Racial Disparities of Youth in Solitary Confinement

Statement of the Problem

Despite mounting evidence that solitary confinement, isolation, or seclusion—typically the placement of an individual in a small cell for 22 to 24 hours—is detrimental to the wellbeing of youth and arguments that it violates the Eighth Amendment to the United States (U.S.) Constitution, numerous states across the U.S. continue to implement this practice in facilities today (Clark, 2017). According to the American Academy of Child and Adolescent Psychiatry, such isolation can lead to "depression, anxiety, psychosis, and psychological and developmental harm" (Teigen & Brown, 2016). In recent years, this issue has gained political salience as efforts by the federal government and 29 states have limited or even banned the practice outright (Clark, 2017; Teigen & Brown, 2017). Some have argued, however, that the issue is symptomatic of a larger problem, namely, the chronic under-resourcing of juvenile correctional and detention facilities (Cooper, 2017). As one of the most vulnerable populations, incarcerated and detained youth face particularly acute challenges as it relates to the use of solitary confinement. This issue is compounded for minority youth who are disproportionately represented in confinement and restraint programs in the U.S. (U.S. Department of Justice, 2010).

History of Solitary Confinement in the U.S.

The use of solitary confinement in the U.S. dates back more than 200 years, with the practice originally being used on adult-aged populations (Cooper, 2017). Solitary confinement has origins in the Walnut Street Jail in Philadelphia, Pennsylvania where Enlightenment ideals motivated reformers to create institutions where prisoners could reflect on their behavior in complete isolation (Alexander, 2015). Early nineteenth-century Quaker reformers also utilized this practice to provide inmates with opportunities for reflection (Clark, 2017). During this period, the effects of the use of solitary confinement were known and documented as the accounts of numerous scholars demonstrate. French intellectual, Alexis de Tocqueville, after touring a New York State prison in 1826, noted that "[solitary confinement] destroys the criminal without intermission and without pity; it does not reform, it kills" (Clark, 2017). In 1842, Charles Dickens toured the Eastern State Penitentiary in Philadelphia and similarly noted the horrendous use of the practice of solitary confinement as a punishment (Cooper, 2017).

There is also a substantial body of case law in the area of solitary confinement, particularly as it relates to adult-aged populations. The U.S. Supreme Court granted a petition for habeas corpus for a prisoner held in solitary confinement in 1890 on grounds that the state statute under which the practice was being condoned was promulgated after the prisoner had committed the crime and therefore violated the constitutional principle against ex post facto laws (Cooper, 2017). This particular case, however, is notable because the Court highlighted the harmful effects of solitary confinement on prisoners. The use of solitary confinement throughout the twentieth century continued without regularity, however, until its use proliferated in the 1980s.

Solitary confinement came into wide use in adult and juvenile detention facilities during the era of "tough-on-crime" policies in the 1980s when there was a significant increase in the number of incarcerated persons nationwide (Cooper, 2017; Clark, 2017). These policies mandated stricter sentencing and release laws as well as the creation of supermax prisons that hold people in isolation in a large-scale fashion. During this time, juvenile justice policies became more punitive in response to the public outcry of juvenile crime and the fear of juvenile

"super predators" (Cooper, 2017). According to a 1999 report by the Office of Juvenile Justice and Delinquency Prevention (OJJDP) in the U.S. Department of Justice (DOJ), these policies had a disparate impact on minority youth. By 1997, after these policies had been in place for over a decade, minority youth accounted for 67 percent of youth committed to public facilities nationwide[1] while only accounting for 34 percent of the national juvenile population—a percentage nearly twice their proportion of the juvenile population (OJJDP, 1999).

Congress has worked to address the overrepresentation of minority youth in confinement since 1988, under the Juvenile Justice and Delinquency Prevention Act, which requires states that receive formula grant program funding to develop corrective strategies for the overrepresentation of minority youth in confinement. However, the overrepresentation of minority youth committed to public facilities has continued as numerous reports by the OJJDP have found (OJJDP, 2010).

Since Congress passed the Juvenile Justice and Delinquency Prevention Act, there have been numerous Supreme Court cases, such as *Roper v. Simmons* (2005), *Graham v. Florida* (2010), and *Miller v. Alabama* (2012), that have found that certain forms of punishment for juveniles, such as the death penalty, are a violation of the Eighth Amendment. Many of these cases have pointed to the fact that the adolescent brain is especially vulnerable to the psychological challenges that are a result of placement in solitary confinement (Clark, 2017).

