No Child Left Alone: Why Iowa Should Ban Juvenile Solitary Confinement

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ABSTRACT: In 2012, the United States Supreme Court held in Miller v. Alabama *that the mandatory imposition of life without parole on a juvenile offender was a violation of the Eighth Amendment's Cruel and Unusual Punishment Clause. In its rationale, the Court relied on scientific research, distinguishing the mental faculties between juveniles and adults and emphasized juveniles' ability to change. The Court has used scientific research in a string of opinions over the last decade to reframe the goal of juvenile sentencing reform—rehabilitation. In the interest of rehabilitation, states should prohibit imposing solitary confinement on juvenile inmates. Solitary confinement has cruel and unusual consequences for juveniles and serves no penological purpose, making its use a violation of the Eighth Amendment. Thus, the Iowa Legislature should enact legislation prohibiting correctional facilities from using juvenile solitary confinement, except for the limited circumstance in which the facility can use no other measure to protect the juvenile from immediately and substantially harming others. Even then, confinement must follow strict guidelines to eliminate the risk of misuse and psychological harm to juveniles. A system where facilities only use juvenile solitary confinement to prevent an offender from committing immediate, substantial harm to others is consistent with the goal of rehabilitation, the trend in the Court's decisions, and the Eighth Amendment.*

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I. INTRODUCTION

Society has consistently recognized that children and adolescents are different from adults,[1] but we did not understand the extent to which they differ until new scientific research emerged in the early 2000s.[2] Over the past decade, the United States Supreme Court has adopted scientific research in a trilogy of opinions, reversing the national trend advocating for punitive juvenile jurisprudence.[3] In 2005, the Court held in *Roper v. Simmons* that imposing the death penalty on juvenile offenders violated the Eighth Amendment's Cruel and Unusual Punishment Clause.[4] The Court found that because of the inherent differences between juveniles and adults, juveniles have diminished culpability, making them less deserving of society's most severe punishments.[5] Five years later, the Court extended *Roper*'s holding in *Graham v. Florida* by prohibiting states from sentencing juvenile offenders convicted of nonhomicide crimes to life without parole.[6] In 2012, the Court once again used the rationale in *Roper* to reach its decision in *Miller v. Alabama*, where it held that the *mandatory* imposition of a life-without-parole sentence on any juvenile offender is unconstitutional.[7] All three decisions not only emphasized the physiological differences between juveniles and adults, but

1. RICHARD LAWRENCE & CRAIG HEMMENS, JUVENILE JUSTICE 20 (2008) (discussing how Roman civil and canon law and early Jewish and Moslem law called for leniency when imposing punishments on juvenile offenders due to their lack of maturity and lesser capability to tell the difference between right and wrong as compared to adult offenders); *see also infra* Part II.A (discussing how the English common law differentiated punishments for children and adults based on age).

2. *Cruel and Unusual Punishment: The Juvenile Death Penalty: Adolescence, Brain Development and Legal Culpability*, JUV. JUST. CENTER (Am. Bar Ass'n, Washington, D.C.), Jan. 2004, at 1 [hereinafter *Adolescence, Brain Development and Legal Culpability*], *available at* http://www.americanbar.org/content/dam/aba/publishing/criminal_justice_section_newsletter/crimjust_juvjus_Adolescence.authcheckdam.pdf; *see also infra* Part III.A (discussing scientific evidence of the differences between juveniles and adults).

3. *See* Anthony Giannetti, Note, *The Solitary Confinement of Juveniles in Adult Jails and Prisons: A Cruel and Unusual Punishment?*, 30 BUFF. PUB. INT. L.J. 31, 33 (2011–2012) (explaining that due to the increase in juvenile crime in the 1990s, the public began to "favor a more punitive approach to juvenile offenders," which caused state legislatures to pass harsher legislation with respect to juvenile jurisprudence).

4. Roper v. Simmons, 543 U.S. 551, 568 (2005) ("A majority of States have rejected the imposition of the death penalty on juvenile offenders under 18, and we now hold this is required by the Eighth Amendment.").

5. *Id.* at 568–71.

6. Graham v. Florida, 560 U.S. 48, 74 (2010) ("This Court now holds that for a juvenile offender who did not commit homicide the Eighth Amendment forbids the sentence of life without parole.").

7. Miller v. Alabama, 132 S. Ct. 2455, 2469 (2012) ("We therefore hold that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders.").

also noted that because of juveniles' continuing development, the primary purpose in sanctioning juvenile offenders should be rehabilitation.[8]

In light of the Court's favorable stance on juvenile rehabilitation, this Note argues that juvenile solitary confinement serves no rehabilitative purpose and instead violates the Eighth Amendment's Cruel and Unusual Punishment Clause. This Note proposes that the Iowa Legislature ban the practice of juvenile solitary confinement, except for the limited circumstance in which there is no other measure to prevent a juvenile offender from immediately and substantially harming others. Part II provides an overview of the development of the American juvenile justice system and the movement towards more punitive juvenile sanctions. Part III explains the scientific research discovering the extent to which juveniles' mental faculties are underdeveloped and discusses the Court's incorporation of this research in its rationale behind its recent juvenile sentencing cases. Part IV introduces and analyzes the issues associated with juvenile solitary confinement, arguing its unconstitutionality and inappropriateness. Part V examines how other states have dealt with the issue of juvenile solitary confinement, and Part VI proposes that the Iowa Legislature prohibit the general use of juvenile solitary confinement as an unconstitutional practice.

II. AN OVERVIEW OF JUVENILES IN THE AMERICAN JUSTICE SYSTEM

The United States did not have a separate justice system for juveniles until the end of the 19th century; however, the underlying concept of courts treating juveniles and adults differently traces back to English common law.[9] First, this Part discusses how the English common law's policies towards juveniles impacted the development of a juvenile justice system in the United States. Second, this Part examines how the purpose of juvenile courts evolved over time as the Supreme Court aligned juvenile proceedings with adult criminal proceedings. Finally, this Part concludes with an analysis of the most

8. *Id.* at 2464–68 (finding that because juveniles' minds are still developing, their characters are not yet fixed, but rather, are apt to change, and consequently, juvenile sanctions should take into account this capacity to change); *see also Graham*, 560 U.S. at 74 ("By denying the defendant the right to reenter the community, the State makes an irrevocable judgment about that person's value and place in society. This judgment is not appropriate in light of a juvenile nonhomicide offender's capacity for change and limited moral culpability."); *Roper*, 543 U.S. at 570 ("[I]t would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed.").

9. *See* AM. BAR ASS'N, DIALOGUE ON YOUTH AND JUSTICE 4 (2007), *available at* http://www.americanbar.org/content/dam/aba/migrated/publiced/features/DYJfull.authcheckdam.pdf (explaining that because the United States was a former British colony, the English common law "heavily influenced" the development of American law); LAWRENCE & HEMMENS, *supra* note 1, at 20 ("American juvenile justice . . . has its roots in English common law."); Charles W. Thomas & Shay Bilchik, *Prosecuting Juveniles in Criminal Courts: A Legal and Empirical Analysis*, 76 J. CRIM. L. & CRIMINOLOGY 439, 443 (1985) (explaining that the United States' treatment of juveniles as a separate category was a result of "developments in English common law").

recent national trend—advocating a harsher, more punitive approach to juvenile sanctions.

A. THE ENGLISH COMMON LAW'S TREATMENT OF JUVENILES

Under English common law, a person was liable for a crime if there was will (intent to commit a crime) and an act (the actual commission of the crime).[10] Without finding both will and an act, a court could not punish a person because the court could not find that the person had committed a crime.[11] English common law recognized only three circumstances in which a person was incapable of committing a crime because of an inability to have will: (1) when a person had "a defect of understanding"; (2) when a person committed an act out of "misfortune and ignorance"; and (3) when a person committed an act out of "compulsion or necessity."[12] Falling under the first of these circumstances, pertinent to this Note, was infancy.[13]

A court could not find a child, seven years old or younger, guilty of a felony because the law deemed it impossible for a child that young to have "felonious discretion."[14] However, a court could find that any child over the age of 14 had will; thus, children over 14 years old risked the court sentencing them to the same punishments that it imposed on adults.[15] Based on this law, courts and juries had discretion with respect to children between the ages of seven and 14.[16] Courts presumed children falling between the ages of seven and 14 were incapable of committing a felony, but if a court and jury determined that the child in question was able to understand the difference between right and wrong, then that child could be convicted and sentenced to death, just like any other adult.[17]

Consequently, courts and juries subjected many children to the same punishments as adult criminals.[18] This common law treatment of juveniles carried over into the American colonies and continued even after the United States was established—there were no special procedures or courts for

10. 4 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 21 (Lawbook Exch., Ltd. 2007) (1772).

