



State Appellate Defender Office

3031 W. Grand Blvd. Ste. 450, Detroit, MI 48202
(Phone) 313.256.9833 (Client calls) 313.256.9822
(Fax) 313.263.0042 www.sado.org

Jonathan Sacks
Director

Marilena David
Deputy Director

Julianne Cuneo
Chief Investigator

Katherine Marcuz
Managing Attorney, Direct Appeals Unit

Tina Olson
Managing Attorney, Juvenile Lifer Unit

Jessica Zimbelman
Managing Attorney, Direct Appeals Unit

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Justices of the Michigan Supreme Court
Hall of Justice
P.O. Box 30052
Lansing, MI 48909

ADM File No. 2022-24

Honorable Justices,

We write in support of the proposed changes to MCRs 6.907, 6.909, and 6.933. The State Appellate Defender Office strongly supports efforts to reduce the use of solitary confinement for all incarcerated persons, including children.

Former US Senator John McCain once said “It’s an awful thing, solitary. It crushes your spirit and weakens your resistance more effectively than any other form of mistreatment.” It is well understood that solitary confinement, or isolation, of an incarcerated person can cause significant psychological harm to that person.¹ Studies from as early as 1787 found harmful effects of holding people in solitary confinement.² The United Nations holds the position that solitary confinement is torture.³ Beyond the negative impacts, studies have found that people of color and people with mental illness are held in solitary at disproportionate rates.⁴

The harms of solitary confinement are particularly acute for youth. Holding youth in solitary confinement can exacerbate mental illness, increase suicide rates, decrease educational opportunities, and stunt development due to lack of exercise and stimulation.⁵ In *Lollis v NY Dep’t of Soc Servs*, 322 F Supp 473 (SDNY 1970), seven different specialists were “unanimous in their condemnation of extended isolation as imposed on children, finding it not only cruel and inhuman, but counterproductive to

¹ Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 Wash U JL & Pol’y 325, 333 (2006).

² *In re Medley*, 134 US 160, 168 (1890).

³ Special Rapporteur of the Human Rights Council, *Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in Accordance with General Assembly Resolution 62/148*, transmitted by Note of the Secretary General, 18, 23, UN Doc A/63/175 (July 28, 2008).

⁴ Leon Digard, Elena Vanko, and Sara Sullivan, *Rethinking Restrictive Housing: Lessons from Five US Jail and Prison System*, Vera Institute of Justice (May 2018).

⁵ Sandra Simkins and Laura Cohen, *The Critical Role of Post-Disposition Representation in Addressing the Needs of Incarcerated Youth*, 8 J Marshall LJ 311, 336 (2015).

the development of the child.”⁶ Groups such as the American Academy of Child and Adolescent Psychiatry oppose solitary confinement for youth due to these effects.⁷

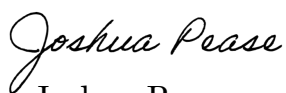
Because the detrimental impact of solitary confinement on youth is so clear, SADO strongly supports efforts to reduce, or preferably eliminate, its use. We are encouraged by this Court’s decision to bring Michigan law in line with federal regulations regarding the use of solitary confinement for youth who are held separate from adults in adult correctional facilities.⁸

We have also had the opportunity to review the position of the State Bar of Michigan Children’s Law Section⁹ and believe that their suggestion of additional language merits consideration. The Children’s Law Section has proposed that, immediately following the new language in MCRs 6.907(B), 6.909(B)(4), and 6.933(G), another sentence be added reading “if the youthful inmate is placed in isolation, the jail must immediately notify the assigned judge or on-call judge or magistrate and indicate the reasons for the placement in isolation, and the court must provide the youthful inmate with an opportunity for a hearing within 24 hours.”

This proposed language from the Children’s Law Section would ensure that there is expedient judicial oversight of the decision to place a youth in isolation. It would also allow the court to remove the youth from the facility if it determines that isolation will be more harmful than other alternatives. We recognize that, given the necessity of keeping youth away from sight and sound of incarcerated adults, the circumstances of such decisions can be complicated and difficult to avoid. However, the welfare of the child should be of paramount concern, and SADO supports giving courts the ability to quickly review and intervene when a facility places a youth in solitary confinement.

Accordingly, SADO supports ADM File No 2022-24 along with the proposed amendments as suggested by the State Bar of Michigan Children’s Law Section, and we thank you for your consideration.

Respectfully,



Joshua Pease
Youth Defense Project Director

SADO/MAACS Court Rules and Legislation Committee

Garrett Burton, Assistant Defender
Dominica Convertino, Assistant Defender
Oliver Edmond, MAACS Accountant

⁶ *Lollis*, 322 F Supp at 480. In *Lollis*, the Court found that isolation was an Eighth Amendment violation.

⁷ www.aacap.org/AACAP/Policy_Statements/2012/Solitary_Confinement_of_Juvenile_Offenders.aspx (last visited November 28, 2023).

⁸ 28 CFR 115.14.

⁹ www.courts.michigan.gov/4acdf2/contentassets/c2e55116e12e47ef8fbf4b588c861dde/approved/2022-24_2023-11-20_commentfromsbm-cls.pdf (last visited November 28, 2023).

Stephanie Farkas, MAACS Litigation Support Counsel
Taylor Fellows, Assistant Defender
Tomiko Gumbleton, Mitigation Specialist
Brad Hall, MAACS Administrator
Tabitha Harris, Assistant Defender
Steven Helton, Assistant Defender
Emma Lawton, Assistant Defender
Katherine Marcuz, Managing Attorney
Jacqueline McCann, Assistant Defender
Maya Menlo, Assistant Defender
Matt Monahan, Assistant Defender
Emily New, Assistant Defender
Jonathan Sacks, Director
Claire Ward, Assistant Defender
Jessica Zimbelman, Managing Attorney