

# CHILDREN'S RIGHTS LITIGATION

AMERICAN BAR ASSOCIATION SECTION OF LITIGATION



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## Legal Care as a Tool to Improve Children's Mental Health

By Amanda M. Walsh – June 27, 2016

If you were asked to name the most common childhood diseases, what would you say? Asthma? Diabetes? When most people are asked this question, they often name one of these diseases; rarely do they list a mental health disorder. However, mental health disorders *are* the most common childhood disease. According to the Child Mind Institute, about 17.1 million children in the United States have or have had a mental health disorder, which is more than the number of children with asthma, cancer, diabetes, and HIV/AIDS *combined*. Despite this prevalence, about 80 percent of children identified as having a mental health disorder are unable to access treatment.

In addition to accessing treatment, the child's social and physical environment can further exacerbate existing mental health issues or cause more, as well as severely disrupt the child's family stability. Consider the following statistics:

- 21 percent of low-income youth will experience a severe mental health disorder, compared with only 10 percent of youth in middle- and high-income families. [Mental Health, Prevalence](#), youth.gov.
- 50 percent of youth in the child welfare system and up to 70 percent of youth in the juvenile justice system have a severe mental health disorder. Mental Health, Prevalence, youth.gov.
- 48 percent of families have to quit their jobs in order to care for a child with a severe mental illness; 27 percent are terminated from their employment. Eileen M. Brennan et al., "[Employed Parents of Children with Mental Health Disorders: Achieving Work-Family Fit, Flexibility, and Role Quality](#)," *Faculty Publications—School of Social Work* (George Fox University 2007).
- Rates of suspensions and expulsions for children with a mental health disorder are three times higher than those of their peers. [Mental Health, Effects](#), youth.gov.
- Youth with emotional disorders have the lowest graduation rates and highest dropout rates; only 32 percent continue on to postsecondary education. Mental Health, Effects, youth.gov.
- Up to 25 percent of the homeless population has a mental health disorder, compared with only 6 percent of the general population. National Coalition for the Homeless, [Mental Illness and Homelessness](#) (July 2009) (fact sheet).
- Individuals with a severe mental health disorder die as much as 25 years earlier than those without. World Health Organization, [Premature Death among People with Severe Mental Disorders](#) (information sheet).
- Approximately 20 percent of parents nationwide reported relinquishing custody of their child to the foster care system solely to access mental health treatment; in Illinois, a parent is giving up custody for this reason once every four days.

These conditions, called the social determinants of health, negatively affect not only the mental health of the child but also that of the family as a whole. Yet, in an overburdened mental health system treating only a small percentage of these youth, the external factors can rarely be addressed. A legal advocate, however, could help address most, if not all, of these conditions through the medical-legal partnership model.

### **Legal Care at Under the Rainbow**

Through an Equal Justice Works fellowship generously sponsored by Walgreen Co. and Baker & McKenzie, LLP, I led the establishment of the first child and adolescent behavioral health-legal partnership in Illinois, working collaboratively with Legal Council for Health Justice, behavioral health clinicians, and Sinai Health System leadership. Based in Chicago, the project partners with Under the Rainbow, a program of Mount Sinai Hospital Medical Center of Chicago (Sinai). Under the Rainbow is a child and adolescent outpatient mental health clinic mostly serving impoverished families in some of the most violent neighborhoods around Chicago, such as North Lawndale.

The program—which joins law, psychology, social work, and medicine—integrates free, accessible legal assistance into the child's mental health treatment plan to improve the mental health outcomes and stability of these families. To fully address these needs as the legal partner, I work on issues ranging from poverty, poor education, and community and family violence, to child welfare involvement. In the first quarter of the partnership, Under the Rainbow clinicians referred 25 legal issues within one of these categories, including access to more income through Social Security or public benefits, special education advocacy to obtain better services in school, or assistance navigating the foster care system. After intake interviews with the client and the client's family, these 25 referrals turned into 42 individual clients with 93 individual legal cases. Some of these cases are kept in house while others, such as housing or criminal cases, are referred to other legal partners. Legal areas that are most frequently referred by the clinicians have been custody, child support, special education, supplemental security income (SSI) eligibility, and immigration.

Serving almost entirely children and families in poverty, Under the Rainbow provides mental health services to children ranging from infants to age 18 and some adults, such as adult family members or caregivers. Approximately 70 percent of Under the Rainbow clients are Latino and 30 percent are African American. These children live in violent neighborhoods where they regularly watch friends and family members get shot and killed. Nearly all of these clients live with post-traumatic stress disorder (PTSD) or some other form of trauma. Other common diagnoses include attachment disorders, attention deficit hyperactivity disorder, and depression. Many live with family members other than their parents or in the foster care system, and many have been abused or neglected at some point in their young lives. Frequently overlooked and without access to additional resources, the Under the Rainbow clients have many unaddressed legal needs exacerbating their mental health and preventing treatment to enable them to move forward.

By providing legal care through this type of interdisciplinary model, these children and families can be helped by (1) looking outside the system, (2) empowering the clinicians and clients, (3) becoming a member of the treatment team, (4) expanding system capacity, and (5) repeating the model.

### **Looking Outside the System**

As discussed above, the social determinants of health heavily affect a child's mental health and overall stability. Despite our knowledge of these external factors, our policies rarely prioritize or work to resolve them, leading to poorer health. Although the United States far exceeds other industrialized nations in health care spending, we rank near the bottom for health outcomes. This paradox is further investigated by Elizabeth Bradley and Lauren Taylor in their book, *The American Health Care Paradox: Why Spending More Is Getting Us Less*. Bradley and Taylor explain that although the United States is spending much more on health care, we are spending much less on social services that address those external factors. In fact, according to the Centers for Medicare and Medicaid Services, about 90 of the factors contributing to health status occur *outside* the health care system and in the realm of social services. Yet, the United States only spends 3 percent of its health care funding on these nonclinical factors. In other words, while other industrialized nations are spending \$2 on social services for every \$1 spent on health care, the United States only spends 55 cents on social services for every \$1 spent on health care.

The most important lesson from these studies is that overall health cannot be addressed in a vacuum, especially mental health. While we now know that social conditions need to be addressed in addition to the health and mental health needs of our clients, health providers often lack resources or capacity to address everything. Even when funding is available to provide social services, legal barriers often prevent advocates from resolving a legal need for a client. Attempting to fix this problem, a physician in Boston hired a lawyer to help a patient with her housing needs. After realizing the positive effects of having a lawyer address a health-harming legal need (as this person's asthma was affected by mold in her apartment), the medical-legal partnership model was born, according to the [National Center for Medical-Legal Partnership](#). In the nearly 25 years since, over 300 of these partnerships have been created across the country. They vary in size and implementation, but all of them have the same goal: improve health outcomes by addressing legal needs.

While the spending paradox discusses the lack of funding for social services, leading to more health problems, this discussion is still missing the component of legal aid. Looking outside the health care system to social services or education is not enough. We must also look to the legal system for assistance, both for direct representation when clients face legal issues and for education and training.