11. *Id.* ("[T]o make a complete crime, cognizable by human laws, there must be both a will and an act.").

12. *Id.* at 21–22.

13. *Id.* at 21. Infancy in this context refers to "minors, or those under twenty-five years old." *Id.* at 22.

14. *Id.* at 23.

15. *Id.* at 22–23.

16. *Id.* at 23.

17. *Id.*

18. LAWRENCE & HEMMENS, *supra* note 1, at 21 ("Youth who committed serious offenses could be subjected to prison sentences, whipping, and even the death penalty.").

juveniles, but rather, everyone was treated the same.[19] It was not until the 19th century that society began to advocate for a separate juvenile justice system.[20]

B. THE DOCTRINE OF PARENS PATRIAE *AND THE DEVELOPMENT OF A SEPARATE SYSTEM FOR JUVENILES*

The doctrine of *parens patriae*, meaning "parent of the country," also had its roots in English common law.[21] The king, seen as "the symbolic father of the country," assumed the responsibility of using his authority to help women and children in need through the Chancery courts.[22] Social reformers advocated that the United States use the doctrine of *parens patriae* after the country experienced a boom in population during the 19th century due to an increased birthrate and an influx of immigration.[23] As cities became overcrowded, the number of destitute children also increased, and social reformers worried about rescuing these children from a life of delinquency.[24] The Society for the Reformation of Juvenile Delinquents established the New York House of Refuge in 1825,[25] which became one of the first public facilities to focus specifically on reforming the lives of these destitute youths.[26] Groups also established similar houses of refuge in Boston and Philadelphia, and soon afterwards, states began to open juvenile reform schools.[27]

The purpose of the juvenile reform schools was to educate and reform delinquent youths with hard work and a strict regimen.[28] However, sexual and physical abuse and discrimination became prevalent problems in these

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19. *Id.*; *see also* Eric Fritsch & Craig Hemmens, *Juvenile Waiver in the United States 1979–1995: A Comparison and Analysis of State Waiver Statutes*, 46 JUV. & FAM. CT. J. 17, 19 (1995) ("At common law juvenile offenders received the same punishment as adult offenders and were usually housed in the same facilities.").

20. LAWRENCE & HEMMENS, *supra* note 1, at 20–21; *see also* AM. BAR ASS'N, *supra* note 9, at 5 (describing the development of juvenile courts during the 19th century).

21. LAWRENCE & HEMMENS, *supra* note 1, at 21 (internal quotation marks omitted).

22. Fritsch & Hemmens, *supra* note 19, at 19; *see also* LAWRENCE & HEMMENS, *supra* note 1, at 20–21 ("The Chancery courts in 15th-century England were created to consider petitions of those in need of aid or intervention, generally women and children who were in need of assistance because of abandonment, divorce, or death of a spouse.").

23. LAWRENCE & HEMMENS, *supra* note 1, at 21.

24. *See id.* ("Urban youth and children of immigrants were thought to be more prone to deviant and immoral behavior than other youth. Early reformers . . . called for institutions that would instruct delinquent youth in proper discipline and moral behavior."); *see also* Fritsch & Hemmens, *supra* note 19, at 19 ("[Due to the Industrial Revolution,] more and more people moved to the cities, [and] the number of children in urban areas increased dramatically. Many of these children were often left unsupervised, because both parents worked. Juvenile delinquency became a problem in many cities.").

25. LAWRENCE & HEMMENS, *supra* note 1, at 21.

26. Thomas & Bilchik, *supra* note 9, at 447 n.22.

27. LAWRENCE & HEMMENS, *supra* note 1, at 21 ("State reform schools opened in Massachusetts in 1847, in New York in 1853, [and] in Ohio in 1857.").

28. *Id.* at 22.

reform schools.[29] The apparent failure of the houses of refuge and reform schools led juvenile advocates to create the "Child-Saving" Movement and push for legislation that would give courts broader jurisdiction over juveniles.[30] Juvenile advocates believed that the court should not only deal with juvenile offenders, but also juveniles with behavioral problems if parental intervention was not enough.[31] As a result, Illinois established the first juvenile court in 1899 in Cook County,[32] and over the next 25 years, all but three states followed suit in establishing juvenile court systems.[33]

Adopting the doctrine of *parens patriae* as their central philosophy,[34] juvenile courts assumed the parental role of acting in the "best interests of the child" and focused on rehabilitating, not punishing, juvenile offenders.[35] Because juvenile courts were dedicated to rehabilitation, juvenile proceedings developed a procedure distinct from that of the adult criminal court.[36] Juvenile proceedings were private, informal in nature, and more similar to civil proceedings than criminal proceedings—for example, juveniles did not have the right to a trial by jury or the right to an attorney.[37] Juvenile courts deemed such due process requirements unnecessary because they were not interested in placing the blame for an offense, but rather, were concerned with finding "the best method of treatment" to help the delinquent juvenile become a productive member of society.[38] In order to determine a juvenile's

29. *Id.* at 22–23. One source notes that "[i]n theory, reformatories were 'schools' that provided parental discipline, education, religious instruction, and meaningful work for incarcerated youth." *Id.* at 23. However, the "discipline in the juvenile reform schools was more brutal than parental, and inmate workers were exploited under an indenture or contract labor system." *Id.*; *see also* Alexander W. Pisciotta, *Saving the Children: The Promise and Practice of* Parens Patriae*, 1838–98*, 28 CRIME & DELINQ. 410, 413–17 (1982) (discussing the extreme methods of punishment and the exploitation of labor that juveniles were subjected to in reform schools).

30. LAWRENCE & HEMMENS, *supra* note 1, at 23 ("The [goal of the] child-saving movement was to extend government intervention over youth behaviors that had previously been the responsibility of parents and families. . . . If parents could not or would not control and properly supervise their own children, then the government should intervene.").

31. *Id.* (noting that behavioral problems ranged from idleness to drinking and vagrancy).

32. *Id.* at 24.

33. Fritsch & Hemmens, *supra* note 19, at 20.

34. LAWRENCE & HEMMENS, *supra* note 1, at 24.

35. AM. BAR ASS'N, *supra* note 9, at 5; *see also* LAWRENCE & HEMMENS, *supra* note 1, at 24 ("Under the juvenile justice philosophy, youthful offenders were designated as delinquent rather than as criminal, and the primary purpose of the juvenile justice system was not punishment but rehabilitation.").

36. LAWRENCE & HEMMENS, *supra* note 1, at 24.

37. Fritsch & Hemmens, *supra* note 19, at 20.

38. *Id.* Juvenile courts even adopted a different vocabulary to distinguish juvenile court proceedings from the adult criminal court system:

> Juveniles were not arrested; they were "taken into custody." Instead of indicting a juvenile, prosecutors "petitioned the juvenile court." Juveniles were not convicted; they were "adjudicated delinquent." Juvenile court sanctions were not referred to as

best treatment, it was necessary for juvenile courts to assess each juvenile's unique circumstances and mete out individualized sentences.[39] The practices of the juvenile court system continued unchallenged until the 1960s when questions began to arise concerning the constitutionality of sending juveniles to institutions similar to prison or transferring their cases to adult criminal court without due process protections.[40]

C. THE CHALLENGES TO THE JUVENILE COURT SYSTEM AND ITS PHILOSOPHY OF REHABILITATION

As the juvenile court system increased in power and size,[41] youth advocates began to question the nature of the informal proceedings and the constitutionality of the lack of due process rights.[42] The Supreme Court addressed these issues and extended many due process rights to juvenile proceedings in three notable cases.[43] In 1966, the Court heard *Kent v. United States* and held that before a juvenile court may waive a case to an adult criminal court, the juvenile court must provide a hearing and allow the juvenile offender's counsel the opportunity to present a defense against the waiver.[44] The next year, the Court expanded juvenile due process rights in *In re Gault*, holding that juveniles have the right to notice of the charges against them, the right to counsel, the right against self-incrimination, and the right to confront and cross-examine adverse witnesses.[45] In 1970, the Court found in *In re Winship* that juveniles are equally entitled as adults to the "proof beyond a reasonable doubt" standard when they are charged with a crime carrying a potential prison sentence.[46] Although the Court's intent was to ensure the constitutional rights of juveniles, its decisions simultaneously opened the door separating the different treatment of juvenile and adult offenders.

