

BEHAVIOR MANAGEMENT: THE ALTERNATIVE TO JUVENILES BEING HELD IN SOLITARY CONFINEMENT

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I. INTRODUCTION

Spending most of the day completely isolated and alone behind a steel door—this is what many young children under the age of eighteen face when locked up in jails and prisons across the United States.¹ These children are

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1. IAN KYSEL, HUM. RTS. WATCH, ACLU, GROWING UP LOCKED DOWN: YOUTH IN SOLITARY CONFINEMENT IN JAILS AND PRISONS ACROSS THE UNITED STATES 1 (Alison Parker et al. eds., 2012).

completely isolated from society, both physically and socially, anywhere from days, weeks, months, or years at a time.² Despite the fact that isolating a juvenile for a short time can occasionally neutralize a sporadic crisis, subjecting youth to solitary confinement can result in a continuous downward spiral of detrimental effects.³ Juveniles in solitary confinement are deprived of services, programming, and other tools that are essential to promoting their healthy growth and development.⁴ In some jurisdictions, youths are placed in solitary confinement as a “punishment status,” whereby their social interaction, education, diet, and physical activity are restricted.⁵ The empirical record has established a unanimous finding that subjecting youths to solitary confinement causes irreparable long-term psychological agony that is both harmful and traumatic, leading to further emotional and physical damage.⁶

Although states have a duty to uphold accountability for wrongful actions and protect society, they also have an extraordinary responsibility not to treat youth in ways that will cause “permanent[] harm [to] their development and rehabilitation, regardless of their [guilt].”⁷ The way teenagers are currently punished—being forced into solitary confinement—can constitute undeniable cruelty and violates the cruel and unusual punishment prohibition of the United States Constitution’s Eighth Amendment.⁸ Further, teens awaiting trial who have not been adjudicated are protected from inadequate treatment under the Due Process Clause of the Fifth and Fourteenth Amendments.⁹ Youths in solitary confinement are subject to unreasonable restraint, cannot be provided safety, and lack necessities to ensure proper growth and development—all of which are protected under the Due Process Clause.¹⁰

The solution is a ban on solitary confinement for juveniles and the implementation of effective alternative behavior management strategies.¹¹

This Comment explores the negative effects of solitary confinement on juveniles while offering an effective alternative to behavior management

2. *Id.*

3. Lauren M. Coler, *Isolated and Forgotten: End the Use and Practice of Solitary Confinement in the Juvenile Justice System*, 45 T. MARSHALL L. REV. 93, 94 (2021).

4. *Id.* For purposes of this Comment, the words “juvenile,” “youth,” “teen,” “teenager,” and “child” refer to individuals under eighteen years of age.

5. *Id.* at 94, 100–01 (quoting *Novak v. Beto*, 453 F.2d 661, 667 (5th Cir. 1971)); KYSEL, *supra* note 1, at 5.

6. Coler, *supra* note 3, at 101, 111–12.

7. KYSEL, *supra* note 1, at 2.

8. *See id.* at 5; Ian M. Kysel, *Banishing Solitary: Litigating an End to the Solitary Confinement of Children in Jails and Prisons*, 40 N.Y.U. REV. L. & SOC. CHANGE 675, 685 (2016).

9. Kysel, *supra* note 8, at 713.

10. *Id.* at 713, 714.

11. *See* KYSEL, *supra* note 1, at 3.

strategies.¹² Part II of this Comment will provide a brief overview of the developmental history behind juvenile transfers from juvenile detention centers to adult court systems.¹³ Part III examines the history of solitary confinement of youths, its causes, and its effects on those incarcerated.¹⁴ Part IV challenges the constitutionality of juvenile solitary confinement by examining the Eighth Amendment and Due Process Clause.¹⁵ It will also analyze the differences between adult and adolescent brains.¹⁶ Part V will examine the Humane Alternative to Long-Term Solitary Confinement Act's ("HALT") implementation and provide an alternative solution to solitary confinement for juveniles—a behavior management system called the token economy system.¹⁷

II. DEVELOPING THE SYSTEM

When the juvenile justice system was developed during the nineteenth century, most of the children who passed through the juvenile justice system were tried and held in facilities separate from adults.¹⁸ In the twentieth century, the juvenile justice system had the ability to waive jurisdiction over specific individual cases, which meant children could be tried as adults in the adult criminal justice system.¹⁹ As time progressed, states enacted legislation encouraging the juvenile justice system to increase the number of juveniles sent to and tried in the adult system.²⁰ Presently, all fifty states allow juveniles to be transferred and prosecuted in an adult justice system.²¹

There are three common ways to transfer a juvenile to adult court: statutory exclusion, judicial waiver, and direct file.²² Forty-seven states provide judges with discretion, making the judicial waiver the favored way to transfer juveniles.²³ The remaining states have implemented statutory exclusion provisions or direct file provisions.²⁴ The burden of proof lies with the state to

12. See discussion *infra* Parts II–V.

13. See discussion *infra* Part II.

14. See discussion *infra* Part III.

15. See discussion *infra* Part IV.

16. See discussion *infra* Part IV.

17. See discussion *infra* Part V.

18. Kysel, *supra* note 8, at 680.

19. *Id.*

20. *Id.*

21. OFF. JUV. JUST. & DELINQ. PREVENTION, JUVENILE JUSTICE REFORM INITIATIVES IN THE STATES: 1994–1996, at 42 (1997).

22. *Id.* at 43.

23. See *id.*; Kysel, *supra* note 8, at 681.

24. OFF. JUV. JUST. & DELINQ. PREVENTION, *supra* note 21, at 43; Kysel, *supra* note 8, at 681.

show that a juvenile should be tried as an adult.²⁵ A child's age eligibility for transfer to adult court varies among states.²⁶ Some states have no minimum age eligibility to transfer and prosecute a juvenile as an adult, while others range from ten to sixteen years of age.²⁷ Once juveniles enter the adult system, they are treated and addressed as adults—regardless of age.²⁸

III. SOLITARY CONFINEMENT

Solitary confinement is the social and physical isolation of an individual between twenty-two to twenty-four hours each day in a seven-by-seven-foot cell with remaining time, if any, spent in a barren concrete exercise yard or a cage.²⁹ However, different institutions may describe solitary confinement differently such as administrative segregation, special housing unit, isolation, permanent lockdown, or supermax; however, each term is synonymous with solitary confinement.³⁰ For instance, in *Berch v. Stahl*,³¹ the District Court defined solitary confinement as “confinement alone and removed from sustained contact with other human beings.”³²

A. *Historical Overview and Background*

In the United States during the late eighteenth century, solitary confinement was relied on for rehabilitation purposes.³³ Currently, however, solitary confinement is used to punish rather than to rehabilitate.³⁴ Dating back to 1829, “when the first real experimenting with solitary confinement began at the Eastern State Penitentiary in Philadelphia,” the institution's intended use—to give inmates a space to think about their wrongful actions—resulted in inmates

25. OFF. JUV. JUST. & DELINQ. PREVENTION, *supra* note 21, at 43.

26. *Id.* at 44.

27. *See id.* at 3, 44.

28. *See id.* at 44; Kysel, *supra* note 8, at 681.

29. Sharon Shalev, *Solitary Confinement as a Prison Health Issue*, in WORLD HEALTH ORG., PRISONS & HEALTH 27, 27 (Stefan Enggist et al. eds., 2017); Abbey Logan, *Juveniles in Solitary Confinement*, 16 UNDERGRADUATE REV. 192, 192 (2022); Sandra Simkins et al., *The Harmful Use of Isolation in Juvenile Facilities: The Need for Post-Disposition Representation*, 38 WASH. U. J.L. & POL'Y 241, 242 (2012).