### **Empowering Clinicians and Clients**

After identifying ways to collaborate across systems to improve a child's mental health, the next step is to provide education and training to those either working in or accessing the mental health

system. Many legal needs can be negotiated or settled without a lawyer once a clinician, client, or family is given the tools to advocate for themselves. For example, after receiving training on special education law and rights, clinicians can attend a meeting with the school and advocate for the appropriate services. The same is true for family members.

In addition, providing a foundational knowledge on other social determinants and legal areas can ensure quick identification of legal needs by the mental health system, which can mean engaging the client sooner in the legal process and likely preventing a crisis. For example, on my first day on site at Sinai, a clinician met with an uncle who had been the foster parent to two nieces and a nephew for the past year and a half. The three children were all clients at Under the Rainbow and had seen dramatic improvement to their mental health since starting therapy. That day, the uncle received a notice from the child welfare agency, the Department of Child and Family Services (DCFS), stating the children were going to be moved to a non-relative foster home because the child welfare caseworker had been unable to make unannounced visits. With only three days to appeal this change of placement, the clinician immediately recognized the urgency of this legal issue, informed the uncle that he had a right to appeal the change, and walked him down to my office.

Because of the quick nature of the change of placement procedures, lawyers rarely get involved at such an early stage. Because the clinician had been empowered, this client was able to connect immediately with legal services. Then, using the clinician's experience with the children and her expertise and understanding of the child welfare system, we were able to convince DCFS that it was not in the children's best interest to be moved; rather it would be detrimental to their mental health. This partnership prevented that terrible outcome from occurring.

The same is true when empowering the client, family, and community. Know-your-rights trainings, especially when conducted jointly by both the legal and mental health partner, provide similar advocacy tools for clients to protect their rights and get appropriate services under the law. A grandmother caring for four grandchildren could be helped immensely just by being told what public benefits she had a right to and how and where to apply. Trainings for teenagers can help them understand their privacy rights under mental health confidentiality laws and prevent an abusive family member from accessing their mental health records. By providing additional tools to clinicians and the community, legal needs can be addressed earlier and often without a lawyer becoming directly involved.

### **Becoming a Member of the Treatment Team**

Perhaps the most crucial step in making this model work has been the integration of legal aid into the mental health treatment setting. Medical-legal partnerships across the country arrange this aspect of the partnership in different ways. Some send referrals to the legal partner without seeing clients or clinicians on site while others have varying levels of on-site integration—from being on site only when appointments or trainings are scheduled to being on site for specific blocks of time each week or month.

Through the partnership with Sinai, I am on site at Under the Rainbow Tuesday and Friday afternoons for a total of 12 hours per week. Each week, I participate in the clinic's weekly staff meetings, meet with clients, and consult with clinicians. Most families try to schedule an appointment before, during, or after their child's therapy appointment. Many, with the clinician in tow, arrive at my office as walk-ins after a legal need was identified in their therapy session. When I'm not meeting with a client, my office door remains open for clinicians to stop in and discuss legal questions that are coming up with their clients. This on-site accessibility to the treatment team and family has been critical for several reasons, including meeting the clients where they are and quickly accessing the clinician's expertise to help guide legal strategies and priorities.

**Meeting the clients where they are.** An important aspect of integration into the treatment setting is prioritizing the needs of the client, particularly with an urban population. Using a trauma-informed lens, I try to be aware of all the obstacles my clients face in traveling to appointments. Many of my clients cannot afford bus fare or cannot find or afford a babysitter to watch their children, so being on site helps clients make their appointments and feel more comfortable. To accommodate those who are employed, I have early evening appointment times available the days I am on site. If the appointment with me does not correspond with the therapy appointment for the child, then the child has access to Under the Rainbow's waiting room and activities. But my physical presence does more than alleviate these transportation and cost barriers; it alleviates some of my clients' overwhelming stress. For example, many clients may feel intimidated or uncomfortable going to an unknown building outside their comfort zone. In addition, about half of my clients are Spanish-speaking. While on site, I have access to the clinic's interpretation services, helping bridge the language gap more quickly and efficiently. The simple fact that I am down the hall at Under the Rainbow with immediate access to all these resources means that the client's stress and instability can already begin to dissipate.

**Depending on the clinician's expertise.** Because the main goal of this collaboration is to improve the child's mental health and family stability, the expertise of the clinician is necessary to help prioritize and address legal needs. The uniqueness of working beside a mental health clinician is their frequent contact with the client and family as well as the foundation of trust built between them. Once appropriate releases permitting clinicians to share information with me for the purpose of legal advocacy have been signed, the clinician will refer the client and family to me for legal intake. In most cases, this referral happens in person, providing an opportunity for me to gather background information on the client and legal issue from the clinician. This pre-intake consult can make a large difference in how I approach a meeting with a client.

For example, one clinician referred a special education case to me for a 15-year-old client. Prior to meeting with the parents, however, the clinician spoke with me about the client's rocky relationship with his father, the father's tendency to be verbally aggressive

and controlling of the mother, the mother's hesitancy to speak up when the father was in the room, and that the mother only spoke Spanish while the father spoke English and inaccurately translated conversations to the mother. With this background in hand, I was able to go into this meeting with both parents and make it clear to each that I needed to hear from them both and from their son. I brought in an interpreter to ensure the mother was receiving the correct information and felt safe communicating her thoughts about the case.

In some instances, after signing appropriate releases and having attorney-client privilege explained to them, a client or family will ask that the clinician be present for the intake appointment. Having the clinician present can help the client feel at ease, especially if I'm meeting with the child. At other times, the clinician will help clarify details that the client forgot or might not realize are legally relevant. As with the pre-intake consult, this speeds up the legal process in addition to alleviating stress for the client. It can also help prioritize legal issues as they are identified. Most of my clients are referred for one or two legal issues, such as special education or custody. Yet, during the intake appointment, I frequently discover additional unmet legal needs, such as eligibility for Social Security or public benefits, immigration status, or an insurance denial. As additional legal needs become apparent, the clinician can help determine which ones are more emergent or impactful on the mental health and stability of the client and family.

Finally, and most importantly, the clinician's expertise is enormously helpful in resolving a legal matter. A large percentage of referrals have been for special education services. Although the clinician is working with a child weekly or biweekly for several months, that same child may have no services available in school. The clinician's familiarity with the client's needs helps guide what evaluations I should seek or whether or not a certain placement is the appropriate setting and least restrictive environment available. My weekly presence at the clinic eliminates the back-and-forth phone calls or emails often seen in traditional law practices, allowing me to quickly follow up and consult with a clinician as a legal case proceeds. Another example of the benefits of working collaboratively with the clinician are in family or child welfare-related cases. These cases often turn on the question of what is in the best interest of the child. The clinician's work helps answer that question and often supports and guides my legal strategy in the case. My role as the attorney is simply to be the tool that carves a legal path to resolving a client's needs.

