

**ALONE AND AFRAID: THE NEED FOR ELIMINATION OF SOLITARY
CONFINEMENT IN SOUTH CAROLINA**

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S. 278 was introduced to the South Carolina Senate on January 10, 2023, and includes language to “prohibit the use of solitary confinement on a child and provide limits for the use of corrective room restrictions upon children within the custody of the department.” Currently, South Carolina is one of eleven states that have not limited solitary confinement of juveniles. This issue became more imperative after a lawsuit in 2022 alleged that the South Carolina Department of Juvenile Justice used months-long isolation in solitary confinement, sometimes for twenty-three hours a day. The U.S. Department of Juvenile Justice concluded after a two-year investigation that with these practices, the South Carolina Department of Juvenile Justice had violated the Fourteenth Amendment. This practice is barbaric, as solitary confinement is shown to cause significant neurological and psychological damage in youth, and may lead to self-harm, psychosis, and suicide. As such, this portion of S. 278 is essential and this Bill must be passed.

First, this article examines the detrimental effects of solitary confinement on youth in the juvenile justice system. Second, this article discusses the South Carolina Department of Juvenile Justice

and its history and practice of solitary confinement, and how that has led to a lawsuit and a ruling of violating the Fourteenth Amendment. Third, this article explores previous attempts in South Carolina, like S. 1042, S. 53, and H. 3212/S.267 to eliminate or limit the use of solitary confinement in the juvenile justice system and why they have failed. Fourth, this article lays out the importance of S. 278 and how South Carolina can finally pass this legislation that eliminates solitary confinement and limits the time allowed in corrective rooms for juveniles in the justice system, as other states have done. Finally, this article addresses alternatives to solitary confinement once it is banned and how they are more beneficial to our youth.

I. INTRODUCTION

“The walls of my tiny cell felt like they were closing in, suffocating me both mentally and physically. . . . The deafening silence amplified my thoughts, driving me to the brink of madness.”¹ Those words are from Sergio Cuevas in his op-ed piece about his time in solitary confinement as a teenager. He went on to say, “[i]n that barren confinement, there was no hope for change, only a deepening sense of resentment and desperation.”² Sergio is one of many who experienced solitary confinement as a youth. Ian Manuel, from Florida, also wrote about his experience in solitary confinement at the age of fourteen.³ Manuel detailed the abuses that are left unchecked behind hidden doors and the consequences of solitary confinement, like people intentionally injuring themselves just to spend time in the hospital and have a “semblance of freedom.”⁴ Manuel himself overdosed on Tylenol just to spend one evening out of solitary confinement.⁵ To this day, “small things often awaken painful memories from solitary” and “[s]ometimes relationships feel constraining.”⁶ He faces “PTSD and challenges big and small for the rest of [his] life because of what [he] was subjected to.”⁷

One of the most notable stories of the impact of solitary confinement on a youth is that of Kalief Browder, who was just sixteen years old when he was

1. Sergio Cuevas, *Youth Solitary Confinement Harms Mental Health, Rehabilitation*, TEENVOGUE (Sept. 12, 2023), <https://www.teenvogue.com/story/youth-solitary-confinement-mental-health#:~:text=The%20walls%20of%20my%20tiny,to%20the%20brink%20of%20madness> [https://perma.cc/PNG7-M5DH].

2. *Id.*

3. Ian Manuel, Opinion, *I Survived 18 Years in Solitary Confinement*, N.Y. TIMES (Mar. 25, 2021), <https://www.nytimes.com/2021/03/25/opinion/solitary-confinement-reform.html> [https://perma.cc/4YGH-6AAT].

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

arrested and placed at Rikers Island.⁸ He spent two of the three years he was in custody in solitary confinement, and shortly after release, took his own life “due in part to the violence and psychological damage suffered.”⁹ Tragically, Kalief was not the only one who committed suicide due to the effects of solitary confinement on the adolescent brain. In 2014, Mariam Abdullah was sixteen when she was charged as an adult with armed robbery and placed in Estrella Jail in Phoenix, Arizona.¹⁰ Abdullah was placed in the “closed custody unit” where girls “were held in their cells for 23 hours a day.”¹¹ They were allowed “one hour of recreation spent in a cage under the searing Arizona sun.”¹² She was not given educational services, and her encounters with mental health staff “were brief exchanges to decide whether she could be removed from suicide watch cells.”¹³ Sadly, once she was transferred to the “adult side of Estrella Jail,” Abdullah was able to take her own life, even after telling “an officer she wanted to kill herself.”¹⁴ These stories, and the stories of many others, showcase the detrimental effects of solitary confinement, and what it can do to a young mind. Unfortunately, despite this information, this is still happening to youth in South Carolina.

II. DETRIMENTAL EFFECTS OF SOLITARY CONFINEMENT ON YOUTH

Solitary confinement began as “a way to handle unruly or disobedient prisoners.”¹⁵ This practice has been used on juveniles “as a way of discipline, behavior control and sometimes even for administrative convenience.”¹⁶ However, it “has been shown to cause significant neurological and psychological damage, and can even lead to suicide in the most serious cases.”¹⁷

8. David K. Li, *Family of Kalief Browder, Young Man Who Killed Himself After Jail, Gets \$3.3M from New York*, NBC NEWS (Jan. 24, 2019, 5:32 PM), <https://www.nbcnews.com/news/us-news/family-kalief-browder-young-man-who-killed-himself-after-jail-n962466> [<https://perma.cc/7696-KRL9>].

