S. HRG. 113–882

REASSESSING SOLITARY CONFINEMENT II: THE HUMAN RIGHTS, FISCAL, AND PUBLIC SAFETY CONSEQUENCES

HEARING

BEFORE THE

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED THIRTEENTH CONGRESS

SECOND SESSION

FEBRUARY 25, 2014

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FEBRUARY 25, 2014, 2:30 P.M.

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REASSESSING SOLITARY CONFINEMENT II: THE HUMAN RIGHTS, FISCAL, AND PUBLIC SAFETY CONSEQUENCES

TUESDAY, FEBRUARY 25, 2014

UNITED STATES SENATE,
SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:30 p.m., in Room SH–216, Hart Senate Office Building, Hon. Dick Durbin, Chairman of the Subcommittee, presiding.

Present: Senators Durbin, Franken, Hirono, and Cruz.

OPENING STATEMENT OF HON. DICK DURBIN, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Chairman DURBIN. Good afternoon. This hearing of the Subcommittee on the Constitution, Civil Rights and Human Rights will come to order.

Today's hearing is entitled "Reassessing Solitary Confinement, Part II: The Human Rights, Fiscal, and Public Safety Consequences." In a moment I will make an opening statement, and then I will recognize Senator Cruz, when he arrives, as the Subcommittee Ranking Member for his opening statement.

Thank you to those who are here in person and those following the hearing on Facebook, Twitter, and using the hashtag #solitary. There was so much interest in today's hearing that we moved to this larger room to accommodate everyone. If someone cannot get a seat in the hearing room, we have an overflow room in 226 Dirksen.

I also want to note that if you look around the hearing room today, you will see a number of pictures of children during the course of this hearing who are being held in solitary confinement. I want to thank the photographer, Richard Ross, for allowing us to use these photos.

This Subcommittee has worked to address human rights issues around the world, as we did with our hearing last month on the Syrian refugee crisis. And we have an obligation to honestly consider our own human rights record at home.

The United States has the highest per capita rate of incarceration in the world. With 5 percent of the world's population, we have close to 25 percent of its prisoners. African Americans and Hispanic Americans are incarcerated at much higher rates than

whites. And the United States holds more prisoners in solitary confinement than any other democratic nation. These are human rights issues that we cannot ignore.

Congress has been unable to find common ground on many important issues, but criminal justice reform is one area where we can show the American people that our Government still functions.

Just a few weeks ago—I am sorry. We have made some progress. In 2010, Congress unanimously passed the Fair Sentencing Act, bipartisan legislation that I co-authored with Senator Jeff Sessions that greatly reduced the sentencing disparity between crack and powder cocaine.

And just a few weeks ago, the Judiciary Committee reported the Smarter Sentencing Act, bipartisan legislation that I have introduced with Senator Mike Lee of Utah that would reform Federal drug sentencing and focus law enforcement resources on the most serious offenders. I want to thank my Ranking Member for cosponsoring that Smarter Sentencing Act as well.

I also want to thank Senator Cruz for his bipartisan cooperation on putting this hearing together today.

Almost 2 years ago, this Subcommittee held the first-ever congressional hearing on solitary confinement. We heard testimony about the dramatic increase in the use of solitary confinement that began in the 1980s. We learned that vulnerable groups like immigrants, children, sex abuse victims, and individuals with serious and persistent mental illness are often held in isolation for long periods of time.

We heard about the serious fiscal impact of solitary confinement. It costs almost three times as much to keep a Federal prisoner in segregation than in the general population.

And we learned about the human impact of holding tens of thousands of men, women, and children in small windowless cells 23 hours a day—for days, for months, and for years—with very little, if any, contact with the outside world. This extreme isolation can have serious psychological impacts on an inmate. According to several studies, at least half of all prison suicides occur in solitary confinement.

And I will never forget the testimony in our last hearing of Anthony Graves, who was held in solitary for 10 of his 18 years in prison before he was exonerated. Mr. Graves told this Subcommittee, "No one can begin to imagine the psychological effects isolation has on another human being. Solitary confinement does one thing: it breaks a man's will to live."

Now, I have been Chairman of this Subcommittee for 7 years. I cannot remember more compelling testimony.

At the last hearing, we heard from the Director of the Bureau of Prisons, Charles Samuels, who is with us again today. I was not particularly happy with the testimony at the last hearing, and I think I made that clear to Mr. Samuels. But I do want to commend him and his team, because they heard the message of our first hearing. At my request, Mr. Samuels agreed to the first-ever independent assessment of our Federal prisons' solitary confinement policy and practice. This assessment is underway, and I look forward to an update today from Mr. Samuels, who is with us.

At our 2012 hearing, we found that the overuse of solitary can present a serious threat to public safety, increasing violence inside and outside prisons. The reality is that the vast majority of prisoners held in isolation will be released someday. The damaging impact of their time in solitary—or their release directly from solitary—can make them a danger to themselves and their neighbors.

I want to note that this is the 1-year anniversary of the tragic death of Federal Correctional Officer Eric Williams, who was killed by an inmate in a high-security prison in Pennsylvania.

We owe it to correctional officers who put their lives on the line every day to do everything we can to protect their safety. Make no mistake. That means that some dangerous inmates must be held in segregated housing. But we also learn from States like Maine and Mississippi, which have reduced violence in prisons by reducing the overuse of solitary.

I made a personal visit to a prison, now basically closed, in Illinois called "Tamms." Tamms was our State maximum security prison. I asked that they take me to the worst of the worst, the most dangerous inmates, and they took me to an area with five prisoners. They happened to be going through some unusual classroom experience while I was there, which I never quite understood, but each of the prisoners was in a separate fiberglass unit, protected from one another and from the teacher. And I walked to each of them and spoke to them, trying to get an understanding of who they were and why they were there and how they perceived their situation. It was much different for each one of them.

But there is one in particular that I remember. He looked to be a community college professor, a clean-cut young man. And I asked him, "Well, how long are you sentenced to prison?" He said, "Originally 20 years." And I said, "Originally?" "Yes," he said. "They added another 50 years." And I said, "Why?" He said, "Because I told them if they put anybody in a cell with me I would kill him, and I did."

Now, that is the reality of prison life in the most extreme circumstance. I know that we want to make certain that those who work in prisons and those who also are prisoners are safer, and we have got to balance that against our concerns about humane treatment of those in solitary confinement.

We must address the overcrowding crisis in Federal prisons that made prisons more dangerous and dramatically increased the inmate-to-correctional officer ratio. That is one important reason I want to pass the Smarter Sentencing Act, which will significantly reduce prison overcrowding by inmates who have committed nonviolent drug offenses. And it is one reason I am working to open the Thomson Correctional Center in my own State. I look forward to working with the Bureau of Prisons to ensure that Thomson helps to alleviate overcrowding and that all prisoners held there are treated appropriately and humanely.

Let me say a word about an especially vulnerable group: children. According to the Justice Department, 35 percent of juveniles in custody report being held in solitary confinement for some time—35 percent. The mental health effects of even short periods of isolation—including depression and risk of suicide—are heightened among youth. That is why the American Academy of Child

and Adolescent Psychiatry has called for a ban on solitary for children under 18.

At our first hearing, we heard about many promising reform efforts at the State level. As is so often the case, State governments continue to lead the way. Let us take a few examples.

Last year, my own State of Illinois closed the Tamms Correctional Center, which I mentioned earlier, relocating the remaining prisoners to other facilities.

In the Ranking Member's home State of Texas, the State legislature last year passed legislation requiring an independent commission to conduct a comprehensive review of the use of solitary confinement in State prisons and jails.

And New York has just announced sweeping reforms that will greatly limit the use of solitary confinement for juveniles and pregnant women.

There have been other positive developments since our first hearing. U.S. Immigration and Customs Enforcement issued important guidance limiting the use of solitary confinement for immigration detainees. This is a positive step for some of the most vulnerable individuals in detention. I want to thank ICE for this effort.

And the American Psychiatric Association issued a policy statement opposing the prolonged isolation of individuals with serious mental illness.

More must be done. That is why today I am calling for all Federal and State facilities to end the use of solitary confinement for juveniles, pregnant women, and individuals with serious and persistent mental illness, except in the rarest of circumstances.

By reforming our solitary confinement practices, the United States can protect human rights, improve public safety, and be fiscally responsible. It is the right and smart thing to do, and the American people deserve no less.

[The prepared statement of Chairman Durbin appears as a submission for the record.]

Senator Cruz has not arrived yet, so I am going to turn to our first witness, and as I mentioned earlier, Senator Cruz and I agreed on a bipartisan basis on all of today's witnesses. I want to note that I invited the Civil Rights Division of the Justice Department to participate in today's hearing, but, unfortunately, they declined. We will be following up with them to make them aware of our hearing and to ensure they are enforcing the Federal civil rights laws that protect prisoners held in solitary confinement.

Also at this time, I ask unanimous consent to enter into the record written testimony of Kevin Landy of the U.S. Immigration and Customs Enforcement, and without objection, it will be included.

[The prepared statement of Mr. Landy appears as a submission for the record.]

Senator DURBIN. Our first witness today is Charles Samuels, Director of the Federal Bureau of Prisons. Director Samuels, you are going to have 5 minutes for an opening statement, and your complete written statement will be included in the record. And if you will please stand and raise your right hand to be sworn, as is the custom of this Committee. Do you swear or affirm that the testi-

mony you are about to give before the Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Director SAMUELS. I do.

Senator FRANKEN. Thank you, Mr. Samuels. Let the record reflect that you have answered in the affirmative, and please proceed.

STATEMENT OF HON. CHARLES E. SAMUELS, JR., DIRECTOR, FEDERAL BUREAU OF PRISONS, WASHINGTON, DC

Director SAMUELS. Good afternoon, Chairman Durbin and Members of the Subcommittee. Thank you for the opportunity to appear before you today to discuss the use of restrictive housing within the Bureau of Prisons.

I cannot begin my testimony without acknowledging that today is the anniversary of the death of Officer Eric Williams. Officer Williams was stabbed to death last year by an inmate while working alone in a housing unit at the United States Penitentiary at Canaan in Waymart, Pennsylvania. We will always honor the memory of Officer Williams and all the courageous Bureau staff who have lost their lives in the line of duty. These losses underscore the dangers that Bureau staff face on a daily basis.

Our staff face the same inherent dangers as other law enforcement officers throughout the country. We house the worst of the worst offenders, to include some State inmates who we house at the State's request, and we do with fewer staff than most other correctional systems.

As you know, the Federal prison system is extremely crowded, operating at 32 percent over capacity systemwide and 51 percent over capacity at our high-security institutions. Both the high crowding and low staffing levels contribute to the rate of violence in our prisons. Last year alone, more than 120 staff were seriously assaulted by inmates, most often in our high-security institutions. In addition, nearly 200 inmates were seriously assaulted by other inmates.

Despite these challenges, our staff interact with nearly all inmates in an open setting without weapons and physical barriers. It is not uncommon for one staff member to be on the recreation yard with hundreds of inmates who are engaged in various activities. Our staff encourage inmates to take advantage of their time in prison to improve their lives by participating in programs such as psychological treatment, education, cognitive behavioral therapy, job training, drug treatment, and other available programs.

Since the hearing held by this Subcommittee in June 2012, I have focused attention and resources on our use of restrictive housing. Over the past 18 months, we have accomplished a great deal in terms of reviewing, assessing, and refining our approach to restrictive housing. We understand the various negative consequences that can result from housing inmates in restrictive housing. Such placement can interfere with re-entry programming and limit interactions with friends and family. However, please note that the large majority of inmates remain in the general population for their entire prison term.

In response to concerns you have raised and because it is the right thing to do, we have implemented numerous innovations to

ensure the Bureau is using restricting housing in the most appropriate manner. We continue to experience decreases in the number of inmates housed in various forms of restrictive housing. This reduction is attributable to a variety of initiatives we have put in place over the past 18 months. We have had several nationwide discussions with wardens and other senior managers about restrictive housing, mental health of inmates, the discipline process, and other related issues.

With respect to specialized mental health treatment, we recently activated a secure mental health step-down unit that provides treatment for maximum custody inmates with serious mental illness who might otherwise require placement in restrictive housing. And we have plans to activate a treatment unit for high-security inmates suffering from severe personality disorders that make it difficult to function in our populations.

We have activated a reintegration unit to help inmates adapt to the general population after an extended stay in restrictive housing that was often prompted by their perceived need for protection.

In addition, we implemented a gang-free institution that allows inmates to safely leave their gang affiliations to avoid restrictive housing and work toward a successful re-entry.

We are in the midst of an independent comprehensive review of our use of restrictive housing. The review team has completed almost half of the site visits. We expect a report to be issued by the end of 2014, and we look forward to the results of the evaluation to consider making additional enhancements to our operations.

Chairman Durbin, I assure you that I share your commitment to providing Federal inmates with safe and secure housing that supports physical and mental health. The mission of the Bureau of Prisons is challenging. Through the continuous diligent efforts of our staff, who collectively work 24 hours each day, 365 days per year, we protect the American public and we reduce crime.

Again, I thank you, Chairman Durbin, and Mr. Cruz and the Subcommittee for your support of our agency, and I will be pleased to answer any questions you or other Members of the Subcommittee may have.

[The prepared statement of Director Samuels appears as a submission for the record.]

Chairman DURBIN. Thanks, Mr. Samuels. Let me, since there are several here, and I want to give them all a chance to ask, let me try to zero in on two or three specifics, if I can. The law recognizes that children are to be treated differently than adults, and that is why we do not house juvenile offenders with adult offenders, and juvenile facilities are different from adult prisons.

When it comes to solitary confinement, we know children are particularly vulnerable. At our last hearing, we heard a devastating story of a young man, James Stewart, who committed suicide after a very brief period in solitary confinement.

Many experts have called for a ban on solitary confinement of juveniles. The Justice Department's National Task Force on Children Exposed to Violence concluded, "Nowhere is the damaging impact of incarceration on vulnerable children more obvious than when it involves solitary confinement." I commend the State of New York for its strides in this area. I do not believe juveniles should be

placed in solitary confinement except under the most exceptional circumstance.

Now, I know the Federal prison has a very limited number of juveniles under your jurisdiction and that they are generally sent to juvenile facilities. What policies and guidance does BOP have to ensure that juveniles under your jurisdiction are not placed in solitary confinement except in exceptional circumstances where there is no alternative to protect the safety of staff and other inmates?

Director SAMUELS. Thank you, Mr. Chairman. As Director of this agency, I recognize the unique needs of juveniles. In the Bureau of Prisons, we have 62 juveniles who have been sentenced to our custody, and these individuals are placed in contract facilities. And part of our requirement with the agreement that we have with these facilities is to provide 50 hours of various programs and to ensure that individualized training is also provided for these individuals under our care.

And out of the 62 inmates currently in our system in these contract facilities, we currently only have one individual who is in restrictive housing. And the requirements that we have is that any individual placed in restrictive housing who is a juvenile, there should be 15-minute checks done. We are ensuring that they are also working with the multidisciplinary committee to ensure that all of the issues are assessed, addressed, and that we are removing the individual out of restrictive housing at the earliest date possible.

Chairman DURBIN. Are there any limits to the period of time that a juvenile can be held in restrictive housing under the Federal system?

Director SAMUELS. There is no specific limit, but if an individual is going to go beyond 5 days in restrictive housing, we require that there are discussions held to at least justify why there is a continued need. And as I have indicated, right now we only have one individual, and it should only be used under the rarest circumstances when there is the belief that there is going to be potential harm to the individual and/or to others. But we do not support long-term placement of any juvenile in restrictive housing.

Chairman DURBIN. I would like to ask you about the issue of mental health, which I think is directly linked to this whole conversation. At our last hearing, Senator Lindsey Graham asked about the mental health effects of solitary confinement and about studies about how this practice affects prisoners. You responded that no study had been conducted within the Bureau at that time. Now, that troubled me because the Federal Bureau of Prisons uses segregation regularly, but it did not seem to be studied as it should be when it comes to serious mental health.

I am pleased that one of the five key areas of study for the independent BOP assessment is mental health. I would like to ask you basically two questions.

Do you anticipate that the assessment will help provide BOP with a better understanding of the mental health effects of segregation? And without getting into some of the specific heart-breaking, gut-wrenching stories of what people do to themselves in solitary confinement, do you agree that people who exhibit this type of be-

havior generally need more mental health treatment and not just the lockdown?

Director SAMUELS. Yes, sir, to your first question, I do believe that the assessment that is being conducted by CNA Analysis Solutions will provide us a road map to further look at our internal operation relative to mental health treatment that is provided to our inmate population when they are placed in restrictive housing. And as I have indicated, since the hearing that was conducted in June 2012, long before this assessment has been put in place with the audit, we have been internally looking at our operation, and we are very much in agreement with the appropriate number of mental health staff being provided to look at the specific population when individuals are placed in restrictive housing and are suffering from any type of serious psychiatric illness, and this is something that we will continue to do.

And I can report, since the last hearing, and particularly with the concern that was being raised at the ADX, we have increased our staffing for psychology services to include ensuring that our psychiatrists within the Bureau are making visits to the facility. And I know that was a concern you had at that time when it was reported that we only had two psychologists responsible for treating that population.

Chairman DURBIN. Has that changed? Has the number changed?

Director SAMUELS. Yes, sir, it has changed. We currently have five individuals who are devoted to that population. We are in the process of recruiting to hire a full-time psychiatrist there, but in the interim, we are also using telepsychiatry. And I have ensured that the chief psychiatrist for the Bureau in our headquarters is also visiting the facility as well, and there are a lot of things that we can do remotely. But we have increased the staffing, and it is something that we will continue to stay on top of.

Chairman DURBIN. Has there ever been a time since you have been in charge when a person has been released directly from restrictive housing to the general population, released from prison?

Director SAMUELS. Yes, and that is also something that, from discussion we had in June 2012, we have discussed extensively throughout the agency with leadership, and I do not believe that it is appropriate. It is something that we will continue to address. No one should be released, based on the concern that was raised, directly from restrictive housing into the general population, and we will do everything possible to ensure that we have procedures in place. And one of the things that we have done, sir, is we have implemented a step-down unit, and definitely for those individuals who are suffering from a significant mental illness, that we do not have those individuals going out without some form of treatment and ensuring that there is a transition period.

Chairman DURBIN. The last question I will ask relates to testimony—we have some excellent witnesses coming in the later panel—about women, particularly pregnant women, who are placed in restrictive housing and solitary confinement. What have you found? And what are your policies when it comes to these prisoners?

Director SAMUELS. With the female population, I can definitely tell you, out of 14,008 female offenders we have in our system,

right now only 197 are in restrictive housing, which is like 1.4 percent. And if an individual requires placement, again, under the rarest circumstances, either to ensure that there is no threat to themselves and to others, we are not looking to place individuals in restrictive housing.

And I would also add for the record that individuals who are placed in restrictive housing, the majority of the time it is for a temporary period. These are not individuals who are placed in for a long period of time.

Chairman DURBIN. Could you define those two terms, "temporary" and "long period," from your point of view?

Director SAMUELS. Well, from my point of view, if an individual—right now out of our entire population, for individuals who are in restrictive housing—and I will start with our special housing unit. We have approximately 9,400 individuals who are in restrictive housing. Only 15 percent of those individuals are in there for periods longer than 90 days, and that would be based on sanctions relative to discipline and/or administrative detention, which, when you look at the two categories, discipline is a sanction imposed for violating a rule, which we definitely need to maintain order within a facility if individuals do things that warrant them being placed in restrictive housing, which is temporary. And for individuals who require long-term placement within restrictive housing, which we can look at individuals for various reasons due to threat to the facility, harm to others, and ensuring that we are trying to do our best to keep the individuals safe, that sometimes will require longer periods of incarceration.

Specifically, when you look at the control unit, where we have in that population a significant number of individuals, 47 percent to be exact, out of the 413 inmates who are at the ADX, 47 percent have killed other individuals, and that is a combination of them murdering individuals before they have come into the system and they have either murdered other inmates and/or staff within the system. Those individuals require longer periods of placement in restrictive housing.

However, for those individuals, I am not saying and I would never advocate in any way that we are saying we are giving up on those individuals. This is where the intensive treatment and ensuring that those individuals are being given adequate time out of their cells for recreational time and other things that we deem appropriate, to ensure that when those individuals need to be pulled out, that the assessments by our psychology staff, psychiatrists, that we are taking all of that into consideration. And I am 100 percent behind ensuring that we are not causing any more damage to an individual who is placed in that setting. But I have to state that to ensure the safety of other inmates, to ensure the safety of our staff, these are individuals that only represent, sir, a small number within our entire population. It is less than one-fifth of a percent. When you look at the 215,000 inmates in our agency, the number is very, very small.

Even when you look at the discipline for as large as our population is, you are only talking about 1,500 inmates out of a population of 215,000. So it is a very small number. We will continue to reduce the number as best we can. And I am committed that in

our population it is better for us to manage inmates in general population. It is better for everyone because those individuals need to have the opportunity to participate in programming. And when we are looking at recidivism reduction, we want them to receive all the intensive programs that we can provide. And when the inmates are not being given those opportunities, you are looking at the issue and concern relative to threat to public safety. And we do not want to be a part of anything that causes us to not be able to carry out the mission. That is one of the most important things that we are responsible for, the Bureau of Prisons.

Chairman DURBIN. Thank you very much.

Senator Cruz.

OPENING STATEMENT OF HON. TED CRUZ,
A U.S. SENATOR FROM THE STATE OF TEXAS

Senator CRUZ. Thank you, Mr. Chairman, and thank you for holding this hearing. I think everyone here shares a number of common objectives: wanting to ensure that all Federal prisoners are held in a humane manner that respects their inherent dignity as human beings, and at the same time that upholds the objectives of sound penological policy, both allowing an opportunity for rehabilitation when possible and ensuring to the maximum extent possible the safety of other inmates and prisons guards, entrusted to guards sometimes some of the most dangerous people in the country, if not the world.

Mr. Samuels, I appreciate your service and your being here today and engaging in this important discussion, and I would like to ask some questions to further understand your testimony and the scope of solitary confinement within the Federal prison system.

You testified there are roughly 215,000 inmates in the Federal system, and that compares to about 1.2 million incarcerated in various State systems. And am I correct that the overwhelming majority of the 215,000 in the Federal system are in the general population at any given time?

Director SAMUELS. Yes, sir. The majority of the inmates are in general population. Also, the majority of the inmates in our system spend their entire period of incarceration in general population. We are only talking about a very, very small percentage. Right now 6.5 percent of our entire population is in some form of restrictive housing. And when you break that number down, as I have mentioned, administrative detention, which is temporary, and also with the disciplinary segregation, they are given a set number of days and/or months that they have to serve.

In a prison environment—and I would hope that everyone understands—it is all about order. And if we do not have order, we cannot provide programs. We are constantly locking down our institutions.

Since the hearing in 2012, we have reduced our restrictive housing population by over 25 percent. Within the last year, we have gone from 13.5 percent to 6.5 percent. So the reductions are occurring. We are only interested in placing individuals in restrictive housing when there is a legitimate reason and justification. With our system being so large, we have over 20,000 gang members in our system. They are watching this hearing. They are watching our

testimony very, very closely, for the reason being if they see that we will lower our standards, we will not hold individuals accountable, it puts our staff at risk, it puts other inmates at risk, and this is why I mentioned in my oral statement that not only are we looking at staff being injured and harmed, our staff are putting their lives on the line every single second of the day to protect the American public. But we are also having inmates within the population who are being harmed by these individuals who have no respect—I mean no respect—for others when it comes to their safety.

We cannot afford at any time to say that for those individuals who assault staff, assault inmates, there is no accountability. This is no different than in society. If individuals violate the laws and they hurt citizens, they are removed from society and either placed in a jail and/or prison.

If these individuals attack police officers, they are removed. They are not given second chances where we say do not do it again. My staff, as I have indicated, who are putting their lives on the line every single day, they have to know that there is accountability for the actions of others.

Now, for treatment and working with those individuals, we are going to continue to do that. That is our mission. Ninety-five percent of the individuals within the Bureau of Prisons at some point will be released. We have a duty, we have an obligation to do everything, sir, to ensure that for that captured population we are working to change their behavior. Many of these individuals come in with significant issues. We have to address those issues, and we will continue to do it.

I also believe that it is very, very important for the Subcommittee to know that when you look at the care levels for mental health, we have approximately 94 percent of the inmates within our system who have no mental illness—94 percent. That is 187,264 inmates. We have the care levels one, two, three, and four. When you take it to level two, you are talking about 10,809 individuals who have been diagnosed with some type of mental illness that would require on average our mental health staff engaging with these individuals once a month. When you go even further for care level three, we have 555 inmates who would require intensive interaction and treatment. And to the concerns that were raised earlier, we need to make sure that these individuals are receiving access, that there is quality time with the mental health providers, and for the most serious cases we have in the Bureau, out of our entire population, 286 individuals are diagnosed with an acute mental illness. Same thing for that population.

But I think everyone needs to know that for our entire population the majority of these inmates do not suffer from a significant mental illness, and they are programming, they are in our institutions doing the right thing and not causing us problems. But it is that very, very small number who will do anything, I mean anything, to hurt others.

I have been in the Bureau of Prisons now going on 26 years. I have talked to inmates. I have had inmates tell me, "If you release me to the general population or if you take me out, I will kill someone." I have a duty and an obligation to protect the staff, to protect the inmates. And when someone is willing to tell you, "If you do

it, this is what I am going to do," I mean, there are huge issues with that.

Senator CRUZ. Mr. Samuels, I appreciate your decades of service, and as someone who spent a significant portion of my adult life in law enforcement, I certainly am grateful, as I am sure is every Member of this Committee, for the service of the many employees of the Bureau of Prisons, many of whom risk their lives to protect innocent citizens every day. And it is not an easy job that you are doing, and it is a very important job.

I would be interested, in the judgment of the Bureau of Prisons, what is the affirmative value of solitary confinement? In what circumstances should it be employed? And what are the risks, what are the downsides to using it as a tool in our prisons?

Director SAMUELS. Thank you, Senator Cruz. The value of restrictive housing in the Bureau should only be used when absolutely necessary for those individuals who pose a threat to others and the safety and security of the facility, and that is to ensure we are protecting staff, inmates, and the general public. It should never, ever be used as a means of being viewed as we are retaliating against individuals. I mean, we are trying to correct the behavior.

I strongly support ensuring that we do not use it just for the sake of we can and we are not being held accountable, no different than the State systems, who are also looking at this issue. And the one thing that I do appreciate with this issue being raised is this is now a national issue. It is a national discussion.

The Association of State Correctional Administrators, which I am a member of, immediately after the hearing we all met. We talked about the best practices and what we should be doing, because when you look at State systems, the Federal systems, and even at the local level, you have many, many, many definitions of what "restrictive housing" means. And so we are working together, and at some point the Association of State Correctional Administrators will be releasing a survey where they are reaching out nationally to all the 51 jurisdictions to ask everyone, "Provide us your best practices," and this will be posted on the website. And I know just from the discussions that we have had—when I say "we," my colleagues, the secretaries, commissioners, and the directors for State corrections. We are moving in the right direction to define what we believe for our profession is appropriate. We are also looking at the issue regarding cultural issues, because you have to understand, where we are moving and where we are headed, we are trying to change a culture, and not just within the Bureau of Prisons, of practices that have been in place for long periods of time.

I have gone out at your request, Mr. Chairman, to visit the States where practices have been in place, to look at what they are attempting to do and what they are doing. And I am very, very mindful of the concern. And I am the Director who firmly believes in treating inmates respectfully, ensuring that they are living in a humane environment, because our actions will dictate to these individuals what our country is all about. And we are not there to judge these individuals. We are there to ensure that they serve their time, they pay their dues to society, and hopefully put them

in a better situation so when they are released, they are productive citizens and the goal of them never returning.

So I do not see a downside with individuals who are not abiding by the rules, because if they are not abiding by the rules within the prison, I mean, at some point when they are released, there is no accountability. So we have to hold them accountable, because if they go out and they continue with that behavior, guess what? They are coming back. And we will do everything possible to try to get them to turn and move away from that negative behavior, but it requires intensive treatment.

I am also looking at ensuring that we are developing a cognitive behavioral therapy program for those individuals who are within our restrictive housing unit so they are not just sitting there. We want there to be active engagement of showing them, hey, we can offer you this, but they have to be willing to accept the olive branch. We do not want to just leave individuals sitting there.

Senator CRUZ. Very good. Thank you, Mr. Samuels.

Chairman DURBIN. Thank you, Senator Cruz.

Senator Franken.

Senator FRANKEN. Thank you, Mr. Chairman.

At the outset, I would like to welcome Damon Thibodeaux, a Minnesotan who will testify later today. Mr. Thibodeaux, you have turned your tragedy into a story of hope and courage, and I want to thank you for sharing it today.

I would also like to thank the Chairman for holding this hearing and all the work you have done on this issue over the years. This practice of solitary confinement or restrictive housing is a troubling one for a number of reasons—for moral reasons, economic reasons, as the Chairman said in his opening statement, for public safety reasons.

One of the aspects of this that concerns me is the mental health aspect of the problem, as we have been discussing. Over the years we have seen the corrections and law enforcement systems take on more and more responsibility for responding to mental illnesses in our communities. Last winter, I hosted a series of roundtable discussions with law enforcement personnel and mental health advocates in my State of Minnesota.

The sheriff who runs the jails in Hennepin County—that is our largest county in Minnesota—told me that about a third of the inmates in his jails really belong in mental health treatment programs and not behind bars. And you have been talking about treating people behind bars. Maybe that is not where they should be treated, if it is possible. There are people with mental illness who have committed some crimes that they need to be behind bars, but there are a lot who probably should be elsewhere.

I have a bill called the Justice and Mental Health Collaboration Act that will improve access to mental health treatment for those who need it, and I think relieving—the purpose is to relieve some of the burden on law enforcement personnel and on correctional personnel.

The bill also funds flexibility in creating alternatives to solitary confinement in our jails and prisons. I would like to thank Senators Durbin, Leahy, Hatch, Grassley, and Graham and others for cosponsoring my bill. I would like to invite others to join that effort.

I want to ask you a couple things, one about crisis intervention training. Director Samuels, last March, I visited the Federal Medical Center in Rochester, Minnesota. They are kind of a psychiatric unit and also behind bars, and they said they have benefited tremendously from CIT, crisis intervention training, and they said they have avoided serious injuries and I think incidents that may lead to inmates going into solitary confinement when they act out and become violent. We see these on these weekend shows that show people behind bars, and the guards have to strap on all kinds of protective wear. They said they can avoid that by understanding when some—and talking someone down instead of, you know, in a way—not provoking a terrible conflict but also not stopping it.

Can you talk a bit about the role that CIT or crisis intervention training plays in the Federal prison system?

Director SAMUELS. Thank you, Senator Franken, and I am glad you raised this question. The National Institute of Corrections, which is also part of the Bureau of Prisons, actually provides the training for crisis intervention, and it is based on a request of State systems. We have ensured that our staff, specifically the Bureau psychologists, have participated in the training. As a result of what they have seen, we have implemented our own protocols relative to the training to use various elements. And we have field-tested this training in one of our institutions, and as a result of it, we are obtaining the feedback, and it is something that we are considering to look at actually adopting within the Bureau based on the Federal system and our unique needs.

So to your point, it does serve value, and we are looking to explore doing more with it within the Federal system.

Senator FRANKEN. Okay. I kind of want to—you know, we are—you provided a lot of statistics about solitary or about restrictive housing. I just want to get more into the human aspect of this. I kind of wanted to on the crisis intervention training. But how big is a cell? How big is the average cell in solitary?

Director SAMUELS. The average size?

Senator FRANKEN. Cell, yes, the size of the cell. How big is it? I am trying to get this—it is the human thing we are talking about. We have got a lot of statistics. How big is the cell?

Director SAMUELS. The average size of a cell is—I guess I am trying to—you are looking for the space of what the——

Senator FRANKEN. Yes, the dimensions in feet and inches. The size of the cell that a person is kept in. I want to get some idea of—I do not—am I asking this wrong?

[Laughter.]

Senator FRANKEN. Is what you are saying that there is no such thing as an average cell for solitary? But, I mean, typically in the Bureau of Prisons, if someone is in solitary confinement, how big is the cell typically?

Director SAMUELS. The average size should be equivalent to 6-by-4, and——

Senator FRANKEN. Okay. That is an answer, 6-by-4. Does the person in the cell during months and months, say, of this, do they have an ability to talk to family?

Director SAMUELS. Yes.

Senator FRANKEN. They always do?

Director SAMUELS. It is not on a frequent basis, but we provide individuals who are in restrictive housing on average—I mean, they are receiving one phone call per month, and this is something that we are looking at when I talk about reform for our disciplinary process for those placed in restrictive housing we need to change, and that is something that we are willing to continue to look at to ensure that we are providing more access for frequency for those phone calls, as well as visits.

Senator FRANKEN. Well, I have run out of time. We will have some witnesses who may be a little bit more descriptive. Thank you.

Director SAMUELS. Actually, it is 10-by-7 for the cell size.

Senator FRANKEN. Thank you.

Thank you, Mr. Chairman.

Chairman DURBIN. Thank you, Senator Franken.

Senator Hirono.

Senator HIRONO. Thank you, Mr. Chairman.

Director Samuels, thank you for your service and all that you are doing to address what is really a troubling situation. We do have someone on the second panel who will testify or talk about women being confined in solitary for reporting abuse, including sexual abuse, by Bureau of Prisons staff. I have a series of questions regarding this situation.

My first question is: Are you aware of this happening in the system, rare as it may be, we hope?

Director SAMUELS. Yes.

Senator HIRONO. Okay. Second question. Then what do you have in place to prevent this kind of abuse from happening?

Director SAMUELS. Well, what we have in place is our staff being active in ensuring that rounds are being made. We have also addressed concerns with ensuring that the inmates are able to reach out and to let us know and being comfortable with that. But we have a zero tolerance.

Senator HIRONO. So you have zero tolerance, but does that mean that the inmates that this is happening to feel free to come forward and report? Who would they report this to? Certainly it should not be the person that has power over them and who is actually the abuser, alleged abuser.

Director SAMUELS. Yes, they are able to report any allegations to staff, and we also have a hotline number that the inmates are given, and they can also report it in that manner.

Senator HIRONO. And in terms of getting this information out to your inmates, do you do this in a written form? Or how do your inmates know, regardless of whether they are in solitary or in the general population, that if they are faced with this kind of abuse, that they know what to do, where to go?

Director SAMUELS. It is provided to the inmate population verbally during discussions as well as in writing.

Senator HIRONO. Mr. Chairman, I would—I think it would be good if he could provide us with a sample or, in fact, the directive regarding what they tell the inmates with regard to this kind of situation so that we can——

Director SAMUELS. We can provide that for the record.

[The information referred to appears as a submission for the record.]

Senator HIRONO. So in terms of the enforcement of this policy or this directive, how do you go about making sure that this is being followed by your staff?

Director SAMUELS. Well, a number of things that we do. At the local level, obviously it is something that the leadership to include management staff are focused on ensuring that we are doing quality control reviews. We utilize our national office. When we go out and we conduct audits of our facilities, we look at the operating practices and procedures to ensure that we are following the expectations of our policies.

Senator HIRONO. How long have these policies been in place at the BOP?

Director SAMUELS. These policies have been in place for decades. We have always had a zero tolerance for any type of activity and given our staff the guidance to carry it out.

Senator HIRONO. And so when this does happen, what happens to the alleged abuser or the violator?

Director SAMUELS. For the individuals who do this, we quickly take all allegations seriously, and those individuals are removed from general population as well as the individuals who have been victimized to ensure that we are looking at the safety and security issues on both sides. And we ensure that the investigation relative to the allegation, that we are doing it in a timely manner and holding those individuals accountable, because as I mentioned, Senator, we do not support nor do we want anyone victimizing others and not being held accountable for their actions.

Senator HIRONO. And is this kind of behavior considered a crime for which the perpetrator can be prosecuted?

Director SAMUELS. Yes, and if the investigation leads to the individual being charged, which we refer all of these issues to the FBI, and then they move in and they do their investigation, and ultimately it is determined whether or not a crime has been committed. And we believe in ensuring that those individuals are held accountable to the fullest extent of the law.

Senator HIRONO. Do you have the numbers on how many individuals have been prosecuted or disciplined in some way? Well, let us talk about disciplined and then prosecution.

Director SAMUELS. I do not have that information with me currently, but I can provide that for the record.

Senator HIRONO. You have that data.

Director SAMUELS. Yes.

Senator HIRONO. Thank you.

[The information referred to appears as a submission for the record.]

Senator HIRONO. Have there been any studies on the effects of solitary confinement on recidivism and/or re-entry?

Director SAMUELS. There have been no studies, and as a result of the hearing that was conducted in 2012 when that question was presented to me and we had not participated in any type of study, we agreed to undergo the analysis that is taking place right now with CNA. And hopefully from that review, we will have some insight, but, Senator, I would have to add, when you are looking at

recidivism, that will require a long period of time to assess when you are looking at the number of individuals who have since been released and the impact on recidivism, and also a resource issue for ensuring that if we undertake something like that, that there will be a substantial cost. But currently we do not have anything like that in place other than what are being looked at as of now.

Senator HIRONO. And I recognize that it is not that easy to determine cause and effect in these situations. Are you aware of any studies that show differences in the effects of solitary confinement on men and women?

Director SAMUELS. No.

Senator HIRONO. Is this aspect going to be addressed in some way in the study that you are referring to?

Director SAMUELS. The comprehensive study that we are undergoing now, that is not part of the assessment. But I agree with you it is something that we should continue to look at, but also, as I have stated, when you look at the gender issues for restrictive housing, the number for us is very, very, very low for the female population, and they are not as likely as the male population to be engaged in behavior that requires them to be placed in restrictive housing for long periods of time.

Senator HIRONO. If I may, you have 198 women in restrictive housing. How many of them are in the ADX facility?

Director SAMUELS. We do not house any females at the ADX, nor do we require for the record to have that type of housing for female inmates, only for males.

Senator HIRONO. Thank you.

Thank you, Mr. Chairman.

Chairman DURBIN. Director Samuels, thank you very much for your testimony. We appreciate it. We are going to follow up with some of the questions that were asked here earlier. Thank you.

Director SAMUELS. Thank you.

Chairman DURBIN. We now invite the second panel to come before us, and I ask the witnesses to take their place at the witness table. I am going to read a little background on them before they are called on.

Rick Raemisch is here. He is the executive director of the Colorado Department of Corrections, three decades of law enforcement experience, and before this position he was the Secretary of the Wisconsin Department of Corrections, and he also served as Deputy Secretary. Previously Mr. Raemisch was the sheriff of Dane County, Wisconsin, served as Assistant U.S. Attorney and Assistant District Attorney in Dane County, as well as an undercover narcotics executive and deputy sheriff, and I thank him for joining us today. Mr. Raemisch, thanks for being here.

Piper Kerman is with us, and she is the author of the New York Times best-selling memoir "Orange Is the New Black: My Year in a Women's Prison," an account of her 13-month incarceration in Federal prison. "Orange Is the New Black" was recently adapted into a Netflix original series. Ms. Kerman works as a communications consultant for nonprofit organizations and serves on the board of the Women's Prison Association. She has spoken and written about prison issues in many media outlets. She received the

2014 Justice Trail Blazer Award from the John Jay College Center on Media, Crime, and Justice. Again, thank you for being here.

Craig DeRoche, president of the Justice Fellowship, the public policy affiliate of the Prison Fellowship that advocates for criminal justice reform based on principles of restorative justice found in the Bible. He previously served as the organization's vice president and director of external affairs. Earlier in his career, he served in the Michigan House of Representatives where he was elected speaker. He lives in Novi, Michigan, with his wife, Stacey, and three young daughters. I want to thank you and the Justice Fellowship for your appearance here today.

Marc Levin is the director of the Center for Effective Justice at the Texas Public Policy Foundation, which has played an important role in adult and juvenile justice reforms in that State. He is a leader of the Texas Public Policy Foundation's Right on Crime Initiative, which has led conservative efforts to reform the criminal justice system. Previously Mr. Levin served as law clerk to Judge Will Garwood of the U.S. Court of Appeals of the Fifth Circuit and staff attorney at the Texas Supreme Court, thanks to the Texas Public Policy Foundation's work, led to reforms of the drug sentencing law, and particularly I want to thank you for your support of the Smarter Sentencing Act, which all the Members here today have cosponsored.

Damon Thibodeaux is a witness before us. In late September, Damon became the Nation's 141st death row inmate to be exonerated on actual innocence grounds since the Supreme Court reinstated capital punishment in 1976. He was released from the Louisiana State Penitentiary at Angola after 15 years in solitary confinement. Mr. Thibodeaux's release was supported by the Jefferson Parish district authority's office, which was responsible for his original prosecutor. Following his release, Mr. Thibodeaux relocated to Minneapolis where he worked for Pitney Bowes, obtained his GED and a commercial driver's license. In January 2014, he began his commercial truck driving career with U.S. Xpress transportation company. I am sorry for what you have been through, sir. I commend you for what you have done to rebuild your life. It is an amazing story. I want to thank you for having the courage to appear here today, and we will be hearing your testimony in just a few moments.