### **Building System Capacity**

The larger benefit of partnering lawyers and mental health professionals is the ability to build additional capacity in the system. Only 20 percent of youth can even access mental health services. Lack of access occurs because of many problems, including a small workforce, geographic inaccessibility, and lack of funding and resources. Working in this model provides an additional outlet to address these systemic concerns.

In fact, just by preventing and addressing legal needs immediately, the treatment of current clients can continue, allowing them to move more quickly through the mental health system and opening spaces for clients who ordinarily would not have received any services. In addition, having a lawyer on the ground working with the clinicians can help identify policy issues that can be addressed at an administrative, legislative, or judicial level. For example, this model can help promote research into alternative and community-based settings to treat the mental health needs of children by showing the importance of looking outside traditional silos. Or the legal team may identify a pattern, such as a burdensome process to obtain a release of information for a primary care physician to communicate with the emergency room psychiatrist who treated the same child two weeks beforehand. Seeing patterns emerge firsthand provide opportunities to develop informed advocacy strategies to address the gaps more holistically.

### **Repeating the Model**

Since the start of the partnership with Sinai at the beginning of 2016, the number of identified legal needs has been astonishing. More important, however, have been the outcomes starting to come out of the collaboration between the legal and mental health sides. Among those outcomes, two children obtained stronger and better special education services; three children remained in their stable and loving home; another child, who is only six years old, was prevented from being kicked out of her school without appropriate steps to address her needs; a grandmother is about to obtain guardianship of her four grandchildren, which will allow her to more easily navigate the health and education systems; and many others are in the process of applying for or appealing denials of Social Security benefits.

The increasing success of this partnership would not have been possible without the dedication and hard work of the clinicians at Under the Rainbow and Sinai leadership. Without their passion, expertise, and desire to include legal aid in the services they are providing, many of these families would likely never have had access to an attorney. Partnerships that work directly with a mental health provider are increasing across the country, including a similar Equal Justice Works project working on veterans' mental health in Chicago, another child and adolescent mental health project in New York City, and many others across the country focused on adults with mental health needs. To make a bigger difference and improve the mental health of these clients, just repeat these steps and watch the positive outcomes begin to build.

**Keywords:** litigation, children's rights, mental health, legal-medical partnership

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## Making the Case to End Solitary Confinement for Juveniles

By Nicole Scialabba – June 29, 2016

Imagine you are 16 years old and arrested for stealing a backpack. You wait 3 years in jail for a trial. You are in solitary confinement for over half of those 3 years, where you are locked alone in a cell for 23 hours of the day. On a daily basis, you cannot speak to anyone, are confined to a small space, and have no reading materials with you. What would you do?

Unfortunately, this story and others like it are not fiction. Kalief Browder was originally arrested in spring 2010 for allegedly stealing a backpack and finally released in May 2013, after all charges were dropped. Upon his release, Mr. Browder attempted to resume a normal life, taking classes at a community college in order to seek a better life. Sadly, Mr. Browder struggled to resume normality as a direct result of his juvenile solitary confinement, ultimately committing suicide in June 2015 after several prior attempts. This struggle is not unique for juveniles who are placed in solitary confinement during their incarcerations.

### **Solitary Confinement: A Brief History**

The U.S. Department of Justice (DOJ) was tasked with reviewing the use of solitary confinement in the American prison system and issued a final report in January 2016, *U.S. Department of Justice Report and Recommendations Concerning the Use of Restrictive Housing*. The report uses the term “restrictive housing,” defined as a removal of an individual from the general prison population, whether voluntary or involuntary; placement of that individual in a single cell or with one other individual; and remaining locked in that cell for most of the day, typically 22 hours or more.

Solitary confinement has been used in furtherance of several objectives. “Investigative confinement” refers to the time when prison officials are determining whether an individual should be placed in solitary. Disciplinary confinement is for individuals who have violated a particular policy or rule, and solitary confinement is used as punishment. Preventive confinement is used when prison officials believe an individual is a threat to the general prison population or corrections officers. Protective confinement is used when there is a perceived threat against the individual within the prison and is designed to ensure the individual is not harmed.

Quakers in Pennsylvania began the practice of solitary confinement in the late eighteenth and early nineteenth centuries, believing it promoted repentance and rehabilitation when prisoners were left alone in their cells with a Bible. Its use quickly spread to other states and Europe. Soon, solitary confinement was abandoned in favor of solitary congregate labor. In 1890, the U.S. Supreme Court criticized the use of solitary confinement by noting that individuals often developed mental illnesses, attempted suicide, and were not able to contribute to society when returning to their community after release due to insufficient mental capacity.

At the turn of the twentieth century, the practice of solitary confinement began to decline, though it was still used as a form of control over prison populations. When prison populations increased and prisons became overcrowded in the 1970s and 1980s due, in part, to the “War on Drugs,” solitary confinement was increasingly used as a control tactic to crack down on riots and prison gangs, especially in prisons that were understaffed. Recent news stories like those about Mr. Browder and the Angola Three—Robert King, Albert Woodfox, and Herman Wallace, who received international attention after spending decades in solitary confinement—have begun highlighting the effects and devastation that solitary confinement can have on an individual.

### **The Impact of Solitary Confinement on Juveniles**

Countless studies have explored the effects of solitary confinement on juveniles. We are constantly learning more about the development of the human brain, according to an article, “More than a Time Out,” 18 *U.C. Davis J. Juv. L. & Pol’y* 244 (2014). We now know that the brains of children and juveniles are still developing and growing until they become young adults.

Specifically, the frontal lobe of the brain undergoes more changes during adolescent years than at any other stage of life. An American Bar Association Juvenile Justice Center article from January 2004, “[Adolescence, Brain Development and Legal Culpability](#),” states that the frontal lobe development continues for juveniles until they are in their early 20s. The frontal lobe controls impulsivity, judgment, planning for the future, and foreseeing consequences of actions. This means that juveniles cannot reason as well as adults, and juveniles’ cognitive functioning is the last part of their brain to fully develop.

As a result, isolation in solitary confinement does more irreparable harm on a juvenile’s brain, which is still developing, than on an adult’s brain. Although isolation as a whole causes damage to both juveniles and adults, adults are more likely to possess the coping skills necessary to better handle the effects of isolation. Generally, studies recognize that juveniles in solitary confinement are more likely to develop mental health problems and that their existing mental health problems are more likely to be exacerbated. In addition, juveniles are more likely to exhibit antisocial behavior, self-harm, and attempt suicide while in solitary confinement.