9. *Id.*

10. Lisa Armstrong, *When Solitary Confinement Is a Death Sentence*, HUFFPOST (Aug. 29, 2019, 6:03 AM), https://www.huffpost.com/entry/solitary-confinement-suicide-prison-teens_n_5d63f4d3e4b01d7b529317aa [<https://perma.cc/234T-R68D>].

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. *Minors in Custody – Solitary Confinement*, CHILD CRIME PREVENTION & SAFETY CTR., <https://childsafety.losangelescriminallawyer.pro/minors-in-custody-solitary-confinement.html#:~:text=Solitary%20confinement%20can%20trigger%20depression,associated%20with%20stupor%20and%20delirium> [<https://perma.cc/2Z7C-WJC3>].

16. *Id.*

17. *Id.*

Solitary confinement is shown to “be especially damaging to youth because the brain grows and develops during one’s adolescent and teenage years, specifically the frontal lobe region which is responsible for cognitive processing, impulse inhibition and consideration of consequences.”¹⁸ Because of this, “[s]olitary confinement can trigger depression, hallucinations, anxiety attacks, obsessive thinking, paranoia and anger in youthful offenders.”¹⁹ Studies have shown that “even a few days in solitary confinement [can] shift a minor’s EEG patterns towards abnormal patterns associated with stupor and delirium.”²⁰ These youth “are deprived of mandatory rehabilitative and educational programming and instead suffer devastating psychological damage.”²¹ In fact, “[h]alf of all suicides occurring in juvenile facilities occurred while the minor was in solitary confinement and 62% of those who committed suicide had a history of being placed in isolation.”²² A youth who experienced solitary confinement in Florida stated:

The only thing left to do is go crazy—just sit and talk to the walls. . . . I catch myself [talking to the walls] every now and again. It’s starting to become a habit because I have nothing else to do. I can’t read a book. I work out and try to make the best of it. But there is no best. Sometimes I go crazy and can’t even control my anger anymore. . . . I can’t even get [out of solitary confinement] early if I do better, so it is frustrating and I just lose it. Screaming, throwing stuff around. . . . I feel like I am alone, like no one cares about me—sometimes I feel like, why am I even living?²³

Solitary confinement can be stressful and it “engender[s] significant levels of anxiety and discomfort.”²⁴ Youth have shared “thoughts of suicide and self-harm; visual and auditory hallucinations; feelings of depression; acute anxiety; shifting sleep patterns; nightmares and traumatic memories; and uncontrollable anger or rage.”²⁵

We know that there are side effects from solitary confinement because the adolescent brain is still developing, but one thing to also consider is that

18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.*

23. HUM. RTS. WATCH & AM. C.L. UNION, GROWING UP LOCKED DOWN: YOUTH IN SOLITARY CONFINEMENT IN JAILS AND PRISONS ACROSS THE UNITED STATES 22 (2012), https://www.hrw.org/report/2012/10/10/growing-locked-down/youth-solitary-confinement-jails-and-prisons-across-united#_ftnref49 [<https://perma.cc/S9D3-Q5B2>].

24. *Id.* at 24.

25. *Id.*

youth in the juvenile justice system are already more vulnerable because they are in a “fragile state, with 70% having a pre-existing mental disorder (e.g. conduct disorder, anxiety, depression).”²⁶ Additionally, “95% of [these] youth have experienced trauma.”²⁷ This is important to acknowledge because “[y]outh with pre-existing mental disorders . . . can experience more pronounced effects from solitary confinement.”²⁸ Those who have “been identified as having a mental health disability before entering solitary confinement struggled more than others” and “described cutting or harming themselves or thinking about attempting suicide one or more times while in solitary confinement.”²⁹ An interview with a minor by the American Civil Liberties Union (ACLU) in 2012 showcased just how pronounced these effects can be.³⁰ He stated:

I was stressed. At first I would sleep all day. I would feel myself getting angry or aggressive. I would try to work out or do something, but I was literally going insane in that little spot. The claustrophobia set in and I would feel I was having anxiety attacks and would go over and get water and try and calm down. I would hear the slightest noise and be on guard.³¹

Youth have described coping strategies they used to get through solitary confinement, such as having someone in their mind they could talk to, make-believe and games, dissociating, and sleeping.³² However, “many felt that in the struggle to cope with solitary confinement, they faced a losing battle with themselves.”³³ In a Philadelphia County Jail, it was “observed that many youth held in solitary confinement in the county jail were prescribed sleeping aids and other prescription medications while in isolation ‘ . . . to cope and reduce anxiety.’”³⁴ Treating these problems are especially difficult when they “may themselves be caused or exacerbated by being held in solitary confinement.”³⁵ Solitary confinement can “trigger[] memories of past trauma,

26. Joseph Calvin Gagnon, Letter to the Editor, *The Solitary Confinement of Incarcerated American Youth During COVID-19*, PSYCHIATRY RES., June 10, 2020, at 1, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7286258/> [<https://perma.cc/V9MT-PQBB>].

27. *Id.*

28. *Id.*

29. HUM. RTS. WATCH & AM. C.L. UNION, *supra* note 23, at 24.

30. See Madison Polay, *Solitary Confinement of Adolescents: A Mental Health Crisis*, SCH. PUB. HEALTH, U. MICH. (June 26, 2019), https://sph.umich.edu/pursuit/2019posts/solitary_confinement_of_minors.html [<https://perma.cc/4AR5-SFU4>].