30. *See Solitary Confinement Facts*, AM. FRIENDS SERV. COMM., <http://www.afsc.org/resource/solitary-confinement-facts> (last visited Feb. 9, 2023).

31. 373 F. Supp. 412 (W.D.N.C. 1974).

32. *Id.* at 420 (holding that solitary confinement's “severity as punishment is drastically increased when the isolation is accompanied by the ‘sensory deprivation’ which is, unnecessarily, attached to the isolation . . .”).

33. Logan, *supra* note 29, at 192.

34. *Id.*

contemplating and attempting suicide, along with developing mental impairments preventing them from functioning properly in society.³⁵ Through the twentieth century, solitary confinement for both adults and juveniles was used frequently throughout the country.³⁶

Today, there is extensive research that has demonstrated the extremely negative impact that solitary confinement has on juveniles in the system.³⁷ In 2016, solitary confinement for juvenile offenders was banned on a federal level by President Barack Obama.³⁸ This has given states the ability to either adopt the ban on solitary confinement or continue with their harmful ways.³⁹ There are currently twenty-three states that have limited or banned the use of solitary confinement in state jails and prison systems, leaving the remaining states the ability to continue its use.⁴⁰

B. *The State of Confinement Quarters*

When inmates are speaking about solitary confinement they commonly refer to it as the “hole.”⁴¹ The “hole” received its name because of the location of the solitary confinement cells, which are “usually under the prison’s first floor.”⁴² Inmates have very little exposure to natural sunlight if they are lucky; that is because most cells do not contain any windows at all to let light inside of the cell.⁴³ Instead, there are bright fluorescent lights that dangle from the ceiling that are kept on at all times, even throughout the night, as a way to destroy the inmate’s natural sleep cycle as well as their body’s essential sleep-wake cycle known as the circadian cycle.⁴⁴ It has been reported that, in some jails and

35. *Id.*

36. *Id.*

37. *Id.* at 193.

38. Logan, *supra* note 29, at 195.

39. See Anne Teigen, *States That Limit or Prohibit Juvenile Shackling and Solitary Confinement*, NAT’L CONF. STATE LEGISLATURES, <http://www.ncsl.org/civil-and-criminal-justice/states-that-limit-or-prohibit-juvenile-shackling-and-solitary-confinement> (July 8, 2022).

40. *Id.*

41. *A Prisoner’s Words Describing the “Hole,”* PRISON CULTURE (July 18, 2011), <http://www.usprisonculture.com/blog/2011/07/18/a-prisoners-words-describing-the-hole/>.

42. *Id.*; see also *Berch v. Stahl*, 373 F. Supp. 412, 415 (W.D.N.C 1974) (defining the solitary confinement cell as “a metal container about five feet by seven feet, with solid steel walls and solid door, windowless, and *totally bare* except for an oriental toilet (a hole in one corner of the floor) flushable only from outside the cell.”).

43. David H. Cloud et al., *Public Health and Solitary Confinement in the United States*, 105 AM. J. PUB. HEALTH 18, 20 (2015).

44. *Id.*; see also Eric Suni, *Circadian Rhythm*, SLEEP FOUND., <http://www.sleepfoundation.org/circadian-rhythm> (Feb. 16, 2023) (“When properly aligned, a circadian rhythm can promote consistent and restorative sleep. But when this circadian rhythm is thrown off, it can create significant sleeping problems, including insomnia. Research is also

prisons, toothbrushes and toothpaste are not provided to individuals in solitary confinement, causing teeth erosions and severe abscesses that are unable to be treated due to restrictions on the ability to seek medical assistance while in isolation.⁴⁵ One inmate reported that, in order to remove a decaying tooth, he would take nylon from his mattress and force it up into the root of his tooth and pull it out.⁴⁶

C. *The Causes*

It is commonly believed that those placed in solitary confinement are habitually violent and dangerous individuals who have committed crimes that are among the worst of the worst.⁴⁷ However, that belief is only true for a very small percentage of confined individuals.⁴⁸ Generally, juveniles are held in solitary confinement for any of the following four reasons—each including the physical and social isolation of juveniles.⁴⁹

The first reason is called “disciplinary solitary confinement,” which is used as a punishment for breaking institutional rules.⁵⁰ The rule breaking can include an array of behaviors ranging from low-level and nonviolent behaviors, such as talking back to staff members or being in possession of contraband, to more violent behaviors such as fighting with others.⁵¹ According to research, a significant percentage of youth are subject to disciplinary solitary confinement as a punitive measure.⁵² The second reason is called “protective solitary confinement,” which is used to protect a youth prisoner, usually from an adult prisoner that may pose a threat to the juvenile.⁵³ The third reason is called “administrative solitary confinement,” which is used when institution officials

revealing that circadian rhythms play an integral role in diverse aspects of physical and mental health.”).

45. See Frank De Palma as told to Christie Thompson, *I Developed Agoraphobia in Prison*, THE MARSHALL PROJECT (May 30, 2019, 10:00 PM), <http://www.themarshallproject.org/2019/05/30/i-developed-agoraphobia-in-prison?gclid=CjwKC>.

46. See *id.*

47. Cloud et al., *supra* note 43, at 20.

48. *Id.*

49. *Briefing Paper: Youth in Solitary Confinement in Adult Facilities*, ACLU, <http://www.aclu.org/other/briefing-paper-juvenile-solitary-confinement-adult-jails-and-prisons> (last visited Feb. 9, 2023).

50. See *id.*

51. *Id.*; VERA INST., WHY ARE PEOPLE SENT TO SOLITARY CONFINEMENT? THE REASONS MIGHT SURPRISE YOU 2, 4 (Mar. 2021), <http://www.vera.org/publications/why-are-people-sent-to-solitary-confinement>.

52. *Briefing Paper: Youth in Solitary Confinement in Adult Facilities*, *supra* note 49.

53. *Id.*

are unsure how to manage the juvenile or when the juvenile is characterized as posing too much trouble to allow the officials to be effective in running the institution properly.⁵⁴ The fourth and final reason is called “medical solitary confinement,” which is used when juveniles need to be medically treated.⁵⁵ Examples of when this type of isolation can be used are when a juvenile has an illness that is contagious or if they express suicidal ideation.⁵⁶ Additionally, there are a large number of inmates with mental illnesses that are placed in solitary confinement in relation to the behavior caused by the mental illnesses they possess.⁵⁷

D. *The Effects*

Even for brief periods of time, isolating juveniles can be extremely harmful.⁵⁸ When placed in solitary confinement, youths do not have the ability to partake in any programs, including educational programs.⁵⁹ Additionally, the confinement has negative psychological consequences.⁶⁰ Prisoner, Ahmad Al Aswadu recounted his time in the “hole” as almost indescribable.⁶¹ He expressed the feelings that consumed his mind in isolation as though his soul had escaped his body, coupled with extreme emptiness that he had never felt before.⁶² “[Eager] visitors are turned away at the gate,” the food quality is substantially reduced, and showers may or may not be designated; these are only a few external effects that isolation can have on an individual.⁶³

Youth who are placed in solitary confinement have expressed in detail how their experiences have led them to cut themselves with staples or razors, have hallucinations, lose the ability to control themselves, or feel out of sorts with reality, all while being in isolation.⁶⁴ Experts have reported that young

54. *Id.*

55. *Id.*

56. *See id.*

57. *See* VERA INST., *supra* note 51, at 2; Cloud et al., *supra* note 43, at 22 (“The grave overrepresentation of people with serious mental illnesses in the nation’s prisons . . . is a public health crisis A recent survey found that in 44 states, more people with serious mental illness are confined in . . . prisons . . . than in the largest remaining state psychiatric hospital.”).