Mr. Raemisch, you have 5 minutes. Your entire written statement—and I have read them all, and I commend them to those who are here. These are some extraordinary statements. But, Mr. Raemisch, 5 minutes to summarize, if you would, and then we will ask a few questions after the whole panel.

STATEMENT OF RICK RAEMISCH, EXECUTIVE DIRECTOR, COLORADO DEPARTMENT OF CORRECTIONS, COLORADO SPRINGS, COLORADO

Mr. RAEMISCH. Thank you, Mr. Chair, Ranking Member Cruz, and distinguished Members of this Committee. It is an absolute honor for me to be here. I am Rick Raemisch. I am the executive director of the Colorado Department of Corrections. I was appointed by Governor John Hickenlooper to fill the vacancy left by

the former executive director, Tom Clements, who was assassinated in March of last year.

In a horrific irony, Mr. Clements was assassinated by an individual who had spent several years in administrative segregation and was released directly from segregation into the community, which is an absolute recipe for disaster.

The other irony involved here is that Mr. Clements had dedicated his short time at the Colorado Department of Corrections to reducing the large number of individuals in the system that were in segregation. In fact, Colorado, if not the lead percentage, was one of the leaders, unfortunately, of incarcerating people in administrative segregation.

I was picked by Governor Hickenlooper because I had the same vision in Wisconsin and was able to do some things there. This gives me an opportunity to continue that vision. And having spent some time in administrative segregation myself recently, it just reinforced my feelings about it, and these are my feelings, and I will summarize them very quickly. In my mind, of over 30 years in the criminal justice system, that administrative segregation is overused, misused, and abused. And what I feel is that we are failing in this particular area in our mission, and our mission really is not about running more efficient institutions, although that is certainly something that we want to do, that is something we need to do, but that is not our primary mission. Ninety-seven percent of all of our inmates return back to the community, and out of those 97 percent, some of them have been in administrative segregation, and our duty and our primary mission is very simple: Make a safer community. And the way we make a safer community is by having no new victims. And the way we have no new victims is by ensuring that the people that we send back into the community are prepared and dedicated to being law-abiding citizens instead of returning in a worse condition than when they came in, and that is where I feel we are failing.

Some of the things we have done in Colorado, I was charged by the Governor with three tasks: eliminate or reduce the number of major mentally ill in our administrative segregation area, and what we were able to do last spring, as an example, we had 50 that were in administrative segregation; this January there were 4.

The second challenge by Governor Hickenlooper was to eliminate or drastically reduce those released directly from segregation into the street. And I might ask or ask anybody in this audience to stand up if they feel like they would like to live next to someone that has been released directly from segregation to the street, and I am pretty sure people are going to stay in their chairs. What we were able to do, in 2012 we released 140 directly into the street; in 2014 we released 2 so far.

And the other area I was challenged by the Governor was take a look at everyone else in administrative segregation and see if you can determine that the numbers of those that should be released, and we have done that. That was started by Executive Director Clements and is being continued by me. In January 2011, we had 1,451 in admin seg, as it is called; in January 2014, we had 597.

In a sense, I do not feel I am replacing Mr. Clements. I feel I am fulfilling his vision. That is what we are doing in Colorado. I

believe that nobody should be released directly to the community, and some of the things that we are doing are some that all can be doing. I do not disagree with anything Mr. Samuels said. I respect him. I have known him for quite some time. Working with the Association of State Correctional Administrators Association, we have done a lot of work in best practices. But let me throw some things out there as I quickly end, as I am running out of time.

For some reason, we seem to think that for admin seg someone is in a cell 23 hours a day. Who defines that? There is probably some obscure court case that mandates that is what happens. Why isn't it 22 hours a day? How about 20 hours a day? How about 18 hours a day or they start at 23 and work their way down to 10? That is one thing we are going to be doing.

It has been automatic for the most part that someone on death row is going to stay in administrative segregation until they are put to death. And as we know, a person spends many years, and some are found innocent and released. So we are going to be changing our policy on that and giving them the opportunity to get outside of their cells.

Where we are going to end up in Colorado is that only the extremely violent—and that is a small handful, about all that we are talking about—are going to be those that remain in administrative segregation. But even then, that does not mean we give up on them. It means we continue to find a solution for these problems because, as I sat in that cell for over 20 hours, my response was, "This is not a way to treat an American." It is not a way that the State should be treating someone. It is not a way this Nation should be treating someone. And, internationally, it is not a way to be treating someone. This is receiving the right amount of attention now at the right time, and I think it is time we move this forward.

Thank you.

[The prepared statement of Mr. Raemisch appears as a submission for the record.]

Chairman DURBIN. Thanks, Mr. Raemisch. And I might say to those gathered here, a roll call vote just started, and some of my colleagues will leave to vote. We will try to keep the hearing going. There may be an interruption for a short recess because of the roll call, but we will be back quickly to resume.

Ms. Kerman.

STATEMENT OF PIPER KERMAN, AUTHOR, BROOKLYN, NEW YORK

Ms. KERMAN. Chairman Durbin, Ranking Member Cruz, and distinguished Members of this Committee, thank you for having me here to address this important issue.

I spent 13 months as a prisoner in the Federal system. If you are familiar with my book, "Orange Is the New Black," you know that I was never held in an isolation unit. The longest amount of time I was placed alone in a holding cell was 4 hours, and I was ready to climb the walls of that small room by the end of that.

I am here today to talk specifically about the impact of solitary confinement on women in American prisons, jails, and detention centers.

Women are the fastest growing segment of the criminal justice system, and their families and communities are increasingly affected by what happens behind bars. At least 63 percent of women in prison are there for a nonviolent offense. However, some of the factors that contribute to these women's incarceration can also end up landing them in solitary confinement.

During my first hours of incarceration, warnings about solitary, or "the SHU," came from both prisoners and staff very quickly, and very minor infractions could send you to the SHU. They can then keep you there as long as they want under whatever conditions they choose. Unlike the normal hive-like communities of prison, 24-hour lockdown leaves you in a 6-by-8 cell for weeks or months or even years, and this is unproductive for individuals, for prison institutions, and the outside communities to which 97 percent of all prisoners return.

Several factors make women's experience in incarceration and solitary different from men's. Women in prison are much more likely than men to suffer from mental illness, which makes being put into solitary confinement much more likely and much more damaging.

Jeanne DiMola, who, like the majority of women prisoners, had a history of mental illness—and 75 percent of women in prison do—she spent the first year of her 6-year sentence in solitary confinement. You have her full written statement. I will share some of her words with you.

"I spent three-quarters of my time on a bunk with a blanket over my head in the fetal position, rocking back and forth for comfort. I tried meditating, to no avail. I can separate body from mind with my disassociative disorder. I cried a lot, not for me but for my kids. I laughed inappropriately. I got angry at myself, angry at those who abused me and led me to this life of addiction. I felt ashamed because I let others abuse my body because I felt I deserved it. I felt sorry I was born. I felt sorry for all the hurt that I caused. But most of all, I felt sorry that there was not a rope to kill myself, because every day was worse than the last."

Solitary is also misused as a threat to intimidate and silence women who are being sexually abused by staff, which is a widespread problem in prisons, jails, and detention centers that house women. Early in my own sentence, a woman who had done a lot of time told me about a friend of hers who had been sexually abused by a guard at Danbury. She told me, "They had her in the SHU for months during the SIS investigation. They shot her full of psych drugs. She blew up like a balloon. When they finally let her out, she was a zombie. They do not play here."

There are egregious examples of solitary confinement being used by prison officials to hide horrific, systemic sexual abuse under their watch. The terrible threat of isolation makes women afraid to report abuse and serves as a powerful disincentive to ask for help or justice.

And, finally, solitary has a devastating effect on families and children of women prisoners. For health and safety, pregnant women should never be placed in solitary, and yet this is allowed in prisons throughout the U.S. Most women in prison are mothers. A child's need to see and hold his or her mother is one of the most

basic human needs, yet visitation for prisoners in solitary is extremely limited, and often all visitation privileges are revoked. Isolation should only be used when a prisoner is a threat to her own safety or that of others, not when pregnant or suffering mental illness or for reporting abuse.

I urge that the Federal Bureau of Prisons, in its assessment of solitary confinement practices, take action to limit the use of solitary on women. They should visit as many women's institutions as possible, FCIs like Tallahassee and Dublin, and they should include confidential discussions with the women who are incarcerated in those facilities.

Last week, my home State of New York announced significant solitary reforms, including prohibition of placing pregnant women in solitary, and the Bureau of Prisons and other States should also embrace those kinds of comprehensive reforms.

Thank you for the opportunity to testify and to help the Subcommittee address this very significant issue. I am hopeful it will mark the next step in urgently needed and long-term oversight and reform.

[The prepared statement of Ms. Kerman appears as a submission for the record.]

Chairman DURBIN. Thank you, Ms. Kerman.

As I said, I have reviewed the testimony of all the members of this panel. It is extraordinary, and I do not want to miss it. So we are going to take a 10-minute recess and let us race over to the floor and back, so if you could just hang around for a few more minutes, we will be back.

This Committee will stand in recess for 10 minutes.

[Whereupon, at 3:42 p.m., the Subcommittee was recessed.]

[Whereupon, at 3:59 p.m., the Subcommittee reconvened.]

Chairman DURBIN. This hearing of the Subcommittee will resume. It would have been 10 minutes except the Senate train broke down. We had to walk over to the Capitol and get back.

So, Mr. DeRoche, please proceed.

STATEMENT OF HON. CRAIG DEROCHE, PRESIDENT, JUSTICE FELLOWSHIP, NOVI, MICHIGAN

Mr. DEROCHE. Good afternoon, Mr. Chairman, Ranking Member Cruz, Members of the Committee. Thank you for revisiting this pressing issue.

Changing the culture in prisons will change the culture in our cities and our States. The disproportionate and arbitrary use of solitary confinement is not only immoral, it is a missed opportunity to break the cycle of crime. This approach does not increase public safety and is contrary to Justice Fellowship's goals for the criminal justice system—accountability and restoration.

Teaching people to become good citizens, rather than just good prisoners, is the charge entrusted to the correctional officers by the taxpayers. Skilled wardens understand that ensuring prisoners become responsible and productive members of society at large is paramount to the safety of our communities, whether inside or outside of the prison walls.

Part of creating safe communities inside prisons includes removing prisoners, individuals, who violate societal norms by placing

themselves or others at risk. But skilled wardens also understand that the removal process needs to be temporary and what is being asked of the prisoner should be available to them and also achievable.

Many in this room know that Justice Fellowship's founder, Chuck Colson, saw his power and pride crumble when he left being President Nixon's counsel to becoming a Federal prisoner. But upon his release from prison, his work actually started touring a solitary confinement unit in Walla Walla prison in 1979, and out of that meeting, Senators, is where Justice Fellowship was founded.

And I am also grateful to you, Mr. Chairman and Ranking Member Cruz, for your support, as has been mentioned, of cosponsoring the Smarter Sentencing Act. And I believe that Mr. Colson, if he were alive today, would applaud your work in that area.

Solitary confinement in theory is for "the worst of the worst" of the prisoners. However, data says otherwise. A case in point is Illinois where a study was conducted and found that 85 percent of the prisoners were sent to disciplinary segregation for minor rule violations. Prisoners in these circumstances too often do not have their cases individually reviewed and looked at from oversight. There was an analogy given earlier about police officers, when they are struck, or other things, but it seems that the justice system does a much greater job on the outside of the walls of having accountability and individual review than segregation has had historically.

When it comes to the discussion about mental illness, regretfully, our family, friends, and neighbors suffering from mental illness are too often punished rather than treated. And I would like to share the story of a man named Kevin, a young man that I had the privilege of knowing back in Michigan, who was diagnosed with bipolar disorder when he was 11 years old, and at 14 was pressured by a peer group to holding up a pizzeria with a toy gun. He wound up in an adult prison and spent nearly a year in segregation. He described his experience as an ongoing panic attack and felt as though he was stuck in an elevator that he needed to escape from, and he eventually tried to commit suicide as his escape. But instead of helping Kevin, the prison guards at the time simply increased his punishment because that was all that they were trained and knowledgeable to do.

Too often our jails have become our country's mental institutions, and I believe that supporting bills such as the Community Mental Health—Collaborative Mental Health Act that Senator Franken spoke of earlier will help provide resources to our States, law enforcement community, as well as to our State corrections officials when they are encountering and dealing with people that are suffering from mental health issues and mental illness.

I would like to share some promising alternatives and strategies from Justice Fellowship's perspective of those that have reduced the use of segregation, that is: first, to use missioned housing to target the need of prisoners with mental illness, developmental delays, and those at risk of sexual victimization; second, to use alternative responses to the disruptions outside of segregation; third, to increase the training for the prison staff on methods that promote positive social behavior within the Bureau of Prisons.

Jurisdictions employing these strategies have not only reduced their use of segregation but have also tracked concurrent reductions in the use of force on prisoners and the number of prison grievances.

I want to acknowledge that the ACA and other organizations have taken a very progressive stance on inviting in external and independent reviews, as has the Bureau of Prisons. And to this Senate panel, whether it is the Internal Revenue Service or the Department of Justice, I believe that holding Government accountable comes with no expiration date. And when the issues of human liberty and public safety are at stake, we must never give up the watch.

And I would hope, Senator, that this is not the end of the discussion today and that these can be continued, including the work with the newly authorized Charles Colson Task Force on Prison Reform.

[The prepared statement of Mr. DeRoche appears as a submission for the record.]

Chairman DURBIN. Well, Mr. DeRoche, thank you very much. It is not the end. This is round two. And I do not know how many more there will be, but I wanted to bring this issue up again and see if progress had been made, and I thank you for your participation.

Mr. Levin, you are making me very nervous. We keep inviting you to these hearings, and as a Texas conservative, I find myself agreeing with you more and more.

[Laughter.]

Chairman DURBIN. So I am hoping that you will at least highlight a few things that you know we disagree on. But thank you very much for coming, and the floor is yours.

Turn the microphone on.

STATEMENT OF MARC LEVIN, DIRECTOR, CENTER FOR EFFECTIVE JUSTICE, TEXAS PUBLIC POLICY FOUNDATION, AUSTIN, TEXAS

Mr. LEVIN. Thank you, Mr. Chairman, for your leadership on this, and I want to thank as well the Ranking Member, who I have known and admired for many years, Senator Cruz.

We are a conservative think tank, but I will tell you——

Senator CRUZ. And I will note on that you did find something you disagree with the Chairman on.

[Laughter.]

Mr. LEVIN. Well, we are a conservative think tank, but I will tell you that if we believe in making Government less intrusive and personal responsibility and accountability, we have to shine the light in the darkest of places and the most restrictive areas of Government control, which is solitary confinement. So I am pleased to be here today.

One of the issues that we feel strongly about is ending the practice of releasing inmates directly from solitary confinement. This is a major problem in Texas with over 1,300 such releases directly from solitary confinement in 2011 from Texas State prisons.

In Washington State, a study was done on their supermax unit that found inmates released directly from solitary confinement

were 35 percent more likely to commit a new offense, and even more likely than that to commit a new violent offense as compared to comparable inmates with similar risk and offense profiles who were not released directly from solitary confinement.

I also want to point out the successes that we have seen in States around the country. Mississippi, as noted earlier, has gone down from 1,300 inmates in 2007 in solitary confinement to today only 300. And that has saved them over $6 million because it is less than half the cost. But I think most importantly, violence in Mississippi prisons has dropped 70 percent since they made those reductions.

And in Maine, for example, they have gone from 139 in solitary confinement at their Warren unit to between 35 and 45 today, just in the last couple of years. And what I want to note is that their corrections commissioner, Joseph Ponte, has noted the downsizing of solitary confinement has led to substantial reductions in violence, reductions in use of force, reductions in use restraint chairs, reductions in inmates cutting themselves up, which used to happen every week. He said it has been almost totally eliminated as a result of these changes.

Part of what they have done there is reducing the duration of solitary confinement; for example, those that used to go there for drugs, they may still go, but if they test clean for drugs, they can graduate out of solitary confinement. And if someone is being kept there for more than 72 hours, that decision is reviewed by the commissioner.

I also want to note that one of the keys in Texas to reducing our solitary confinement has been the Gang Renunciation and Disassociation Program. Inmates can earn their way out of solitary confinement by exemplary behavior and renouncing their gang membership.

I also want to point out that using sanctions and incentives behind bars is a way to provide for incentives that lead inmates to behave better, which, therefore, reduces the need for solitary confinement. One of the models is the parallel universe model used in Arizona through their Getting Ready program. For example, inmates with exemplary behavior may have a longer curfew. Those that misbehave may be denied certain privileges, such as making phone calls and, for example, also access to the mail and other things, except for their attorneys. And so this creates a positive incentive.

By the same token, we know through things like the HOPE program, swift and certain sanctions work. And so there is a role for 24-hour timeout for example. But, again, we have to make sure that we are not overusing solitary confinement for long periods.

One of the—perhaps the strongest incentives is, of course, earned time, and I will tell you we are very pleased that Senator Cornyn, Senator Whitehouse, and other Members are supporting earned time legislation, particularly for nonviolent offenders in the Federal system. Clearly, by reducing the number of dead-enders, we can make sure folks have an incentive for good behavior in prison. And also, by the way, a study has shown 36 percent fewer new offenses for those released to parole as opposed to discharge without supervision.

I want to go over a list of recommendations that we would urge you to do in addition to, of course, ending the release directly from solitary confinement. Those include eliminating rules that deny any reading materials to those in solitary confinement; improving training in de-escalation techniques for prison personnel; training in mental retardation and mental illness; also using that parallel universe model that creates incentives for positive behavior and self-improvement; creating a matrix of intermediate sanctions.

Now, this would not be for those who do serious bodily injury to a staff member or other inmate who, of course, should go to solitary for an extensive period. But for those that commit minor violations bars, that they would have intermediate sanctions that can be used to get their attention and correct the behavior before it leads to solitary.

Reducing the number of dead-enders through the earned time policy, the missioned housing, which was mentioned earlier, for those who, for example, are in protective custody, former police officers, those who are mentally ill, those who are in the process of leading a gang. Unfortunately, those individuals often end up in the same 23-hour-a-day cell as those who are being punished for disciplinary violations when we know these smaller housing communities with a better staff/inmate ratio can address that issue.

And I will tell you that if we can address the overcrowding, that helps immensely, because when you have inmates piled in day rooms with inadequate staff ratio, that makes it more difficult to defuse the very tensions that often lead to placement in solitary confinement.

So I want to thank the Committee for their work on this, and I truly believe we are on the path to solutions that will both increase our order in prisons and make the public safer when these inmates are discharged.

[The prepared statement of Mr. Levin appears as a submission for the record.]

Chairman DURBIN. Thanks, Mr. Levin.

Again, thanks to the entire panel. A special thanks to Ms. Kerman and Mr. Thibodeaux for coming and speaking openly about their own experience in incarceration.

Mr. Thibodeaux, I have read your testimony three times. It is that compelling. And I invite you now in a few minutes to summarize it, and then we will ask some questions.

STATEMENT OF DAMON THIBODEAUX,
MINNEAPOLIS, MINNESOTA

Mr. THIBODEAUX. Thank you. Chairman Durbin, Ranking Member Cruz, and Members of the Subcommittee, thank you for inviting me to speak about my 15 years in solitary confinement on death row at the Louisiana State Penitentiary at Angola.

I am here because, in September 2012, I became the 141st actually innocent death row exoneree since the U.S. Supreme Court reinstated capital punishment in 1976. But before I was exonerated and released, I was subjected to solitary confinement for 23 hours a day for 15 years between the ages of 23 and 38. This experience was all the more painful and cruel because I had not committed the crime for which I had been sentenced to die.

In my written statement, I describe the physical and mental torture that inmates in solitary confinement suffer. The diet is horrible. The heat and cold are often unbearable. And normal physical and mental activity, human contact, and access to health care are severely limited.

As harmful as these conditions are, life in solitary is made all the worse because it is often a hopeless existence. Humans cannot survive without food and water. They cannot survive without sleep. But they also cannot survive without hope.

Years on end in solitary, particularly on death row, will drain that hope from anyone because in solitary there is nothing to live for.

I know this because I lost my hope after realizing what my existence would be like for years on end until I was either executed or exonerated. I was on the verge of committing what was basically suicide by State by voluntarily giving up my legal rights and allowing the State to carry out the sentence of death, something that would have been done only a few weeks after signing the necessary paperwork. My lawyer, Denise LeBoeuf, talked me out of doing that by convincing me that I would be exonerated and released someday, and that is why I was able to regain my hope and became willing to continue my legal fight.

I was one of the fortunate on death row because I had Denise and my other lawyers and supporters, but the State effectively kills most men in solitary years before it injects them with any lethal drugs.

I can see no reason to subject anyone to this type of existence, no matter how certain we are that they are guilty of a horrible crime and are among the worst of the worst. Even if we want to punish them severely, we should refrain from this form of confinement and treatment only because it is the humane and moral thing for us to do.

My religious faith teaches that we should be humane and caring for all people, saint and sinner alike. What does it say about us as a Nation that even before the law allows the State to execute a person, we are willing to let it kill them bit by bit and day by day by subjecting them to solitary confinement?

I do not condone what those who have killed and committed other serious offenses have done. But I also do not condone what we do to them when we put them in solitary for years on end and treat them as subhuman. We are better than that. As a civilized society, we should be better than that.

I would like to believe that the vast majority of the people in the United States would be appalled if they knew what we are doing to inmates in solitary confinement and understood that we are torturing them for reasons that have little, if anything, to do with protecting other inmates or prison guards from them. It is torture, pure and simple, no matter what else we want to call it. I would like to think that we can all agree that our Constitution prohibits it.

I thank the Subcommittee for looking at the situation and educating the public about it, and I am pleased to answer any questions you may ask.

[The prepared statement of Mr. Thibodeaux appears as a submission for the record.]

Chairman DURBIN. Mr. Thibodeaux, in the opening statement I talked about the inmate that I met who said, "I got an extra 50 years because I told them if they put somebody in the cell, I would kill him, and I did." It was a stunning, cold-blooded statement.

Did you run into similar circumstances of other inmates who were that dangerous?

Mr. THIBODEAUX. There was one. He volunteered for execution, and that is why he dropped his appeals, because he stated that if he ever got out, he would do it again.

Chairman DURBIN. What is the right thing to do with that kind of person based on what you have seen in your—I do not know how to describe it—incredible life experience?

Mr. THIBODEAUX. Well, I have also—I have also come in contact with individuals who are in prison rightfully, they are on death row. And they make no attempt to profess their innocence. They just would prefer life as opposed to death. But someone who would make a statement like that to kill someone that is put in the cell with him, just leave him in the cell by themselves. You let them out at appropriate times. You do not just lock them in a hole and forget about them. You know, if I was to do that or you were to do that to someone in your home, you would go to prison for that. It is inhumane.

Chairman DURBIN. Thank you.

Ms. Kerman, I know that Senator Hirono and others may raise the question about women, incarcerated women, and you have been—you have lived that and you know the vulnerabilities they have. I think about other categories, those who are being held for immigration offenses, which are technical violations—they are not crimes per se; I mean, it is a violation of law, there is no question about it, but it is not a question of a violent crime or anything like that—and the vulnerability they would have because of language and culture and threat of deportation. What can you tell us about those women and what they face?

Ms. KERMAN. Women who have not been convicted of a crime and yet are held in confinement and potentially subjected to solitary confinement for any variety of reasons, that is a horrifying thought. Too often solitary confinement is used not to control people who are truly dangerous to themselves or others but as a tool of control within an institution when other management tools of an institution, whether it be a detention center or whether it be a prison or jail, would be far more humane and likely more effective.

Chairman DURBIN. Was there any recourse at Danbury in terms of a person or office that you could contact as an inmate if you saw or felt you were being threatened by a guard, for example?

Ms. KERMAN. Your best chance, if you felt that you were under threat and in danger from either a staffer or, frankly, from another prisoner would be if you had contact with the outside world, and different prisoners have different degrees of contact with the outside world. Frankly, a prisoner like myself, who is middle class and has a lot of access, you know, money on my phone account, and so on and so forth, has a much better chance at gaining recourse if I was subjected to either sexual abuse or any other kind of abuse.

But within a prison system, it is a very slippery slope to try to gain justice, and inmates have a very limited trust of prison officials unless a prison is run in a way that is transparent and humane in the first place.

So, you know, there is a medium-security men's State prison I visited in Ohio a number of times. It is run in a very, very different way than any prison I was ever held in. And the warden there is a really remarkable person. So different institutions are run in very different ways, and it makes all the difference in terms of whether a prisoner who is being targeted for abuse, whether it is by staff or by another prisoner, feels comfortable seeking justice.

Chairman DURBIN. Mr. Thibodeaux, how much contact did you have with the outside world in your 15-year experience?

Mr. THIBODEAUX. I had five contact visits with my family in the 15 years I was there.

Chairman DURBIN. How often were you able to meet with your attorney?

Mr. THIBODEAUX. Whenever they got out to visit. I had a law firm from Minneapolis on my case as well. They probably saw me there three, maybe four times.

Chairman DURBIN. In 15 years?

Mr. THIBODEAUX. In 15 years. But I was more concerned with the case work they were doing. If they wanted to come and visit me, fine. Being in a cell like that, you kind of cherish the visits, you know? But I was more concerned with the progress that was being made in my case.

Chairman DURBIN. Mr. Raemisch, there was a point in Director Samuels' testimony that really kind of stunned me. I think what I heard him say—and I want to make sure I do not misstate it. He thought that 4 percent of the Federal population in prison suffered from mental illness. I may be off on that number, but not too far off. I have heard numbers about people with mental illness challenges in prisons, State and otherwise, dramatically higher than that. What is your impression about the question of mental illness and incarceration?

Mr. RAEMISCH. I am not sure—I cannot speak for him, and I believe the 4 percent was right that he said. But what went through my mind was it is very possible he was talking about those that fall within the definition of major mentally ill, which our number is about 4 percent, but our mental health needs that do not fall into that major category is 34 percent, so it is about a third of our population. I can tell you that about 70 percent of our population has some type of drug and/or alcohol problem also to throw into the mix.

Chairman DURBIN. And what we found in the first hearing was that many people with—mentally challenged people, and I cannot tell you what levels, but many mentally challenges people found it difficult to follow the rules as well as they should have, and any type of resistance on their part, because either they wanted to resist or they were mentally challenged, was answered with segregation.

Mr. RAEMISCH. Let me give you the example I give when I speak publicly about it. If I was walking down the sidewalk past the bus stop and someone was mumbling fairly loudly to themselves, like

is often the case, we would keep walking and understand that there was some type of mental health issue. Typically, in an institution that would probably get someone, if they were disrupting the day-to-day activities of the institution, would get themselves into an administrative seg cell.

So what I have said—and I cannot stress this enough—in my mind is that administrative segregation is used, except for the extremely dangerous, is used to allow an institution to run more efficiently. It suspends the problem at best, but multiplies it at its worst. And so it does run more efficiently until you let that person out of there. And if you have not addressed what got him in there to begin with, you have done nothing. And that is the problem with the mentally ill, is what I struggle with and what we are trying to change in Colorado and we are making great progress, is how can you hold someone accountable if they do not understand the rule they broke to begin with. It is a no-win situation.

Chairman DURBIN. Thank you.

Senator Cruz.

Senator CRUZ. Thank you, Mr. Chairman. I would like to thank each of the witnesses for coming here and for giving your testimony. And I would also like to thank you for your advocacy and involvement with the justice system and advocating on behalf of those who are incarcerated.

And, in particular, Mr. Thibodeaux, I would like to thank you for your powerful and moving testimony. When I was a lawyer in private practice, I had the opportunity to represent John Thompson, who is another individual who was wrongfully convicted of murder in Louisiana and sentenced to death, and he was subsequently exonerated, and it was a powerful experience personally, having the opportunity to get to know Mr. Thompson and to represent him both in the court of appeals and the U.S. Supreme Court. And so let me echo the Chairman's comment to apologize to you for the ordeal you endured.

Mr. THIBODEAUX. Thank you, sir.

Senator CRUZ. And thank you for having the courage to speak out about it, because that cannot be easy to do.

Mr. THIBODEAUX. No.

Senator CRUZ. This issue is an issue that raises complicated issues because you have got conflicting interests. Mr. Raemisch, I would like to ask, in your judgment, with what frequency is solitary confinement used for relatively minor infractions?

Mr. RAEMISCH. I can only at this point give you my impression, and my impression is that it is incredibly overused in that area. I was talking during the break that really the process has not changed in over 100 years, and I try and think of what is still being done 100 years ago that is being done today that should be done, and I cannot think of anything. And so when I look at that whole process, it again has become a tool to make a facility run more efficiently, and that part of our mission we are failing, because we are sending them out into the community worse than they came in. And I believe that is what lengthy periods of time in administrative segregation does.

You know, if I may just say, when I hear some of the comments—and I spoke at John Jay University a few weeks ago on

some issues in corrections, and sitting next to me was the director of the Texas Corrections and Florida—or California Corrections, some pretty big systems. And when I was asked a question by one of the audience members, I said—and I pointed to the others, "Welcome to the knuckle-dragging thug club," because the public perception is, that is what we are. And if I can stress one thing—and I saw Mr. Samuels try and stress it, and I would also—it is that at one time early in my law enforcement career, I may have had that same impression. But I truly have to tell you that overall I have never seen a more dedicated professional group of men and women that risk their lives, and they do it because they want to have a safer community and they put themselves at great risk to do that.

That aside, like any large bureaucracy—and we tend to be the largest in each State, or close to it; I have 6,000 employees—you end up with problems. And it is how we react to those problems, and that is why right now, one, I really appreciate what you have done by calling this hearing; and, two, by having me participate, because I can tell you that I do not know of any State in the Nation through ASCA right now that is not taking a very hard look at their administrative segregation policies. You have really brought it to the forefront. We all understand that, as professionals, the movement is to this is not the right way we should be treating people and we get that.

What we do ask for is help in finding some solutions, because there are some that are too dangerous that they cannot be let out. But I also have to stress that is a small number.

Senator CRUZ. Thank you, Mr. Raemisch.

In your written testimony, you stated that while the goal of many of the reforms is to decrease the number of offenders housed in administrative segregation, "there will always be a need for a prison within a prison. Some offenders will need to be isolated to provide a secure environment for both staff and offenders." It strikes me that a great many people would think that solitary confinement, particularly for an extended period of time, is not an appropriate punishment for relatively minor infractions but could well be a necessary tool for the most violent inmates who may pose a real threat to the safety of other inmates or of guards.

Each of the members of this panel has interacted with the criminal justice system in different capacities, Ms. Kerman and Mr. Thibodeaux as inmates, Mr. Raemisch administering a correctional institution and system, Mr. DeRoche ministering and helping bring hope and redemption to those incarcerated, Mr. Levin studying the important justice issues.

A question I would ask of all five of you is: In your judgment, based on the different experiences you have had, is there an appropriate role for solitary confinement? Is there a need for it? And in what circumstances, if at all? And I would welcome the views of all five witnesses.

Mr. RAEMISCH. In my mind right now, yes, but in a limited sense. And that is because I have said that there are some diseases for which there are no cure right now, and that does not mean we do not keep trying to find the cure for the disease. But what I have been told by my head clinicians is that we have four to five in our

system that, if they are let out of administrative segregation, they will kill someone. And they lay that responsibility on me, and I get that.

But I also understand that in all other areas there is so much room for improvement. Let us figure that group out a little while from now. Let us take care of all the other numbers that are sitting in administrative segregation that at this point I think there are many other alternatives other than keeping them there.

Mr. LEVIN. Yes, that is an excellent question. I would, first of all, say we have to distinguish 24-hour or even 72-hour placement to defuse a situation from long term. In Texas State prisons, the average time in solitary is 4 years. So some served as long as 24 years.

The other issue is in Texas, thousands are placed in solitary confinement solely for being suspected gang members upon initially entering prison, having committed no disciplinary violations. And I think it is critical that—and I question the extent to which we are doing that in Texas. We have gone down in our total solitary confinement by over 1,000 in the last couple years since we started bringing this up at the legislature, and there is an ongoing study in Texas, an independent study that the legislature approved last session. But I think that one of the issues you brought up, Commissioner, that I think is very important is if you have got somebody in solitary who is 23 hours, no stimulation, having them be able to earn an hour more this month, okay, in programming and such so that they can get out or gradually work their way toward more interaction. And so that is a great idea, and I think generally speaking, as I have said, the more you can create both positive incentives and graduated sanctions for inmates to address disciplinary issues, that is going to be able to make sure that—people in long-term solitary confinement really should be those that have done harm to other inmates or staff or made statements indicating that they intend to do that. And, again, the short term can be used, 24 to 72 hours, to defuse. But even that, we have heard about the SIT teams, there is de-escalation training, there are things—just making sure there is no overcrowding and there are proper ratios, that can defuse a lot of the tensions that lead to violence behind bars.

Mr. DEROCHE. There is a study, Senator, that was done in Minnesota for a faith-based dorm that we have run there for more than 10 years, but it was a 10-year study of every single inmate that went through that program, and it found that there was a 0.8-percent recidivism rate, and that was every type of prisoner that went through there from, you know, the worst of the worst on through. And at the same time, it found that there was no deviation between the technical violations of the people that went through that program and the general population in Minnesota, which had a 37-percent recidivism rate. In other words, human beings were still going to be human beings even if they have moved away from a criminal lifestyle.

So I do think that, the Director's comments about technical violations, that we should take to heart that, boy, that is the same type of behavior I see in my kids, that is the same type of behavior I see in the workplace. And guess what? When we study it and we find a bunch of people moved away from criminal activity, they are

still going to get it wrong on a technical side of how they get through a day. And so we need to take that seriously of—what I started my statement with, if you want to change the culture on the outside in our cities and in our States, we have got to change the culture on the inside. And I am so impressed and encouraged to hear people talking about going out, Mr. Chairman, and seeing, you know—and to the Director, his willingness to go see people who are doing it right, because there are prisons where the population, the people in the prisons have made a decision that they do not want to live in a bad downward spiraling culture. And when skilled wardens change that culture and they use very sparingly the use of segregation, with people knowing that they can return back to a positive and improving culture when they straighten their act out, that is where it is best used—temporary, always with the invitation of working your way back, because these corrections officers do have the responsibility, the same as the noble people that serve in our fire departments and our police departments, they are supposed to be making it more safe for us as taxpayers. When these people leave, they have got a difficult job. But we have got to empower them, we have got to train them, and we have to hold them accountable. We have to have oversight like we do in the other professions. When you are using this power, how is it being meted out, and to what end, to what results, what outcomes, what metrics? Because we can do a far better job than we are, Senator, but it should—you are not going to be able to eliminate it, if that is what you are asking for.

Ms. KERMAN. I do not believe that solitary confinement has a rehabilitative value, and, therefore, I think that it should not be used other than for the most serious security concerns.

What I have seen solitary confinement used most often is that disciplinary seg, not ad seg. It is true that women often do not go into ad seg, though sometimes they do spend years and years in solitary confinement. I can only emphasize that there is nothing rehabilitative about being locked into a tiny box for 23 hours a day. And so correctional systems should take very seriously their responsibility to rehabilitate and direct the tremendous amounts of taxpayer dollars that they consume toward that goal.

Mr. THIBODEAUX. In my 15 years in Angola, it got to a point where we were all being taken to the yard one at a time. When I got there, they were taking us one tier at a time. But an incident takes place, and everyone suffers the consequences, not just the person who commits the incident. And that is a real big minus in the system because it tells everyone else that, well, it does not matter if I am the model inmate because I am going to get punished if someone else does something wrong anyway, so why should I bother?

If solitary confinement is going to be used for the worst of the worst, as it should because safety is the biggest issue in prison, because you—I mean, let us face it. We all agree that not everyone in prison is innocent. So if it is going to be used, know your limitations with it. You know, do not just lock someone up in a cell and forget about them. They are still a human being somewhere. They may have mental issues. They may have emotional issues. But if you identify that and find a way around it, then you can deal with

it in a humane way. It does not have to be, okay, just put them in a jumpsuit and shower shoes and lock him in the cell for 23 hours a day.

The one thing I wanted more of when I was in the cell is time out of the cell, you know? Sadly, that is not the reality. But if you want to have solitary confinement, use it in the most limited capacity possible.

Senator CRUZ. Well, thank you very much, to all five of you.

Chairman DURBIN. Senator Hirono.

Senator HIRONO. Thank you, Mr. Chairman.

I want to thank all of you for coming and testifying and shedding light on this issue, and I particularly want to thank Mr. Thibodeaux because your testimony was very—you have been there. As we say in Hawaii, mahalo for sharing your terrible experiences.

I am especially concerned about reports that women are confined in solitary for reporting abuse, including sexual abuse, by the Bureau of Prisons staff, and especially as I have been working with Senator Gillibrand and other Senators to address the issue of sexual assault in the military, which is another institution where survivors of sexual assault can also be at the mercy of their supervisors in the chain of command due to the power dynamic and possible threats of retaliation that can exist in both of these environments. So I want to thank you, Ms. Kerman, for your testimony.

And I do note that, Mr. Raemisch, you noted that 97 percent of our prisoners do get released into the community, so we really need to pay attention to what is happening with them because, as you say, Mr. Raemisch, they should come out better, not worse, than when they were in prison. And I think that is a sentiment that all of us would share.

Ms. Kerman, you heard Director Samuels' responses to my questions about what happens in the instance of the abuse of power by the Bureau of Prisons personnel, especially with regard to women and sexual abuse. Having heard his responses, do you think that the Bureau of Prisons is doing enough to prevent and prosecute this kind of abuse of power by their staff?

Ms. KERMAN. No. I believe that in every women's prison and jail sexual abuse of women and girls by staff is a problem. In some places like Otter Creek, Kentucky, or Tutwiler Prison in Alabama, those abuses have been revealed to be systemic and very widespread and very sinister.

What I observed during the time that I was locked up was that a staff member who was under suspicion for sexually abusing prisoners would be removed from direct contact with the prisoner or prisoners that he was accused—they were always men in the instances that I knew of, but they would still be there on the property. And, of course, a person is innocent until proven guilty. I firmly believe that. But many, many aspects of the experience of incarceration have that silencing effect: the fact that your abuser may not, in fact, be far away from you, may be in view, he might be driving perimeter in the facility in which you are held, and so you might, in fact, see him all the time; the fear of solitary confinement and isolation, I cannot overemphasize how powerful a disincentive that is.

To go into the SHU for 90 days is a really long time, and typically during the type of SIS investigation that happens in the BOP, those investigations do not happen quickly. Not only will you deal with the pain of isolation, which is so well detailed in some of the written testimony which has been submitted to this Committee, but on a very practical level, you will lose your housing, you will lose your prison job, you will lose a host of privileges, obviously, if you are held in isolation.

All of these things conspire to really, really silence women, and, of course, the concern about how much they can trust the people to whom they are supposed to report abuse is a very serious consideration.

Senator HIRONO. So there are all kinds of disincentives in the environment where reporting of these kinds of abuse of power does not readily occur. Do you have any thoughts on what we can do? And I am not even talking about using the threat of being put into solitary as a way to control and hide this kind of behavior on the part of the staff.

Ms. KERMAN. The best-case scenario is for female prisoners and, frankly, for all prisoners to have increased access to the outside world. So the person you would be most inclined to trust in terms of seeking redress against abuse would not necessarily be someone inside of the institution in which you live.

Access to counsel is a tremendously important issue. The vast majority of prisoners in any system are indigent; you know, 80 percent of criminal defendants are too poor to afford a lawyer. And so their access to counsel, you know, before they are locked up is poor, and their access to counsel while they are locked up is negligible.

So those are the things that would make the biggest difference, and, frankly, those things will make the biggest difference in their rehabilitation as well, not just in their ability to access justice while incarcerated, but also in their ability to be rehabilitated and to return safely to the community.

The isolation of solitary confinement is just a small metaphor for the total isolation of incarceration, and when we put people to the margins, it makes it harder for them to return to the community.

Senator HIRONO. And I do not want to confine my questions on women and the deleterious effect, the negative effect, but for the rest of the panel, Ms. Kerman has said that maybe one of the ways that we can shed light on what is going on in our prison system—and I am not saying this is symptomatic of everything that is going on. It is a tough problem. But would you agree that providing more access to the outside world is one way that we can prevent some of these abuses of power from occurring within the system?

Mr. LEVIN. Yes, and also an ombudsman. We had a scandal of sexual abuses in our juvenile State facilities in Texas in late 2006, early 2007. One of the things we did was create an ombudsman's office which is not in the chain of command of any prison warden and actually reported directly to the commission, the Texas Youth Commission at that time, whose members were appointed by the Governor, so actually not reporting even to the paid director of the commission.

So when you have an ombudsman who is not in the chain of command at a particular prison unit who these reports of abuses can

go to, and that individual can then independently look into them, and certainly not everyone is accurate, but some of them are. And that way when it is not kept totally within the unit, there is more accountability and independence in examining that.

Senator HIRONO. Would the rest of you agree that that is one of the ways that we could help?

Mr. DEROCHE. I would say very much so, and we find at Prison Fellowship that the more that the prison lets folks in from the outside, the less problems that exist. It is an inverse relationship. And I think that that would continue.

And I know the gravity for State or Federal officials—I saw it firsthand when I was Speaker of the House in Michigan. We had a mentally ill inmate found dead in his cell after being neglected for 72 hours and the cell was 110 degrees. And I fought that as hard as I could, but the gravity was we got this, we are going to do an investigation, we have got people, we are going to—and it did not get the satisfactory outcomes that you would get with the justice system on the outside.