31. *Id.*

32. HUM. RTS. WATCH & AM. C.L. UNION, *supra* note 23, at 25–26.

33. *Id.* at 26.

34. *Id.* at 28.

35. *Id.*

making it yet more difficult to cope with the experience.”³⁶ This is even more important because “[y]outh in the criminal justice system have histories of trauma and abuse at much higher rates than the general population.”³⁷ One youth was held in solitary confinement for “three months when she was 15 years old” and she stated that she was raped at age eleven and that “when she was isolated, the memories came back.”³⁸ A defense attorney stated that “there is . . . no accommodation [of past trauma]” for these youth.³⁹

The harm of solitary confinement is not just psychological, but also physical. Solitary confinement can “result[] in a deprivation of exercise and adequate nutrition.”⁴⁰ Many youth in solitary confinement are only allowed one hour out “to walk around or exercise,” while some have reported “being denied recreation” time altogether.⁴¹ “The Centers for Disease Control (CDC) and the US Department of Health and Human Services both recommend that youth between the ages of six and seventeen engage in one hour or more of physical activity each day,” including “adequate aerobic or muscle-strengthening exercise.”⁴² This, plus “young people report[ing] going to sleep hungry night after night” can result in “physical changes as a result of the stress of solitary confinement, such as hair or weight loss.”⁴³ This can lead to stunted growth and physical development.⁴⁴

Finally, social development can falter due to solitary confinement, as well. “Young people in solitary confinement are frequently deprived of contact with their families and their own children, access to education, and to programming or services necessary for their growth, development, and rehabilitation.”⁴⁵ Many youth in solitary were either “denied the ability to visit with loved ones” or “only allowed to visit with loved ones while in a cage, behind glass, or by video-conference.”⁴⁶ For those in solitary and juvenile detention, family can be “the only thing that gives them hope.”⁴⁷ These youth were often “denied access to adequate education” as “some facilities were regularly provided with a packet of educational materials for in-cell self-study, but often their completed work went ungraded and their questions unanswered.”⁴⁸ A youth who “spent approximately 20 days in protective

36. *Id.* at 34.

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.* at 37.

41. *See id.*

42. *See id.* at 38.

43. *Id.* at 39.

44. *Id.*

45. *Id.* at 41.

46. *Id.*

47. *Id.*

48. *Id.* at 42.

solitary confinement in jail when he was 15, stated bluntly, ‘No, there was no school for inmates in isolation and there were no exceptions for me.’⁴⁹ This is detrimental as “[s]ome of th[ese] young people described diminished reasoning and learning abilities as a result of solitary confinement.”⁵⁰ Furthermore, there are often no “proper educational services” for youth with disabilities in solitary confinement who need individualized instruction.⁵¹ Additionally, adolescents in solitary experienced little “programming or services aimed at rehabilitation or social development.”⁵² There are “concerns about the long-term implications for youth” who are held in solitary confinement who do not receive “programming aimed at reentry into society” and are then released back into the community.⁵³

The ACLU of Washington published an article discussing how “[e]ven when a person is freed from solitary, its effects may not go away.”⁵⁴ “There is no evidence [that it] improves behavior, and an abundance of evidence that it hurts kids.”⁵⁵ If we want our youth to be rehabilitated—the use of solitary confinement makes th[is] outcome[] unlikely, if not impossible.”⁵⁶

III. DARK HISTORY OF SOLITARY CONFINEMENT IN SOUTH CAROLINA

The South Carolina Department of Juvenile Justice (SC DJJ) is familiar with the use of solitary confinement on its youth. In fact, they have a dark history of it. “In the 1990s, a group of law firms and civil rights organizations representing children incarcerated in the facilities successfully sued the agency over the use of solitary confinement.”⁵⁷ “In 1995, [SC DJJ] lost that lawsuit and was required to submit a remedial plan and implement policy changes”⁵⁸

49. *Id.*

50. *Id.* at 44.

51. *Id.*

52. *Id.* at 46.

53. *Id.* at 46–47.

54. Amy Roe, *Solitary Confinement Is Especially Harmful to Juveniles and Should Not Be Used to Punish Them*, ACLU WASH. (Nov. 17, 2017), <https://www.aclu-wa.org/story/solitary-confinement-especially-harmful-juveniles-and-should-not-be-used-punish-them> [<https://perma.cc/Z6BA-Q9F4>].

55. *Id.*

56. *Id.*

57. Haven Orecchio-Egresitz, *Children Detained in South Carolina Live with Feces on Floors, Mold on Walls, and Roaches in Their Food, Suit Says*, BUS. INSIDER (May 3, 2022, 3:25 PM), <https://www.businessinsider.com/south-carolina-rights-groups-sue-over-abuse-of-juvenile-detainees-2022-4> [<https://perma.cc/QA9X-ZXDR>].

58. First Amended Complaint for Declaratory & Injunctive Relief at 2, S.C. State Conf. of NAACP v. S.C. Dep’t of Juv. Just., No. 22-CV-01338 (D.S.C. filed Sept. 28, 2023).