58. Simkins et al., *supra* note 29, at 257; *see also* Teigen, *supra* note 39.

59. Simkins et al., *supra* note 29, at 257.

60. *Id.*; Jeffrey L. Metzner & Jamie Fellner, *Solitary Confinement and Mental Illness in U.S. Prisons: A Challenge for Medical Ethics*, 38 J. AM. ACAD. PSYCHIATRY & L. 104, 104 (2010).

61. *See* Ahmad Al Aswadu, *A Black View of Prison*, BLACK SCHOLAR, Apr.–May 1971, at 28, 31.

62. *See id.*

63. *See id.*

64. *See* KYSEL, *supra* note 1, at 1.

people are unable to psychologically handle solitary confinement for several reasons.⁶⁵ Because youth are still in the process of development, having to deal with the traumatic experience of being in solitary confinement has an extreme effect on their ability to adequately grow.⁶⁶ Confinement not only causes physical harm due to the deprivation of physical exercise, it causes even more serious mental health problems that are likely to persist for the rest of their lives.⁶⁷

Young people can be guilty of horrible crimes with significant consequences for victims, their families, and their communities. The state has a duty to ensure accountability for serious crimes, and to protect the public. But states also have special responsibilities not to treat young people in ways that can permanently harm their development and rehabilitation, regardless of their culpability.⁶⁸

Solitary confinement hosts a wide variety of negative psychological consequences.⁶⁹ “[These] can include anxiety, depression, anger, cognitive disturbances, perceptual distortions, obsessive thoughts, paranoia, and psychosis.”⁷⁰ Because juveniles in confinement are stripped away from any reading materials, programming, and exercise, they have ample time to plunge deep into thoughts, which oftentimes leads to a depressive state.⁷¹ Further, juveniles often lack the ability to visualize the temporariness of isolation, which can deepen the depression.⁷² Juveniles in isolation are deprived of socialization, with juvenile facilities taking it as far as providing meals through a small slit in the cell door.⁷³ The deprivation of social needs causes an array of behavioral problems, which in turn results in additional punishments and a continuance of the depression cycle.⁷⁴

Agitation is another negative consequence of isolation.⁷⁵ Juveniles are unable to grasp the understanding that isolation is a consequence of certain

65. *Id.* at 2.

66. *Id.*

67. *See id.* at 2, 3; Simkins et al., *supra* note 29, at 257 (explaining how isolation “in fact provokes and worsens [mental health] problems”).

68. KYSEL, *supra* note 1, at 2.

69. Simkins et al., *supra* note 29, at 257.

70. *Id.* at 254; Metzner & Fellner, *supra* note 60, at 104 (“Isolation can be psychologically harmful to any prisoner, with the nature and severity of the impact depending on the individual, the duration, and particular conditions (e.g., access to natural light, books, or radio).”).

71. Simkins et al., *supra* note 29, at 257.

72. *Id.* at 258.

73. *See id.*

74. *Id.*

75. *Id.*

behaviors or actions and not directed at them personally, which causes them to become increasingly agitated as they believe the isolation is unfair.⁷⁶ Acting out, to receive attention and ultimately being ignored, leads to more agitation.⁷⁷ Victimization, which can be re-traumatizing, is another effect that isolation can have on juveniles.⁷⁸ Youth who are subjected to the system often experience abuse and neglect as well as exposure to violence and other traumatic events that occur inside the facilities.⁷⁹ Young teens who enter the foster care system come from many different backgrounds and many have been a victim of child neglect or abuse.⁸⁰ The untreated trauma that most of the juveniles in the system have faced impedes their development, which gives rise to a great deal of struggles such as depression, substance abuse, destructive behavior, aggression, and concentration issues.⁸¹ Because isolation provides juveniles with ample time to focus on their thoughts, the painful memories they have endured and experiences they have gone through often circulate in their head, causing them to feel trapped in a constant cycle of re-victimization.⁸²

The lack of education is an additional effect of isolation.⁸³ Education is a crucial and fundamental aspect of a child's development and growth.⁸⁴ Since juveniles are still in the process of development, education plays a significant role in the process of delivering skills and internalizing knowledge and value.⁸⁵ Education shapes the way juveniles think.⁸⁶ Through education, they can build up their self-esteem and other social skills that will assist them in contributing to the harmony within society—including the institutions they are in.⁸⁷

Lastly, solitary confinement increases the risk of suicide.⁸⁸ Some of the juveniles who enter the system already face suicidal thoughts, and throwing these children into isolation will only cause these thoughts to intensify.⁸⁹ The socialization that is stripped from the children is dire to those who face suicidal

76. Simkins et al., *supra* note 29, at 258.

77. *Id.*

78. *Id.*

79. *Id.* at 258–59; *see also Briefing Paper: Youth in Solitary Confinement in Adult Facilities, supra* note 49.

80. *See* Simkins et al., *supra* note 29, at 259.

81. *Id.*

82. *Id.*

83. *Id.* at 260.

84. Fazilah Idris et al., *The Role of Education in Shaping Youth's National Identity*, 59 *PROCEDIA – SOC. BEHAV. SCIS.* 443, 450 (2012); *see also* Simkins et al., *supra* note 29, at 260.

85. Idris et al., *supra* note 84, at 450.

86. *Id.*

87. *See id.* at 445.

88. Simkins et al., *supra* note 29, at 259; Kysel, *supra* note 8, at 689.

89. Simkins et al., *supra* note 29, at 259; *Briefing Paper: Youth in Solitary Confinement in Adult Facilities, supra* note 49.

thoughts.⁹⁰ According to the Department of Justice, greater than sixty percent of juveniles who committed suicide had been a victim of being held in solitary confinement in the past.⁹¹ Not to mention the high number of children who have the desire to, or actually do, attempt to commit suicide while being confined.⁹² The United Nations Human Rights Committee has made the conclusion that isolation may be considered torture.⁹³

1. Mental Health Effects

Kalief Browder, a juvenile, was sent to jail to await a trial for allegedly stealing a backpack.⁹⁴ After enduring several brutal attacks by fellow inmates and taking beatings from the guards, Mr. Browder was held in solitary confinement for two years for an alleged crime that he was not even prosecuted for.⁹⁵ Upon release, Mr. Browder's mother stated he would spend long periods of time pacing around the four corners of each room in their home, acting as if he were still inside the very small isolation cell.⁹⁶ He would tell her, "Mom, that was all I was allowed to do for years."⁹⁷ Prior to incarceration, Mr. Browder did not suffer from any mental illnesses.⁹⁸ However, that suddenly changed after he had entered the system.⁹⁹ After having been isolated, Mr. Browder faced depression that was so unbearable that two years following his release, he ultimately lost his battle with depression by committing suicide.¹⁰⁰

90. Simkins et al., *supra* note 29, at 259.

91. *Briefing Paper: Youth in Solitary Confinement in Adult Facilities*, *supra* note 49.