Anecdotal evidence demonstrates the devastating effects of solitary confinement on juveniles. A 16-year-old girl in Florida began to cut herself after spending 4 months in solitary confinement. She started cutting “because it is the only release of my pain. . . . When I see the blood, it makes me want to keep going.” Ian M. Kysel, “[Solitary confinement makes teenagers depressed and suicidal. We need to ban the practice](#),” *Wash. Post*, June 17, 2015. Other teenagers described how they wanted to die rather than continue feeling the despair of a life with no way out. Yet another individual described how he tried to break his finger just so he could get out of isolation. *Id.*

According to [Alone and Afraid](#), a June 2014 report by the American Civil Liberties Union, effects can include “hypersensitivity to stimuli; perceptual distortions and hallucinations; increased anxiety and nervousness; revenge fantasies, rage, and irrational anger; fears of

persecution; lack of impulse control; severe and chronic depression; appetite loss and weight loss; heart palpitations; withdrawal; blunting of affect and apathy; talking to oneself; headaches; problems sleeping; confusing thought processes; nightmares; dizziness; self-mutilation; and lower levels of brain function, including a decline in EEG activity after only seven days in solitary.”

The destructive impact of juvenile solitary confinement can be long-lasting. Many juveniles (who have sometimes become adults while incarcerated) struggle with re-acclimating to normal life, tragically demonstrated through the tale of Mr. Browder's suicide. Further elaborating the strength of solitary confinement's wrath, Mr. Browder had family support and access to therapy upon his release. He also had nationwide support, including an anonymous donation to pay his college tuition and gifts from celebrities, including a laptop to use while pursuing his higher education. The sad reality is that not many juveniles or adults who are reentering society have such support to cope with solitary confinement's long reach.

### **Background on the DOJ's January 2016 Final Report**

Recent progress has been made in addressing juvenile solitary confinement. At the national convention of the National Association for the Advancement of Colored People on July 14, 2015, President Barack Obama announced that he had asked Attorney General Loretta Lynch and the DOJ to conduct a review of the solitary confinement policies in American prisons. He also asked that guidelines be developed to reduce the use of solitary confinement and provide a more consistent approach to how solitary confinement is used for prisoners.

A working group of high-level employees from the U.S. Marshall Service, the DOJ, the Executive Office of the U.S. Attorneys, and the Federal Bureau of Prisons was created. The result was a comprehensive report, [\*U.S. Department of Justice Report and Recommendations Concerning the Use of Restrictive Housing\*](#) (Jan. 2016). The final report, more than 100 pages long, details the history of the use of solitary confinement, compares its use among federal agencies and states, and outlines guiding principles and policies that should be implemented to reduce its use in the prison system.

In addition, the working group created an 11-page document that further breaks down and explains the guiding principles that should be used by prisons across the country when implementing policies regarding the use of solitary confinement. While the final report, and the guidelines based on it, is to be used by local, state, and federal prisons, it is simply a report. It has no enforcement capabilities, nor does it confer any kind of rights and responsibilities on prisons across the country.

### **Current Treatment of Juveniles in the Federal Prison System and State and County Prisons**

The federal prison system recognizes two types of juveniles:

- those under the age of 18 and adjudicated as juveniles and
- those under the age of 18 but adjudicated as adults.

Juveniles adjudicated as juveniles are housed separately from adults until they are 21; juveniles adjudicated as adults are housed separately from adults until they are 18. At the beginning of December 2015, the Federal Bureau of Prisons was responsible for only 71 juvenile inmates, and 26 of those were under the supervision of the U.S. Probation Office.

None of the incarcerated juveniles are housed in federal prisons; rather, the Federal Bureau of Prisons holds contracts with facilities that house them. Part of the agreements requires that the juveniles receive 50 hours of programming per week, which includes different types of trainings, counseling services, and other opportunities designed to help a juvenile successfully reintegrate into society.

In the federal system, juveniles are hardly ever placed in solitary confinement, and if they are, there are guidelines that the facilities must follow. For a minor rule violation that requires a brief cooling-off period, the juvenile can be placed on a room restriction, but it must not exceed one hour, and the room must remain unlocked. For a major rule violation, there are additional notifications and protections for the juvenile. Staff must monitor the juvenile every 15 minutes.

If a juvenile is to be placed in solitary confinement, the Federal Bureau of Prisons must be notified, and within 24 hours of being placed, a written copy of the alleged rule violation must be given to the juvenile. Also, a licensed mental health professional must see the juvenile to ensure that the behavior was not a result of a mental illness or medical condition.

If a juvenile is to remain in solitary confinement beyond 24 hours, a facility administrator is required to review the confinement every 24 hours. If the confinement goes beyond five days, a licensed mental health professional must conduct another review and a "special behavior management program plan" must be developed and implemented by an interdisciplinary team.

In state and county prison systems, the use of solitary confinement for juveniles typically falls under protective confinement. Many juveniles are put in solitary confinement as a means to separate them from the adult population in an effort to prevent them from being preyed upon. Solitary confinement is also used when there is overcrowding in a prison and there are no other regular cells available. Policies vary widely regarding how solitary confinement is to be used, and there are mechanisms in place to provide oversight of the confinement.

### **Guiding Principles for Juveniles**

The guiding principles of the DOJ's report identify policies that prisons should implement to better regulate the use of solitary confinement in a more uniform manner that is consistently applied to individuals. Specifically, the principles state that restrictive housing should not be used for juveniles. The only exception to this rule is if the individual poses an immediate safety risk to himself or herself or to others. The guiding principles state that even in that rare circumstance, the confinement should be brief, only amounting to a cooling-off period for the juvenile.

For young adults (18–24), correction officials should receive training on brain development in young adults. The prisons should try to use wrap-around programming, which includes educational and vocational training, independent living preparation, specialized treatment goals and objectives, counseling and psychological services, structured recreational activities, religious and cultural services, financial responsibility classes, and opportunities for family visitation, to reduce incidents that would cause solitary confinement. In addition, individuals who are placed in solitary confinement should receive both educational and therapeutic services.

### **Effects of the Report**

Although the DOJ's report does not have the force of law, nor any enforcement capabilities, there are many changes afoot regarding the use of solitary confinement specifically for juveniles. The most prominent one is an executive order banning the use of solitary confinement for juveniles in the federal prison system, which President Obama announced on January 25, 2016, stating that the practice is overused and has devastating psychological consequences.

While the president's executive order made headlines, it has little direct impact mainly due to the fact that there are fewer than 75 juveniles currently involved in the federal prison system. Although largely symbolic, the president's ban has helped to spur other states and local and county jails to action.

In March 2016, a federal court approved a class action settlement involving New York's punitive use of solitary confinement in its state prison system. The settlement included a detailed plan to overhaul the use of solitary confinement. On May 3, 2016, Los Angeles County announced policies that severely restrict the use of solitary confinement for juveniles. Many other states and counties have followed suit, instituting similar bans on juvenile solitary confinement.

While self-instituted bans sound like an instant call to action, change, and reform in the prison system, the sad reality is that there is no enforcement mechanism for these bans, just as the DOJ's final report lacks an enforcement mechanism. The succeeding president, governor, or county official can easily eliminate or change the ban just as swiftly as it was implemented. There is also less likely to be media coverage or buzz if the ban or restrictions are lifted.