However, “[i]n 2017, a legislative audit revealed that DJJ facilities continued to be violent and dangerous and that youth experienced . . . extended periods of isolation.”⁵⁹ “A subsequent legislative audit showed that these conditions continued from 2017 to 2019.”⁶⁰ In 2016, data showed that “an average of 16.8 percent of all children housed at [SC] DJJ’s Broad River Road Complex [BRRC] were in ‘segregation’” and that “[o]n many days, that figured spike[d] well over twenty percent.”⁶¹ At BRRC, this meant that children were “typically kept in individual cells for up to twenty-three hours each day.”⁶² During this time, “DJJ’s ‘Segregation Track Sheet Summary’ for November and December 2016 [listed] *ninety-one* separate children placed in at least one form of segregation.”⁶³ The data also showed that “half of those ninety one children were kept in segregation for ten days or more.”⁶⁴ A statement was given by a child on April 1, 2016, about their time in solitary confinement at BRRC:

As of today, I’ve been in lock-up for 23 days and still doesn’t know how much longer I’ll remain in there. While in lock-up we receive barely an hour of less for recreation. So most of the time in my cell with myself with a window that’s painted that preventing us from seeing outside. During the 23 days here I’ve only been outside once, we don’t go to school, never been to the cafeteria, and not allowed to socialize with each other. Being in lock-up makes me feel suicidal because I’m claustrophobic. And most of the time were always in a cell. It makes me feel like going through the wall it causes me to be angry, frustrated, and confused.⁶⁵

On April 14, 2022, the United States Department of Justice (US DOJ) Civil Rights Division released its investigation of BRRC. This report detailed that in its first report from February 5, 2020, SC DJJ “used prolonged and punitive isolation.”⁶⁶ In the two years from the first report until the second, nothing had changed. In its April 14, 2022 report, US DOJ detailed an incident where

59. *Id.*

60. *Id.*

61. JOSH GUPTA-KAGAN ET AL., EFFECTIVE SOLUTIONS TO SOUTH CAROLINA’S JUVENILE JUSTICE CRISIS 13 (2017), <http://www.pandasc.org/wp-content/uploads/2017/04/Juv-enile-Justice-Report.pdf> [<https://perma.cc/NH6A-VEBM>].

62. *Id.*

63. *Id.*

64. *Id.*

65. *Id.* The above excerpt is “presented verbatim in the child’s voice.” *Id.*

66. CIV. RTS. DIV., U.S. DEP’T OF JUST. & U.S. ATTY’S OFF. DIST. OF S.C., INVESTIGATION OF SOUTH CAROLINA DEPARTMENT OF JUVENILE JUSTICE’S BROAD RIVER ROAD COMPLEX 1 (2022), <https://www.justice.gov/opa/press-release/file/1494661/download> [<https://perma.cc/8K79-GC4N>].

“staff members handcuffed a boy and locked him in isolation for five hours” which “risks harm to the young person who struggles against the restraints out of sight.”⁶⁷ The 2022 report provided notice that the conditions at BRRC violated the Fourteenth Amendment, stating “the violations are pursuant to a pattern or practice of resistance to the full enjoyment of rights protected by the Fourteenth Amendment.”⁶⁸

In an April 2022 lawsuit from the South Carolina State Conference of NAACP, Disability Rights South Carolina, and Justice 360, it was argued again that “many staff resort to ‘protecting’ youth by placing them in solitary confinement for 23 hours a day” and that “prolonged isolation [likewise] has become a default management tool to address even the most minor infractions.”⁶⁹ Although there was an agreement made between SC DJJ and the US DOJ, in April of 2022 (two weeks prior to the lawsuit), to reform BRRC, this lawsuit addressed that the agreement didn’t go far enough because it only pertained to BRRC, and not the “four other facilities across the state.”⁷⁰

These reports and the lawsuit showcase just how many people are aware of what youth in South Carolina are experiencing. Although the knowledge is there, the youth of South Carolina have borne the pain of inaction in the one place where a change can be made, the South Carolina State House.

IV. SOUTH CAROLINA’S ATTEMPTS TO ELIMINATE OR LIMIT SOLITARY CONFINEMENT

Currently, South Carolina is one of eleven states that has not limited or eliminated solitary confinement of juveniles.⁷¹ While, in 2016, President Barack Obama banned solitary confinement for juveniles in the federal prison system, South Carolina did not follow suit with state legislation.⁷²

67. *Id.* at 4.

68. *Id.* at 1.

69. First Amended Complaint for Declaratory & Injunctive Relief at 2, S.C. State Conf. of NAACP v. S.C. Dep’t of Juv. Just., No. 22-CV-01338 (D.S.C. filed Sept. 28, 2023).

70. See Michelle Liu, *Groups Sue over Conditions in S. Carolina’s Juvenile Lockups*, AP NEWS (Apr. 27, 2022, 12:38 PM), <https://apnews.com/article/violence-lawsuits-south-carolina-columbia-c6dbf9da4aa4a878ec025431c15a023e> [<https://perma.cc/VZ7J-9J2S>].

71. Patrick Riley, *Against Changing Tide, 11 States Haven’t Limited Solitary Confinement of Juveniles*, JUV. JUST. INFO. EXCH. (Apr. 28, 2023), <https://jjie.org/2023/04/28/against-changing-tide-11-states-havent-limited-solitary-confinement-of-juveniles/> [<https://perma.cc/BW87-Q9XY>].

72. See Juliet Eilperin, *Obama Bans Solitary Confinement for Juveniles in Federal Prisons*, WASH. POST (Jan. 26, 2016, 6:25 AM), https://www.washingtonpost.com/politics/obama-bans-solitary-confinement-for-juveniles-in-federal-prisons/2016/01/25/056e14b2-c3a2-11e5-9693-933a4d31bcc8_story.html [<https://perma.cc/8VU6-LDKM>].