92. *Id.*

93. Simkins et al., *supra* note 29, at 251.

94. Mike Hayes, *Kalief Browder's Mother Tells the Horrific Story of Finding His Body After His Suicide*, BUZZFEED NEWS (Jan. 29, 2016, 1:12 PM), <http://www.buzzfeednews.com/article/mikehayes/kalief-browders-mother-tells-the-horrific-story-of-finding-h>.

95. *Id.*

96. *Id.*

97. *Id.*

98. 'Prior to Going to Jail, I Never Had Any Mental Illnesses' Man Jailed as Teen Without Conviction Commits Suicide, FOX 59, <http://fox59.com/news/national-world/man-jailed-as-teen-without-conviction-commits-suicide> (June 8, 2015, 6:09 PM).

99. *See id.*

100. Hayes, *supra* note 94; *see also* Simkins et al., *supra* note 29, at 256. Dr. Grassian concluded . . . a continued intolerance of social interaction, a handicap which often prevents the inmate from successfully readjusting to the broader social environment of general population in prison and, perhaps more significantly, often severely impairs the inmate's capacity to reintegrate into the broader community upon release from imprisonment.

Simkins et al., *supra* note 29, at 256.

An investigation at New York's Rikers Island established that twenty-five percent of sixteen to eighteen-year-olds were placed in isolation in which seventy-three percent of those juveniles were mentally ill.¹⁰¹ Juveniles in the system who are mentally ill have a heightened level of struggle when faced with being held in solitary confinement.¹⁰² The mother of a fifteen-year-old mentally ill child locked up in a Michigan prison recounted her son's gut wrenching experience in solitary confinement in which she explained how her son was prohibited from receiving his as-needed medication to control his mental illness.¹⁰³ On just one noted occasion, this gave rise to the child being unable to calm himself down to the extent that he began slamming his head against the concrete walls of the cell.¹⁰⁴ When the prison guards ordered the child to stop and he did not obey their commands, they brutally struck him several times and sprayed him with pepper spray.¹⁰⁵ Further, in order to further restrict him, the prison guards placed him in belly chains and leg irons while they tied his bloody body to the bed in only his underwear and a helmet.¹⁰⁶ Psychologist Craig Haney, who began studying the effects of isolation in prisons in the 1970's, stated:

At first I wondered whether solitary confinement would actually be beneficial, if prisoners would see it as a respite to get out of the really overcrowded conditions they were in and have the opportunity to achieve some solace and some solitude I was quickly disabused of the notion that there were any real benefits.¹⁰⁷

101. Antonia Cartwright, *OP-ED: International Perspectives on Juvenile Detention and Solitary Confinement*, JUV. JUST. INFO. EXCH. (Aug. 27, 2014), <http://jjie.org/2014/08/27/op-ed-international-perspectives-on-juvenile-detention-and-solitary-confinement>; see also Marquise Francis, *Rikers Island, One of America's Most Notorious Jails, Is Now One of Its Deadliest*, YAHOO NEWS (Nov. 6, 2021), <http://news.yahoo.com/rikers-island-one-of-americas-most-notorious-jails-is-now-one-of-its-deadliest-090043078.html> (explaining that New York's Rikers Island is one of the most notorious jails in the United States known for its violence and neglect against inmates with horrific living conditions, having been deemed the deadliest jail after a large increase in deaths had occurred).

102. See Diana D'Abruzzo, *One Cell, a Lifetime of Pain: Waking to the Truth of Solitary Confinement*, ARNOLD VENTURES (May 19, 2021), <http://www.arnoldventures.org/stories/one-cell-a-lifetime-of-pain-waking-to-the-truth-of-solitary-confinement>.

103. *Id.*

104. *Id.*

105. *Id.*

106. *Id.*

107. D'Abruzzo, *supra* note 102.

IV. A CONSTITUTIONAL CHALLENGE

The main tools to challenge the constitutionality of solitary confinement are the Eighth Amendment and the Due Process Clause of the Fifth and Fourteenth Amendments to the United States Constitution.¹⁰⁸ As of 2016, no court has ever ruled definitively on Eighth, Fifth, or Fourteenth Amendment challenges to solitary confinement for juveniles.¹⁰⁹ However, some courts in the last few decades have found and held that juveniles who have been isolated in solitary confinement have had their constitutional rights violated.¹¹⁰ More specifically, these courts have ruled in certain instances that the isolation is amongst a cruel and unusual punishment in violation of the Eighth Amendment or in violation of one's due process under the Fourteenth Amendment.¹¹¹

A. *Due Process Clause Challenge*

The Due Process Clause of the Fourteenth Amendment states, “nor shall any State deprive any person of life, liberty, or property, without due process of law.”¹¹² In order to invoke the Fourteenth Amendment's procedural protection, one must show that either their life, liberty, or property is in jeopardy.¹¹³ A juvenile cannot face criminal punishment prior to being adjudicated guilty.¹¹⁴ When punishments such as solitary confinement are imposed after a juvenile has been adjudicated guilty of a crime, the Eighth Amendment applies.¹¹⁵ Punishments that occur prior to adjudication are evaluated under the Fifth and Fourteenth Amendments' substantive due process protections.¹¹⁶ When taking a juvenile into the system and holding them there against their will, the State has a constitutional duty to assume some responsibility to ensure the safety and well-being of that individual.¹¹⁷ Because juveniles are unable to take care of themselves upon being “locked up,” when the State fails to provide the juveniles

108. Kysel, *supra* note 8, at 696; *see also* U.S. CONST. amends. VIII, V; U.S. CONST. amend. XIV, § 1.

109. Kysel, *supra* note 8, at 685.

110. *Id.*; *see also, e.g.*, *Inmates of Boys' Training Sch. v. Affleck*, 346 F. Supp. 1354, 1366–67 (D.R.I. 1972).

111. Kysel, *supra* note 8, at 685; *Inmates of Boys' Training Sch.*, 346 F. Supp. at 1366–67.

112. U.S. CONST. amend. XIV, § 1.

113. *Wilkinson v. Austin*, 545 U.S. 209, 221 (2005).

114. *See* Kysel, *supra* note 8, at 712.

115. *Id.* at 712–13.

116. *Id.* at 713.

117. *Id.*

with the basic human needs, the Due Process Clause is triggered and comes into effect to protect the juveniles.¹¹⁸ This is because restraining a juvenile's freedom to act on his own behalf through the system is unconstitutional and goes against what the Due Process Clause is designed to do—to protect.¹¹⁹

B. Eighth Amendment Challenge

The Eighth Amendment's Cruel and Unusual Punishment Clause states that "nor [shall] cruel and unusual punishments [be] inflicted."¹²⁰ This Amendment guarantees juveniles in the system the right to not be subject to extreme penalties.¹²¹ This right comes from the principle of justice that the punishment must be proportionate to the offender and the offense.¹²² Juveniles held in the current state of solitary confinement arguably violates this Amendment.¹²³ The Supreme Court of the United States has distinguished that juveniles must be held to different standards of accountability or degrees of punishment in comparison to adults.¹²⁴ Because juveniles possess adolescent brains that are still in the process of growing, the traumatic impact of the isolation where they are unable to grow psychologically, physically, socially, or developmentally, has created long-term and even permanent damage to juveniles.¹²⁵

When a prisoner is confined in an isolation cell as a form of punishment that the prisoner believes to be cruel and unusual, the prisoner is permitted to claim an Eighth Amendment violation.¹²⁶ In order for one to challenge the harsh conditions of solitary confinement under the Eighth Amendment, a two-part analytical test must be met.¹²⁷ The first part of the test is met upon proving that

118. *Id.*

119. *See* Kysel, *supra* note 8, at 713.

