Lincoln professor. The student analyzed data from the seven facilities with significant use of solitary confinement. The facilities include the Youth Rehabilitation and Treatment Centers in Kearney and Geneva, four county juvenile detention facilities, and one youth facility for males who have been convicted as adults that is run by the Nebraska Department of Correctional Services. The student also included the four incidents of room confinement of juveniles reported by the Nebraska Correctional Center for Women in the total uses of room confinement. Between July 2016 and September 2017, the eight facilities reported an astonishing 2,728 uses of room confinement for juveniles.

Among the most troubling data from the analysis is the reasons that Nebraska youth are being placed in confinement. By facilities own reports, a total of 19.9% of solitary confinement across the facilities was for rule violations and behavioral infractions. Solitary was used 15% of the time for “administrative reasons.” Therefore, the two most common reasons juveniles were placed in room confinement in Nebraska directly conflict with best practices.

¹² See Sanctuary Network, The Sanctuary Model, <http://www.sanctuaryweb.com/network.php> (last visited Mar. 12, 2014) (listing systems and facilities that have adopted the Sanctuary Model for juvenile justice).



Despite best practices limiting the use of confinement to 4 hours, incidents of confinement in Nebraska across the 7 facilities last an average of 42.7 hours per use of confinement.

Further, racial disparities in the use of room confinement of Nebraska juveniles is evident. For example, census data tells us that the state is comprised of 88.9% White, 5% Black, and 10.7% Latino/Hispanic people.¹³ However, 33.4% of the uses of solitary confinement involved black children while 15.6% of the uses involved Latino/Hispanic children. 45.3% of the uses of solitary confinement involved white children.

For graphical depictions of the reported data and real stories from Nebraska youth who have experienced room confinement in 2017, please see the attachment.

We applaud Senators Pansing Brooks, Ebke, Howard, Krist, Morfeld, Quick, and Wishart for their effort to ensure that young people in Nebraska's juvenile facilities are not subjected to unnecessary confinement practices that harm both youth and the communities to which they will return.

Sincerely,

A handwritten signature in black ink that reads "Scout Richters".

Scout Richters
ACLU of Nebraska
Legal & Policy Counsel

Enclosure: Juvenile Solitary Factsheet

¹³ *QuickFacts Nebraska*, UNITED STATES CENSUS BUREAU (2017) available at <https://www.census.gov/quickfacts/NE>.

Written testimony from community faith leaders in support of LB 870 submitted at the committee hearing on the bill after ACLU-NE presented to the group about the issue.

REV. STEPHEN C. GRIFFITH

128 North 13th Street, Suite 607 Lincoln, NE 68508
sgriffithne@gmail.com 402-730-8927

To: Members of the Judiciary Committee
Re: Support for LB 870-Juvenile Solitary Confinement
From: Lincoln Area Members of the Faith Community
Date: January 23, 2018

As faith leaders and members of the faith community in Lincoln and the surrounding area, we are committed to the affirmation of the inherent human dignity of all people. As such, we offer our full support of LB 870 to limit the use of solitary confinement in Nebraska facilities that house young people.

We see a particular importance in fostering the healthy development of Nebraska children. We know that using solitary confinement on young people can greatly inhibit their healthy growth into adults and cause irreparable harm. When we hurt our young people, we also hurt our future.

As faith leaders and members of the faith community in Nebraska, we join with the National Religious Campaign Against Torture and faith leaders and members across the country to support a system of justice that recognizes the human dignity of all people, including Nebraska children.

We urge the Nebraska Legislature to pass LB 870 to ensure that young people in Nebraska who are involved in the juvenile justice and criminal justice systems get the tools they need to become healthy adults. We, as faith leaders representing various faith traditions share a belief in the worth of each and every person, including our most vulnerable young people. Subjecting our children to hours of solitary confinement does not affirm this worth. LB 870 is not only a public policy issue, but a moral issue for faithful Nebraskans.

Thank you for your consideration of this important issue.

Sincerely,

Rev. Beth Ann L. Stone
Evangelical Lutheran Church in America
Transition Pastor, Grace Lutheran Church,
Central City, Nebraska
Transition Pastor, Fridhem Lutheran Church,
Hordville, Nebraska

Rev. Dan Warnes
First Lutheran Church, Lincoln, Nebraska

Rev. Dylan Dell-Haro
Church of the Brethren, Beatrice, Nebraska

Rev. Jerrold Thompson
St. Mark's on the Campus Episcopal Church,
Lincoln, Nebraska

Pastor Mary Beth Tuttle
Holmesville Church of the Brethren,
Holmesville, Nebraska

Pastor Tim Amor
Beatrice Mennonite Church, Beatrice, Nebraska

Rev. Stephen Griffith
United Methodist Church (ret.) Lincoln, Nebraska

cc: Sen. Howard, Sen. Wishart, Sen. Quick

Written testimony from mom of solitary confinement survivor in support of LB 870 submitted at the committee hearing on the bill supplementing her oral testimony.

To: Members of the Judiciary Committee

From: Elise Schultz, North Platte Resident

Re: **Support for LB 870**

Date: January 24, 2018

Hello, My name is Elise Schultz. My daughter is Megan Schultz. She got in a bit of trouble. Nothing violent, or malicious. She tested positive for marijuana. Her probation officer Katie Groves, whom was supposed to be working with us to help her, never spoke to us once, despite the fact we called her at least twice a week. She went to her drug therapy once a week, and we kept a close eye on her. She did things like tie dye shirts with her little siblings, and paint her little sister's fingernails. She mostly got good grades in school and she had friends.

On February 22nd 2017, all of that changed. We were told at her court date that she would be sent to a group home. The probation officer lied and said she had exhausted all efforts with Megan. Having never spent more than a night away from her family, she was frightened and she started to hyperventilate. She was in the middle of a full blown panic attack, and I was trying to comfort her when I was told to leave the courtroom...no forced to leave. I was told we could say goodbye when she calmed down. I heard screams from the courtroom and heard "I just want to see my mom"! I wanted to comfort her. We were then told to leave the courthouse...to leave the property! A police officer escorted us off threatening to arrest us, especially me and I was holding my 2 year old son. They arrested the young man that was with us for obstruction of justice. He did nothing wrong.

Megan was beaten, choked, and thrown into a jail cell with nothing but a thin sheer blanket to cover herself with. Prisoners passing by as well as workers, her pleas to see her mother going unheard! She was sent to JDC Madison Nebraska the next day. The Judge, Kent Turnbull said that she was to be there for no more than a few weeks for "evaluation". There were no available people to do this, nor were any called. Judge Turnbull lied. I can't imagine what she was feeling. The horror! This poor frightened 120 pound child being treated like a dangerous criminal. Something out of a nightmare!! We talked on the phone for the next week or so, and we planned to see her on her Birthday-her sweet 16 was on March 5th. Everything was arranged, then they told us we were to have no contact with her by order of the county attorney, Rebecca Harding. I was extremely upset. The only thing keeping my poor daughter and myself together was the short conversations we were allowed. I had spent every birthday with her since the day she was born, yet I was not even allowed to wish her a simple "Happy Birthday" even though I knew it

would not be a happy one. I cried the entire day of her birthday.

She spent all her time there in solitary confinement. No therapist, counselor, or doctor to check her bruises. She was only allowed to leave the room to eat. I got ahold of the ACLU after making call after call for someone to help. They got us privileges back to talk to her on the phone. Then we were allowed to visit. It was 5 hours to get there to see her. We got to stay for 2 hours, then drive back. Lots of fun with small children.

Later, Judge Turnbull lied yet again and said he made the no contact order but no reason was given, and the documentation said the CA made the order. He also said he was not biased about her, as we tried to get a different Judge to see her case. He heard what happened in the courtroom, but denied it saying he "turned his radio up".

She was brought back to North Platte after a month in JDC, most of that time spent in solitary. She was then sent to YRTC Geneva even though the law says that is the last place to go. She should have been sent to a group home in Kearney which would have been much closer for us to visit and she would not be around all these inner city girls that changed her for the worse. In Geneva, she was not allowed to talk to others for 3 weeks. Again, solitary confinement!! When she was, she was made fun of, harassed, and treated horribly even by the staff members. Megan was abused by the other residents even hit on several occasions. A male staff member watched her dress. She broke her foot while there on a crack in the sidewalk on a ball court, and it was never fixed. She was also told to walk on the foot before the X-Rays were viewed, and it never healed correctly. When she cried, she was ridiculed and told in sarcastic tones "Poor baby-haha" Her stomach hurt all the time from worry and the horrible food. She gained 30 pounds off the greasy food they served. They control the kids there with food!! Offer them treats like a dog for good behavior. It is scandalous!!!

When she finally did get home in August 2017, she has changed. She's bitter, she's distant, she's sad. She is never home now. I don't get to see her much. I miss my girl that was stolen from me. She was forced to grow up too quickly, without her family. Just another statistic, a lost name in the system.

My daughter was deeply traumatized by her experiences in the system. A major part of that trauma came from the overuse of solitary confinement. As a mother of 10 children, I have seen many different personality types. I want to stress the importance of positive social interaction for children and teens alike.

Sincerely,

Elise Schultz

Written testimony from former out-of-state juvenile facility warden in support of LB 870 submitted at the committee hearing.



STATE OF MISSISSIPPI
DEPARTMENT OF CORRECTIONS
PELICIA HALL
COMMISSIONER

Leander Parker, Warden, Y.O.U.
Central Mississippi Correctional Facility

Post Office Box 88550
Pearl, Mississippi 39208
(601)932-2880

To: Nebraska Legislature, Members of the Judiciary Committee

From: Leander Parker, Warden

Date: December 28, 2020

RE: Support for LB 870

My name is Leander Parker, and I am the Warden of the Mississippi Department of Corrections' Youthful Offender Unit in Rankin County, Mississippi. I have over 30 years of experience in leadership and management in juvenile correctional and probation settings, law enforcement practices, investigations, policy development, and public affairs. Although I spent the first five years of my career working in state and federal correctional institutions for adults, all of my experience since has been in youth facilities – in fact, I have worked in or managed eight different youth facilities in four states: Alabama, Georgia, Maryland, and Mississippi. I hope that my expertise may prove useful in proving the fact, youth detention center can be operated safely with the use of solitary confinement.

I should explain that Mississippi's Youthful Offender Unit was created in 2012, when youth were moved out of the Walnut Grove Correctional Facility in Walnut Grove, Mississippi because of awful conditions there. Mississippi advocates had filed a class-action lawsuit against the Walnut Grove Correctional Facility over conditions of confinement and excessive room confinement. The facility was at the same time subject to a U.S. Department of Justice investigation, which revealed that guards regularly had sex with youth; brutal rapes among youth in the facility were described as the worst of "any facility anywhere in the nation"; and guards regularly beat, kicked, and punched handcuffed and defenseless youth. They also organized fights between youth and bet money on them. A federal judge called the facility a "cesspool of unconstitutional and inhuman acts."

In response, the Mississippi state legislature directed the state Department of Corrections to move youth out of the Walnut Grove facility and establish the Youthful Offender Unit, to house youth who had been convicted as adults. The Department did this in 2012, and hired me as the facility's first Warden. I understood that my job was to shift the culture to eliminate the violence and create an environment in which youth could be rehabilitated. So when I worked with my team to design the Youthful Offender Unit, I used all the methods I've learned in my career for working successfully with kids who have committed serious offenses, while still keeping the staff and community safe.

I should say up front that the youth in our facility were not put there for minor behaviors. As of January 23, 2018, we had 33 males in our facility, and they all have very serious charges: murder, armed robbery, armed carjacking, robbery, aggravated assault, and sexual assault. My I add almost all of these boys are involved in gangs – Vice Lords, Crips, or something else. I can name the ones who aren't affiliated on the fingers of one hand. And yet we don't use shackles and we use room confinement very, very rarely. We simply don't need to – and since we make this work, I know it's possible in other facilities.

If there's anything I've learned in my career of managing secure youth facilities, it's that you have to offer the kids something beneficial: a positive behavior program that offers them rewards for good behavior and excelling to the best of their ability will turn any child around, in my opinion. If you lock them in a cell every day for misbehaving, the only thing that will do is to make them more aggressive. Because being locked down doesn't mean a whole lot – it doesn't teach them anything they can use when they're not locked up. They act out in the first place because they're uncomfortable in their environment. They often times feel unsafe, or they act out in school at the facility because they do not or can do the school work and they feel they have to “man up” or act out. A child shouldn't have to do this, but if they're in a place where they don't feel safe, the acting out makes them feel safer – partly because they know they'll be locked up. It's my belief that the environment of a youth facility should be so calm that the kids don't have to show anybody how tough they are.

One thing I have learned in my many years is you have to make sure incarcerated juveniles are engaged in positive activities throughout the day – they need to be doing something that will benefit them. That's why, when we got into developing the program at the Youthful Offender Unit, one of the key areas I wanted to focus on was school. After all, that's one reason why many of them get in trouble in the first place: they were not going to school. So from the first day of getting admitted to the YOU, every child have to participate in school 330 minutes or six (6) class periods. These are the same requirement of the public school system.

Recreation is important too, and you also need strong extracurricular activities. People think these activities have to cost a lot of money, but I have found that there are always many people in the community willing to come in and work with the youth – local community programs and churches, for example. We have an art program, we offer meditation, a mixture of religious programs, and every month, students from Jackson State University, which is one of the local colleges. These students come in and do a weekly musical program with the juveniles, we call it music therapy. They bring their instruments and the kids get an opportunity to sing and take part in learning how to play the different instruments.

We also take a positive approach to discipline. We set up a system for kids to earn rewards – they're given a point card with four levels. For everything they do, from waking up in the morning, making their beds, going to school, participation in school, and so on, they get the opportunity to earn points. At the end of the week, on Friday, they can spend their points at the “Point Store”, where they can buy assorted snacks, hygiene products and even radios & headphones.

Since 1998, I've worked in eight different youth facilities, and I've always taken this behavior management system with me. Here in Mississippi, I tailored it so that youth can also have points taken away if it need to be done as sanction in lieu of harsher punishment.

We also have systems in place to make sure that kids can complain if they need to. We have

a grievance process, and boxes on the walls throughout the facility they can put written notes into the boxes so that kids can vent. We also make sure that they have free access to staff – including me – if they have a concern or a problem.

Of course, how we chose and trained our staff is also crucial. Because the Youthful Offender Unit is located on the grounds of Mississippi’s maximum security prison for adults (which is far from ideal), many of our staff came from the adult prison, and weren’t used to working with youth. Working with young people is very different from working with adults – they’re still developing, and capable of enormous change, and their issues tend to be more complex. So before we opened the facility, we interviewed all the people we brought over – I was looking for people who bought into the program. Because in my experience, the staff and leadership all need to have the same values when it comes to using confinement or restraints. I don’t believe in confinement as a punishment for everything when working with juveniles, so when I hire employees, I look for someone who has the ability to sit down with a kid, de-escalate a situation, talk it through. Usually, people think you should look for a big strong officer capable of putting a male or female in their rooms. They’re good to have, but I’m really looking for those with good communications skills who know how to de-escalate a situation. I wouldn’t want to hire someone who locked a kid up every time they had a problem.

Once we hired the right folks, we provided our staff with 40 hours of training that deals with youth brain development, de-escalation techniques, mental health training, and more. We repeat the training every six months. I also let the staff know the expectations right up front: we’re dealing with juveniles, so we’re not using room confinement unless in some cases of youth assaults. The confinement have to be approved by me or my assistant.

As a leader, you have to monitor what the staff do and provide support, because incidents will happen, and you need to be able to provide coaching to your staff to help them understand the value of de-escalating a situation. So it is important for a facility to keep track of disciplinary incidents, the number of assaults, where they occurred, what time of day, which staff person was involved. I monitor the collected and review data with my staff. We look at ways to improve. We debrief and talk about incidents, and if the numbers are of concern on a staff, I try to offer suggestions, solutions, and coach them on how to respond differently.

Our approach works even though almost every kid in the unit is involved in a gang. You have to be aware of their gang affiliations and pay attention when they say they can’t do certain things, like eat right next to each other in the cafeteria, but as long as staff provides strong direction, it’s not an issue. They may not be able to walk right next to each other on the way to the gym, but once they get there, they interact just fine.

For all this to work, you can’t be the type of leader where you spend all your time in an office. You have to be where the kids know you. It is important to interact with them and to let them know your expectations. The same applies for employees at the facility.

When we designed the Youthful Offender Unit, I had the option to remodel an existing

building, so we built four, open dorms where no more than 10-15 kids can sleep in at any one time. If two kids really don't get along, we can switch one from one dorm to another. Within the dorm, they're not locked in their cells – they can move around. I also have single cells for kids who really require one, but by being in their small community, the kids have someone to talk to and interact with, and their behavior is better.

To sum up, my recipe for an effective, safe, and secure facility that doesn't rely on confinement or restraints:

- keep the kids occupied throughout the day with positive activities – including a high-quality school, vocational activities, recreation, and extracurricular activities provided by the facility staff and or community members;
- use a positive behavior management system that allows kids to earn points when they're doing well – and create system to make sure that any reduction in points is done fairly;
- give kids an opportunity to voice their grievances/complaints;
- hire and train qualified staff willing and able to focus on de-escalating situations and talking things through with the kids instead of relying on restraints or confinement, and provide ongoing training and monitor their use of discipline so we can coach them on how to improve;
- provide lots of mental health services and support, to address the youths' underlying needs;
- keep the facility numbers small, if possible limited to a maximum of 50 kids;
- hire and support staff that understands how the adolescent brain differs from adult brains, support the use of therapeutic interventions with kids when at all possible instead of punitive ones, and who interact with the kids daily.

