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Abbey Logan

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Statement of the Issue

The topic of solitary confinement has been controversial in the United States for decades. Policies regarding juveniles in solitary confinement have been especially contentious in recent years. In this essay, I define solitary confinement and provide a brief overview of its history, discuss the current state of affairs and legal issues, evaluate a case in which solitary confinement played a key role, discuss the federal policy which ended solitary confinement for juveniles, and analyze the quality and effectiveness of the case and policy. I then suggest how to move forward from this detrimental practice.

Solitary confinement can be defined as the separation of an adult or juvenile from the general population, whether it be in a jail, prison, or juvenile detention center. There are numerous reasons that incarcerated people may be placed in solitary confinement, including breaking the rules, safety concerns for staff or other inmates, concerns for the individual’s personal safety, and clinical reasons (National Commission on Correctional Health Care, 2016). Solitary confinement may entail spending 22-24 hours a day in an eight-by-ten-foot cell (Teigen & Brown, 2016). There are no windows or access points to the outside world, and along with sensory deprivation, there are few educational, rehabilitative, or vocational opportunities to pursue. Solitary confinement eliminates almost all meaningful contact with others, which is an important factor for human interaction and growth (National Commission on Correctional Health Care, 2016). The specifications of solitary confinement vary based on the facility, but generally they are similar in terms of the structure of the cell and the lack of human interaction allowed. Other terms for this practice may include isolation, protective segregation, permanent lockdown, supermax, or intensive management (National Commission on Correctional Health Care, 2016).

Historical Analysis

The practice of solitary confinement originated in the late 18th century, as a method of improving conditions and rehabilitating prison inmates (Taddino, 2017). However, it was not long until this practicetransitioned into a form of abusive punishment instead. 1829 marks the year when the first real experimenting with solitary confinement began at the Eastern State Penitentiary in Philadelphia (Sullivan, 2006). Its intended use at that point was to give inmates time and space to contemplate their actions and repent their sins; however, it resulted in inmates developing insanity, attempting or completing suicides, and no longer being able to function properly as humans in society (Sullivan, 2006). In 1890, Supreme Court Justice Samuel Miller addressed the issue of the failing mental and physical health of those placed in solitary confinement, in explicit relation to those housed at the Eastern State Penitentiary (Sullivan, 2006). Miller’s role in this case was important in highlighting the inhumane and detrimental conditions present at the facility, setting a standard for Eastern State Penitentiary, along with all other facilities around the country. In 1934, the U.S. saw a worsening trend with solitary confinement, as Alcatraz was opened and inmates there were subject to be thrown in “The Hole” (solitary confinement) with no light, no clothes, and no food (Sullivan, 2006). Marion III in Illinois was the first prison in 1983 to adopt a 23-hour lockdown policy with no inmate communication or access to the outside, as a result of inmates murdering prison guards (Sullivan, 2006).

Towards the end of the twentieth century, specifically in the 1980s, the U.S. used solitary confinement for both adults and juveniles frequently. The first supermax prison, Pelican Bay, built in 1989, was created to hold inmates in isolation for 22.5 hours per day with little space for much else (Sullivan, 2006). In the 1990s, supermax prisons became increasingly popular, being built in
and jails are believed to be the worst type of placement for juveniles currently. The Campaign for Youth Justice states that juveniles are more likely to be placed in solitary confinement when inside of adult prisons and jails due to compliance efforts with a Prison Rape Elimination Act (PREA) standard (Sawyer, 2019). PREA originated in 2003 at a federal level in order to address and eliminate sexual assaults and rapes in correctional facilities (National Sheriffs’ Association, 2019). The PREA standard addresses “‘sight and sound’ separation from incarcerated adults” (Sawyer, 2019, paragraph sixteen).

Today, there are ongoing debates regarding the use of solitary confinement for juveniles. As of February 2020, Nebraska and Washington passed laws to ban the use of solitary confinement for juveniles, and Hawaii introduced a similar law in an effort to ultimately ban the practice. Furthermore, there is controversial research arguing that brief exposure to solitary confinement may increase the risk of death (News on solitary, 2019). There are also arguments against solitary confinement for juveniles due to the severe psychological effects it may produce as a result of their underdeveloped brains. Other professionals are advocating against it due to the fact that it can be seen as a form of child abuse (Clark, 2017).