[I]n the appropriate case, substantive due process may be argued to place affirmative obligations on government officials to ensure that core elements of a pretrial detainee child's liberty interest are guaranteed—including the interest in being safe, in being free from unreasonable restraint, and in some level of services or programming to promote growth and development.

Id. at 714.

120. U.S. CONST. amend. VIII.

121. *See* Miller v. Alabama, 567 U.S. 460, 469 (2012).

122. *Id.*

123. Taylor R. Graves, Juvenile Solitary Confinement and the Eighth Amendment 33 (May 2022) (Honors thesis, University of South Dakota) (on file with USD RED, University of South Dakota), <http://red.library.usd.edu/cgi/viewcontent.cgi?article=1241&context=honors-thesis>.

124. *Id.* at 10; Graham v. Florida, 560 U.S. 48, 68–69 (2010).

125. Graves, *supra* note 123, at 12, 18–19.

126. *See* G.H. v. Marsteller, 424 F. Supp. 3d 1109, 1114 (N.D. Fla. 2019).

127. *Id.*

the conditions are impartially serious or extreme, such as by showing that the isolation created the unreasonable risk of producing severe damage to his/her health or safety moving into the future.¹²⁸ The second part is met when one proves that the institutional staff knew of the harm that was being caused, but instead chose to ignore it.¹²⁹

1. Difference Between Adult and Adolescent Brains

Youths might be treated differently from adults in the justice system because they are still developing physically and psychologically.¹³⁰ These juveniles are going through massive internal and external changes that require, for example, the need to exercise and maintain a balanced diet and the necessary attention to ensure they successfully manage these changes.¹³¹ Therefore, they must be met with special psychological, social, and emotional support.¹³² The psychological differences in youth include impulsivity, the capacity to change, and the need to develop.¹³³ In solitary confinement, the juveniles are not able to meet any of those needs.¹³⁴ Additionally, juveniles in solitary confinement are prohibited from receiving proper care, therefore they are unable to obtain the proper age-differentiated physical, dental, and vision care examinations and assessments needed to ensure they are healthy.¹³⁵ Denying juveniles these rights that are fundamental in shaping their entire future is unconstitutional and falls under cruel and unusual punishment.¹³⁶

It has been established that developments in psychology and brain science consistently show the fundamental differences between the mind of a juvenile and an adult.¹³⁷ Further, the brain of a juvenile continues to grow and mature throughout life until late adolescence.¹³⁸ Consequently, the youth years of a juvenile are considered the most important period in the development of an individual.¹³⁹ Change is something that the system claims to strive for and the

128. *Id.*

129. *Id.*

130. *See* KYSEL, *supra* note 1, at 14.

131. *Id.*

132. *See id.* at 14, 16.

133. *Id.* at 15–16.

134. *Id.* at 3, 16.

135. *See* KYSEL, *supra* note 1, at 3, 15.

136. *See id.* at 5.

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

138. *See id.*

139. Eduardo R. Ferrer, *Transformation Through Accommodation: Reforming Juvenile Justice by Recognizing and Responding to Trauma*, 53 AM. CRIM. L. REV. 549, 554 (2016); *see also* *Miller v. Alabama*, 567 U.S. 460, 476 (2012) (noting that “[youth] is a moment and

increased adaptability in early childhood and adolescence molds juveniles to be much more susceptible to and capable of change compared to adults.¹⁴⁰ Although the potential is great in juveniles, there is a great risk posed when they are exposed to unsupported and toxic environments—the exact risk that solitary confinement encompasses.¹⁴¹

Throughout the adolescent period of a juvenile, their brain's circuitry and behavior begin to stabilize.¹⁴² The growth in a juvenile's brain circuitry and operation significantly impacts the regions in the brain that are associated with self-consciousness, the assessment of risk and reward, and the regulation of emotions.¹⁴³ “[In order] for a juvenile brain to fully develop, it needs environmental stimuli and social interaction[s].”¹⁴⁴ The brains of juveniles, in comparison to adults, differ when it comes to the developmental process of the brain's frontal lobe.¹⁴⁵ Scientific findings have revealed that the brain of each and every human being goes through substantial structural growth during the adolescent years.¹⁴⁶ “The frontal lobe is responsible for cognitive processing such as planning, strategizing, and organizing thoughts and actions” that are amid the last region in the brain to mature.¹⁴⁷ The frontal lobe does not reach maturation and development until an individual reaches their twenties.¹⁴⁸ Further, the development of the brain of a youth is molded by consistent healthy relationships, responsive communications, and modeling of acceptable behaviors.¹⁴⁹ Development occurs the most when juveniles feel emotionally and physically safe and when they have the ability to be engaged and challenged throughout the process.¹⁵⁰ Once a juvenile has passed the developmental phase of their life, the brain is unable to rewind and redevelop at a later time in life,

‘condition of life when a person may be most susceptible to influence and to psychological damage’”) (quoting *Eddings v. Oklahoma*, 455 U.S. 104, 115 (1982)).

140. See Ferrer, *supra* note 139, at 562; *Miller*, 567 U.S. at 476.

141. Ferrer, *supra* note 139, at 554–55; see also KYSEL, *supra* note 1, at 2.

142. Coler, *supra* note 3, at 103.

143. *Id.*

144. *Id.*; Jessica Feierman & Jenny Lutz, *Placing Juveniles in Solitary Confinement Doesn't Fix Them. In Fact, It Makes Them Worse*, USA TODAY, <http://www.usatoday.com/story/opinion/policing/2019/01/11/policing-usa-juvenile-detention-solitary-confinement-mental-illness/2505702002> (Jan. 11, 2019, 2:39 PM) (“Rather than isolating young people, we should create opportunities for them to learn positive skills and maintain the critical relationships that they need to grow and thrive.”).

145. KYSEL, *supra* note 1, at 15.

146. *Id.*

147. *Id.*

148. *Id.*

149. Lisa Flook, *Four Ways Schools Can Support the Whole Child*, GREATER GOOD SCI. CTR. (Apr. 23, 2019), http://greatergood.berkeley.edu/article/item/four_ways_schools_can_support_the_whole_child.

150. *Id.*

making the effects permanent.¹⁵¹ Therefore, to deny juveniles such a crucial and important aspect that is detrimental in shaping the rest of their lives goes against what the Eighth Amendment was set to accomplish.¹⁵²

V. THE RESOLUTION

A resolution to the issue of solitary confinement will take time to accomplish, but it is obtainable with the right tools and training.¹⁵³ Interactive treatment programs have been proven to be prosperous in limiting behavioral issues and mental health problems.¹⁵⁴ While some states have adopted former President Obama's ban on solitary confinement for juveniles in federal prison systems, many states have not.¹⁵⁵ Responsively banning isolation and, instead, implementing behavior management systems is an alternative that each state in the United States must embrace in order to provide a more effective way for reducing disobedient behavior.¹⁵⁶

Juveniles entering the justice system are deemed to be extremely vulnerable.¹⁵⁷ A report showed that nearly one in ten juveniles who are incarcerated report experiencing sexual abuse in juvenile correctional facilities.¹⁵⁸ Many juveniles in the system have past traumas, for example, due to being sexually abused by family members.¹⁵⁹ With that, they will likely be dealing with several different mental disorders, including depression and post-traumatic stress disorder, especially in young females.¹⁶⁰ It has been shown that young females tend to act out and resist the authority of males inside the system stemming from their past traumatic life experiences.¹⁶¹ The discipline to come from acting out—solitary confinement—will not only exacerbate any existing mental disorders, but also may cause more physical and psychological trauma to

151. Coler, *supra* note 3, at 103.

152. *See id.* at 101; *Graham v. Florida*, 560 U.S. 48, 76 (2010) (“An offender’s age is relevant to the Eighth Amendment, and criminal procedure laws that fail to take defendants’ youthfulness into account at all would be flawed.”).