Further, while the president's federal ban and a governor's statewide ban are important first steps in eliminating the problem of juvenile confinement, the majority of all prisons do not fall under the purview of those bans. For example, county jails and juvenile detention facilities that are not run by a state do not have to adhere to the state or federal ban on the use of solitary confinement for juveniles. Thus, it is up to those individual facilities to determine whether a ban on solitary confinement for juveniles should be implemented.

### **The Future of Solitary Confinement for Juveniles**

There appears to be a growing tide toward permanent elimination of solitary confinement for juveniles. Scientific research has demonstrated that the use of solitary confinement overall has

devastating consequences, among them the impact on cognitive functioning development in a still-developing brain. The combination of the recent research on juvenile brain development, public awareness, and public opinion are coming together to eliminate the use of solitary confinement for juveniles. While the bans recently instituted by the president, state governors, and counties are welcome and assist with increasing public awareness, legislation is the only way to eliminate solitary confinement for juveniles once and for all.

Currently, Congress is considering the Sentencing Reform and Corrections Act, a bill that, among other things, would institute a permanent ban on the use of solitary confinement for juveniles involved in the federal prison system. Senator Cory Booker is a cosponsor of the bill and is hopeful that a federal legislative ban on juvenile solitary confinement will serve as a model for other states to legislate their own bans.

While there are many reforms being proposed to the criminal justice system, we should remain focused on reforming the juvenile prison system because the individuals within it are the most likely to return to society at a young age. If the United States truly wants prison to serve as a rehabilitative function and deterrent for future crime, then focusing on juveniles and how to rehabilitate them will in turn help to develop programming in the adult prison system that focuses on reentry. We have a responsibility to equip them with the tools necessary to be successful upon reintegration rather than leaving them with debilitating mental diseases or illnesses that stunt their growth and prevent them from achieving future success.

**Keywords:** litigation, children's rights, solitary confinement, juvenile detention, mental health

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## Art Works for Flint's Detained Youth

By Shelley R. Spivack – June 27, 2016

Sixteen years old, alone, and facing life imprisonment without parole for the murder of his best friend's father. This was Randy, a boy I was appointed to represent in 1988.

The first juvenile in the now infamous city of Flint to be automatically tried as an adult on a charge of first-degree murder, Randy spent the six months awaiting trial at GVRC, Genesee County Michigan's short-time juvenile detention facility. As his only visitor, I met with Randy weekly. Randy's focus during these meetings was not on his role as the shooter in a five-defendant murder trial, but on the drawings, designs, and paintings he had created that week. Never having had any type of formal art education, Randy spent his time in detention drawing, both in the art class that was part of the detention center's educational program and during virtually all of his "free" time. "Drawing was the life preserver that kept him afloat. It was what gave him hope. It allowed him to express himself, to develop a skill, and to become someone other than the first kid in Genesee County to face life imprisonment without parole." Rosenbaum & Spivack, *Implementing a Gender-Based Arts Program for Juvenile Offenders*, at xiv (2014).

Fast-forward to 2011. Randy, who had been convicted of the lesser charge of second-degree murder and received a 22-year sentence, had been released from prison earlier that year. GVRC, while still housing youth awaiting trial on both juvenile and adult charges, had been the victim of budget cuts and no longer offered any type of arts education to youth like Randy.

My thoughts in March of 2011 turned to Randy as I saw a flier soliciting proposals for Share Art Flint, a grant program initiated by the Ruth Mott Foundation aimed at bringing arts programming to underserved populations in Flint. As a board member of the Buckham Fine Arts Project, an artist-run contemporary arts gallery, I envisioned a program in which our artist members would share their talents and expertise with Flint's detained youth by conducting arts workshops at GVRC.

With the help of our artist members, GVRC administration, as well as faculty and students at University of Michigan-Flint, the vision became a reality when the Ruth Mott Foundation awarded Buckham funding for a three-month pilot project to start in September of 2011. The Buckham/GVRC Share Art Project is now in its sixth year of programming, offering visual arts, theater, spoken-word poetry, and dance workshops to youth detained in one of the most violent and economically and environmentally distressed cities in our nation.

### Why Arts Programming?

Research has shown that arts education has a positive effect on the development of youth. However, with decreasing budgets, communities and schools have drastically reduced or cut arts programming. As a result, most incarcerated youth have never been exposed to classes or workshops in the visual or performing arts.

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Research has also shown that the introduction of arts programming in the criminal justice system has had a beneficial effect on justice-involved youth. A 2003 study examined a program in which professional artists conducted visual arts, poetry, and music workshops in a detention facility. The researchers identified four major processes that led to the success of the program: “connecting, expressing, learning, and discovery.” Ezell & Levy, [An Evaluation of an Arts Program for Incarcerated Juvenile Offenders](#), 54 *J. Correctional Educ.* 108, 113 (2003).

Involvement in the arts has also been shown to result in the development of positive identity. This is particularly important for detained youth as “disconnecting from illegal activity often involves imagining a different life.” Through involvement with the arts youth have an opportunity to explore, use their imaginations, and begin to re-create themselves. (Ross, [Exploring the Ways Arts and Culture Intersect with Public Safety](#) (Urban Institute 2016). Other studies have found that arts programming can result in reduced negative behaviors and more effective emotional communication, as well as contributing to the development of both cognitive processes and pro-social skills, all of which are crucial for justice involved youth. *Id.*

### **Pilot Project Design**

GVRC is a short-term detention center housing males and females ages 10–17 who are court-ordered into secure detention while awaiting trial, disposition, or placement for offenses ranging from violation of probation for status offenses to first-degree murder. The facility holds up to 60 youth and consists of three wings, two of the wings housing males and one of the wings housing primarily females. While the average length of stay is 21 days, youth who are awaiting trial on adult offenses often remain in the facility for about six months. GVRC offers basic educational programming; however, as the facility is designated solely as a detention center, there are no treatment programs available to the youth during their stay.

In designing the pilot project, our team of artists, university professors, and criminal justice professionals sought to create a program that would enable the youth to develop their artistic talent in a safe and nonjudgmental atmosphere while at the same time allowing them to express their “pain, joy, and hope.” Ezell & Levy, *supra*. Working closely with the GVRC administration, we developed a plan that would expose a maximum number of youth to arts workshops. Two separate workshops—visual arts and spoken-word poetry—would be conducted for a period of four weeks in each of the three wings, and each workshop would be taught by a team of two artists and limited to a maximum of ten youth. At the end of the three-month pilot project, an exhibit of the youths’ work would be held at Buckham Gallery in downtown Flint.



Fig. 1. A group mural.

The artist-teachers we chose to participate in the program were all working artists who had previously taught in community or youth arts projects and had a demonstrated ability to connect with youth of all backgrounds as well as an ability to teach fundamental artistic skills and techniques. Because none of the artist-teachers had previously worked in a detention facility, training sessions were held with GVRC staff and administrators so that all the teachers had a clear understanding of the rules of the facility.