**Current State of Affairs**

Recent research demonstrates several negative impacts that solitary confinement can have on juveniles including: “depression, anxiety, and psychosis” (Teigan, 2020, paragraph three). Several states and court systems have spent recent years re-evaluating the concept of solitary confinement as it applies to juveniles (Teigan, 2020). In 2016, President Barack Obama banned solitary confinement for juvenile offenders on a federal level (Teigan, 2020). Currently, there are 29 states and jurisdictions that prohibit the use of solitary confinement for juveniles all together (Clark, 2017). However, 15 other states have been reported to limit the use of solitary confinement for juveniles (Clark, 2017).

As of 2017, there were approximately 54,000 juveniles incarcerated throughout our country (Clark, 2017). In 2014, the Office of Juvenile Justice and Delinquency Prevention declared that approximately half of juvenile detention centers in the U.S. reported using solitary confinement for juveniles for at least four consecutive hours (Clark, 2017). However, juvenile offenders are not only located in detention centers, but also long-term secure facilities and adult prisons or jails. Therefore, it is likely that the number of juveniles subjected to solitary confinement is much higher than that report leads suggests. Adult prisons

**Legal Issues**

Due to the debates regarding the negative impacts solitary confinement may impose on juveniles, several legal issues have arisen around the country. Over the last two decades there have been numerous Supreme Court cases which have addressed juvenile offenders, with a few examples being: *Roper v. Simmons* (2005), *Graham v. Florida* (2010), and *Miller v. Alabama* (2012) (Clark, 2017). Each of these cases emphasized adolescents’ underdeveloped brains, increased susceptibility to peer pressure, low impulse control, and better chance of rehabilitation in comparison to adults (Clark, 2017).
While these cases did not explicitly address solitary confinement, they highlighted the important differences between adolescents and adults, which further suggest that solitary confinement is far riskier and more detrimental to adolescent health and development.

Psychological research has found that 50 percent of juveniles who committed suicide while incarcerated (out of 100 juveniles) did so while confined to their rooms (Clark, 2017). Furthermore, studies on self-harm of incarcerated juveniles have demonstrated a correlation between being placed in solitary confinement and being under the age of 19 (Clark, 2017). Therefore, it has been found that placing juveniles in solitary confinement may lead to acts of self-harm. This research suggests that solitary confinement is increasingly bad for juveniles’ mental health, and in addition to several mental illnesses, may also lead to acts of self-harm or suicidal ideation and attempts. In addition to mental health concerns, a juvenile’s emotional, social, and physical states can be negatively altered as a result of solitary confinement. Human interaction is necessary for survival and growth, just as the ability to move around freely is necessary for physical health. Not only can solitary confinement deteriorate a juvenile’s emotional and psychological health, but it may contribute to the development of muscle atrophy or vitamin deficiency (HG.org, n.d.).

Additionally, by law juveniles cannot be subject to solitary confinement past a certain amount of time depending on which state they are in. If a juvenile is forced to endure solitary confinement longer than the maximum time as indicated by a law, there is grounds for a lawsuit. These practices and legal matters are further complicated depending upon how the juvenile was convicted. If a juvenile is tried as an adult they may be subject to solitary confinement that exceeds months or even years, whereas juveniles in detention centers are more likely to be punished using solitary confinement based on their age (HG.org, n.d.). Several lawsuits have occurred as a direct result of harsh solitary confinement conditions and have involved the American Civil Liberties Union as a result (HG.org, n.d.). Furthermore, basic human rights argue for inmates to have at least eight hours outside of their cells per day and to have access to educational and mental health services (HG.org, n.d.). Solitary confinement revokes those basic human rights.

Case

There is one case, which specifically highlights an example of legal issues regarding juvenile solitary confinement and its misuse. In 2010, a young man was put in jail for allegedly stealing somebody’s bag (Wagner, 2016). Kalief Browder, a 16-year-old from New York, spent over 1,000 days in a juvenile detention center awaiting trial (Webster, 2019). His trial date was postponed more than 30 times (OJJDP supports eliminating solitary confinement for youth, 2016). He was sent to Rikers Island, a notorious jail complex segregated from the mainland in New York known for its harsh conditions and history of inmate self-inflicted injuries and suicides. Rikers Island also has a history of violating human rights (Maule & Liu, 2020).