153. *See Coler, supra* note 3, at 107–08.

154. Simkins et al., *supra* note 29, at 257.

155. *See Teigen, supra* note 39.

156. *See* FLA. DEP’T JUV. JUST., EFFECTIVE BEHAVIOR MANAGEMENT 3 (2010), <http://www.djj.state.fl.us/content/download/22619/file/behavior-mgmt-pg-v3-5.pdf>.

157. Ronnie K. Stephens, *Trauma and Abuse of Incarcerated Juveniles in American Prisons*, INTERROGATING JUST. (May 28, 2021), <http://interrogatingjustice.org/prisons/trauma-and-abuse-of-incarcerated-juveniles-in-american-prisons/>.

158. *Id.*

159. *Id.*

160. *Id.*

161. *Id.*

be endured.¹⁶² As proven, solitary confinement does not rehabilitate the juveniles who are placed inside in that tiny cell—it only puts them at a higher risk of severe long-term negative effects.¹⁶³

A. *Adhering to the Nelson Mandela Rules*

As Nelson Mandela stated, “[i]t is said that no one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its highest citizens, but its lowest ones.”¹⁶⁴ Nelson Mandela spent twenty-seven years of his life in prison after receiving a life sentence for conspiring against the apartheid regime.¹⁶⁵ Throughout his time in prison, Mr. Mandela was in and out of solitary confinement; however, he also managed to receive a law degree and took on a leadership role within the jail.¹⁶⁶ Mr. Mandela spent approximately six years in long-term isolation; after negotiations occurred with the government to end apartheid, he was released from prison at age seventy-one.¹⁶⁷ Four years after being released from prison, Mr. Mandela became the first democratically elected president in South Africa.¹⁶⁸ In 2015, the United General Assembly adopted the United Nations Standard Minimum Rules for the Treatment of Prisoners, known as the “Nelson Mandela Rules” to honor the great leader Nelson Mandela.¹⁶⁹

The Mandela Rules are intended to revise the standards of solitary confinement internationally and offer guidelines to end the inhumane practice of long-term solitary confinement, arguing that solitary confinement in excess of fifteen consecutive days amounts to torture or degrading punishment.¹⁷⁰ Under

162. Stephens, *supra* note 157.

163. *See id.*

164. NELSON MANDELA, LONG WALK TO FREEDOM: THE AUTOBIOGRAPHY OF NELSON MANDELA 174–75 (1994); Andrea Flynn-Schneider, *Mandela Rules Create New Standards for International Treatment of Prisoners*, HUM. RTS. BRIEF, 2015, at 36, 36.

165. Jean Casella & James Ridgeway, *Mandela in Solitary*, SOLITARY WATCH (Dec. 7, 2013), <http://solitarywatch.org/2013/12/07/mandela-solitary/>.

166. *Id.*

167. *Id.*

168. *See id.*; *Mandela’s Presidency*, APARTHEID MUSEUM, <http://www.apartheidmuseum.org/exhibitions/mandelas-presidency> (last visited Feb. 9, 2023).

169. Andrew Gilmour, *The Nelson Mandela Rules: Protecting the Rights of Persons Deprived of Liberty*, U.N. CHRONICLE (July 1, 2019), <http://www.un.org/en/un-chronicle/nelson-mandela-rules-protecting-rights-persons-deprived-liberty>; G.A. Res. 70/175, annex, United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), at 1 (Dec. 17, 2015).

170. Letter from Am. C.L. Union et al., to Joe Biden, President 1 (June 3, 2021) (on file with American Civil Liberties Union), http://www.aclu.org/sites/default/files/field_document/letter_to_biden_administration_on_ending_solitary_confinement.pdf; *see also* Flynn-Schneider, *supra* note 164, at 37 (“[A]ccording to Yuval

the Mandela Rules, solitary confinement shall only be used as a last resort for as short a time as possible and subject to an independent review of the confinement.¹⁷¹ Other revisions to the rules include the protection of basic fundamental rights, which includes providing proper living conditions to all prisoners and treating each inmate in a respectful and dignified manner when it comes to conducting searches.¹⁷² Further, the most relevant thing to note is that the United Nations have called on the member states to ban solitary confinement for population groups that are subject to vulnerability, including youth.¹⁷³ Rule forty-five in the Nelson Mandela Rules states the following:

The imposition of solitary confinement should be prohibited in the case of prisoners with mental or physical disabilities when their conditions would be exacerbated by such measures. The prohibition of the use of solitary confinement and similar measures in cases involving women and children, as referred to in other United Nations standards and norms in crime prevention and criminal justice, continues to apply.¹⁷⁴

One of the first states to adhere to the United Nations Nelson Mandela Rules is New York.¹⁷⁵ New York has created and implemented an alternative measure to solitary confinement called the Humane Alternative to Long-Term Solitary Confinement Act (“HALT”).¹⁷⁶ Applied to all state prisons and county

Ginbar, Legal Advisor at Amnesty International, the rules ‘would help turn imprisonment from a wasted time of suffering and humiliation into one used for personal development leading to release, to the benefit of society as a whole.’”).

171. Flynn-Schneider, *supra* note 164, at 36.

172. *Id.* at 36–37.

173. See *The United Nations, STOP SOLITARY FOR KIDS*, <http://stopsolitaryforkids.org/international-law-united-nations> (last visited Feb. 9, 2023).

174. G.A. Res. 70/175, *supra* note 169, at 17 (footnote omitted); *The United Nations*, *supra* note 173 (stating that United Nations Committee on the Rights of the Child has defined a “child” to be persons up to the age of eighteen years old); U.N. Convention on the Rights of the Child art. 1, Nov. 20, 1989, 1577 U.N.T.S. 3.

175. See Hilary Andersson, *Solitary Confinement: New York Bans Prison Isolation Over 15 Days*, BBC NEWS (Apr. 2, 2021), <http://www.bbc.com/news/world-us-canada-56596837>; N.Y. CORRECT. LAW § 137(6)(i)(i) (McKinney 2023).

176. *The Humane Alternatives to Long-Term (“HALT”) Solitary Confinement Act*, N.Y.C.L. UNION, <http://www.nyclu.org/en/legislation/humane-alternatives-long-term-halt-solitary-confinement-act> (last visited Feb. 9, 2023).

The HALT Solitary Confinement Act is rooted in the principle that no one should be subject to inhumane, degrading treatment. The bill prohibits correctional officers from resorting to solitary confinement as the default option for addressing disciplinary or administrative issues. The HALT Act reorients the system toward practices that emphasize treatment and rehabilitation over punishment and isolation.