On January 12, 2021, South Carolina Senators Malloy and Shealy introduced S. 53.⁷³ This bill was referred to as the “South Carolina Juvenile Justice Reform Act.”⁷⁴ The bill amended “Article 3, Chapter 19, Title 63, relating to the Department of Juvenile Justice, by adding section 63-19-365 to prohibit the use of solitary confinement on a child and provide limits for the use of corrective room restrictions upon children within the custody of the department.”⁷⁵ The bill defined “solitary confinement” as “physical and social isolation in a room or cell for twenty-two hours per day or more” and defined “corrective room restriction” as the “confinement of a child to a room as protective action and includes, without limitation: (a) administrative seclusion; (b) behavioral room confinement; (c) corrective room rest; and (d) room confinement.”⁷⁶ The limits on corrective room restriction included several important details. First, “[a] child . . . may be subjected to corrective room restriction only if all other less-restrictive options have been exhausted and only for the purpose of ensuring the safety of the child, staff or others or ensuring the security of the facility.”⁷⁷ Second, “[a] child must only be subjected to corrective room restriction for the minimum time required to address the unsafe behavior and the child must be returned to the general population of the facility as soon as reasonably possible.”⁷⁸ Third, “[a]ny action that results in corrective room restriction for more than two hours must be documented in writing and approved by a supervisor.”⁷⁹ Fourth, “[t]he facility shall conduct a safety and well-being check on a child subjected to corrective room restriction at least once every ten minutes while the child is subjected to corrective room restriction.”⁸⁰ However, a very important focus should be keeping corrective room restriction from inadvertently becoming solitary confinement. This bill attempts to thwart this by saying:

A child who is subjected to corrective room restriction for more than twenty-four hours must be provided:

- (1) not less than one hour of out-of-room, large muscle exercise each day, including, without limitation, access to outdoor recreation if weather permits;
- (2) access to the same meals and medical and mental health treatment, the same access to contact with parents or legal guardians, and the

73. S. 53, 124th Gen. Assemb., Reg. Sess. (S.C. 2021).

74. *Id.*

75. *Id.*

76. *Id.* (proposed § 63-19-365(A)).

77. *Id.* (proposed § 63-19-365(C)).

78. *Id.* (proposed § 63-19-365(D)).

79. *Id.* (proposed § 63-19-365(E)).

80. *Id.* (proposed § 63-19-365(F)).

same access to legal assistance and educational services as is provided to children in the general population of the facility;

(3) any other interaction or services necessary to prevent a violation of Subsection (B); and

(4) a review of the corrective room restriction status at least once every twenty-four hours. If, upon review, the corrective room restriction is continued, the continuation must be documented in writing, including, without limitation, an explanation as to why no other less-restrictive option is available.⁸¹

Additionally, the bill states that “[t]he facility shall not subject a child to corrective room restriction for more than seventy-two consecutive hours.”⁸² The bill made it to the Senate Judiciary Committee in March of 2022, where it received some positive feedback from juvenile justice reform advocates.⁸³ However, portions of the bill raised concerns, and the bill did not get passed before the crossover deadline of April 7, 2022.⁸⁴

At the same time, a more specific bill, S. 1042, was introduced on February 2, 2022 by Senators Hutto and Shealy.⁸⁵ This bill was to “Amend Article 15, Chapter 19, Title 63 of the 1976 Code, relating to the Juvenile Justice Code, by adding section 63-19-1690 to prohibit the use of restraint or confinement and to provide exceptions.”⁸⁶ Proposed Section 63-19-1690 stated that “[m]echanical or chemical restraint, isolation, or room confinement may only be used to ensure the immediate safety of an individual or others if no less restrictive intervention has been, or is likely to be, effective in averting danger.”⁸⁷ This section further stated that this “must never be used . . . as a threat or form of punishment; in lieu of adequate staffing; as a replacement for active treatment; for staff convenience; or for property damage not involving imminent danger.”⁸⁸ The bill also proposed to “amend Section 63-19-820(C) and (E) of the 1976 Code . . . to remove the exception of solitary

81. *Id.* (proposed § 63-19-365(G)). Subsection (B) states that “[n]o child shall at any time be held in solitary confinement.” *Id.* (proposed § 63-19-365(B)).

82. *Id.* (proposed § 63-19-365(H)).

83. See Julia Kauffman, *South Carolina’s Juvenile Justice System Could Get Major Overhaul*, WLTX (Mar. 25, 2022, 6:53 PM), <https://www.wltx.com/article/news/local/south-carolina-lawmakers-look-to-overhaul-juvenile-justice-system-children-crime/101-f626d682-c888-4e6b-b4b5-22bb28ac3036> [<https://perma.cc/8GJX-B3GC>]; Chris Joseph, *Activists Renew Push for Juvenile Justice Reform Bill After Turbulent Summer*, WIS 10 (Sept. 23, 2021, 7:29 PM), <https://www.wistv.com/2021/09/23/activists-renew-push-juvenile-justice-reform-bill-after-turbulent-summer/> [<https://perma.cc/4KW5-QEC3>].