Over the course of the last decade, this issue has gained political salience as 29 states have adopted legislation that has limited the practice or even banned it outright (Teigen & Brown, 2017). In 2014, calls to end the practice came from President Obama, Attorney General Eric Holder, the American Psychiatric Association, and the Council for Juvenile Corrections Administrators (Cooper, 2017).

Health Consequences of Solitary Confinement

The health consequences of solitary confinement have been documented since the practice began. Dr. Stuart Grassian, a board-certified psychiatrist and Harvard Medical School professor, documented his groundbreaking research about the health consequences that result for adults subjected to solitary confinement (Clark, 2017). His research, which included in-depth interviews of nearly 200 individuals held in solitary confinement for sustained periods in California and Massachusetts, found that most of the individuals "manifested a distinct syndrome of dissociation, confusion, and paranoia, with a great many developing more chronic difficulties in social interaction" (Clark, 2017).

More recent research by the American Medical Association (AMA) has found that youth-aged populations are at a heightened risk for various potential consequences such as "depression, anxiety, and psychosis" (Moran, 2014). The AMA has called for a complete ban on the use of solitary confinement "except for extraordinary circumstances such as those that involve the protection of juveniles, staff, or other detainees" (Cooper, 2017). One reason for the acute challenges that solitary confinement presents to adolescents unlike adults, is that adolescents are often unaware that their seclusion is temporary, causing them to suffer more than adults (Beyer and Simkins, 2012). Another potential health consequence for youth-aged populations placed in isolation for extended periods is the correlation with attempted and completed suicides (Cooper, 2017).

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[1] See Appendices A-C on pages 6-8.

Characteristics of Youth Placed in Solitary Confinement

Youth-aged populations may be placed in solitary confinement if they exhibit the following characteristics: disruptive or uncooperative behavior, suspicion of gang affiliation, being in need of protection (particularly for vulnerable populations), developmental challenges, and mental illness (Clark, 2017). Often, youth placed in solitary confinement have the most difficulty with adjusting to their respective institutions. Detained and incarcerated youth, more broadly, often have a history of abuse and neglect, accompanied by high rates of psychiatric illness and comorbidities (Clark, 2017). Additionally, the majority of youth-aged offenders in residential facilities have at least one mental illness.

According to a 2010 report by the OJJDP, minority youth are disproportionately represented in placement programs. The report from the OJJDP also illustrates that the type of residential programs that youth are held varies significantly based on race. African-American youth are disproportionately placed in corrections programs (42 percent vs. 31 percent or less of other races/ethnicities), Hispanic youth are more likely to be placed in camp programs (17 percent vs. 7 percent), and White youth are more likely to be placed in residential treatment programs (20 percent vs. 9 percent).

Solitary Confinement Conditions for Youth

The OJJDP's 2010 report also found that more than one-third of youth in custody reported being isolated and that of those isolated, 87 percent stated that their isolation was longer than 2 hours. Over half (55 percent) stated that their isolation lasted for more than 24 hours. While the majority of youth are screened within a week of entering a facility by mental health professionals and counselors, 52 percent of those isolated longer than 2 hours indicated that they had not spoken with a counselor since arriving at the facility (U.S. DOJ, 2010). More recent reports by the OJJDP have illustrated that isolation for extended periods continues to occur, with the U.S. DOJ noting the practice of solitary confinement and isolation as "widespread" (Clark, 2017; OJJDP, 2014; OJJDP, 2015).

Policy Solution

According to Salamon (2002), there are five areas to evaluate a policy program: effectiveness, efficiency, equity, manageability, and political legitimacy. Any policy solution that seeks to meaningfully address the issue of juvenile solitary confinement and its disparate impact on minority youth must address these aspects. One such example would be a multi-pronged approach that includes a constitutional prohibition on the use of solitary confinement on detained and incarcerated youth and a redirection of federal, state, and local resources to research- and evidence-based programs to protect youth and facility staff. Given the clear arguments that solitary confinement of juveniles violates the Eighth Amendment's ban on cruel and unusual punishment, this step is crucial because it would require that all facilities end the use of this practice and protect the human rights of a vulnerable population. The second step in this multi-pronged approach—namely, redirecting state resources to research- and evidence-based programs—is important, especially in the nearly 20 states that still allow youth to be placed in solitary confinement. To ensure that there are still means available to address an issue that lies at the heart of the solitary confinement issue—the need to protect facility staff and youth, the second step would achieve this goal. In 2017, for example, the Los Angeles County Board of

Supervisors restricted the use of solitary confinement for detained youth and instead created alternative programs that achieve their objectives through "relationship-building, trauma-informed care, positive youth development, small and therapeutic group settings, high-quality education, a relational-approach to supervision, and an integrated group treatment model" (Read, 2017). State attorney generals, in particular, will play a crucial role in this given their ability to bring together stakeholders from across the state, including the correctional facilities personnel, and initiate efforts to reform correctional and detention facility policies (Cooper, 2017).