Id.

jails in New York State, this Act states that no one may be placed in segregated confinement for longer than is necessary, which is typically no longer than fifteen consecutive days.¹⁷⁷ If any person must be separated for longer than the fifteen consecutive days, they will be placed in a rehabilitative and therapeutic unit called Residential Rehabilitation Unit (“RRU”).¹⁷⁸ Additionally, the Act provides a ban on solitary confinement as a whole for special populations, which includes persons twenty-one years of age or younger, persons fifty-five years or older, anyone with a physical, mental, or medical disability, and individuals who are pregnant, new mothers, or caring for a child while incarcerated.¹⁷⁹ It has been provided that the only time people in special populations may be confined for a period of time is after a disciplinary hearing in which they are either given seven hours a day out-of-cell time not exceeding forty-eight hours or they are transferred to a residential rehabilitative unit or mental health treatment unit.¹⁸⁰ Each correctional facility must provide an annual public record concerning all aspects of the policies and practices of segregated confinement and residential rehabilitation units.¹⁸¹

The RRU is separated from general population and is used for treatment, therapy, and rehabilitative programming.¹⁸² The units are also designed to be therapeutic and trauma-informed, and possess the goals of individualized treatment and rehabilitation while working out the causes of troublesome behavior.¹⁸³ Additionally, inmates who are placed in a RRU will receive suicide prevention screening that is to be administered by trained staff from the department or the office of mental health.¹⁸⁴ If it is revealed that the inmate is at risk of suicide, a mental health clinician will further evaluate and the measures most appropriate for that individual will be taken.¹⁸⁵

177. See *id.*; *Summary of the Humane Alternative to Long-Term (HALT) Solitary Confinement Act (A.2500/S.1623)*, N.Y. CAMPAIGN FOR ALTS. TO ISOLATED CONFINEMENT, <http://nycaic.org/legislation/> (last visited Feb. 9, 2023); N.Y. CORRECT. LAW § 137(6)(i)(i).

178. *Summary of the Humane Alternative to Long-Term (HALT) Solitary Confinement Act (A.2500/S.1623)*, *supra* note 177; N.Y. CORRECT. LAW § 137(6)(i)(i).

179. Assemb. B. 2277, 2021–2022 Reg. Sess. (N.Y. 2021); N.Y. CORRECT. LAW §§ 2(33), 137(6)(h).

180. N.Y. CORRECT. LAW § 137(6)(h).

181. *Id.* § 401-A(4).

182. *Id.* § 2(34).

183. *Id.*

184. *Id.* § 137(6)(d)(ii)(A)–(B).

185. N.Y. CORRECT. LAW § 137(6)(d)(ii)(A)–(B).

B. *Behavior Management Systems*

Implementing the different sections, as discussed within the HALT Act, would be extremely beneficial for each state in the United States that has not banned solitary confinement for juveniles in every jail and prison.¹⁸⁶ Implementing the HALT Act will ensure that juveniles will not be faced with being placed in solitary confinement and will provide them with a housing alternative that will be effective in upholding safety for themselves and others around them.¹⁸⁷ However, in order to ensure the juveniles are successful in a residential rehabilitative unit, it is crucial they are provided with strategies to manage their behavior.¹⁸⁸

A behavior management system is the application of methods and strategies that change an individual's actions.¹⁸⁹ This system is implemented in educational programs.¹⁹⁰ Not only is it successful in getting youth to abide by program rules, it brings about change in the behavior of youths and increases their ability to understand accountability.¹⁹¹ Further, it enhances their development of pro-social behavior skills.¹⁹² There are several different components that may go into an effective behavior management system; the focus of this Comment is geared towards components that are most effective in dealing with individuals who struggle with pro-social behavior and self-discipline.¹⁹³

Most teenagers who enter the criminal justice system endure a variety of intense educational needs that are often exacerbated by poor mental health and medical and social concerns.¹⁹⁴ Males who are poverty-stricken, come from minority backgrounds, and have serious learning and/or behavioral issues make

186. See *id.*; *The Humane Alternatives to Long-Term ("HALT") Solitary Confinement Act*, *supra* note 176.

187. N.Y. Assemb. 2277.

188. See FLA. DEP'T JUV. JUST., *supra* note 156, at 3.

189. *Id.*

190. NAT'L CTR. ON EDUC., DISABILITY & JUV. JUST., TOOLS FOR PROMOTING EDUCATIONAL SUCCESS AND REDUCING DELINQUENCY I (2007), <http://search.issuelab.org/resource/tools-for-promoting-educational-success-and-reducing-delinquency.html>.

191. FLA. DEP'T JUV. JUST., *supra* note 156, at 3.

192. *Id.* (explaining that prosocial behavior is the ability to care for the well-being and rights of others, as well as to feel emotions such as empathy towards other individuals in a way that benefits someone other than themselves).

193. See discussion *supra* Parts II–IV; discussion *infra* Section V.B.1; FLA. DEP'T JUV. JUST., *supra* note 156, at 7.

194. NAT'L CTR. ON EDUC., DISABILITY & JUV. JUST., *supra* note 190, at 3.

up the majority of the population of incarcerated youth.¹⁹⁵ Many of these juveniles are likely coming in with prior issues such as disciplinary removal from school, school failure, and illiteracy.¹⁹⁶ Notably, those are several of many issues that may lead to the reason why they act out, causing them to be held in solitary confinement.¹⁹⁷ That is why it is important to support the implementation of behavioral management strategies to positively impact these individuals who have already faced hardships and who are susceptible to change due to their brains still being in the process of development.¹⁹⁸

Instead of simply throwing a juvenile in solitary confinement because of poor behavior, these juveniles must be effectively taught in a productive manner.¹⁹⁹ Research has proven that punishment, negative consequences, and cruel discipline approaches are not successful in leading to effective teaching of tolerable social behaviors for the juveniles in the system.²⁰⁰ Teaching pro-social behaviors and self-discipline through the use of behavior management strategies is a promising method that institutional staff must practice.²⁰¹

1. The Token Economy System

Moreover, it is important that children within a RRU are restricted in possessing some of the privileges that are in general population.²⁰² This is because if they were provided the same privileges in a separated RRU, then they will likely have no desire to undertake and put forth effort in to the behavior management system that will be implemented through the token economy system.²⁰³ The token economy system is a type of behavior management system that implements the use of a token to enhance the encouragement of desirable behavior and also decreasing the undesirable behavior.²⁰⁴ Studies have asserted the effectiveness of the token economy system with youth who have poor

195. *Id.*

196. *Id.*

197. *Briefing Paper: Youth in Solitary Confinement in Adult Facilities*, *supra* note 49.

198. *See* NAT'L CTR. ON EDUC., DISABILITY & JUV. JUST., *supra* note 190, at 3; Ferrer, *supra* note 139, at 554.

199. NAT'L CTR. ON EDUC., DISABILITY & JUV. JUST., *supra* note 190, at 3.

200. *Id.* at 21.

201. *See id.*

202. *See What Is a Token Economy in Behavior Management?*, UNIVERSAL CLASS, <http://www.universalclass.com/articles/special-education/using-a-token-economy-to-manage-behaviors.htm> (last visited Feb. 9, 2023).

203. *See id.*; Christine Sarkissian, *Do Token Economies Help Manage Behaviors of Youth? Applying a Logical Framework to Evaluate Program Effectiveness* (2017) (M.S.W. thesis, California State University, Northridge) (on file with ScholarWorks, California State University).