By implementing these proven practices, a juvenile detention center can definitely be operated safely without depending on the excessive use of room confinement no matter what the offender's charges are.

Thank you for letting me present this letter. I hope it is helpful with operating juvenile facilities safely with very limited use of room confinement.

Leander Parker, Warden (YOU)

Appendix C: Facts Sheets & Communications

Fact sheet created and distributed in January 2018 as supplement to legislative testimony in support of LB 870. Includes stories as well as data gathered through our analysis.

GROWING UP LOCKED DOWN IN NEBRASKA

January 2018

DYLAN, A 19-YEAR-OLD NEBRASKAN

Dylan is 19-years-old and has been housed in either Tecumseh State Correctional Institute and the Nebraska Correctional Youth Facility since 2014 when he was just 15. Dylan has been put in isolation multiple times and has not received appropriate mental health and medical care.

We asked him how being in these facilities is hurting him.



They do it Physically with they Groov Squad with Body Armor they Shock Shields, Pepper Ball & rubber Bullet Guns & they Comb of mace and they fist & elbow & knees. It a game for them until its not and reality hit them. Now mean? Then Mentally by are health care and a Average of 1 year in Solitary Confinement Jmates do each time they End up in there. the unhealthy food we get Breakfast, lunch, & Dinner. Also the small amount of Phone call we get to call are Family, which for me has been 1 fifteen minute call Per week for the past 8 months. ect. And then there is Spiritually →

Well I'm in Solitary Confinement so all I get is a Bible in my cell and that is it. But even when I was on the yard if you sign of for a service and you try to walk in and CO's wont let you in if you dont got a Belt on or if you dont got on a khaki shirt on or if you a few minutes late when it be the Unit Staff who make us late or even if we to early we get sent back ect. This Place is designed to destroy you and thats the bottom line.

ACLU Nebraska

134 S. 13th St. #1010
Lincoln, NE 68508

402.476.8091
aclunebraska.org

ADDITIONAL STORIES OF CONFINEMENT

Nebraska attorneys from across the state have shared concerns about the use of solitary confinement on their juvenile clients. These are real stories from 2017 about the way solitary confinement is used in Nebraska. We have chosen not to share names of facilities and have changed names in order to protect the identities of the young people.

Katie

Katie is a Caucasian female

“The only thing to do if you are in solitary is sleep. I get extremely depressed being in isolation. You don’t have any contact with anyone else in the facility. I have hurt myself while I have been in room confinement.”

Darryl

Darryl is an African American male

“When I was in solitary, no one talked to me. Staff would look at me through a window every once in a while. Before I went to solitary, I had individual therapy. I did not get therapy while I was locked in my room. I did not get school work. The only thing to sit on during the day was a concrete slab.”

Malik

Malik is an African American male

“There is nothing to do in confinement. You only get out of your room for 1 hour a day. Staff can extend your time in solitary for any reason they want. I was in confinement for over a week for cussing at a staff member. Being in solitary does not help me. It only makes me angry.

Jada

Jada is an African American female

“Being in confinement made me have an anxiety attack. I was locked in my room. You eat meals in your room and don’t have any contact with anyone. I was not even allowed to have a book. I slept most of the time. Being in solitary made me feel like I was going crazy. I think putting people in solitary causes them to cut themselves. I could hear other people screaming, crying, and yelling.”

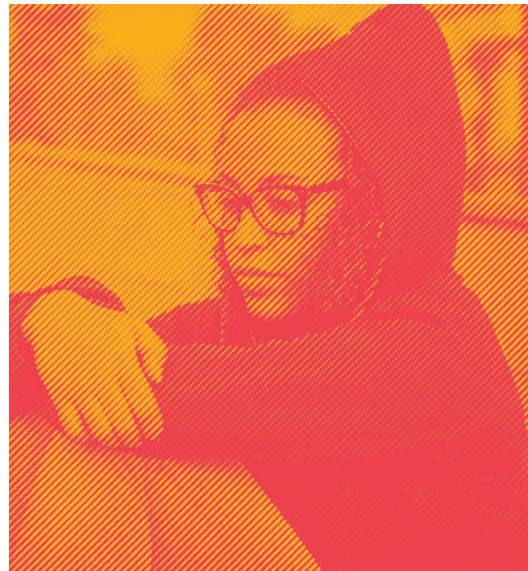
WHY ARE YOUNG NEBRASKANS IN SOLITARY CONFINEMENT?

Reasons for Solitary & Number of Incidents

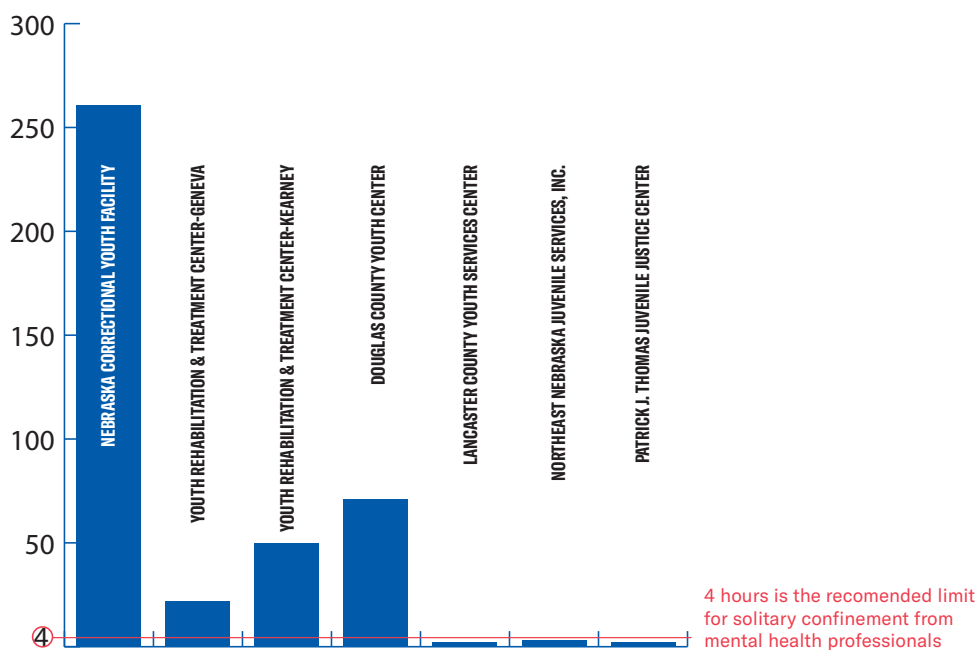
Rule violations/disobeying orders	646
Administrative including staff breaks	481
Verbal Aggression including cussing	193
Self-harm (threats and attempts)	84

These are the types of reasons for solitary that LB 870 would prohibit.

Source: Mandatory data reporting from facilities for the period of July 2016 to September 2017.



AVERAGE DURATION OF EACH USE OF SOLITARY CONFINEMENT IN NEBRASKA FACILITIES IN HOURS*



Source: 2017 Juvenile Room Confinement Annual Report, Office of Inspector General of Nebraska Child Welfare Reports

YOUTH OF COLOR ARE OVERREPRESENTED IN USE OF SOLITARY CONFINEMENT

Race	Percent of Solitary Incidents ¹	Percent of Child Population in Nebraska ²
White	45.3%	70.0%
Black	33.4%	5.8%
American Indian or Alaska Native	9.4%	1.1%
Asian	20.0%	2.4%
Multi-Race	5.5%	6.4%
Hispanic	15.6%	14.3%

¹Mandatory data reporting from facilities for the period of July 2016 to September 2017. Hispanic data from facilities based on ethnicity reporting.

²U.S. Census Bureau, Annual Estimates of the Resident Population by Sex, Age, Race, and Hispanic Origin, July 1, 2015, Table PEPASR6H.

Postcard that ACLU-NE designed, printed, and distributed at events related to juvenile solitary confinement. We encouraged those in attendance to fill them out for distribution to their state senator.

**Kids need: human interaction - love
mental health care - books - family
sunlight - hygiene - regular exercise
physical health care - peer contact
writing materials
adequate meals** **NOT SOLITARY
CONFINEMENT**

ACLU Nebraska

**KIDS NEED US TO
#STOPSOLITARY**

ACLU of Nebraska
134 S 13th St #1010
Lincoln, NE 68508

Non-Profit Org US Postage PAID Lincoln, NE Permit #410
--

Materials designed and distributed at ACLU-NE's Lunch and Learn for state senators and their staff to raise awareness of the issue of juvenile solitary confinement while legislature was not in session.

Growing Up Locked Down: Juvenile Solitary Confinement in Nebraska

**Lunch & Learn Friday, Nov. 9
at Hruska Law Center, Lincoln, NE**

Agenda

Welcome

Danielle Conrad, ACLU of Nebraska

Nebraska Landscape

Julie Rogers, Inspector General
of Nebraska Child Welfare

Data from Nebraska Facilities

Dr. Richard L. Wiener and Julie
Wertheimer

Best Practices and Reform Efforts

Christine Henningsen

Closing Remarks

State Senator Patty Pansing Brooks

Handout

Growing Up Locked Down

- January 2016 full report
- January 2018 updated summary

This recent ACLU of Nebraska report demonstrates that some Nebraska facilities housing youth are using solitary far in excess of best practices.

The report explains how solitary confinement harms children, catalogs solitary confinement policies used by Nebraska's juvenile detention facilities, and outlines a path to reform, because we can and must do better for our vulnerable youth in Nebraska.

RACIAL DISPARITIES IN NEBRASKA JUVENILE DETENTION FACILITIES

4 in 20 youth in Nebraska are youth of color.



11 in 20 youth in Nebraska Juvenile Facilities are youth of color.



ACLU Nebraska

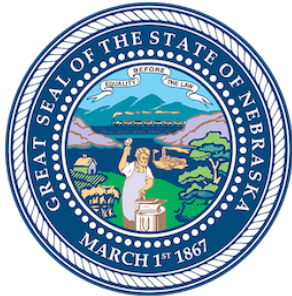
134 S. 13th St. #1010
Lincoln, NE 68508

402.476.8091
aclunebraska.org



Danielle Conrad
Executive Director
ACLU of Nebraska

Danielle Conrad graduated from the University of Nebraska-Lincoln with a bachelor's degree in political science. She earned her Juris Doctorate from the University of Nebraska College of Law. She was elected to the Nebraska Legislature in 2006 and re-elected in 2010. She has worked as a staff attorney and policy advocate for low-income working families and new immigrants at the Nebraska Appleseed Center for Law in the Public Interest, in nonprofit management, and political consulting. She serves on the board of directors of Legal Aid of Nebraska. Danielle has served as the executive director at the ACLU of Nebraska since 2014.



Julie Rogers, Inspector
General of Nebraska Child
Welfare

Created by the Legislature in 2012, the Office of the Inspector General (OIG) provides an independent form of inquiry and review of the actions of individuals and agencies responsible for the care and protection of children in the Nebraska child welfare and juvenile justice systems. The office investigates allegations or incidents of misconduct, misfeasance, malfeasance, statutory violations, and regulatory violations.



Dr. Richard L. Wiener
UNL Professor of Psychology
Courtesy Professor of Law

Professor Wiener received his Ph.D. from the University of Houston and his Masters Degree in Legal Studies at UNL. He was a professor of Psychology at Saint Louis University (1982-2000) and most recently chair of the Department of Psychology at Baruch College, City University of New York. In 2002 Dr. Wiener joined the Law-Psychology Program (as director) and the Social Psychology Program at UNL. He is the former editor of Law and Human Behavior, the official journal of the American Psychology/Law Society (Division 41 of the APA).



Julie Wertheimer
UNL J.D./PhD student

Julie Wertheimer is a third-year graduate student at the University of Nebraska—Lincoln, where she is pursuing both a J.D. and PhD in Social Psychology. Julie is ranked third in her class at the UNL College of Law and is a member of the Nebraska Law Review. Julie works in the Legal Decision-Making Research Lab at UNL under the direction of Dr. Richard Wiener. Her current research examines stigma against ex-offenders, particularly women and parents. Julie graduated Phi Beta Kappa and summa cum laude from Knox College, where she received a B.A. in Psychology.



Christine Henningsen
Director
Nebraska Youth Advocates
UNL Center on Children,
Families, and the Law

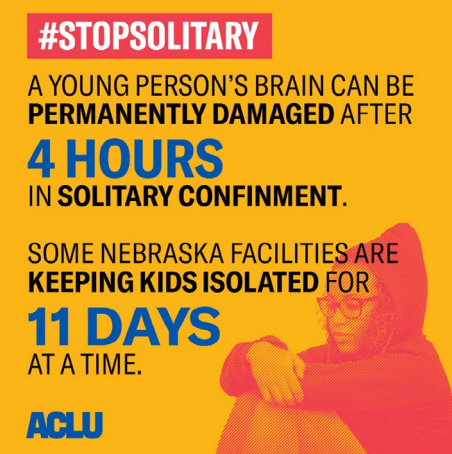
Christine Henningson is the Director of Nebraska Youth Advocates, which focuses on giving juvenile defense attorneys the tools to advocate zealously on behalf of their clients. Prior to directing NYA, Christine was a staff attorney for the Nebraska Court Improvement Project and served for five years as an Assistant Public Defender in Douglas County primarily in juvenile court. She graduated magna cum laude from Loyola University Chicago with a degree in Social Work and graduated summa cum laude from Creighton Law School. She is a certified juvenile defense trainer through the National Juvenile Defender Center in Washington, D.C.



State Senator Patty
Pansing Brooks

Senator Patty Pansing Brooks represents Legislative District 28. She is a wife and mother of three children, and a small business owner and partner in her law firm. She now serves the Legislature as the Vice-Chair of the Judiciary Committee, as a member of the Education Committee, the Committee on Committees, and the Justice Reinvestment Oversight Committee. She also served as the Chair of the Legislature's Department of Corrections Special Investigative Committee.

Notes:



@aclunebraska



@ACLUofNE



@acluofne

ACLU Nebraska

134 S. 13th St. #1010
Lincoln, NE 68508

402.476.8091
aclunebraska.org

Fact sheet providing snapshot of reasons youth were placed in confinement and the average length of confinement for some NE facilities distributed in 2017 to support a bill to increase solitary confinement report transparency.

ACLU of NEBRASKA

Use of Solitary Confinement in Nebraska Youth Facilities

Following the release of ACLU of Nebraska's report, *Growing Up Locked Down*, the Nebraska Legislature passed LB 845 in 2016 to require reporting on any future use of solitary confinement in youth facilities.

In the fall of 2016 residential youth facilities provided their first-ever quarterly reports showing imposition of room restriction. The data from our state facilities are very troubling—both for using isolation for very long periods and for imposing isolation for inappropriate reasons.

Mental health experts recommend juveniles not be subjected to isolation from their peers for more than four (4) hours because of mental health impacts. Yet all three state facilities reported room restriction use that far exceeds best practices.

In the first quarter, the YRTC's used room restriction between 18 – 29 times a month in Geneva and 20 – 36 times a month in Kearney. The average length of stay in room restriction for girls at Geneva was .83 days or 19.92 hours. The average length of stay in room restriction for boys at Kearney was 2.53 days or 60.72 hours. On average, boys spent three times more time in isolation than girls.ⁱⁱ

The data reported by the YRTC's is troubling, given the fact the youngest child subjected to isolation in the first quarter reporting was a girl who was only 14 years old. Both facilities also reported placing children in isolation for "self-harming behavior," for "threat of suicide," and due to a PREA investigation. When a child harms herself or threatens he might kill himself, that child needs mental health

intervention—not isolation. Some of the distressing examples that were reported are below. It should be noted that mental health experts stress that solitary confinement should never be used in response to self-harm or similar mental health infractions.

- 15-year-old Latina placed in segregation for 139 hours for being "verbally abusive,"
- 15-year-old Latina placed in segregation for 116 hours for "self-harming,"
- 18-year-old Latino placed in segregation for 105 hours for "self-harming,"
- 17-year-old Latino placed in segregation for 118 hours for an unspecified "behavioral infraction,"
- 15-year-old Native American young man placed in segregation for 75 hours for an unspecified "behavioral infraction,"
- 17-year-old African American young man placed in segregation for 144 hours for being "verbally abusive towards staff."

The State NCYF facility had fewer uses of isolation (7-10 uses per month), but appears to have had two children—who were in room restriction for the entire three-month reporting period. The State reported no attempts to re-integrate these two juveniles into normal housing during that period.

Become a Member
aclunebraska.org/join

Follow us
[@ACLUofNE](https://twitter.com/ACLUofNE)

Join our Action Network
aclunebraska.org/action



There was some good news from the non-state facilities:

- Lancaster County: few instances of use for 1-2 hours, a few isolated periods of 6 -10 hours.
- Sarpy County: only a handful instances of use, all less than 3 hours.
- Norfolk group home: one use of solitary for 20 minutes.
- NO use at all by Lincoln Child Guidance Center, North Platte Youth Center, Child

Saving Institute, Scottsbluff CAPWN Youth Center, NOVA Treatment in Omaha, Omaha Home for Boys.

Given the large number of instances of room restriction use by the YRTCs and the abysmally long periods of isolation used by NCYF, Nebraska needs to ensure meaningful reforms are having intended effects to protect the fragile health of vulnerable Nebraska kids.