In the spoken-word poetry workshops, the artist-teachers “challenged the youth to explore their own feelings and helped them use language as a means of self-expression and communication.” (Rosenbaum & Spivack, *supra*, at 20. During the sessions, they were not only teachers but mentors and active participants, choosing themes such as mistakes, negative and positive identities, and life stories. Each workshop followed a basic format, starting with an exercise allowing the youth to create their own identity by naming themselves. The artist-teachers then presented pieces of their own poetry relating to the chosen theme and helped the youth become “active” listeners by questioning them about what they had heard. The youth were then challenged to write their own pieces and, at the end of class, present them orally as spoken word.

The artist-teachers leading the visual arts workshops not only taught drawing techniques but also worked with the youth to improve cognitive skills, sharpen their observational abilities, cultivate

imagination, and work cooperatively. A primary goal of the workshops was to enable the youth to “see” beyond their immediate surroundings and to use art to reenvision themselves and their futures. During the workshops, the youth completed group mural (Fig. 1) as well as individual drawings and projects (Fig. 2).



Fig. 2. An individual project.

### Pilot Project Outcomes

Several methods were used to gauge the outcomes of the pilot project: review and evaluation of the youths' work, youth surveys and focus groups, and interviews with artist-teachers and GVRC staff.

A review of the youths' writing indicated that the boys tended to focus on the violence in Flint and the loss of loved ones due to death or incarceration. For example:

*It used to be fight and get knocked down  
Now it's run up with your chap you get shot now. . . .  
It used to be a couple of murders, its been a lot now. . . .*

and

*All my life I grew up seeing cocaine, guns and money.  
While I sit in a cell, I think it's like hell but really its not  
I miss my fam, my dad is gone  
I don't have anyone but my mom,  
My dad is locked up because of what he did.*

The girls, while also focusing on violence, often wrote about the violence inflicted on them by their "loved" ones:

*A little innocent girl no more  
You forced on her what she never wanted  
You cause destruction  
Devastation  
I hate you*

and violence inflicted on them by themselves:

*Self mutilation  
A bad reputation  
I feel sum agitation  
Everyday I'm feeling pain . . .  
This just too much, I'm so ashamed.*

Gender differences also emerged in reviewing the youths' surveys and in interviews with the artist-teachers. In the surveys and focus groups, the girls were extremely positive about the spoken-word sessions while the boys reacted more favorably to the skills learned in the visual arts workshops. Observations by the artist-teachers and GVRC staff confirmed these results. During the spoken-word sessions, many of the boys felt uncomfortable with verbal expression and instead created word art, while the girls easily engaged with words, both orally and in writing. Conversely, in the visual arts workshops, the boys more readily engaged with the projects and enjoyed "making things" more than the girls.

A second issue regarding gender was also observed. As many of the girls had been victims of sexual abuse, workshops combining both boys and girls made it difficult for the girls to feel safe and freely express themselves, a primary objective of the program.

As a result, we decided to create a "gender-based" program for girls that would concentrate on spoken-word poetry and that would employ the basic principles of gender-responsive programming: safety, connection, and empowerment. Bloom & Covington, [\*Gender-Specific Programming for Female Offenders: What Is It and Why Is It Important\*](#) (1998). The spoken-word workshops would be limited to female residents and would also be taught by two female artist-teachers. For the boys, the decision was made to concentrate on the visual arts workshops.

### Gender-Based Workshops

Gender-based programming grew out of the research conducted by feminist criminologists over the past two decades. This research indicates that girls' offending is both qualitatively and quantitatively different than boys' offending. Their "pathways" to delinquency differ as do their needs once in the juvenile justice system. Girls often follow a pattern characterized by earlier and more frequent victimization (physical, emotional, or sexual abuse). These traumatic experiences often cause them to run away, abuse substances, fail to attend school, and become involved in domestic violence situations in the home. These behaviors subject girls to further victimization and exploitation and also lead to "criminal" acts such as theft, drug use, and prostitution. Once in the juvenile justice system, girls are more likely to be "over detained" and returned to detention more frequently than boys. Girls are also more at risk for serious mental and physical health issues and for self-harming behaviors. Rosenbaum & Spivack, *supra*, at 7.

Acknowledging the differences in girls' "pathways" to offending and their needs once in the system is crucial to creating a gender-responsive program. Ideally, such programs should "use an integrative, cooperative, and holistic approach, foster empowerment, emphasize strengths, employ gender-responsive cognitive-behavioral elements, and build self-esteem." Rosenbaum & Spivack, *supra*, at 8.

**Girls' spoken-word poetry, dance, and theater workshops.** The team, through careful research and observation, has developed a gender-based program for girls that now includes spoken-word poetry, dance, and theater. Workshops are held weekly and all girls at GVRC are invited to attend.

Spoken-word poetry lends itself well to the principles of gender-based programming. The process of writing and speaking gives the girls the opportunity and ability to tell their own stories in their own words. It gives voice to their thoughts, dreams, and hopes, as well as to their fears, faults, and frustrations. It allows them to "own" their words and to begin redefining themselves, as opposed to being defined by others. One project participant put it this way:

*Writing is like my emotions pouring out of my soul on paper. No one understands until my pen and pad connect. It makes me feel like no one is around to judge my speech or critique but only to take it all in. Writing expresses that soft sad side people rarely get to see. To watch my words soak in is like music to my ears. Writing is ME.*

One of the most significant aspects of the workshops is the connection that has developed between the artist-teachers and the participants. Through focus groups and surveys, we have learned that the girls are very grateful that people actually listen to them and believe that what they say has meaning and is not seen as "stupid." One of the girls stated, "You actually listen!!!! Thank you all." In addition, the artist-teachers have often made connections with the girls that last beyond their time at GVRC.

Mood surveys indicated a significant improvement in the girls' mood after participating in one of the spoken-word workshops. Words used to describe their mood before the workshop were "frustrated," "stressed," and "angry." Moods most often identified after class were "happy," "chilled out," and "calm."

Improvements in self-esteem, self-awareness, and empathy can also be seen through their comments in surveys and focus groups. The girls indicated that they learned that they are the only ones who can change themselves, that they can get through the bad stuff, that they can't run from their problems, that "I am a brave and happy person, even with everything I have been through," and that they can do better in life. They credit the spoken word for gaining an understanding and respect for one another, learning to trust women, and learning that they are not the only person hurting. Most importantly, they state that the workshops enable them to learn to tell their story so someone else doesn't do it for them.

Dance and theater workshops were developed to complement the spoken-word program. In the theater program, an emphasis is placed on increasing the girls' self-confidence when speaking in a group and the use of body language. The dance workshops were developed with the objective of decreasing the girls' sense of isolation and addressing the sense of detachment from their physical selves many of them experience as a result of trauma and physical abuse. These workshops address issues such as negative body image, self-confidence, and physical awareness of self and others through the styles of modern and contemporary dance. The classes include warm-ups, introduction of short choreographed dance steps, improvisation, and discussion.