I think we need independent voices. I think people need immediate access, not a month later, to a phone call about something that has happened in their life, Senator.

Senator HIRONO. Thank you, Mr. Chairman. My time is up.

Chairman DURBIN. Thank you, Senator Hirono.

I want to thank everyone who has testified here today. We have over 130 statements that have been submitted for the record. I will not read the names of all the groups, but I thank them each and every one. They will be made part of the record, without objection.

[The information referred to appears as a submission for the record.]

Chairman DURBIN. I asked my staff to look up a quote which was in the back of my mind, and I got part of it right. It was Dostoevsky who said, "The degree of civilization in a society can be judged by entering its prisons." And that is why this hearing and this testimony is so important.

Our charge is to deal with issues involving the Constitution, civil rights, and human rights, and I think all three of those elements come together in what we are talking about today.

There are some things that strike me as more or less consensus. We do not want to release people from segregation or solitary into society. The results are disastrous, and they have been well documented. We do not want to see children in solitary confinement or segregation, perhaps in the most extreme cases maybe, but otherwise no. We know the vulnerability of women in incarceration and even more so in segregation. And we certainly know the impact of mental illness on the behavior of prisoners and the problems that they run into once put in solitary confinement.

If you get a chance to read Mr. Thibodeaux's testimony, do it, because he goes through in graphic detail elements of segregation or solitary confinement which should not be acceptable under any circumstances—under any circumstances—where the food that you are given is barely edible, where there is virtually no medical care given to those who are in this situation, where—I was struck by the sentence where you said for 15 years you never saw the night sky or stars. It just is one of those gripping realizations when you

think about what you have been through. The limited access you had to even keep your body fit, the limited access you had to outside visitors, even, as you said, you made a conscious choice that you did not want your son to see you there during that circumstance.

All of these things suggest treatment which goes beyond incarceration. It really crosses the line, Mr. Raemisch, I think, in terms of what we should do to any human being, any fellow human being, and that is what this comes to.

I thank you all for being here. This is not the last of these hearings until the problem is resolved. I do not know that it will ever be totally resolved, but we are moving on the right path. The first hearing started the conversation, and I sense that we are starting to move in the right direction at many different levels.

I commend the States and I think Senator Cruz would join me in saying many of the States have shown a real willingness to take this issue on even more than we have, and I think it is important that they continue that and we learn from them in the process.

So we are going to leave the record open for about a week. If you get some written questions, which you might—it is rare, but it happens—if you could respond and return them, we would appreciate that very much.

Senator Cruz, thanks for being here, and, Senator Hirono, thank you as well.

This meeting of the Subcommittee stands adjourned.

[Whereupon, at 4:50 p.m., the Subcommittee was adjourned.]

[Additional material submitted for the record follows.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

Witness List

Hearing before the
Senate Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights and Human Rights

On

"Reassessing Solitary Confinement II: The Human Rights, Fiscal, and Public Safety Consequences"

Tuesday, February 25, 2014
Dirksen Senate Office Building, Room 226
2:30 p.m.

Panel I

Charles E. Samuels, Jr.
Director
Federal Bureau of Prisons
Washington, DC

Panel II

The Honorable Craig DeRoche
President
Justice Fellowship
Novi, MI

Piper Kerman
Author
Brooklyn, NY

Marc Levin
Director
Center for Effective Justice
Texas Public Policy Foundation
Austin, TX

Rick Raemisch
Executive Director
Colorado Department of Corrections
Colorado Springs, CO

Damon Thibodeaux
Minneapolis, MN

Department of Justice

STATEMENT OF

CHARLES E. SAMUELS, JR.
DIRECTOR
FEDERAL BUREAU OF PRISONS

BEFORE THE

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS, AND HUMAN RIGHTS
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

FOR A HEARING ON

REASSESSING SOLITARY CONFINEMENT:
THE HUMAN RIGHT, FISCAL, AND PUBLIC SAFETY CONSEQUENCES

PRESENTED ON

FEBRUARY 24, 2014

Statement of Charles E. Samuels, Jr.
Director of the Federal Bureau of Prisons
Before the Subcommittee on the Constitution, Civil Rights, and Human Rights
United States Senate Committee on the Judiciary
February 25, 2014

Good morning, Chairman Durbin, Ranking Member Cruz, and Members of the Subcommittee. Thank you for the opportunity to appear before you today to discuss the use of restrictive housing within the Bureau of Prisons (Bureau). Chairman Durbin, I appreciate you and other members of the Judiciary Committee for your support of the Bureau over the years, and I look forward to continuing our work together.

Since becoming the Director of the Bureau, in December 2011, I have undertaken reviews of many aspects of our operations, including our use of restrictive housing. Certainly I am most concerned with anything we do that has a direct impact on the safety and well-being of our staff, the inmates in our care, and the general public. I am equally concerned about our ability to prepare inmates for release and to reduce recidivism. The hearing held by this Subcommittee in June 2012 was instrumental in sharpening the Bureau's focus on restrictive housing; in fact, the issue has been in the forefront for corrections nationally, not just in the Bureau. Over the past year, we have accomplished a great deal in terms of reviewing, assessing, and refining our approach to putting inmates in restrictive housing. We believe that the inmates in restrictive housing are there for the right reasons and for an appropriate duration.

The Bureau is the Nation's largest corrections system with responsibility for approximately 215,000 inmates. We confine almost 174,000 inmates in 119 federal prisons that have a total rated capacity of 130,915. The remaining over 42,000 inmates are in privately operated prisons, and in Residential Reentry Centers, local jails, or on home confinement. System wide, the Bureau is operating at 32 percent over its rated capacity. Crowding is of special concern at our higher security facilities—with 51 percent overcrowding at our high security institutions and 41 percent at our medium security prisons.

We confine a significant number of dangerous people. More than 40 percent of the inmate population is housed in medium and high security facilities. At the medium security level 77 percent of the inmates have a history of violence, over half have been sanctioned for violating prison rules, and half have sentences in excess of 9 years. At the high security level, half of the inmates have sentences in excess of 12 years, 71 percent have been sanctioned for violating prison rules, and more than 87 percent have a history of violence. One out of every six inmates at high security institutions is affiliated with a gang.

However, we take seriously our mission to protect public safety by running safe and secure prisons and by providing inmates with treatment and training necessary to be productive and law-abiding citizens upon release from prison. Bureau staff works hard to provide care and programs to give inmates the best chance for a successful return to their communities.

In order to effectively carry out our mission, at times we must remove some offenders from the institution's general population. The vast majority of our inmates remain in general population throughout their term of incarceration, abide by institution rules, work at institution jobs, and participate in programs. Most inmates are never placed in any form of restrictive housing. When restrictive housing is used, it is usually only for brief periods of time for the vast majority of inmates and involves only a very small subset of the population.

Inmates placed in restrictive housing are not "isolated" as that term may be commonly understood. All inmates have daily interactions with staff members who monitor for signs of distress. In most circumstances, inmates placed in restrictive housing are able to interact with other inmates when they participate in recreation and can communicate with others housed nearby. They also have other opportunities for interaction with family and friends in the community (through telephone calls and visits), as well as access to a range of programming opportunities that can be managed in their restrictive housing settings. Bureau psychologists receive specialized training to address the needs of inmates who suffer from mental health problems or disorders and who are placed in restrictive housing units. All staff is trained in suicide prevention and in identifying and addressing signs and symptoms that may indicate a deterioration of an inmate's mental health.

In response to concerns you raised at last year's hearing, and because it is the right thing to do, I have been personally involved in numerous initiatives to ensure the Bureau is using restrictive housing in the most appropriate manner. I consulted with the leaders of several state departments of correction that have been identified as being particularly progressive in this area, including in Mississippi, Maine, Colorado, and Ohio. I visited facilities in Mississippi and Maine to learn firsthand about their experiences.

I am pleased to report that we continue to experience decreases in the number of inmates housed in various forms of restrictive housing. This reduction is attributable to a variety of initiatives we have put in place over the past two years including nationwide deployment of a new information system that allows us to track and monitor carefully the operations of our Special Housing Units (SHU). Some of the steps we have taken to reduce our use of various forms of restrictive housing include holding several nationwide videoconferences with Bureau leadership regarding restrictive housing use, discipline, and alternative sanctions. We have activated a secure mental health step down unit at United States Penitentiary (USP) in Atlanta, Georgia. The Bureau has identified inmates in restrictive housing who we believe, can benefit from

residential treatment and the therapeutic environment it provides, and have transferred them to the unit. The treatment program includes comprehensive assessments and focuses on the management of mental illness and steps to recovery, emotional self-regulation, improving social skills, and activities of daily living in a modified therapeutic community setting. We have transferred some inmates from the Administrative Maximum Security Facility (ADX) in Florence, Colorado and the United States Medical Center for Federal Prisoners in Springfield, Missouri to this unit.

In addition, we recently established a gang-free institution that allows inmates to safely leave their gang affiliations and work toward successful reentry upon release from prison. This program, which currently houses 68 inmates and will continue to expand, is expected not only to decrease the misconduct that is associated with prison gang activity, but also to provide inmates with greater opportunities to engage in reentry programming.

We are in the midst of an independent comprehensive review of our use of restrictive housing. This review, overseen by the National Institute of Corrections, will identify "best practices" for restrictive housing operations and will help us continue to make improvements. The review team includes current and former directors and deputy directors of state departments of corrections who have already conducted four site visits at USP Terre Haute, Indiana, USP Lewisburg, Pennsylvania, USP Coleman, Florida and Federal Correctional Institution (FCI) Butner, North Carolina. They will be visiting at least five other sites: USP Allenwood, Pennsylvania; ADX and USP Florence, Colorado; USP Hazelton, West Virginia; USP and FCI Victorville, California; and USP Tucson, Arizona. We expect the report to be issued in the winter of 2014, and look forward to the results of the evaluation to make additional enhancements to our operations.

Chairman Durbin, this concludes my formal statement. I assure you that I share your commitment to providing federal inmates with safe and secure housing that supports physical and mental health. There are certainly times when restrictive housing placements are necessary and appropriate. A mission for our agency, and for all corrections professionals, is balancing the need for safety and security of inmates and staff with opportunities for effective interventions and maintaining ties to the community. I look forward to our continued collaboration on this important issue.

Again, I thank you Chairman Durbin, Mr. Cruz, and the Subcommittee for your support for our agency. The mission of the Bureau is challenging. Through the continuous diligent efforts of our staff, who collectively work 24 hours each day, 365 days per year - weekends and holidays - we protect the public and help to reduce crime recidivism. I would be pleased to answer any questions you or other Members of the Subcommittee may have.

JUSTICE FELLOWSHIP

Advancing restorative justice principles into policy solutions

Testimony of Craig DeRoche
President of Justice Fellowship
Before the Senate Judiciary Subcommittee on the
Constitution, Civil Rights, and Human Rights
Reassessing Solitary Confinement II:
The Human Rights, Fiscal, and Public Safety Consequences
February 25, 2014

Mr. Chairman, Ranking Member Cruz, and other distinguished Senators of the Committee, I am grateful that you are revisiting this pressing issue.

The prolific use of solitary confinement in our nation's prisons and jails is cause for genuine concern.[1] It is yet another example of the government allowed to grow unchecked, creating a burgeoning bureaucratic system loathe to produce results. Taxpayers and victims of crime count on a return for our investment in the criminal justice system. As a conservative, I believe we should apply serious scrutiny to processes that restrict liberty, including isolation practices. As a Christian, I believe that humanity ascribes its value and dignity from its Creator, and thus, I advocate for an accountability system that underscores the dignity and value of humanity in all circumstances. The disproportionate and arbitrary use of solitary confinement is not only immoral, it is a missed opportunity to break the cycle of crime. This approach does not increase public safety and is contrary to Justice Fellowship's goals for the criminal justice system—accountability and restoration.

In prison culture, many tolerated norms are antithetical to societal standards. Justice Fellowship believes that the overuse of solitary confinement is a direct result of this lost culture war. Teaching people to become good citizens, rather than just good prisoners, is the charge entrusted to correctional officials by taxpayers. Skilled wardens understand that developing pro-social communities within prison walls is paramount to public safety—both inside and outside of prison fences. Part of creating safe communities inside prisons includes removing individuals who violate societal norms by placing themselves or other's safety at risk. Skilled wardens also understand, however, that this removal process must be temporary, and that a clear path back into the community must be not only clearly available, but achievable. Skilled wardens and corrections officers should welcome oversight, performance measurements, and independent review to ensure their use of segregation increases safety in the prison and the safety of the community upon prisoners' reintegration.

[1] United States Department of Justice, Office of Justice Programs, Bureau of Justice Statistics. *Census of State and Federal Adult Correctional Facilities, 2005*. ICPSR24642-v2. Ann Arbor, MI: Interuniversity Consortium for Political and Social Research [distributor], 2010-10-05.doi:10.3886/ICPSR24642.v2. http://dx.doi.org/10.3886/ICPSR24642.v2 (last visited Feb. 20, 2014).

The Legacy of Justice Fellowship

As many of you know, our founder, the late Chuck Colson went from being President Nixon's Counsel to a federal prisoner as a result of his involvement in the Watergate scandal. Although his power and pride crumbled, Colson's faith in Jesus Christ was strengthened. Upon his release from prison, Colson vowed never to forget the prisoners he left behind. In 1976, he founded Prison Fellowship, the largest prison ministry in the world today.

The genesis of Justice Fellowship actually began as a response to the use of solitary confinement and other appalling living conditions in prison. Chuck was the first outsider to enter Washington State Penitentiary in Walla Walla after a nine-month lockdown ended in 1979. He insisted on going into the worst segregation unit. The assistant warden offered him a raincoat since it was likely he would have excrement and urine thrown at him. Chuck declined the raincoat. No one threw anything at him as he made his way through, offering to pray for each prisoner, but Chuck was appalled by the filth, overcrowding, and chaos. He promised the leaders among the prisoners that he would take their story to the movers and shakers on the outside. Chuck's exit from the prison gates at Walla Walla became the founding moment for Justice Fellowship.

In the past 30 years, Colson and Justice Fellowship have played a leading role in passing groundbreaking justice reforms at the state and federal level. I am honored to continue leading Justice Fellowship by advancing reforms that increase restorative outcomes for victims, offenders, and communities. Thanks to funding included in the recent spending bill, I am pleased to report that Chuck's legacy on these issues lives on through the Charles Colson Task Force on Federal Corrections, which will review the challenges faced by the Bureau of Prisons and make recommendations for further reforms. I am grateful to the Chairman and Ranking Member for their leadership in addressing one of the Bureau's most pressing issues today—dangerous overcrowding—by sponsoring and cosponsoring the Smarter Sentencing Act.[2] This broad bipartisan support for reforming and reducing mandatory sentences for non-violent drug offenses is a signal that the political left and right are finally willing to cast aside sacred political epithets such as being "tough on crime" and "lock 'em up and throw away the key" in order to have a meaningful conversation on how address the real challenges facing our nation's criminal justice system.

The History of Faith Communities and Solitary Confinement

The opening of the Eastern Pennsylvania Penitentiary in 1829 has been called the United States' "first experiment" in solitary confinement.[3] The term "penitentiary" was coined because the Quaker leaders believed that placing prisoners in solitary cells made of stone would cause them to meditate on their sins, pray, and become penitent.[4] However, the Quakers realized the critical spiritual element of fellowship cannot be overlooked. After visiting the penitentiary in 1842, Charles Dickens documented his observations of the men held in these solitary cells: "I believe it

[2] S. 1410, 113th (as reported by S. Comm. on the Judiciary, Jan. 30, 2013).
[3] Laura Sullivan, *Timeline: Solitary Confinement in U.S. Prisons*, NATIONAL PUBLIC RADIO, July 26, 2006, http://www.npr.org/templates/story/story.php?storyId=5579901.
[4] Id.

. . . to be cruel and wrong. I hold this slow and daily tampering with the mysteries of the brain, to be immeasurably worse than any torture of the body."[5]

I am glad to say that the faith community has made progress in reclaiming its history. Today, along with many faith groups, the Quakers are actively involved[6] in advocating for reform of the use of solitary confinement and other pressing criminal justice issues.

The Overuse of Solitary Confinement

Isolating a prisoner in a cell alone may be necessary in cases where an individual poses a serious threat to institutional safety, but the overuse of solitary confinement for non-violent rule infractions, involuntary protective custody, and as a response to people acting out as a result of untreated mental illness, is not only wrong from a moral perspective, but often counterproductive.

In theory, solitary confinement is for "the worst of the worst" prisoners. Yet, the data often reveals a very different story. The Vera Institute's Segregation Reduction Project found 85 percent of prisoners were sent to disciplinary segregation for minor rule infractions in Illinois.[7] Common violations included being out of place, failing to report to an assignment, and refusing an order.

We should move out of solitary confinement people who were placed there for non-violent rule infractions, but even for people who landed there for legitimate safety reasons, we must make strides to give them opportunities to regain trust and make positive social choices. The goal should always be to move prisoners back to general population, and staff should be rewarded for encouraging prisoners to do so. People in segregation should have their cases individually reviewed by an independent authority regularly to determine their progress and whether less restricted housing is appropriate.

Public Safety at Risk: From Solitary to the Street

One of Justice Fellowship's staff took a tour of segregation units in a state maximum security prison over a year ago. The prison had one staff member dedicated to a pilot "step-down" program. The program targeted prisoners who were currently in segregation but were due for release to the community within the next year and would move them to gradually less restrictive housing and increased programming. When asked how many of the prisoners on the long list for release were participating, the staff person replied that around 25% were involved. When asked about the rest, she replied that they did not have any capacity to include more of the prisoners,

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[5] CHARLES DICKENS, AMERICAN NOTES 146 (Fromm Int'l 1985) (1842).

[6] Rachael Kamel & Bonnie Kerness, *The Prison Inside the Prison: Control Units, Supermax Prisons, and Devices of Torture*, AMERICAN FRIENDS SERV. COMM. (2003), http://afsc.org/sites/afsc.civicactions.net/ files/documents/ PrisonInsideThePrison.pdf.

[7] *Reassessing Solitary Confinement: The Human Rights, Fiscal and Public Safety Consequences: Hearing Before the Subcomm. on the Constitution, Civil Rights, and Human Rights of S. Comm. on the Judiciary*, 112th Cong. 4 (2012) (statement of Michael Jacobson, President & Director, Vera Institute of Justice) (available at http://www.vera.org/files/michael-jacobson-testimony-on-solitary-confinement-2012.pdf).

and some of them were just too dangerous to risk it. By now, these people—*too dangerous for the general prison population*—are our neighbors.

This phenomenon poses a serious public safety concern that should be thoroughly researched and addressed. One study found that prisoners freed directly from solitary confinement cells to the community had recidivism rates that doubled those of prisoners who were given a period of transition into the general prison population before release.[8]

People with Mental Illness

Many studies have documented the detrimental psychological and physiological effects of long-term segregation.[9] I want to be clear that I am distinguishing mental *health* problems, which almost all of us face at some point in life, from acute mental *illness*.

Mental illness is too often punished rather than treated. Kevin, a young man I have the privilege to know, was diagnosed with bipolar disorder when he was 11. Other teenage boys pressured him to rob a pizza joint with a toy gun at 14. As a result, he was sent to a secure juvenile facility and later moved to an adult prison in Michigan where he spent nearly a year in segregation. Describing how the conditions made him feel he said, "It's like a panic attack, like being trapped in an elevator. Eventually, I have to do something to get it out."[10] One time, that "something" was ripping a suicide blanket so that he could try to hang himself. Rather than try to get this young man the help he needed, prison officials ordered him to reimburse the department $145 for the blanket and took 12 days of privileges away. Today, Kevin and his family are active advocates for justice reforms.

In many ways, this is a systemic problem that starts long before people enter the criminal justice system. Jails have become the *de facto* mental institutions in our country. I am grateful that the Senate Judiciary Committee has taken a significant step to address this systemic issue, by passing the Justice and Mental Health Collaboration Act, which equips law enforcement with Crisis Management Teams to respond to people displaying signs of mental illness and provide them with the resources they need before they are booked into jail.[11] Additionally, the legislation includes a specific provision providing the Attorney General with the ability to award resources to correctional institutions to develop alternatives to solitary confinement.[12]

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[8] *See, e.g.*, Lovell, et al., *Recidivism of Supermax Prisoners in Washington State*, 53 CRIME AND DELINQ. 633, 633–56 (Oct. 2007).

[9] *See e.g.*, Stuart Grassian & Nancy Friedman, *Effects of Sensory Deprivation in Psychiatric Seclusion and Solitary Confinement*, 8 INT'L J.L. & PSYCHIATRY 49 (1986); Craig Haney & Mona Lynch, Regulating Prisons of the Future: A Psychological Analysis of Supermax and Solitary Confinement, 23 NEW YORK UNIVERSITY REVIEW OF LAW AND SOCIAL CHANGE 477-570 (1997); Craig Haney, Mental Health Issues in Long-Term Solitary and "Supermax" Confinement, 49 CRIME & DELINQ. 124 (2003).

[10] Jeff Gerritt, *Mentally Ill Get Punishment Instead of Treatment*, DETROIT FREE PRESS (Feb. 5, 2012) http://www.freep.com/article/20120205/OPINION02/202050442/PUNISHMENT-INSTEAD-OF-TREATMENT-Hundreds-of-Michigan-s-mentally-ill-inmates-languish-in-solitary-confinement-lost-in-a-prison-system-ill-equipped-to-treat-them.

[11] S. 162, 113th (as reported by S. Comm. on the Judiciary, June 20, 2013).

[12] Id. at § 3(j)(2)(C)(iii).

Maximizing Opportunities for Interaction and Healthy Relationships

We should never lose sight of a person's humanity and their need for fellowship. If someone needs to be placed in segregation because they pose an imminent danger, the environment must be as safe and humane as possible. Corrections administrators should have a plan in place that is focused on changing that person's behavior so they can succeed not only in the general prison population, but in society upon release.

Men and women who are in segregation for legitimate security reasons should be afforded the maximum opportunity possible for interaction with other human beings, communication with family and mentors, books, and other productive activities. The recent American Correctional Association standards affirm that people held in segregation and protective custody should have access to educational services, commissary, library access, religious guidance, counseling, and other activities.[13]

Alternatives and Strategies

A growing number of jurisdictions have requested assistance through independent review experts available to address the overuse of solitary confinement through the National Institute of Corrections as well as nonprofits like the Vera Institute's Segregation Reduction Project launched in 2010.[14] I want to share some general concepts of promising alternatives and strategies used in several of these jurisdictions that have reduced the use of segregation as a result of this assistance:

- Creating "missioned housing" that allows for services targeted to the needs of prisoners with mental illness, developmental delays, or those at risk of sexual victimization. These units provide a smaller community setting for these vulnerable populations without placing them in solitary confinement.
- Whenever possible, offering alternative responses to disruptions such as anger management and behavior programs, reduction of privileges, or restricted movement in the prisoner's current housing.
- Providing incentives for positive behavior such as increased privileges, enhanced education, and job training.
- Providing training for staff on motivational interviewing to communicate with prisoners in a supportive manner that promotes pro-social behavior.
- Screening prisoners for cognitive disabilities and providing specialized training for staff on how to redirect and communicate effectively with this population.
- Staff training and enhanced interventions for developmentally and intellectually delayed prisoners.

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[13] *Using Administrative Segregation to Manage Offenders*, AMERICAN CORR. ASS'N (Winter 2013), http://www.aca.org/conferences/winter2013/WC2013_Presentations/C-1I%20Using%20Administrative%20Segregation%20to%20Manage%20Offenders.pdf.

[14] Segregation Reduction Project, VERA INSTITUTE OF JUSTICE, http://www.vera.org/project/segregation-reduction-project (last visited Feb. 20, 2014).

Jurisdictions employing these strategies have not only reduced their use of segregation, but have also tracked concurrent reductions in the use of force on prisoners and the number of prisoner grievances.[15]

Accountability

Inviting accountability is not an easy thing to do, but it is a sign of good governance. We applaud the many jurisdictions, including the Bureau of Prisons, that have invited independent experts to review their use of segregation.

I also want to acknowledge the American Correctional Association and the Association of State Correctional Administrators for the work they have done to issue standards, provide an increased number of trainings, and generally raise awareness and opportunities to discuss best practices among their members.

Government accountability, whether over the Internal Revenue Service or the Department of Justice, is not a project with an end date. These are positive steps, but when the issue of human liberty and public safety is at stake, we must never give up watch.

We look forward to partnering with law enforcement and corrections officials as we continue to improve accountability and oversight, and increase the resources needed to advance best practices in our nation's prisons, jails, juvenile, and immigrant detention facilities.

Justice Fellowship's Recommendations

I would like to leave you with three parting recommendations:

1. Do not let the conversation end here. Stay invested in the Bureau of Prisons' progress and look for more opportunities for oversight and transparency in the future. One such opportunity might be through review by the Chuck Colson Task Force on Federal Corrections.
2. I urge you all to work with your colleagues in the Senate and the House to pass the Smarter Sentencing Act and the Justice and Mental Health Collaboration Act. We must reduce the dangerous overcrowding in the federal system which contributes to violence and the subsequent overuse of solitary confinement. We must also provide law enforcement and corrections officers with the training and support they need to divert people with serious mental illness from jails in the first place and to develop alternatives to segregation.
3. Make a personal investment in promoting restoration of your community. Many of us know how to give our clothes to those without and donate food to the hungry, but few know how to visit the prisoner. If you haven't had this opportunity, I would invite each of you to come with us to visit a prison and learn more about these issues firsthand.

Conclusion

[15] Sec'y Bernard Warner, *Restrictive Housing*, (2013) (DOC Internal Report).

Restorative justice requires that the criminal justice system do more than warehouse people convicted of crimes. Restorative justice requires proportionate punishments to hold men and women accountable for the harm they have caused to their victims and communities. It requires treating those convicted of a crime with fairness and dignity, even if they are locked behind bars. It requires opportunities during incarceration for prisoners to make amends and rebuild the trust of the community. It requires finality of punishment, opening the door to a second chance and a fresh start. We have suffered decades of unproductive pendulum-swings in criminal justice. It is time to turn to what may seem a new and radical model, but is actually a long-standing and well-proven one: justice that restores.

In closing, I would like to thank the Chairman and Ranking Member for holding this federal hearing on solitary confinement, and I look forward to continuing our dialogue on this important issue.

Testimony of Piper Kerman
Hearing before the Senate Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights and Human Rights
"Reassessing Solitary Confinement II:
The Human Rights, Fiscal, and Public Safety Consequences"
Tuesday, February 25, 2014

Chairman Durbin, Ranking Member Cruz, and distinguished members of the Subcommittee, I want to thank you all for this opportunity to address you and for organizing this important hearing.

I spent 13 months as a prisoner in the Federal Bureau of Prisons system from 2004-2005, with most of my time served at the Federal Correctional Institution in Danbury, Connecticut. From my first hours of incarceration, whispers and warnings about solitary confinement – better known as the SHU – came with frequency and from all quarters, prisoners and staff alike. One of the first women to befriend me in prison had just spent a month in the SHU for a minor infraction. Solitary confinement is a prison within a prison. But unlike the hive-like communities of people that exist behind prison walls, which have conflicts but also opportunities for redemption, 24-hour lockdown leaves you completely alone in a six-by-eight foot cell for weeks, sometimes months and even years. Here, the terror and the lasting damage of incarceration may be increased a thousand fold. This is unproductive for individuals, the institutions and the outside communities, to which the vast majority of prisoners will return.

If you are familiar with my book, *Orange is the New Black*, you know I'm the first to acknowledge that unlike many prisoners, I have the resources and support to take my own experiences in prison and use them to try to make critical improvements to this country's criminal justice system. Since my release, I have worked with many criminal justice-involved women who need help advocating for the changes they need to be safe and to get back on their feet. I am here today in that capacity.

If you've watched the Netflix original series adapted from my book, you may recall an episode in which the character that is based on me spends time in the SHU. Although today I will share many stories about solitary confinement, I mercifully did not spend any time in solitary. However, the way solitary confinement is handled on the show is an accurate depiction and the silencing effect of the SHU is very real.

Women in Solitary Confinement

When we think of solitary confinement, most of us don't picture *women* being subjected to this form of extreme punishment. But the truth is that women prisoners are routinely subjected to solitary confinement in jails, prisons and detention centers across the United States.[i] Increasingly, the American public and our leaders are learning about the profound negative psychological impacts of solitary confinement and the excessive number of people held in these conditions, but I want to talk about the unique harms and dangers of subjecting women prisoners to this practice.

Women are the fastest growing population in the criminal justice system and their families and communities are increasingly affected by what happens behind bars. At least 63% of women in prison are there for a nonviolent offense.[ii] However, some of the factors that contribute to these women's incarceration can also end up landing them in solitary confinement. Mental health problems are overwhelmingly prevalent in women's prisons and jails, which have a much higher percentage of mentally ill prisoners than in men's facilities.[iii] High incidences of sexual and physical assault[iv] are a reality for women in prison, jail, and immigration detention centers, both before and during their incarceration.[v] These facts are very important in relation to the use of solitary. It is critical for our criminal justice system to address

the unique situation of women in prison—especially those women subjected to the social and sensory deprivation of solitary confinement.

While I was in prison, I saw many women sent to the SHU for minor infractions such as moving around a housing unit during a count, refusing an order from a correctional officer, and possession of low-level contraband like small amounts of cash (which is largely useless in prison) or having women's underwear from the outside rather than prison-issued underwear. All of these infractions drew at least 30 days in solitary. Sometimes women are sent to the SHU immediately upon their arrival in prison because there aren't any open beds. This is especially terrifying if a woman has never been in prison or jail before, which is often the case. Stories about the SHU are rampant – some told directly by the women who experienced solitary first hand, but often passed along from prisoner to prisoner. They all evoke terror and a conviction to keep your head down and report nothing that you see, hear or experience for fear that you may be locked down in isolation.

I have submitted for the record the full written testimony of Jeanne DiMola, who spent one year of her six-year sentence in solitary. She describes with chilling detail the neglect and abuse she endured while in the SHU and the impact the experience of extreme isolation still has on her as she works hard to get her life back on track. Jeanne writes: "When you have no one to talk to inside a grey, dingy cell with its blacked out window, you start talking to yourself, then you think your inner self at least deserves an answer, so I began answering myself. I asked myself what if I got swallowed into this black hole in my cell and just disappeared. I asked myself if it would be better off for my family if this thorn in their side went away for them so they can truly forget me. The best way I can describe being in this small box when life is going

on without you is you are dead and the cell is your coffin. Everything goes on without and around you. But you stay the same...stagnant."

Mental Illness

Mental health experts tell us that solitary confinement is psychologically harmful, especially for people with pre-existing mental illness. Serious mental illness can also result from prisoners' experiences in solitary confinement. In studies of prisoners held in solitary confinement for 10 days or longer, people deteriorated rapidly, with elevated levels of depression and anxiety, a higher propensity to suffer from hallucinations and paranoia, and a higher risk of self-harm and suicide.[vi] In solitary confinement units, some prisoners can be found sitting in puddles of their own urine, others smeared in their own feces. The sounds of prisoners shrieking in their cells and banging their fists or heads against the walls is nothing out of the ordinary. Extreme and grotesque self-mutilation is also all too common, such as prisoners who have amputated parts of their own bodies or, in one particularly disturbing case, a prisoner who sewed his mouth shut with a makeshift needle and thread from his pillowcase. Others attempt to or succeed in committing suicide. Regular correctional staff is simply not equipped to deal with the medical issues that are so prevalent within solitary confinement units.

Nearly 75% of women in prison are diagnosed with mental illness. The conditions of confinement are especially difficult for mentally ill people, as adherence to prison rules is simply more difficult for them. This leads to destructive and intense cycles of infractions and punishment. Prisoners with mental illness suffer in ways that make their behavior difficult to manage. They often end up in solitary confinement as a result of behavior that is beyond their

control. They are essentially punished for their illness.[vii] Putting women with mental illness in solitary confinement only exacerbates a pre-existing illness. They often leave prison in far worse shape than when they went in. Women with mental illness will have great difficulty getting back on their feet and returning successfully to the community unless we mandate through all correctional systems that mentally ill women should not be held in solitary confinement, and should instead be appropriately managed with full medical care.

Consider the story of Jan Green. A 50-year-old grandmother and mother of four,[viii] Jan was sent to Valencia County Jail in New Mexico on a domestic violence charge that was later dropped.[ix] Staff at the jail knew she had mental health issues when she came in, but instead of giving her treatment, they pepper sprayed her for refusing to wear jail-issued clothing, and eventually put her in solitary confinement where she spent nearly two years in an 8-by-7-foot cell with a mattress on the floor for a bed.[x] Because the water in her cell did not work properly, Jan was unable to wash her hands or shower.[xi] Not only did her shower head not work, it dripped constantly.[xii] The jail refused to give her toilet paper or sanitary napkins for long periods of time to the point where she was forced to wipe herself with paper bags from her sack lunch.[xiii] When her family picked her up from jail, she was soiled from dried menstrual blood that had accumulated over several months.[xiv]

Jan's mental health deteriorated from the constant water drips, being deprived of sanitation, and endless hours of isolation to the point that she spiraled into total psychosis and was ultimately deemed incompetent to stand trial.[xv] Her daughter's ongoing attempts to get medical care for her mother failed. Not once was she seen by a psychiatrist or medical doctor.[xvi] After months in solitary, Jan's lack of exercise and the poor hygiene caused her sock

to rot into an open wound on her foot.[xvii] After nearly two years in solitary, the criminal charges against Jan were finally dismissed and she was released from custody.[xviii] Her daughter describes the mother she used to know as "outgoing and outspoken," but solitary confinement "shattered her as a person."[xix] When asked about Jan Green, the warden responded: "We're just not equipped with dealing with mental health populations," stating that it was an "economic decision not to provide mental health care."[xx]

Physical and Sexual Abuse

The effects of physical and sexual abuse are also worsened by solitary confinement. I have a vivid memory from early in my prison sentence: a woman who had done a lot of time shared a cautionary tale. She told me about a friend of hers who had gone home not long before; her friend had been sexually abused by a correctional officer, and the abuse was discovered. She told me: "They had her in the SHU for months during the investigation. They shot her full of psych drugs – she blew up like a balloon. When they finally let her out, she was a zombie. It took a long time for her to get back to herself. They do not play here."

Fear of being put in solitary as "protective custody" has a chilling effect on women prisoners' willingness to report sexual abuse, which is commonplace and sometimes rampant in prisons, jails, and detention centers. Another long-time prisoner warned me about a specific correctional officer, calling him a predator; her warning came with a reminder – if a woman ever reported him, she would be locked in the SHU. The terrible threat of isolation makes women afraid to report abuse and serves as a powerful disincentive to ask for help or justice.

In addition, solitary confinement itself can compound the impact of past physical and sexual abuse. A majority of women in state prisons across America report being victims of past physical or sexual abuse.[xxi] In many prisons across this country, women in solitary confinement are watched by male guards during showers, when undressing and when using the toilet. For the majority of women prisoners who have been victimized by men in the past, being watched by male guards during their most private moments can cause acute psychological suffering.[xxii]

A recent Equal Justice Initiative investigation into sexual abuse at Alabama's Tutwiler Prison for Women found that women who report sexual abuse, "are routinely placed in segregation by the warden."[xxiii] In the notorious Otter Creek Correctional Center in Kentucky, a woman who saved evidence from her sexual assault (an epidemic problem within the prison with multiple victims) was reportedly placed in segregation for 50 days.[xxiv] At the Dwight Correctional Center in Illinois, a woman alleged in court documents that she was repeatedly raped by prison staff, eventually resulting in a pregnancy and the birth of her son.[xxv] When the woman tried to report the assaults, she was placed in solitary confinement, and threatened with a longer sentence.[xxvi]

Women who are sexually abused by prison guards are forced to decide between reporting the attack and risking placement in solitary, where they will suffer extreme pain and psychological deterioration, or staying silent and risking further abuse of themselves or others. The use of solitary confinement for "protective custody" perpetuates the cycle of abuse and makes women's prisons more dangerous for the women who live behind their walls.

Impact on Children and Families

In addition to the damaging effects solitary confinement has on women prisoners, children and families also suffer. Solitary confinement impedes access to important pre-natal and women's health care services. In fact, pregnant women in solitary confinement often receive no medical care.[xxvii] Yet pregnant prisoners in America are still sent to the SHU.

I want to tell you about a female inmate in Illinois who I'll call Meghan out of respect for privacy. She had battled depression for years, and found herself pregnant behind bars. Because of her pregnancy, Meghan had to discontinue some of her mental-health medications. She also needed extra sleep. One day, a guard decided Meghan didn't get up fast enough for mealtime and sent her to solitary confinement as punishment. In solitary, Meghan didn't get her prenatal vitamins. Her requests for water were denied — sometimes for several hours, despite the heat in her isolation cell and the known danger of dehydration during pregnancy. Worse yet, the extreme social isolation in solitary further hampered her fight against clinical depression.

Solitary confinement can also cause lasting damage to families and children. The majority of women in prison were their children's primary or sole caregiver prior to incarceration.[xxviii] When these women are incarcerated, maintaining any semblance of a relationship with their children largely depends on regular visitation.[xxix] A child's need to see and hold his or her mother is one of the most basic human needs. Yet visitation for prisoners in solitary confinement is extremely limited, with contact visits often forbidden, and often all visitation privileges revoked. This is true even if the infraction is minor, like possession of contraband or disobeying an order.

These visitation restrictions mean that, when a mother is held in solitary confinement, her children's visits are either limited to interactions through a physical barrier, such as a glass partition, or eliminated altogether.[xxx] Through a partition, a child cannot give his or her mother a hug, or hear her voice clearly. The separation is clear. Solitary punishes innocent children.

Conclusion

For many female prisoners, solitary confinement exacerbates the mental health issues and histories of trauma and abuse with which they already struggle. Most women in prison have not committed violent crimes and are not prone to resort to violence while incarcerated. Solitary confinement is an extreme form of punishment, yet its use within women's prisons is routine – sometimes even sinister when it serves to silence women who are being victimized.

We should all share the same goal here: to curb the unnecessary use of solitary confinement in any form. This is possible, and it happens when correctional leaders and staff do the right thing. Last week, I visited the Marion Correctional Institution, a medium security men's state prison in Ohio. It houses a little more than 2,600 men. Since 2011, they have reduced the number of beds at Marion Correctional needed for "administrative segregation" – long-term solitary confinement – by 48 beds, from 175 to 127. They have cut one SHU unit and converted those beds into different, more productive housing. They did this along with an increase in population of approximately 900 men. This change was not the result of a special initiative focused on the SHU. Rather, within the entire institution, the warden and his staff increased prisoners' access to meaningful activities and rehabilitation, to work opportunities, and to incentive-based programs, and in the process they saw solitary confinement numbers

come down. This is good for the institution as a whole – prisoners, staff and administration – and proves the point of getting good outcomes in correctional systems: it is always a question of strong leadership and recognition that it is human beings that fill our prisons and jails.

Isolation should only be used when a prisoner is a serious threat to her own safety or that of others; it should never be a long-term solution. When isolation is necessary, the conditions must be humane and rehabilitative. We must ensure that women with mental illness and pregnant women are never subject to solitary. And we must prevent women from being sent to solitary for reporting abuses.

As the Federal Bureau of Prisons pursues an independent assessment of its solitary practices, I urge it to include an assessment of practices at a women's facility, such as the FCIs at Tallahassee, Dublin or Alderson, and take action to limit the use of solitary on women. I ask the assessors to visit as many women's facilities as possible, and to include in the assessment confidential discussions with the women who are incarcerated in those facilities.

I am exceptionally proud to say that last week, my home state of New York announced sweeping reforms of the use of solitary confinement, including the prohibition of placing pregnant women in disciplinary solitary confinement. New York is the first state to agree to this important provision, and the Bureau of Prisons and other states should adopt the same set of sensible comprehensive reforms.

Thank you for the opportunity to participate in this important hearing and to help the Subcommittee address this very significant issue. I am hopeful that it will mark the next step in urgently needed and long-term oversight and reform.

[i] *See* Joane Martel, *Telling the Story: A Study in the Segregation of Women Prisoners*, 28 SOC. JUST. 196, 196-197 (2001) (giving an overview of the literature on solitary confinement and finding almost no literature on women in solitary confinement); Cherami Wichmann & Kelly Taylor, *Federally Sentenced Women in Administrative Segregation: A Descriptive Analysis* (2004) (first quantitative study on segregation of federally sentenced women in Canada). *See also infra* at 19 and accompanying text.

[ii] In 2010, 37% of women in state prison were held for a violent offense, compared with 54% of men. E. ANN CARSON & WILLIAM J. SABOL, BUREAU OF JUST. STAT., PRISONERS IN 2011 9 TBL. 9 (2012), *available at* http://www.bjs.gov/content/pub/pdf/p11.pdf.

[iii] DORIS J. JAMES & LAUREN E. GLAZE, BUREAU OF JUST. STAT., MENTAL HEALTH PROBLEMS OF PRISON AND JAIL INMATES 1 & 4 Tbl. 3 (2006), *available at* http://www.bjs.gov/content/pub/pdf/mhppji.pdf ("An estimated 73% of females in State prisons, compared to 55% of male[s] had a mental health problem[]. In Federal prisons, the rate was 61% of females compared to 44% of males; and in local jails, 75% of females compared to 63% of male[s].").