The ACLU supports the proposed changes in LB 516 to strengthen accountability and transparency for youth facilities in Nebraska.

ⁱ <https://aclunbraska.org/growinguplockeddown>

ⁱⁱ Using an Analysis of Variance (ANOVA), using Type I sums of squares, adjusting for covariates (that were ultimately unnecessary), sex consistently predicted length of stay in isolation, $F(1,215) = 37.05, p < 0.001$. Data were transformed to meet the assumptions of said analytic method; obviously, no follow-up tests were available. Additional, technical details about these analyses can be provided.

Thanks to Julie L. Rogers and the office of the Inspector General of Nebraska Child Welfare for compiling the information provided by facilities in Nebraska.

Thanks to the Cooper Foundation for funding the initial research into juvenile solitary confinement in Nebraska.

Appendix D: Data Reports, Polling, & Online Survey

Data analysis supplementing oral testimony in support of LB 230.

Richard L. Wiener, Ph.D.
University of Nebraska/Lincoln

January 17, 2019

BIOSKETCH

Dr. Richard L. Wiener received his Ph.D. in Psychology from the University of Houston. He studied law at the University of Nebraska/Lincoln (UNL) College of Law where he earned a Master's Degree in Legal Studies. He is currently the Charles Bessey Professor of Psychology and Law at UNL where he served as the director of the Law and Psychology Program from 2002 until 2015. Dr. Wiener is the past editor of *Law and Human Behavior*, the official journal of the American Psychology/Law Society (Division 41 of the American Psychological Association) and is currently the Secretary/Treasurer of the Society for Psychological Study of Social Issues (SPSSI). He serves as a research consultant for Nebraska Administrative Office of Probation and the Nebraska Crime Commission. Wiener studies the application of social and cognitive psychology to problems of legal decision-making. He currently conducts and supervises research in the areas of program evaluation, policy and social science, discrimination, and legal decision-making. He is the recipient of funding from the National Science Foundation, the National Institute of Justice and the Substance Abuse and Mental Health Services Administration. Dr. Wiener has published numerous research articles, edited volumes, book chapters and law review articles. Professor Wiener teaches courses in the Graduate School and the Law College at UNL.

REPORT OF FINDINGS

Analysis I: Disparate Treatment in Confinement Incidents

Minority versus Majority Incidents. The data that the UNL team collated and which Ms. Wertheimer entered into a statistical database produced several important analyses and findings that I will now summarize. The first analysis was a comparison of the percent of White European (non-Latinx), African American and Latinx youth in 2016, as estimated from the 2010 national census (these were the U.S. Census estimates) to the racial/ethnic breakdown of the youth in solitary confinement for both Wave 1 (2016-2017) and Wave 2 (2017-2018). Figure 1 depicts the results separately for each Wave and Figure 2 shows the same data collapsed across Waves. As you can see from Figure 2, while approximately 83% of the youth in Nebraska are White, only 32% of those in solitary confinement were White. However, while only about 5% of Nebraska youth are Black and 11% are Latinx, the percent of solitary confinement incidents were about 21% Black, and 33% Latinx. This means that Black and Latinx youth were seriously over represented in solitary confinement signaling a possible problem of disparate impact for Nebraska's minority youth. Furthermore, we calculated a chi square statistic (see Table 1) which shows that the difference between the percentage of youth in the population across two years that were minority youth and those who were in confinement is statistically significant. The green values in Table 1 (i.e., 3824, 243, and 518) are the numbers that we would expect to find if the number of youth reflected their percent in the Nebraska population.

Analysis II: Duration of Time Spent in Solitary Confinement

Duration of Solitary Confinement. The second analysis examined the duration of time spent in solitary confinement for each incident recorded. Table 2 shows that for Wave 1 the mean number of hours per incident was approximately 1 day and 18 hours (almost two days) but ranged as high as 27 days. For Wave 2, the mean length of duration was significantly lower than in Wave 1 but still exceeded one day and ranged as high as 23 days. The standard deviation for this statistic is large in both waves suggesting that the length of stay in solitary confinement for youth is highly variable from incident to incident across both years. That shows an inconsistent use of confinement throughout the Juvenile Justice system in Nebraska. In summary, while the length of stay in solitary confinement decreased across the two time samples, it was still outside the boundaries of a least restrictive use of confinement.

Figure 3 is a frequency distribution with number of hours on the x-axis and frequency of events on the Y-axis, showing that the number of hours spent in confinement for these youth in both waves are highly variable across the state. It is important to note that there are standard procedures for calming out of control children that do not require them to spend anytime let alone several hours in confinement and certainly not multiple days. In fact, the duration of time youth spent in solitary confinement at Wave 2 (25.5 hours) is significantly greater (over 4 times greater) than both the time that the Nebraska community sample estimated youth *should* stay in solitary confinement (5.94 hours) and the time that these same Nebraska respondents estimated that the youth *actually do* stay in confinement (5.44 hours). Figure 4 shows these data and the statistical tests between the measures.

Minority versus Majority Confinement Durations. The next analysis examined the number of hours of each incident of solitary confinement broken down by the race and ethnicity of the youths in confinement. Figure 5 shows a wide variation in time spent in confinement for an average incident, ranging from a high of about 48 hours for Latinx youth at Wave 1 to a low of 16 hours for multi-racial youth at Wave 2. While the total time in confinement was significantly lower at Wave 2 as compared to Wave 1 for Latinx, Black and White youth, Latinx and Black youth spent more time in solitary confinement than did their White counterparts at Wave 1 and Latinx youth spent more time in solitary than did their White counterparts at Wave 2. These results are troubling because there is no obvious reason why duration of confinement should vary significantly by the racial or ethnic origin of the youth.

Analysis III: Reason for Placement in Solitary Confinement

Reasons for Confinement. Staff in the facilities must provide reasons for placing the youth in solitary confinement and Figure 6 lists the twelve most common reasons that the staff offered at Wave 1 and Wave 2 along with the reasons that the Nebraska community sample expected. The reasons listed in Figure 6 represent three categories: 1) youth physically out of control and potentially dangerous to others in the facility (37.8% for Wave 1 and 43.8% for Wave 2), 2) youth who violated a behavioral rule or some other administrative instruction (37.6% for Wave 1 and 27.9% for Wave 2), and 3) youth who were in solitary confinement for another reason (16.1 for Wave 1 and 18.6 for Wave 2). The most justifiable reason to place a

child in confinement for a very short stay (i.e., less than an hour) is the first category, that is, the youth was physically out of control. Figure 7 shows Wave 1 and Wave 2 actual confinement reasons that staff provided broken down by Physically Uncontrollable Violations and Administrative Violations along with the percent in each category that the Nebraska Community sample expected staff to answer. The Figure shows that the Nebraska sample expected 77% of the youth to be in solitary confinement because they were physically out of control and expected only 3.8% to be there for an administrative violation. In both Wave 1 and Wave 2 the actual placements for being physically uncontrolled was much lower than the community expected and placements for administrative reasons was much greater than expected. Thus, the community sample did not expect the youth to be in solitary for the reasons that the staff provided upon placing youth in confinement.

At the same time, the community sample also provided alternatives to solitary confinement that they believed could be useful for dealing with troubled youth that were out of control. As shown in Figure 8, over 50% of the sample of Nebraskan citizens endorsed temporarily removing the youth from activities, punishing negative behaviors, rewarding positive behaviors, praising positive behaviors, and writing behavior contracts. These five alternative suggestions appeared as options on the survey after consultation with a clinical psychologist licensed in the state of Nebraska who also endorsed these techniques. Thus, citizens in Nebraska were able to come up with a variety of alternative methods of dealing with youth other than placing them in solitary confinement, many of which a clinical expert also endorsed.

Analysis IV: Duration of Confinement Based Upon Facility

Solitary Confinement in Each Institution. The data showed that the average number of hours that each youth spent in solitary confinement varied greatly across the reporting institutions at both Wave 1 and Wave 2 as illustrated in Figure 9. For example, the youth in confinement at the Nebraska Correctional Youth Facility spent on average of 232 hours, or about 9 and half days, during the typical incident in Douglas County NCYF at Wave 1 and 248 hours or over 10 days at Wave 2. This is a statistically significant increase at that institution from Wave 1 to Wave 2. The next highest time in detention was about 46 hours or almost 2 days at the YRTC in Kearny at Wave 1, which did decrease significantly to 26 hours, but still over a full day at Wave 2. This was followed closely by the 39 hours in the Douglas County Youth Center Restrictive Housing Unit at Wave 1, which increased slightly but not significantly at Wave 2 to 41 hours. It is important to note that not all youth spent multiple hours in confinement, and in fact, at the Northeast Nebraska Juvenile Services in Madison County, the typical solitary confinement incident lasted about 2 hours at Wave 1 and Wave 2.

Conclusion. These data point out the need to regulate and control the frequency and duration of solitary confinement for youth in the Nebraska Juvenile Justice System. The data show that current practices over represent and disadvantage Black and Latinx youth both in terms of how often they wind up in solitary confinement and how long they stay in confinement. There are wide variations in the use of confinement across Nebraska's institutions with some youth spending as long as 23 days in solitary confinement. Perhaps most importantly, not all staff put children in solitary confinement because the youths were physically out of control,

instead many had other reasons for doing so, some of which are consistent with using solitary confinement as punishment. A community sample of 1000 Nebraskans found the duration of time that youth were in solitary confinement to be 4 times too long, they found the reasons for placement out of line with their expectations and they endorsed a number of alternative techniques for dealing with out of control children, which a licensed clinical psychologist expert put forth. The data that we collected and analyzed support restricting the use of solitary confinement for youth in Nebraska to no more than one hour and only when no other reasonable less restrictive means is possible.

ANALYSIS I: DISPARATE TREATMENT IN CONFINEMENT INCIDENTS

Figure 1: Evidence of Disparate Impact (Percent in Sample vs Nebraska Population) (Note: 12% of the sample are mixed or other)

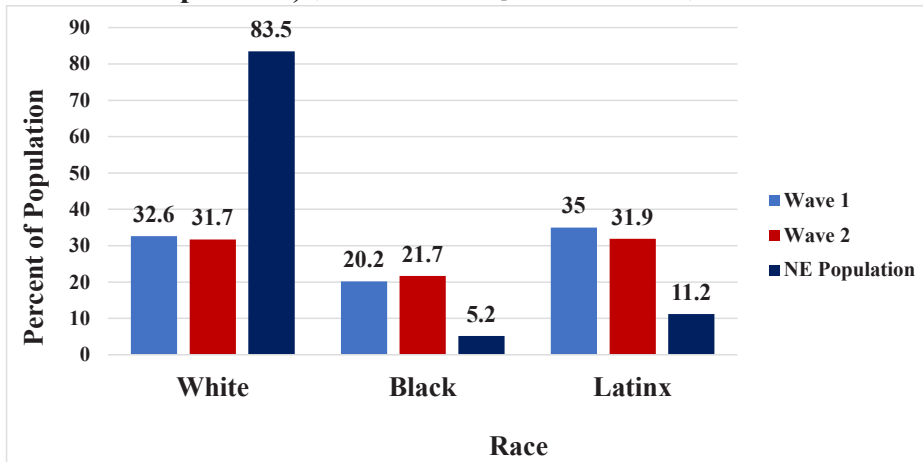


Figure 2: Evidence of Disparate Impact (Percent in Sample vs. Unbiased Estimation of Confined Percent)

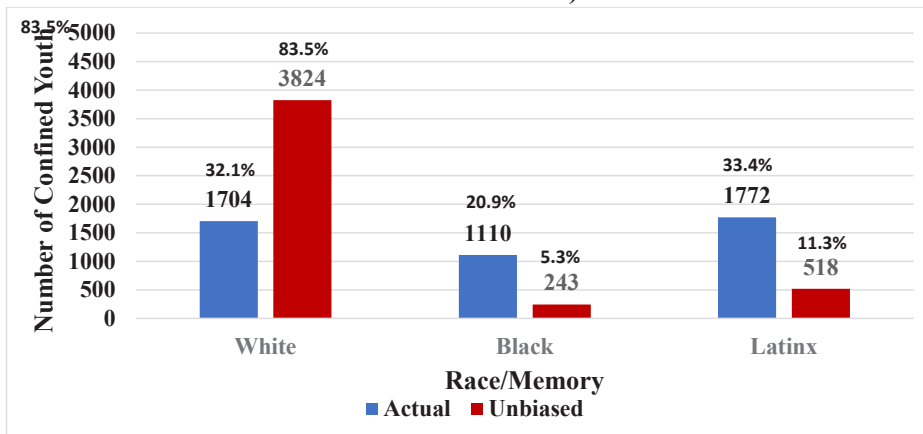


Table 1: Cross Tabulation of Population Race/Ethnicity by Sample Race for Chi-Square Test of Statistical Significance

	Race			
	White	Black	Latinx	
Sample	1704 (32.1%) 3824	1110 (20.9%) 243	1772 (33.4%) 518	4586
Nebraska Population	1513350 (83.4%)	95060 (5.3%)	203428 (11.3%)	1811838
	1515054	96170	205200	1816424

$\chi^2 = 7326.893, p < .0000, r = .784$ (test of independence) (excludes mixed or other in sample)

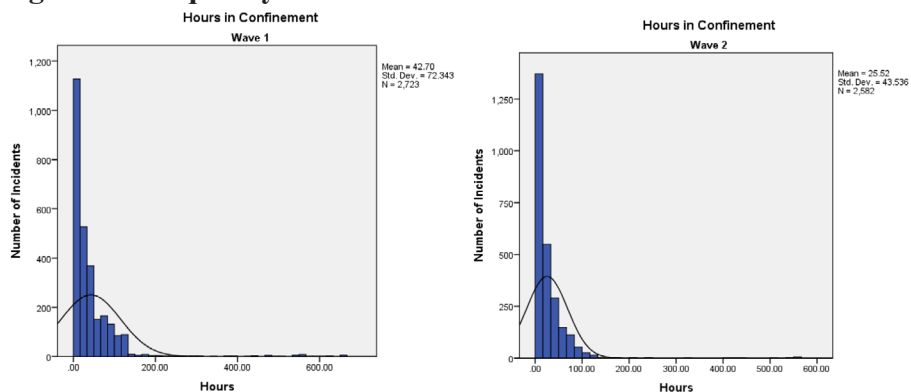
ANALYSIS II: DURATION OF TIME SPENT IN SOLITARY CONFINEMENT (HOURS)

Table 2: Hours in Confinement

	Wave 1	Wave 2
Mean	42.2 (1 day, 18 hours)	25.5 (1 day, 1.5 hours)
Median	21.5 (Almost 1 day)	15
Standard Deviation	70.79	43.5
Minimum	.25 (15 minutes)	.22 (13 minutes)
Maximum	651 (27 days)	558 (23 days)

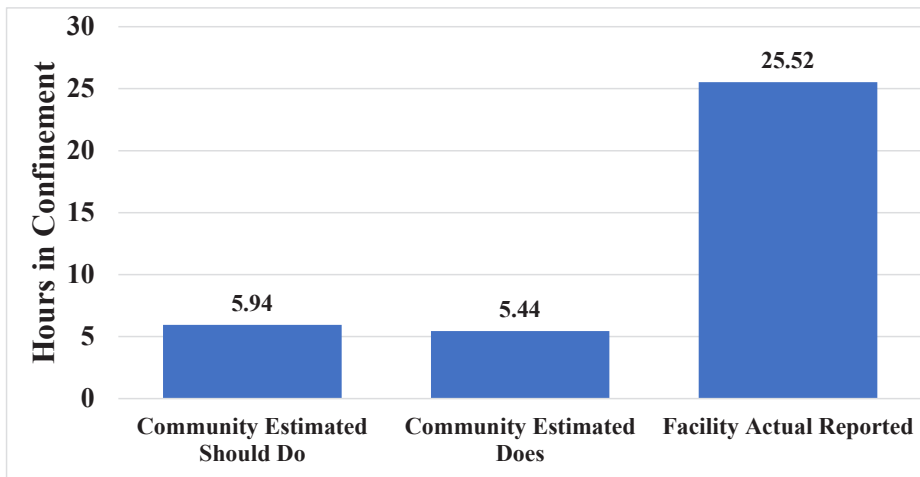
$t(4505.53) = 10.55$ ($p < .001$) (equal variances not assumed)

Figure 3: Frequency Distribution of Hours in Confinement



$t(1, 4505.53) = 10.55$ ($p < .001$) (equal variances not assumed)

Figure 4: Estimated Hours in Confinement and Actual Hours in Confinement

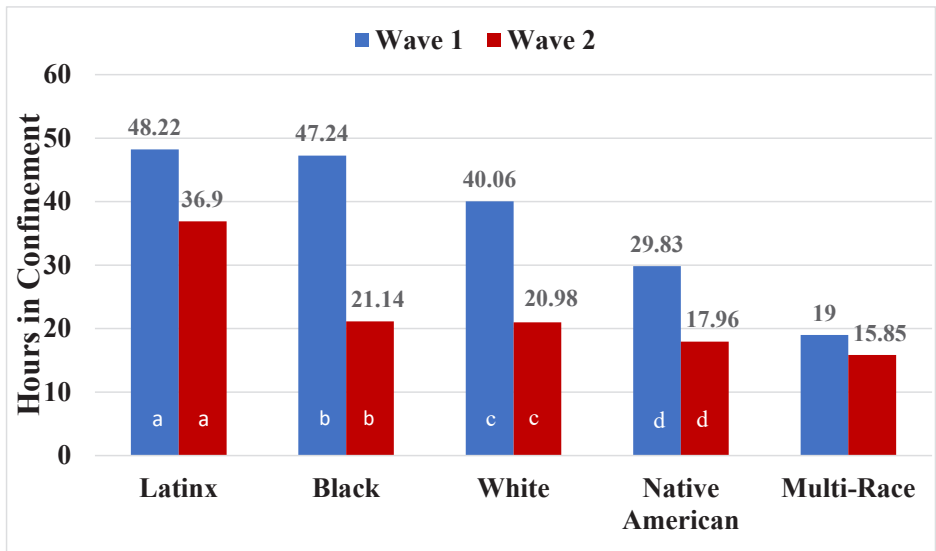


Should vs Does: $t(1,943) = 1.593$, $p = .112$

Should vs Actual: $t(1,958) = -67.091$, $p < .001$

Note: bars that share subscripts are significantly different

Figure 5: Mean Hours in Confinement by Race



$F(4, 5272) = 3.70, p = .005, \eta^2 = .003$

Note: bars that share subscripts are significantly different; Latinx and Black are significantly different from Whites at Wave 1 and Blacks are significantly different from Whites at Wave 2.