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sentences, but as "dispositions." Juveniles were not sent to prisons; they were sent to "training schools" or some other euphemistically named institution.

Id.

39. *Id.*; *see also* LAWRENCE & HEMMENS, *supra* note 1, at 25 (explaining that juvenile courts "examined the background and social history of the child and the family environment to assess the child's needs").

40. LAWRENCE & HEMMENS, *supra* note 1, at 25–26.

41. Fritsch & Hemmens, *supra* note 19, at 21.

42. Elizabeth S. Scott & Laurence Steinberg, *Adolescent Development and the Regulation of Youth Crime*, JUV. JUST., Fall 2008, at 15, 17.

43. AM. BAR ASS'N, *supra* note 9, at 6–8.

44. Kent v. United States, 383 U.S. 541, 557 (1966) (explaining that, because a waiver from juvenile court to adult criminal court could subject the defendant to a sentence as harsh as the death penalty, the arbitrary decision to waive the case without conducting a hearing or giving the reasons for the waiver constituted an unfair deprivation of due process).

45. *In re* Gault, 387 U.S. 1, 33–34, 41, 55, 57 (1967).

46. *In re* Winship, 397 U.S. 358, 366–68 (1970) (discussing the standard of proof in juvenile adjudications and rejecting the argument that a lower standard is justified because a juvenile proceeding is akin to a civil proceeding, designed to treat, not punish, juvenile delinquents).

As Justice Potter Stewart argued in his dissent in *In re Gault*, "by requiring many of the same due process guarantees in juvenile cases that are required in criminal cases, the Court was converting juvenile proceedings into criminal proceedings," which redefined the juvenile court system as an adversarial system.[47] This realignment of the juvenile court system undermined the societal interest in rehabilitation and invited the discussion of imposing punishment on juvenile offenders.[48] Indeed, as juvenile crime rates increased dramatically between 1960 and 1980,[49] "conservative politicians [began to] ridicule[] the juvenile system and pointed to [its] high recidivism rates as evidence that rehabilitation was a failure."[50]

In addition to the dramatic increase in crime rates, the types of crimes that juveniles committed became much more violent, moving from vandalism and theft to "assault, rape, and murder."[51] In response, state legislatures turned away from the rehabilitative model of the juvenile court system and passed harsher legislation to crack down on juvenile crime.[52] Many states reformed their statutes to expressly introduce punishment as a main concern for juvenile courts and provided for determinate sentencing and longer sentences.[53] Although juvenile court judges had always retained the authority to transfer juvenile offenders to criminal courts, state legislatures "made it easier and, in some cases, mandatory for juvenile court judges to transfer juvenile offenders to criminal court."[54] These reforms reflected a clear change in policy from rehabilitating juvenile offenders to holding them culpable for their actions—a common mantra became "adult time for adult crime."[55] It was not until the beginning of the 21st century that society returned to the discussion of juvenile culpability.

III. INCORPORATING SCIENTIFIC RESEARCH IN JUVENILE JUSTICE

Society's renewed interest in juvenile culpability paired with the advent of new technologies in the 21st century, allowing researchers to learn more about the juvenile mind than in the past.[56] This Part discusses that scientific

47. AM. BAR ASS'N, *supra* note 9, at 7; *see also In re Gault*, 387 U.S. at 78–79 (Stewart, J., dissenting).

48. *See* AM. BAR ASS'N, *supra* note 9, at 9–10.

49. Fritsch & Hemmens, *supra* note 19, at 21 ("[J]uvenile crime . . . increas[ed] by almost 250% between 1960 and 1980.").

50. Scott & Steinberg, *supra* note 42, at 17.

51. Fritsch & Hemmens, *supra* note 19, at 21.

52. *Id.* at 22; *see also* Scott & Steinberg, *supra* note 42, at 17.

53. Fritsch & Hemmens, *supra* note 19, at 22–23.

54. AM. BAR ASS'N, *supra* note 9, at 10; *see also* Scott & Steinberg, *supra* note 42, at 17–18 (discussing automatic transfer statutes in which juveniles of a certain age or charged with a certain crime were automatically and "categorically treated as adults").

55. Scott & Steinberg, *supra* note 42, at 18 (internal quotation marks omitted).

56. *Adolescence, Brain Development and Legal Culpability*, *supra* note 2, at 1.

research and its impact on the Supreme Court's holdings regarding juvenile justice.

A. THE SCIENTIFIC RESEARCH DISTINGUISHING JUVENILES FROM ADULTS

In the early 2000s, scientists were able to learn more about the development of the human brain by using new technologies.[57] In particular, scientists learned how to utilize "magnetic resonance imaging (MRI) to create and study three-dimensional images of the brain without the use of radiation."[58] This advance has allowed scientists to safely track the development of the brain from childhood, through adolescence, to adulthood.[59] As a result, scientists discovered that adolescent brains are much more underdeveloped than what scientists had previously believed.[60] The frontal lobe of the brain, which regulates judgment, impulsivity, and emotions, undergoes the most change during adolescence and is the last area to mature.[61] In fact, the brain does not fully develop until the early 20s.[62]

This research established that although juveniles may be able to distinguish between right and wrong, they are less capable "than adults to control their impulses, to use reason to guide their behavior, and to think about the consequences of their conduct."[63] These physiological differences make the transformation between adolescence and adulthood more than just a matter of age and outer physical change. Adolescents undergo a mental transformation before their brains fully mature, making them less culpable than adults and more likely and able to change and successfully rehabilitate.[64] This research made a significant impact on the development of juvenile jurisprudence because it indicated juveniles' ability to rehabilitate.

B. THE SUPREME COURT'S ADOPTION OF THE SCIENTIFIC RESEARCH

The United States Supreme Court adopted the scientific research that revealed the lesser culpability of juveniles to establish a new framework for sentencing juvenile offenders. This Subpart will discuss the Court's holdings in *Roper v. Simmons*, *Graham v. Florida*, and *Miller v. Alabama* to explain this science-based framework.

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57. *Id.*

58. *Id.*

59. *Id.* at 2.

60. *Id.*

61. *Id.*; *see also Lesson 1–The Brain: What's Going On in There?*, NAT'L INSTS. HEALTH, http://science.education.nih.gov/supplements/nih2/addiction/activities/lesson1_brainparts.htm (highlight the frontal lobe of the brain to access information) (last visited Dec. 28, 2014).

62. *Adolescence, Brain Development and Legal Culpability*, *supra* note 2, at 2.

63. AMNESTY INT'L & HUMAN RIGHTS WATCH, THE REST OF THEIR LIVES: LIFE WITHOUT PAROLE FOR CHILD OFFENDERS IN THE UNITED STATES 45 (2005), *available at* http://www.hrw.org/reports/2005/us1005/TheRestofTheirLives.pdf.

64. *Adolescence, Brain Development and Legal Culpability*, *supra* note 2, at 3.

1. *Roper v. Simmons*

In *Roper v. Simmons*, Christopher Simmons conspired with two other juveniles to burglarize, kidnap, and murder a random victim.[65] He was 17 years old when the three juveniles carried out their plan.[66] The State subsequently charged Simmons with first-degree murder, and the jury convicted and sentenced Simmons to death.[67] The Supreme Court ultimately granted certiorari and held that the imposition of the death penalty on a juvenile offender was a violation of the Eighth Amendment's Cruel and Unusual Punishment Clause.[68]

In its reasoning, the Court acknowledged that the law should reserve the death penalty, as society's worst punishment, for those offenders who commit the most heinous crimes and whose characteristics do not warrant any mitigation in culpability.[69] The Court then identified three key differences between juveniles and adults: (1) juveniles lack the maturity and ability to foresee and consider the consequences of their actions; (2) juveniles are more susceptible to being influenced by outside pressures; and (3) juveniles are capable of and apt to change because their character is still developing.[70] These differences emphasize juveniles' diminished culpability and minimize any justifications for imposing the death penalty on juvenile offenders.[71]

The Court identified the two "penological justifications for the death penalty" as retribution and deterrence.[72] Subjecting juvenile offenders to the death penalty would not serve the retributive purpose because the punishment would be disproportionately excessive in comparison to the juvenile offender's lower culpability level.[73] Similarly, the death penalty would not serve the deterrent purpose because of the nature of juvenile characteristics—juveniles' inability to assess and appreciate the consequences of their actions makes it improbable that a juvenile would conduct a risk analysis before participating in a dangerous felony.[74] Thus, it would be unjust

65. Roper v. Simmons, 543 U.S. 551, 556 (2005).

66. *Id.*

67. *Id.* at 557–58.