Given the trend of states as well as the federal government in limiting and banning the use of solitary confinement for detained and incarcerated youth, the proposed solution is politically feasible. As the largest juvenile justice system in the U.S., the model provided by Los Angeles County also highlights the point that such a solution is manageable even on a large scale. The proposed policy solution also addresses the equity concerns that the current system of solitary confinement for juveniles does not address, namely, the need for mental health professionals and counselors for detained youth as an alternative to isolating youth for indefinite periods of time. Data on the measures for effectiveness and efficiency for programs like the one implemented in Los Angeles County are not widely available given how recent policy changes are. However, it can be expected that the evidence-based programs that have been initiated to replace solitary confinement will be more effective at addressing the needs of detained and incarcerated youth and maintaining the safety of facility staff given the current data that supports these methods over the use of solitary confinement and seclusion.

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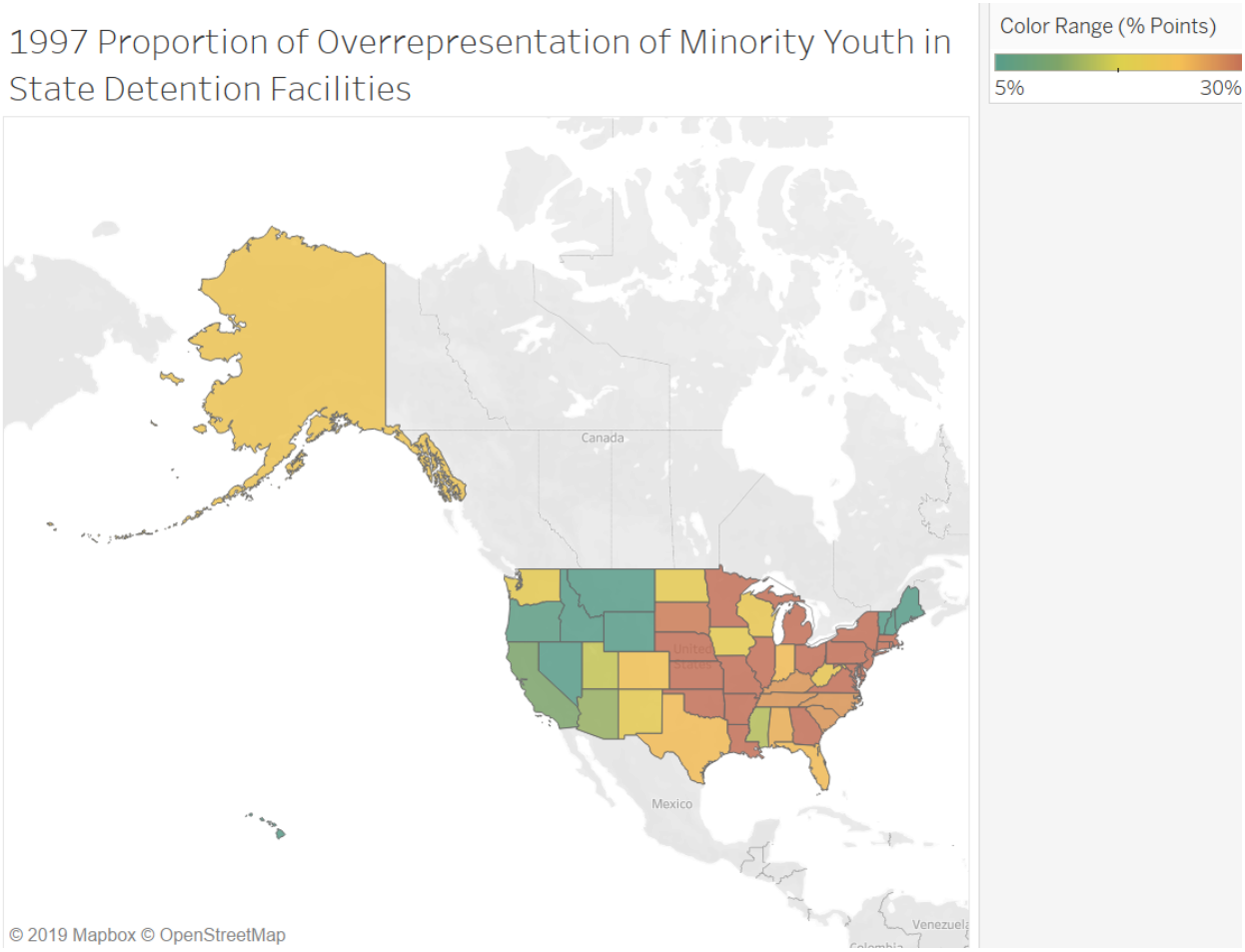
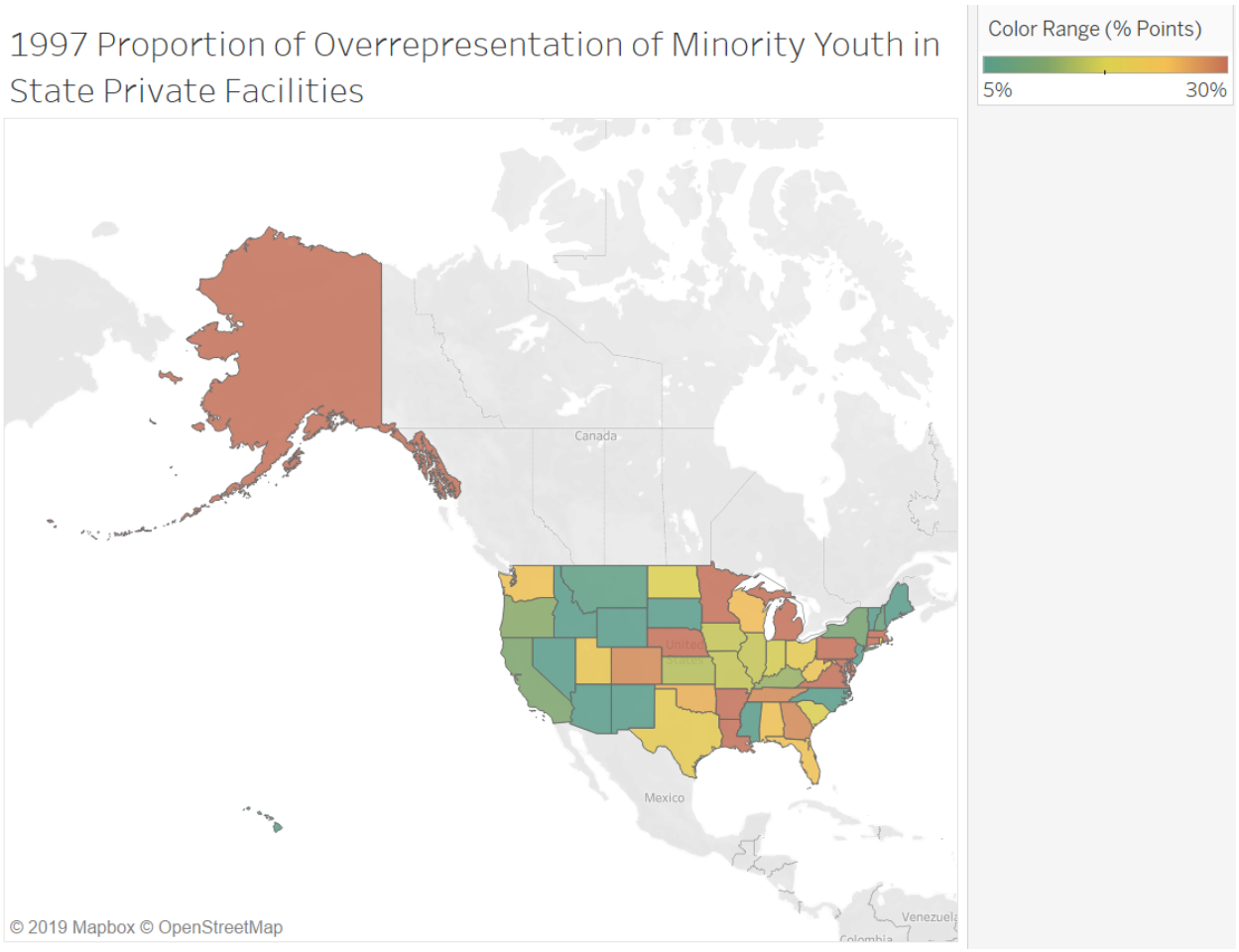
Appendix A