ANALYSIS III: REASON FOR PLACEMENT IN SOLITARY CONFINEMENT

Figure 6: Most Common Reasons for Confinement

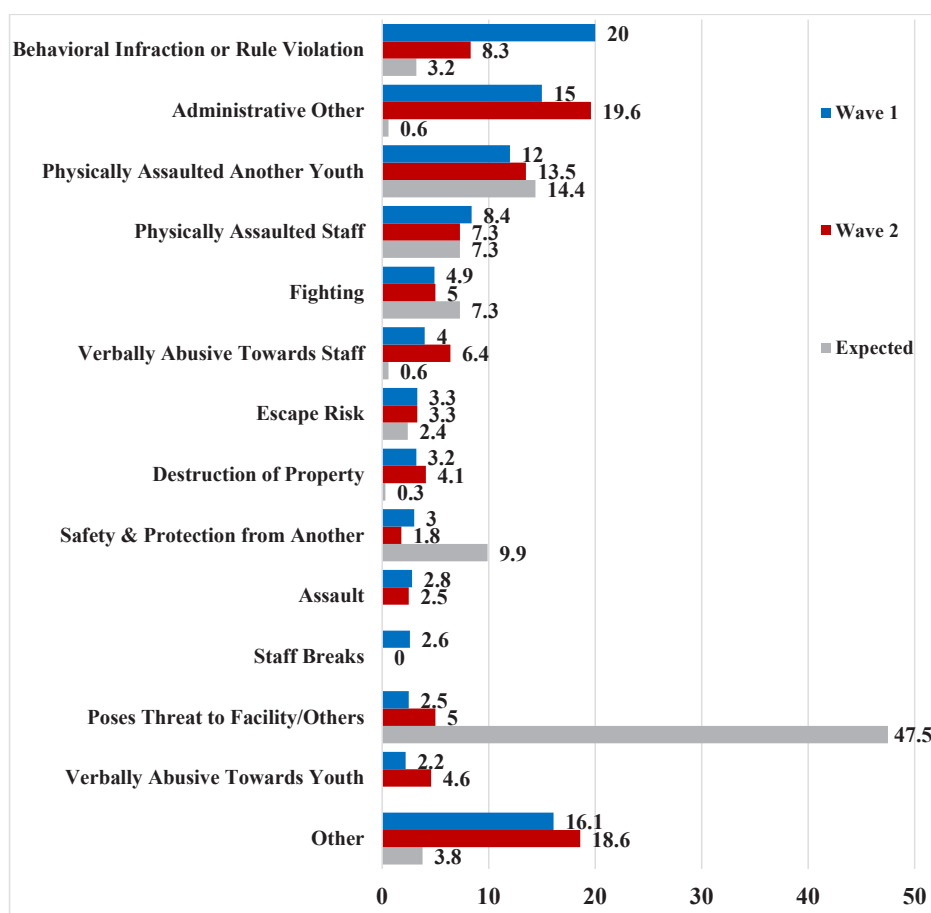


Figure 7: Most Common Reasons for Confinement – Actual vs Expected

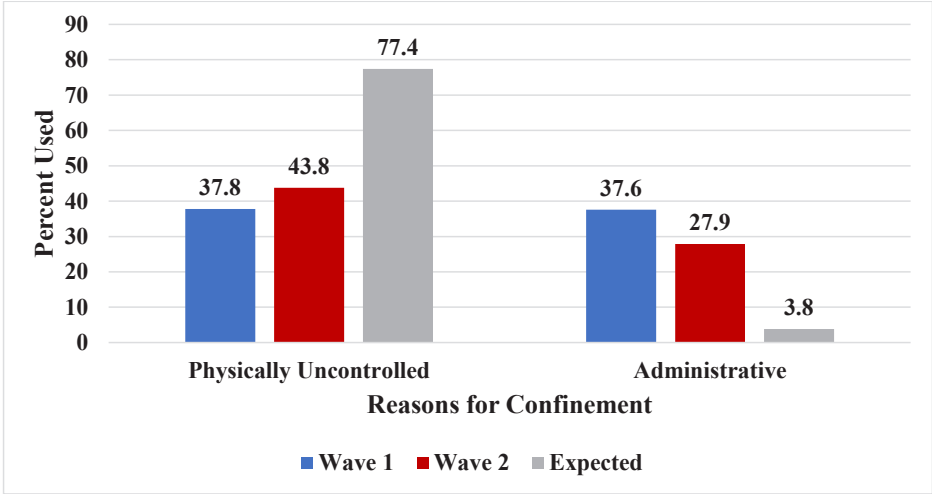
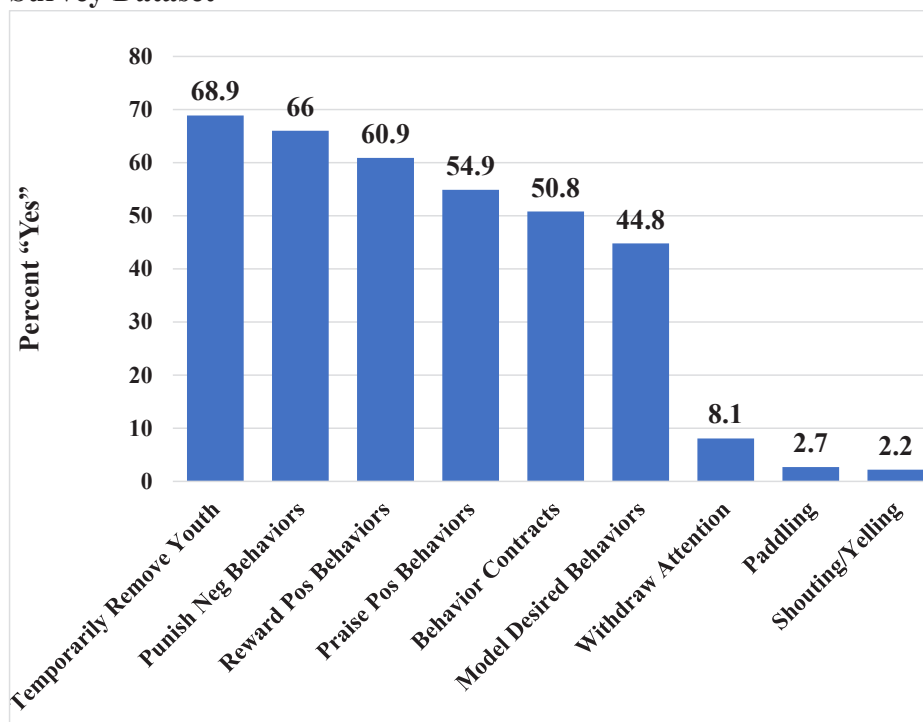
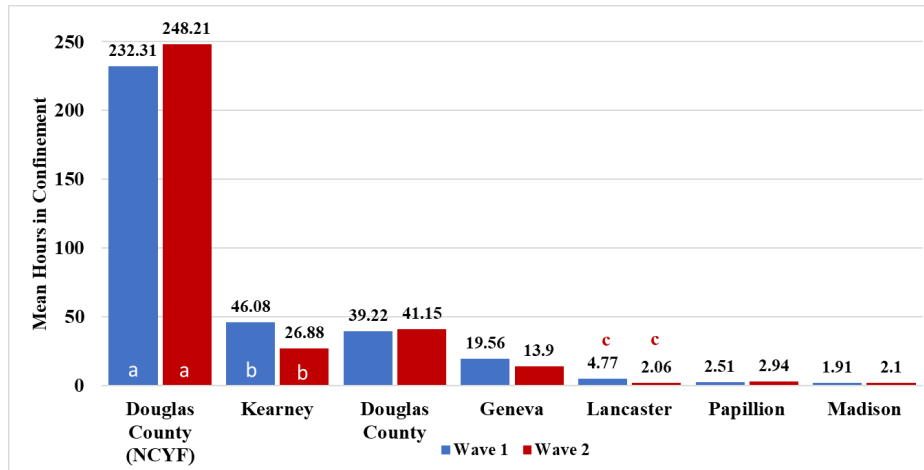


Figure 8: Alternatives to Confinement Endorsed in the Community Survey Dataset



ANALYSIS IV: DURATION OF CONFINEMENT BASED UPON FACILITY

Figure 9: Mean Number of Hours of Duration Based on Facility



Julie Wertheimer

University of Nebraska—Lincoln

January 16, 2019

BIOSKETCH

Julie Wertheimer is currently a third-year graduate student at the University of Nebraska—Lincoln, where she is pursuing both a J.D. and PhD in Social Psychology. Julie is currently ranked 3rd in her class at the University of Nebraska College of Law, and she is a member of Nebraska Law Review. Julie works in the Legal Decision-Making Research Lab at UNL under the direction of Dr. Richard Wiener. She recently helped author a report for the Nebraska Department of Probation entitled “Relapse Prevention and Pretreatment Program Evaluations.” Her current research examines stigma against ex-offenders, particularly women and parents. Julie graduated Phi Beta Kappa and *summa cum laude* from Knox College, where she received a B.A. in Psychology.

PART I: DEMOGRAPHIC STATISTICS FOR THE FACILITIES AND YOUTH IN THE STUDY

This report describes the data collection, data management and data analysis procedures that the UNL team used to complete the solitary confinement report. It begins with a description of the data collected and continues with the data preparation and analysis process.¹

Reporting Facilities. 2,728 incidents of juvenile solitary confinement were reported in Nebraska between July 2016 and September 2017. The reporting period between July 2016 and September 2017 constitutes Wave 1 of data collection. 2,583 incidents of juvenile solitary confinement were reported in Nebraska between July 2017 and September 2018. The reporting period between July 2017 and September 2018 constitutes Wave 2 of data collection. Eight facilities did not report any incidents of solitary confinement in that time. Three facilities reported four or fewer instances of solitary confinement and were not included in the analysis. The data came from the reports from seven facilities who reported regular use of juvenile solitary confinement. The staff at the institutions entered all the data in the reports that we received from the ACLU. The facilities and the number of incidents reported from each are shown in Figure 1. The total number of incidents across waves is shown in Figure 2.

Preparing Data for Analysis. The ACLU sent Dr. Wiener and I the reports from the facilities that reported the use of juvenile solitary confinement. The purpose of our analysis was to calculate how many incidents of solitary confinement there were, who was confined, how long they were confined, and how those numbers changed from Wave to Wave 2. Before we could analyze the data, we coded common variables in the submitted reports. The major variables in the data set are listed in Table 1. I then constructed an SPSS (Statistical Package for the Social Sciences) data file containing those common variables. SPSS is statistical analysis software.

Steps Taken to Ensure Accuracy. To minimize errors, I gave each incident a unique ID number so I could easily match each line of data from the report to the correct line in the SPSS data file. Where possible, I copied and pasted lines from the reported excel data files into the SPSS data file to reduce transcription errors. After the data had been entered, we checked for possible errors by calculating descriptive statistics (e.g., means, medians, and maximum and minimum values) for all the variables and examined them for unusual values. Any observation that appeared unusual (e.g., any duration greater than 224 hours) was double-checked. This process uncovered only a few minor errors, which were corrected against the original data files.

Demographic Analyses. The age, gender, and race/ethnicity of youth in confinement (overall and broken down by wave) are reported in Figures 3, 4, 5, and 6 respectively. At the time of confinement, the juveniles were aged 11 to 19, with the average age of a juvenile in solitary being

¹ The data point in the analysis is incident, rather than individual youth, because it was impossible to determine whether each incident involved a different juvenile or whether some juveniles were confined multiple times. This means the data only reflects each individual instance that a juvenile was placed in solitary confinement. It does not reflect the fact that some juveniles may have been placed in solitary confinement more than once.

about 16yrs old in both Waves 1 and 2. The majority of confined youth were male, though nearly 28% in Wave 1 and 34% in Wave 2 were female. The number of males decreased significantly from Wave 1 to Wave 2, while the number of females increased during the same time. Confined youth were mostly Latinx, White, and Black in both Waves. The number of Latinx youth decreased significantly from Wave 1 to Wave 2 but the number of solitary confinement incidents were not significantly different across the two Waves for any of the other ethnic/racial categories.

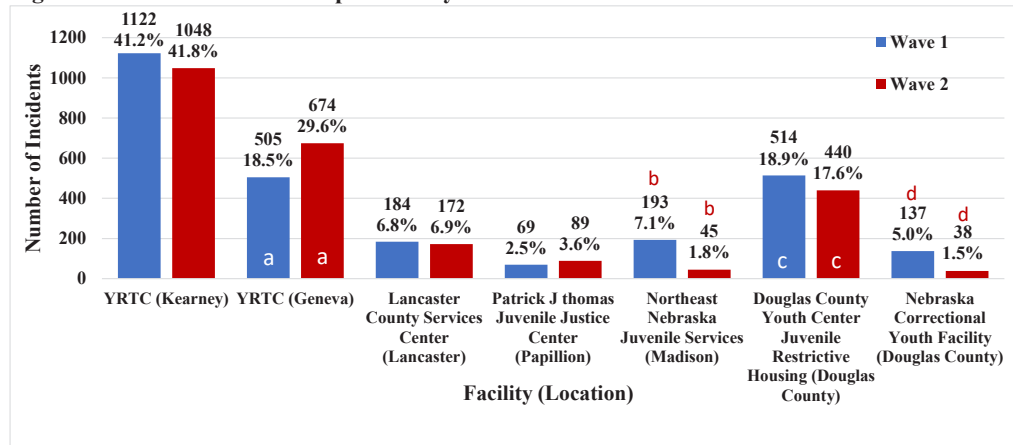
PART II: COMMUNITY SURVEY

Participant Recruitment. Participants were recruited through Prime Panels via Amazon's Concierge Services. Prime Panels utilizes participants from a variety of online survey platforms (e.g., Amazon Mechanical Turk, SurveyMonkey). Prime Panels collected data from 1000 adult residents of Nebraska. Participants were sent a link to complete an online survey about their perceptions of and beliefs about the use of juvenile solitary confinement in Nebraska. The survey took an average of 10 minutes to complete, and participants were compensated for their participation in the amount that they agreed to with the platform through which they completed the survey.

Preparing Data for Analysis. I downloaded the data through Qualtrics Survey Software. I then went through the data and removed any participants who missed or failed at least one attention check and any participants who completed the survey in less than 5 minutes or more than 70 minutes. Prime Panels continued to recruit participants until we had 1000 participants whose responses we could trust, that is who met the attention check and duration criterion. The major variables in the data set are listed in Table 2.

Participant Demographic Analyses. The age, gender, and race/ethnicity of survey respondents are reported in Figures 6, 7, and 8 respectively. Participants' ages ranged from 18 through 79, with the average age being 38.65 years old. The majority of participants were female, though nearly 26% were male. Participants were primarily White. Additionally, 74% of participants indicated that they were registered voters in Nebraska. The analyses that include community survey respondents do not vary significantly by sex of the respondents.

Figure 1: Number of Incidents per Facility



$\chi^2(6, 5230) = 174.680, p < .001$; contingency coefficient = .180, $p < .001$
 Note: bars that share subscripts are significantly different at $p < .05$.