68. *Id.* at 578.

69. *Id.* at 568 ("Capital punishment must be limited to those offenders who commit 'a narrow category of the most serious crimes' and whose extreme culpability makes them 'the most deserving of execution.'" (quoting Atkins v. Virginia, 536 U.S. 304, 319 (2002))).

70. *Id.* at 569–70.

71. *Id.* at 570 ("These differences render suspect any conclusion that a juvenile falls among the worst offenders."); *see also* Robert J. Smith, *Forgetting* Furman, 100 IOWA L. REV. 1149, 1182 (2015) (discussing the diminished culpability of many criminals, particularly juveniles).

72. *Id.* at 571.

73. *Id.*

74. *Id.* at 572 ("The likelihood that the teenage offender has made the kind of cost-benefit analysis that attaches any weight to the possibility of execution is so remote as to be virtually nonexistent." (quoting Thompson v. Oklahoma, 487 U.S. 815, 837 (1988)) (internal quotation marks omitted)).

and impractical to impose the death penalty on a juvenile offender; rather, a life-without-parole sentence would be a sufficiently severe sanction.[75]

Yet, the Court did not assume that all juvenile offenders were the same, and acknowledged that it was possible that some juvenile offenders were psychologically mature enough to realize the gravity of their actions.[76] Nonetheless, the Court decided to impose a categorical ban on juvenile capital punishment instead of allowing courts to impose the punishment on an individual basis because of the "unacceptable likelihood . . . that the brutality or cold-blooded nature of any particular crime would overpower mitigating arguments based on youth as a matter of course, even where the juvenile offender's objective immaturity, vulnerability, and lack of true depravity should require a sentence less severe than death."[77] The Court determined that it was more beneficial to draw a line to spare the lives of the majority of juvenile offenders, who are still developing and capable of change.[78]

2. *Graham v. Florida*

Five years after *Roper*, the Court decided *Graham v. Florida*, in which Terrance Graham pleaded guilty to armed burglary with assault or battery and attempted armed robbery at the age of 16.[79] The trial court sentenced Graham to probation, but less than six months later, police arrested him again for a home invasion robbery and the possession of firearms.[80] Because Graham violated the terms of his probation, the trial court held a sentencing hearing with respect to his earlier crimes, and imposed the maximum penalty of life imprisonment without parole.[81]

The Supreme Court held that the Eighth Amendment's Cruel and Unusual Punishment Clause prohibits the imposition of a life-without-parole sentence on juvenile offenders convicted of nonhomicide crimes.[82] The Court "recognized that defendants who do not kill, intend to kill, or foresee that life will be taken are categorically less deserving of the most serious forms of punishment than are murderers."[83] In addition to *Roper*'s reasoning that juveniles already have diminished culpability, the Court found that "juvenile

75. *Id.*
76. *Id.*
77. *Id.* at 573.
78. *Id.* at 574.
79. Graham v. Florida, 560 U.S. 48, 53–54 (2010).
80. *Id.* at 54–55.
81. *Id.* at 56–57.
82. *Id.* at 82 ("The Constitution prohibits the imposition of a life without parole sentence on a juvenile offender who did not commit homicide.").
83. *Id.* at 69.

offender[s] who did not kill or intend to kill ha[ve] a twice diminished moral culpability."[84]

Further, a juvenile life-without-parole sentence bears similar characteristics to the death penalty.[85] Aside from the fact that the sentence is irrevocable, it is important to note that a juvenile offender would spend a majority of his life in prison, serving more years than any adult offender.[86] Thus, a life-without-parole sentence for an adult offender and a juvenile offender are "the same . . . in name only."[87] In fact, imposing a life-without-parole sentence on a juvenile offender who commits a nonhomicide crime serves no legitimate penological purpose.[88]

The Court indicated that retribution only serves a legitimate penological purpose if it is proportional to the crime and the culpability of the offender.[89] As the Court acknowledged in *Roper*, the justification for retribution is weaker with respect to a minor as opposed to an adult.[90] With twice-diminished culpability in a nonhomicide crime, no retributive aspect would justify the imposition of a life-without-parole sentence on a juvenile offender.[91]

Just as the Court noted in *Roper*, the physiological aspects of juveniles' brain development also make deterrence an unsatisfactory justification for life without parole for a nonhomicide offense.[92] Juveniles often lack the judgment to foresee and consider consequences before taking action. The fact that courts rarely impose juvenile life without parole for a nonhomicide offense further undermines the likelihood that the juvenile would be aware of and deterred by the punishment.[93]

The *Graham* Court also recognized that incapacitation would not justify a juvenile life-without-parole sentence for a nonhomicide crime.[94] The Court explained that the purpose of incapacitation is to reduce recidivism rates.[95] Indeed, "statistics show 67[%] of former inmates released from state prisons

84. *Id.*

85. *Id.* at 69–70 ("The State does not execute the offender sentenced to life without parole, but the sentence alters the offender's life by a forfeiture that is irrevocable. It deprives the convict of the most basic liberties without giving hope of restoration . . . ." (citing Solem v. Helm, 463 U.S. 277, 300–01 (1983))).

86. *Id.* at 70.

87. *Id.*

88. *Id.* at 71 ("With respect to life without parole for juvenile nonhomicide offenders, none of the goals of penal sanctions that have been recognized as legitimate—retribution, deterrence, incapacitation, and rehabilitation—provides an adequate justification." (citation omitted)).

89. *Id.* at 71–72.

90. *Id.*

91. *Id.* at 72 ("[R]etribution does not justify imposing [life without parole] on the less culpable juvenile nonhomicide offender.").

92. *Id.* at 72.

93. *Id.* ("[Juveniles] are less likely to take a possible punishment into consideration when making decisions. This is particularly so when that punishment is rarely imposed.").

94. *Id.*

95. *Id.*

are charged with at least one serious new crime within three years."[96] However, this concept is inapplicable to the juvenile offender: to assume that a "juvenile offender forever will be a danger to society requires the sentencer to make a judgment that the juvenile is incorrigible."[97] The Court noted that any determination that a juvenile is incorrigible goes against the findings of scientific research with regards to juvenile brain and personality development.[98] To decide that a juvenile is incorrigible not only undermines the concept of youth and immaturity, but also denies the juvenile offender the opportunity to prove his change in hopes of release and redeeming his life.[99]

Finally, a life-without-parole sentence also does not serve the goals of rehabilitation because it eliminates the offender's opportunity to reenter society.[100] Essentially, a life-without-parole sentence is a determination that there is no rehabilitative prospect in the offender's life, which is a harsh judgment to make when the offender is a juvenile.[101]

Because of the continued emphasis on a juvenile's capacity to change, the Court ruled that the State must give juvenile offenders convicted of nonhomicide crimes "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation."[102] The Court's holding in *Graham* is especially significant because it firmly set the precedent that juveniles are a category separate from adults, warranting different sentencing considerations and procedures.[103]

3. *Miller v. Alabama*

Despite the expansive holdings of *Roper* and *Graham*, the Court issued much narrower holding in *Miller v. Alabama*, a decision involving two consolidated cases.[104] In the first, a trial court in Alabama convicted 14-year-old Evan Miller of beating a man and setting his trailer on fire, resulting in the man's death.[105] In the second, a trial court in Arkansas convicted 14-year-old Kuntrell Jackson of capital felony murder and aggravated robbery, in which a co-felon shot and killed the victim.[106] Both petitioners received

96. *Id.* (citing Ewing v. California, 538 U.S. 11, 26 (2003)).

97. *Id.*

98. *Id.* at 72–73 ("The characteristics of juveniles make that judgment questionable."); *see also supra* Part III.A.

