



# STOP SOLITARY

Ending the Solitary Confinement of Youth  
in Juvenile Detention and Correctional Facilities

## Youth Solitary Confinement: International Law and Practice

### INTERNATIONAL LAW PROHIBITS THE SOLITARY CONFINEMENT OF ANYONE UNDER 18

International law prohibits anyone below 18 years of age from being subjected to solitary confinement, and condemns the practice as a form of cruel, inhuman or degrading treatment or punishment. These international laws and standards—encompassed in treaties and other international instruments—are persuasive sources of authority in formulating policy and legislation, and in interpreting how the Constitution protects children in the context of crime and punishment.

The **United Nations (U.N.) Convention on the Rights of the Child (CRC)** establishes that “children,” defined as any person below the age of 18, should be afforded heightened measures of protection by the State, in particular when they come into conflict with the law.<sup>1</sup> Article 37 of the CRC requires that children be protected from torture and other forms of cruel, inhuman or degrading punishment and treated with humanity and respect at all times, even when incarcerated.<sup>2</sup> The Committee on the Rights of the Child, the body tasked with monitoring, enforcing and interpreting the CRC, has stated that the use of solitary confinement violates Article 37 of the CRC.<sup>3</sup>

Likewise, the **U.N. Guidelines for the Prevention of Juvenile Delinquency** (Riyadh Guidelines) recognize punitive solitary confinement of children as a form of cruel, inhuman, or degrading treatment.<sup>4</sup> The **U.N. Rules for the Protection of Juveniles Deprived of their Liberty** (Beijing Rules) also explicitly prohibit solitary confinement of children.<sup>5</sup>

Based on the harmful physical and psychological effects of solitary confinement and the particular vulnerability of children to those effects, the **U.N. Special Rapporteur on Torture** has twice called for the abolition of solitary confinement of persons under age 18. In his 2008 report to the U.N. General Assembly, the Special Rapporteur endorsed the recommendations made in the **Istanbul Statement on the Use and Effects of Solitary Confinement** to abolish solitary confinement of persons below 18 years of age.<sup>6</sup> More recently, in his 2011 report to the General Assembly, the Special Rapporteur reiterated this recommendation.<sup>7</sup>

### HEIGHTENED LEVELS OF PROTECTION FOR CHILDREN WITH MENTAL DISABILITIES

International law and practice also prohibit the use of solitary confinement on persons with mental disabilities. Because the harmful effects of solitary are particularly acute for people with mental disabilities, the office of the U.N. Special Rapporteur on Torture has recommended an absolute ban on solitary confinement of these individuals.<sup>8</sup> By extension, in light of their age and disability, children with mental disabilities are especially vulnerable to the harmful effects of solitary confinement and should never be subjected to the practice.

### INTERNATIONAL LAW PROVIDES STRONG AUTHORITY FOR INTERPRETING THE U.S. CONSTITUTION

U.S. courts have long recognized international law and practice as a persuasive source of authority for questions arising under the U.S. Constitution. Significantly, the Supreme Court has repeatedly looked to international and comparative law in its analysis of the Eighth Amendment’s prohibition of “cruel and unusual punishment,” and its specific application to children. Whether a punishment is “cruel and unusual” is a determination informed by “evolving standards of decency that mark the progress of a maturing society.”<sup>9</sup>

In *Roper v. Simmons*, the Supreme Court ruled that allowing children to be executed was a disproportionate punishment that violated the Eighth Amendment. In reaching its decision, the Court looked “to the laws of other countries and to international authorities as instructive for its interpretation of the Eighth Amendment’s prohibition of ‘cruel and unusual punishments.’”<sup>10</sup>

Most recently, in *Graham v. Florida*, the Court affirmed the relevance of international law to the proper interpretation of the Eighth Amendment protections applicable to children. In its analysis of the constitutionality of juvenile life without parole laws, the Court examined the practices of other countries in sentencing children, continuing the Court’s “longstanding practice in noting the global consensus against the sentencing practice in question.”<sup>11</sup> The Court concluded that international law, agreements and practices are “relevant to the Eighth Amendment . . . because the judgment of the world’s nations that a particular sentencing practice is inconsistent with basic principles of decency demonstrates that the Court’s rationale has respected reasoning to support it.”<sup>12</sup>

Given this strong authority, international law is relevant to the determination of how the Constitution applies to disproportionate and punitive conditions of confinement for children and whether solitary confinement constitutes “cruel and unusual” punishment.