Figure 2: Number of Incidents Across Waves in the Facilities Report

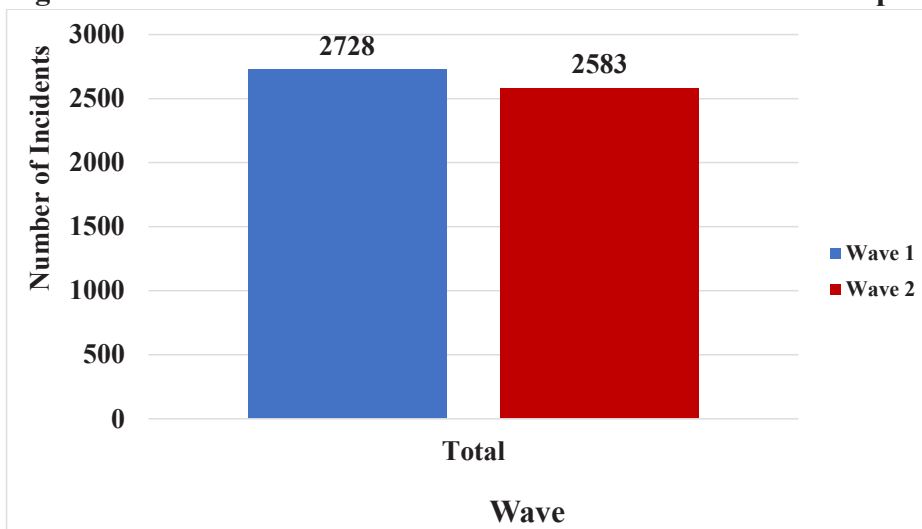
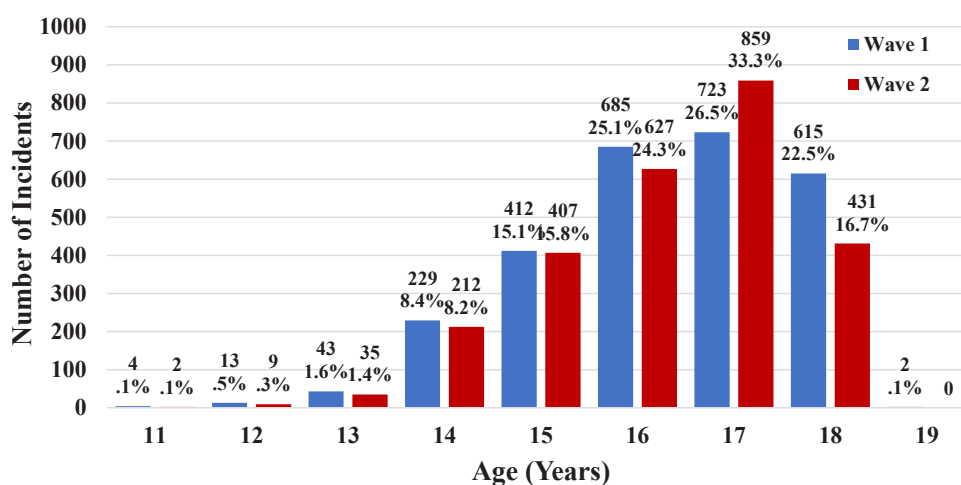


Table 1. List of Major Variables in the Facilities Report Dataset

Variable
Gender
Race/Ethnicity
White
Black
Latinx
Native American
Multi-race
Reason for Confinement
Duration (Hours)
Age (Years)

Figure 3: Ages of the Youth at the Time of Confinement

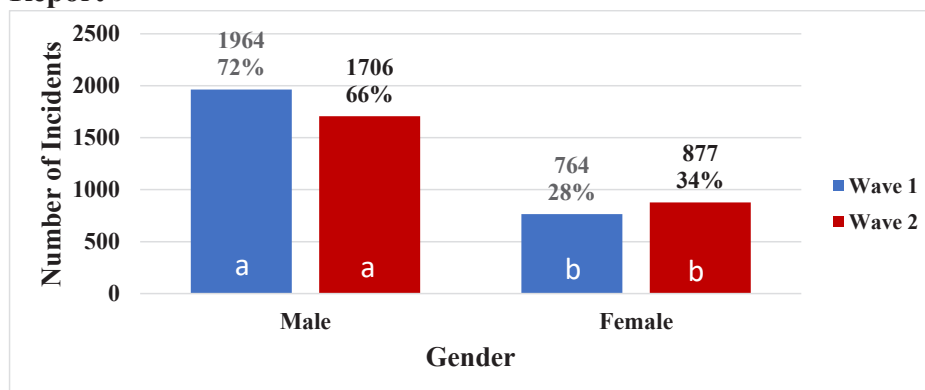


Wave 1:
 Mean: 16.32 (16 yrs. and 4 months)
 Standard Deviation: 1.35
 Median: 16 years
 Mode: 17 years

Wave 2:
 Mean: 16.29 (16 yrs. and 4 months)
 Standard Deviation: 1.27
 Median: 16 years
 Mode: 17 years

$t(5305) = 1.103, p = .270$

Figure 4: Gender of the Youth in Confinement in the Facilities Report



$\chi^2(1, 5311) = 21.976, p < .001$; contingency coefficient = .064, $p < .001$

Note: bars that share subscripts are significantly different

Figure 5: Overall Race and Ethnicity of the Youth in Confinement in the Facilities Report

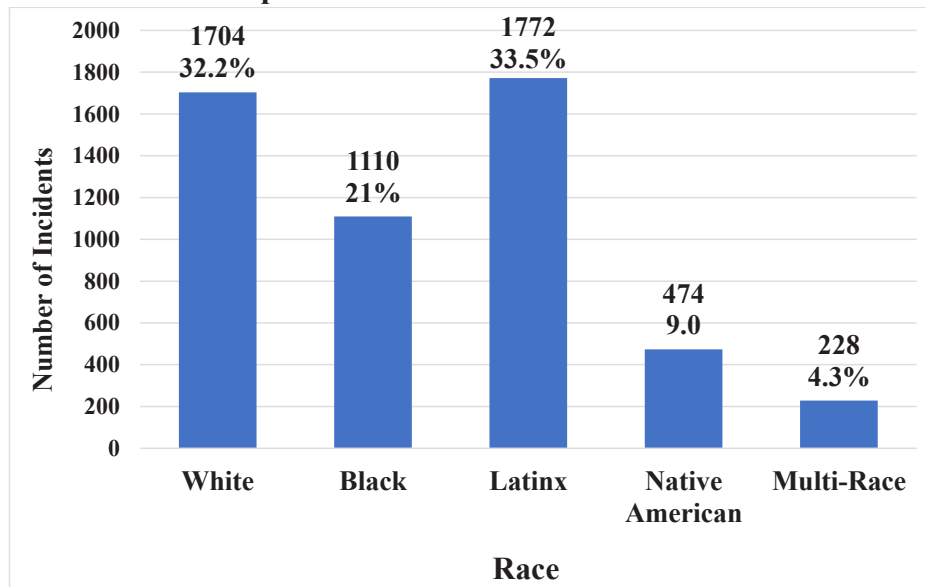
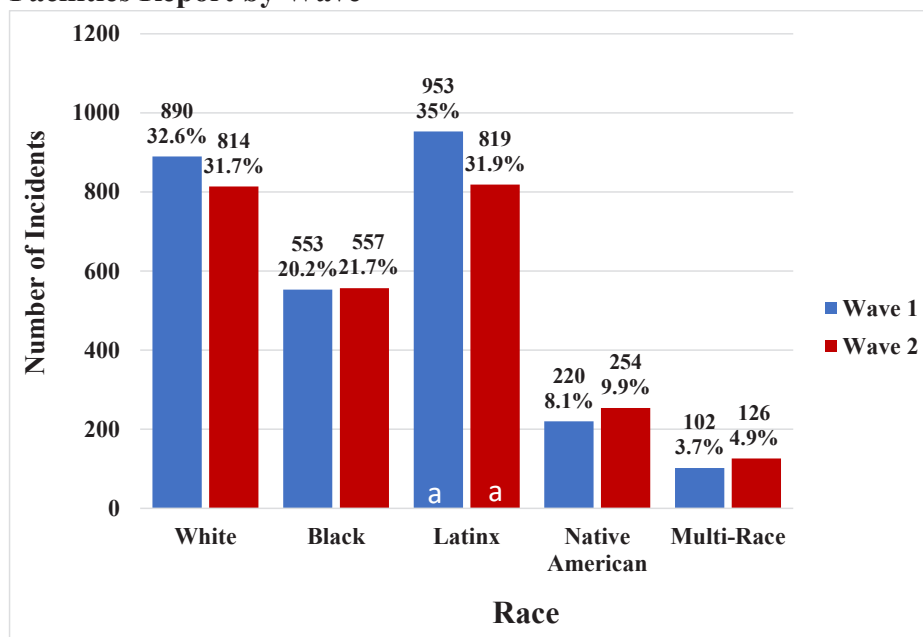


Figure 6: Race and Ethnicity of the Youth in Confinement in the Facilities Report by Wave



$\chi^2(4, 5288) = 14.371, p = .006$; contingency coefficient = .052, $p = .006$
 Note: bars that share subscripts are significantly different

Table 2. List of Major Variables in the Community Survey Dataset

Variable
Gender
Race/Ethnicity
White
Black
Latinx
Native American
Multi-race
Estimated Reason for Confinement
Estimated Duration (Hours)
Age (Years)
Registered Voter

Figure 7. Participant Age in the Community Survey Dataset

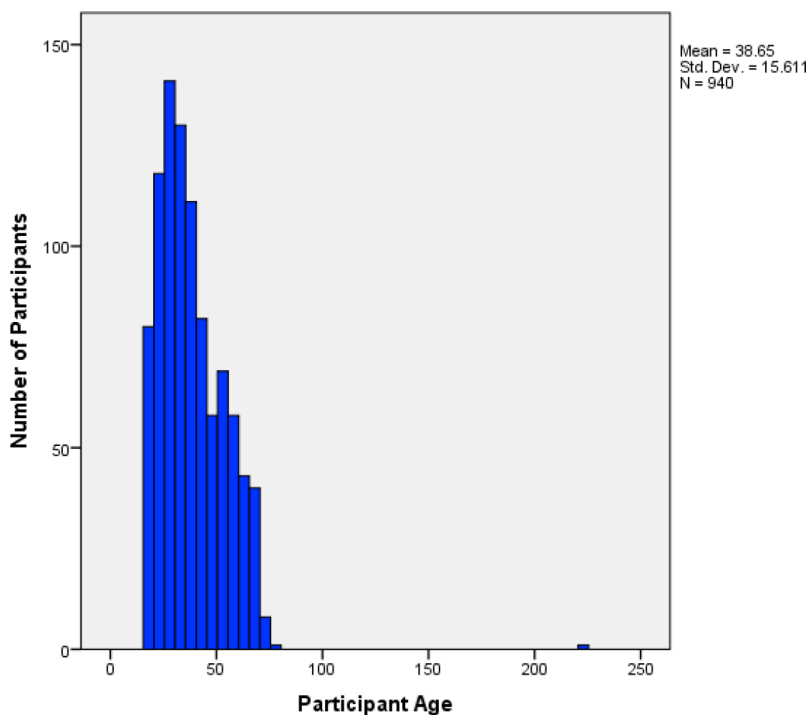


Figure 8. Participant Gender in the Community Survey Dataset

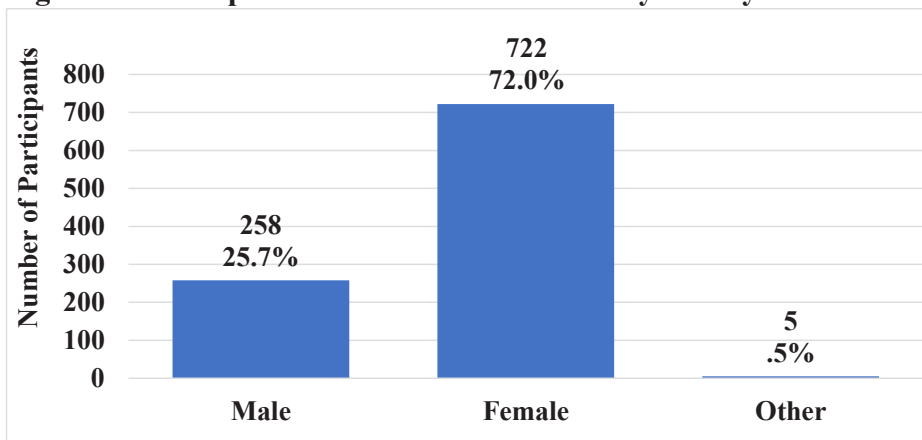


Figure 9. Participant Race/Ethnicity in the Community Survey Dataset

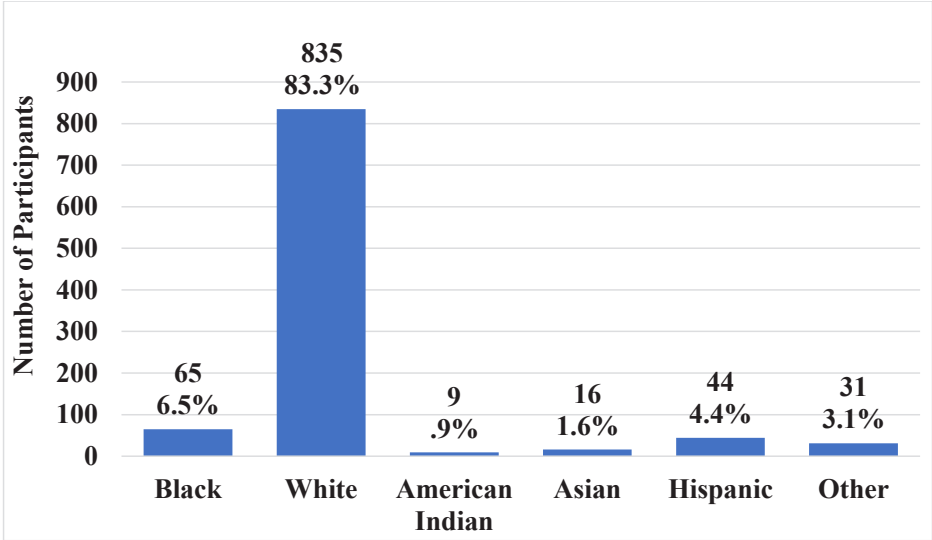
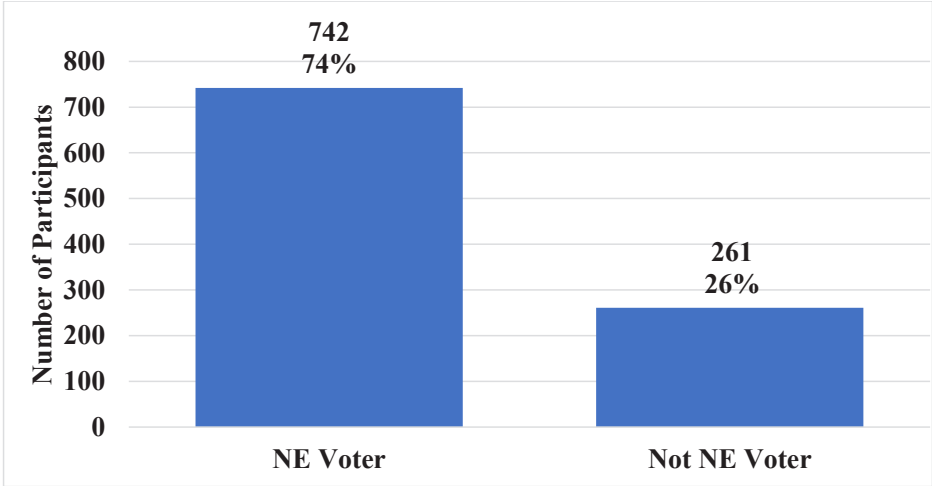


Figure 10. Participant Voter Registration Status in the Community Survey Dataset



Richard L. Wiener, Ph.D.
University of Nebraska/Lincoln
January 24, 2018

BIOSKETCH

Dr. Richard L. Wiener received his Ph.D. in Psychology from the University of Houston. He studied law at the University of Nebraska/Lincoln (UNL) College of Law where he earned a Master's Degree in Legal Studies. He is currently the Charles Bessey Professor of Psychology and Law at UNL where he served as the director of the Law and Psychology Program from 2002 until 2015. Dr. Wiener is the past editor of *Law and Human Behavior*, the official journal of the American Psychology/Law Society (Division 41 of the American Psychological Association) and is currently the Secretary/ Treasurer of the Society for Psychological Study of Social Issues (SPSSI). He serves as a research consultant for Nebraska Administrative Office of Probation and the Nebraska Crime Commission. Wiener studies the application of social and cognitive psychology to problems of legal decision-making. He currently conducts and supervises research in the areas of program evaluation, policy and social science, discrimination, and legal decision-making. He is the recipient of funding from the National Science Foundation, the National Institute of Justice and the Substance Abuse and Mental Health Services Administration. Dr. Wiener has published numerous research articles, edited volumes, book chapters and law review articles. Professor Wiener teaches courses at the graduate level and in the Law College at UNL.

REPORT OF FINDINGS

Minority versus Majority Incidents. The data that the UNL team collated and which Ms. Wertheimer entered into a statistical database produced several important analyses and findings that I will now summarize. The first analysis was a comparison of the percent of White European (non-Latinx), African American and Latinx youth in 2016, as estimated from the 2010 national census (these were the U.S. Census estimates) to the racial/ethnic breakdown of the youth in solitary confinement between the years 2016 to 2017. The results are depicted in Figure 1 below. As you can see while approximately 80% of the youth in Nebraska are White, only 33% of those in solitary confinement were White. However, while only 5% of Nebraska youth are Black and 12% are Latinx, the percent of solitary confinement incidents were about 33% white, 20% Black, and 35% Latinx. This means that Black and Latinx youth were seriously over represented in solitary confinement signaling a possible problem of disparate impact for Nebraska's minority youth. Furthermore, we calculated a chi square statistic (see Table 1) which shows that the difference between the percentage of youth in the population that were minority youth and those who were in confinement is statistically significant.

Duration of Solitary Confinement. The second analysis examined the duration of time spent in solitary confinement for each incident recorded. Table 2 shows the mean number of hours per incident was approximately 1 day and 18 hours (almost two days) but ranged as high as 27 days. The standard deviation for this statistic is large suggesting that the length of stay in

solitary confinement for the youth is highly variable from incident to incident. That shows an inconsistent use of confinement throughout the Juvenile Justice system in Nebraska. Figure 3 is a frequency distribution with number of hours on the x-axis and frequency of events on the Y-axis, showing that the number of hours spent in confinement for these youth are different across the state. It is important to note that there are standard procedures for calming out of control children that do not require them to spend anytime let alone several hours in confinement and certainly not multiple days.