Results from surveys and focus groups indicate that dance allows the girls to release and express their troubles, their anger, and other emotions; that dance gives them confidence and is liberating; and that they can communicate and cooperate with their peers through dance.

**Boys' visual arts and theater workshops.** The artist-teachers in the boys' visual arts program take an expansive view of these workshops. Instead of looking at the workshops as a place to merely teach drawing skills, they view their workshops as a "positive agent for change within the community." In leading the workshops, they view the relationships developed between themselves and the students, as well as among the students, to be of primary importance. As a result, the level of trust that has developed has led to a 100 percent participation rate. Their goal is to create a nonjudgmental atmosphere in which the students can take ownership of the process by engaging with simple tools to learn to make something new. They also seek to teach the students that the creative process and engagement with objects, such as a pencil and paper, can be used as a means to channel anger and frustrations, not only while they are at GVRC but also when they are released.

As the facility houses both short- and long-term residents, one of the challenges has been how to structure the workshops so that both sets of students remain engaged. One of the ways they do this is to create a series of workshops that allow the youth to engage in a long-term project, such as a mural, consisting of segments that can be completed in one class. This has resulted in improved focus, concentration, and problem-solving abilities.

The goal of the boys' theater workshops is to introduce the youth to different forms of dramatic expression while developing their problem-solving skills, enhancing their ability to work cooperatively in a group, improving their verbalization skills, increasing their awareness of body language, and giving them an outlet for creative expression. The instructors use various improvisation techniques ranging from short-form improv to longer, partnered scenes with built-in challenges. They also create real-life scenarios, such as interviewing for a job, to introduce various life skills into the workshops.

During the spring of 2016 the artist-teachers introduced a new series of literacy-based workshops: "Shakespeare Detained." The goal of this project is to encourage and foster language enrichment through an experiential exploration of the most popular works of William Shakespeare. The workshops explore Shakespeare in an enriching and understandable format that challenges the youths to recognize, analyze, and practice language and forms of literary expression that relate to their own lived experiences.

As with the girls, the feedback received from the youth in both the visual arts and theater classes has been very positive. The results from mood surveys are similar to the girls' and show a marked improvement in mood after participation in the workshops.

In both classes, the most significant response was in respect to their own creativity. They learned that they were capable of being creative and how to express who they are in positive ways. By participating in theater workshops, they learned communication skills and they learned that they can act like different people, which they didn't know was possible. Visual arts taught them not only art skills but also how to work as a team, respect for others, patience, and that they can do good things if they put the time into doing it.

### **Let Our Voices Be Heard**

The value and meaning of programs such as the Buckham/GVRC Share Art Project can best be summed up in the words of the youth themselves. Below is an excerpt of an "I AM" poem written by one of the project participants:

*I am that girl that hundreds want to see  
succeed and thousand want to see fail  
I wonder will those thousand live to see me  
succeed  
I hear those thousand coming up to me when  
their evil ways catch up with them saying*

*"Did you really make it?"*

*"Yeah I made it."*

*I AM SUCCESS. . . .*

*I cry when I cant find a outlet for  
my anger, displaced emotions, and feelings  
of regret but yet, I cry. My tears fall upon  
my cheek and I realize where I should be. . . .  
And its not a prisoner of my own mind  
I AM FREE. . . .*

*I understand the consequences for my  
Actions so I replace reality with  
Satisfaction but Troubles the numerator  
for my fraction. . . .*

*I dream that my city realizes its potential  
and that I no longer tote pistols just to  
prevent being a victim  
I try to be my self and not anyone else  
; because a lot of people change and its  
hard to go right when you used to left  
I hope I never make more mistakes  
because mistakes can take over your  
life and corrupt all your good  
deeds  
I AM UNDEFEATED*

From "*I Am Me*" : *A Collection of Poetry and Stories Written by Young Women* (2015).

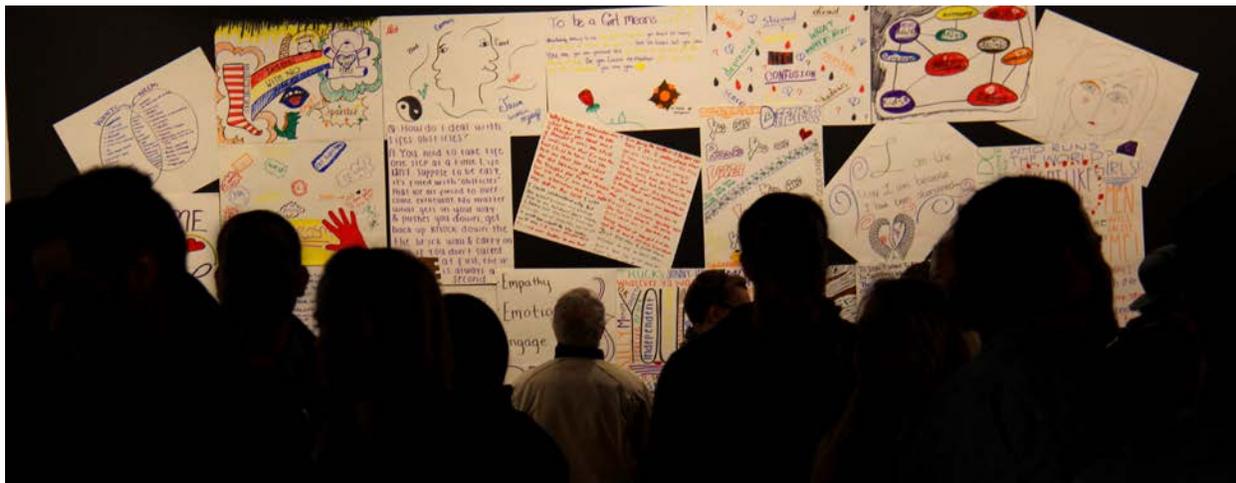


Fig. 3. At the gallery.

For more information, visit the [Arts in Detention exhibit](#) online at Buckham Gallery's website. Also check out our [virtual tour](#) of the 2016 "Arts in Detention" exhibit.

**Keywords:** litigation, children's rights, juvenile offender, detention, art programs, Arts in Detention

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## Engaging Youth in Court: A National Analysis

By Sharon Elstein – June 27, 2016

Youth engagement projects focusing on court participation improve outcomes for youth in foster care. In most court contexts, the rules strongly favor firsthand information. Yet, where a foster youth's life is the topic of discussion, all too often we have not been hearing directly from the youth. New data show that youth want to come to court and courts are able to make better decisions when they do.

A number of U.S. jurisdictions have looked at these issues. Many of these efforts were supported by state court improvement programs. Evaluations included surveys of youth, attorneys, judges, and social workers, as well as court observations. This analysis is derived from seven assessments, two of them completed in Colorado and the others in Delaware, Kansas, New Jersey, Vermont, and Washington.