### CONCLUSION

International law and practice prohibit the solitary confinement of anyone under the age of 18 and condemn it as a form of cruel, inhuman or degrading treatment or punishment. These international standards are relevant to the interpretation of how the Constitution protects children, as well as in formulating policy and legislation, because they confirm that the solitary confinement of persons under the age of 18 is contrary to contemporary standards of decency and therefore may well violate the cruel and unusual punishment clause of the Eighth Amendment.

*As the nation’s largest public interest law organization, with affiliate offices in every state and a legislative office in Washington D.C., the ACLU works daily in courts, legislatures, and communities to promote more effective criminal justice policies. [www.aclu.org/stopsolitary/](http://www.aclu.org/stopsolitary/)*

## Endnotes

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<sup>1</sup> U.N. Convention on the Rights of the Child, *opened for signature* Nov. 20, 1989, 1577 U.N.T.S. 3 (entered into force Sept. 2, 1990) (“CRC”). As the Supreme Court recognized in *Roper*, the CRC is relevant to the interpretation of the protections afforded by the Eighth Amendment even though the United States is one of only two countries that have not ratified the treaty. See *Roper v. Simmons*, 543 U.S. 551, 576 (2005).

<sup>2</sup> *Id.* at art. 37 (requiring, in relevant part, that State Parties ensure that: “(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment ... (b) ... Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age ...”).

<sup>3</sup> U.N. Comm. on the Rights of the Child, 44<sup>th</sup> Sess., General Comment No. 10, Children’s rights in juvenile justice, U.N. Doc. CRC/C/GC/10 (2007).

<sup>4</sup> U.N. Guidelines for the Prevention of Juvenile Delinquency, G.A. Res. 45/112, Annex, 45 U.N. GAOR Supp. (No. 49A), U.N. Doc. A/45/49, at 201 (Dec. 14, 1990) (“The Riyadh Guidelines”).

<sup>5</sup> U.N. Rules for the Protection of Juveniles Deprived of their Liberty, G.A. Res. 45/113, Annex, 45 U.N. GAOR Supp. (No. 49A), U.N. Doc. A/45/49, ¶ 67 (Dec. 14, 1990) (“The Beijing Rules”) (“[a]ll disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned.”).

<sup>6</sup> Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Interim Rep. of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, ¶¶ 78-85, Annex (Istanbul Statement on the Use and Effects of Solitary Confinement), U.N. Doc A/63/175 (July 28, 2008) (by Manfred Nowak) *available at* <http://www.unhcr.org/refworld/pdfid/48db99e82.pdf>.

<sup>7</sup> Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Interim Rep. of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, ¶ 77, U.N. Doc. A/66/268 (Aug. 5, 2011) (by Juan Mendez) *available at* <http://solitaryconfinement.org/uploads/SpecRapTortureAug2011.pdf>.

<sup>8</sup> *Id.*, ¶¶ 67-68, 78. See also Istanbul Statement, *supra* note 6, at 24-25.

<sup>9</sup> *Trop v. Dulles*, 356 U.S. 86, 101 (1958) (plurality opinion).

<sup>10</sup> *Roper v. Simmons*, 543 U.S. 551, 575 (2005) (citing *Trop v. Dulles*, 356 U.S. 86, 102-103).

<sup>11</sup> *Graham v. Florida*, 130 S.Ct. 2011, 2032 (2010).

<sup>12</sup> *Id.*, at 2034.