Minority versus Majority Confinement Durations. The next analysis examined the number of hours of each incident of solitary confinement broken down by the race and ethnicity of the youths in confinement. Figure 4 shows a wide variation in time spent in confinement for an average incident, ranging from a high of about 48 hours for Latinx youth to a low of 19 hours for multi-racial youth. The White youth spent an average of 40 hours in confinement for the typical incident. African American youth spent longer time in confinement than did White youth but not as long as Latinx youth. These results are troubling because there is no obvious reason why duration of confinement should vary significantly by the racial or ethnic origin of the youth.

Reasons for Confinement. Staff in the facilities must provide reasons for placing the youth in solitary confinement and Figure 5 lists the twelve most common reasons that the staff offered. The reasons listed in Figure 5 represent three categories: 1) youth physically out of control and potentially dangerous to others in the facility (32.2% - in red), 2) youth who violated a behavioral rule or some other administrative instruction (37.6% - in blue), and 3) youth who were in solitary confinement for another reason (30.2% in black). The most justifiable reason to place a child in confinement for a very short stay (i.e., less than an hour) is the first category, that is, the youth was physically out of control. According to the reasons that the staff provided only 31.2 percent, not quite a third of the incidents, was attributable to a physically out of control youth.

Solitary Confinement in Each Institution. The data showed that the average number of hours that each youth spent in solitary confinement varied greatly across the reporting institutions. For example, the youth in confinement at the Nebraska Correctional Youth Facility spent on average of 232 hours, or about 9 and half days, during the typical incident. The next highest time in detention was about 46 hours or almost 2 days at the YRTC in Kearny, followed closely by the 39 hours in the Douglas County Youth Center Restrictive Housing Unit. It is important to note that not all youth spent multiple hours in confinement, and in fact, at the Northeast Nebraska Juvenile Services in Madison County, the typical solitary confinement incident lasts less than 2 hours.

Conclusion. These data point out the need to regulate and control the frequency and duration of solitary confinement for youth in the Nebraska Juvenile Justice System. The data show that current practices over represent and disadvantage Black and Latinx youth both in terms of how often they wind up in solitary confinement and how long they stay in confinement. There are wide variations in the use of confinement across Nebraska's institutions with some youth spending as long as 27 days in solitary confinement. Perhaps most importantly, only a minority of staff put children in solitary confinement because they were physically out of control

(32.2%) and the remainder had other reasons for doing so, some of which are consistent with using solitary confinement as punishment. The data that we collected and analyzed support restricting the use of solitary confinement for youth in Nebraska to no more than one hour and only when no other reasonable less restrictive means is possible.

ANALYSIS I: DISPARATE TREATMENT IN CONFINEMENT INCIDENTS

Figure 1: Evidence of Disparate Impact (Percent in Sample vs Nebraska Population)

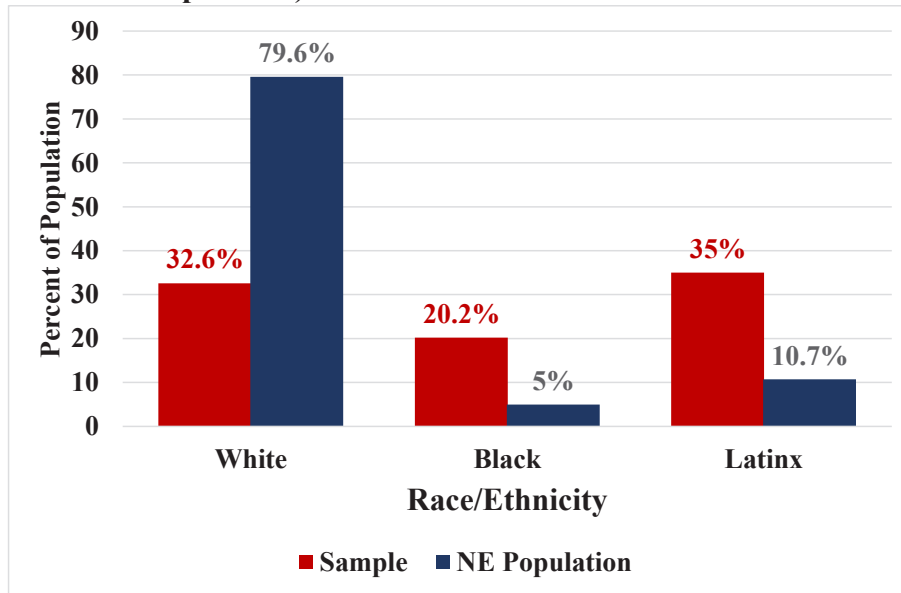


Table 1: Cross Tabulation of Population Race/Ethnicity by Sample Race for Chi-Square Test of Statistical Significance

	Race			
	White	Black	Latino	
Sample	889 (32.6%)	550 (20.2%)	953 (35%)	2392 (87.8%)
Nebraska Population	1513350 (79.6%)	95059.7 (5%)	203427.8 (10.70%)	1811838 (95.3%)
	1514239	95609.7	204380.8	1814229

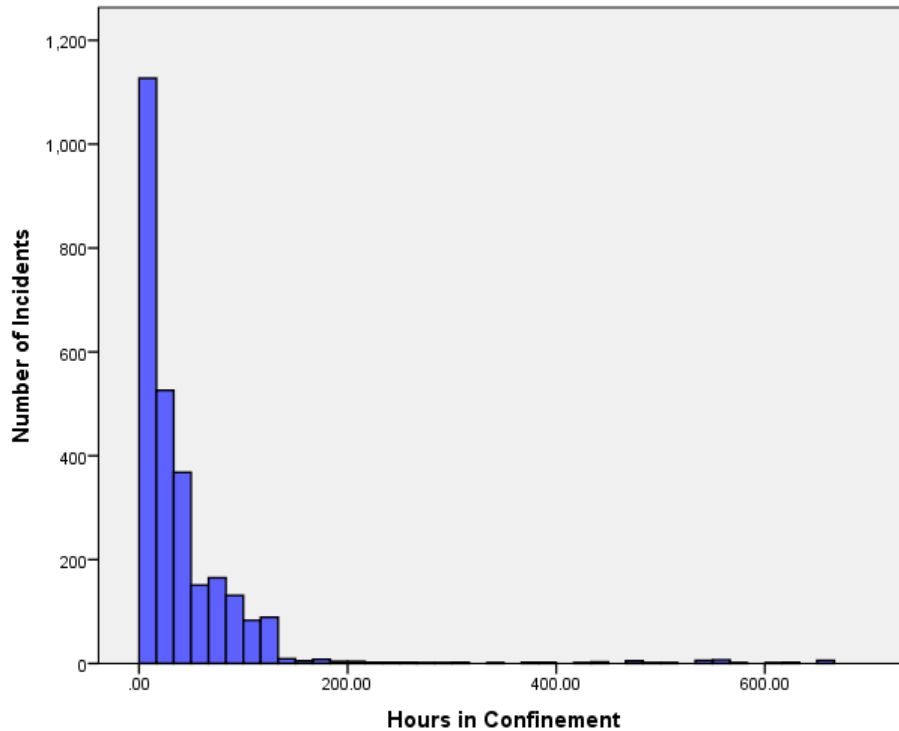
$$\chi^2_{(2)} = 3778.891, p < .0001 \text{ (test of independence)}$$

ANALYSIS II: DURATION OF TIME SPENT IN SOLITARY CONFINEMENT (HOURS)

Table 2: Hours in Confinement

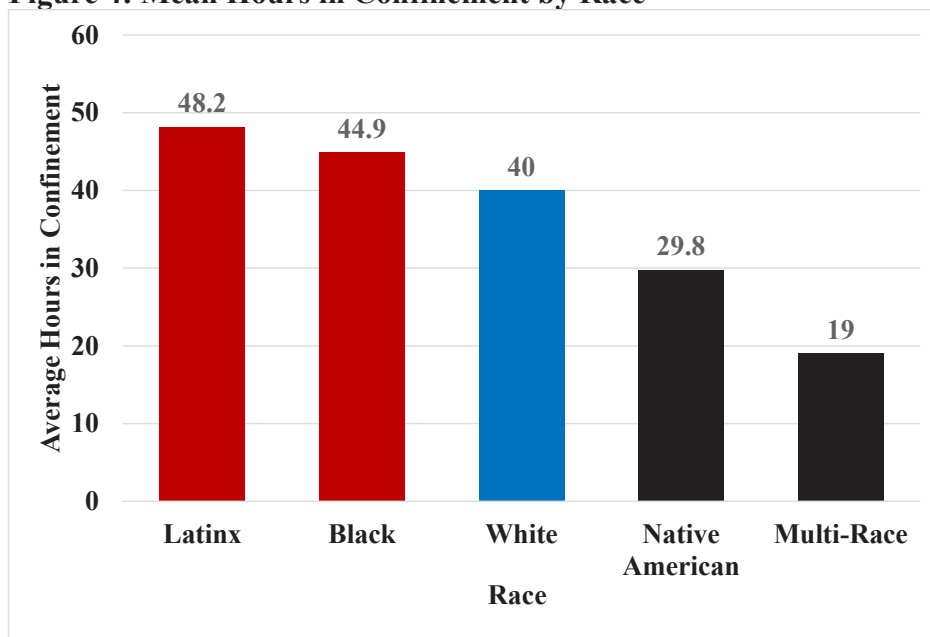
Mean	42.2 (1 day, 18 hours)
Median	21.5 (Almost 1 day)
Standard Deviation	70.79
Minimum	.25 (15 minutes)
Maximum	651 (27 days)

Figure 2: Frequency Distribution of Hours in Confinement



ANALYSIS III: DURATION OF TIME SPENT IN SOLITARY CONFINEMENT BROKEN DOWN BY RACE/ETHNICITY (HOURS)

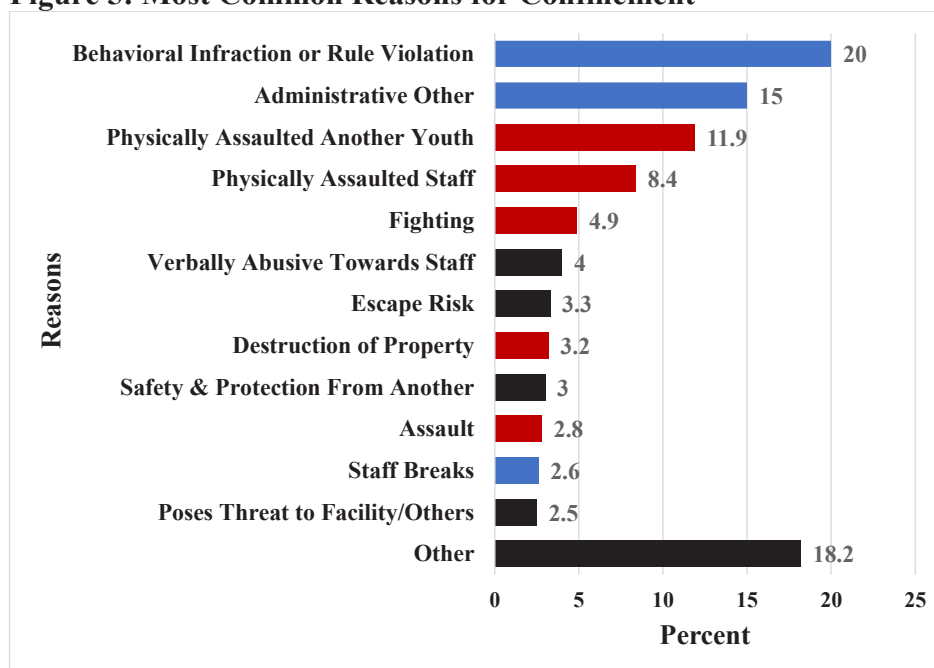
Figure 4: Mean Hours in Confinement by Race



$F(4, 2704) = 6.588, p < .001$

ANALYSIS IV: TWELVE MOST COMMON REASONS FOR SOLITARY CONFINEMENT

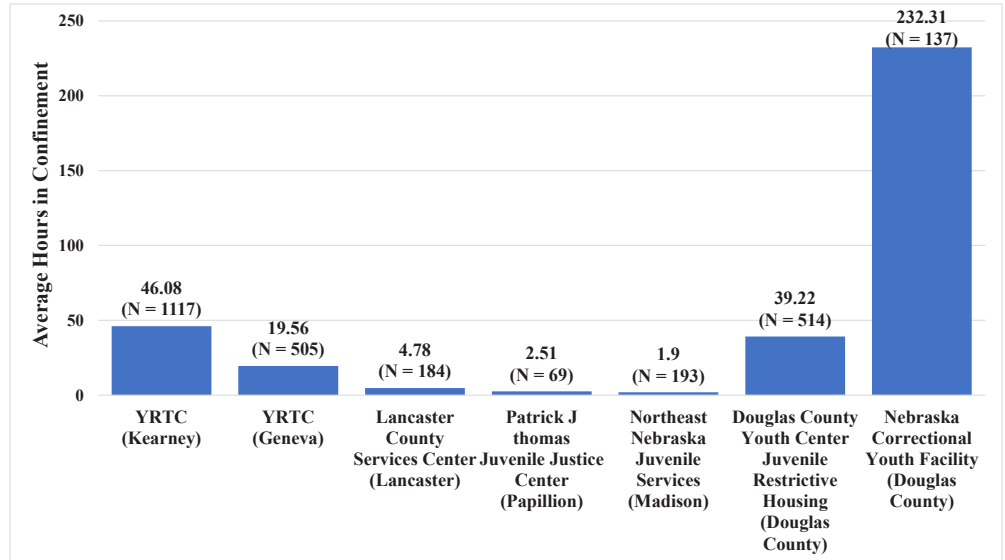
Figure 5: Most Common Reasons for Confinement



The total percent of youth in solitary confinement because they were physically out of control (in red) in Figure 5 was equal to **31.2%**. The others were in solitary confinement because of another reason including **37.6%** who violated a behavioral rule or some other administrative rule.

ANALYSIS V: DURATION OF CONFINEMENT BASED UPON FACILITY

Figure 6: Mean Number of Hours of Duration Based on Facility



F(6, 2712) = 346.506, p < .001

Julie Wertheimer

University of Nebraska—Lincoln

January 24, 2018

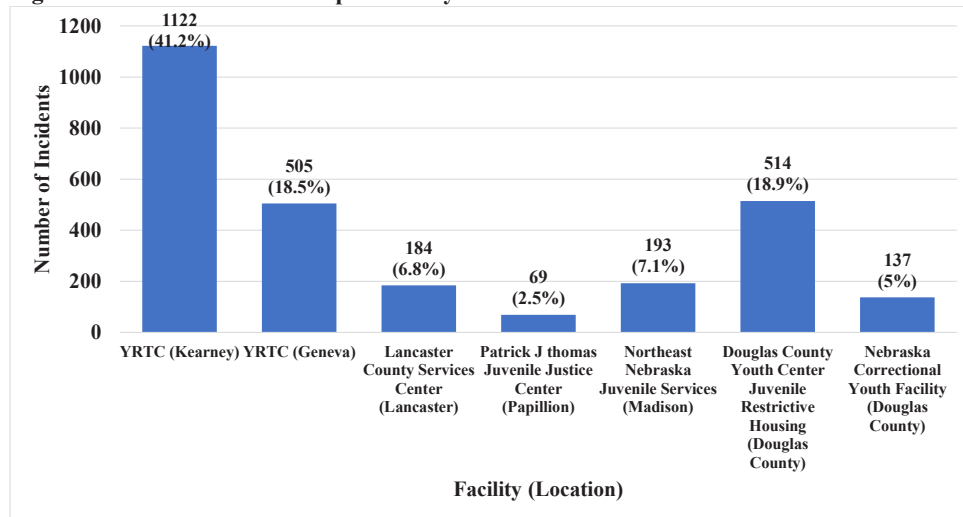
BIOSKETCH

Julie Wertheimer is currently a second-year graduate student at the University of Nebraska—Lincoln, where she is pursuing both a J.D. and PhD in Social Psychology. Julie is currently ranked 3rd in her class at the University of Nebraska College of Law, and she is a member of Nebraska Law Review. Julie works in the Legal Decision-Making Research Lab at UNL under the direction of Dr. Richard Wiener. She recently helped author a report for the Nebraska Department of Probation entitled “Predictive Validity of the YLS/CMI as Administered in Nebraska Probation.” Her current research examines stigma against ex-offenders, particularly women and parents. Julie graduated Phi Beta Kappa and *summa cum laude* from Knox College, where she received a B.A. in Psychology.

DEMOGRAPHIC STATISTICS FOR THE FACILITIES AND YOUTH IN THE STUDY

Note: The data point in the analysis is incident, rather than individual youth, because it was impossible to determine whether each incident involved a different juvenile or whether some juveniles were confined multiple times. This means the data only reflects each individual instance that a juvenile was placed in solitary confinement. It does not reflect the fact that some juveniles may have been placed in solitary confinement more than once.

Figure 1: Number of Incidents per Facility



Reporting Facilities. 2,724 incidents of juvenile solitary confinement were reported in Nebraska between July 2016 and September 2017. 8 facilities did not report any incidents of solitary confinement in that time. 3 facilities reported 4 or fewer instances of solitary confinement, and were not included in the analysis. The data came from the reports from 7 facilities who reported regular use of juvenile solitary confinement. The staff at the institutions entered all the data in the reports that we received from the ACLU. The facilities and the number of incidents reported from each are shown in Figure 1.