For nearly two years while Browder was in the detention center, he sat in solitary confinement because he refused to accept guilt for a crime he hadn’t committed - stealing a book bag (Webster, 2019). During this two-year period, Browder additionally faced numerous physical beatings at the hands of the Rikers Island correctional officers (Maule & Liu, 2020). In 2013, Browder was released after charges were dropped, and he was never brought to trial (Wagner, 2016). Over the two years following his release, Browder was hospitalized in a psychiatric facility on three separate occasions and
attempted suicide twice (Webster, 2019). On a Saturday in 2015, Browder committed suicide in his home; he was only 22 years old (Webster, 2019). Reports from news outlets and medical professionals argue that Browder’s solitary confinement and the act of being locked up for 23 hours a day for two years deteriorated his mental health and evoked a trauma in his life that he could not bear (Wagner, 2016).

Policy

In July of 2015, following the death of Browder, former President Barack Obama requested that the Attorney General review “the overuse of solitary confinement across American prisons” (Office of the Press Secretary, 2016, paragraph one). The Department of Justice then conducted a thorough review of solitary confinement practices, including when it’s utilized, on whom, and the typical conditions of such confinement (Office of the Press Secretary, 2016, paragraph one). The DOJ’s review resulted in 50 guideline principles for limiting the use of solitary confinement at federal, state, and local levels (Office of the Press Secretary, 2016, paragraph one). These principles emerged out of President Obama’s leadership and initiative. In January of 2016, President Obama published an executive order which banned the use of solitary confinement for juveniles at the federal level in both jails and prisons (Krebs, 2016). This executive order additionally banned the use of solitary confinement as a punishment for lesser infractions (Pitre, 2016). More definitively, Obama’s order banned a federal prisoner from being subject to solitary confinement for a first offense for longer than 60 days at a time, a sentence significantly lower than the preexisting 365-day rule (Pitre, 2016).

Quality of connection between case and policy

The case of Kalief Browder and the federal ruling which banned solitary confinement for juveniles is directly correlated. While there were other unjust cases of juveniles being subject to solitary confinement, the case of Browder seemed to strike Obama. Obama cited the Browder case when he announced his concern regarding the use of solitary confinement on youth as a punitive practice.

Analysis of policy in terms of the case

When analyzing the federal policy, which banned solitary confinement for juveniles and placed several other restrictions surrounding its general use, one may question whether that would have changed the life of Kalief Browder. Browder was being housed in Riker’s Island in New York. Riker’s island is overseen by the New York City Corrections Department (Schwirtz, 2017). It is considered to be a “principal jail complex” with ten different jails on it, including those for women, youth, and more dangerous male criminals (Schwirtz, 2017). By legal terminology, Riker’s Island is not a prison, and it is not federally operated and owned. Therefore, under legal circumstances, the federal policy which banned the use of solitary confinement would not have been useful for the case of Browder and would not have protected him from this inhumane and punitive practice.

If Riker’s Island were a federal prison, solitary confinement would have been banned, and Browder would have been removed from solitary. The psychological impacts and damage of solitary confinement would have likely still followed him, but perhaps not to the extent which they did. Another factor to consider is if the state of New York had adopted a policy similar to that of Obama’s federal ban on solitary confinement for juveniles. If New York had adopted similar legislation fast enough, Browder would have been released from solitary and not kept in isolation for more than two years. It is possible that Browder would still be alive today if he had not been subject to isolation for the excessive amount of time that he was. However, the fact remains that this policy, even at the federal level, was initiated after the death of Browder.
and ultimately could not have made a difference in his case. Unfortunately, tragedy tends to drive policy in this country. Obama’s legislation, while a step in the right direction, was not enough to save Browder and prevent his tragic suicide.

**Analysis of policy’s efficiency in terms of research**

Obama’s executive order banning juvenile solitary confinement has been effective in keeping juveniles out of isolation in federal prisons and jails. It impacted an estimated 10,000 prisoners when the ruling first became enforced (Pitre, 2016). However, there were only a couple hundred juveniles in federal custody, as opposed to 48,000 juveniles who were incarcerated in state facilities as of 2019 (Sawyer, 2019). While the argument can be made that Obama’s executive order created a trend towards banning the use of solitary confinement on juveniles, another argument could be made that an executive order alone is not enough.