[iv] In state prison, 57.6% of women reported past physical or sexual abuse, compared to 16.1% of men. In federal prisons, 39.9% of women reported past abuse, compared to 7.2% of men. In jails, 47.6% of women reported past abuse, compared to 12.9% of men. CAROLINE WOLF HARLOW, BUREAU OF JUST. STAT., PRIOR ABUSE REPORTED BY INMATES AND PROBATIONERS 1 (1999), *available at* http://www.bjs.gov/content/pub/pdf/parip.pdf. More than a third of women in state prisons or local jails reported being physically or sexually abused before the age of eighteen.

[v] Human Rights Watch, *All Too Familiar: Sexual Abuse of Women in U.S. State Prisons* (1996), *available at* http://www.hrw.org/legacy/reports/1996/Us1.htm [hereinafter *All Too Familiar*] ("One of the clear contributing factors to sexual misconduct in U.S. prisons for women is that the United States, despite authoritative international rules to the contrary, allows male correctional employees to hold contact positions over prisoners, that is, positions in which they serve in constant physical proximity to the prisoners of the opposite sex.").

[vi] *See* Craig Haney, *Mental Health Issues in Long-Term Solitary and "Supermax" Confinement*, 49 CRIME & DELINQ. 124 (2003); Stanley L. Brodsky & Forrest R. Scogin, *Inmates in Protective Custody: First Data on Emotional Effects*, 1 FORENSIC REP. 267 (1988); Stuart Grassian, *Psychopathological Effects of Solitary Confinement*, 140 AM. J. PSYCHOL. 1450 (1983); Holly A. Miller & Glenn R. Young, *Prison Segregation: Administrative Detention Remedy or Mental Health Problem?*, 7 CRIM. BEHAVIOR & MENTAL HEALTH 85 (1997). *See generally* HANS TOCH, MOSAIC OF DESPAIR: HUMAN BREAKDOWN IN PRISON (1992).

[vii] *Id.* (describing how some of the women in the California SHU were placed in solitary for behavior that can be a sign of mental health problems).

[viii] Compl. at 2, 13, *Green v. Chavez*, No. 12-CV-1260 MV/KBM, (D. N.M. 2012).

[ix] *Id.* at 3.

[x] *Id.*

[xi] Chris Ramirez, *4 On Your Side Exposes County Jail Shortcomings*, EYEWITNESS NEWS 4KOB, Feb. 14, 2014, *available at* http://www.onenewspage.us/video/20140208/1612385/On-Your-Side-exposes-county-jail-shortcomings.htm.

[xii] Compl. at 9; Ramirez, *supra* note 6.

[xiii] Compl. at 10-11.

[xiv] *Id.* at 11; Ramirez, *supra* note 6.

[xv] *Id.* at 4.

[xvi] *Id.* at 3, 7, 15, 17.

[xvii] *Id.* at 5.

[xviii] *Id.*

[xix] Ramirez, *supra* note 6.

[xx] *Id.*

[xxi] BUREAU OF JUSTICE STATISTICS, PRIOR ABUSE REPORTED BY INMATES AND PROBATIONERS, *supra* note 11, at 1; *see also* LAPIDUS ET AL., CAUGHT IN THE NET, *supra* note 8, at 47-48 (describing the vulnerabilities of women in prison and in particular the phenomenon of re-traumatization experienced by incarcerated women who have been victims of physical and sexual abuse prior to their incarceration).

[xxii] *See supra* note 12 and accompanying text; *supra* note 49 and accompanying text.

[xxiii] *See* Equal Justice Initiative, Findings: Equal Justice Initiative Investigation Into Sexual Violence at Tutwiler Prison for Women 2 (May 2012), *available at* http://www.eji.org/files/EJI%20Findings_from_Tutwiler_Investigation.pdf.

[xxiv] *See* Kevin Dayton, *Incident Leads to Changes at Prison*, HONOLULU ADVERTISER, Oct. 2, 2008 (detailing the reports of abuse, and noting that the victim was from Hawai'i); *see also* Gary Hunter, *Sexual Abuse by Prison and Jail Staff Proves Persistent, Pandemic*, PRISON LEGAL NEWS, Feb. 21, 2014, *available at* https://www.prisonlegalnews.org/21225_displayArticle.aspx (summarizing many recent cases of sexual assault and rape in prisons across the country).

[xxv] *See* Complaint at 3-5, Doe v. Denning, No. 1:08-cv-01265, Doc. 1 (Mar. 3, 2008, N.D. Ill. E. Div.), *available at* http://ia600402.us.archive.org/31/items/gov.uscourts.ilnd.217697/gov.uscourts.ilnd.217697.1.0.pdf.

[xxvi] *See id.* at 4

[xxvii] *See* Testimony by the Correctional Association of New York Before the Senate Judiciary Committee's Subcommittee on the Constitution, Civil Rights and Human Rights, *supra* note 32, at 4 ("[I]solation can compromise women's ability to fulfill their particular needs related to reproductive health care, for instance by impeding pregnant women's access to critical obstetrical services, preventing them from getting the regular exercise and movement vital for a healthy pregnancy. Similarly, women in isolation may be dissuaded from requesting care related to sensitive gynecological issues because they are required to inform correction officers about details of their medical problem, may have serious difficulty accessing appropriate medical staff when they do reach out, may be shackled during gynecological appointments that do occur, and will often interact with medical providers in full view of correction officers and/or receive superficial evaluations through closed cell doors."); Interview with Gail Smith, Exec. Dir. CLAIM IL (May 15, 2013).

[xxviii] GLAZE & MARUSCHAK, *supra* note 17, at 4.

[xxix] SUSAN D. PHILLIPS, THE SENTENCING PROJECT, VIDEO VISITS FOR CHILDREN WHOSE PARENTS ARE INCARCERATED: IN WHOSE BEST INTERESTS? 1-2 (2012), *available at* http://sentencingproject.org/doc/publications/cc_Video_Visitation_White_Paper.pdf (describing the importance of and barriers to visitation of incarcerated parents).

[xxx] *Id.*, at 3-5 (recognizing that video visitation is not a substitute for face-to-face visits, but can be useful when used in addition to face-to-face visits); THE UNIVERSITY OF VERMONT, PRISON VIDEO CONFERENCING 2 (noting in-person visitation is most effective and advising that virtual visitation should be used to increase parent-

child contact, not to replace in-person visitation); *Graham v. Graham*, 794 A.2d 912, 915 (Pa. Super. Ct. 2002) (noting virtual visitation is not equivalent to in-person visitation for a parent).

Texas Public Policy
FOUNDATION

Testimony of Marc A. Levin, Esq.
Director of the Center for Effective Justice at the Texas Public Policy Foundation Before the U.S Senate Judiciary Subcommittee on The Constitution, Civil Rights and Human Rights

February 25, 2014

A. INTRODUCTION

The Texas Public Policy Foundation (TPPF) is a conservative think tank. Our mission is to promote and defend liberty, personal responsibility, and free enterprise, and in 2005 the Foundation launched the Center for Effective Justice, which has worked with all three branches of Texas government to advance solutions that emphasize offender and system accountability, empowerment and restoration for victims of crime, and fiscal responsibility. We've assisted with reforms in Texas that have led to the closing of 10 juvenile and adult correctional facilities while at the same time achieving crime reductions that have surpassed the overall national decline. Texas now has its lowest crime rate since 1968.[1] In 2010, the Texas Public Policy Foundation launched Right on Crime, which is a national clearinghouse for conservative criminal justice reforms. The Right On Crime Statement of Principles has been signed by many of the country's most prominent conservative leaders.

As conservatives, we are appropriately skeptical of government that is too large, too intrusive, and too costly, and we insist on accountability and transparency. Government is at its most restrictive when it imposes solitary confinement so it is only appropriate that we bring a critical focus to this issue rather than succumb to an out of sight, out of mind mentality. While we recognize solitary confinement is needed in some instances, policies and practices must be implemented to ensure it is not unnecessarily used to the detriment of public safety, taxpayers, and justice.

The U.S. Bureau of Prisons (BOP) maintained approximately 12,400 inmates in solitary confinement at the time of the May 2013 General Accounting Office (GAO) report, although BOP officials claim the segregated population has declined since then. Many more inmates are so housed in state prisons, which typically means 23 hours alone in a small cell with no stimulation or interaction with other people. The GAO report found that the use of solitary confinement has been growing in the federal prison system despite a lack of any available evidence that this practice was increasing safety for inmates and staff.[2] The GAO report also for the first time revealed the actual cost of solitary confinement on the federal level, finding that it amounts to $78,000 per inmate per year, nearly three times that of housing inmates in the general population.[3] Since the time of the last Senate hearing on solitary confinement, BOP has agreed

to begin an audit that will, for the first time, lead to some outside scrutiny of BOP's use of segregation.

The research in this area and the recent successes that several states have achieved in both reducing solitary confinement and improving order in their correctional facilities suggests that there are changes in policies and practices from which both the BOP and state prison systems can benefit.

B. Solitary Confinement Can Endanger Public Safety

While often viewed primarily as a moral issue, solitary confinement has significant implications for public safety. First and foremost, prisons must discontinue the practice of releasing inmates directly from solitary confinement to the public.

A study in Washington state found that inmates released directly from the Supermax prison, which consists entirely of solitary confinement, committed new felonies at a rate 35 percent greater than that for inmates of the same risk profile released from the general population.[4] Additionally, a greater percentage of the new crimes committed by those released from solitary confinement were among the most serious violent felonies.[5]

Despite this finding, many states continue to release inmates directly from solitary confinement, with more than 1,300 such releases in 2011 in Texas alone.[6] In 2013, a Colorado inmate released directly from solitary confinement murdered the state's director of corrections, Tom Clements. Alarmingly, dating back to 2002, half of those released from Colorado prisons who subsequently committed murder served time in solitary confinement, with some discharged directly to the street. However, as documented below, major changes are underway that are significantly reducing overall solitary confinement in Colorado and those discharged directly from this custody level, with the latter figure falling from 221 in 2004 to 70 in 2013.[7]

The average American may understandably wonder, if an inmate is too dangerous for the general population of a prison, how can they live next to me the next day? While inmates who have served their entire sentence must by law be released, this date is not a mystery to corrections officials. Stepping them down to a lower level of custody at least several months prior to release is not too much to ask.

While it is commonsensical to most people that someone who was subjected to 23 hours a day in a cell with no stimulation will have great difficulty reentering society the next day, the negative effects of solitary confinement on those who were mentally ill even prior to entering solitary confinement are well documented. *The Journal of the American Academy of Psychiatry Law* noted: "The stress, lack of meaningful social contact, and unstructured days can exacerbate symptoms of illness or provoke recurrence. Suicides occur disproportionately more often in segregation units than elsewhere in prison."[8] One study found that 45 percent of prisoners in

solitary confinement suffered from serious mental illness, marked psychological symptoms, psychological breakdowns, or brain damage.[9]

C. Jurisdictions Have Proved Solitary Confinement can be Safely Reduced

One of the most stunning examples of downsizing solitary confinement comes from Mississippi. In 2007, Mississippi had 1,300 inmates in solitary confinement while today there are only 300.[10] This downsizing has saved Mississippi taxpayers $6 million, because solitary confinement costs $102 per day compared to $42 a day for inmates in the general population.[11] Most importantly, violence within Mississippi's prisons and the recidivism rate upon release are both down, with violence dropping nearly 70 percent.[12]

Maine is a similar success story. In 2011, the state prison in Warren instituted a plan to reduce long-term segregation which has resulted in a decline in the segregated population from 139 in August 2011 to between 35 and 45 inmates just a year later.[13] Importantly, Maine Corrections Commissioner Joseph Ponte said the downsizing of solitary confinement has led to "substantial reductions in violence, reductions in use of force, reductions in use of chemicals, reductions in use of restraint chairs, reductions in inmates cutting [themselves] up — which was an event that happened every week or at least every other week…The cutting has] almost been totally eliminated as a result of these changes."[14]

Some of the changes involved reducing the duration of solitary confinement – for example, those segregated for drugs can now graduate out of confinement and stay in the general population as long as they pass drug tests. Moreover, there was a change in the chain of command. Rather than the shift captain being able to place an inmate in segregation for more than three days, the segregation unit manager and the housing unit manager must agree after this period to continue the segregation and that decision must be ratified by the Commissioner.

Similarly, in the last decade, Ohio dramatically reduced its solitary confinement population from 800 to 90 prisoners.[15] Additionally, from September 2011 to September 2013, Colorado cut the number of inmates in solitary confinement from 1,505 to 662. The number of mentally ill offenders in solitary confinement has fallen even more sharply and Colorado Department of Corrections Executive Director Rick Raemisch has proposed that, for those mentally ill offenders who are not redirected to a secure treatment program, they be given at least 20 hours of out-of-cell programming per week.

It is important to note that prison staff do not necessarily want more inmates to be in solitary confinement. In fact, in January 2014, the association representing Texas prison guards, AFSCME Texas Correctional Employees Local 3807, called for reducing the solitary confinement of death row inmates, noting that because "inmates have very few privileges to lose," staff become easy targets.[16]

There have been some incremental advances in improving Texas' use of solitary confinement. In 2013, a provision was enacted requiring an independent study of solitary confinement that is now getting underway. Also, bills that were proposed on this issue in the last several legislative sessions brought the matter to the attention of corrections leaders. At hearings on the legislation, Texas Department of Criminal Justice (TDCJ) officials were called to testify to explain their policies and practices and it was apparent that, while legislators did not want to micromanage the agency, they wanted to see progress. From 2007 to the most recent report, the number of inmates in solitary confinement in Texas prisons, referred to as administrative segregation, has dropped from 9,347 to 8,238.[17] These figures do not include those in "safekeeping," a form of protective custody for vulnerable inmates such as former police officers.

One of the keys to the modest reduction in solitary confinement in Texas has been the elimination of the waiting list for the Gang Renunciation and Disassociation Program (GRAD) where inmates can earn their way out of solitary confinement by renouncing their gang affiliation and receive protection during the process. Notably, none of the inmates who have completed this program have ever returned to solitary confinement.[18] In Texas, unlike many other states, inmates can be placed in solitary confinement not only for disciplinary violations, but also upon initial entry into prison if they are suspected to be gang members. This is why the GRAD program is particularly important.

More broadly, any intervention that reduces prison violence is likely to reduce solitary confinement by avoiding the incidents that often lead to it. One of the best models for promoting order in prisons is the parallel universe model embraced by Arizona in 2004 through the "Getting Ready" program, which won the innovation award from the Harvard University JFK School of Government. The parallel universe model attempts to make prison more like ordinary life in that how the inmate is treated is directly related to their behavior. For example, inmates who are exemplary, both in completing educational and treatment programs, holding a job inside of prison, and maintaining an unblemished disciplinary record, have a longer curfew and receive better food. Since the program was implemented, inmate violence has decreased by 37 percent, inmate-on-staff assaults by 51 percent, and inmate suicides by 33 percent.[19] So many inmates are working through the program that they have contributed more than $1 million to a fund for victims of crime, and recidivism rates of participants are 35 percent lower than for similar inmates.[20]

By the same token, the swift and certain sanctions model that is so successful in the HOPE Court certainly has a place inside prisons. It is a bit more challenging to apply a matrix of intermediate sanctions in prison because there are fewer privileges that inmates have that can constitutionally be withheld, as compared with those on probation or parole. However, such sanctions can include withholding access to the commissary, withholding access to the phone and mail except to communicate with an attorney, relocation to a less desirable cell or higher security unit and away from any inmate with whom they have a dispute, and even short stints in solitary confinement of 24 to 72 hours. Required anger management programming should also be

available as a response to misconduct. While inmates who instigate force causing serious bodily harm to a staff member or other inmate should be placed in solitary confinement for a significant period of time rather than dealt with through intermediate sanctions, these intermediate sanctions can address the more common, less severe disciplinary infractions before they escalate to that point.

However, perhaps the most effective sanction is sometimes not available due to policies that result in a large share of inmates serving all or nearly all of their sentence behind bars, regardless of their behavior. Those inmates eligible for parole typically realize that their record of behavior inside prison will be a major factor in whether they will be approved for parole. In those states with good time or earned time policies, the only way an inmate can earn time off their sentence is through good behavior, though under earned time policies they often must go beyond that by completing treatment, educational, and vocational programs. Yet, the federal government and many states abolished parole in the 1990's, even for nonviolent offenders. Some of these same states such as Florida also adopted so-called truth-in-sentencing policies that require even nonviolent offenders to serve 85 to 90 percent of their sentences beyond bars.

However, a 2013 a study conducted by the Pew Charitable States Public Safety Performance Project of New Jersey of inmates released from prison found that comparable inmates placed on parole supervision committed 36 percent fewer new offenses, casting doubt on policies such as the abolishment of parole that have led to more inmates maxing out their entire term behind bars.[21] Not only does the elimination of parole and requirements that inmates serve virtually all their time in prison put prison growth on auto-pilot, these policies create another drawback that is relevant here. That is, many inmates know that, unless they go so far as to commit another crime in prison, they will be released on the same date or virtually the same date regardless of their behavior. The same drawback applies to life without parole sentences, which while justified in many of the cases in which they are imposed due to the heinousness of the crime and a pattern of violence, are being served by inmates in Louisiana for offenses such as marijuana and stealing a belt.[22] While Louisiana is the state with the most nonviolent offenders serving life without parole, the federal system dwarfs all states, accounting for two-thirds of the 3,278 prisoners serving life without parole in 2013 for nonviolent offenses. By reducing the share of inmates, particularly nonviolent inmates, who must serve all or virtually all of their entire terms behind bars, we can ensure that more inmates have an incentive to avoid the types of misconduct that often lead to solitary confinement.

D. RECOMMENDATIONS

The successful experiences of several states and the empirical research in this area lead to many recommendations that can reduce the unnecessary use of solitary confinement while promoting order in correctional facilities. These include:

1) End the practice of releasing inmates directly from solitary confinement.

2) Ensure that there is an oversight mechanism, whether that is an ombudsman or the head of the department, to review decisions to keep an inmate in solitary confinement beyond 72 hours. This is particularly important in states like Texas where inmates can be placed in solitary confinement simply for being a suspected gang member, a determination which is prone to human error.
3) Provide a means for inmates to earn their way out of solitary confinement, such as through a period of exemplary behavior and gang renunciation, if they were not placed there for instigating force that caused serious bodily injury to a staff member or other inmate.
4) Eliminate rules that make all inmates in solitary confinement ineligible for any programing and allow such inmates access to constructive reading materials, including educational course books.
5) Enhance training for prison personnel in de-escalation techniques, mental illness, and mental retardation, issues which often lead to solitary confinement. Some states such as Nebraska are looking at having some higher level prison guard positions filled by individuals with degrees in areas such as social work who are better equipped to not just respond to behavior, but change it.
6) Require agencies to include in their annual or biennial budget proposals an estimate of the additional cost attributable to solitary confinement.
7) Implement a parallel universe model that creates incentives for positive behavior and self-improvement.
8) Create a matrix of intermediate sanctions that must be used prior to placing an inmate in solitary confinement for more than 72 hours, unless that inmate has instigated force that caused serious bodily injury to a staff member or other inmate.
9) For nonviolent inmates, restore parole and allow for earned time, thereby reducing the number of "dead-enders" and allowing for substantial variation in time served based on the inmate's performance. We recommend the pending bills before this Committee by Senators Whitehouse and Portman (S. 1675) and Cornyn (S. 1783) that would expand earned time for nonviolent offenders
10) Enact into law the Smarter Sentencing Act (S. 1410), introduced by Chairman Durbin and Senator Lee, and cosponsored by Ranking Member Cruz, which will reduce overcrowding in the federal system so that we can focus on the most serious offenders, lead to safer institutions, and save billions that can also be used for other important public safety priorities. Overcrowding can contribute to the overuse of solitary confinement by leading to an insufficient number of guards to control inmates in the general population and making it more difficult to separate inmates and groups of inmates who may have issues with one another.
11) Utilize "missioned housing," which are separate, smaller correctional settings, for inmates in segregation as protective custody, such as former police officers and those who have recently exited a gang, as well as for mentally ill and developmentally delayed inmates who were segregated due to an inability to follow orders. These inmates who did not harm another inmate or staff member should not be subject to 23 hours of solitary confinement alongside those who committed acts of violence behind bars. The Wisconsin

model of Special Management Units provides an example of such "missioned housing" for these types of inmates.

12) Reexamine prison construction and renovation plans, including the planned BOP retrofitting of the Thomson unit purchased from Illinois, to ensure unnecessary Supermax/solitary confinement beds are not added. Even if additional maximum security capacity is needed, the vast majority or all of the beds can be general population beds.
13) Other states should join the BOP and states such as Illinois and Maryland in bringing in an outside organization, such as the Vera Institute, to provide a perspective from outside the system, analyze data, and help train wardens and other personnel in alternative strategies. Vera provided technical support to Washington and Ohio in successfully reducing solitary confinement and is now working with Illinois and Maryland through their Segregation Reduction Project to analyze data, and help train wardens and other personnel in alternative strategies. In Illinois, for example, Vera found that 85% of the more than 2,000 inmates in solitary confinement were placed there for less severe types of infractions and that the average length of stay was some 2.8 years.[23]
14) Improve availability of data. For example, there is no reliable data on the number of inmates in different types of segregation (punitive versus protective) and very little data at all on local jails and immigration detention centers.

E. Conclusion

It is doubtful that any prison warden ever lost their job for putting an inmate in solitary confinement. Prison officials are rightly worried about being held to account for prison violence and escapes. Consequently, absent independent scrutiny and a focus on this issue at the highest level in a corrections agency, the natural incentive within the system can be to use solitary confinement excessively. As conservatives who believe in holding institutions accountable, we must be especially vigilant in shining a light into these darkest recesses of government. Now, that light is illuminating policies and practices that can lead to greater public safety through improved offender outcomes, lower costs to taxpayers, and more orderly correctional facilities.

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Testimony of Rick Raemisch
Executive Director of the Colorado Department of Corrections
"Reassessing Solitary Confinement II: The Human Rights, Fiscal,
and Public Safety Consequences"
February 25, 2014
Administrative Segregation: A Story without an End

Chairman Durbin, Ranking Member Cruz, and members of the Subcommittee:

I am Rick Raemisch, Executive Director of the Colorado Department of Corrections. I was appointed to this position following the murder of the Department's former Executive Director on March 19th of last year. Tom Clements, as many of you know, was murdered answering the door of his home by a recent parolee who had been released directly into the community from Administrative Segregation.

I am honored to appear before the Subcommittee, and I look forward to talking to you about Administrative Segregation and what we are doing in Colorado to prevent such tragedies from ever happening again.

My career in law enforcement began in 1976 when I became Deputy Sheriff in Dane County, Wisconsin. During the three decades that followed, I served the citizens of my home state as Deputy; Undercover Narcotics Detective; elected Sheriff; Assistant District Attorney; Assistant U.S. Attorney; Administrator of Probation and Parole, Wisconsin Department of Corrections; Deputy Secretary, Wisconsin Department of Corrections; and Secretary, Wisconsin Department of Corrections.

My experiences in law enforcement have led me to the conclusion that Administrative Segregation has been overused, misused, and abused for over 100 years. "The Steel Door Solution" of segregation, as I call it, either suspends the problem or multiplies it, but definitely does not solve it. If our goal is to decrease the number of victims inside prison, and outside prison, like Tom Clements, then we must rethink how we use Administrative Segregation, especially when it comes to the mentally ill. This is a goal I pursued in Wisconsin and now am pursuing in Colorado.

While head of the Wisconsin Department of Corrections (DOC), I was accountable for more than 22,000 inmates, 73,000 individuals on probation or parole, and approximately 1,000 juveniles. During my three and a half years leading the Department, we made tremendous strides in reducing the number of offenders in Administrative Segregation and removing those with mental illness so they could receive treatment.

I was in Wisconsin when I heard of Tom Clements' murder. After the initial shock, I became angry someone had the audacity to take the life of someone who was working hard to improve the quality of life for inmates while also protecting the public. I applied

for the position, and was appointed Executive Director by Governor John Hickenlooper, who wanted me to continue Mr. Clements' vision. For me, it was an opportunity to bring to Colorado what I had started in Wisconsin. Moreover, it was an opportunity for me to channel my anger about Mr. Clements' death into developing and implementing a plan that focuses on using segregation only for those who really need it, making sure those offenders who are released from solitary do not cause more harm, and making sure segregation does not make people more violent.

My belief was, and still is, that it's impossible to hold an offender with an unstable serious mental illness accountable for violating the prison's rules, if the offender doesn't understand the rules he is supposed to be playing by. So expecting a mentally ill inmate who is housed in Administrative Segregation long-term and without treatment to follow the rules is pointless. It's my conviction that long-term segregation creates or exacerbates mental illness. I try to visit institutions at least once a week to talk with staff and inmates including some who are in Administrative Segregation. Often times, the mental illness was apparent. Sometimes inmates were so low-functioning they could not meaningfully function or communicate.

During my time in Wisconsin, I developed many of the philosophies and practices that we are successfully incorporating at the Colorado DOC. Some of this work had already begun under the direction of former Executive Director Tom Clements.

Since leading the CDOC, I've worked with my Executive Team to develop a workable action plan to reduce the use of Administrative Segregation. We are reducing the number of offenders in Administrative Segregation by assessing each case individually. We have made reductions among those with a serious mental illness, those who are released directly from Administrative Segregation into the community, and all other persons in Administrative Segregation.

Along with my Executive Team, I am focusing on allowing the use of Administrative Segregation only for those who truly are a danger to others or themselves. But just because an offender needs to be in Administrative Segregation for safety reasons, that doesn't mean they should sit in a windowless, tiny cell for 23 hours a day. There are other solutions. There are other options.

In Colorado, our goal is to get the number of offenders in Administrative Segregation as close to zero as possible, with the exception of that small number for whom there are no other alternatives. We have put in place an action plan that I believe will get us to that goal by the end of this year. This action plan consists of:

- focusing the use of Administrative Segregation on truly violent offenders who pose an immediate danger to others or themselves;
- not releasing an offender into the community directly from Administrative Segregation;

- removing levels of Restrictive Housing (housing will be driven by incentives);
- developing a Sanction Matrix for violent acts, which will result in placement in Administrative Segregation;
- ending indeterminate lengths of Administrative Segregation placement;
- reviewing the cases of offenders currently housed in Administrative Segregation for longer than 12 months;
- establishing a "Management Control Unit" where offenders have 4 hours a day out of their cells in small groups;
- establishing a "Transition Unit" with a cognitive course to prepare offenders for transition to General Population; and
- redefining the housing assignments with incentives for Death Row offenders. These offenders will no longer be classified as Administrative Segregation cases and will have opportunities to leave their cells 4 hours a day together.

While the goal is to decrease the number of offenders housed in Administrative Segregation, there will always be a need for a prison within a prison. Some offenders will need to be isolated to provide a secure environment for both staff and offenders, but they should not be locked away and forgotten.

Administrative Segregation cannot be a story without an end for offenders. While I continue to believe that offenders who are violent should remain in Administrative Segregation until they can demonstrate good behavior, there must be a defined plan. Offenders, if they are to meet expectations, must know what those expectations are; to succeed, they must know what success looks like. When individuals enter the prison system they know the length of their sentence. The same philosophy should apply to those entering an Administrative Segregation cell.

Since putting the first stage of the Department's action plan into effect in December, we are seeing successes. In these few months, the number of serious mentally ill housed in Administrative Segregation has been reduced to one offender. These offenders removed from Administrative Segregation are receiving treatment in Residential Treatment Programs outside of the containment of Administrative Segregation.

As a result of recent changes, the Colorado Department of Corrections has seen a reduction in the Administrative Segregation population from 1,451 in January 2011 to 597 in January 2014. That is a reduction of nearly 60 percent. Because Colorado's total adult offender incarcerated population is currently 17,574, this means the Colorado DOC Administrative Segregation population is currently just 3.4%, down from a peak of 1,505 or 6.8% in August of 2011. As a result of these reductions, we did not see an immediate increase in assaults. We believe as we track this further, our institutions will actually be safer.

Of course, there is no question that Administrative Segregation is more expensive. The cost of housing an offender in Administrative Segregation is $45,311 a year, compared to the $29,979 a year it costs to house an offender in general population. Therefore, each offender that is housed in the general population and not Administrative Segregation saves the state $15,332 annually per offender.

I am data driven. And if what you care about is victims and the community, you must do what works. What I want is fewer victims. Each person we turn around who was in Administrative Segregation means fewer victims of crime and violence. Ninety-seven percent of all offenders will eventually go back to their communities. Releasing offenders directly from Administrative Segregation into the community is a recipe for disaster. Our job is to effectively prepare each of them for successful re-entry, not to return them to the community worse than before their time in prison. In Colorado, in 2012, 140 people were released into the public from Administrative Segregation; last year, 70; so far in 2014, two.

This is a message I deliver directly to my wardens. I say to them: "Who wants to live directly next to someone who was just released from solitary confinement? Think about how dangerous that is." I also encourage my staff to spend some time in segregation so that they understand the experience. I have done that myself, and the experience was eye-opening.

The current reliance on Administrative Segregation is not a Colorado problem. It's not even only a national problem. The use of Administrative Segregation is an international problem and it will take many of us to solve it. I believe reform requires the cooperation of corrections leadership, corrections staff, legislators, stakeholders and the community. But I do see change. I see an evolution that will better serve our citizens and make our communities safer.

Thank you for the opportunity to appear before this Subcommittee.

TESTIMONY OF DAMON A. THIBODEAUX
SENATE JUDICIARY COMMITTEE
FEBRUARY 25, 2014

Chairman Durbin, Ranking Member Cruz, and members of the Subcommittee, thank you for inviting me to testify today. My name is Damon Thibodeaux. When I was 22 years old, I was arrested, interrogated by police, and coerced into falsely confessing to raping and murdering my 14-year-old cousin. In October 1997, I was tried and convicted for capital murder and sentenced to death. I was then sent to the Louisiana State Penitentiary at Angola where I spent a month shy of 15 years in solitary confinement before I was exonerated and released in late September 2012. I then became the 141st known actually innocent death-row exoneree since the Supreme Court reinstated capital punishment in 1976. I was the 18th death row inmate since that time to be exonerated based at least in part on DNA evidence.

I do not really have the words to tell you fully how much physical, mental, and emotional harm is done to those of us who are placed into solitary confinement for any length of time, but I want to thank you for this chance to give you at least some idea about what we are doing to people when we confine them in this way.

I spent my years at Angola, while my lawyers fought to prove my innocence, in a cell that measured about 8 feet by 10 feet. It had three solid walls all painted white, a cell door, a sink, a toilet, a desk and seat attached to a wall, and an iron bunk with a thin mattress. These four walls are your life. Being in that environment for 23 hours a day will slowly kill you. Mentally, you have to find some way to live as if you were not there. If you cannot do that, you will die a slow mental death and may actually wish for your physical death, so that you do not have to continue that existence. More than anything, solitary confinement is an existence without hope.

Fairly early during my confinement at Angola, I very seriously considered giving up my legal rights and letting the State execute me. I was at the point where I did not want to live like an animal in a cage for years on end, only to lose my case and then have the State kill me anyway. I thought it would be better to end my life as soon as I could and avoid the agony of life in solitary. Fortunately, my lawyer and friend, Denise LeBoeuf, convinced me that I would be exonerated and released someday, and she gave me hope to keep fighting and living.

The food, such as it was, was brought to us whenever the prison decided it was time to feed us. It consisted often of nothing more than rice and gravy, and sometimes rotten vegetables that could not be sold in stores to people on the outside. The diet was high in salt, carbohydrates, and fat, and, together with the lack of normal activity and exercise, caused many of the men to develop diabetes, heart disease, and other serious ailments. I estimate that about 70 percent of the inmates on death row at Angola had heart and dental issues, largely from the food and other conditions. Inmates would go untreated because they could not afford treatment. One inmate could not walk after years of solitary confinement. I developed high blood pressure and high cholesterol, problems that disappeared after my release and return to a decent diet and normal activity.

The heat inside death row was unbearable during the long summers in Louisiana because we were denied air-conditioning. The prison actually blew hot air from the outside into the death row building, raising temperatures into the 100-130 degree range in each cell and making our existence there all the more unbearable. We would sit in our cells with the sweat dripping down our bodies. Some would strip and lie on the floor where they would also try to sleep. But, if we had to leave the cell or if a tour group came through to stare at us, we had to dress in our jumpsuits, no matter how hot it was. Those who had heart disease or diabetes suffered the most.

In the winter, the problem was exactly the opposite. The temperatures in the cells were often in the 40-50 degree range because we often did not have heat. We collected sweatshirts and blankets to stay warm. Some of the men could not afford them, so we would give them our sweatshirts to stay warm. But, if someone could not help you, you just sat there and shivered. We treat pets and animals better than this. If you treated animals this way, you would get arrested and prosecuted, but that is apparently not the case with humans.

People would come to death row to tour our cells as if we were in a zoo. I sometimes thought that they brought tour groups from schools and churches into death row just to see how difficult it was for us there. We are, as the prison tells these visitors, the "worst of the worst" and do not deserve to be treated humanely.

Inmates in solitary have no job and no educational or job training opportunities. The time passes painfully and slowly.

In solitary confinement, we spent our time waiting for exoneration, execution, or the reduction of our death sentences to life in prison. We have access to television on a shared basis with another inmate, and the viewing is limited to whatever the prison permits. We can read books if someone on the outside can afford to buy them for us from Amazon or some other approved seller, or if inmates share the books they have received. I understand that some inmates in some prisons do not have these same privileges and they must come up with other ways to keep their minds from slipping.

No one, no matter how horrible the crimes for which they have been convicted, can endure this lack of stimulation, contact, and activity for very long. I saw men lose their minds. Some screamed at all hours of the night. Some just stared at a wall, even when they could spend their one hour a day outside of the cell. Some were drugged to the point that they seemed nearly

comatose. Some tried to save their medications and overdose on them to commit suicide. I saw men smear their feces in their cells. For 15 years, I watched the State slowly execute many of my fellow inmates before it could legally put the needle into their arms.

To make the time pass as best that I could, I exercised in my cell two or three times a day. During the one hour each day that I was out of my cell, I could shower, call my lawyer, or take care of whatever else I needed to do. On three days each week, I could spend that one hour outdoors in what was basically a caged dog-run. Depending on the weather, I might stay inside and exercise in the hallway by running back and forth. I did not see the night sky or stars during those 15 years. Sleep was often a problem because I was so inactive and mentally dulled during the day.

To keep my mind occupied as best that I was able, I watched the news, listened to the radio or cds, and read what I could. I repeated this same routine over and over again, day after day, for 15 years. The monotony was interrupted only by a visit or phone call with one of my lawyers or, rarely, a visit from a family member. These visits, which not everyone gets, occurred about once every five years. I would not permit my son, who was five years old when I was incarcerated at Angola, to visit and see me in that condition. I insisted that he wait until I was exonerated before we met. Only on the day of my release on September 28, 2012, when he was 20 years old, did I see him for the first time since my arrest in July 1996. I believed that seeing me in those conditions at Angola would be harmful to both of us.

Since my release, I have seen a psychologist who has helped me understand how I have to view my time in solitary for a crime that I did not commit and how to keep it from causing me even more harm. I have suffered a number of long-term effects from solitary confinement, including difficulty engaging and speaking with people on some occasions.

I do not condone what those who have killed and committed other serious offenses have done. But, I also do not condone what we do to them when we put them in solitary for years on end and treat them as less than human. We are better than that or, at least, we like to think that we are. Why do we think it is necessary to do this to anyone and what benefit are we gaining by doing it? It's torture, pure and simple, no matter what else we want to call it. Very few people in this country have any idea that we are keeping thousands of people in solitary confinement and what we are doing to them by doing that.

I thank the Subcommittee for looking at this situation and educating the public about it.

Opening Statement of Senator Dick Durbin
"Reassessing Solitary Confinement II:
The Human Rights, Fiscal, and Public Safety Consequences"

This Subcommittee has worked to address human-rights issues around the world, as we did with our hearing last month on the Syrian refugee crisis.

And we have an obligation to honestly consider our own human-rights record at home. The United States has the highest per capita rate of incarceration in the world – with five percent of the world's population, we have close to 25 percent of its prisoners. African Americans and Hispanic Americans are incarcerated at much higher rates than whites. And the United States holds more prisoners in solitary confinement than any other democratic nation. These are human-rights issues that we cannot ignore.

Congress has been unable to find common ground on many important issues. But criminal justice reform is one area where we can show the American people that their government still functions.

We have made some progress. In 2010, Congress unanimously passed the Fair Sentencing Act, bipartisan legislation I authored with Senator Jeff Sessions that greatly reduced the sentencing disparity between crack and powder cocaine.

And just a few weeks ago, the Judiciary Committee reported the Smarter Sentencing Act, bipartisan legislation I introduced with Senator Mike Lee that would reform federal drug sentencing and focus law-enforcement resources on the most serious offenders. I want to thank my Ranking Member for cosponsoring the Smarter Sentencing Act.

I also want to thank Senator Cruz for his bipartisan cooperation in working on today's hearing.

Almost two years ago, this Subcommittee held the first-ever Congressional hearing on solitary confinement. We heard testimony about the dramatic increase in the use of solitary confinement that began in the 1980's. We learned that vulnerable groups like immigrants, children, sexual abuse victims, and individuals with serious and persistent mental illness are often held in isolation for long periods.

We heard about the serious fiscal impact of solitary. It costs almost three times more to keep a federal prisoner in segregation than in general population.

We learned about the human impact of holding tens of thousands of men, women, and children in small windowless cells 23 hours a day – for days, months, years – with very little, if any, contact with the outside world. Such extreme isolation can have serious psychological effects on inmates. According to several studies, at least half of all prison suicides occur in solitary confinement.

I will never forget the testimony of Anthony Graves, who was held in solitary for ten of his 18 years in prison before he was exonerated. Mr. Graves told this Subcommittee, "No one can

begin to imagine the psychological effects isolation has on another human being. Solitary confinement does one thing, it breaks a man's will to live." I have been Chairman of this Subcommittee for seven years and I have never heard more compelling testimony.

At the last hearing, we also heard from the Director of the Bureau of Prisons, Charles Samuels. Candidly, I was disappointed in Mr. Samuels's testimony. But I want to commend Mr. Samuels and his team, because they heard the message of our first hearing. At my request, Mr. Samuels agreed to the first-ever independent assessment of our federal prisons' solitary confinement policies and practices. This assessment is currently underway, and I look forward to an update today from Mr. Samuels.

At our 2012 hearing, we found that the overuse of solitary can present a serious threat to public safety, increasing violence inside and outside of prison. The reality is that the vast majority of prisoners held in isolation will be released someday. The damaging impact of their time in solitary – or their release directly from solitary – can make them a danger to themselves and their neighbors.

I want to note that today is the one-year anniversary of the tragic death of federal Correctional Officer Eric Williams, who was killed by an inmate in a high security prison in Pennsylvania. We owe it to correctional officers who put their lives on the line every day to do everything we can to protect their safety. Make no mistake, that means that some dangerous inmates must be held in segregated housing. But we also should learn from states like Maine and Mississippi, which have reduced violence in their prisons by reducing the overuse of solitary confinement.

And we must address the overcrowding crisis in federal prisons that has made prisons more dangerous and dramatically increased the inmate-to-correctional officer ratio. That's one important reason that I'm working to pass the Smarter Sentencing Act, which will significantly reduce prison overcrowding by inmates who have committed non-violent drug offenses. And it's one reason I'm working to open Thomson Correctional Center as a federal prison in my state. I look forward to working with the Bureau of Prisons to ensure that Thomson helps to alleviate overcrowding and that all prisoners held there are treated appropriately and humanely.

Let me say a word about an especially vulnerable group – children. According to the Justice Department, 35 percent of juveniles in custody report being held in solitary for some time. The mental health effects of even short periods of isolation – including depression and risk of suicide – are heightened in youth. That's why the American Academy of Child and Adolescent Psychiatry has called for a ban on solitary for children under 18.

At our first hearing, we heard about many promising reform efforts at the state level. As is so often the case, state governments continue to lead the way. To take just a few examples:

- Last year, my own state of Illinois closed its only supermax prison, Tamms Correctional Center, and relocated the remaining prisoners to other facilities.

- In the Ranking Member's home state of Texas, the state legislature last year passed legislation requiring an independent commission to conduct a comprehensive review of the use of solitary confinement in state prisons and jails.

- And New York has just announced sweeping reforms that will greatly limit the use of solitary confinement for juveniles and pregnant women.

There have been other positive developments since our first hearing. U.S. Immigration and Customs Enforcement issued important guidance limiting the use of solitary confinement for immigration detainees. This is a positive step for some of the most vulnerable individuals in detention, and I want to work with ICE to make sure the guidance is implemented effectively.

And the American Psychiatric Association issued a policy statement opposing the prolonged isolation of individuals with serious mental illness.

More must be done. That's why today I'm calling for all federal and state facilities to end the use of solitary confinement for juveniles, pregnant women, and individuals with serious and persistent mental illness, except in exceptional circumstances.