Preparing Data for Analysis. The ACLU sent Dr. Wiener and I the reports from the facilities that reported the use of juvenile solitary confinement. The purpose of our analysis was to calculate how many incidents of solitary confinement there were, who was confined, and how long they were confined. Before we could analyze the data, we coded common variables in the submitted reports. The major variables in the data set are listed in Table 1. I then constructed an SPSS file containing those common variables. SPSS is statistical analysis software.

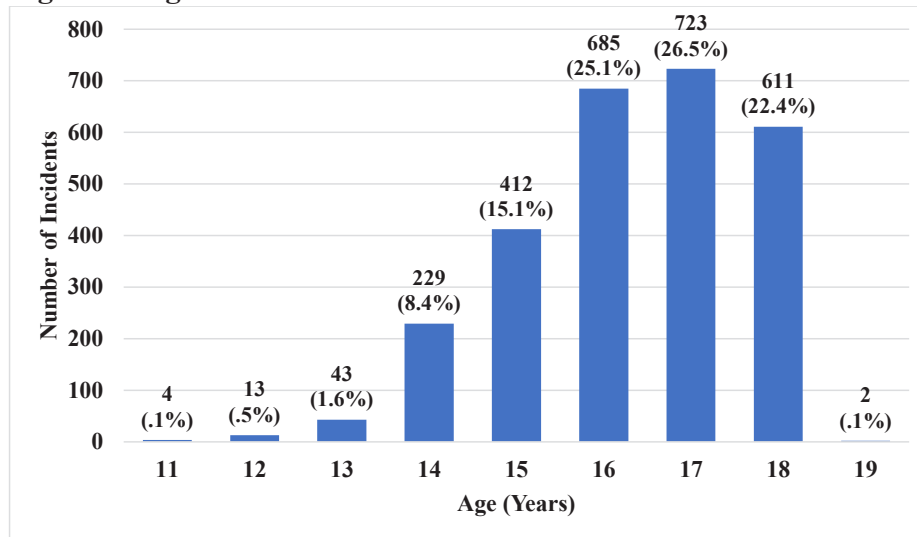
Table 1. List of Major Variables in the Dataset

Variable
Gender
Race/Ethnicity
White
Black
Latinx
Native American
Multi-race
Reason for Confinement
Duration (Hours)
Age (Years)

Steps Taken to Ensure Accuracy. To minimize errors, I gave each incident a unique ID number so I could easily match each line of data from the report to the correct line in the SPSS file. Where possible, I copied and pasted lines from the data files into the SPSS file so as to reduce transcription errors. After the data had been entered, we checked for possible errors by calculating descriptive statistics (e.g., means, medians, and maximum and minimum values) for all the variables and examined them for unusual values. Any observation that appeared unusual (e.g., any duration greater than 224 hours) was double-checked. This process uncovered only a few minor errors, which were corrected against the original data files.

Demographic Analyses. The age, gender, and race/ethnicity of youth in confinement are reported in Figures 2, 3, and 4, respectively. At the time of confinement, the juveniles were aged 11 to 19, with the average age of a juvenile in solitary being about 16yrs old. The majority of confined youth were male, though nearly 28% were female. Confined youth were mostly Latinx, White, and Black.

Figure 2: Ages of the Youth at the Time of Confinement



Mean: 16.32 (16 yrs. and 4 months)
Standard Deviation: 1.35
Median: 16 years
Mode: 17 years

Figure 3: Gender of the Youth in Confinement

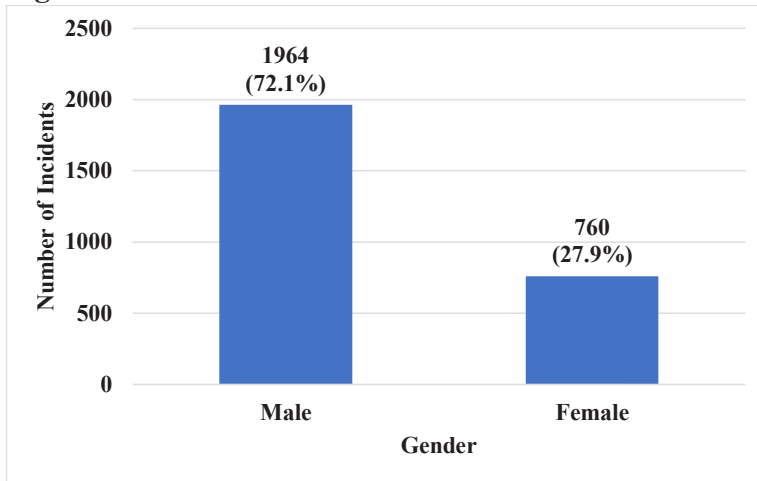
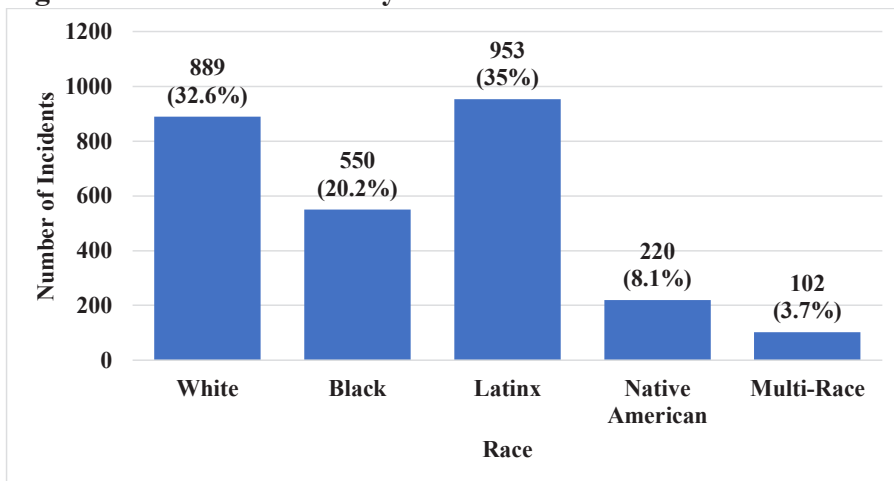


Figure 4: Race and Ethnicity of the Youth in Confinement

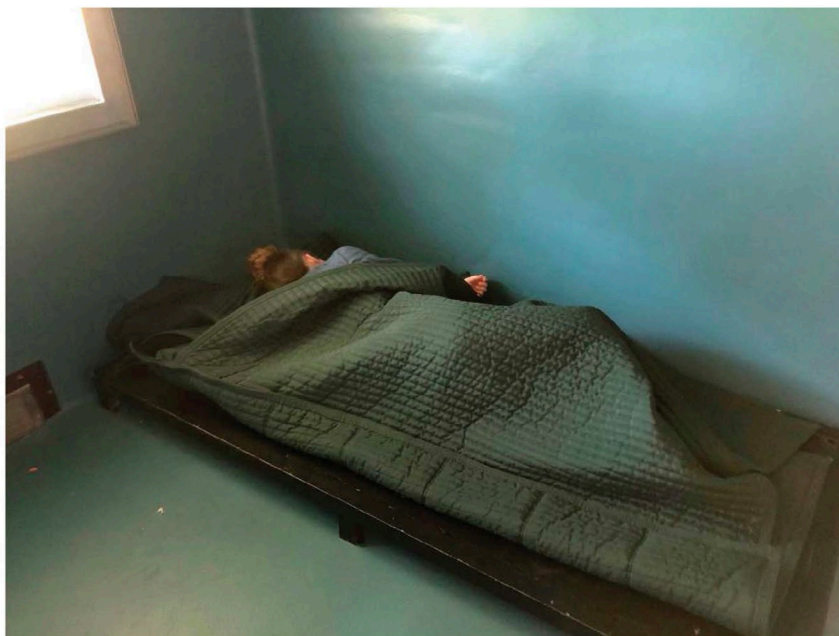


Appendix E: Media Coverage

News coverage of LB 230 signed into law.

Juvenile solitary confinement bill signed into law

JoAnne Young
Feb 13, 2020



Senators who visited the Geneva Youth Rehabilitation and Treatment Center in August saw this youth who was confined to their room.

Patty Pansing Brooks, Courtesy photo

JoAnne Young

Gov. Pete Ricketts signed a bill into law this week that would restrict the use of solitary confinement in juvenile detention centers and treatment facilities.

Sen. Patty Pansing Brooks' bill (LB230) requires that other options be tried before resorting to confinement. The youth must present a serious threat to themselves or others to justify the use of confinement.

The ACLU of Nebraska said it has waged a four-year campaign, beginning in 2016, to end juvenile solitary confinement in Nebraska. It published a report "Growing Up Locked Down," and highlighted stories of people who have experienced juvenile solitary confinement.

"This is nothing short of a historic moment," said Scout Richters, ACLU of Nebraska legal and policy counsel. "We know young Nebraskans in the juvenile justice system need education, treatment and rehabilitation — not weeks and months alone in confinement. This bill stops a practice that not only undermines rehabilitation but also negatively impacts children in a way that they will carry with them for life."

More than 600 Nebraska youth were put in room confinement over the past year with one child confined for nearly four months, she said. Though people of color represent about four out of 20 Nebraskans, the latest available data indicates 14 in 20 incidents of juvenile room confinement involve a youth of color.

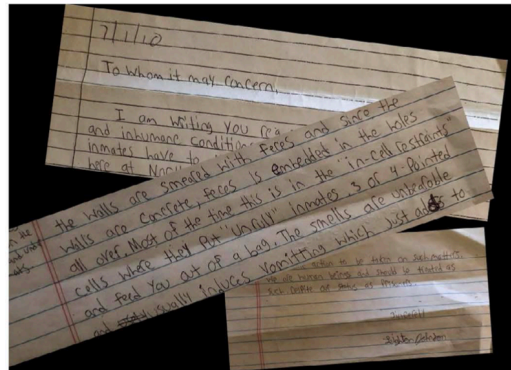
Senators want to keep the staffs at these facilities safe, Pansing Brooks said during debate on the bill, but the facilities also need to be required to use the best practices to keep both staff and girls and boys there safe, she said.

"It hasn't helped the staff to traumatize the youth more than they already are traumatized," she said.

The Growing Fight Against Solitary Confinement

Public outrage over the practice has spurred many states to curb its use.

by Michelle Chen
January 13, 2020



Leighton Johnson's 2010 letter from a Connecticut prison documented systematic human rights abuses in the prison.

In July 2010, Leighton Johnson wrote a letter to advocacy groups, calling attention to the horrors he had witnessed in solitary confinement in a supermax prison in Connecticut.

“There are so many things that are going on in this building that are unjust, inhumane and basic violations of our rights. But we have no voice,” Johnson wrote. “I’m hoping this will open some eyes and cause some action to be taken We are human beings and should be treated as such, despite our status as prisoners.”

Johnson, who recently recited the letter in a phone interview from New Haven, is no longer imprisoned. But his plea—asking to be

treated as a human being—still resonates in a growing debate about reforming a practice widely regarded around the world as torture.

The power of solitary confinement lies in its ability to exert extraordinary violence without a single touch—in fact, that’s the point. Denied meaningful human interaction and fresh air in a barren cell typically just large enough to turn around in, for nearly twenty-four hours a day, for weeks, months, and even years, people experience agony through isolation.

Johnson, who spent several years of his decade-long sentence in solitary, said prison staff provoked people to stir up conflict and make them miserable and angry as possible, and ignored requests for medical or mental health treatment or legal documents. He described the putrid air, “filthy” medical clinic, and shower smeared with urine, feces, and semen.

Johnson, reflecting on the several years he spent cycling in and out of solitary, frames his appeal around universal rights, regardless of a person’s sentence.

But in the years since Johnson wrote his letter, growing public outrage over the practice [spurred many states](#), including New Jersey, Washington, and even solid red states like Texas, Nebraska, and Arkansas, to [pass reforms](#) to curb the use of solitary confinement, often focused on restricting the use of solitary for “vulnerable” groups—usually more sympathetic populations, such as juveniles.

Still, the practice remains entrenched in the nation’s carceral

infrastructure. While there are no firm statistics on the use of solitary nationwide, one [study](#) estimated that, in 2012, there were 89,199 people being held in solitary, about 69,000 in state and federal prisons and rest in local jails.

“We think of solitary confinement as the handmaiden of over-incarceration,” says Amy Fettig, director of the American Civil Liberties Union’s National Prison Project. While the practice represents the most extreme form of imprisonment, she adds, “It is a symptom of an entire set of institutions that are deeply, deeply broken.”

Inmates subjected to solitary, most of whom will eventually be released, suffer extraordinary death and suicide rates and chronic physical and mental health problems after leaving prison, and often end up concentrated in communities starved of social services.

A [recent study](#) by researchers at the University of North Carolina at Chapel Hill found that in the two weeks following release from the North Carolina state prison system, people who have spent any time in solitary confinement or “restrictive housing” were significantly more likely than the general prison population to die by opioid overdose. In the year after release, homicide or suicide mortality rates overall were higher in the solitary confinement population. There was also a high rate of recidivism— returning people to the environment that traumatized them in the first place.

Then there are those who never get out, who take their lives while in solitary.

“I’ve been in situations where people have actually killed themselves

right next door to me,” says Johnson, recalling a man who managed to hang himself while officers were not looking. Now thirty-five, he is working with [Stop Solitary: Connecticut](#). In mid-December, the group [called](#) on the state to end its use of solitary confinement.

Johnson, reflecting on the several years he spent cycling in and out of solitary, frames his appeal around universal rights, regardless of a person’s sentence: “I committed a crime, and I deserved prison time. But that doesn’t mean that while I’m doing my prison time that I should be treated as less than a human in inhumane conditions.”

Historically, the widespread use of solitary [coincides](#) with the expansion of torture tactics in the prison system in the 1970s and 1980s. Today, solitary typically takes the form of “administrative segregation”—separation from the general population due to a perceived risk of violence, escape or some other safety concern. However, it is often used as a disciplinary response to an infraction, which might simply involve disobeying an officer’s orders.

According to the Vera Institute’s [analysis](#) of solitary confinement in several states, most of the inmates in solitary were there for disciplinary segregation. People of color and those with mental illnesses were disproportionately represented.

Cesar Villa was sentenced to solitary confinement at the notorious Pelican Bay prison in California based on a charge that he was affiliated with a gang. In 2013, his twelfth year in the prison’s Security Housing Unit, he [reflected](#) on what the experience had done to him: “My psyche had changed—I would never be the same. The ability to hold a single good thought left me, as easily as if it was a simple shift of wind sifting over tired, battered bones.”

Inmates subjected to solitary, most of whom will eventually be released, suffer extraordinary death and suicide rates and chronic physical and mental health problems after leaving prison.

“Other than the death penalty, long-term solitary confinement is the worst thing that can legally be done to a person in this country,” says Jean Casella, co-founder of the advocacy group [Solitary Watch](#), in an interview with *The Progressive*. Such prolonged, frequent, punitive detainments in solitary contravene the so-called “[Mandela Rules](#)”—internationally recognized human rights standards that require the minimal use of the practice, and never against people with serious mental illness, nor as a form of “collective punishment.”

Solitary Watch [reported](#) that in 2011 “nearly all of the 1,100 men in the [segregation unit] at Pelican Bay State Prison had been in solitary for five years or more,” some for as many as twenty years. The dire conditions prompted a [major lawsuit](#) led by the Center for Constitutional Rights, along with widespread [hunger strikes and protests](#) in 2013, which eventually [paved the way](#) for significant restrictions on the use of solitary. A settlement with the state that effectively [prompted many releases](#) from solitary, as well as an agreement to overhaul restrictive housing policies.

Fettig says [confronting the harms](#) of solitary means facing some of the most brutal aspects of prison culture and “really reimagining the way we do corrections and the way we do law enforcement in this country.” Enhancing mental-health treatment programs, providing a socially supportive setting for all incarcerated individuals, and [strengthening](#)

programs for people preparing for reentry into the community, would help tamp down the stressors that current cause violent or disruptive behavior.

And, in the long run, advocates want to reduce overall incarceration by fundamentally changing the legal and law enforcement systems to focus less on punishment and more on therapeutic, rehabilitative intervention, and stable housing and jobs.

In the meantime, the use of solitary is being gradually reduced, state by state.

New Jersey recently passed a law that restricts the use of “isolated confinement” to no more than twenty days, and only for people between the ages of twenty-one and sixty-five. It also bans its use for inmates who are pregnant, postpartum, LGBTQ, or deemed to have a serious medical or psychological condition. The law, which applies to both prisons and jails, also directs the prison system to provide recreational and rehabilitative interventions during the short time when people in solitary are allowed out of their cells.

In 2019, Nebraska also passed a similar law to restrict the use of solitary for vulnerable populations, including minors in adult prisons. Now activists are campaigning to end solitary in juvenile detention, where youth of color are heavily overrepresented. “Young Nebraskans in the juvenile justice system need education, treatment, and rehabilitation,” says Scout Richters, legal and policy counsel for ACLU Nebraska, “and we know that isolating children, whose brains are still developing, undermines these goals.”

Cultural change among the prison workforce is a more complex challenge. California and Colorado have [hired](#) more mental-health staff and [trained](#) jail officers to treat inmates more humanely and to deescalate potential conflicts in order to minimize solitary confinement. But there has been [resistance](#) from corrections officer unions, which [insist](#) solitary is a necessary safeguard for staff. Following a ban on solitary for people between the ages of sixteen and twenty-one in local jails, New York City’s Correction Officers’ Benevolent Association [petitioned](#) the city’s Board of Collective Bargaining to allow for the use of solitary, citing a recent 25 percent spike in violence between jail inmates (even though research shows no [link between violence rising and decreased use of solitary](#)).