In many cases, data were collected where states were making efforts to ensure and improve youth engagement, including

- trainings and workshops providing youth and professionals with guidance on how to engage youth
- changes to court policies or procedures
- tools for youth, attorneys, and others

The data clearly demonstrate that many foster youth want to participate in decisions affecting their lives. Judges learn more about the youth coming before them and report having a better understanding of what youth need and want and why. Responses from caseworkers, court-appointed special advocates (CASAs), guardians ad litem (GALs), and other attorneys also reflect the positive benefits of youth participation.

The analyses of the seven assessments demonstrate the following:

- Decision making improves when youth are in court.
- Youth want to come to court.
- Court is usually a positive experience for youth, even though they understand they will not always get what they want.
- Youth felt they are heard and understood.
- Youth often reported being concerned about placement, school, permanency, and visitation.
- Barriers to getting youth to court can be overcome.

Elstein, Kelly & Trowbridge, ABA Center on Children and the Law, [\*Engaging Youth in Court: A National Analysis 2015\*](#).

Foster youth want to be involved in decisions about their lives, especially with respect to placements, permanency, school, and visitation. Youth and professionals agree that the firsthand information they can contribute allows courts to make better decisions. The data show the importance of the adage that many youth have been telling policy makers for years:

“Nothing about us without us.”

<b>Colorado A and Colorado B</b>	A: The Colorado Judicial Institute, Bridging the Gap (United Way), and Center for Research Strategies, 2007, conducted focus groups with 58 current and former foster youth, ages 14–26. B: February 2014 online survey with 258 GALs, county attorneys, parent attorneys, judicial officers, CASA directors, district court administrators, and others.
<b>Delaware</b>	Delaware surveyed 95 youth ages 14–21 and 150 attorneys, CASAs/GALs, judges, foster parents, caseworkers, and case managers.
<b>Kansas</b>	Kansas data are derived from 31 surveys of judges in 2013 and 44 in 2014, 28 court observations in 2013 and 32 in 2014, and 17 youth surveys in 2013.
<b>New Jersey</b>	In 3 counties, 600 professionals’ daily surveys were completed, as well as 135 youth surveys; 66 surveys were completed regarding absent children/youth; 170 professionals also completed monthly surveys.
<b>Vermont</b>	The Vermont Court Improvement Program, Youth Development Program, and DCF-Family Services Division surveyed 74 youth, ages 13–18, about their experience in 2013.
<b>Washington</b>	Surveys were conducted in 2009–2010 of 551 youth and 12 judicial officers in 4 jurisdictions in the state about 1,357 hearings.

**Keywords:** litigation, children’s rights, court participation, surveys

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**PRACTICE POINTS**

June 16, 2016

## **UCLA Civil Rights Project Publishes Study on Financial Impact of School Exclusion**

On June 2nd, the Center for Civil Rights Remedies at The Civil Rights Project released "[The High Cost of Harsh Discipline and Its Disparate Impact](#)," a study focused on suspensions, school dropouts, and their consequent costs. Research has shown that the risk for dropping out increases when a student is suspended. These dropouts have an oft-overlooked financial and social impact due to lost wages, higher crime rates, greater demand for welfare, and poor public health.

The study outlines previously performed research to show the connection of suspensions to dropout rates and the financial cost of an increase in school dropouts, combining the work of three researchers to estimate the impact of school exclusion nationwide. Russell Rumberger presented an analysis of the Educational Longitudinal Study in which 16,252 high school sophomores were surveyed first in 2002, again in 2004, 2006, and 2012. The students were filtered using demographic data, family information, and school performance. Robert Balfanz used the Florida state data system, focusing on 181,897 freshmen followed from 2000 to 2008 to evaluate the number of in and out of school suspensions and high school graduation rates, factoring in demographic and performance variables. Clive Belfield examined the fiscal and social costs of dropouts in Florida and California. To assess the financial impact, economic outcomes were compared for high school dropouts and graduates, age 18 to 65, in earnings, crime, health, and welfare.

According to the report, suspension rates have been rising since early 1970s, especially for students of color. A review of suspension rates by racial group shows a wide discrepancy between the percentage of suspended black and Hispanic students and that of white students. Between 2000 and 2001, there were approximately 3.5 million high school sophomores in the United States. 16 percent of tenth graders reported having received a suspension in or out of school within their first semester. Applying this percentage to the total number of tenth graders nationwide, approximately 564,457 students were suspended, which results in a 12 percent increase of dropouts, or 67,735 students. Each dropout is estimated to cost the country \$163,340 fiscally, with a social impact of about \$527,695 per student.

The study's findings show that on a national scale, there is a 23 percent decrease in graduation rates between students who have experienced a suspension and those who haven't. Economically, rising dropout rates and lower graduation numbers are estimated as costing the United States \$11 billion in fiscal losses and \$35.7 billion in social costs. Conversely, when the suspension rate is reduced, leading to fewer dropouts, the financial impact lessens. A 1 percent decrease in school suspensions was estimated to benefit the economy by \$691 million fiscally and \$2.2 billion socially. Reducing the suspension rate by half was expected to yield \$5.5 billion

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fiscally and \$17.8 billion in social benefits. The study also breaks down specific results from California and Florida, and recognizes its research's limits, as the report only looks at 9th and 10th grade data from two states. The study did not evaluate data from suspensions in earlier grades and its estimates were based on students graduating from high school in 2004, not accounting for the recent declines in suspension rates in some states.

The UCLA Center for Civil Rights Remedies recommends that the federal and state governments use this data to craft and apply evaluation and oversight plans that factor in suspension rates when gauging school performance. One goal of the report is to direct resources towards more effective disciplinary policies and practices in schools to reduce the frequency of suspensions and risk for student dropout. Further, the study advocates for the review of data and research provided on costs to states and the country as a whole.

—[Jessalyn Schwartz](#), *ABA Children and the Law Advisory Task Force, Boston, MA*

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May 31, 2016

## **"Burdened for Life: The Myth of Juvenile Record Confidentiality and Expungement in Illinois"**

In April, the Illinois Juvenile Justice Commission in partnership with the Children and Family Justice Center at Northwestern Pritzker School of Law released "[Burdened for Life: The Myth of Juvenile Record Confidentiality and Expungement in Illinois](#)." This first of a kind study explains that Illinois laws and policies governing the treatment of court and arrest records of youth "threaten public safety, produce substantial unnecessary costs, and impede young people's ability to transition to productive adulthood."

Although state law long has emphasized the principle that a youth's mistakes should not brand that child for life, Illinois youth have been harmed by the erosion of confidentiality protections and the extreme difficulty and expense of erasing a record through the expungement process, according to the report.

In Illinois, tens of thousands of juveniles are arrested each year, and the largest majority of those arrests by far are for non-violent offenses. Over the last decade, only three of every 1,000 arrests—less than one third of one percent of juvenile arrests—were expunged in Illinois, the study determined.

—[Julie Biehl](#), *Children and Family Justice Center, Northwestern Pritzker School of Law, Chicago, IL*

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