Some law enforcement officers, psychologists, and legal service representatives argue that juvenile solitary confinement violates the Eighth Amendment’s Cruel and Unusual Punishment clause, and thereby banning it on a federal level is not effective enough (Protecting America’s children: Why an executive order banning juvenile solitary confinement is not enough, 2016-2017). Obama’s executive order should instead coincide with both Congressional legislation and Supreme Court jurisprudence in order to ensure a lasting effect and keep juveniles out of isolation permanently (Protecting America’s children: Why an executive order banning juvenile solitary confinement is not enough, 2016-2017).

On the other hand, researchers argue that this executive order created a growing trend towards the banning of juvenile solitary confinement. In recent years, overall use of solitary confinement for juveniles has declined, with several states such as Colorado, Maine, California, Idaho, and Illinois taking appropriate measures to close solitary confinement units and reduce the overall number of inmates in solitary confinement (Lloyd, 2017). Today, 11 states and Washington D.C. limit or prohibit the use of juvenile solitary confinement. Prior to Obama’s executive order in 2016, a select few states had already begun to eliminate juvenile solitary confinement, but not nearly enough. West Virginia, in 1998, was the first state to ban solitary confinement for juveniles, although in 2012 the state was sued for not abiding by its own laws (Hager & Rich, 2014). Alaska, Mississippi, and Connecticut took measures to ban solitary confinement for juveniles in 2012, and in 2014 states such as Indiana and New York limited the use of solitary for juveniles (Hager & Rich, 2014). This data indicates that while some legislation existed to limit or prohibit the use of solitary confinement for juveniles, there has been a substantial increase in that type of legislation as a direct result of Obama’s executive order.

As is the case with most policies, there is always room for improvement. In an ideal world solitary confinement would not be a common punitive practice, not only for juveniles, but also for the elderly, the mentally ill, and the general jail and prison populations overall. In order to make the most significant difference, solitary confinement for juveniles ultimately must be banned at both a federal and state level since far larger numbers of our youth are found in the juvenile justice system in state and local facilities than in the criminal justice system under federal care.

**Future Suggestions**

Given the substantial evidence, solitary confinement for juveniles is proven detrimental to both the criminal justice system and the mental health of inmates. Solitary confinement for juveniles costs those juveniles their emotional and physical well-being. Studies demonstrated worsening depression, anxiety, suicidal
ideation, and increased cases of vitamin deficiency and muscle atrophy in juveniles who were subject to solitary confinement. Additionally, the use of solitary confinement for juveniles has created legal issues. The legal issues have resulted in negative press and increased expenses for the system. The most productive way to move forward for this point would be to ban solitary confinement at the state level as it has been banned at the federal level.

Conclusion

While solitary confinement has existed for hundreds of years, its intention and its outcome have resulted in two diverse meanings. Solitary confinement was built to isolate criminal adult offenders; it was not until only recently that this inhumane punishment was also inflicted upon juveniles. It is a maladaptive, punitive practice with few advantages other than being able to regain control over a prison population. It is inhumane and detrimental to the physical, emotional, and psychological development of juveniles. The abusive use of solitary confinement resulted in the young, innocent, 22-year-old Browder taking his own life. The former President Obama recognized this punishment as detrimental to juvenile development and therefore abolished it. While Obama’s executive order was effective for juveniles in the federal system, it did not have a substantial impact on the population which most needs reform: juveniles in the justice system at the state level. Ultimately, Obama’s order has set a precedent for legislative trends in which more states are moving towards banning the use of juvenile solitary confinement completely, or at the very least, placing strict policy guidelines regarding the terms of its use.

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About the Author

Abbey Logan is a graduating senior majoring in Psychology and minoring in Criminal Justice. She is a member of the Honors Program at BSU. Her research was conducted during the fall of 2020 under the instruction of Dr. Jennifer Hartsfield (Criminal Justice). Abbey submitted this paper at the end of the Fall 2020 semester as her final paper for the course, Mental Health in the Criminal Justice System. Abbey plans to pursue a master’s degree in Clinical Psychology here at BSU within the next couple of years and ultimately have a career in the field of Psychology working with children.