84. See Kauffman, *supra* note 83; Joseph, *supra* note 83.

85. See S. 1042, 124th Gen. Assemb., Reg. Sess. (S.C. 2022).

86. *Id.*

87. *Id.*

88. *Id.*

confinement for children if the child is waiting to stand trial as an adult” and “to limit the time permitted for the solitary confinement of children.”⁸⁹ However, this bill placed very few criteria on how solitary confinement can or cannot be used, especially as compared to S. 53.⁹⁰ S. 1042 also made it to the Senate Judiciary Committee, where it did not pass before the April 7th deadline.⁹¹

On the other side of the state house, the South Carolina House of Representatives introduced House Bill 3212 on January 12, 2021, the same day that S. 53 was introduced.⁹² This bill was titled the “Youth Sentencing Act of 2021.”⁹³ One portion of this bill stated that “[s]olitary confinement may not be directed for a person who is younger than eighteen years of age.”⁹⁴ However, the bill does state that “[m]echanical or chemical restraint, isolation, or room confinement only may be used to ensure the immediate safety of an individual or others if no less restrictive intervention has been, or is likely to be, effective in averting danger.”⁹⁵ This exception could likely be used to justify extended isolation that mirrors solitary confinement and it does not include as many conditions and regulations as S. 53. However, the bill does state that “[m]echanical or chemical restraint, isolation, or room confinement must never be used for coercion, retaliation, or humiliation; as a threat or form of punishment; in lieu of adequate staffing; as a replacement for active treatment; for staff convenience; or for property damage not involving imminent danger.”⁹⁶ Just like the bills in the Senate, this bill was referred to the Committee on Judiciary and never passed the House.⁹⁷ However, on January 10, 2023, S. 267 was introduced in the South Carolina Senate mirroring the language of H. 3212.⁹⁸ It was referred to the Senate Judiciary Committee where it is currently pending.⁹⁹ However, a more comprehensive version—S. 278—is also pending there.¹⁰⁰

It is of note that all three of these bills went beyond just addressing solitary confinement and included other juvenile justice reforms that legislators wanted to address, as well. Each of these bills had matters that were stricken when they were in their respective committees related to those

89. *Id.*

90. *Compare id. with* S. 53, 124th Gen. Assemb., Reg. Sess. (S.C. 2021).

91. *See* S. 1042, 124th Gen. Assemb., Reg. Sess. (S.C. 2022).

92. H.R. 3212, 124th Gen. Assemb., Reg. Sess. (S.C. 2021).

93. *Id.*

94. *Id.* (proposed amendment to § 17-25-20).

95. *Id.* (proposed § 63-19-1690).

96. *Id.*

97. *See id.*

98. *See* S. 267, 125th Gen. Assemb., Reg. Sess. (S.C. 2023).

99. *Id.*

100. *See infra* Section V.

additional areas, but not to the sections related to solitary confinement, showing that the halt in passing likely came from these other areas.

V. PENDING S. 278 AND HOW TO PASS IT

On January 10, 2023, S. 278 was introduced in the South Carolina State Senate by Senators Malloy and Shealy and is currently residing in the Senate for the 2023–2024 General Session.¹⁰¹ This bill directly mirrors the language of S. 53, prohibiting solitary confinement and limiting corrective room restrictions.¹⁰² On January 10, 2023, it was referred to the Committee on Judiciary.¹⁰³ However, it has not yet passed in Committee.¹⁰⁴ Matters have been stricken and added to the bill, but none in the section on solitary confinement, showing that this is not the section that has caused the bill to be halted.¹⁰⁵ Because S. 278 incorporates multiples facets of juvenile law and has had difficulty passing because of edits to those sections (like S. 53, S. 1042, and H. 3212), it is imperative for the South Carolina Senate to isolate the section on solitary confinement as its own bill and pass it. This bill has better language regarding solitary confinement and isolation than S. 267 (also currently pending). Because this bill addresses corrective room restrictions—exercise time, social interaction with family, meals, and medical treatment—it ensures that corrective room restriction does not turn into solitary confinement and that youth are receiving the same level of care as the general population. This is imperative since the lack of these things can cause youth to quickly deteriorate.¹⁰⁶

There are states nationwide that have isolated this subject matter to pass legislation prohibiting the use of solitary confinement on minors. In fact, “[t]wenty-four states and the District of Columbia have enacted statutes that limit or prohibit solitary confinement.”¹⁰⁷ Arkansas did this in 2019 through House Bill 1755 which focused “primarily” on “the punitive isolation or solitary confinement of individuals who are under eighteen (18) years of age” and did not include additional juvenile justice reform.¹⁰⁸ The Governor of Louisiana signed House Bill 746 in 2022 after an investigation showed that

101. S. 278, 125th Gen. Assemb., Reg. Sess. (S.C. 2023).

102. *Compare id.* with S. 53, 124th Gen. Assemb., Reg. Sess. (S.C. 2021).

103. S. 278, 125th Gen. Assemb., Reg. Sess. (S.C. 2023).

104. *See id.*

105. *See id.*

106. *See* HUM. RTS. WATCH & AM. C.L. UNION, *supra* note 23, at 14–15.

107. Anne Teigen, *States that Limit or Prohibit Juvenile Shackling and Solitary Confinement*, NAT’L CONF. OF STATE LEGS. (Feb. 1, 2024), <https://www.ncsl.org/civil-and-criminal-justice/states-that-limit-or-prohibit-juvenile-shackling-and-solitary-confinement> [https://perma.cc/S8P6-PZTZ].