By reforming our solitary confinement practices, the United States can protect human rights, improve public safety, and be more fiscally responsible. It is the right and smart thing to do, and the American people deserve no less.

Senate Judiciary Committee Hearing
Subcommittee on the Constitution, Civil Rights, and Human Rights
"Reassessing Solitary Confinement II:
The Human Rights, Fiscal, and Public Safety Consequences"
Questions for the Record Submitted by Senator Al Franken

Questions for Craig DeRoche

Question 1. I appreciate the Justice Fellowship's strong support for the Justice & Mental Health Collaboration Act (JMHCA). One Senator has blocked JMHCA from passing the Senate, stating that he has questions as to whether the activities set forth in the bill are federal responsibilities. How would you respond?

Senate Judiciary Committee Hearing
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Questions for Rick Raemisch

Question 1. In your written testimony, you wrote: "Expecting a mentally ill inmate who is housed in Administrative Segregation long-term and without treatment to follow the rules is pointless. It's my conviction that long-term segregation creates or exacerbates mental illness," end quote. I think that a lot of corrections officers would agree with that statement. I certainly do." Can you elaborate on the importance of mental health treatment options for inmates with mental illnesses?

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Questions for Charles Samuels

Question 1. During the hearing, you testified that most inmates in solitary confinement are limited to one telephone call per month.

(a) What is the Bureau's justification for that limitation?

(b) Do you disagree with the proposition that such limited contact with family compromises an inmate's future prospects for successful reentry into his community?

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Answer. I would respond by saying that passing the Justice and Mental Health Collaboration Act is not only an appropriate–but a critical–responsibility of the federal government. This legislation provides temporary resources to equip the "laboratories of democracy" to each develop unique evidence-based alternatives to the challenges faced by the criminal justice system in responding to people with mental illness.

As a conservative, I'm against federal funds that supplant state functions, but I support providing resources to local grantees where that funding will be used to start-up and evaluate an innovative program that otherwise would not be possible, especially where resulting cost savings can be reinvested to make the program sustainable at the local level.

Thank you for your leadership on this legislation Sen. Franken. I urge all Senate Judiciary Committee members to cosponsor and to work to pass this critical legislation.

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Question 1. In your written testimony, you wrote: "Expecting a mentally ill inmate who is housed in Administrative Segregation long-term and without treatment to follow the rules is pointless. It's my conviction that long-term segregation creates or exacerbates mental illness," end quote. I think that a lot of corrections officers would agree with that statement. I certainly do." Can you elaborate on the importance of mental health treatment options for inmates with mental illnesses?

With the deinstitutionalization process in the 1950's and 60's, state hospitals across the nation were shut down and the seriously mentally ill were moved into communities with little education provided to members of communities, and without the appropriate outreach services in place. In society, including corrections, it's imperative that we realize the behaviors that are going to be entering into communities and develop and establish coping mechanisms as well as continuity of care for those offenders with serious mental illness.

The prison system has become the treatment centers (or dumping ground) for those that are convicted of criminal offenses with underlying mental health issues that nobody has addressed. Once the offenders enter into the penal setting, their symptoms are frequently exacerbated by the anxiety associated with incarceration as well as the conditions of confinement that are imposed outside of the freedoms of society. Thus the reason that it's important that these offenders are identified early in their incarceration for mental health needs and even more so if their behaviors continue to escalate. The sooner we can identify and initiate treatment and coping skills for those offenders with mental illness, the better the chances are that the offender will understand the value in the treatment and participate in outpatient treatment when they leave the correctional setting. This is the number one reason why we work so hard to assess for and initiate treatment for any offender that is exhibiting any symptoms of mental health needs in the correctional setting.

You can only imagine what an administrative segregation cell does to someone, who is mentally ill to begin with. Our goal is zero major mentally ill inmates in segregation. On most days we are able to accomplish that goal. I now have two institutions dedicated to treating inmates with mental health issues. We are adopting the philosophy that you can't hold someone responsible for an incident that occurred as a result of a mental illness. I hope this answers your question Senator Franken. The bottom line is if we expect these individuals to be productive members of their community, we need to treat their mental illness first, before we attempt to address their criminogenic needs. Thank you for the honor of testifying before the Subcommittee.

Sincerely

Rick Raemisch
Executive Director
Colorado Department of Corrections

Subcommittee on the Constitution, Civil Rights and Human Rights
Committee on the Judiciary
United States Senate
Hearing on "Reassessing Solitary Confinement II:
The Human Rights, Fiscal, and Public Safety Consequences"

Questions for the Record Submitted by Senator Al Franken

Questions for Charles Samuels

Question 1. During the hearing, you testified that most inmates in solitary confinement are limited to one telephone call per month.

(a) What is the Bureau's justification for that limitation?

Inmates housed in the Special Housing Unit (SHU) are currently permitted one telephone call per month, in addition to in person visits with family and friends and the opportunity to write and receive letters. All of these forms of communication are intended to allow inmates to maintain ties with family and friends.

Providing telephone calls to inmates in SHU requires direct observation and supervision by staff members who have a variety of other important duties related to ensuring the safety and security in SHU. Specifically, staff make frequent rounds and interact with the inmates, provide meals, escort inmates to and from recreation, and perform general unit security checks.

As I noted in my testimony, we are examining ways to potentially increase the availability of telephone contact for inmates in SHU without harming the safe and orderly operations of SHUs. I would be happy to provide you with an update on these plans as we move forward.

(b) Do you disagree with the proposition that such limited contact with family compromises an inmate's future prospects for successful reentry into his community?

We are continuing our efforts to ensure inmates are placed in SHU only as necessary and for the appropriate duration. Limited contact with family and friends in SHU is one of the many aspects that are being reviewed by CNA as part of the independent audit, and we look forward to those results to further inform our SHU practices.

Testimony of the Social Action Commission
***of the* African Methodist Episcopal Church**

Before the United States Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights

Hearing on

Reassessing Solitary Confinement II: The Human Rights, Fiscal and Public Safety Consequences

February 25, 2014

Thank you Chairman Durbin, Ranking Member Cruz and members of the Subcommittee for the opportunity to submit testimony on behalf of the Social Action Commission of the African Metbodist Episcopal Church in regards to the human rights issues surrounding solitary confinement.

The African Methodist Episcopal Church is one of the largest independent black institutions in the world. Our constituents are in over 6000 congregations, in thirty-nine countries on five continents. The African Methodist Episcopal Church has a dynamic and groundbreaking history rooted in the United States. It is unique in that the A.M.E. Church is the first major religious denomination in the Western World that had its origin over sociological and theological beliefs and differences. It rejected the negative theological interpretations which rendered persons of African descent second class citizens. Our Church has stood at the center of equality and justice for all people, especially the most vulnerable, from the foundations of this nation to the present day. Our commitment is to a ministry of liberation, civil rights and human dignity.

In response to issues regarding incarceration, The Social Action Commission has undertaken an initiative called the *Covenant Project to Eradicate Mass Incarceration*. The project addresses incarceration issues through: local ministries to prisoners and families, local and national mobilization campaigns and far-reaching strategies which educate, equip and train clergy and lay. In addition, we seek to participate in legislative and administrative forums to educate and advocate for more humane and just policies and authentic rehabilitation in the prisons, and adequate monitoring of the prison system.

It is from this context that the Social Action Commission of the African Methodist Episcopal Church raises its voice against the grave human injustice of solitary confinement. We are anxious to preserve the humanity, dignity, health and sanity of the incarcerated. We are concerned that isolation is being used as a means of first resort rather than last. We are troubled by the lack of accountability beyond the prison walls in which administrative segregation is practiced. We are dedicated to give resistant voice to solitary confinement's use against vulnerable populations which have little or no recourse. Therefore, the Social Action Commission of the African Methodist Episcopal Church stands in solidarity with all the proponents of the abolition and reformation of its practice.

Solitary confinement has been deemed by survivors, psychologists, scholars, and much of the civilized world, as torture and an abuse of human rights. Solitary Watch reports that the U.S. houses at least 80,000 prisoners in isolation on any given day. The United States stands as the world leader in the use of solitary confinement.[i] Prisoners spend hours, days, months and sometimes years in 8x10 concrete cells, with little human contact and recreational access.

Solitary confinement's proponents argue it is used to segregate the most violent extreme inmates who pose harm and disruption to the general prison population. However, isolation techniques are most often used to manage nonviolent individuals. Mississippi's Department of Corrections for example found that 80 percent of the state's segregated prisoners did not fit their own profile standards for violent behavior. Isolation has too often been used to punish minor offenses, coerce cooperation during interrogations, and inflict indefinite disciplinary measures.[ii] Furthermore, research suggests the widespread use of solitary confinement leads to higher rates of recidivism and does little to protect prisoners or society.

In addition, we are greatly concerned with the lack of data collection, transparency and oversight of this practice in our nation's prisons. Solitary confinement measures have little to no oversight beyond the prison in which it is being practiced.

Survivors have documented cases of psychosis, suicidal thoughts, hallucinations, desires for self-mutilation, severe anxiety, depression, and insomnia. It is imperative that we as a nation stand against any practice that can be deemed as cruel and unusual punishment.

While we stand resolute against the arbitrary use of this "touch-less torture" for every human being, we are particularly concerned with the isolation and segregation of the mentally ill, at risk youth, sexually assaulted women, and prisoners of color. As a religious institution dedicated to standing with and giving voice to the least of these, we urge lawmakers to impose restrictions and oversight to protect the vulnerable.

We stand and give voice to the mentally ill who are often punished for behaviors that require treatment and not punishment. A 2003 report from Human Rights Watch found that one-third to one-half of prisoners in solitary confinement suffered from mental illness. The unwillingness of

many prison facilities to diagnose mental illness and distinguish it from disciplinary problems, exacerbates emotional trauma and leads to a vicious cycle of isolation abuse.

We stand and give voice to our nation's incarcerated youth. In a letter to the ACLU the US Department of Justice stated that, "*The isolation of children is dangerous and inconsistent with best practices and that excessive isolation can constitute cruel and unusual punishment.*"[iii] Solitary confinement of youth can cause serious developmental harm and long term mental health problems especially for children with disabilities or histories of trauma and abuse.[iv] Transparency and systematic data collection on the use of solitary confinement in juvenile detention facilities is rare. Therefore, the extent to which at risk youth are being further traumatized by social isolation is not fully known nor is its practice accountable to anyone.

We stand and give voice to sexually assaulted incarcerated women. It has been documented that prison facilities across the nation routinely put women who make allegations of sexual assault in solitary confinement pending their investigations. Women who report sexual abuse are often placed in segregation as a means of retaliation against whistle blowing. Incarcerated women report that some prison systems have created new rules for entry to solitary confinement to discourage reports of staff sexual assault.[v]

We stand and give voice to those disproportionately affected by the War on Drugs. Margo Schlanger, Professor of Law at the University of Michigan Law School, stated that there is remarkably little systematic information available about who is held in segregated confinement but the scant quantitative data that exists, suggests that in many states the harsh conditions of solitary confinement are probably disproportionately affecting prisoners of color.[vi] The 2013 Human Rights Watch World Report notes that, "practices contrary to human rights principles, such as the death penalty, juvenile life-without-parole sentences, and solitary confinement are common and often marked by racial disparities."[vii] We are not suggesting racism plays the primary role in the overrepresentation of African Americans in solitary confinement, but we are concerned that the overrepresentation of people of color in federal and state prisons, due to the War on Drugs, makes them particularly susceptible to this grave human rights violation.

Fyodor Dostoevsky famously wrote that, "The degree of civilization in a society can be judged by entering its prisons." As long as solitary confinement is unregulated and left to the discretion of fallible individuals, abuses will continue and America's most vulnerable will continue to suffer at the hands of injustice.

In 1890, the United States Supreme Court acknowledged the cruel irreversible effects of solitary confinement. Yet, with little exception, there are no laws in the United States prohibiting the practice.[viii] The Social Action Commission of the African Methodist Episcopal Church urges the Department of Justice to appoint a task force to investigate solitary confinement's use in prisons across the nation and make public its findings. We also urge the Bureau of Prisons to appoint independent auditing and over site bodies to discourage abuse. Lastly, we call on federal

lawmakers to deem solitary confinement as cruel and unusual punishment and adopt laws that discourage its use.

We commend this body for giving attention to this critical human rights issue and extending us the opportunity to give voice for whom we are critically concerned.

Respectfully submitted,

Bishop Reginald T. Jackson, Chairman, Social Action Commission
Jacquelyn Dupont-Walker, Director, Social Action Commission
Rev. Charles F. Boyer, Coordinator, Covenant Project to Eradicate Mass Incarceration

[i]Justicefellowship.org. "Solitary Confinement: Isolation & Administrative Segregation | Justice Fellowship." 2014. http://www.justicefellowship.org/solitary-confinement (accessed 23 Feb 2014).

[ii]Smithsonian. "The Science of Solitary Confinement." 2014. http://www.smithsonianmag.com/science-nature/science-solitary-confinement-180949793/ (accessed 23 Feb 2014).

[iii] Letter from Robert L. Listenbee, Administrator, US Department of Justice, to Jesselyn McCurdy, Senior Legislative Counsel, American Civil Liberties Union 1 (Jul. 5, 2013), available at https://www.aclu.org/sites/default/files/assets/doj_ojjdp_response_on_ij_solitary.pdf .

[iv]American Civil Liberties Union. "ALONE & AFRAID: Children Held in Solitary Confinement and Isolation in Juvenile Detention and Correctional Facilities." New York: ACLU, 2013.

[v]Solitary Watch. "Women in Solitary Confinement: Sent to Solitary for Reporting Sexual Assault - Solitary Watch." 2013. http://solitarywatch.com/2013/12/12/women-solitary-confinement-sent-solitary-reporting-sexual-assault/ (accessed 24 Feb 2014).

[vi]Solitary Watch. "Prison Segregation and Racial Disparities - Solitary Watch." 2013. http://solitarywatch.com/2013/11/02/prison-segregation-racial-disparities/ (accessed 24 Feb 2014).

[vii]Hrw.org. "World Report 2013: United States." 2014. http://www.hrw.org/world-report/2013/country-chapters/united-states (accessed 24 Feb 2014).

[viii] Solitary Watch. "Fact Sheet: Solitary Confinement and the Law." Washington D.C.: Solitary Watch, 2011.

AFSCME Texas
Correctional Employees
Local 3807

February 25, 2014

Greetings,

As the president of the largest correctional professional organization in Texas, I am calling on the US Congress to make changes to implement national policy on the usage of administrative segregation that would positively impact both the correctional staff and offenders.

Research shows that depriving inmates of human contact for long periods of time may exacerbate mental crisis, assaultive behavior, antisocial behaviors, and acute health disorders. Psychological effects due to lack of sensory stimulation can include anxiety, depression, anger, cognitive disturbances, perceptual distortions, obsessive thoughts, paranoia, and psychosis.

The intended use of administrative segregation was to reduce violence on staff and inmates. Unfortunately a reduction in violence on staff has not been the case in Texas since the state greatly increased their use of administrative segregation in the 1990's. Serious assaults on Texas correctional staff has gradually risen over 104% during the last 7 years. In 2013 over 79% of the 499 reported intentional exposures to bodily fluids occurred in segregated housing areas of the Texas Department of Criminal Justice. None of the exposure assaults involved regular general population offenders.

The over reliance on solitary confinement in Texas may be a direct result of lack of trained and experience staff. The Texas Department of Criminal Justice officer turnover rate is 24 percent annually. A better trained and experienced workforce could better manage an increasing mental health population, reducing the over usage of solitary confinement.

Technologies such as use of computer tablets linked to a secure network could offset some inmate's lack of sensory stimulation, delivering rehabilitation and education programs via the secure network.

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AFSCME Texas
Correctional Employees
Local 3807

Even more alarming is we are relcasing inmates into our communities every day, who have spent years in solitary conditions with little or no treatmcnt to correct the behavior which lead to their incarceration in solitary conditions.

Correctional departments should be in the business to corrcet negative behavior, but unfortunately many times we lack the resources or policies, which result in costly recidivism for our taxpayers.

Respectfully,

Lance L Lowry
President AFSCME Local 3807
Texas Corrcctional Employees

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Reassessing Solitary Confinement II:
The Human Rights, Fiscal, and Public Safety Consequences

Hearing before the Senate Judiciary Subcommittee on the
Constitution, Civil Rights, and Human Rights

February 25, 2014

Statement submitted by
The American Bar Association

For the Hearing Record

Members of the Subcommittee on the Constitution, Civil Rights, and Human Rights:

I am Thomas M. Susman, Director of the American Bar Association (ABA) Governmental Affairs Office. I am submitting this statement on behalf of the ABA for inclusion in the hearing record of the Subcommittee's hearing on February 25, 2014, "Reassessing Solitary Confinement II: The Human Rights, Fiscal, and Public Safety Consequences."

The ABA commends the Subcommittee for continuing its examination of this important issue. We share a growing concern over what has become the prolonged solitary confinement instituted in federal and state prisons and jails. The costs—to the public fisc, to prisoners, and to the communities to which the vast majority of once-isolated prisoners will return—are immense.

The impact of solitary confinement of juveniles in custody is especially pronounced. The Department of Justice has estimated that 35 percent of juveniles report being held in solitary for some time. The American Academy of Child and Adolescent Psychiatry advises that even short periods of isolation too often have serious long-term mental health impact on this vulnerable age group. For these reasons, segregation—while occasionally necessary for safety reasons—should be imposed in the most limited manner possible. The ABA urges the Subcommittee to continue its investigation of how the use of long-term solitary confinement may be restricted in ways that promote the safe, efficient, and humane operation of prisons.

The Subcommittee's attention to this issue is precipitating the first serious review in decades by federal and state facilities of the use of solitary confinement. Since the first hearing in June 2012, the Bureau of Prisons (BOP) undertook a first-ever independent assessment of federal prisons' solitary confinement policies and practices that is still ongoing. That review is being overseen by the National Institute of Corrections and will identify best practices in both the federal and state systems. The state legislature in Texas last year passed legislation authorizing an independent commission to conduct a comprehensive review of solitary confinement policies in its prisons

and jails. And the state of New York has enacted far-reaching reforms that will strictly limit the use of solitary confinement for pregnant women and juveniles.

Over the past fifteen years, the use of solitary confinement has attracted growing concern due to its documented human and fiscal costs. Piper Kerman and Damon Thibodeaux provided compelling testimony about personal tolls from living in solitary confinement for extended periods. Their individual experiences—as noted in Colorado Department of Corrections Director Rick Raemisch's testimony—find support in a variety of studies that suggest that isolation decreases brain activity and can provoke serious psychiatric harms—including severe depression, hallucination, withdrawal, panic attacks, and paranoia—some of which may be long-lasting. Some data suggest that prisoners who have spent long periods in isolation are more likely to reoffend, and many report that these prisoners have a more difficult time creating lasting social bonds that are necessary to reintegration.

The ABA has long been committed to promoting a criminal justice system, including humane and safe prisons, that reflects American values. Since the 1960s, the ABA's multivolume Criminal Justice Standards[1] has guided the development of law and practice in the American criminal justice system. In 2004, the ABA began the work of updating its standards—last drafted in 1981—governing the treatment of prisoners. Drafters consulted with a range of institutional representatives to devise a set of standards grounded in legal and constitutional principles that recognized the rights prisoners and provided sufficient operational leeway for administrators' professional judgment. In February 2010, a set of ABA *Standards for Criminal Justice on the Treatment of Prisoners* was approved by the ABA House of Delegates.

The ABA Standards contain specific guidance on the use of prolonged isolation and apply to all prisoners in adult correctional facilities, including jails. The standards regarding solitary confinement center around a core ideal: "Segregated housing should be for the briefest term and under the least restrictive conditions practicable and consistent with the rationale for placement and with the progress achieved by the prisoner."[2] The ABA Standards regulate various forms of segregation, including administrative and disciplinary segregation, long- and short-term. The Standards recognize that "[c]orrectional authorities should be permitted to physically separate prisoners in segregated housing from other prisoners" but stipulate that such separation "should not deprive them of those items or services necessary for the maintenance of psychological and physical wellbeing." (23-3.8.) The Standards forbid in all instances "extreme isolation," which is defined to "include a combination of sensory deprivation, lack of contact with other persons, enforced idleness, minimal out-of-cell time, and lack of outdoor recreation." (23-3.8.) In short,

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[1]The full text of the ABA Standards is published at http://www.americanbar.org/content/dam/aba/publishing/criminal_justice_section_newsletter/crimjust_policy_midyear2010_102i.authcheckdam.pdf. Relevant standards have been reproduced in the Appendix to this Statement.

[2] AM. BAR ASS'N, ABA STANDARDS FOR CRIMINAL JUSTICE: TREATMENT OF PRISONERS intro. (3d ed. 2011), available at http://www.americanbar.org/content/dam/aba/publishing/criminal_justice_section_newsletter/crimjust_policy_midyear2010_102i.authcheckdam.pdf; *see also* Margo Schlanger, Margaret Love & Carl Reynolds, CRIMINAL JUSTICE MAGAZINE (Summer 2010).

while it may be necessary physically to separate prisoners who pose a threat to others, that separation does not necessitate the social and sensory isolation that has become routine.

A broad array of reasons may justify placement in short-term segregation (23-2.6), whereas administrators should use "long-term segregated housing sparingly" and only where serious safety concerns are at stake. (23-2.7).[3] Placement in long-term segregation requires notice and a hearing (including the ability to present evidence and available witnesses) and a showing by a preponderance of the evidence that the requirements have been met. (23-2.9.) Continuing segregation requires an individualized plan so that the prisoner understands what is expected, as well as meetings between administrators and the prisoner at least every 90 days. For prisoners who are placed in long-term segregation, the Standards call for the effective monitoring and treatment of their mental health needs. (23-2.8.) Finally, prisoners with serious mental illness may not be placed in segregation; the Standards instead call for the development of high-security mental health housing appropriate for prisoners whose mental illness interferes with their appropriate functioning in the general population.

The ABA Standards reflect a growing trend among states—especially among commissioners of corrections—that are seeking alternatives to long-term isolation. As the Subcommittee heard from Mark Levin and Colorado Director of Corrections Rick Raemisch, many states are finding that it is possible to reduce reliance on solitary confinement without sacrificing the safety of prison staff, other prisoners, or the public. The ongoing independent assessment of best state and federal practices undertaken at the direction of the BOP will likely soon lead to policies in federal systems to reduce reliance on solitary confinement of federal prisoners in federal and private prisons.

We greatly appreciate the Subcommittee's attention to this important matter.

[3] The term "long-term segregated housing" means segregated housing that is expected to extend or does extend for a period of time exceeding 30 days. AM. BAR ASS'N, ABA STANDARDS FOR CRIMINAL JUSTICE: TREATMENT OF PRISONERS, Standard 23-1.0 (o): Definitions, (3d ed. 2011).

APPENDIX

ABA Standards for Criminal Justice (Third Edition), Treatment of Prisoners (2010)

Standard 23-2.6 Rationales for segregated housing

(a) Correctional authorities should not place prisoners in segregated housing except for reasons relating to: discipline, security, ongoing investigation of misconduct or crime, protection from harm, medical care, or mental health care. Segregated housing should be for the briefest term and under the least restrictive conditions practicable and consistent with the rationale for placement and with the progress achieved by the prisoner. Segregation for health care needs should be in a location separate from disciplinary and long-term segregated housing. Policies relating to segregation for whatever reason should take account of the special developmental needs of prisoners under the age of eighteen.

(b) If necessary for an investigation or the reasonable needs of law enforcement or prosecuting authorities, correctional authorities should be permitted to confine a prisoner under investigation for possible criminal violations in segregated housing for a period no more than [30 days].

Standard 23-2.7 Rationales for long-term segregated housing

(a) Correctional authorities should use long-term segregated housing sparingly and should not place or retain prisoners in such housing except for reasons relating to:

(i) discipline after a finding that the prisoner has committed a very severe disciplinary infraction, in which safety or security was seriously threatened;
(ii) a credible continuing and serious threat to the security of others or to the prisoner's own safety; or
(iii) prevention of airborne contagion.

(b) Correctional authorities should not place a prisoner in long-term segregated housing based on the security risk the prisoner poses to others unless less restrictive alternatives are unsuitable in light of a continuing and serious threat to the security of the facility, staff, other prisoners, or the public as a result of the prisoner's:

(i) history of serious violent behavior in correctional facilities;
(ii) acts such as escapes or attempted escapes from secure correctional settings;
(iii) acts or threats of violence likely to destabilize the institutional environment to such a degree that the order and security of the facility is threatened;
(iv) membership in a security threat group accompanied by a finding based on specific and reliable information that the prisoner either has engaged in dangerous or threatening behavior directed by the group or directs the dangerous or threatening behavior of others; or
(v) incitement or threats to incite group disturbances in a correctional facility.

Standard 23-2.8 Segregated housing and mental health

(a) No prisoner diagnosed with serious mental illness should be placed in long-term segregated housing.

(b) No prisoner should be placed in segregated housing for more than [1 day] without a mental health screening, conducted in person by a qualified mental health professional, and a prompt comprehensive mental health assessment if clinically indicated. If the assessment indicates the presence of a serious mental illness, or a history of serious mental illness and decompensation in segregated settings, the prisoner should be placed in an environment where appropriate treatment can occur. Any prisoner in segregated housing who develops serious mental illness should be placed in an environment where appropriate treatment can occur.

(c) The mental health of prisoners in long-term segregated housing should be monitored as follows:

(i) Daily, correctional staff should maintain a log documenting prisoners' behavior.

(ii) Several times each week, a qualified mental health professional should observe each segregated housing unit, speaking to unit staff, reviewing the prisoner log, and observing and talking with prisoners who are receiving mental health treatment.

(iii) Weekly, a qualified mental health professional should observe and seek to talk with each prisoner.

(iv) Monthly, and more frequently if clinically indicated, a qualified mental health professional should see and treat each prisoner who is receiving mental health treatment. Absent an individualized finding that security would be compromised, such treatment should take place out of cell, in a setting in which security staff cannot overhear the conversation.

(v) At least every [90 days], a qualified mental health professional should perform a comprehensive mental health assessment of each prisoner in segregated housing unless a qualified mental health professional deems such assessment unnecessary in light of observations made pursuant to subdivisions (ii)-(iv).

Standard 23-2.9 Procedures for placement and retention in long-term segregated housing

(a) A prisoner should be placed or retained in long-term segregated housing only after an individualized determination, by a preponderance of the evidence, that the substantive prerequisites set out in Standards 23-2.7 and 23-5.5 for such placement are met. In addition, if long-term segregation is being considered either because the prisoner poses a credible continuing and serious threat to the security of others or to the prisoner's own safety, the prisoner should be afforded, at a minimum, the following procedural protections:

(i) timely, written, and effective notice that such a placement is being considered, the facts upon which consideration is based, and the prisoner's rights under this Standard;

(ii) decision-making by a specialized classification committee that includes a qualified mental health care professional;

(iii) a hearing at which the prisoner may be heard in person and, absent an individualized determination of good cause, has a reasonable opportunity to present available witnesses and information;

(iv) absent an individualized determination of good cause, opportunity for the prisoner to confront and cross-examine any witnesses or, if good cause to limit such confrontation is found, to propound questions to be relayed to the witnesses;

(v) an interpreter, if necessary for the prisoner to understand or participate in the proceedings;

(vi) if the classification committee determines that a prisoner is unable to prepare and present evidence and arguments effectively on his or her own behalf, counsel or some other appropriate advocate for the prisoner;

(vii) an independent determination by the classification committee of the reliability and credibility of confidential informants if material allowing such determination is available to the correctional agency;

(viii) a written statement setting forth the evidence relied on and the reasons for placement; and

(ix) prompt review of the classification committee's decision by correctional administrators.

(b) Within [30 days] of a prisoner's placement in long-term segregated housing based on a finding that the prisoner presents a continuing and serious threat to the security of others, correctional authorities should develop an individualized plan for the prisoner. The plan should include an assessment of the prisoner's needs, a strategy for correctional authorities to assist the prisoner in meeting those needs, and a statement of the expectations for the prisoner to progress toward fewer restrictions and lower levels of custody based on the prisoner's behavior. Correctional authorities should provide the plan or a summary of it to the prisoner, and explain it, so that the prisoner can understand such expectations.

(c) At intervals not to exceed [30 days], correctional authorities should conduct and document an evaluation of each prisoner's progress under the individualized plan required by subdivision (b) of this Standard. The evaluation should also consider the state of the prisoner's mental health; address the extent to which the individual's behavior, measured against the plan, justifies the need to maintain, increase, or decrease the level of controls and restrictions in place at the time

of the evaluation; and recommend a full classification review as described in subdivision (d) of this Standard when appropriate.

(d) At intervals not to exceed [90 days], a full classification review involving a meeting of the prisoner and the specialized classification committee should occur to determine whether the prisoner's progress toward compliance with the individual plan required by subdivision (b) of this Standard or other circumstances warrant a reduction of restrictions, increased programming, or a return to a lower level of custody. If a prisoner has met the terms of the individual plan, there should be a presumption in favor of releasing the prisoner from segregated housing. A decision to retain a prisoner in segregated housing following consideration by the classification review committee should be reviewed by a correctional administrator, and approved, rejected, or modified as appropriate.

(e) Consistent with such confidentiality as is required to prevent a significant risk of harm to other persons, a prisoner being evaluated for placement in long-term segregated housing for any reason should be permitted reasonable access to materials considered at both the initial and the periodic reviews, and should be allowed to meet with and submit written statements to persons reviewing the prisoner's classification.

(f) Correctional officials should implement a system to facilitate the return to lower levels of custody of prisoners housed in long-term segregated housing. Except in compelling circumstances, a prisoner serving a sentence who would otherwise be released directly to the community from long-term segregated housing should be placed in a less restrictive setting for the final months of confinement.

Standard 23-3.8 Segregated housing

(a) Correctional authorities should be permitted to physically separate prisoners in segregated housing from other prisoners but should not deprive them of those items or services necessary for the maintenance of psychological and physical wellbeing.

(b) Conditions of extreme isolation should not be allowed regardless of the reasons for a prisoner's separation from the general population. Conditions of extreme isolation generally include a combination of sensory deprivation, lack of contact with other persons, enforced idleness, minimal out-of-cell time, and lack of outdoor recreation.

(c) All prisoners placed in segregated housing should be provided with meaningful forms of mental, physical, and social stimulation. Depending upon individual assessments of risks, needs, and the reasons for placement in the segregated setting, those forms of stimulation should include:

(i) in-cell programming, which should be developed for prisoners who are not permitted to leave their cells;
(ii) additional out-of-cell time, taking into account the size of the prisoner's cell and the length of time the prisoner has been housed in this setting;

(iii) opportunities to exercise in the presence of other prisoners, although, if necessary, separated by security barriers;
(iv) daily face-to-face interaction with both uniformed and civilian staff; and
(v) access to radio or television for programming or mental stimulation, although such access should not substitute for human contact described in subdivisions (i) to (iv).

(d) Prisoners placed in segregated housing for reasons other than discipline should be allowed as much out-of-cell time and programming participation as practicable, consistent with security.

(e) No cell used to house prisoners in segregated housing should be smaller than 80 square feet, and cells should be designed to permit prisoners assigned to them to converse with and be observed by staff. Physical features that facilitate suicide attempts should be eliminated in all segregation cells. Except if required for security or safety reasons for a particular prisoner, segregation cells should be equipped in compliance with Standard 23-3.3(b).

(f) Correctional staff should monitor and assess any health or safety concerns related to the refusal of a prisoner in segregated housing to eat or drink, or to participate in programming, recreation, or out-of-cell activity.

Written Statement of the American Civil Liberties Union
Before the United States Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights

Hearing on

Reassessing Solitary Confinement II:
The Human Rights, Fiscal, and Public Safety Consequences
Tuesday, February 25, 2014
at 2:30 pm

Submitted by the
ACLU Washington Legislative Office
ACLU National Prison Project

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The American Civil Liberties Union (ACLU) welcomes this opportunity to submit testimony to the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights for its hearing on Reassessing Solitary Confinement II: The Human Rights, Fiscal, and Public Safety Consequences, and urges the Subcommittee to act to curb the dangerous overuse of solitary confinement in American prisons, jails, juvenile detention centers, and other places of detention.

The ACLU is a nationwide, nonprofit, non-partisan organization with more than a half million members, countless additional activists and supporters, and 53 affiliates nationwide dedicated to the principles of liberty and equality embodied in our Constitution and our civil rights laws. Consistent with that mission, the ACLU established the National Prison Project in 1972 to protect and promote the civil and constitutional rights of prisoners. Since its founding, the Project has challenged unconstitutional conditions of confinement and over-incarceration at the local, state and federal level through public education, advocacy and successful litigation. The ACLU's national ***Stop Solitary*** campaign works to end the pervasive use of solitary confinement and to divert children and persons with mental disabilities and mental illness out of solitary altogether. The monetary cost of solitary confinement, coupled with the human cost of increased psychological suffering and sometimes irreparable harm, far outweighs any purported benefits. More effective and humane and less costly alternatives exist.

I. The Dangerous Overuse of Solitary Confinement in the United States

Over the last two decades, corrections systems have increasingly relied on solitary confinement, even building entire "supermax" prisons, where prisoners are held in extreme isolation, often for years or even decades. Although supermax prisons were rare in the United States before the 1990s, today forty-four states and the federal government have supermax units or facilities, housing at least 25,000 people nationwide.[1] But this figure does not reflect the total number of prisoners held in solitary confinement in the United States on any given day. Using data from the Bureau of Justice Statistics, researchers estimated in 2011 that over 80,000 prisoners are held in "restricted housing," including administrative segregation, disciplinary segregation and protective custody—all forms of housing involving substantial social isolation.[2]

This massive increase in the use of solitary confinement has led many to question whether it is an effective or humane use of public resources. Legal and medical professionals criticize solitary confinement and supermax prisons as unconstitutional and inhumane, pointing to the well-known harms associated with placing people in isolation and the rejection of its use in American prisons decades earlier.[3]

Other critics point to the expense of solitary confinement. Supermax prisons typically cost two or three times more to build and operate than even traditional maximum-security prisons.[4] Yet there is little evidence to suggest that solitary confinement makes prisons safer. Indeed, research suggests that supermax prisons actually have a negative effect on public safety.[5] Despite these concerns, states and the federal government continue to invest taxpayer dollars in constructing supermax prisons and enforcing solitary confinement conditions. As new fiscal realities force state and federal cuts to essential public services like health and education, it is time to ask whether we should continue to use solitary confinement despite its high fiscal and human costs.

A. What is solitary confinement?

Solitary 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; restriction or denial of reading material, television, radios or other property; severe constraints on visitation; and the inability to participate in group activities, including eating with others. While some specific conditions of solitary confinement may differ among institutions, generally the prisoner spends 23 hours a day alone in a small cell with a solid steel door, a bunk, a toilet, and a sink.[6] Human contact is restricted to brief interactions with corrections officers and, for some prisoners, occasional encounters with healthcare providers or attorneys.[7] Family visits are limited; almost all human contact occurs while the prisoner is in restraints and behind a partition.[8] Many prisoners are only allowed one visit per month, if any.[9] **The amount of time a person spends in solitary confinement varies, but can last for months, years, or even decades.**

Solitary confinement goes by many names, whether it occurs in a supermax prison or in a unit within a regular prison. These units are often called disciplinary segregation, administrative segregation, control units, security housing units (SHU), special management units (SMU), or simply "the hole." Recognizing the definitional morass, the American Bar Association has created a general definition of solitary confinement, which it calls "segregated housing":

> The term "segregated housing" means housing of a prisoner in conditions characterized by substantial isolation from other prisoners, whether pursuant to disciplinary, administrative, or classification action. "Segregated housing" includes restriction of a prisoner to the prisoner's assigned living quarters.[10]
>
> The term "long-term segregated housing" means segregated housing that is expected to extend or does extend for a period of time exceeding 30 days.[11]

Solitary confinement is used to punish individuals 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, the elderly, or individuals who identify as or are perceived to be lesbian, gay, bisexual, transgender or intersex (LGBTI).

B. The detrimental effects of solitary confinement

Solitary confinement is widely recognized as extremely harmful. Indeed, people held in solitary confinement experience a variety of negative physiological and psychological reactions: hypersensitivity to stimuli;[12] perceptual distortions and hallucinations;[13] increased anxiety and nervousness;[14] revenge fantasies, rage, and irrational anger;[15] fears of persecution;[16] lack of impulse control;[17] severe and chronic depression;[18] appetite loss and weight loss;[19] heart palpitations;[20] withdrawal;[21] blunting of affect and apathy;[22] talking to oneself;[23] headaches;[24] problems sleeping;[25] confusing thought processes;[26] nightmares;[27] dizziness;[28] self-mutilation;[29] and lower levels of brain function, including a decline in EEG activity after only seven days in solitary confinement.[30] Additionally, suicide rates and incidents of self-harm are much higher for prisoners in solitary confinement. A February 2014 study by the American Journal of Public Health found that detainees in solitary confinement in New York City jails were nearly seven times more likely to harm themselves than those in general population, and that the effect was particularly pronounced for juveniles and people with severe mental illness; in California prisons in 2004, 73% of all suicides occurred in isolation units—though these units accounted for less

than 10% of the state's total prison population.[31] Recognizing these dangers, professional organizations including the American Psychiatric Association, Mental Health America, the National Alliance on Mental Illness, and the Society of Correctional Physicians have issued formal policy statements opposing long-term solitary confinement, especially for prisoners with mental illness.[32]

C. People with mental illness are dramatically overrepresented in solitary confinement

There is a common misconception that prisoners in solitary confinement are dangerous, the "worst of the worst,"[33] but few actually meet this description. If the use of solitary confinement were restricted solely to the violent and predatory, most supermax prisons and isolation units would stand virtually empty. One major reason for the overuse of solitary confinement in U.S. prisons today is that elected officials pushed to build supermax facilities and segregation units based on a desire to appear "tough on crime," rather than on actual need.[34] Many states built large facilities they didn't need, and now fill the cells with relatively low-risk prisoners.[35] Sadly, the thousands of people in solitary confinement include many with severe mental illness or cognitive disabilities, who find it difficult to function in prison settings or to understand and follow prison rules.[36] For example, Indiana prison officials admitted in 2005 that "well over half" of the state's supermax prisoners suffer from mental illness.[37] On average, researchers estimate that at least 30% of prisoners held in solitary confinement suffer from mental illness.[38]

Solitary confinement is psychologically difficult for everyone, but it is devastating for those with mental illness, and can cause them to deteriorate dramatically. Many engage in extreme acts of self-injury and sometimes suicide. It is not unusual for prisoners in solitary confinement to compulsively cut their flesh, bang their heads against walls, swallow razors and other harmful objects, or attempt to hang themselves. In Indiana's supermax, a prisoner with mental illness killed himself by self-immolation; another man choked himself to death with a washcloth.[39] These shattering impacts of solitary confinement are all too common in similar facilities across the country, and have been well documented. **Federal courts have repeatedly held that placing individuals with serious mental illness in such conditions is cruel and unusual punishment under the Eighth Amendment to the Constitution**.[40]

D. Thousands of children are subjected to the damaging effects of solitary confinement

Children in both the adult and juvenile systems are routinely subjected to solitary confinement. In adult prisons and jails, youth are often placed in "protective custody" for safety reasons. Despite the prevalence of youth under the age of 18 in adult facilities in the United States—estimated at more than 95,000 in 2011—most adult correctional systems offer few alternatives to solitary confinement as a means of protecting youth.[41] Young people may spend weeks, months, even years in solitary. In addition to "protective custody," youth in adult facilities may also be isolated as punishment for violating rules designed to manage adult prisoners. In many juvenile facilities, isolation is also used to punish disciplinary infractions. These sanctions can last for hours, days, weeks, or longer and often permit abusive isolation practices.[42]

Children are even more vulnerable to the harms of prolonged isolation than adults.[43] Young people's brains are still developing, placing them at higher risk of psychological harm when healthy development is impeded.[44] Children experience time differently than adults; they need social stimulation.[45] Many youth enter the criminal justice system with histories of substance abuse, mental illness, and trauma, problems which often go untreated in isolation, exacerbating

the harmful effects.[46] A tragic consequence of the solitary confinement of youth is the increased risk of suicide and self-harm, including self-mutilation. In juvenile facilities, more than 50% of all suicides occur in isolation.[47] For youth in adult jails, suicide rates in isolation are nineteen times those for the general population.[48] At the same time, youth in isolation are routinely denied minimum education, mental health treatment, and nutrition,[49] which directly affects their ability to successfully re-enter society and become productive adults.[50]

Efforts are underway to end this practice. In June 2012, the Department of Justice issued national standards under the Prison Rape Elimination Act (PREA), stating that "the Department supports strong limitations on the confinement of adults with juveniles,"[51] and mandating that facilities make "best efforts" to avoid isolating children.[52] The U.S. Attorney General's National Task Force on Children Exposed to Violence concluded in 2011, "nowhere is the damaging impact of incarceration on vulnerable children more obvious than when it involves solitary confinement."[53] Internationally, the U.N. Special Rapporteur on Torture has called for a global ban on the solitary confinement of children under 18.[54] Human Rights Watch and the ACLU have also called on the United States to ban this practice.[55]

E. Vulnerable LGBTI prisoners are too often placed in solitary confinement

Unfortunately, solitary confinement has become the default correctional management tool to protect LGBTI individuals from violence in general population. Particularly for transgender women, who are routinely housed in men's facilities, entire prison sentences are often spent in solitary confinement. In a typical case, Andrea, a transgender woman in a New York State men's prison, was involuntarily placed in "protective custody," rather than receiving a meaningful classification assessment. Prison officials' recommendation for Andrea stated, "Based on the Inmate being transgendered, and his [sic] likeness to a female, the likelihood of him being victimized is great. The inmate both looks and sounds like a female, therefore I recommend his protective custody to prevent any harm based on his looks and transgendered status."[56] Andrea, like many transgender women, remained in isolation for her entire three-year sentence and reported ongoing sexual harassment from officers and severe anxiety and depression.[57]

While correctional officials often justify the use of solitary confinement as necessary protection for vulnerable LGBTI prisoners, the effects of such placements are devastating. These placements also fail to keep vulnerable individuals safe. In addition to the stigma of being isolated solely based on one's actual or perceived LGBTI status, LGBTI individuals in "protective" isolation experience the same mental health deterioration that typically characterizes solitary confinement, are denied access to medically necessary healthcare and programs, and are at increased risk of assault and harassment from officers.[58] Though the final PREA standards impose strict limits on the use of "protective custody," correctional agencies continue to house LGBTI individuals in isolation almost as a matter of course.[59] And while the PREA regulations recognized that solitary confinement for LGBTI prisoners can be psychologically damaging and physically dangerous,[60] we continue to hear reports of this practice and its devastating effects from LGBTI prisoners and detainees.