99. *Graham*, 560 U.S. at 73.

100. *Id.* at 74.

101. *Id.* (finding that a judgment of incorrigible character "is not appropriate in light of a juvenile nonhomicide offender's capacity for change and limited moral culpability").

102. *Id.* at 75.

103. Emily C. Keller, *Constitutional Sentences for Juveniles Convicted of Felony Murder in the Wake of* Roper, Graham *&* J.D.B., 11 CONN. PUB. INT. L.J. 297, 308 (2012).

104. *See* Miller v. Alabama, 132 S. Ct. 2455, 2460 (2012).

105. *Id.* at 2462.

106. *Id.* at 2461.

mandatory sentences of life without parole, which they contested as a violation of the Eighth Amendment's Cruel and Unusual Punishment Clause.[107] The Supreme Court ruled in favor of the petitioners.[108] In its analysis, the Court reiterated and emphasized the rationale in both *Roper* and *Graham*, and concluded that youth "is relevant to the Eighth Amendment."[109]

The Court found that under a mandatory sentencing scheme, the trial court does not have the opportunity to consider the "hallmark features" of youth, which often include "immaturity, impetuosity, and [the] failure to appreciate risks and consequences."[110] Furthermore, trial courts are also unable to take into account the home environment in which the juvenile offender was raised or the "peer pressures" that may have influenced his conduct.[111] Without the ability to consider such factors, the trial court is unable to mitigate a sentence for a juvenile who has the capability to rehabilitate and allows for the possibility of a disproportionately cruel and unusual mandatory life-without-parole sentence.[112] Thus, although the Court did not categorically ban life without parole for juvenile offenders, it did require sentencers to take the juvenile offender's youth into account when making sentencing determinations.[113]

IV. JUVENILE SOLITARY CONFINEMENT VIOLATES THE EIGHTH AMENDMENT

Through *Roper*, *Graham*, and *Miller*, the Supreme Court established the precedent of sentencing juveniles as a separate and distinct category from adults and also emphasized that rehabilitation should be the primary purpose of juvenile sanctions. In light of this rehabilitative goal, this Part questions the use of solitary confinement as a juvenile sanction. Used to punish, isolate, or protect vulnerable prisoners, "[s]olitary confinement is the practice of placing a person alone in a cell for 22 to 24 hours a day with little human contact or interaction; reduced or no natural light; . . . severe constraints on visitation;" and denials of access to entertainment and group activities.[114] This Part argues

107. *Id.* at 2460.

108. *Id.* at 2469 ("We therefore hold that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders.").

109. *Id.* at 2466 (quoting Graham v. Florida, 560 U.S. 48, 76 (2010)). Consequently, "criminal procedure laws that fail to take defendants' youthfulness into account at all would be flawed." *Id.* (quoting *Graham*, 560 U.S. at 76) (internal quotation marks omitted).

110. *Id.* at 2468.

111. *Id.*

112. *Id.* at 2468.

113. *Id.* at 2469 ("Although we do not foreclose a sentencer's ability to [sentence a juvenile to mandatory life without parole] in homicide cases, we require it to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.").

114. AM. CIVIL LIBERTIES UNION, ACLU BRIEFING PAPER: THE DANGEROUS OVERUSE OF SOLITARY CONFINEMENT IN THE UNITED STATES 3–4 (2014), *available at* https://www.aclu.org/sites/default/files/assets/stop_solitary_briefing_paper_updated_august_2014.pdf ("Solitary confinement is used to

that juvenile solitary confinement is unconstitutional because it is cruel and unusual and serves no penological purpose.

A. Juvenile Solitary Confinement Is Cruel and Unusual

Under the Eighth Amendment, "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."[115] Although courts traditionally "focused on the basic components of physical sustenance [such as]: food, shelter, and medical care" to determine whether an inmate had an Eighth Amendment challenge to the conditions of his confinement, courts now also recognize Eighth Amendment challenges based on "psychological pain and suffering."[116] However, psychological pain and suffering only implicate the Eighth Amendment when the confinement in question inflicts or aggravates mental illness, or causes an inmate to go insane—such punishment is cruel and unusual because it deprives the inmate of his human existence.[117] In order to assess whether the conditions of confinement would create an unconstitutional risk to an inmate's health, the Supreme Court has implemented a two-prong test: (1) the conditions of confinement are "very likely . . . to cause serious damage to the inmate's future health, and (2) . . . society considers the risk to be so grave that it violates contemporary standards of decency to expose *anyone* unwillingly to such a risk."[118]

Juvenile solitary confinement undoubtedly meets this test. Juveniles are more vulnerable than adults to the repercussions of solitary confinement because their brains are not yet fully developed.[119] The repercussions of solitary confinement include mental illness or worsened mental illness, anxiety, rage, insomnia, self-mutilation, suicidal ideation, and suicide.[120]

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punish prisoners who have violated rules, or to isolate those considered too dangerous for general population. It is also sometimes used to 'protect' prisoners who are perceived as vulnerable—such as youths . . . .").

115. U.S. CONST. amend. VIII.

116. Giannetti, *supra* note 3, at 39.

117. *Id.*

118. *Id.* (quoting Madrid v. Gomez, 889 F. Supp. 1146, 1265 (N.D. Cal. 1995)) (internal quotation marks omitted).

119. HUMAN RIGHTS WATCH & AM. CIVIL LIBERTIES UNION, GROWING UP LOCKED DOWN: YOUTH IN SOLITARY CONFINEMENT IN JAILS AND PRISONS ACROSS THE UNITED STATES 24 (2012), *available at* http://www.hrw.org/sites/default/files/reports/us1012ForUpload.pdf ("[Y]oung people have fewer psychological resources than adults do to help them manage the stress, anxiety and discomfort they experience in solitary confinement."); *see also* Giannetti, *supra* note 3, at 46–47 ("The harm caused to juveniles by isolation is distinctly different and more severe than the harm caused to adults because of its irreparability. Once the developmental window passes for a juvenile, the brain cannot go back and redevelop at some point in the future; the developmental effects are likely permanent. This inhibition of development not only fundamentally alters the cognitive abilities of the juvenile, but . . . significantly impacts social relationships and social identity.").

120. HUMAN RIGHTS WATCH & AM. CIVIL LIBERTIES UNION, *supra* note 119, at 23–35 (examining the negative effects of juvenile solitary confinement, based on interviews of

These repercussions are traumatic experiences that impede a juvenile's brain development, which in turn affects the juvenile's cognitive and social abilities.[121] Aside from the personal repercussions these juveniles experience, juvenile solitary confinement carries significant risk for society as well.[122] Most juvenile inmates endure some time in solitary confinement, and most juvenile inmates also have the opportunity to return to society; however, successful reintegration is improbable because of juveniles' stunted cognitive and social abilities.[123] In addition to exuding anti-social behavior, these juveniles have trouble controlling their emotions and assessing the consequences of their actions, leading to higher rates of recidivism.[124] Because of the serious risk to juvenile offenders' future health and the negative impact to future public safety, juvenile solitary confinement is a cruel and unusual punishment, violating the Eighth Amendment.

B. JUVENILE SOLITARY CONFINEMENT SERVES NO PENOLOGICAL PURPOSE

Juvenile solitary confinement is not only cruel and unusual in nature, but also serves no penological purpose, making it an "unnecessary and wanton infliction of pain," and a violation of the Eighth Amendment.[125] The Supreme Court has recognized four theories of penological justification—retribution, deterrence, incapacitation, and rehabilitation—although "the Eighth Amendment does not mandate adoption of any one penological theory."[126] Nevertheless, jails and prisons have relied on these theories to justify the different types of solitary confinement: punitive, protective, administrative, and medical.[127] However, the confinement conditions are basically the same, making the purpose of the solitary confinement's use irrelevant.[128] This

adolescents who reported being isolated); *see also* AM. CIVIL LIBERTIES UNION, *supra* note 114, at 4 (listing "a variety of negative physiological and psychological reactions" that inmates experience during solitary confinement).

121. *See* Giannetti, *supra* note 3, at 46–47.

122. *Id.* at 47–48.

123. *Id.*

124. *Id.* at 48.