“Other than the death penalty, long-term solitary confinement is the worst thing that can legally be done to a person in this country.”

Despite some backlash, Bonnie Kerness, director of the [American Friends Service Committee’s Prison Watch](#), which helped lead the campaign for the New Jersey legislation, says public opposition to solitary confinement is rising steadily, with some aiming to rid society of prisons altogether. She [acknowledges the limitations](#) of the legislation—it restricts the use of solitary but does not fully end the practice or substantially improve conditions within restricted housing. But she notes that the more radical activists driving the campaign see “abolishing the use of solitary confinement as a first step to abolishing the use of prisons as we know them.”

The conversation in Congress is now shifting as well. After the passage of a major [sentencing reform bill](#) in 2018 and years of [steady reductions](#) in the national prison population, [two federal bills](#) have

been introduced to overhaul standards for solitary confinement. The more expansive proposal, which would deal with state as well as federal prisons, [declares](#) that “a prisoner may be placed in solitary confinement only under extreme emergency circumstances, as a last resort, for as short a time as possible, subject to independent review.”

But nationwide reform seems unlikely for now, under a Republican administration and a conservative Supreme Court.

Johnson, for his part, still suffers from the trauma of his time in solitary. Part of his recovery is taking part in the movement to defeat the practice.

“I made promises to people when I was inside that I wasn’t going to stop fighting,” he says. He recalls that, after sending his letter, when he realized that advocates on the outside were campaigning to help him, “I said, you know, I’m going to do the same thing once I get home for people who are still in there . . . You know how many people inside don’t know that we out here doing this fight right now?”

Michelle Chen

Michelle Chen is a contributing writer for The Nation, a contributing editor at Dissent magazine and a co-producer of Dissent’s “Belabored” podcast. Find her on Twitter at @meeshelchen

Local View

Local View: End juvenile solitary confinement

DYLAN P. MURPHY

Feb 20, 2019

At 14 years of age, I found myself desperate for help. I needed one person to listen to me. Instead, I looked around at the small, cold, bare room my body was in instead. I was all alone.

White walls stared at me with no windows for a glimpse of light. There was no sink, no toilet. Sometimes, I was granted a thin, bare mattress. These conditions reinforced dissociation of my mind. A camera ominously stared down at me from the ceiling, possessing no warmth or comfort.

There was no human connection or support within the four walls of the locked room in which I had found myself. My healing most certainly did not take place there.

Reasons for my placements in solitary in a local psychiatric facility -- where I spent roughly six months -- began the first night I was admitted, when staff refused to explain the content of form in an age-appropriate manner and so I refused to sign it. I was told to drag a mattress to a hidden, secured room. Staff locked me inside with it.

Another time, standing up for myself against discrimination towards identities I hold landed me in solitary. Often, I found myself locked away for being honest about my deep depression and my urges to hurt myself. The problem with this was that the only time I ever actually hurt myself inside of that facility was when I was in solitary. No one seemed to care despite their argument of that dreaded room being for my safety in the first place.

Lincoln Sen. Patty Pansing Brooks has introduced LB230. The bill would bring an end to juveniles being placed in solitary due to problematic reasons such as punishment, staffing shortages or in retaliation against the young person. Alarming, these punitive justifications are still happening in Nebraska, and LB230 would be a powerful step toward ending them.

The bill would also require certain minimum standards for rooms used for confinement. Youth in confinement would have equal access to meals, family, contact, legal assistance and educational programming.

The bill would also require that youth in confinement have access to appropriate mental health and medical care. Further, it would mandate that youth are held only until the immediate and significant risk is resolved and any confinement for longer than one hour during a 24-hour period must be documented and approved by a supervisor.

In other words, should LB230 be passed into law, the injustice of the lengthy sentence of trauma that was placed upon my own shoulders by solitary confinement would be prevented for current and future Nebraska juveniles in youth facilities.

Now age 33 and a Bachelor of Social Work practicum student, I can examine LB230 from both a personal and professional social work lens and see that it is a huge step toward limiting further harm to current and future Nebraska youth. Current practices are not best practices, and that demands a deeper consideration by Nebraskans of how juveniles in facilities in the state are being treated.

It stands to reason that, if Nebraska desires to have juvenile facilities that want to operate within these best practices, LB230 needs to be passed into law and those facilities then need to comply with the standards it sets forth. The effects of solitary

have been proven to cause damage to youths' still-developing prefrontal cortex, a critical brain region linked to impulse control and organization of behavior, speech and reasoning.

That is what solitary did to me. You can leave solitary, but solitary confinement does not leave you.

If the youth in our juvenile facilities are to be supported rather than disregarded, then facilities should avoid isolating them at all costs.



Dylan P. Murphy

Dylan P. Murphy is a social work intern for ACLU Nebraska who lives in Omaha.

Blog post from survivor of juvenile solitary confinement published on ACLU-NE website in January 2018 in support of LB 870.

ACLU of Nebraska

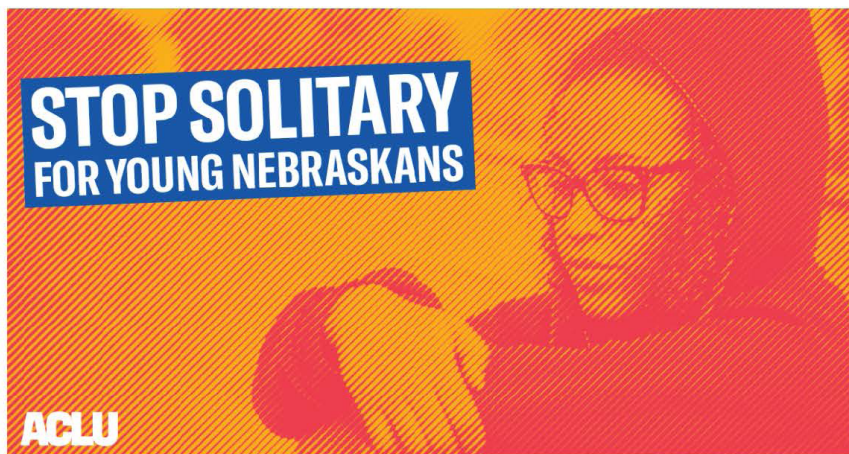
[Menu](#)

[Donate](#)



By [Megan, a young Nebraskan \(/en/biographies/megan-young-nebraskan/\)](/en/biographies/megan-young-nebraskan/)

JANUARY 5, 2018 - 12:45PM



In 2016, the ACLU of Nebraska released [Growing Up Locked Down](https://www.aclunebraska.org/en/publications/growing-locked-down) (<https://www.aclunebraska.org/en/publications/growing-locked-down>), finding that young Nebraskans in state and county facilities were regularly being subjected to solitary confinement for weeks and months at a time. Senator Patty Pansing Brooks has introduced [LB870](https://nebraskalegislature.gov/bills/view_bill.php?DocumentID=33867) (https://nebraskalegislature.gov/bills/view_bill.php?DocumentID=33867) to ensure alternatives to solitary confinement are used in facilities with young Nebraskans. This is the story of a young Nebraskan who spent her 16th birthday in solitary confinement. Her family asked that her full name not be used.

Many 16-year-olds spend their birthdays with their family and friends. I spent my 16th birthday this past March trapped in solitary confinement.

You may be wondering how a teenage girl ended up in solitary confinement in Nebraska. As I spent hours alone and locked up, I was wondering the same thing.

Rewind to just a few weeks earlier and I was living with my mom and dad and 8 brothers and sisters. In my neighborhood, I was a typical high school girl. I loved cooking, singing, and hanging out with my friends. I had no idea what was about to happen to me.

In late February, I had to go to court to review how I was doing on juvenile probation for a drug offense. I tested positive for marijuana and missed my curfew so my probation officer told the judge I should be removed from my home. I had a panic attack. I felt like I couldn't breathe. I saw my parents and I wanted to stand up to hug them, or go to them, or something. The deputies in the courtroom grabbed me and held me down. The prosecutor charged me with attempted escape, but I wasn't trying to escape. I just wanted to be closer to my parents. The judge ordered that I be locked up in county jail for the night. I was just 15. Can you imagine waking up at home expecting a normal day and trying to fall asleep that night in a jail cell with no clothes and no one to talk to? I couldn't until it happened to me.

Because of marijuana and running late, I was away from everything I had ever known while I was locked in a room alone waiting for my trial on the new charges.

I was then sent almost four hours away from my home to a young adult detention center in Madison, NE. Because of marijuana and running late, I was away from everything I had ever known while I was locked in a room alone waiting for my trial on the new charges.

My cell was about the size of a queen-sized bed. The only thing I was allowed to have in my room was a book.

Prior to this experience, I didn't know what solitary confinement meant or why people would be sent there. My cell was about the size

of a queen-sized bed. The only thing I was allowed to have in my room was a book. There was a small bed, a desk and a chair.

There was no counselor to talk to about what I was going through. I was only able to talk to my mom every few days, sometimes for only three minutes. When I first got there, I had to “earn” soap, a toothbrush and toothpaste. They took my pillow away as punishment. I spent countless hours isolated from everything and everyone. I felt myself becoming less “me” every day.

After a couple weeks in Madison, the judge told me I was going to the Youth Rehabilitation and Treatment Center in Geneva. I just could not believe the judge’s decision. I had heard Geneva was a place for girls that did the worst crimes in the state and that lots of fights happened there. How was that a good place for me? I told the judge that I wanted to go home on house arrest. They took me to Geneva from the courtroom that day. I had never been so upset and scared before in my whole life. On the way there, I think the woman guard who was driving me must have felt bad for me because she stopped at a fast food restaurant to buy me something to eat.

While I was at Geneva, I was in a constant state of depression. I had anxiety attacks and when I tried to get help for them, no one cared. While I was there, at least two girls attempted suicide and many others talked about it. I can honestly say that for the first time in my life, I thought about hurting myself too. Just like at Madison, I spent a lot of my time alone, confined to my cell, desperate for anything that reminded me of my old life. At different times while I was locked up in Madison and Geneva, I was not allowed talk with my lawyers and my family. Thankfully my family fought back to get me out and to help me share my story.

I chose to come forward with my story to help other people. I want people to know that the kids like me who are locked up and put in solitary confinement aren’t monsters. No one, especially a kid,

deserves to be locked away and forgotten. I still feel the effects of being put in solitary confinement. A lot of kids are there for much longer than I was and, unlike me, have no support from their families. I can only imagine how bad it is for them. All of these young people should have a voice and I hope sharing my story helps more Nebraskans listen to those who are still locked up and can't tell their stories. Juvenile solitary needs to end in Nebraska. We might not be able to stop solitary in other places but we can make a positive change right here at home. Solitary for kids doesn't solve anything. It only hurts kids like me, and our future in Nebraska.

Official calls ACLU report on Nebraska's use of juvenile solitary confinement 'groundbreaking and heartbreaking'

By Martha Stoddard / World-Herald Bureau
Jan 4, 2016

LINCOLN — Nebraska prisons and detention facilities keep youngsters locked up alone for some of the longest periods in the nation, according to a report released Monday.

The ACLU of Nebraska report, “**Growing Up Locked Down**,” found that juveniles are kept in isolation for up to 90 days in some facilities, while other facilities don’t even know how often or how long juveniles are deprived of contact with other people.

Danielle Conrad, executive director of the ACLU chapter, called the report “groundbreaking and heartbreaking.”

She said mental health experts have found that depriving young people of contact with others for more than four hours at a time can have devastating long-term impacts on their health and well-being.

Effects include increased suicide rates, psychological damage and stunted development.

“Nebraska’s policies and use of solitary confinement for juveniles truly shock the conscience,” Conrad said.

The report called for legislation banning, or at least limiting, the use of solitary confinement for juveniles. The report also called for mandatory mental health assessments of youth put in isolation and for training staff in alternatives to solitary.

In response, state officials said they are working to address the use of solitary confinement for juveniles.

The Nebraska Department of Correctional Services is working with several groups, including the ACLU, to develop policies and procedures for the use of solitary confinement for all ages of inmates, according to spokeswoman Dawn-Renee Smith.

The effort is part of the broader prison reforms undertaken in recent years.

“NDCS uses restrictive housing as necessary for youthful offenders adjudicated as adults and sentenced to its custody,” she said.

Smith said the restrictive housing unit for juveniles does allow them to see other youth and to look out windows from their cells. They also can interact with staff, and they have a means to appeal their placement.

Tony Green, deputy director of juvenile services within the Nebraska Department of Health and Human Services, said that agency has been working for several years to reduce the use of isolation in its two youth treatment and rehabilitation centers.

Average time in isolation has dropped about 50 percent since 2012, he said. In addition, the Council of Juvenile Correctional Administrators chose Nebraska as one of eight states to get technical assistance in reducing the use of isolation.

“Currently, we limit solitary confinement as a last resort and, as evidenced by our average stays, aim to keep isolation stays to less than four hours,” Green said.

The ACLU researchers looked at solitary confinement of youth in five county juvenile detention facilities, two state prisons and two youth rehabilitation and treatment centers.

The researchers looked at policies and at actual use of solitary at those facilities.

None of the facilities comply with what are considered best practices, said Amy Miller, ACLU legal director. Those practices call for limiting isolation to four hours at a time and only as an immediate safety mechanism.

In Nebraska, the researchers found, youth often are placed alone for several hours or even weeks, with limited contact with family members and limited access to reading and writing materials, educational programs, recreation, drug treatment or mental health services.

The report tells of Jacob Rusher, now an adult, who spent time in solitary at the Douglas County juvenile detention facility. He said he was alone 23 hours a day, without radio or television. He was allowed one book, a blanket, a mat and a toothbrush.

“You’re a kid, you don’t even know how to deal with normal emotions yet—then you’re sitting there by yourself, nowhere to go and every negative thing you’ve been told about yourself seems to be coming true,” Rusher said.

Amy Fettig, senior staff counsel for the national ACLU’s Prison Project, said she knows of no other state with policies allowing juveniles to be kept isolated for as long as they are in Nebraska.

Where other states have held youth in isolation for longer, it was contrary to policy, she said.

Among the findings in the Nebraska report:

- The state corrections department, which holds juveniles in the Nebraska Correctional Youth Facility and Nebraska Correctional Center for Women, allows youth to be held in solitary for up to 90 days. At least one juvenile last year was kept in restrictive housing for the full 90 days.
- The Youth Rehabilitation and Treatment Centers in Kearney and Geneva, run by HHS, allow youth to be put in solitary confinement for up to five days. However, one girl at the Geneva center spent more than six days in isolation in 2014.
- Douglas and Scotts Bluff County juvenile detention centers do not track the use of solitary confinement.

— The Sarpy County juvenile detention center has no written policy about use of solitary confinement.

— The Lancaster County juvenile detention center has put youth in solitary for such reasons as “too many books in room,” “note passing” and “talking in hallway.”

Fettig, who works with a national campaign to stop the use of solitary confinement in prisons, said there has been rapid change in the use of isolation for juveniles in other states.

New York and Ohio have eliminated it entirely, while others such as Oklahoma and Alaska have passed laws limiting its use.

Contact the writer: 402-473-9583, martha.stoddard@owh.com

ENDNOTES

- 1 Sara Johnson et al., *Adolescent Maturity and the Brain: The Promise and Pitfalls of Neuroscience Research in Adolescent Health Policy*, 45(3) J. OF ADOLESCENT HEALTH 216 – 221 (2009).
- 2 Craig Haney, *Mental Health Issues in Long-Term Solitary and "Supermax" Confinement*, 49 CRIME & DELINQ. 124, 130, 134 (2003).
- 3 See *Department of Correctional Services Special Legislative Committee (LR 424-2014) Report to the Legislature*, December 15, 2014, https://nebraskalegislature.gov/pdf/reports/committee/select_special/lr424_2014/lr424_report.pdf; See also *Justice Reinvestment in Nebraska*, COUNCIL OF STATE GOVERNMENTS JUSTICE CENTER (2014), <https://csgjusticecenter.org/projects/justice-reinvestment/past-states/nebraska/>.
- 4 Martha Stoddard, *Rules on kids in solitary need rewrite, report says*, OMAHA WORLD-HERALD (Jan. 5, 2016), https://omaha.com/eedition/sunrise/articles/rulesonkids-in-solitary-need-rewrite-report-says/article_0cdb9157-237e-51d8-a38a-d9b7c388734f.html.
- 5 Martha Stoddard, *Little progress seen in curbing solitary confinement of Nebraska youths in juvenile facilities*, (Nov. 23, 2019), https://omaha.com/state-and-regional/little-progress-seen-in-curbing-solitary-confinement-of-nebraska-youths-in-juvenile-facilities/article_d81378af-7cdf-56bb-81a4-87197bd78d38.html.
- 6 Amy Lillethorup, *Statement on Ongoing Crisis Situation at YRTC-Geneva*, VOICES FOR CHILDREN, (Aug. 20, 2019), <https://voicesforchildren.com/statement-on-ongoing-crisis-situation-at-yrtc-geneva/>.

ACLU

Nebraska

134 S. 13th Street #1010 | Lincoln, NE 68508
aclunebraska.org

This work would not have been possible without the support of the **National Religious Campaign Against Torture**, the **Unlock the Box Campaign**, and the **Cooper Foundation**.