F. Solitary confinement on death row is overused and thwarts vital appellate processes

Nationally, more than 3,000 prisoners are confined on death rows in 35 states. According to the ABA Standards for the Treatment of Prisoners, death row prisoners may be separated from other prisoners, but should be housed in conditions comparable to those in general population. Solitary

confinement should be used only for brief periods for reasons related to discipline, security, or crime.[61] Despite this clear standard, the overwhelming majority of death-penalty states house death row prisoners in what amounts to solitary confinement. The vast majority of these states confine death row prisoners in segregation or solitary-type conditions based *solely* on their death sentences.[62] Simply put, they are condemned to solitary for life, a kind of death before dying. This is of singular concern. While solitary confinement is overused in virtually every type of penal or detention facility in the United States, in no other circumstance is solitary confinement automatically and irrevocably imposed.

Death row is not supposed to be a locus of punishment itself, but rather the place where a state houses a condemned prisoner until all of his appeals are concluded, all process due has been observed, and all doubts concerning his execution resolved. This appellate process is invaluable in preventing the execution of the innocent, and those unconstitutionally or otherwise unlawfully sentenced to death.[63] Death row conditions endured during these appeals are the same for the guilty and innocent, for those properly and improperly sent to death row. Change, however, is afoot. United States District Judge Leonie Brinkema recently ruled that Virginia's automatic placement of death-row prisoners in solitary confinement—without any process in which the prisoner could challenge the placement, and certainly without respect to their dangerousness, misconduct, or any other individualized reason—violates the right to due process guaranteed by the Constitution.[64] In Texas, the Department of Criminal Justice, prison guard unions, and advocates are currently discussing revisions to the Texas Death Row Plan, including limiting solitary confinement to those prisoners who break the rules.[65]

G. Solitary confinement is inconsistent with international human rights principles

The U.N. Committee Against Torture, established to monitor compliance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment —a treaty ratified by the United States in 1994—has recommended that the practice of long-term solitary confinement be abolished altogether and has criticized solitary confinement practices in the United States.[66] Moreover, in a groundbreaking global study on solitary confinement, the U.N. Special Rapporteur on Torture called for a ban on the practice, except in exceptional circumstances, as a last resort, and for as short a time as possible. He also called for increased safeguards against abusive and prolonged solitary confinement, the universal prohibition of solitary confinement exceeding 15 days, and the discontinuance of solitary confinement for juveniles and mentally disabled persons.[67] The Special Rapporteur has repeatedly requested that the U.S. government grant him access to conduct an investigation of solitary confinement practices in the United States; his request has yet to be granted.[68]

II. The Federal Bureau of Prisons overuses solitary confinement

Recent years have seen increased attention to solitary confinement in the federal Bureau of Prisons (BOP), which as the nation's largest prison system that holds about 15,000 prisoners in solitary confinement.[69] Following the first-ever Congressional hearing on solitary confinement, in June 2012,[70] Senator Dick Durbin (D-IL), announced in February 2013 that the BOP had agreed to an independent and comprehensive review of its use of solitary.[71] Reports of the audit's findings, however, have yet to be made public.

In May 2013 the Government Accountability Office (GAO), an independent investigative agency of Congress, issued a damning report on BOP's use of solitary confinement.[72] The report found

that, despite BOP's extensive use of segregated housing (7% of BOP's 217,000 prisoners), BOP has never assessed whether the practice contributes to prison safety.[73] Nor has BOP assessed the psychological effects of long-term segregation, although its Psychology Services Manual notes that extended periods in segregation "may have an adverse effect on the overall mental status of some individuals."[74] The report concluded that BOP does not adequately monitor segregated housing to ensure that prisoners receive food, out-of-cell exercise, and other necessities.[75] Moreover, these assessments confirm other criticisms of BOP's segregation practices. In June 2012, eleven prisoners at ADX Florence, BOP's supermax prison in Colorado, filed a class-action lawsuit on behalf of all individuals with mental illness held at the facility; the lawsuit alleges that, contrary to BOP's written policies, prisoners with mental illness are routinely assigned to ADX, and are unconstitutionally denied necessary treatments.[76] The complaint describes frequent incidents of self-harm and highly symptomatic behavior among the prisoners with mental illness who are held at ADX.[77]

In spite of these criticisms, and although the independent study of BOP's use of solitary confinement is not yet complete, the system will soon significantly expand its capacity to house prisoners in conditions of extreme solitary confinement. In October 2012, BOP acquired an existing, non-operational maximum security state prison in Illinois, Thomson Correctional Center, which has a reported 1,600 cells.[78] During a November 2013 Senate Judiciary Hearing, BOP Director Charles Samuels indicated that the agency was planning to bring Thomson online as an operational ADX facility.[79] While BOP is preparing to add more ADX beds, the existing ADX facility in Florence, Colorado, which houses prisoners in the most extreme forms of isolation in the federal system, has a reported capacity of 490 supermax beds, of which 413 are now in use.[80] Opening Thomson as an ADX would therefore represent a significant and unnecessary expansion of BOP's capacity to subject prisoners to extreme, long-term solitary confinement.

Meanwhile, BOP appears to be mandating a solitary confinement quota in its privately contracted facilities. BOP contracts with fifteen low- and minimum-custody private prisons in its system, which together house nearly 30,000 prisoners.[81] Two of these contracts in particular, and BOP's 2012 CAR XIV solicitation for an additional 1,000 private prison beds, appear to give private prison companies a financial incentive to place excessive numbers of prisoners in isolation by requiring that at least 10% of "contract beds" be located in Special Housing Unit (SHU) cells while compensating the facilities based on the number of beds filled.[82] These cells are specifically meant to house prisoners in isolation. And because BOP does not generally house prisoners under age 18 in its custody, children in federal custody are also held in contract facilities, under terms that do not necessarily ban the use of solitary confinement.[83]

III. Solitary Confinement is Costly and Jeopardizes Public Safety

Solitary confinement serves no demonstrable correctional purpose, yet costs more than any other form of imprisonment. There is little evidence on the utility of solitary confinement.[84] A 2006 study found that opening a supermax prison or SHU had no effect on prisoner-on-prisoner violence in Arizona, Illinois, and Minnesota,[85] and that creating isolation units had only limited impact on prisoner-on-staff violence in Illinois, none in Minnesota, and actually increased violence in Arizona.[86] A similar study in California found that supermax or administrative segregation prisons had increased violence levels.[87] Some researchers have concluded that the severe restrictions in solitary confinement increase violence and engender other behavioral

problems.[88] Although there is little evidence that solitary confinement is an effective prison management tool, there is ample evidence that it is the most expensive. Supermax prisons and segregation units can cost two or three times as much as conventional facilities to build and operate.[89] Staffing costs are much higher—prisoners are generally escorted by two or more officers any time they leave their cells, and work that in other prisons would be performed by prisoners (such as cooking and cleaning) is done by staff. A 2007 estimate from Arizona put the annual cost of holding a prisoner in solitary confinement at approximately $50,000, compared to about $20,000 for the average prisoner.[90] In Maryland, the average cost of housing a prisoner in segregation is three times greater than in a general population facility; in Ohio and Connecticut it is twice as high; and in Texas the costs are 45% greater.[91]

Not only is there little evidence that the enormous outlay of resources for these units makes prisons safer, there is growing concern that such facilities are actually detrimental to public safety. The pervasive use of solitary confinement means that thousands of prisoners return to their communities after months or years in isolation, emerging without social skills or life skills that would make them better citizens.[92] A 2006 commission raised concerns regarding the practice of releasing prisoners directly from segregation settings to the community,[93] and a 2006 study of prisoners in solitary confinement noted that such conditions may "severely impair . . . the prisoner's capacity to reintegrate into the broader community upon release from imprisonment."[94]

Indeed, release directly from isolation strongly correlates with an increased risk of recidivism. Preliminary research from California suggests that rates of return to prison are 20% higher for solitary confinement prisoners.[95] In Colorado, two-thirds of prisoners released directly from solitary confinement returned to prison within three years; prisoners who first transitioned from solitary confinement to the general prison population were 6% less likely to recidivate in the same period.[96] A 2001 study in Connecticut found that 92% of prisoners who had been held at the state's supermax prison were rearrested within three years of release, compared with 66% of prisoners who had not been held in administrative segregation.[97] Another study, in Washington State, tracked 8,000 former prisoners upon release and found that, not only were those who came from segregation more likely to reoffend, but they were also more likely to commit violent crimes.[98] Findings like these, suggesting a link between recidivism and the debilitating conditions in segregation, have led mental health experts to call for prerelease programs to help prisoners held in solitary confinement transition to the community more safely.[99]

IV. There are Better Alternatives to Solitary Confinement

A. State-level reforms reduce the use of solitary confinement

Numerous states have taken steps to investigate, monitor, reduce, and reform their use of solitary. These reforms have resulted from agency initiative as well as legislative action. **A growing number of state corrections officials have taken direct steps to regulate the use of solitary confinement, especially as it relates to mental health issues and potential litigation.** Responding to litigation that was settled in 2012, the Massachusetts Department of Correction rewrote its mental health care policies to exclude prisoners with severe mental illness from long-term segregation and designed two maximum security mental health treatment units to divert the mentally ill out of segregated housing.[100] In Colorado, as of December 2013, all state wardens have been directed that any prisoners with "major mental illness" are no longer to be placed in

administrative segregation.[101] By the end of 2013, facing mounting public scrutiny of its overuse of solitary confinement, the New York City Department of Correction had reassigned all detainees with mental illness in "punitive segregation" at Rikers Island jail to units with more therapeutic resources.[102] In 2007, a New York State solitary confinement law went into effect; the law excludes prisoners with serious mental illness from solitary confinement, requires mental health monitoring of all prisoners in disciplinary segregation, and creates a non-disciplinary unit for prisoners with psychiatric disabilities where a therapeutic milieu is maintained and prisoners are subject to the least restrictive environment consistent with their needs and mental status.[103]

State correctional leaders have also undertaken more comprehensive reforms to their use of solitary confinement. Last week, the New York State Department of Corrections and Community Supervision announced an agreement with the New York Civil Liberties Union to reform the way solitary confinement is used in New York State's prisons, with the state taking immediate steps to remove youth, pregnant women, and the developmentally disabled and intellectually challenged prisoners from extreme isolation.[104] With the agreement, New York State becomes the largest prison system in the country to prohibit the use of punitive solitary confinement against prisoners under 18.[105] In January 2013, Illinois shuttered its notorious supermax prison, Tamms Correctional Center, a move that will reportedly save the state over $20 million per year.[106] In November 2013, New Mexico's corrections secretary outlined a plan to relocate nonviolent prisoners out of segregation, and to relocate "protective custody" prisoners to a separate general-population cluster, cutting the state's segregation population by half over the next year.[107] Almost 10 percent of New Mexico's 7,000 prisoners are currently held in segregated housing, and a recent ACLU report condemned the state's overuse of segregation.[108] In 2012, the Colorado Department of Corrections undertook an external review by DOJ's National Institute of Corrections; the resulting reforms led to the closure of a 316-bed supermax facility, and projected savings of millions of dollars.[109] Other correctional reforms have emerged in recent years from Mississippi,[110] Maine,[111] and Michigan.[112]

Reforms to the use of solitary confinement in juvenile justice facilities are also underway. In June 2013, the governor of Nevada signed into law new restrictions on the isolation of youth in juvenile facilities; the law places reporting requirements on the use of isolation, and forbids holding a child in room confinement for longer than 72 hours.[113] In 2012, West Virginia's governor signed into law an outright ban on the use of punitive isolation in juvenile facilities.[114]

State legislatures are calling for studies to address the impact of solitary confinement. In May 2013, the Texas legislature passed a bill requiring an independent commission to take a comprehensive look at the use of solitary confinement in adult and juvenile facilities across the state.[115] In 2011, the Colorado legislature required a review of administrative segregation and reclassification efforts for prisoners with mental illness or developmental disabilities.[116] In 2011, the New Mexico legislature mandated a study on solitary confinement's impact on prisoners, its effectiveness as a prison management tool, and its costs.[117] Similarly, in 2012 the Lieutenant Governor of Texas commissioned a study on the use of administrative segregation in the Texas Department of Criminal Justice, including the reasons for its use, its impact on public safety and prisoner mental health, possible alternative prison management strategies, and the need for greater reentry programming for the population.[118] In 2012, the Virginia Senate passed a joint resolution mandating a legislative study on alternative practices to limit the use of solitary

confinement, cost savings associated with limiting its use, and the impact of solitary confinement on prisoners with mental illness, as well as alternatives to segregation for such prisoners.[119]

B. ICE implements greater oversight of solitary confinement in all facilities

U.S. **Immigration and Customs Enforcement (ICE)** has since September 2013 imposed monitoring requirements and substantive limits on the use of solitary confinement, providing an example for reform which BOP should strive to emulate. The directive, which applies to over 250 immigration detention facilities, requires that any placement in solitary confinement for longer than 14 days receive field office director approval; it also places substantive safeguards on "protective" segregation of vulnerable individuals.[120] Because ICE is comparable to BOP in many ways, including its extensive national network of facilities and private contract facilities, the ICE directive sets a strong example of rigorous monitoring and substantive requirements which BOP can and should follow.

C. ABA Standards provide a model for broad reforms

Recognizing the inherent problems of solitary confinement, the **American Bar Association** recently approved *Standards for Criminal Justice, Treatment of Prisoners* to address all aspects of solitary confinement (the Standards use the term "segregated housing").[121] The solutions presented in the Standards represent a consensus view of representatives of all segments of the criminal justice system who collaborated exhaustively in formulating the final ABA Standards.[122] These solutions include the provision of adequate and meaningful process prior to placing or retaining a prisoner in segregation (ABA Treatment of Prisoners Standard 23-2.9 [hereinafter cited by number only]); limitations on the duration of disciplinary segregation and the least restrictive protective segregation possible (23-2.6, 23-5.5); allowing social activities such as in-cell programming, access to television, phone calls, and reading material, even for those in isolation (23-3.7, 23-3.8); decreasing sensory deprivation by limiting the use of auditory isolation, deprivation of light and reasonable darkness, and punitive diets (23-3.7, 23-3.8); allowing prisoners to gradually gain more privileges and be subject to fewer restrictions, even if they continue to require physical separation (23-2.9); refraining from placing prisoners with serious mental illness in segregation (23-2.8, 23-6.11); careful monitoring of prisoners in segregation for mental health deterioration and provision of appropriate services for those who experience such deterioration (23-6.11).

V. Recommendations

1. The ACLU urges Congress to enact legislation that would establish a commission to create national standards to address to overuse of solitary confinement in federal, state and local prisons, jails and other detention facilities. This commission would conduct a comprehensive study of the use of solitary confinement in corrections and detention facilities across the country, the impact of the practice on cost, facility safety, incidents of self-harm, and recidivism. In addition, the commission would develop national standards to address the overuse of solitary confinement. The Department of Justice would take the commission's recommendations and create regulations that ensure the development of smart, humane and evidence-based best practices that will limit the use of all forms of isolation and solitary confinement, and ban the practice for children under the age of 18, persons with mental illness, and other vulnerable individuals.

2. The ACLU urges Congress to pass legislation to require reforms to the use of solitary confinement in federal facilities operated by or contracted with BOP. This legislation should include a BOP ban on the solitary confinement of juveniles held in federal custody and prisoners with mental illness. BOP should be required to reduce its use of solitary confinement and other forms of isolation in federal prisons by implementing reforms based on the standards for long-term segregated housing established by the American Bar Association's *Standards for Criminal Justice, Treatment of Prisoners*, as well as the findings of the Government Accountability Office (GAO), and the ongoing study of BOP's use of segregation being conducted by outside contractors. Consistent with this type of legislation that would require reforms to the use of solitary confinement, BOP's newly acquired facility at Thomson, Illinois, should not be designated for use as an ADX (supermax) facility. Instead, it should be converted for use as a lower custody, general population prison.

3. The ACLU urges Congress to engage in increased federal oversight and monitoring of BOP's use of solitary confinement and provide more funding to the agency for alternatives to solitary confinement in order to further the goals of transparency and substantive reform. A necessary first step toward reform is the promotion of transparency in segregation practices. Greater accountability would empower citizens, taxpayers, lawmakers, and corrections officials to make informed choices about the use of segregation, a practice which has been shrouded in secrecy and therefore subject to abuse.

4. The ACLU urges Congress to enact legislation that would require federal, state, and local prisons, jails, detention centers, and juvenile facilities to report to the Bureau of Justice Statistics (BJS) who is held in solitary confinement and for what reason and the length of their segregation. BJS should annually publish the statistical analysis and present a comprehensive review of the use of solitary confinement in the United States.

5. The ACLU urges Congress to provide federal funding through the Bureau of Justice Assistance (BJA) or other entity to support federal, state, and local efforts to reduce the use of solitary confinement, with a focus on programming and other alternatives.

6. The ACLU urges Congress to conduct oversight into why the Department of State has not yet granted the United Nations Special Rapporteur on Torture an official invitation to visit the United States to examine the use of solitary confinement in U.S. prisons and detention facilities. Also, the Congress should inquire about the State Department's role in the overdue process of updating the United Nations Standard Minimum Rules for the Treatment of Prisoners (SMRs). New provisions of the SMRs should include a ban on solitary confinement of juveniles and individuals with serious mental illness and protect against prolonged solitary confinement for all persons.

ENDNOTES

[1] DANIEL P. MEARS, URBAN INST., EVALUATING THE EFFECTIVENESS OF SUPERMAX PRISONS 4 (2006).
[2] Angela Browne, Alissa Cambier, Suzanne Agha, *Prisons Within Prisons: The Use of Segregation in the United States*, 24 FED'L SENTENCING REPORTER 46 (2011).
[3] *In re Medley*, 134 U.S. 160, 168 (1890) ("[Prisoners subject to solitary confinement] fell, after even a short confinement, into a semi-fatuous condition, from which it was next to impossible to arouse them, and others became violently insane; others still, committed suicide; while those who stood the ordeal better were not generally reformed, and in most cases did not recover sufficient mental activity to be of any subsequent service to the community.").
[4] MEARS, *supra* note 1, at ii.
[5] *See, e.g.*, KERAMET REITER, PAROLE, SNITCH, OR DIE: CALIFORNIA'S SUPERMAX PRISONS & PRISONERS, 1987-2007 47-51 (2010); MAUREEN L. O'KEEFE, COLO. DEP'T OF CORRECTIONS, ANALYSIS OF COLORADO'S ADMINISTRATIVE SEGREGATION 25 (2005).
[6] Eric Lanes, *The Association of Administrative Segregation Placement and Other Risk Factors with the Self-Injury-Free Time of Male Prisoners*, 48 J. OF OFFENDER REHABILITATION 529, 532 (2009).
[7] *Id.*
[8] *Id.*
[9] Leena Kurki & Norval Morris, *The Purposes, Practices, and Problems of Supermax Prisons*, 28 CRIME AND JUST. 385, 389 (2001).
[10] ABA CRIM. JUST. STANDARDS ON THE TREATMENT OF PRISONERS, Standard 23-1.0(r) (2010), *available at* http://www.abanet.org/crimjust/policy/midyear2010/102i.pdf [hereinafter ABA STANDARDS].
[11] *Id.* at Standard 23-1.0(o).
[12] Stuart Grassian, *Psychopathological Effects of Solitary Confinement*, 140 AM. J. OF PSYCHIATRY 1450, 1452 (1983).
[13] *Id.*; Craig Haney, *Mental Health Issues in Long-Term Solitary and "Supermax" Confinement*, 49 CRIME & DELINQ. 124, 130 (2003); *see generally* Richard Korn, *The Effects of Confinement in the High Security Unit at Lexington*, 15 Soc. Just. 8 (1988).
[14] Grassian, *supra* note 12, at 1452-53; Haney, *supra* note 13, at 130, 133; Holly A. Miller, *Reexamining Psychological Distress in the Current Conditions of Segregation*, 1 J. OF CORRECTIONAL HEALTHCARE 39, 48 (1994); *see generally* Stanley L. Brodsky & Forest R. Scogin, *Inmates in Protective Custody: First Data on Emotional Effects*, 1 FORENSIC REP. 267 (1988).
[15] Grassian, *supra* note 12, at 1453; Holly A. Miller & Glenn R. Young, *Prison Segregation: Administrative Detention Remedy or Mental health Problem?*, 7 CRIM. BEHAV. & MENTAL HEALTH 85, 91 (1997); Haney, *supra* note 13, at 130, 134; *see generally* HANS TOCH, MOSAIC OF DESPAIR: HUMAN BREAKDOWN IN PRISON (1992).
[16] Grassian, *supra* note 12, at 1453.
[17] *Id.*; Miller & Young, *supra* note 15, at 92.
[18] Grassian, *supra* note 12, at 1453; Miller & Young, *supra* note 15, at 92; Haney, *supra* note 13, at 131.
[19] Haney, *supra* note 13, at 130; s*ee generally* Korn, *supra* note 13.
[20] Haney, *supra* note 13, at 131.
[21] Miller & Young, *supra* note 15, at 91; *see generally* Korn, *supra* note 13.
[22] Miller & Young, *supra* note 15, at 91; *see generally* Korn, *supra* note 13.
[23] Haney, *supra* note 13, at 134; *see generally* Brodsky & Scogin, *supra* note 14.
[24] Haney, *supra* note 13, at 133.
[25] *Id.*
[26] Haney, *supra* note 13, at 137; *see generally* Brodsky & Scogin, *supra* note 14.
[27] Haney, *supra* note 13, at 133.
[28] *Id.*
[29] Grassian, *supra* note 12, at 1453; Lanes, *supra* note 6, at 539-40.
[30] Paul Gendreau, N.L. Freedman, G.J.S. Wilde & G.D. Scott, *Changes in EEG Alpha Frequency and Evoked Response Latency During Solitary Confinement*, 79 J. OF ABNORMAL PSYCHOL. 54, 57-58 (1972).
[31] *See* Homer Venters et al., *Solitary Confinement and Risk of Self-Harm Among Jail Inmates*, 104:3 AM. J. PUBLIC HEALTH 442, 442-447 (March 2014), *available at* http://ajph.aphapublications.org/doi/pdf/10.2105/AJPH.2013.301742; Expert Report of Professor Craig Haney at 45-46 n. 119, *Coleman v. Schwarzenegger*, 2008 WL 8697735 (ED. Cal 2010) (No: Civ S 90-0520 LKK-JFM P). Another study examined the impact of solitary confinement on the amount of time that passes between incidents in which prisoners harm themselves and found that prisoners in solitary harm themselves on average 17 months earlier than prisoners in general population. *See* Lanes, *supra* note 6, at 539-40.

[32] *See* AMERICAN PSYCHIATRIC ASSOCIATION, POSITION STATEMENT ON SEGREGATION OF PRISONERS WITH MENTAL ILLNESS (2012), *available at* http://www.psych.org/File%20Library/Learn/Archives/ps2012_PrisonerSegregation.pdf ("Prolonged segregation of adult inmates with serious mental illness, with rare exceptions, should be avoided due to the potential for harm to such inmates."); AMERICAN PUBLIC HEALTH ASSOCIATION, SOLITARY CONFINEMENT AS A PUBLIC HEALTH ISSUE, POLICY NO. 201310 (2013), *available at* http://www.apha.org/advocacy/policy/policysearch/default.htm?id=1462 (detailing the public-health harms of solitary confinement; urging correctional authorities to "eliminate solitary confinement for security purposes unless no other less restrictive option is available to manage a current, serious, and ongoing threat to the safety of others"; and asserting that "[p]unitive segregation should be eliminated"); MENTAL HEALTH AMERICA, SECLUSION AND RESTRAINTS, POLICY POSITION STATEMENT 24 (2011), *available at* http://www.nmha.org/positions/seclusion-restraints ("urg[ing] abolition of the use of seclusion . . . to control symptoms of mental illnesses"); NATIONAL ALLIANCE ON MENTAL ILLNESS, PUBLIC POLICY PLATFORM SECTION 9.8, *available at* http://www.nami.org/Template.cfm?Section=NAMI_Policy_Platform&Template=/ContentManagement/ContentDisplay.cfm&ContentID=38253 ("oppos[ing] the use of solitary confinement and equivalent forms of extended administrative segregation for persons with mental illnesses"); SOCIETY OF CORRECTIONAL PHYSICIANS, POSITION STATEMENT, RESTRICTED HOUSING OF MENTALLY ILL INMATES (2013), *available at* http://societyofcorrectionalphysicians.org/resources/position-statements/restricted-housing-of-mentally-ill-inmates ("acknowledg[ing] that prolonged segregation of inmates with serious mental illness, with rare exceptions, violates basic tenets of mental health treatment," and recommending against holding these prisoners in segregated housing for more than four weeks).

[33] Kurki & Morris, *supra* note 9, at 391.

[34] *Id.* at 390-91.

[35] Roy King, *The Rise and Rise of Supermax: An American Solution in Search of a Problem?*, 1 PUNISHMENT & SOC'Y. 163, 177 (1999).

[36] Haney, *supra* note 13, at 127.

[37] Howard Greninger, *Suit Targets Carlisle Prison*, TERRE HAUTE TRIBUNE-STAR, Feb. 4, 2005.

[38] *See, e.g.*, James Ridgeway & Jean Casella, *Locking Down The Mentally Ill: Solitary Confinement Cells Have Become America's New Asyluns*, THE CRIME REP., Feb.20, 2010, *http://www.thecrimereport.org/archive/locking-down-the-mentally-ill*; MARY BETH PFEIFFER, CRAZY IN AMERICA: THE HIDDEN TRAGEDY OF OUR CRIMINALIZED MENTALLY ILL (2007); JENNIFER R. WYNN, ALISA SZATROWSKI & GREGORY WARNER, THE CORRECTIONAL ASSOCIATION OF NEW YORK, MENTAL HEALTH IN THE HOUSE OF CORRECTIONS: A STUDY OF MENTAL HEALTH CARE IN NEW YORK STATE PRISONS 48 (2004). For a recent indictment of states' and the federal government's practices of warehousing people with mental illness in prisons, see generally Nicholas Kristof, *Inside a Mental Hospital Called Jail*, N.Y. TIMES, Feb. 9, 2014, http://www.nytimes.com/2014/02/09/opinion/sunday/inside-a-mental-hospital-called-jail.html (not focusing on solitary confinement.

[39] Karin Grunden, *Man found hanging in cell at Wabash Valley Correctional Facility*, TERRE HAUTE TRIBUNE-STAR, Oct. 1, 2003.

[40] *See, e.g.*, Indiana Protection & Advocacy Services Commission v. Commissioner, Case 1:08-cv-01217-TWP-MJD, Doc. 279 (S.D. Ind., Dec. 31, 2012), available at http://www.in.gov/ipas/files/IDOC_trial_court_decision.pdf (holding that the Indiana Department of Correction's practice of placing prisoners with serious mental illness in segregation constituted cruel and unusual treatment in violation of the Eighth Amendment); Jones 'El v. Berge, 164 F. Supp. 2d 1096, 1101-02 (W.D. Wis. 2001); Ruiz v. Johnson, 37 F. Supp. 2d 855, 915 (S.D. Tex. 1999), *rev'd on other grounds*, 243 F.3d 941 (5th Cir. 2001), *adhered to on remand*, 154 F. Supp. 2d 975 (S.D. Tex. 2001) ("Conditions in TDCJ-ID's administrative segregation units clearly violate constitutional standards when imposed on the subgroup of the plaintiffs' class made up of mentally-ill prisoners"); Coleman v. Wilson, 912 F. Supp. 1282, 1320-21 (E.D. Cal. 1995); Madrid v. Gomez, 889 F. Supp. 1146, 1265-66 (N.D. Cal. 1995); Casey v. Lewis, 834 F. Supp. 1477, 1549-50 (D. Ariz. 1993); Langley v. Coughlin, 715 F. Supp. 522, 540 (S.D.N.Y. 1988) (holding that evidence of prison officials' failure to screen out from SHU "those individuals who, by virtue of their mental condition, are likely to be severely and adversely affected by placement there" states an Eighth Amendment claim).

[41] HUMAN RIGHTS WATCH & THE AMERICAN CIVIL LIBERTIES UNION, GROWING UP LOCKED DOWN: YOUTH IN SOLITARY CONFINEMENT IN JAILS AND PRISONS ACROSS THE UNITED STATES, 132 (2012), *available at* http://www.aclu.org/growinguplockeddown; WASH. COAL. FOR THE JUST TREATMENT OF YOUTH, A REEXAMINATION OF YOUTH INVOLVEMENT IN THE ADULT CRIMINAL JUSTICE SYSTEM IN WASHINGTON: IMPLICATIONS OF NEW FINDINGS ABOUT JUVENILE RECIDIVISM AND ADOLESCENT BRAIN DEVELOPMENT 8 (2009), *available at* http://www.columbialegal.org/files/JLWOP_cls.pdf.

[42] Sandra Simkins, et al., *The Harmful Use of Isolation in Juvenile facilities: The Need for Post-Disposition Representation*, 38 WASH. U. J.L. & POL'Y 241 (2012), *available at* http://digitalcommons.law.wustl.edu/cgi/viewcontent.cgi?article=1019&context=wujlp; LINDSAY M. HAYES, NAT'L CTR. ON INSTITUTIONS AND ALTERNATIVES JUVENILE SUICIDE IN CONFINEMENT: A NATIONAL SURVEY 40 (2004).

[43] AM. ACAD. OF CHILD & ADOLESCENT PSYCHIATRY, POLICY STATEMENT ON SOLITARY CONFINEMENT OF JUVENILE OFFENDERS (Apr. 2012), *available at* http://www.aacap.org/cs/root/policy_statements/solitary_confinement_of_juvenile_offenders; Sandra Simkins et al., *The Harmful Use of Isolation in Juvenile Facilities: The Need for Post-Disposition Representation*, 38 WASH. U.J.L. &POL'Y 241, 257-61 (2012).

[44] Jay N. Giedd, *Structural Magnetic Resonance Imaging of the Adolescent Brain*, 1021 ANNALS N.Y. ACAD. SCI. 77 (2004), *available at* http://intramural.nimh.nih.gov/research/pubs/giedd05.pdf; Laurence Steinberg, *Cognitive and Affective Development in Adolescence*, 9 TRENDS IN COGNITIVE SCI. 69 (2005), *available at* http://www.temple.edu/psychology/lds/documents/CognitiveandAffectiveDEvelopmentTICS.pdf.

[45] Laurence Steinberg et al, *Age Differences in Future Orientation and Delay Discounting*, 80 CHILD DEV. 28, (2009), *available at* http://www.wisspd.org/htm/ATPracGuides/Training/ProgMaterials/Conf2011/AdDev/ADFO.pdf; Jennifer Woolard et al., *Juveniles within Adult Correctional Settings: Legal Pathways and Developmental Considerations*, 4 INT'L J. FORENSIC MENTAL HEALTH 1, 9 (2005), *available at* http://www.policyarchive.org/handle/10207/bitstreams/20668.pdf.

[46] HAYES, *supra* note 42; LINDA A. TEPLIN ET AL., U.S. DEPT. OF JUST., PSYCHIATRIC DISORDERS OF YOUTH IN DETENTION (2006), *available at* https://www.ncjrs.gov/pdffiles1/ojjdp/210331.pdf; Patricia Kerig et al., *Posttraumatic Stress as a Mediator of the Relationship Between Trauma and Mental Health Problems Among Juvenile Delinquents*, 38 J. YOUTH &ADOLESCENCE 1214 (2009), *available at* http://www.psych.utah.edu/people/people/kerig/pub/PosttraumaticStressasaMediator.pdf; Jason Washburn et al., *Psychiatric Disorders Among Detained Youths: A Comparison of Youths Processed in Juvenile Court and Adult Criminal Court*, 59 PSYCHIATRIC SERV. 965 (2008), *available at* http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2718561/pdf/nihms109770.pdf.

[47] HAYES, *supra* note 42, at 28;Seena Fazel et al., *Suicide in Prisoners: A Systematic Review of Risk Factors*, 69 J. CLINICAL PSYCHIATRY 1721 (2008); *see* CHRISTOPHER MUOLA, U.S. DEPT. OF JUST., SUICIDE AND HOMICIDE IN STATE PRISONS AND LOCAL JAILS 9 (2005), *available at* http://bjs.ojp.usdoj.gov/content/pub/pdf/shsplj.pdf.

[48] CAMPAIGN FOR YOUTH JUSTICE, JAILING JUVENILES: THE DANGERS OF INCARCERATING YOUTH IN ADULT JAILS IN AMERICA 10 (2007), *available at* http://www.campaignforyouthjustice.org/documents/CFYJNR_JailingJuveniles.pdf.

[49] *Concerning Pretrial Detention of Juveniles Prosecuted as Adults: Hearing on HB 12-1139 Before the H. Comm. on Judiciary*, 68th General Assem. (Colo. 2012) (statement of Peg Ackerman, County Sheriffs of Colorado), *available at* http://podcache-101.granicus.com/pstore1/coloradoga/coloradoga_d0c9ed72-c055-4de2-8a9a-730e8104df44.mp4; *see* Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400-1450 (2004) (in which several provisions do not generally apply to disabled children convicted as adults and incarcerated in adult prisons), *available at* http://idea.ed.gov/download/statute.html; PHYSICAL ACTIVITY GUIDELINES ADVISORY COMM., PHYSICAL ACTIVITY GUIDELINES ADVISORY COMMITTEE REPORT (2008) (recommending that youth engage in moderate to vigorous physical exercise three to five times a week), *available at* http://www.health.gov/PAguidelines/Report/pdf/CommitteeReport.pdf; U.S. DEPT. OF AGRIC., U.S. DEPT. OF HEALTH & HUM. SERV., DIETARY GUIDELINES FOR AMERICANS (2010) (recommending diet management and increased physical activity to improve public health), *available at* http://www.cnpp.usda.gov/Publications/DietaryGuidelines/2010/PolicyDoc/PolicyDoc.pdf; David E. Arredondo, *Principles of Child Development and Juvenile Justice: Information for Decision-Makers*, 5 J. CENTER FOR FAM., CHILD &CTS. 127 (2004).

[50] U.S. DEPT. OF HEALTH & HUM. SERV., EFFECTS ON VIOLENCE OF LAWS AND POLICIES FACILITATING THE TRANSFER OF YOUTH FROM THE JUVENILE TO THE ADULT JUSTICE SYSTEM: A REPORT ON RECOMMENDATIONS OF THE TASK FORCE ON COMMUNITY PREVENTIVE SERVICES 6-8 (2007), *available at* http://www.cdc.gov/mmwr/pdf/rr/rr5609.pdf; BARRY HOLMAN & JASON ZIEDENBERG, JUSTICE POLICY INST., THE DANGERS OF DETENTION (2006), *available at* http://www.justicepolicy.org/images/upload/06-11_REP_DangersOfDetention_JJ.pdf.

[51] National Standards to Prevent, Detect and Respond to Prison Rape, Docket No. OAG-131, (May 16, 2012) (to be codified at 28 C.F.R. pt. 115), *available at* http://www.ojp.usdoj.gov/programs/pdfs/prea_final_rule.pdf.

[52] *Id.*

[53] ATTORNEY GENERAL'S NATIONAL TASK FORCE ON CHILDREN EXPOSED TO VIOLENCE, REPORT OF THE ATTORNEY GENERAL'S NATIONAL TASK FORCE ON CHILDREN EXPOSED TO VIOLENCE, DEFENDING CHILDHOOD: PROTECT, HEAL, THRIVE, 115, 125 (2012), *available at* http://www.justice.gov/defendingchildhood/cev-rpt-full.pdf.

[54] The Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman, or degrading treatment or punishment, *Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, delivered to the General Assembly*, U.N. Doc. A/66/268 (Aug. 5, 2011) [hereinafter Special Rapporteur].

[55] HUMAN RIGHTS WATCH & THE AMERICAN CIVIL LIBERTIES UNION, GROWING UP LOCKED DOWN: YOUTH IN SOLITARY CONFINEMENT IN JAILS AND PRISONS ACROSS THE UNITED STATES, 132 (2012), *available at* http://www.aclu.org/growinguplockeddown.

[56] LGBT PREA comments, http://transequality.org/PDFs/PREA_Comments_April_2011.pdf.

[57] Id. Correspondence on file with authors.

[58] Sylvia Rivera Law Project, "Its war in here: A Report on the Treatment of Transgender and Intersex People in New York State Men's Prisons" 17-19 (2007), http://srlp.org/files/warinhere.pdf

[59] National Standards to Prevent, Detect and Respond to Prison Rape, *supra* note 51.

[60] Unfortunately, LGBTI detainees in immigration detention facilities are not covered by the PREA regulations. Leslie Cooper, *New Federal Standards Offer Unprecedented Protections to LGBTI Prisoners*, ACLU BLOG (May 21, 2012, 2:25 PM), http://www.aclu.org/blog/prisoners-rights-lgbt-rights-womens-rights/new-federal-standards-offer-unprecedented. Detainees in immigration facilities across the country are often subjected to inhumane conditions, including extended periods of solitary confinement, often in the name of "protecting" LGBTI detainees facing the risk of physical and sexual abuse. The ACLU of Arizona recently produced a report detailing the incredibly degrading treatment faced by LGBTI immigration detainees at facilities in that state. VICTORIA LOPEZ, IN THEIR OWN WORDS: ENDURING ABUSE IN ARIZONA IMMIGRATION DETENTION CENTERS, ACLU OF ARIZONA, (June 2011), *available at* http://www.acluaz.org/sites/default/files/documents/detention%20report%202011.pdf. Transgender and gay detainees are already at higher risk of sexual violence and inadequate medical care while in immigration detention. *Id.* at 23. On top of those concerns, LGBTI detainees are often subjected to long-term "protective custody" – extended periods of isolation, sometimes for 23 hours per day, and harsh treatment by detention officials. *See* Immigration Equality, *Conditions of Detention*, http://www.immigrationequality.org/issues/detention/conditions-of-detention/ (last visited June 15, 2012).

[61] ABA Crim. Just. Standards on the Treatment of Prisoners, Standard 23-2.6.(a) (2010), available at http://www.abanet.org/crimjust/policy/midyear2010/102i.pdf.

[62] American Civil Liberties Union, *A Death Before Dying: Solitary Confinement on Death Row*, July 2013, available at https://www.aclu.org/deathrowsolitary; Mark D. Cunningham & Andrea D. Lyon, *"Reason Not the Need": Does the Lack of Compelling State Interest in Maintaining a Separate Death Row Make It Unlawful?*, AMERICAN JOURNAL OF CRIMINAL LAW, 33, 13-17 (2006) (discussing death row conditions in multiple states).

[63] Death Penalty Information Center, *The Innocence List*, available at http://www.deathpenaltyinfo.org/innocence-list-those-freed-death-row (documenting exoneration during appeals process of 143 innocent death-row prisoners); James S. Liebman & Jeffrey Fagan, *A Broken System: Error Rates in Capital Cases, 1973-1995,* available at http://www2.law.columbia.edu/instructionalservices/liebman/ (documenting 68% reversal rate of death sentences nationally, due to prejudicial legal error).

[64] *Prieto v. Clarke*, No. 12-CV-1199Slip Copy, 2013 WL 6019215 (Nov. 12, 2013 E.D.Va.).

[65] Alex Hannaford, *Prison Guard Union Calls on Texas to Curtail Solitary Confinement on Death Row*, TEXAS OBSERVER, Jan. 28, 2014, available at http://www.texasobserver.org/texas-prison-guard-union-calls-curtailment-solitary-confinement-death-row/; Steve J. Martin, *Why solitary confinement puts death row guards in jeopardy*, DALLAS NEWS, Feb. 6, 2014, available at http://www.dallasnews.com/opinion/latest-columns/20140206-why-solitary-confinement-puts-death-row-guards-in-jeopardy.ece (opinion piece of former corrections officer and Texas prison official).