125. Rhodes v. Chapman, 452 U.S. 337, 346 (1981) ("[T]he Eighth Amendment prohibits punishments which, although not physically barbarous, 'involve the unnecessary and wanton infliction of pain,' or are grossly disproportionate to the severity of the crime. Among 'unnecessary and wanton' inflictions of pain are those that are 'totally without penological justification.'" (internal citations omitted)).

126. Harmelin v. Michigan, 501 U.S. 957, 999 (1991) (Kennedy, J., concurring in part and concurring in the judgment).

127. Laura Dimon, *How Solitary Confinement Hurts the Teenage Brain*, ATLANTIC (June 30, 2014, 3:00 PM), www.theatlantic.com/health/archive/2014/06/how-solitary-confinement-hurts-the-teenage-brain/373002/; *see also* HUMAN RIGHTS WATCH & AM. CIVIL LIBERTIES UNION, *supra* note 119, at 48 ("Jails and prisons generally use solitary confinement for one of three reasons: to punish inmates; to manage them (either to protect others from them, or them from others); or to treat them.").

128. HUMAN RIGHTS WATCH & AM. CIVIL LIBERTIES UNION, *supra* note 119, at 48.

Subpart will discuss why juvenile solitary confinement serves no penological purpose and violates the Eighth Amendment by examining the various types of solitary confinement.

1. Punitive Solitary Confinement

Punitive solitary confinement is one of the most serious forms of discipline that a jail or prison can impose on an inmate who breaks the rules.[129] Regardless of age, all inmates are subject to the same disciplinary system—youth is not a mitigating factor in disciplinary hearings.[130] This disregard of youth directly contravenes the Court's holding in *Miller*, which advocates individualized sentencing for juvenile offenders.[131] To hold adult and juvenile inmates to the same standard of behavior would mean ignoring scientific research that highlights the fundamental differences between the mental faculties of adults and juveniles, as well as Supreme Court opinions that mandate separate treatment for the two groups.[132] Consequently, punitive solitary confinement would not serve any retributive purpose since the punishment is not proportional to the culpability of the offender.[133]

2. Protective Solitary Confinement

Correctional facilities use protective solitary confinement to protect juvenile offenders from the general prison population.[134] Some juveniles prefer protective solitary confinement,[135] and a number of jails and prisons automatically hold juvenile offenders in protective solitary confinement.[136]

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129. *Id.*

130. *See id.* at 50–51 (explaining that there is no differentiation among inmates in prison). "There are the rules. If you violate the rules you'll go through the process and your hearing and any potential discipline is the same regardless of age." *Id.* (quoting Telephone Interview by Human Rights Watch with Michael Grover, Police Chief, Cottage Grove, Ore. (Apr. 20, 2012)) (internal quotation marks omitted).

131. *See supra* Part III.B.3.

132. *See supra* Part III.

133. *See supra* note 89 and accompanying text.

134. HUMAN RIGHTS WATCH & AM. CIVIL LIBERTIES UNION, *supra* note 119, at 54. The report documents the story of one juvenile who "was placed in protective solitary confinement after experiencing sexual abuse." *Id.* at 56.

135. *Id.* at 55. In fact, some adolescents purposely violate prison rules in order to receive punitive solitary confinement, so they do not have to live in fear of older inmates. *Id.*

136. *Id.* at 54 ("A recent University of Texas survey of Texas jails found that 25 out of 41 jails that responded to a survey held youth in protective solitary confinement by default."). This protective measure is due in large part to the Prison Rape Elimination Act ("PREA"). *See id.* at 55. The regulations implementing the Act provide: "A youthful inmate shall not be placed in a housing unit in which the youthful inmate will have sight, sound, or physical contact with any adult inmate through use of a shared dayroom or other common space, shower area, or sleeping quarters." 28 C.F.R. § 115.14(a) (2013). Although the Department of Justice asserts that long-term solitary confinement is not the appropriate solution for rape elimination, the "PREA regulations do not prohibit isolation or solitary confinement," and its use is still prevalent. HUMAN RIGHTS WATCH & AM. CIVIL LIBERTIES UNION, *supra* note 119, at 55.

Although the intent behind protective solitary confinement may be well-meaning, it is not reasonable to force juveniles to choose between the harmful consequences of solitary confinement and assault.[137] Juveniles who are in protective solitary confinement are still subject to the emotional and mental tolls of "extreme isolation and sensory deprivation," which can cause irreparable damage.[138] The Eighth Amendment prohibits such "grossly disproportionate" sanctions.[139] Further, protective solitary confinement does not serve any of the penological justifications that the Supreme Court recognizes: it is not meant to punish, deter, incapacitate, or rehabilitate juvenile offenders. Although protective solitary confinement may deter adult offenders from abusing juvenile offenders, the point of deterrence as a penological justification is to preclude the *sanctioned* person from acting.[140]

3. Administrative Solitary Confinement

Juvenile inmates are subject to administrative solitary confinement for one of two reasons: (1) overcrowding in the general population, and (2) classification as a danger to others.[141] There is no penological justification for putting a juvenile in solitary confinement because of overcrowding in the general population area—in fact, it is more costly.[142] Subjecting a juvenile inmate to solitary confinement based on dangerousness is also unjust because facilities do not factor the juvenile's age into the determination of his classification.[143] Imposing long-term or even indefinite solitary confinement

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137. HUMAN RIGHTS WATCH & AM. CIVIL LIBERTIES UNION , *supra* note 119, at 56.

138. *Solitary Confinement Is Cruel and Ineffective*, SCI. AM. (July 17, 2013), http://www.scientificamerican.com/article.cfm?id=solitary-confinement-cruel-ineffective-unusual.

139. *E.g.*, Rhodes v. Chapman, 452 U.S. 337, 346 (1981) (citing Coker v. Georgia, 433 U.S. 584, 592 (1977) (plurality opinion)).

140. *See supra* notes 92–93 and accompanying text.

141. HUMAN RIGHTS WATCH & AM. CIVIL LIBERTIES UNION, *supra* note 119, at 57–58; Rebecca Baird-Remba, *What Life Is Like for the 2 Million People Behind Bars in America*, BUS. INSIDER (May 14, 2013, 5:46 PM), http://www.businessinsider.com/life-in-prison-pictures-2013-5?op=1 ("Prison administrators have also tried to solve overcrowding by . . . putting more inmates in solitary confinement, or administrative segregation.").

142. *See generally* SAL RODRIGUEZ, SOLITARY WATCH, FACT SHEET: THE HIGH COST OF SOLITARY CONFINEMENT (2011), *available at* http://solitarywatch.com/wp-content/uploads/2012/01/fact-sheet-the-high-cost-of-solitary-confinement.pdf (discussing the high cost of housing inmates in solitary confinement as opposed to general population in California, Illinois, Colorado, Ohio, and Texas). Although data are largely unavailable, "[o]ne study estimated that the average per-cell cost of housing an inmate in a supermax prison is $75,000, as opposed to $25,000 for an inmate in the general population." *Id.* at 1. "A supermax [prison] is a stand-alone unit or part of another facility and is designated for violent or disruptive inmates. It typically involves up to 23-hour-per-day, single-cell confinement for an indefinite period of time." DANIEL P. MEARS, URBAN INST.: JUSTICE POLICY CTR., EVALUATING THE EFFECTIVENESS OF SUPERMAX PRISONS, at ii (2006), *available at* http://www.urban.org/UploadedPDF/411326_supermax_prisons.pdf.

143. *See* HUMAN RIGHTS WATCH & AM. CIVIL LIBERTIES UNION, *supra* note 119, at 58 (noting that the factors that go into the decision of whether an inmate will be subject to administrative

on a juvenile based on his perceived dangerousness is equivalent to finding the juvenile incorrigible, which the *Miller* Court indicated is a question that cannot be considered without factoring in the juvenile's youth and capacity to change.[144]

4. Medical Solitary Confinement

Finally, there is medical solitary confinement, which is imposed when jail and prison officials determine that the inmate is experiencing a "psychological emergenc[y]" or needs to be quarantined.[145] In the past, scientists considered solitary confinement a form of "therapeutic intervention," but recent research has shown that isolation is inappropriate for those who suffer from mental illness.[146] People with mental illnesses deteriorate even more in solitary confinement, and many engage in acts of self-mutilation and suicide.[147] In fact, the rate of suicide increases when juveniles are placed in solitary confinement.[148] Thus, medical solitary confinement is cruel and unusual, and the government cannot justify its use.