108. *See* H. 1755, 92nd Gen. Assemb., Reg. Sess. (Ark. 2019).

“boys as young as 14 were held in solitary confinement virtually around-the-clock for weeks, “ similar to the allegations made in the lawsuit against SC DJJ.¹⁰⁹ This bill, like that of Arkansas, focused solely on reforming solitary confinement, instead of incorporating other juvenile justice reform arguments.¹¹⁰ Finally, the state of Maryland passed House Bill 1001 in 2019 that “prohibits anyone under 18 from being put in restrictive housing unless the facility manager finds that the youth poses an ‘immediate and substantial risk (1) of physical harm to the minor, other inmates, or staff; or (2) to the security of the facility.’”¹¹¹

South Carolina can move forward with banning solitary confinement by isolating this portion of S. 278 into its own bill as these states have, as it is not the section of the bill that has undergone the most debate and changes.

VI. ALTERNATIVES TO SOLITARY CONFINEMENT

Once solitary confinement is banned, there are alternatives that will better assist juveniles in detention.

A. *Therapeutic Diversion Units*

In North Carolina, a study was done in state prisons using Therapeutic Diversion Units (TDUs).¹¹² These units “are intended to reduce cycling of individuals with mental health conditions through restrictive housing (i.e., solitary confinement).”¹¹³ These units “are staffed with behavioral health, nursing and custody professionals.”¹¹⁴ “TDUs are focused on helping participants develop effective emotional regulation and self-management skills, understand their symptom presentation and patterns, and prepare for re-entry into a less restrictive environment within the prison and ultimately into

109. See Beth Schwartzapfel et al., *Louisiana Limits Solitary Confinement for Youth*, MARSHALL PROJECT (June 22, 2022, 6:00 AM), <https://www.themarshallproject.org/2022/06/22/louisiana-limits-solitary-confinement-for-youth> [https://perma.cc/7U97-TAG2].

110. See H. 746, 2022 Leg., Reg. Sess. (La. 2019).

111. *Maryland*, STOP SOLITARY FOR KIDS, <https://stopsolitaryforkids.org/maryland/#:~:text=HB%201001%20went%20into%20effect,the%20security%20of%20the%20facility.%E2%80%9D> [https://perma.cc/4DQ6-H8VU].

112. See Molly Remch et al., *Sustained Impacts of North Carolina Prison Therapeutic Diversion Units on Behavioral Outcomes, Mental Health, Self-Injury, and Restrictive Housing Readmission*, 164 PREVENTIVE MED. art. no. 107318, at 1 (2022).

113. *Id.*

114. *NC Prisons Study Finds Better, Safer Outcomes with Diversion Program for Mental, Behavioral Health*, UNC GILLINGS SCH. OF GLOB. PUB. HEALTH (Oct. 29, 2021) [hereinafter *NC Prisons Study*], <https://sph.unc.edu/sph-news/nc-prisons-study-finds-better-safer-outcomes-with-diversion-program-for-mental-behavioral-health> [https://perma.cc/S83B-VCS8].

the community.”¹¹⁵ Research “showed” that “offenders assigned to a TDU instead of restrictive housing were at least three times less likely to commit further infractions, harm themselves or require inpatient mental health treatment.”¹¹⁶ These units can be adapted in juvenile detention facilities because they are structured and adapted based on each person and their needs. This would allow for specific assistance for juveniles with mental health disorders, and as previously mentioned, the majority of juveniles in detention suffer from a mental health disorder.

B. Crisis Intervention Training

Crisis Intervention Training allows for law enforcement to “improve the outcomes” during a crisis.¹¹⁷ The National Alliance on Mental Illness of South Carolina conducts “5 day training program[s] for law enforcement officers to learn how to respond safely and quickly to people with serious mental illness in crisis.”¹¹⁸ These “[o]fficers learn to recognize the signs of psychiatric distress and how to de-escalate a crisis.”¹¹⁹ Incorporating this training in our juvenile detention facilities regularly would help juvenile detention officers de-escalate conflict and better respond without the use of solitary confinement. This training can also go beyond regular Crisis Intervention Training by including “early intervention mechanisms, secondary trauma care for the [] staff themselves, and providing a broader understanding of the impact of solitary confinement on the individuals for whom they are responsible.”¹²⁰

C. Additional Mental Health Support in Facilities

One use of solitary confinement has been for those who are on suicide watch. However, solitary confinement actually increases the risk of suicide.¹²¹ There are “number of studies” that show that “mental health care for youth in

115. Molly Remch et al., *Impact of a Prison Therapeutic Diversion Unit on Mental and Behavioral Health Outcomes*, 61 AM. J. PREVENTIVE MED. 619, 620 (2021).

116. *NC Prisons Study*, *supra* note 114.

117. See *Crisis Intervention Team (CIT) Programs*, NAT’L ALLIANCE ON MENTAL ILLNESS, [https://www.nami.org/Advocacy/Crisis-Intervention/Crisis-Intervention-Team-\(CIT\)-Programs](https://www.nami.org/Advocacy/Crisis-Intervention/Crisis-Intervention-Team-(CIT)-Programs) [https://perma.cc/86QF-3CNM].

118. *Crisis Intervention Team*, NAT’L ALLIANCE ON MENTAL ILLNESS S.C., <https://nami.sc.org/support-and-education/mental-health-education/cit/> [https://perma.cc/THN5-KS46].