[66] *See, e.g.*, U.N. Comm. Against Torture, *Consideration of Reports Submitted by States Parties Under Article 19 of the Convention: Denmark*, ¶ 14, U.N. Doc. CAT/C/DNK/CO/5 (July 16, 2007). When the same Committee reviewed practices in the United States, it expressed grave concerns over the extremely harsh regime imposed on prisoners in "super-maximum" prisons. The Committee specifically noted the prolonged isolation prisoners are subject to and the effect such treatment has on their mental health, and recommended that "[t]he State party should review the regime imposed on [prisoners] in 'supermaximum prisons,' in particular the practice of prolonged isolation." *See* U.N. Comm. Against Torture, *Consideration of Reports Submitted by States Parties Under Article 19 of the Convention: Conclusions and Recommendations of the Committee Against Torture: United States of America*, U.N. Doc. CAT/C/USA/CO/2, at ¶ 36 (May 18, 2006).

[67] Special Rapporteur, *supra* note 54; *see also* Jules Lobel, *Prolonged Solitary Confinement and the Constitution*, 11 U. Pa. J. CONST. L. 115, 122-25 (2008); Elizabeth Vasiliades, *Solitary Confinement and International Human Rights: Why the U.S. Prison System Fails Global Standards*, 21 AM. U. INT'L L. REV. 71, 98 (2005

[68] *See* Letter from American Civil Liberties Union et al. to Acting Assistant Secretary Urza Zeya, Acting Assistant Secretary Dean Pittman & Deputy Legal Adviser Susan Biniaz (June 19, 2013), available at https://www.aclu.org/files/assets/coalition_letter_to_department_of_state_re_juan_mendez_visit.pdf (urging, in a coalition letter, the U.S. Department of State to invite U.N. Special Rapporteur Juan Mendez to conduct a fact-finding mission to examine the use of solitary confinement in U.S. prisons and other places of detention).

[69] During the June 2012 Senate hearing on solitary confinement, Charles E. Samuels, Jr., Director of the Federal Bureau of Prisons, stated that seven percent of the total federal prison population is held in solitary confinement. With a current federal prison population of approximately 217,000, this means that 15,190 prisoners are being held in isolation in federal facilities. *See Reassessing Solitary Confinement: The Human Rights, Fiscal, And Public Safety Consequences: Hearing before the Subcomm. on the Constitution, Civil Rights, and Human Rights of the S. Comm. on the Judiciary*, 112th Cong. 12 (2012) (verbal exchange between Charles E. Samuels, Jr. and Sen. Al Franken (D-MN)).

[70] *See The Constitution, Civil Rights, and Human Rights*, U.S. SEN. COMM. ON THE JUDICIARY, http://www.judiciary.senate.gov/about/subcommittees/constitution.cfm (last visited June 24, 2013).

[71] Press Release, Sen. Dick Durbin (D-IL), Durbin statement on Federal Bureau of Prisons Assessment of its Solitary Confinement Practices (Feb. 4, 2013), http://www.durbin.senate.gov/public/index.cfm/pressreleases?ID=07260483-4972-4720-8d43-8fc82a9909ac.

[72] *See* U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-13-429, IMPROVEMENTS NEEDED IN BUREAU OF PRISONS' MONITORING AND EVALUATION OF IMPACT OF SEGREGATED HOUSING 2 (2013) [hereinafter GAO REPORT ON SEGREGATED HOUSING]. "Segregated housing" refers to housing units in which prisoners are locked in their cells for approximately 23 hours a day, either alone or with a cellmate. GAO REPORT ON SEGREGATED HOUSING, at 6.

[73] *Id.* at 33.

[74] *Id.* at 40.

[75] *Id.* at 41.

[76] *See* Mentally Ill Prisoners at Federal Supermax File Class Action Suit Alleging Deliberate Mistreatment, Washington Lawyers' Committee for Civil Rights and Urban Affairs (June 18, 2012), *available at* http://www.supermaxlawsuit.com/2012-06-18-Supermax-Press-Release.PDF.

[77] *Id.*

[78] See Capital Asset Plan and Business Case Summary, Exhibit 300, Part I: Summary Information And Justification (All Capital Assets), Administrative USP Thomson, IL, Mar. 29, 2013, http://www.justice.gov/jmd/2014justification/exhibit300/usp-thomson.pdf (requesting funding for USP Thomson); Reuters, Update 1-Illinois Prison Eyed To House Guantanamo Detainees, Nov. 15, 2009, http://www.reuters.com/article/2009/11/15/guantanamo-idUSN15468433200911l5 (reporting that Thomson, as constructed, has 1,600 cells)

[79] *See* Videorecording of Charles Samuels, Jr., testifying at Senate Judiciary Committee Hearing SD-226, Nov. 11, 2013, at 52:00-54:00, available at http://www.senate.gov/isvp/?comm=judiciary&type=live&filename=judiciary110613 (discussing BOP's need for more ADX beds in the context of Thomson). *See also* Press Release, Durbin, Bustos: Robust Funding for Prison Activation in Omnibus Appropriations Bill is Good News for Thomson, Jan. 13, 2014, http://www.durbin.senate.gov/public/index.cfm/pressreleases?ID=e0120b76-bfc9-4f5c-9655-1d76fe3202ee ("In July 2013, the Senate Appropriations Committee, of which Durbin is a member, approved funding for the activation of the Thomson correctional facility at the level that was requested by President Obama in his Fiscal Year 2014 budget proposal which was delivered to Congress last April."); Budget for Fiscal Year 2014 at 730, Department of Justice, *available at* http://www.whitehouse.gov/sites/default/files/omb/budget/fy2014/assets/jus.pdf (requesting "$166.3 million in program enhancements to begin the activation process for three institutions (Federal Correctional Institution at Hazelton, West Virginia, United States Penitentiary at Yazoo City, Mississippi, and ADX United States Penitentiary at Thomson, Illinois)").

[80] *See* Letter from John Boehner et al. to President Barack Obama, Feb. 12, 2009, at 1, http://royce.house.gov/uploadedfiles/final_signed_gtmo_letter_12_feb_09.pdf (stating that ADX Florence has a capacity of 490 supermax beds); Federal Bureau of Prisons, USP Florence Admax, http://www.bop.gov/locations/institutions/flm/ (last visited Feb. 4, 2014, 11:45 a.m.) (stating that USP Florence currently has a population of 413 supermax prisoners).

[81] *Population Statistics*, Federal Bureau of Prisons, http://www.bop.gov/about/statistics/population_statistics.jsp (last visited Feb. 12, 2014).

[82] *Contract between Corrections Corporation of America and BOP for management of Eden Detention Center*, at 53, available at TEXAS PRISON BID'NESS, http://www.texasprisonbidness.org/files/facilities/contracts/Contract%20-

%20CCA%20Eden.1-100.pdf (last visited Feb. 2, 2014) (hereinafter Eden Contract); *Contract between GEO Group and BOP for management of Reeves County Detention Center Reeves contract*, at 56, available at TEXAS PRISON BID'NESS, http://www.texasprisonbidness.org/files/facilities/contracts/Contract%20-%20RCDC%20CAR6.1-109.pdf (last visited Feb. 2, 2014)(hereinafter Reeves Contract); Federal Bureau of Prisons, CAR XIV, Solicitation No. RFP-PCC-0021, at 12 (Aug. 2, 2012), *available at* https://www.fbo.gov/utils/view?id=db982f62c592f7f88489220a7e112154.

[83] *See* Paul Guerino, Paige M. Harrison & William Sabol, Bureau of Justice Statistics, US Department of Justice, "Prisoners in 2010" (2011), http://bjs.gov/content/pub/pdf/p10.pdf; Heather West, Bureau of Justice Statistics, US Department of Justice, "Prison Inmates at Mid-year 2009 – Statistical Tables" (2010), http://bjs.ojp.usdoj.gov/content/pub/pdf/pim09st.pdf.

[84] Mears, *supra* note 1, at 1-2.

[85] Chad S. Briggs, et al., *The Effect of Supermaximum Security Prisons on Aggregate Levels of Institutional Violence*, 41 CRIMINOLOGY 1341, 1341-42 (2006).

[86] *Id.* at 1365-66.

[87] REITER, *supra* note 5, at 44-46.

[88] *See* Kurki& Morris, *supra* note 9, at 391; Miller & Young, *supra* note 15.

[89] CAROLINE ISAACS & MATTHEW LOWEN, AM. FRIENDS SERV. COMM., BURIED ALIVE: SOLITARY CONFINEMENT IN ARIZONA'S PRISONS AND JAILS 14 (2007); Daniel P. Mears & Jamie Watson, *Towards a Fair and Balanced Assessment of Supermax Prisons*, 23 JUST. Q. 233, 260 (2006).

[90] ISAACS & LOWEN, *supra* note 89, at 4.

[91] MEARS, *supra* note 1, at 20, 26, 33; Connecticut Department of Correction, Average Daily Expenditure Per Inmate, *available at* http://www.ct.gov/doc/cwp/view.asp?a-1505&q=265600.

[92] *See, e.g.*, REITER, *supra* note 5, at 2 (noting that in California nearly 40% of segregated prisoners are released directly to the community without first transitioning to lower security units); O'KEEFE, *supra* note 5, at 23 (noting that Colorado also releases about 40% of its supermax population directly to the community).

[93] COMMISSION ON SAFETY AND ABUSE IN AMERICA'S PRISONS, CONFRONTING CONFINEMENT 55 (2006), *available at* http://www.vera.org/download?file=2845/Confronting_Confinement.pdf (Hon. John J. Gibbons & Nicholas de B. Katzenbach, Co-Chairs).

[94] Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 Wash. U. J.L. & Pol'y 325, 333 (2006).

[95] REITER, *supra* note 5, at 50.

[96] O'KEEFE, *supra* note 5, at 25.

[97] LEGISLATIVE PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE, RECIDIVISM IN CONNECTICUT 41 (2001).

[98] COMMISSION ON SAFETY AND ABUSE IN AMERICA'S PRISONS, *supra* note 93, at 55.

[99] Terry Kupers, *What To Do with the Survivors? Coping with the Long-term Effects of Isolated Confinement*, 35 CRIM. JUST. & BEHAV. 1005 (2008).

[100] *See* Press Release, U.S. District Court Approves Settlement Reached in Five-Year Litigation Over Solitary Confinement of Mentally Ill Prisoners, Bingham McCutchen (Apr. 12, 2012), *available at* http://www.dlc-ma.org/prisonsettlement/index.htm ("As a result of the litigation, DOC already has implemented significant systemic reforms, including a mental health classification system, a policy to exclude inmates with severe mental illness from long-term segregation, and the design and operation of two maximum security mental health treatment units as alternatives to segregation."); Settlement Agreement, Disability Law Center, Inc. v. Massachusetts Department of Correction, et al., Civil Action No. 07-10463 (MLW).

[101] *See* Memorandum from Lou Archuleta, Interim Director of Prisons, Colorado Department of Corrections, to Wardens, Offender Services (Dec. 10, 2013) (directing wardens to no longer refer prisoners with "major mental illness" or "MMI Qualifiers" to administrative segregation, reproducing the wording of a new administrative code section describing the policy, and noting that the Department is "working to move" MMI prisoners out of administrative segregation), *available at* http://aclu-co.org/sites/default/files/Memo%20Mental%20Health%20Qualifiers%20Ad%20Seg%20MEMO%20%282%29.pdf.

[102] *See* Sean Gardiner, *Solitary Jailing Curbed: New York City Department of Correction Stops Solitary Confinement for Mentally Ill Inmates Who Break Rules*, WALL ST. JOURNAL, Jan. 5, 2014, *available at* http://online.wsj.com/news/articles/SB10001424052702304617404579302840425910088?mod=rss_newyork_main.

[103] *See* N.Y. MENTAL HYGIENE LAW § 45.07(z) (2011); N.Y. CORRECTION LAW §§ 137, 401, 401(a) (2008).

[104] *See* Stipulation for a Stay with Conditions, Docket No. 11-CV-2694 (SAS), Peoples v. Fischer, (S.D.N.Y. Jan. 24, 2014), *available at* http://www.nyclu.org/files/releases/Solitary_Stipulation.pdf.

[105] *See* NYCLU Lawsuit Secures Historic Reforms to Solitary Confinement, NYCLU.org, Feb. 19, 2014, http://www.nyclu.org/news/nyclu-lawsuit-secures-historic-reforms-solitary-confinement; Benjamin Weiser, *New*

York State to Limit Use of Solitary Confinement, N.Y. TIMES, Feb. 19, 2014, http://www.nytimes.com/2014/02/20/nyregion/new-york-state-agrees-to-big-changes-in-how-prisons-discipline-inmates.html.

[106] *See* Tamms Supermaximum Security Prison Now Closed, Amnesty International, Jan. 10, 2013, http://www.amnestyusa.org/our-work/latest-victories/tamms-supermaximum-security-prison-now-closed; Steve Mills, *Quinn's Prison Plan Causes Stir*, CHICAGO TRIBUNE, Feb. 23, 2012, *available at* http://articles.chicagotribune.com/2012-02-23/news/ct-met-illinois-state-budget-prisons-20120223_1_super-max-maximum-security-prison-maximum-security-inmates; Dave McKinney and Andrew Maloney, *Gov. Pat Quinn: Close super-max downstate Tamms prison*, CHICAGO SUN TIMES, February 22, 2012, *available at* http://www.suntimes.com/news/politics/10785648-418/gov-pat-quinn-close-super-max-downstate-tamms-prison.html.

[107] Associated Press, *New Mexico Prisoner Segregation Under Review*, LAS CRUCES SUN-NEWS, Nov. 24, 2013, http://www.lcsun-news.com/las_cruces-news/ci_24592049/new-mexico-prisoner-segregation-under-review.

[108] http://nmpovertylaw.org/WP-nmclp/wordpress/WP-nmclp/wordpress/wp-content/uploads/2013/10/Solitary_Confinement_Report_FINALsmallpdf.com_.pdf

[109] COLO. DEP'T OF CORR., REPORT ON IMPLEMENTATION OF ADMINISTRATIVE SEGREGATION PLAN 1-2 (2012), *available at* https://www.aclu.org/prisoners-rights/report-co-docs-implementation-administrative-segregation-plan; *see also* Denise Maes, *Guest Column: Solitary Confinement Reform is Welcome Sign of Progress*, COLORADO SPRINGS GAZETTE, Jan. 27, 2012, *available at* www.gazette.com/common/printer/view.php?db=colgazette$id=132524; News Release, Colo. Dep't of Corr., The Department of Corrections Announces the Closure of Colorado State Penitentiary II (March 19, 2012), *available at* http://www.doc.state.co.us/sites/default/files/Press%20release%20CSP%20II%20close%20%20Feb%201%202013.pdf.

[110] The state of Mississippi saved $8 million annually and saw a 70% reduction in violence levels when it closed an entire solitary confinement unit. See Terry A. Kupers et al., *Beyond Supermax Administrative Segregation: Mississippi's Experience Rethinking Prison Classification and Creating Alternative Mental Health Programs*, 36 CRIM. JUST. &BEHAV. 1037, 1041 (2009); John Buntin, *Exodus: How America's Reddest State – And Its Most Notorious Prison – Became a Model of Corrections Reform*, 23 GOVERNING 20, 27 (2010).

[111] In Main, tighter controls and approval requirements on the use of SMUs, as well as expanded programming options, led to SMU population reductions of over 50%. See Lance Tapley, *Reform Comes to the Supermax*, PORTLAND PHOENIX, May 25, 2011, *available at* http://portland.thephoenix.com/news/121171-reform-comes-to-the-supermax/.

[112] In Michigan, new segregation parameters have led to fewer violent incidents. See Jeff Gerritt, *Pilot Program in UP Tests Alternatives to Traditional Prison Segregation*, DETROIT FREE PRESS, January 1, 2012, *available at* www.frep.com/fdcp/?unique=1326226266727.

[113] *See* Nev. SB 107, *available at* http://www.leg.state.nv.us/Session/77th2013/Reports/history.cfm?billname=SB107.

[114] *See* Associated Press, *W.Va. Ends Solitary Confinement for Juveniles*, TIMES W.V., Apr. 26, 2012, *available at* http://www.timeswv.com/westvirginia/x130096856/W-Va-ends-solitary-confinement-for-juveniles.

[115] http://www.capitol.state.tx.us/billlookup/Text.aspx?LegSess=83R&Bill=SB1003#.

[116] S. B. 176, 68th Gen. Assem., Reg. Sess. (Colo., 2011).

[117] H. Mem. 62, 50th Leg., 1st Sess. (N.M. 2011).

[118]Press Release, Office of the Lieutenant Governor, *Lt. Governor Dewhurst Issues Select Interim Charges Relating to Transportation, Homeland Security and Criminal Justice* (Jan. 13, 2012), *available at* http://www.ltgov.state.tx.us/prview.php?id=337.

[119]S. J. Res. 93, 2012 Leg., Reg. Sess. (Va. 2012).

[120] See U.S. Immigration and Customs Enforcement, 11065.1: Review of the Use of Segregation for ICE Detainees (2013), *available at* http://www.ice.gov/doclib/detention-reform/pdf/segregation_directive.pdf.

[121]ABA Standards, *supra* note 10, Standard 23-2.9.

[122]*Id.* Numerous other professional organizations—medical, correctional, psychological experts, as well as human-rights organizations and others—oppose the practice of long-term solitary confinement, particularly as it is used to warehouse prisoners who suffer from mental illness and those who are vulnerable due to their age or other characteristics. See Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Interim Rep. of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, U.N. Doc A/66/268, ¶¶ 76-78 (Aug. 5, 2011) (asserting that solitary confinement for longer than 15 days constitutes torture, and that juveniles and people with mental illness should never be held in solitary confinement); AMERICAN ACADEMY OF CHILD AND ADOLESCENT

PSYCHIATRY, SOLITARY CONFINEMENT OF JUVENILE OFFENDERS, *supra* note 32; AMERICAN PSYCHIATRIC ASSOCIATION, POSITION STATEMENT ON SEGREGATION OF PRISONERS WITH MENTAL ILLNESS, *supra* note 32; AMERICAN PUBLIC HEALTH ASSOCIATION, SOLITARY CONFINEMENT AS A PUBLIC HEALTH ISSUE, *supra* note 32; MENTAL HEALTH AMERICA, SECLUSION AND RESTRAINTS, POLICY POSITION STATEMENT 24, *supra* note 32; NATIONAL ALLIANCE ON MENTAL ILLNESS, PUBLIC POLICY PLATFORM SECTION 9.8, *supra* note 32, SOCIETY OF CORRECTIONAL PHYSICIANS, POSITION STATEMENT, RESTRICTED HOUSING OF MENTALLY ILL INMATES , *supra* note 32; NEW YORK STATE COUNCIL OF CHURCHES, RESOLUTION OPPOSING THE USE OF PROLONGED SOLITARY CONFINEMENT IN THE CORRECTIONAL FACILITIES OF NEW YORK STATE AND NEW YORK CITY (2012), *available at* https://sites.google.com/site/nyscouncilofchurches /priorities/on-solitary-confinement; PRESBYTERIAN CHURCH (USA), COMMISSIONERS' RESOLUTION 11-2, ON PROLONGED SOLITARY CONFINEMENT IN U.S. PRISONS (2012), *available at* https://pc-biz.org/MeetingPapers/(S(em2ohnl5h5sdehz2rjteqxtn))/Explorer.aspx?id=4389 (urging all members of the faith to participate in work to "significantly limit the use of solitary confinement"); RABBINICAL ASSEMBLY, RESOLUTION ON PRISON CONDITIONS AND PRISONER ISOLATION (2012), *available at* http://www.rabbinicalassembly.org/story/resolution-prison-conditions-and-prisoner-isolation?tp=377 (calling on prison authorities to end prolonged solitary confinement, and the solitary confinement of juveniles and of people with mental illness); AMERICAN BAR ASSOCIATION, ABA CRIMINAL JUSTICE STANDARDS ON THE TREATMENT OF PRISONERS, STANDARDS 23-2.6-2.9, 23-3.8, 23-5.5 (2010), *available at* http://www.americanbar.org /publications/criminal_justice_section_archive/crimjust_standards_treatmentprisoners.html (limiting acceptable rationales for segregated housing and long-term segregated housing, stating that no prisoners with serious mental illness should be placed in segregation, requiring monitoring of mental-health issues in segregation, and requiring certain procedures for placement in long-term segregation, generally characterizing segregated housing as a practice of last resort, and requiring social interaction and programming for those placed in segregation for their own protection); NEW YORK STATE BAR ASSOCIATION, COMMITTEE ON CIVIL RIGHTS REPORT TO THE HOUSE OF DELEGATES: SOLITARY CONFINEMENT IN NEW YORK STATE 1-2, RESOLUTION (2013), *available at* http://www.nysba.org/WorkArea/DownloadAsset.aspx?id=26699 (calling on state officials to significantly limit the use of solitary confinement, and recommending that solitary confinement for longer than 15 days be proscribed); NATIONAL COMMUNICATION ASSOCIATION, RESOLUTION REGARDING EXTENDED SOLITARY CONFINEMENT AND TORTURE (2010), *available at* http://www.natcom.org/uploadedFiles/About_NCA/Leadership_and_Governance/Public_Policy_Platform/PDF-PolicyPlatform-Resolution_Regarding_Extended_Solitary_Confinement_and_Torture.pdf ("condemn[ing] any use of torture or extended solitary confinement").

PREPARED STATEMENT OF

ERIC YOUNG
PRESIDENT
COUNCIL OF PRISON LOCALS
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

BEFORE THE

SUBCOMMITTEE ON CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS
COMMITTEE ON THE JUDICIARY
U.S. SENATE

ON

REASSESSING SOLITARY CONFINEMENT II: THE HUMAN RIGHTS, FISCAL AND PUBLIC SAFETY CONSEQUENCES

FEBRUARY 25, 2014

Chairman Durbin, Ranking Member Cruz, and Subcommittee Members -

My name is Eric Young. I am President of the Council of Prison Locals, American Federation of Government Employees (AFGE), AFL-CIO. On behalf of the nearly 39,000 federal correctional workers who work at the 119 Federal Bureau of Prisons (BOP) institutions, I want to thank you for the opportunity to submit our prepared statement for the hearing record on the important subject "Reassessing Solitary Confinement II: The Human Rights, Fiscal, and Public Safety Consequences."

Today marks the one-year anniversary of the death of one of our members, Correctional Officer Eric Williams. Eric was murdered on February 25, 2013, by an inmate while working in a housing unit at USP Canaan, the high security prison in Canaan, Pennsylvania. The inmate who murdered Eric stabbed him 129 times and beat him so badly his skull was crushed. His father, Don Williams, stated "I could not even recognize my own son in his casket."

The next day, February 26, 2013, Lieutenant Osvaldo Albarati was gunned down on his way home from work after leaving the Metropolitan Detention Center in Guaynabo, Puerto Rico. All indications are his murder was a result of his work at the prison.

Nearly six years ago on June 20, 2008, two inmates murdered Correctional Officer Jose Rivera at USP Atwater, the high security prison in Atwater, California. One inmate tackled him at the knees and held him down, while the other mounted on top of him and stabbed him more than 20 times with a prison icepick-styled weapon.

These are some of the murders of correctional staff that have occurred during my 19-year tenure at BOP. Thankfully, these tragic events occur infrequently. But much more frequent are the serious assaults on our staff that occur in federal prisons around the country almost daily. As you may expect, these assaults often have devastating and lasting impacts on staff and their families.

I want to share some important information and facts with this Subcommittee as you consider the critical issues surrounding today's hearing topic. Many individuals and organizations have perspectives on these issues. But few have the day-to-day experiences that our sworn law enforcement officers have - working with, controlling and supervising inmates in a federal penal system. We put our lives on the line every day to ensure that you, your families, and your communities are safe and secure.

I have been employed as a correctional officer with BOP since 1995. I am proud of the work that we do at BOP, despite the inherent dangers associated with our work and despite the insufficient resources we have been provided by the Congress over the years to deal with an ever-increasing inmate population. We correctional officers often say we work the toughest beat in law enforcement because, unlike police officers in the community, we do not have weapons and we often work without a partner around the most dangerous individuals our society has ever produced.

As you may know, Eric Williams was working alone in an inmate housing unit with 130 high security inmates – many of whom have extensive histories of violence in communities and inside prisons. Eric worked with known murderers, drug offenders and gang-leaders. This is not an unusual work assignment for any of our staff. And the correctional workers who work on the recreation yard are similarly imperiled. Often they are alone with several hundred inmates with nothing more than a radio body alarm to call for help in an emergency.

We operate the largest corrections system in the country, with the highest inmate to correctional officer ratio (10 to 1), and with some of the world's most hardened criminals. With 215,000 inmates in federal custody, it is a wonder that we don't have more killings, large-scale disturbances, escapes, and other problems. Our success is attributable to professional staff and agency policies and procedures that have been developed over time that have been vetted, implemented, refined over the years. And we have specialized facilities, including the Administrative Maximum Security prison in Florence, Colorado (ADX) and hopefully soon, we can add the Thomson Correctional Center in Senator Durbin's home state of Illinois to our resources.

The Thomson facility is critical to our success in managing the overall BOP inmate population. BOP institutions are operating at 39% above rated capacity, with our high security penal facilities 51% above rated capacity and medium security facilities 41% above rated capacity. As former BOP Director Harley Lappin stated when he testified before the House Commerce-Justice-State Appropriations Subcommittee: "We are experiencing the consequences of increased inmate idleness and the challenges in managing prisons that are becoming increasingly crowded with inmates who are more prone to violence and disruptive activity and more defiant of authority . . . Correctional administrators agree that crowded prisons result in greater tension, frustration, and anger among the inmate population, which leads to conflicts and violence."

By removing the worst of the worst from our open prison settings at medium security institutions and high security penitentiaries and putting them in the places like ADX or in our Special Management Units, we do a lot to protect the safety of staff, inmates and the public. And it is critical that we have mechanisms in place to remove inmates from all our general population settings, immediately, at critical times, to prevent assaults on inmates and staff which may cause serious injuries and deaths. Inmates who refuse to abide by institution rules or refuse programming pose significant risks to the orderly operation, security and safety of the institutions.

There must be places in our special housing units, the jails inside the prisons, to house inmates who fall into such categories. After all, we provide police officers on the street the opportunity to lock up and remove citizens who have not been convicted of anything, but pose a danger to others when they believe it is important for the protection of the public. In prisons the need is even greater. We cannot tolerate inmates demonstrating lack of respect to our staff who run our prisons. We must be able to restrict and restrain inmates before their behavior escalates. And we must have deterrent mechanisms in place to control inmates' behavior before it creates anarchy in

a prison setting. We cannot have staff and inmates being targeted for assaults and certainly cannot allow anyone to be murdered without consequence.

I understand the concerns expressed by some of the members of this Subcommittee, by prison inmate advocacy groups, and by the BOP Director and Department of Justice leaders with regard to ensuring we are mindful of the need for humane treatment of all inmates, particularly those inmates who are segregated from the general population. But let us not forget that there are inmates who have demonstrated their unwillingness to program. Some have shown their proclivity to disrupting the good order of our prisons and demonstrated an interest in harming other inmates and staff.

We should be concerned about the humane treatment of inmate assailants. But we also should be concerned about the safety of both the non-assailant general inmate population and the correctional workers who are responsible for their controlled management. In addition, I want to be clear that I support the efforts of BOP Director Samuels to carefully review our operations and practices on the use of restrictive housing. And I look forward to learning about the results of the audit that is underway currently through the National Institute of Corrections. In the past year, I have also participated providing the Council's perspective to the Government Accounting Office (GAO) in their review of restrictive housing.

Let me amplify my earlier reference to the types of inmates that BOP staff works with every day in order to make it overwhelming clear for those on the Subcommittee the type of risks we face in our federal prisons. First of all, we interact with the inmates 24 hours a day, 7 days a week. In the entire system that includes 215,000 inmates, only 413 are housed in our ADX supermax facility in Colorado. This figure represents less than one-fifth of one percent. That right there should indicate the extent to which we are judicious in our placement of inmates in the highest form of segregation we have.

And I find it hard to believe that anyone on the Subcommittee would argue with these placements, after I describe for you the history and records of the inmates housed in Colorado. Of the 413 inmates, 194 have a history of homicide in the community, 121 have a history of homicide while in the Control Unit and 58 have a history of homicide while in the general prison setting. These individuals have proven their willingness to kill prison staff and others. Concerns for their well-being should never be paramount to the lives of our sworn law enforcement professionals dedicated to ensuring that prisons are safe and secure.

Across our 119 federal prisons we house more than 20,000 inmates associated with "Security Threat Groups" and "Disruptive Groups," our terms for gangs. And, let us not forget the more than 400 international and domestic terrorists who are incarcerated in BOP prisons to secure our nation's security. We also have large numbers of drug offenders, many of whom have ties to international cartels and major narcotic traffickers, weapon offenders, sex offenders and the typical murderers and robbers.
The BOP is not home to large numbers of white-collared criminals as it once incarcerated. Nor should it be still caricatured as "Club-Fed." No State, county or

municipality can begin to compare in terms of the volume or the severity of the types of inmates we have system-wide. In fact, they often turn to us to house the ones they cannot handle or control. We have the most violent inmate populations of any correctional system in the world today, and, we do so while ensuring their humane treatment and providing opportunities for self-improvement.

Let me leave you with this. Decisions that our staff make each and every day in terms of whether inmates should remain in general population or be transferred to restricted housing units have real implications for the safety and well-being of our sworn law enforcement officers. The theories, research and positive sentiments expressed on behalf of the inmates who are isolated from the general inmate population are certainly worthy of discussion and debate. But at the end of the day, the security of our prisons and the safety of our staff, the general inmate population, and the American public must be paramount.

This is why: In June 2008, at USP Atwater, the high security prison in Atwater, California, two inmates were found to be under the influence of alcohol. Staff at the facility made decisions to not routinely remove intoxicated inmates from their respective units. They felt it was appropriate to keep them in their units to let them sleep it off, instead of placing inmates in the Special Housing Unit (SHU). This was done to keep the numbers down in the SHU. Because of such decisions, two inmates who were later assessed to be intoxicated at this facility were able to get out of their cells and into the open area of the housing unit where they relentless pursued Correctional Officer Jose Rivera and murdered him.

I realize that hindsight is 20/20 and those staff would probably make a different decision today. However, I fear that some would advocate for similar decisions to be made even in the future. For the record, the inmates who were responsible for Jose's murder had previous assault-on-staff histories, and one had a history of murder and attempted murder. Same with Eric Williams -- the inmate was due to return back to the State to serve prison time for murder. And, although the death of Lieutenant Osvaldo Albarati is still under investigation, it is suspected his murder involves inmates who should have been incarcerated in restrictive housing unit, but were not.

In retrospect, there are inherent hazards associated with a prison environment which can never be completely eliminated. However, you should trust the law enforcement professionals running our prisons – both BOP management and correctional workers - to devise initiatives and create policies to properly manage our inmate population. You can be reassured we do so in a humane way by ensuring their unit team, psychology professionals and other law enforcement professionals working at the prisons routinely visit them while they are confined in restrictive housing. Besides, for this Subcommittee to take only the sentiments of these outside advocacy groups who have never worked under such conditions is improper and wrong-headed.

I close with this. There is a mother today crying over her son's grave. She goes to visit his grave almost every day since his murder. Please know that your actions

today and in the future could result in others mourning the death of their loved ones in similar fashion. I am asking that members of this Subcommittee to think about that when making decisions to unnecessarily limit restrictive housing.

This concludes my written statement. Thank you for including it in the record of today's hearing. Please keep our fallen officers' families in your hearts and prayers.

American Friends Service Committee

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Statement of the American Friends Service Committee
Before the United States Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights

Hearing on Reassessing Solitary Confinement II: The Human Rights, Fiscal and Public Safety Consequences

Tuesday, February 25, 2014

"My best attempt to describe prolonged isolation in a supermax prison is that it's like Chinese water torture. A single drop may not harm you but the millions of little drops of stress, anxiety, uncertainty, depression, and sorrow build up until you can begin to feel your mind breaking. I wish I could explain it better. Maybe then people could understand and wouldn't allow this hell to continue." - Joe D., Tamms Correctional Center[1]

The American Friends Service Committee (AFSC) is a nearly 100-year old faith-based organization grounded in the Quaker belief in the dignity and worth of every person. Early Quakers were leaders in the prison reform movements in England from the 17th century forward, as well as in the colonies. AFSC has carried forward this concern for both prisoners and victims of crime, seeking approaches that uphold each person's humanity and restore wholeness to communities and relationships.

Our work to ensure a more humane and restorative criminal justice system continues today with efforts to ensure prisoners receive proper medical care, appropriate mental health services, and interaction with others, to document violations and abuses where they occur, and to provide public education about the crippling effects of long-term solitary confinement.

The AFSC greatly appreciates the opportunity to share our experiences and the testimonies we have collected from those directly impacted by solitary confinement. We thank the Subcommittee for continuing this important dialogue on isolation in prisons, jails and detention centers.

Our policy recommendations are rooted in our accompaniment of those held in isolation, those who have been released from segregation, and their family members. We are called by our faith to advocate for an end to prolonged solitary confinement, a practice that has permanent, severe effects on individuals, communities, and our nation's moral integrity. The human rights abuses that accompany long-term solitary confinement are deeply troubling. Additionally, one often-neglected aspect of isolation is that certain groups in our communities are more affected by this practice than others, with individuals of color who comprise more than 60% of the U.S. prison population disproportionately impacted.[2] The AFSC believes that retributive policies such as

[1] Bonnie Kerness, "Torture in United States Prisons: Evidence of Human Rights Violations" at 11 (2012).
[2] The Sentencing Project, *Racial Disparity* (Feb. 21, 2014, 6:24 PM), http://www.sentencingproject.org/template/page.cfm?id=122

isolation should be replaced by rehabilitative models that are not only more humane but also better prepare individuals for successful return to their communities.

We call upon members of Congress to enact policies that honor the human rights of all prisoners and detainees, including:

- transparency in the use of solitary confinement;
- an end to placing vulnerable populations in solitary confinement, including juveniles and the mentally ill;
- prohibition on isolation lasting more than 15 days (long-term isolation);
- closing all Communications Management Units;
- independent oversight of isolation practices; and
- adoption of solitary confinement policies that are in compliance with applicable legal obligations.

Those placed into solitary confinement experience some of the most psychologically and physically challenging environments in the prison system. Individual cells measure a mere 8x10 feet. Cells are placed side to side and stacked on top of each other in tiers. Prisoners are restricted to their cells for 23 to 24 hours every day. Lights remain on for 24 hours a day, seven days a week, 365 days a year. The temperature in these cells is often extremely hot or frigidly cold. The cell features a large steel door with a small slot for food trays, preventing meaningful human interaction.[3] Those who have been in isolation for extended periods of time often have difficulty reintegrating into the general population and the community. Robert Dellelo, a former solitary confinement prisoner, explained to the AFSC his reaction when first being temporarily released from his isolation cell to meet with his attorney:

> *"I began to sweat, I couldn't concentrate. I did not know where to look. It is hard to believe, but I just wanted to get out of the room and go back to my cell. Later on I realized that I was confused because it had been months since I had seen a whole body... Seeing a whole body that moved unpredictably was very unsettling."*[4]

Despite widespread use, little information has been released nor have formal studies been conducted regarding the use of solitary confinement. In fact, the public knows very little about its application. The number of individuals being held in long-term isolation is not public information, though we know through the most recent Census that 81,622 people were in "restricted housing" (which does not include those isolated in county, juvenile and immigration facilities)[5] and an estimated 30,000 people live in segregation.[6] The length of time prisoners serve in isolation is unknown. No studies have been conducted about the financial costs of solitary. The impacts of isolation on the safety of prison staff are also unknown. This lack of knowledge hinders assessment of isolation and raises concerns about the conditions in which individuals are kept, far from the cleansing light of public scrutiny. The AFSC respectfully requests that Congress address this lack of transparency by requiring all prisons, jails, and detention centers to annually report to the Bureau of Justice Statistics comparative data on the use and implementation of isolation.

Vulnerable populations should not be placed in solitary confinement due to the unique circumstances rendering them more likely to suffer irreparable harm because of conditions

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3 Bonnie Kerness & Jamie Bissonette Lewey, Race and the Politics of Isolation in U.S. Prisons; Atlantic Journal of Communication; Jan 30, 2014, at 28.
4 Id. at 22.
5 Id. at 29.
6 American Friends Service Committee, Solitary Confinement Facts, (Feb. 21, 2014, 6:02 PM), https://afsc.org/resource/solitary-confinement-facts

inherent in isolation. Juveniles, the elderly, prisoners experiencing mental illness, and disabled individuals should be prohibited from placement in solitary confinement for any period of time. The destructive impacts on susceptible prisoners who are placed in solitary confinement are illustrated through the case of Jack Powers. Powers, whose PTSD originated from incidents while incarcerated, is a prisoner at the ADX Supermax Prison in Colorado. Until recently he had been in Control Unit isolation for 12 years, where he was denied psychological care and medications for his condition. The stress of being in solitary confinement while suffering the full brunt of his illness led Powers to mutilate himself, including amputating fingers, earlobes, cutting his Achilles tendon, and removing his own testicle and scrotum.[7] Powers was released from solitary only after a lawsuit was filed against the Bureau of Prisons.[8] Prisoners with preexisting conditions that put them at high risk of harm while in solitary confinement must be protected from such placements.

> *"Obviously we are not human beings to them [the administration], we are merely a number. Most of the inmates in solitary confinement need mental help but are not receiving it."* – Anonymous, SCI Dallas Restricted Housing Unit[9]

Individual testimonies and medical research show that those placed in long-term solitary confinement are profoundly impacted by the conditions they experience in isolation. Prisoners in isolation commonly exhibit signs of psychological distress including hallucinations, hypersensitivity to noise and touch, insomnia, paranoia, feelings of rage and fear, distortions of time and perception, and PTSD.[10] 50 percent of prisoners who take their own life are confined in segregation, yet this group of individuals living in isolation only comprises between six and eight percent of the total prison population.[11] The AFSC recommends a prohibition on all isolation lasting more than fifteen days, as advised by the U.N. Special Rapporteur for torture.[12]

An additional area of concern to the AFSC is the use of Communications Management Units (CMUs). CMUs are solitary confinement units in the federal system reserved for "inmates who due to their current offense of conviction, offense conduct, or other verified information, require increased monitoring of communications with persons in the community to ensure the safe, secure and orderly running of Bureau facilities, and to protect the public."[13] This definition fails to capture the ways in which this policy chills the exercise of free speech. A former Marion Prison warden, Ralph Arons, commented on the practical utility of the CMU at his facility, "(t)he purpose of the Marion Control Unit is to control revolutionary attitudes in the prison system and in society at large."[14] This goal is not reserved just for the Marion Prison. For example, in the 1980s three women were placed in isolation in a unit similar to a CMU (called the Special Housing Unit). In the court decision that led to the release of two of the women from solitary, the Judge

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7 Andrew Cohen, An American Gulag: Descending into Madness at Supermax, The Atlantic, (Feb. 23, 2014, 4:12 PM), http://www.theatlantic.com/national/archive/2012/06/an-american-gulag-descending-into-madness-at-supermax/258323/.

8 John Jay Powers, "Finally Out and Among the Living", The Colorado Independent, (Feb. 23, 2014, 4:36 PM), http://www.coloradoindependent.com/145073/finally-out-and-among-the-living.

9 Bonnie Kerness, "Torture in United States Prisons: Evidence of Human Rights Violations" at 13 (2012).

10 American Friends Service Committee, supra note 6.

11 Terry A. Kupers, "What To Do With The Survivors?: Coping With the Long-Term Effects of Isolated Confinement" at 1009 (2008).

12 United Nations News Centre, "Solitary Confinement Should Be Banned in Most Cases, UN Expert Says", (Feb. 23, 2014 5:35 PM), https://www.un.org/apps/news/story.asp?NewsID=40097&;Cr=torture&Cr1=+ForceRecrawl:+0#.UwqCY_F1Rek.

13 U.S. Department of Justice, Federal Bureau of Prisons, State of the Bureau 2007: Bureau of Prisons Staff: Everyday Heroes, 2007.

14 Steve Whitman, The Marion penitentiary: It should be opened up, not locked down, The Southern Illinoisan, Aug, 7, 1988 at D25.

commented on the erosion of psychological health and constitutional rights for these women in solitary confinement:

> *"Defendants may be concerned that the two plaintiffs will persuade inmates within the general prison population to share their political views, but those fears cannot be accommodated at the expense of constitutional rights...The treatment of the plaintiffs has skirted elemental standards of human decency. The exaggerated security, small group isolation and staff harassment serve to constantly undermine the inmates' morale."*[15]

Sadly, the assault on political prisoners continues. In 2008 the AFSC assisted Ojore Lutalo in obtaining the reason why he was placed in isolation at a New Jersey prison, "[The Department] continues to show concern regarding your admitted affiliation with the Black Liberation Army. Your radical views and ability to influence others poses a threat to the orderly operation of this Institution."[16] Non-citizens are also subjected to solitary confinement while in detention facilities. In 2012 approximately 300 people were kept in isolation while detained.[17] This includes immigrants exercising their right to free speech, such as one immigrant father of three who reported that he was placed in solitary confinement after initiating a hunger strike to protest his detention. While in isolation he began suffering from gastrointestinal bleeding. When he informed jail staff of his condition he was told he would not be released from solitary and would be denied medical care unless he ended his hunger strike.[18] The use of solitary confinement to isolate individuals based on their political stances and to subvert their free speech rights is unacceptable.