Despite the different rationales for the four types of solitary confinement, a common component to each is the government's lack of accountability. Although solitary confinement is a prevalent practice across the country, "[n]either states nor the federal government publish systematic data that show the number of youth held in adult jails and prisons who are subjected to solitary confinement."[149] Consequently, there are also no data regarding the length of time juveniles spend in solitary confinement,[150] raising the risk of arbitrary imposition and the misuse of solitary confinement. In light of the growing awareness of the issues of juvenile solitary confinement, states have begun to reform their laws to address the issue.[151]

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solitary confinement are "the individual's criminal conviction and history, severity of any disciplinary infractions, and other individual characteristics," but rarely age).

144. *See supra* Part III.B.3.

145. HUMAN RIGHTS WATCH & AM. CIVIL LIBERTIES UNION, *supra* note 119, at 60.

146. *Id.*

147. AM. CIVIL LIBERTIES UNION, *supra* note 114, at 6 ("It is not unusual for prisoners in solitary confinement to compulsively cut their flesh, repeatedly smash their heads against walls, swallow razors and other harmful objects, or attempt to hang themselves.").

148. Juvenile Justice Reform Comm., *Policy Statement: Solitary Confinement of Juvenile Offenders*, AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY (Apr. 2012), http://www.aacap.org/AACAP/Policy_Statements/2012/Solitary_Confinement_of_Juvenile_Offenders.aspx ("[T]he majority of suicides in juvenile correctional facilities occur when the individual is isolated or in solitary confinement.").

149. *See* HUMAN RIGHTS WATCH & AM. CIVIL LIBERTIES UNION, *supra* note 119, at 63.

150. *Id.* at 65 ("The limited evidence available suggests that adolescents in a significant number of jails and prisons spend prolonged periods—weeks and months, rather than just hours and days—in solitary confinement.").

151. *See infra* Part V.

V. STATE RESPONSES TO THE ISSUES WITH JUVENILE SOLITARY CONFINEMENT

Thus far, five states have banned the use of punitive solitary confinement: Alaska, Connecticut, Maine, Oklahoma, and West Virginia.[152] Several states, including Mississippi, New York, and Ohio, have strictly limited the general use of the practice as a result of lawsuits in federal court.[153] Recently, several other states have considered bills regarding juvenile solitary confinement.[154] This Part focuses on the proposed bills of California, Florida, Montana, Nevada, and New Hampshire.

California Senate Bill 61 aimed to amend the state's Welfare and Institutions Code to provide that a juvenile inmate would only be subject to solitary confinement if he "pose[d] an immediate and substantial risk of harm to others . . . and all other less-restrictive options ha[d] been exhausted."[155] Moreover, the duration of solitary confinement would have been limited to a maximum of 24 consecutive hours, and the State would have been required to have a clinician evaluate the juvenile inmate in person "within one hour after placement in solitary confinement and every four hours thereafter."[156]

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152. Lloyd Nelson, *ACLU Calls for Ending Solitary Confinement in NJ Training School for Boys, Other Juvenile Jails*, NJ.COM (Aug. 2, 2013, 12:01 PM), http://www.nj.com/middlesex/index.ssf/2013/08/aclu_calls_for_ending_solitary_confinement_in_nj_training_school_for_boys_other_juvenile_jails.html.

153. *See* David Crary, *Solitary Confinement for Youths Should Be Banned, Makes Juveniles 'Go Crazy': Human Rights Watch*, HUFFINGTON POST (Dec. 10, 2012, 5:12 AM), http://www.huffingtonpost.com/2012/10/10/solitary-confinement-for-youths-banned_n_1954848.html (discussing limits in place as the result of litigation in Mississippi, Montana, West Virginia, and Illinois); Editorial, *A Model for Juvenile Detention Reform*, N.Y. TIMES (June 8, 2014), http://www.nytimes.com/2014/06/09/opinion/a-model-for-juvenile-detention-reform.html (stating that, as a result of a lawsuit, "Ohio will sharply reduce and eventually end solitary confinement"); Editorial, *New York Rethinks Solitary Confinement*, N.Y. TIMES (Feb. 20, 2014), http://www.nytimes.com/2014/02/21/opinion/new-york-rethinks-solitary-confinement.html (discussing new limits on solitary confinement, such as "those younger than 18 [in solitary confinement] will receive at least five hours of exercise and other programming outside their cell five days a week").

154. *See* S.B. 61, 2013 Leg., Reg. Sess. (Cal. 2013) (limiting the use of juvenile solitary confinement to exceptional circumstances); S.B. 812, 2013 Leg., Reg. Sess. (Fla. 2013) (limiting punitive solitary confinement to 72 hours and advocating restrictions on other forms of solitary confinement); H.B. 536, 63d Leg., Reg. Sess. (Mont. 2013) (prohibiting solitary confinement that lasts longer than three consecutive days for juvenile inmates); S.B. 107, 2013 Leg., Reg. Sess. (Nev. 2013) (as introduced Feb. 13, 2013) (providing that the use of juvenile solitary confinement be limited to circumstances in which the juvenile poses an immediate risk to safety concerns); H.B. 480-FN, 2013 Leg., Reg. Sess. (N.H. 2013) (prohibiting administrative solitary confinement and limiting punitive solitary confinement).

155. Cal. S.B. 61, § 1(b) (as amended by Assembly, Sept. 4, 2013).

156. *Id.* § 1(b)(3)(A) (as amended by Senate, Apr. 30, 2013). A later version of the bill provided:

> The [juvenile] shall be held in solitary confinement only for the minimum time required to address the safety risk, and that does not compromise the mental and physical health of the [juvenile]. . . . The [juvenile] shall not be placed in solitary confinement for more than 24 hours in a one-week period without the written approval of the Chief of the Division of Juvenile Facilities.

To increase government accountability and to counteract the risk of arbitrariness, the proposed bill would have mandated all juvenile facilities to document each instance of solitary confinement, its duration, and the reason behind its imposition, and would have proclaimed that those documents be open to the public.[157]

Florida's proposed bill had some similar provisions to that of California's proposed bill. Florida Senate Bill 812 proposed that juveniles placed in "emergency cell confinement" had to be evaluated by a mental health clinician within an hour of confinement and "at least every [four] hours thereafter to determine if the youth should remain in cell confinement."[158] Similar to California's proposed bill, Florida's proposed law would have restricted facilities to using such confinement as a last resort, required them to document the confinement, and precluded them from imposing confinement for longer than 24 consecutive hours.[159] However, unlike California, Florida's proposed bill would have allowed punitive and protective solitary confinement to be imposed on juvenile inmates, albeit with strict guidelines regarding duration and access to privileges.[160]

Montana House Bill 536 took a different approach than California and Florida's proposals by advocating for the prohibition of long-term solitary confinement for juvenile inmates.[161] Long-term solitary confinement referred to confinement that lasted "more than three consecutive days in a 30-day period."[162] Although there was a categorical ban for long-term confinement, the proposed bill said nothing about juvenile solitary confinement that lasted less than three consecutive days.[163] This implies that there would have been no restrictions on imposing short-term solitary confinement.

Nevada proposed and ultimately passed Senate Bill 107, which was initially similar to the proposed bills of California and Florida in that it proposed limiting the use of juvenile solitary confinement to those situations

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Id. § 1(b)(1)–(2) (as amended by Assembly, Sept. 4, 2013).

157. *Id.* § 1(d).

158. S.B. 812, 2013 Leg., Reg. Sess. § 1(4)(d) (Fla. 2013). "Emergency cell confinement" refers to the confinement of a juvenile who posed an "immediate, serious danger" either to himself or to others. *Id.* § 1(2)(b).

159. *Id.* § 1(4)(a)–(b).

160. *Id.* § 1(5)–(6). The bill proposed that a juvenile could not be held in punitive solitary confinement for more than 72 hours and had to be checked on at least four times an hour. *Id.* § 1(5)(a)–(b). Juveniles in punitive and protective solitary confinement would have had access to daily showers and at least two hours of "out-of-cell" exercise time, as well as "[a]ccess to the same standards of . . . medical treatment, educational services," and visitations "as provided to prisoners in the general population." *Id.* § 1(5)(c)(1), (3).