119. *Id.*

120. See *Alternatives to Solitary Confinement: Introducing the International Guiding Statement*, ASS’N FOR THE PREVENTION OF TORTURE (July 4, 2023), <https://www.apt.ch/news/alternatives-solitary-confinement-introducing-international-guiding-statement> [https://perma.cc/UDZ6-PQGV].

121. See *Minors in Custody – Solitary Confinement*, *supra* note 15.

the juvenile justice system . . . is often inadequate.”¹²² Studies also show that “[y]oung people in solitary confinement do not get the help they need to cope or adequate access to treatment for mental health problems, whether preexisting or newly developed.”¹²³ Additionally, the 2020 U.S. DOJ report on BRRC showcased that this South Carolina facility was “failing to get [juvenile detainees] mental health [help] when they threaten to harm or kill themselves.”¹²⁴ Adding more mental health support and services could greatly benefit the youth in South Carolina’s juvenile detention facilities and would be a better alternative to solitary confinement for those who are coping with mental health disorders.

D. Programming

Programming like academic courses, vocational training, and life skills programs can make a difference in eliminating behaviors that lead to solitary confinement.¹²⁵ These programs can increase social interaction and lead to a decrease in recidivism.¹²⁶ They can also “provide youth with mentors and adult role models.”¹²⁷ Finally, they can provide youth with “a major boost to [their] self-esteem.”¹²⁸ A 2002 study showed that programming that will help these youth succeed “is critically needed and . . . even desired by youth

122. JANE KOPPELMAN, NAT’L HEALTH POL’Y F., GEO. WASH. UNIV., ISSUE BRIEF NO. 805, MENTAL HEALTH AND JUVENILE JUSTICE: MOVING TOWARD MORE EFFECTIVE SYSTEMS OF CARE 12 (2005), <https://www.ncbi.nlm.nih.gov/books/NBK559790/#:~:text=According%20to%20the%20National%20Center,over%20who%20should%20be%20paying> [<https://perma.cc/7TH7-GKN7>].

123. HUM. RTS. WATCH & AM. C.L. UNION, *supra* note 23, at 35.

124. Michelle Liu, *Juvenile Justice Agency Agrees to Reform Main Prison*, AP NEWS (Apr. 14, 2022, 3:58 PM), <https://apnews.com/article/business-us-department-of-justice-columbia-south-carolina-prisons-6d0c87c5ef48a44e2371d10f29d67328> [<https://perma.cc/PT98-WW E J>].

125. See Press Release, Chris Wright, Commc’ns Off., WA Dep’t of Corr., DOC Takes Next Step Towards Reducing the Use of Solitary Confinement (Oct. 18, 2023), <https://www.doc.wa.gov/news/2023/10182023p.htm> [<https://perma.cc/5VWT-YD6F>].

126. See OFF. OF JUV. JUST. & DELINQ. PREVENTION, EDUCATION FOR YOUTH UNDER FORMAL SUPERVISION OF THE JUVENILE JUSTICE SYSTEM (2019), https://ojjdp.ojp.gov/model-programs-guide/literature-reviews/education_for_youth_under_formal_supervision_of_the_juvenile_justice_system.pdf [<https://perma.cc/3RJS-XA74>].

127. See *Provide Opportunities for Children and Youth*, OFF. OF JUV. JUST. & DELINQ. PREVENTION, <https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/action/sec4.htm#:~:text=Even%20high%20risk%20youth%20can,they%20experience%20many%20protective%20factors.&text=Improving%20education%20and%20youth%20employment,essential%20components%20of%20delinquency%20prevention> [<https://perma.cc/72JB-P5T5>].

128. See Wylie Wong, *How Correctional Facilities Provide Youth Offenders with IT Skills*, EDTECH: CLASSROOM (Oct. 31, 2006), <https://edtechmagazine.com/k12/article/2006/10/how-correctional-facilities-provide-youth-offenders-it-skills> [<https://perma.cc/J5KA-ANY M>].

themselves.”¹²⁹ “[A]t the Pine Grove youthful offender facility in Pennsylvania . . . they described high levels of activities as one of the important elements of managing [] youth in their facility.”¹³⁰ There are many “[y]oung people who [] experienced solitary confinement across the United States, and who . . . frequently identified idleness as the primary source of conflict, and hence rule violations, in jails and prisons.”¹³¹

VII. CONCLUSION

The dark history of solitary confinement of juveniles in South Carolina is prevalent. It is time that South Carolina legislators stop history from repeating itself and eliminate solitary confinement for juveniles by isolating that portion of S.278 and passing it as its own bill, as other states have done. There are several alternatives to solitary confinement that can help with youth who “break the rules,” help “protect them from adults or from one another,” or be utilized when “officials do not know how else to manage them.”¹³² All of these alternatives incorporate consideration for those with mental health disorders. Banning solitary confinement can change the future of many youth by halting its hinderance to their psychological and neurological development. It can save lives, help reduce recidivism, and change the landscape of South Carolina’s juvenile detention facilities.

129. See Eric Killian et al., *What Incarcerated Youth Say Would Help Them Succeed: Can Extension Play a Role?*, 40 J. EXTENSION art. no. 4IAW2 (2002), <https://archives.joe.org/joe/2002august/iw2.php> [<https://perma.cc/C2HZ-SJWA>].

130. HUM. RTS. WATCH & AM. C.L. UNION, *supra* note 23, at 83–84.

131. *Id.* at 84.

132. *See id.* at 3.