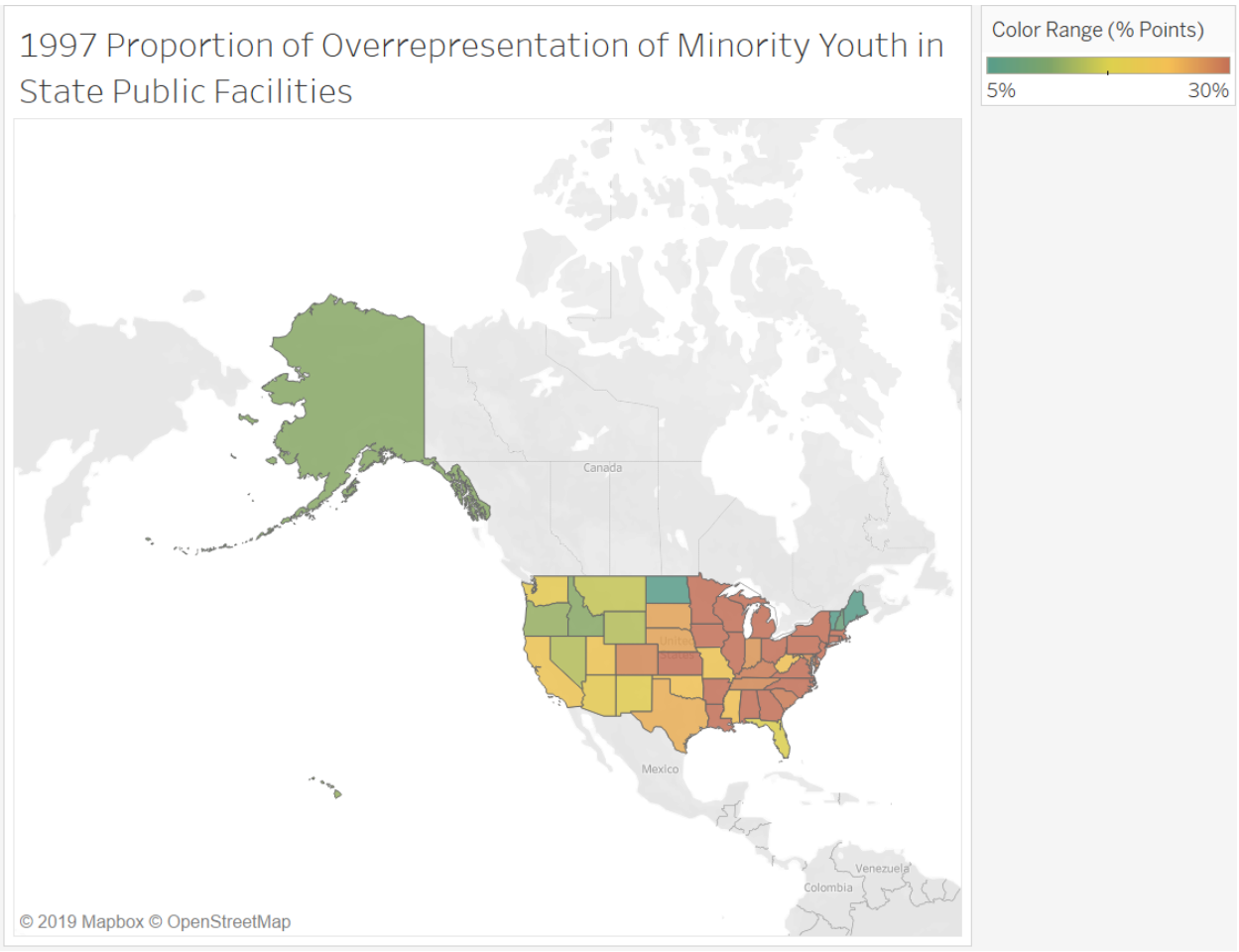
Data Source: OJJDP 1999 Report

Appendix B



Data Source: OJJDP 1999 Report

Appendix C



Data Source: OJJDP 1999 Report