161. H.B. 536, 63rd Leg., Reg. Sess. § 4(c) (Mont. 2013).

162. *Id.* § 3(4).

163. *See id.* § 4 (failing to address juvenile solitary confinement lasting less than three consecutive days).

in which the juvenile would have posed an immediate risk to others.[164] However, unlike California and Florida's proposals, Nevada's bill, as introduced, did not require facilities to document the solitary confinement, and did not impose a quantified limitation on the length of confinement.[165]

New Hampshire House Bill 480-FN only proposed prohibiting the administrative use of solitary confinement for juveniles.[166] Punitive solitary confinement still would have been allowed but limited to a maximum of six weeks.[167] This limitation would have applied to both juveniles and adults.[168]

While each state's proposed bill demonstrated a concern for juvenile inmates, California's proposed bill was the only one that comported with the Eighth Amendment and Supreme Court precedent, and is the model that the Iowa Legislature should look to in implementing its own reform of juvenile incarceration. The following Part will discuss how California's proposal met constitutional standards and why Iowa should follow its lead.

VI. THE IOWA LEGISLATURE SHOULD ADOPT CALIFORNIA'S PROPOSED APPROACH TO JUVENILE SOLITARY CONFINEMENT

This Note proposes that the Iowa Legislature adopt California's proposed approach and ban all forms of juvenile solitary confinement, with a limited exception for circumstances in which the juvenile inmate poses an immediate risk of substantial harm to others. The Legislature should subject this limited form of solitary confinement to similar, strict guidelines to eliminate the risk of misuse and psychological harm to juveniles. These guidelines should provide: (1) solitary confinement will only be used as a last resort if other measures to alleviate the immediate and substantial risk of harm are not successful; (2) the duration of confinement will last only as long as the immediate risk of substantial harm is present, but will not exceed 24 consecutive hours; (3) a mental health clinician will be required to meet with the juvenile within an hour of confinement and will continue to evaluate the juvenile every four hours; and (4) all confinements will be documented and made available to the public.[169] This system of juvenile solitary confinement

164. S.B. 107, 2013 Leg., Reg. Sess. §§ 1–2 (Nev. 2013) (as introduced Feb. 13, 2013). The version of the bill that was ultimately passed no longer addressed juvenile solitary confinement, but rather, imposed a disciplinary scheme involving "corrective room restriction." NEV. REV. STAT. § 62B.215 (2013).

165. S.B. 107 §§ 1–2 (as introduced Feb. 13, 2013). The bill initially only stated that solitary confinement should last just long enough "to address the threat of harm to the child, staff or others or to the security of the facility, but only if the mental and physical health of the child is not compromised." *Id.* §§ 1(3), 2(3).

166. H.B. 480-FN, 2013 Leg., Reg. Sess. § 2(III)(c) (N.H. 2013) ("Solitary confinement shall not be used as a form of housing for inmates under the age of 18 years.").

167. *Id.* § 2(III)(a).

168. *Id.*

169. *See supra* notes 155–57 and accompanying text (discussing the California proposal).

will be consistent with the goal of rehabilitation, the trend in the Supreme Court's decisions, and the Eighth Amendment.

Unlike Florida, Montana, and New Hampshire, California's proposed bill would have prohibited the use of punitive solitary confinement on juveniles.[170] Punitive solitary confinement is arguably the most serious sanction available under the current disciplinary system, and it is imposed without discretion for youth.[171] The Supreme Court has consistently held that youth is a relevant factor when considering punishments for juveniles and has recognized that juveniles are less culpable for their actions, and consequently, less deserving of society's most severe punishments.[172] As one of the most serious disciplinary sanctions, punitive solitary confinement is disproportionately excessive when applied to a juvenile, and thus, is a cruel and unusual practice prohibited by the Eighth Amendment.[173] California's proposed bill, prohibiting punitive solitary confinement, would have comported with the Constitution and Supreme Court precedent.

Although Nevada's proposed bill was initially similar to that of California's in that it limited juvenile solitary confinement to situations where there would have been an immediate risk of harm, it did not impose a limit on the duration or require documentation of the confinement.[174] As a result, there would have been a lack of government accountability and a risk that solitary confinement would have been arbitrarily imposed and misused.[175] Arbitrarily imposing solitary confinement likely implicates the Fourteenth Amendment, which prohibits the undue deprivation of liberty (in this case, the liberty interest in staying out of solitary confinement).[176] California's proposed requirement for detailed documentation would have eliminated the risk of arbitrary use or abuse of solitary confinement, protecting juveniles from the possibility of unconstitutional punishment.

Aside from eliminating punitive and arbitrary solitary confinement, California's proposed bill also would have prohibited all other forms of solitary confinement for juveniles.[177] However, it allowed for one limited exception: solitary confinement would have been allowed as a last resort if a juvenile posed an immediate and substantial risk of harm to others.[178] This limited exception would not have violated the Eighth Amendment's Cruel and Unusual Punishment Clause because solitary confinement in this

170. *See supra* Part V.

171. *See supra* notes 129–30 and accompanying text.

172. *See supra* Part III.B.

173. *See supra* Part IV.A.

174. *See supra* notes 164–65 and accompanying text.

175. *See supra* notes 149–51 and accompanying text.

176. U.S. CONST. amend. XIV, § 1.

177. *See supra* Part IV.B (describing the use of solitary confinement for punitive, protective, administrative, and medical purposes).

178. *See supra* note 155 and accompanying text.

circumstance would not be disproportionately excessive and would serve a legitimate penological purpose: incapacitation.[179] When all other preventative measures fail to eliminate the immediate risk of substantial harm that a juvenile poses to others, solitary confinement can appropriately incapacitate that juvenile from acting on his desire to do harm. California's proposed bill would have prevented the possible abuse of solitary confinement by requiring detailed documentation of all incidents of solitary confinement.[180] The proposed bill also would have protected juveniles from the risk of psychological harm by requiring a mental health clinician to consult with the juvenile in set intervals of time and by limiting the extent of duration to a maximum of 24 hours.[181]

The Iowa Legislature should adopt the provisions of California's proposed bill because California's proposed bill comported with Supreme Court precedent, the Constitution, and the scientific research distinguishing juveniles from adults. The provisions met constitutional standards, accounted for the lesser culpability of juveniles, and would have helped further the goal of rehabilitation. Eliminating punitive solitary confinement for juveniles can help redirect correctional facilities to focus on society's interest in rehabilitating juveniles.[182] Consequently, the rate of recidivism will likely decrease and provide evidence of juvenile offenders' capacity to change.[183]

VII. CONCLUSION

Throughout its history, the United States has continued to change its position on juvenile sentencing jurisprudence. Initial concerns for rehabilitation gave way to more punitive measures as juvenile crime increased in frequency and violence. However, scientific research has shed light on the extent to which juvenile minds are underdeveloped, which has mitigated the level of culpability juveniles have for their actions. This mental underdevelopment highlights juveniles' capacity to change and reinforces the societal concern to turn delinquent juveniles into upstanding citizens. The Supreme Court has incorporated this research in its holdings and indicated its acceptance of juvenile rehabilitation as more than just a novelty of liberal reformers.

Rehabilitation is a realistic and necessary goal for juvenile jurisprudence because science supports the probability of juvenile maturation and change. Thus, the concern for juvenile rehabilitation undermines the use of juvenile solitary confinement, which causes irreparable harm to a juvenile's

179. *See supra* note 126 and accompanying text.

180. *See supra* note 157 and accompanying text.

181. *See supra* note 156 and accompanying text.

182. *See supra* Part III.B (explaining the Court's recent decisions, which imply that rehabilitation should be the primary goal when sentencing juvenile offenders).

183. *See supra* note 122–24 and accompanying text.

intellectual and social capabilities and serves no penological purpose. Solitary confinement not only harms the juvenile who is subjected to it, but also the public, who must deal with the ramifications of a traumatized citizen once he or she reenters society.

The Iowa Legislature can help set an example for other states, as well as the federal government, by banning the use of solitary confinement, except for the extreme circumstance in which no other measure will prevent a juvenile from immediately and substantially harming others. This system of juvenile solitary confinement will refocus correctional facilities to concentrate on rehabilitating juvenile offenders while serving the safety interests of society by reducing recidivism rates. Furthermore, this system will align the State of Iowa with Supreme Court precedent and the Constitution.