204. *See* Sarkissian, *supra* note 203.

behavior or emotional disorders through targeting behaviors like aggression, on-task behavior, and social skills.²⁰⁵ When a desired or non-desired behavior has been performed, it is immediately recorded in an individualized point card, which is used to keep track of tokens earned, tokens spent, and any penalties.²⁰⁶ Youths who show improvements in behavior and continue to maintain those improvements will receive more points on their point cards, which leads to more tokens that can be exchanged for something that they desire.²⁰⁷ Having these desires that will be obtainable through the token system will be effective in promoting positive and desirable behavior.²⁰⁸

While in the developmental phase, particular behaviors that children show are predominantly due to the consequences that a certain behavior may have on the child.²⁰⁹ For example, if the resulting consequences of the behavior are good, it is more likely that the behavior will continue to repeat itself in the future.²¹⁰ However, if the resulting consequences of a behavior are negative, it is less likely that a child will continue repeating that behavior.²¹¹ With poor behavior comes negative consequences, which includes punishment.²¹² It has been shown that punishment represses the negative behavior, but does not fully eliminate it.²¹³ This means that the cycle of punishment, then retaliation, then more punishment is endless, and the way to eliminate this cycle is to implement rewards for positive behaviors.²¹⁴ Rewards have significantly reduced violence inside juvenile detention centers; thus, using a token reward system in jails and prisons for young adults may be a successful measure to reduce violence.²¹⁵

There are six mandatory steps to implement a token economy system in juvenile detention centers.²¹⁶ The first step is to determine what the target behavior is.²¹⁷ The target behaviors can be found by analyzing why the juvenile was sent to the residential rehabilitative unit in the first place, whether it was, for example, because they were talking back to the staff or getting into fights with

205. *Id.*

206. *See What Is a Token Economy in Behavior Management?*, *supra* note 202; Sarkissian, *supra* note 203.

207. *See* Sarkissian, *supra* note 203.

208. *See id.*

209. Frederick W. Huff, *Behavior Management in Detention of Juveniles*, JUV. JUST., Nov. 1975, at 19, 20.

210. *Id.* at 20–21.

211. *Id.* at 21.

212. *See id.* at 20–21.

213. *Id.* at 21.

214. *See* Huff, *supra* note 209, at 21.

215. *See id.*

216. *See What Is a Token Economy in Behavior Management?*, *supra* note 202.

217. *Id.*

other inmates.²¹⁸ The second step is to choose the tokens that will be used.²¹⁹ If the program is implemented, juveniles can access their tokens digitally via an application on their tablets or physically using poker chips or stickers.²²⁰ The third step is to select the rewards the juvenile inmates are eligible for.²²¹ Juveniles in the residential rehabilitation unit program will be motivated to participate in the token economy for accruing tokens.²²² Some of the token-based rewards can include television time, commissary options, and recreational time, which includes the option to play sports and access functions of the tablet that general population has, such as music and approved games.²²³ The above-mentioned tokens will come with restrictions in the residential rehabilitation unit in order to induce behavioral modification.²²⁴ The fourth step is to determine the reinforcement schedule.²²⁵ Juveniles can obtain tokens by cleaning their rooms when they wake up, participating daily in their treatment, therapy, or educational classes, behaving properly during meals, recreation, leisure, and bed time, and being honest, polite, and respectful to the staff members inside the institution.²²⁶ The fifth step is to determine what the token exchange criterion is.²²⁷ Each jail or prison can implement their own exchange system by placing the cost of a reward with a specific number of tokens.²²⁸ The sixth step is to ensure each staff member who will be working in the residential rehabilitative unit is equipped with special training on the token economy system and how to implement it effectively.²²⁹ There must be assigned staff members who have the duty of keeping track of and updating each juvenile inmate's point card on their tablet.²³⁰ When juveniles receive a penalty, they must be instructed on what they did wrong in an effective way to fix the behavior moving forward.²³¹

218. *Id.*; see also VERA INST., *supra* note 51, at 2.

219. *What Is a Token Economy in Behavior Management?*, *supra* note 202.

220. *See id.*

221. *Id.*

222. Sarkissian, *supra* note 203, at 4–5.

223. *See What Is a Token Economy in Behavior Management?*, *supra* note 202.

224. *See Huff*, *supra* note 209, at 21.

225. *What Is a Token Economy in Behavior Management?*, *supra* note 202.

226. Sarkissian, *supra* note 203, at 9.

227. *What Is a Token Economy in Behavior Management?*, *supra* note 202.

228. *See id.*

229. *Id.*; *The Humane Alternatives to Long-Term (“HALT”) Solitary Confinement Act*, *supra* note 176.

230. *See Huff*, *supra* note 209, at 22.

231. *See What Is a Token Economy in Behavior Management?*, *supra* note 202.

VI. CONCLUSION

Although solitary confinement has been around for quite a long time, the purpose of isolation is drastically different today than it was in the past.²³² In the past, when solitary confinement was first developed, it was designed to hold dangerous habitual adult prisoners.²³³ Now, it holds children who may not pose a threat and still have developing brains that are susceptible to change.²³⁴ Juveniles are much different than adults.²³⁵ For juveniles in the system, solitary confinement causes irreparable short-term and long-term damage.²³⁶ Placing a child inside a small cell for twenty-two to twenty-four hours a day with no social interaction and harsh conditions is arguably against the Eighth Amendment's cruel and unusual punishment.²³⁷ Further, there is a strong argument that it is also against the child's Due Process rights as they are deprived of the proper care that must be provided to them.²³⁸

As shown, the abusive use of solitary confinement causes irreparable physical, emotional, and psychological effects on juveniles.²³⁹ Mr. Browder is a prime example of the effects that the isolation can have on a juvenile.²⁴⁰ Mr. Browder went into the system with no mental health issues and ultimately died upon leaving the system because of his mental health issues after being in isolation.²⁴¹ If it is important for jails and prisons to rehabilitate youth and deter future crime from occurring in the United States, then it is crucial that the states who are still restraining juveniles in solitary confinement implement the HALT Act and provide juveniles in the residential rehabilitative unit with behavior management strategies through the token economy system.²⁴² The HALT Act will ensure that juveniles are not placed in solitary confinement, but are placed in a separate residential rehabilitative unit where they are provided with the

232. Logan, *supra* note 29, at 197.

233. See Cloud et al., *supra* note 43, at 19.

234. See Ferrer, *supra* note 139, at 554.

235. See KYSEL, *supra* note 1, at 14.

236. See Graves, *supra* note 123, at 18–19.

237. *Id.* at 15, 45; see also U.S. CONST. amend. VIII.

238. Kysel, *supra* note 8, at 714.

239. Logan, *supra* note 29, at 197.

240. See Hayes, *supra* note 94.

241. 'Prior to Going to Jail, I Never Had Any Mental Illnesses' Man Jailed as Teen Without Conviction Commits Suicide, *supra* note 98.

242. Nicole Scialabba, *Making the Case to End Solitary Confinement for Juveniles*, A.B.A. (June 27, 2016), <http://www.americanbar.org/groups/litigation/committees/childrens-rights/articles/2016/making-case-end-solitary-confinement-juveniles/>; see also *The Humane Alternatives to Long-Term ("HALT") Solitary Confinement Act*, *supra* note 176.

effective tools to promote proper development and growth.²⁴³ Additionally, implementing the token economy system will motivate juveniles to put the pieces of their acts and behaviors together with the consequences of those acts to eliminate any future negative behavior.²⁴⁴

243. See *The Humane Alternatives to Long-Term ("HALT") Solitary Confinement Act*, *supra* note 176.

244. See *What Is a Token Economy in Behavior Management?*, *supra* note 202.