The policies behind CMUs are also disturbing because of the disproportionate impact on Muslim inmates who are assumed to be a security threat because of their faith. The Marion CMU Muslim population is 72%, 1200% higher than the national average of this religious group in federal prisons. This disparity also appears in the Terre Haute CMU where Muslim inmates represent two-thirds of the population.[19]

> *"There is no justice and no rights for someone like me who is a foreigner and Muslim... There are people here who don't have any contact with the outside. They never write or get mail, they have no phone calls and no visits... All our visits, even with family, must be through glass. Stopping me from hugging my baby has nothing to do with national security!"* - Yassin A., Communications Management Unit: Terre Haute[20]

Religious belief should never be grounds on which individuals are subjected to isolation and hindered from communicating with loved ones. The AFSC calls for all CMUs to be immediately closed due to their disparate impact on people of color, religious minorities and political activists.

The use of solitary confinement in prisons and detention facilities on the federal, state, and local levels must be overseen by an independent body to ensure the rights of inmates are preserved and detention standards are respected. The very nature of solitary – restricted access to the outside world – creates an environment ripe for abuse and mismanagement. Below are examples of testimonies from prisoners who have endured ill treatment while in isolation:

> *"The conditions were very inhumane...hot, no working vents at all...my first cell bugs were biting me all over my body... They had a light on all day that felt like a rotisserie*

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15 Baraldini v. Meese, 691 F. Supp. 432 (D.D.C. 1988).
16 Kerness, supra note 9, at 5.
17 Detention Watch Network, "Expose and Close: One Year Later" at 10.
18 Id.
19 Center for Constitutional Rights, CMUs: The Federal Prison System's Experiment in Social Isolation, (Feb. 24, 2014, 10:59 AM), http://ccrjustice.org/cmu-factsheet.
20 Kerness, supra note 9, at 29.

> *lamp. It was hard to sleep because of the hot humid cells and constant bugs biting me all day and night...we had no cups to drink the brown colored water that came out of the sinks and toilets."* – A.S. A., SCI Dallas Restricted Housing Unit[21]

> *"Some inmates bang on tables, bunks, doors, sinks, etc. and it seems like it never ceases. Other than that I hear guards yelling and cursing at people. Often I hear them use racial slurs and other derogatory terms towards inmates. The Cos tell inmates to 'kill themselves' and sometimes kick doors or clang keys to disturb our sleep."* Anonymous, SCI Dallas Restricted Housing Unit[22]

> *"I witnessed several incidents of guard on inmate abuse. Once I saw two guards punch an inmate in the face while the inmate was handcuffed and shackled to a bench. I saw inmates slammed face first onto the concrete, often for nothing. These incidents cite only the overt physical abuse. The mental abuse, was, in some cases, worse...Even now, six months out of the hole I still remain affected. I withdraw from social interaction/setting. I feel frustrated for no apparent reason. Possibly the most damaging aspect of segregation is the sense of powerlessness. You can yell, scream, report misconduct and abuse to prison officials to no avail."* – Brian S., Jefferson City Correctional Center[23]

The AFSC regularly receives communication from prisoners seeking relief from inhumane conditions and treatment in solitary confinement. Only a non-affiliated body of evaluators that conduct regular and ongoing visits to these facilities can address this human rights crisis.

The use of long-term solitary confinement violates both U.S. and international law. This practice is a breach of binding international agreements to which the U.S. is a part, including: The International Covenant on Civil and Political Rights (Art. 7, 10, 16); the U.N. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Art. 1,4); and the U.N. Declaration of Human Rights (Art. 5). This practice also runs afoul of the fundamental Constitutional right to be free from cruel and usual punishment.[24]

> *"They'd blare the sound into the isolation cell so loud it hurt my ears. He'd then add pre recorded sounds of a guillotine hacking off limbs and several other sounds at the same time. They did this for days."* – Eric H, El Dorado Correctional Facility[25]

Consistently violating numerous legal obligations on both the domestic and international levels to order to facilitate human rights abuses against prisoners cannot be tolerated. As a world leader, the United States has the responsibility to lead the international community in demonstrating respect for all of God's creatures, without exception.

In conclusion, we urge the Subcommittee to move swiftly and take concrete actions to at the federal, state, and local levels to address mistreatment in isolation, including:

- Increase transparency on the use of solitary confinement by requiring all prisons, jails, and detention centers to report to the Bureau of Justice Statistics comparative data relating to use and implementation of isolation annually;
- Prohibit the use of solitary confinement for vulnerable populations, including juveniles, the elderly, prisoners experiencing mental illness, and disabled individuals;

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21 Kerness, supra note 9, 13.
22 Kerness, supra note 9, at 13.
23 Kerness, supra note 9, at 19.
24 Bonnie Kerness, Statement of American Friends Service Committee to the Senate Committee on the Judiciary, Subcommittee on the Constitution, Civil Rights, and Human Rights, (2012).
25 Kerness, supra note 9, at 20.

- Prohibit the use of long-term isolation (fifteen days or longer);
- Close all Communication Management Units to ensure prisoners are able to execute their human and civil rights without retaliation;
- Establish an independent oversight body to ensure prisoners are protected from ill treatment and their rights are protected; and
- Ensure all solitary confinement policies and practices conform to relevant domestic and international laws.

The American Friends Service Committee is heartened by the Subcommittee's leadership in holding this second hearing on solitary confinement. We appreciate the opportunity to present testimony drawn from our organizational experience with individuals and communities impacted by solitary confinement.

Testimony of
Roy Speckhardt, Executive Director
American Humanist Organization
Before the
Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights and Human Rights
Hearing on Reassessing Solitary Confinement
February 25, 2014

Mr. Chairman, Members of the Subcommittee, thank you for this opportunity to submit testimony on behalf of the American Humanist Association concerning the harmful use of solitary confinement in our nation's federal prisons, jails, and detention centers. We are encouraged that a growing number of states across the nation are reassessing this practice and implementing policies to limit its use. In light of the high cost of solitary confinement and its diminishing returns, we are grateful for the Subcommittee's timely review of the federal system's use of isolation today.

The American Humanist Association is an educational organization that strives to bring about a progressive society where being good without gods is an accepted way to live life. We are accomplishing this through our defense of civil liberties and secular governance, by our outreach to the growing number of people without traditional religious faith, and through a continued refinement and advancement of the humanist worldview. Humanism encompasses a variety of nontheistic views (atheism, agnosticism, rationalism, naturalism, secularism, and so forth) while adding the important element of a comprehensive worldview and set of ethical values---values that are grounded in the philosophy of the Enlightenment, informed by scientific knowledge, and driven by a desire to meet the needs of people in the here and now.

Across our nation prisoners, inmates, and detainees are being confined in a small cells for 22-24 hours per day for weeks, months, even years. Many studies have documented the detrimental psychological and physiological effects of long-term solitary confinement, including hallucinations, perceptual distortions, panic attacks, and suicidal ideation. Considering this severe harm, we strongly believe prolonged solitary confinement is a violation of the inherent dignity in every human being.

The use of solitary confinement has increased dramatically in the last few decades. The Commission on Safety and Abuse in American's Prisons noted in their report, *Confronting Confinement*, that from 1995 to 2000, the growth rate of segregation units significantly surpassed the prison growth rate overall: 40% compared to 28%. Rather than a last resort, solitary confinement has become a default management and discipline tool.

The drastic rise in solitary confinement has cost us financially, as the daily cost per inmate in a solitary confinement unit far exceeds the costs of housing an inmate in lower security facility since solitary confinement units require individual cells and significantly more staff. The success of several states such as Mississippi, Maine, and Colorado in maintaining prison security while reducing their use of isolation demonstrates that solitary is not the only, or best, option.

Further, we must not neglect the larger public safety impact. The negative effects of prolonged solitary confinement harm our communities, as demonstrated by the fact that prisoners who are freed directly from solitary confinement cells are significantly more likely to commit crimes again. Successful

reentry of these citizens to our local communities therefore requires preparation for release while they are still incarcerated. This is why the American Humanist Association recent sent a letter along with faith groups to the Senate Subcommittee on Commerce, Justice, Science, and Related Agencies asking Congress to expand programming options, such as job training and drug rehabilitation programs, for current inmates.

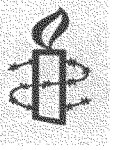
Mr. Chairman, Members of the Subcommittee, the American Humanist Association believes strongly that the United States should do everything it can to reverse our nation's harmful and expensive reliance on solitary confinement. We have a moral obligation to uphold the dignity and the mental health of those currently incarcerated. To that end, we would strongly support your leadership in sponsoring legislation that would limit the use and length of solitary confinement. We implore you to immediately take steps to end the use of prolonged solitary confinement. Your hearing today is a very important effort in doing that, and we thank you for the opportunity to contribute to it.

USA

SUBMISSION ON 'REASSESSING SOLITARY CONFINEMENT - THE HUMAN RIGHTS, FISCAL, AND PUBLIC SAFETY CONSEQUENCES'

HEARING BEFORE THE SENATE JUDICIARY SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS: 25 FEBRUARY 2014

AMNESTY INTERNATIONAL



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Amnesty International is a global movement of 3 million people in more than 150 countries and territories, who campaign on human rights. Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights instruments. We research, campaign, advocate and mobilize to end abuses of human rights. Amnesty International is independent of any government, political ideology, economic interest or religion. Our work is largely financed by contributions from our membership and donations

AMNESTY
INTERNATIONAL

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USA: Submission on 'reassessing solitary confinement - the human rights, fiscal, and public safety consequences'

INTRODUCTION

Amnesty International welcomes this opportunity to submit further testimony to the Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights on "Reassessing Solitary Confinement: the Human Rights, Fiscal, and Public Safety Consequences," following its first hearing in June 2012. The practice of solitary confinement in US prisons and conditions in isolation units remains a major human rights concern. We urge the Committee to take concrete steps to ensure that US practice is consistent with the USA's obligations under international human rights law and standards.

GENERAL CONCERNS AND OBSERVATIONS

The use of long-term segregation as a management tool to control prisoners for security or behavioural reasons is being increasingly challenged by US penal experts and others as costly, ineffective, and inhumane. However, thousands of prisoners across the USA remain in prolonged or indefinite isolation, confined to small cells for 22-24 hours a day, often in units designed to reduce sensory and environmental stimulation. In some states, including Arizona, California, Oklahoma and Texas, the cells in some isolation units have no windows to the outside and there is little access to natural light. Exercise is typically limited to no more than five to ten hours a week and is often taken in bare yards with no equipment or view of the outside world. Prisoners in administrative or punitive segregation usually have no access to work or meaningful rehabilitation or recreational programs and may spend years with minimal human contact. Some are released directly from isolation units to the streets, despite evidence suggesting that prisoners held in such restrictive conditions find it more difficult than others to adjust on their release, and thus have higher rates of recidivism.

Conditions such as those described above are in clear breach of international standards for humane treatment, including those set out under the United Nations (UN) Standard Minimum Rules for the Treatment of Prisoners (SMR), the UN Basic Principles for the Treatment of Prisoners, and the International Covenant on Civil and Political Rights to which the US is a State Party.[1] The combined effects of the social and environmental deprivations imposed, particularly over a prolonged or indefinite period, can amount to torture or other cruel, inhuman or degrading treatment or punishment in violation of the USA's obligations under international law.[2]

International and regional human rights treaty bodies and experts have consistently called on states to restrict their use of solitary confinement, in recognition of the physical and mental harm and suffering this can cause even when imposed for limited periods. This was reiterated by the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in a detailed report issued in August 2011 in which he called on states to apply solitary confinement "only in exceptional circumstances and for the shortest possible period of time".[3] He defined solitary confinement as "the physical and social isolation of individuals who are confined to cells for 22-24 hours a day." He called for the abolition of solitary confinement in the case of children under 18 and people with mental disabilities on the ground that its imposition in such cases, for any duration, constitutes cruel, inhuman or degrading treatment. He stressed the importance of safeguards for prisoners placed in segregation, including regular monitoring and review of prisoners' mental and physical condition by qualified, independent medical personnel, and a meaningful opportunity for prisoners to challenge their confinement through a process of administrative review and through the courts. In a statement issued on 7 October 2013, the Special Rapporteur urged the US Government to take "concrete steps to eliminate the use of prolonged and indefinite solitary confinement in US prisons and detention facilities".[4]

While some states have taken steps to limit their use of solitary confinement, many jurisdictions have failed to put in place the safeguards called for above. Although US courts have found that isolating people who are seriously mentally ill in "super-maximum security"

facilities is incompatible with the constitutional prohibition of "cruel and unusual punishment", prisoners with mental health problems continue to be over-represented in isolation units. For example, Amnesty International was informed that, as of July 2012, more than 50% of women prisoners in the SHU and the Administrative Segregation Unit at the California Institution for Women were in the Correctional Clinical Case Management System (CCCMS), meaning they were diagnosed as suffering from some form of mental illness.[5] Even where policies prohibit confining mentally ill prisoners in isolation, mental health monitoring is often inadequate. According to an ongoing lawsuit, prisoners with serious mental illness have been confined to the federal super-max prison at ADX, in some cases for many years, without adequate monitoring or treatment, and despite policies barring people who are seriously mentally ill from being held at the facility.[6] Children under 18 continue to be held in solitary confinement in many jurisdictions, including in juvenile facilities, adult jails and in the adult prison system, despite this being in clear breach of international standards.[7]

The evidence suggests that many individuals who are segregated are not a serious threat or danger to others. Some are isolated because of disturbed or disruptive behaviour indicative of mental health or behavioural disorders; prisoners in such cases may be effectively punished for behaviour they are unable to control, in conditions that could have a further negative impact on their health. In some states, such as California, prisoners have been placed in indefinite isolation because of their alleged links to prison gangs even though they may not be involved in serious criminal or threatening behaviour. In many states prisoners under sentence of death are automatically placed in isolation and have no way of alleviating their harsh conditions through their behaviour. All too often procedural safeguards are minimal and assignments to SHU housing are difficult to challenge, both internally through administrative review and through the courts.

Despite the severe impact of segregated confinement, prisoners may be afforded few safeguards to ensure a fair hearing or establish why such restrictions are necessary. Albert Woodfox, for example, has spent more than 40 years in solitary confinement in prisons in Louisiana; although he has had no serious disciplinary citations for many years, successive internal review boards since 1972 have reauthorized his continued isolation on grounds of "Reason for Original Lockdown".[8] Prisoners in other jurisdictions, including the federal system, have been held in isolation based on their committal offence rather than their institutional behaviour.[9]

As has been amply documented, US courts provide only a limited remedy for prisoners held in isolation, generally deferring to prison administrators in deciding what restrictions are necessary on security grounds. The US Supreme Court has not ruled that solitary confinement, even when imposed indefinitely, is per se a violation of the Constitution.[10] It has set a high threshold for judging when prison conditions violate the Eighth Amendment prohibition of "cruel and unusual punishment", holding that they must be so severe as to deprive inmates of a "basic necessity of life" – interpreted to mean the physical requirements of food, clothing, shelter, medical care and personal safety – and that the authorities must have shown "deliberate indifference" to a risk of harm.[11] The courts have been less willing to consider mental and psychological pain or suffering as sufficient to render conditions unconstitutional, a situation where US jurisprudence falls short of international human rights law. The UN Human Rights Committee has emphasized that the prohibition of torture and other cruel, inhuman or degrading treatment under international law "relates not only to acts that cause physical pain but also to acts that cause mental suffering" and has stated, specifically, that prolonged solitary confinement may breach this prohibition.[12]

In light of the lack of effective remedies under existing US law, we believe that the Sub-Committee, the US Congress and the US Department of Justice have a vital role in encouraging the promulgation of national standards to regulate and limit the use of solitary or isolated confinement. In addition to the general concerns outlined above, Amnesty

International submits its concerns regarding the following issues, which we believe are relevant to the Sub-Committee's review.

CALIFORNIA: REFORMS TO ITS SECURITY HOUSING UNIT (SHU) POLICIES DO NOT GO FAR ENOUGH

In September 2012, Amnesty International published a report expressing concern about conditions in California's SHU units, following a visit to three state prisons in late 2011.[13] At the time of its report, nearly 4,000 prisoners were held in the SHUs, two-thirds of whom were serving indeterminate (indefinite) SHU terms based on alleged gang membership or association. They include hundreds of prisoners who had spent more than a decade – many longer than 20 years – in conditions of severe isolation and environmental deprivation at Pelican Bay SHU. Many of the same prisoners remain in isolation today.

The California authorities have recently introduced reforms which include a Step Down Program (SDP) for prisoners serving indeterminate SHU terms, using what the department has called a "behaviour-based model" to enable them to earn their way back to the general prison population. Amnesty International welcomes in principle measures to provide a route out of isolation through prisoners' own behaviour. However, the reforms have serious shortcomings, in particular by continuing to house prisoners for long periods in unacceptably harsh conditions of isolation. It will normally take at least four years for prisoners to work their way out of the SHU through the SDP. For the first two years, most prisoners will remain confined for 22-24 hours a day to their cells, with no group association at any time. No change to the harsh physical conditions in Pelican Bay SHU are proposed, despite these being in breach of minimum internationally recognized standards. Only limited association is proposed for the third year of the SDP and for the first six months of year four. All visits remain non-contact and there are severe restrictions on phone calls with families.

While prisoners in the SDP are required to engage in some programming, such as anger management skills and other cognitive behavioural studies, these are remotely delivered and taken in-cell for the first two years. Given the negative effects that prolonged isolation can have on physical and psychological health, it is hard to see how such programs can have a positive impact when conducted in such a restrictive setting, or how a prisoner's progress can be properly measured in the absence of any social interaction.

Prisoner advocates have expressed concern that a lack of clear criteria for progressing through the SDP means that the process remains discretionary, with much depending on assessments by correctional staff on the ground, and few positive opportunities for prisoners to demonstrate good behaviour. While cases are reviewed by a classification committee every six months, prisoners can be moved back a level at any time, and there is concern that those who fail to progress through the system for whatever reason can still be held in isolation indefinitely.

The reforms also include changes to the gang validation process, with prisoners who are "associates" rather than actual gang members no longer automatically assigned to the SHU. However, advocates have reported that the distinction between "active" gang members and associates can remain blurred in practice, and that prisoners may still be assigned to the SHU without clear evidence of dangerous or disruptive behaviour.

The limited nature of the California reforms demonstrates the importance of having clear national guidelines for reform. These should include strict criteria to measure how prisoners can progress through any phased system of segregation, with prisoners being able to work their way out of isolation in a far shorter time-frame than described above. Prisoners should only be segregated if they pose a continuing serious threat that cannot be safely controlled in a less restrictive environment, and for the shortest possible time. Even at the most restrictive custody levels, prisoners should be held in conditions that fully conform to international standards for humane treatment, including adequate access to natural light, fresh air,

exercise and rehabilitation programs. There should be opportunities for some group interaction at every stage of segregated confinement, as has proved effective in some other states.

These measures would also be in keeping with standards promulgated by the American Bar Association (ABA) which state, *inter alia*, that segregated housing "should be for the briefest possible term and under the least restrictive conditions practicable consistent with the rationale for placement and with the progress achieved by the prisoner" (Standard 23-2.6); that "Conditions of extreme isolation should not be allowed regardless of the reasons for a prisoner's separation from the general population" (23-3.8 (b)); and that all prisoners in segregated housing should be provided with "meaningful forms of mental, physical and social stimulation", including, where possible, more out-of-cell time and opportunities to exercise in the presence of other prisoners (23-3.8 (c)).

ISOLATION IN THE FEDERAL SYSTEM

Amnesty International has raised concern about conditions under which prisoners are held in long-term isolation in the federal system. These include conditions in the US Penitentiary, Administrative Maximum (ADX), Florence, Colorado.

The vast majority of ADX prisoners are confined to solitary cells for 22-24 hours a day in conditions of severe physical and social isolation. While the cells have a narrow window to the outside, and thus access to natural light, the structure is designed to minimise human contact. The cells in the General Population units (where most prisoners are housed) are positioned so that they prevent prisoners from seeing or having direct communication with inmates in adjacent cells; each cell also has an interior barred door separated by several feet from a solid outer door, compounding the sense of isolation. Exercise is limited to up to ten hours a week, in a bare interior room or in small individual yards or cages, with no view of the natural world. The only time a General Population prisoner may have any direct contact with another inmate is when speaking to a prisoner in an adjacent cage during very limited outdoor exercise. Prisoners in the Control Unit, or who are under disciplinary measures, exercise in solitary yards and thus have no contact with other prisoners. Outside exercise is limited to two or three days a week only and falls below the minimum daily outdoor exercise recommended under the UNSMR. Visits are non-contact and most contact with staff, including medical and mental health staff, takes place behind barriers.

While most prisoners at ADX have black and white TVs with multiple channels, and access to in-cell educational and other programs, Amnesty international believes that the conditions of isolation are unacceptably harsh and that in-cell programs cannot compensate for the lack of meaningful social interaction many prisoners endure for years on end. Prisoners in the General Population must spend at least 12 months, and often far longer, before becoming eligible for a Step Down Program where they can participate in some group association and earn their way to a less restrictive facility. Although there is no detailed public information on the time prisoners spend in each unit at ADX, a BOP analysis based on a limited survey of 30 inmates in 2011 showed prisoners were likely to spend at least three years in the General Population (confined to solitary cells for 22-24 hours a day) before being admitted to the SDP.[14] Other sources based on a wider sample of prisoners have found that scores of prisoners have spent more than twice as long in solitary confinement.[15] Prisoners in the Control Unit, the most isolated section of the facility, are ineligible for the SDP as they are serving fixed terms for specific offences, terms which can extend to six or more years.

Although all prisoners now receive a hearing prior to placement at ADX, advocates have criticized the internal review procedures – including those for deciding when a prisoner can access and progress through the SDP – as over-discretionary and lacking clear criteria. According to lawsuits and other sources, this means some prisoners effectively remain in the facility indefinitely, without being able to change their circumstances. Amnesty International

believes that the conditions of isolation in the most restrictive custody levels at ADX breach international standards for humane treatment and, when applied long-term or indefinitely, can amount to cruel, inhuman or degrading treatment or punishment in violation of international law.

RESTRICTIONS ON ACCESS TO ADX: LACK OF TRANSPARENCY REGARDING BOP USE OF ISOLATION

In June 2001, an Amnesty International representative was given a tour of ADX and was provided with access to most parts of the facility and an opportunity to speak with the Warden, senior staff and some prisoners. However, the organization's further requests to visit the prison in 2011 and 2012 were turned down by the BOP. This appears to reflect a more general tightening of access to the facility in recent years, including by members of the media. Amnesty International notes that a review of federal segregation policies is currently being conducted by outside contractors. However, it believes that prisons should not be insulated from outside scrutiny by human rights groups and experts. In this regard, the organization has joined with other NGOs in calling on the US Department of State to extend an invitation repeatedly requested by the UN Special Rapporteur on Torture to visit the USA to examine, among other things, the use of solitary confinement in federal and state facilities. Such an invitation would be consistent with the commitment made by the US government to support the work of the Special Rapporteurs and UN human rights mechanisms, and to encourage the full enjoyment of the human rights of persons deprived of their liberty.[16]

External scrutiny is of particular importance in the case of all facilities where prisoners are further isolated within an already enclosed environment. In ADX there is little publicly available information about the current operation of the facility beyond a few institutional supplements giving a bare outline of the various units and programs; lack of information on conditions and their impact on individual cases can be compounded by the fact that prisoners under Special Administrative Measures (SAMs) may have severe restrictions placed on their communication with the outside world, including through visits and correspondence. A report by the General Accounting Office (GAO) in May 2013 noted more generally that "there is little publicly available information on BOP's use of segregated housing".[17]

The study also noted that, while the BOP had an Internal Review Division which periodically inspected compliance with policies in other federal segregation units (including Security Housing cells and Special Management Units in other prisons), "BOP does not have requirements in place to monitor similar compliance for ADX-specific policies". Overall, the GAO study found that BOP had not assessed the impact of segregated housing on institutional safety or the impact of long-term segregation on inmates. While the BOP has agreed to develop specific ADX internal monitoring procedures in line with the GAO recommendations, Amnesty International believes there should be regular, external reporting and review of conditions at ADX and other isolation facilities.

The need for external scrutiny is heightened by information suggesting that ADX prisoners are held under more isolated conditions than before, including than at the time of Amnesty International's 2001 visit, and that the original purpose of the prison – to allow a clear route out of isolation within a defined period – has been eroded over the years. As revealed in litigation documents, there are also conflicting accounts given by prisoners and their attorneys and ADX administrators about aspects of the regime, such as the amount of contact prisoners have with staff and the value of programs provided.

ISOLATION/SOLITARY CONFINEMENT IN OTHER PARTS OF THE FEDERAL SYSTEM

The US government has stated that only 0.25% of the federal prison population is held at ADX. However, other federal facilities also confine prisoners in prolonged isolation. They include more than 1,000 prisoners held in Special Management Units (SMUs), where two

prisoners are usually confined to small cells for at least 23 hours a day for periods of 18-24 months, terms which can be extended. Conditions in the units are harsh, with inmates allowed only five hours exercise a week, falling below the SMR. Although having a cell-mate may relieve some of the effects of isolation, confining two people in a small, enclosed space for 23-24 hours a day can lead to severe additional stresses. A lawsuit filed in July 2011 has challenged conditions in the SMU at Lewisburg Penitentiary as amounting to "cruel and unusual punishment", citing among other things, a series of assaults by prisoners on their cell-mates, including two murders.[18] Standards limiting the use of isolation and improving conditions in segregation facilities should include units where prisoners are double-celled in an otherwise isolated environment.

Amnesty International remains concerned by the solitary confinement of prisoners held in pre-trial federal detention. This includes concerns about conditions in the SHU, 10th Floor South, at the federal Metropolitan Correctional Centre (MCC) in New York, where detainees are confined alone for 23-24 hours a day to cells which have no view to the outside and little natural light, with no outdoor exercise. Detainees in MCC have included foreign nationals charged with supporting terrorism who have been extradited or subjected to an "extraordinary rendition" to the USA; in addition to their harsh physical conditions of confinement, some have had only limited contact with their families and no social visits. Several prisoners have spent years in the unit before being brought to trial. Amnesty International has expressed concern to the US government that conditions in the MCC 10th Floor SHU constitute cruel, inhuman or degrading treatment and are incompatible with the presumption of innocence in the case of untried prisoners whose detention should not be a form of punishment. Lawyers who have represented prisoners in the MCC SHU have describe the negative impact of the conditions on their clients' state of mind, and the organization is concerned that such conditions may impair a defendant's ability to assist in his or her defence and thus the right to a fair trial.

The US government is reported to have reduced the overall numbers of prisoners in segregated confinement (including SHU cells situated in most prisons) in the past year. However, its budget proposals for 2014 include plans to open a second "supermax" prison, following its purchase of Thomson Correctional Center, a former state facility in Illinois. The government's 2014 budget request to Congress includes a funding proposal to "begin activating the facility as an Administrative-Maximum U.S. Penitentiary in Fiscal Year 2014".[19] While the exact conditions under which prisoners will be held in Thomson remain unclear, Amnesty International is concerned that the facility will replicate the regime at ADX, Florence. Any expansion of the use of long-term solitary confinement and the isolated conditions as they exist at ADX, Florence, would be a retrograde move, contrary to international human rights standards.

AMNESTY INTERNATIONAL'S RECOMMENDATIONS

General recommendations for all jurisdictions on the use of isolated confinement

In line with international human rights law and standards, all jurisdictions should ensure that solitary or isolated confinement, whether imposed for disciplinary or administrative purposes, is imposed only as a last resort and for the minimum period possible.

Strict criteria should be established to ensure that only prisoners who are a severe, continuing threat to the safety of others or the security of the institution are placed in high security segregation units or facilities.

No prisoner should be held in prolonged or indefinite isolation.

All prisoners in segregated confinement should have access to meaningful therapeutic, educational and rehabilitation programs.

Conditions in all segregation facilities should provide minimum standards for a humane

living environment so that prisoners even in the most restrictive settings have adequate facilities for outdoor exercise, access to natural light, and meaningful human contact both within the facility and with the outside world.

There should be opportunities for some group interaction and association for prisoners at all stages of segregated confinement, both to benefit their mental and physical health and to allow their behaviour to be measured and to encourage their progress to less restrictive custody.

Children under 18 should never be held in solitary confinement or "close cell" confinement. All youthful offenders should receive treatment appropriate to their age and developmental needs with the primary goal of rehabilitation as required under international standards.

No prisoner with mental illness or who is at risk of mental illness should be held in solitary or isolated cellular confinement.

There should be adequate mental health monitoring of all prisoners in segregation, with opportunities for prisoners to consult with mental healthcare professionals in private.

Placement in segregated confinement should be made only after an impartial hearing at which the prisoner has a fair and meaningful opportunity to contest the assignment and the right to appeal. Procedural safeguards should include those recommended under the ABA standards. Prisoners should be provided with regular, meaningful review of any continued segregation through a similar impartial proceeding, with clear criteria to enable them to move to less restrictive settings within a reasonable time frame.

There should be regular, external review of conditions in segregation facilities and of the procedures and operation of such facilities.

Recommendations to the federal government and Congress

Congress should require, and the federal government institute, reforms to the use of solitary and isolated confinement in all BOP facilities so that they meet with the above standards and fully conform to international law and standards for humane treatment.

The Department of State should invite the UN Special Rapporteur on Torture to investigate the use of solitary confinement in US prisons, including through on-site visits under the terms requested by the Special Rapporteur.

A national reporting system to the Bureau of Justice Statistics should be established under which state and local prison and detention facilities, including juvenile facilities, are required to provide data on their use of solitary confinement, including statistics on the numbers of prisoners held in segregated facilities, the length of confinement, the effectiveness of programs instituted, the costs of confinement and the impact on prisoners, on institutional safety and on recidivism.

The above data and input from experts, including mental health experts and penal reformers, should be studied to provide guidance on best practice and effective measures to reduce the use of solitary or isolated confinement.

National guidelines should be drawn up to limit the use of solitary and isolated confinement based on international standards, the ABA standards and best practice.

Amnesty International urges that Thomson Correctional Center not be funded or designated as a super-maximum isolation facility and that the federal government take steps to reduce and provide alternatives to its use of isolated confinement.

ENDNOTES

[1] A detailed description of the relevant international standards is given in Amnesty International's previous submission to the Sub-Committee and in its report, USA: The Edge of Endurance, Prison Conditions in California's High Security Units, published in September 2012, (hereafter referred to as The Edge of Endurance. http://www.amnesty.org/en/library/info/AMR51/060/2012. This includes reference to standards for the living conditions of prisoners and standards which provide that prisoners should not be subjected to hardships beyond those inherent in the deprivation of liberty as well; it also cites the findings of the UN Human Rights Committee (the monitoring body of the International Covenant on Civil and Political Rights (ICCPR) that conditions in some US super-maximum security prisons are incompatible with the requirement under Article 10(3) of the ICCPR that rehabilitation should form an essential part of the penitentiary system.

[2] The Human Rights Committee and the Committee against Torture (the monitoring body of the Convention against Torture, have criticised the harsh conditions of isolation in some US super-max prisons as inconsistent with the USA's obligations under the ICCPR and the Convention against torture (Concluding Observations of the Human Rights Committee on the Second and Third U.S. reports, 2006 and Conclusions and Recommendation of the Committee against Torture on the second report of the USA, May 2006).

[3] Interim Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 5 August 2011, United Nations General Assembly A/66/268/, para 46.

[4] http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13832

[5] The Edge of Endurance, op cit at note 1 (chapter 13).

[6] Cunningham v Federal Bureau of Prisons

[7] Para. 67 of the UN Rules for the Protection of Juveniles Deprived of their Liberty, adopted by the General Assembly in resolution 45/113 of 14 December 1990, states "All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including ...solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned". In its General Comment no. 10 (2007), on the prohibition of torture or other cruel, inhuman or degrading treatment under Article 37 of the Convention on the Rights of the Child (CRC), the Committee on the Rights of the Child stated "disciplinary measures in violation of Article 37 of the CRC must be strictly forbidden, including ... closed or solitary confinement". As a signature to the CRC the USA is bound not to do anything to defeat the object and purpose of the treaty.

[8] Information from official prison Lockdown Review summaries. Woodfox was placed in lockdown with Herman Wallace following their 1972 conviction of the murder of a prison guard, a charge they have consistently denied. Herman Wallace was released in October 2013 after his conviction was overturned but he died a few days later from terminal cancer.

[9] This includes Arizona, where prisoners sentenced to life terms are automatically placed in isolation for at least the first two years, and in the federal system where prisoners accused or convicted of supporting terrorism have been held in solitary confinement pre-trial or at ADX after conviction, based on the offence.

[10] The Court has held only that some minimal due process is required where prisoners are assigned to isolated custody under conditions which imposes "an atypical hardship".

[11] Wilson v Seiter, 501 U.S. (1991) and Farmer v Brennan, 511 U.S. (1994)

[12] Human Rights Committee General Comment 20 on Article 7 of the ICCPR.

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[13] USA: The Edge of Endurance, op cit at note 1.

[14] Evidence presented by the USG in the case of Babar Ahmad and Others v UK, before the European Court of Human Rights (ECHR).

[15] A survey for the litigants in the case of Babar Ahmad before the ECHR (supra) found 43 inmates at ADX had spent eight years in isolation; similar findings were revealed from a larger sample of 110 ADX prisoners.

[16] http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13832

[17] GAO report, Improvements Needed in Bureau of Prison's Monitoring and Evaluation of Impact of Segregated Housing, May 2013, p.2.

[18] Richardson v Kane, filed December 2011.

[19] http://justice.gov/jmd/2014factsheets/prisons-detentions.pdf

Reassessing Solitary Confinement II: The Human Rights, Fiscal, and Public Safety Consequences

Hearing Before the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights

The Honorable Dick Durbin, Chair

Tuesday, February 25, 2014

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Introductory Remarks

In a compelling and undeniable way, the June 19, 2012 hearing entitled, "*Reassessing Solitary Confinement: The Human Rights, Fiscal, and Public Safety Consequences*" exposed the ills and abuses associated with solitary confinement.[1] In addition to providing a great teachable moment, the hearing also served as a call for introspection for states and officials wishing to balance legitimate penological concerns with human rights guarantees and constitutional protections. Many jurisdictions genuinely considered the testimony and swiftly undertook corrective action.[2] Reforms ranged from studies to assessments to hearings to actual policy

[1] The June 19, 2012 hearing is hereinafter referred to as "*Reassessing Solitary Confinement I.*"

[2] California (October 2013 hearings regarding conditions and use of solitary confinement); Colorado (reduction in solitary confinement population and closure of supermax facility); Illinois (closed Tamms Maximum Security Correctional Center in 2013 due to excessive use of solitary confinement); Indiana (federal ruling saying isolation of the mentally ill is a 8th Amendment violation/reforms underway); Maine (started reforms in 2010/send less people/spend less time there); Mississippi (reduced solitary population by 90%, saw 70% decrease in violence & $8

changes. Subsequent to "*Reassessing Solitary Confinement I*," another major development took place. Juan E. Mendez, Special Rapporteur on Torture, urged the United States to adopt concrete measures to eliminate the use of prolonged or indefinite solitary confinement under all circumstances.[3] Special Rapporteur Mendez, using the Louisiana case of the Angola 3 (men believed to be held in solitary confinement longer than anyone else in the nation), expressed:[4]

> This is a sad case and it is not over....The co-accused, Mr. Woodfox, remains in solitary confinement pending an appeal to the federal court and has been kept in isolation in a 8-foot-by-12 foot...cell for up to 23 hours per day, with just one hour of exercise or solitary recreation. Keeping Albert Woodfox in solitary confinement for more than four decades clearly amounts to torture and it should be lifted immediately....The circumstances of the incarceration of the so-called

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million annual savings); Nevada (recently enacted legislation that places restrictions on isolation of youth); New York (agreed to new guidelines for the maximum length prisoners can be placed in solitary confinement and agreed to reforms concerning vulnerable groups); Virginia (recently implemented an incentive-based step down program that allows prisoners in solitary confinement to earn their way out of solitary confinement based on good behavior); State of Washington (newly created Reintegration & Progression Program using behavioral modification classes to transition inmates out of solitary confinement); and, Texas (passed a bill requiring data collection relative to solitary confinement). Additionally, in February 2013, the Federal Bureau of Prisons agreed to an assessment of its solitary confinement policies. Also, in April 2013, the Homeland Security Department, asked federal immigration officials to provide more information about immigrants being held in solitary confinement at federal facilities. In September 2013, U.S. Immigration and Customs Enforcement (ICE) released a new directive regulating the use of solitary confinement in immigration detention. And, in October 2013, Juan E. Méndez called for revisions to the United Nations Standard Minimum Rules for the Treatment of Prisoners (to reflect an absolute ban on indefinite or prolonged durations, and prohibiting any use of solitary confinement against juveniles, persons with mental disabilities or women who were pregnant or nursing).

[3] *See* Juan E. Mendez, Special Rapporteur on Torture, Four Decades in Solitary Confinement Can Only be Described as Torture, United Nations (Oct. 7, 2013), *available at* http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13832&LangID=E (accessed Feb. 24, 2014).

[4] Robert King Wilkerson, Albert Woodfox and the late Herman Wallace are hereinafter referred to as "the Angola 3." Robert King Wilkerson was released in 2001. Herman Wallace was released in 2013. **Albert Woodfox remains in custody and in solitary confinement where he has been held since 1972, a total of 42 years. Albert Woodfox is 68-years-old.** The case that sent Mr. Woodfox to solitary confinement was overturned in state post-conviction proceedings, but the State re-indicted him and be was convicted again after a second trial in 1998. After this conviction was affirmed on direct appeal and Woodfox exhausted state post-conviction remedies, Woodfox filed a petition for habeas corpus in federal court, which was granted. An appellate panel subsequently vacated the district court's judgment and remanded Woodfox's case for further proceedings. Following an evidentiary hearing, the district court again granted Woodfox's petition on the ground that his 1993 indictment by a West Feliciana Parish grand jury was tainted by grand jury foreperson discrimination. *See Woodfox v. Cain*, 926 F.Supp.2d 841 (M.D.La., Feb 26, 2013). The State's appeal of this ruling is pending before the Fifth Circuit Court of Appeals.

> Angola Three clearly show that the use of solitary confinement in the US penitentiary system goes far beyond what is acceptable under international human rights law. [5]

My "*Reassessing Solitary Confinement I*" statement was written with the sole hope of offering insights that might address a national problem. I now write burdened by the dual pressures of national and international complexities. The work of this committee, when viewed against this backdrop, is arguably one of the most important undertakings at this moment in history. At a time where the United States outpaces most of the civilized world by the rate we incarcerate and sentence, we are also approaching the embarrassing distinction of being the forerunner where abuses and ills associated with solitary confinement are concerned. If successful, reforms initiated by this committee could improve conditions for over 82,000 humans on American soil,[6] as well as rehabilitate the reputation of a nation that has been tarnished in the eyes of our global family. To those who care about justice, corrections, respect for law, human rights and the greater good of the nation, you are so much more than public servants and this is so much more than just a hearing. You are, in fact, ministers of justice, stewards of change and stalwarts of reform. I graciously thank you for your willingness to tread the turbulent pathway to progress.

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[5] *Supra* n. 3.

[6] Joseph Stromberg, *The Science of Solitary Confinement*, Smithsonian.com, http://www.smithsonianmag.com/science-nature/science-solitary-confinement-180949793/ (accessed Feb. 22, 2014) ("Picture MetLife Stadium, the New Jersey venue that hosted the Super Bowl earlier this month. It seats 82,556 people in total, making it the largest stadium in the NFL. Imagine the crowd it takes to fill that enormous stadium. That, give or take a thousand, is the number of men and women held in solitary confinement in prisons across the U.S.").

Substantive Remarks

I write concerning three areas where attention would be most beneficial, the first of which is the need to affix a uniform meaning to the term solitary confinement. There are two immediate benefits to be derived from this. Primarily, this would end linguistic stalemates that have delayed needed reforms. A uniform definition would also advance state and federal legislative initiatives since the nomenclature used to describe the various forms of isolation varies between jurisdictions.[7] By way of example, one might consider the state of Louisiana, home to the previously referenced Angola 3 case. A Louisiana federal court offered this glimpse into the prison world imposed upon the Angola 3:

> Extended lockdown, also known as closed cell restrictions or administrative segregation, is a form of incarceration...that is similar to solitary confinement. The prisoners thereto assigned remain alone in cells approximately 23 hours each day. During the other hour, a prisoner may shower and walk along the tier in which his cell is located. Three times a week, the prisoner may use this hour to exercise alone in a fenced yard, if the weather permits. The prisoners in extended lockdown also face additional restrictions on privileges generally available to inmates such as personal property, reading materials, access to legal resources, work, and visitation rights. In contrast, inmates in the general prison population live in a dormitory setting where they can interact with one another, attend religious ceremonies and take advantage of educational opportunities, training, and other privileges denied to those in extended lockdown.[8]

It is important to note that these present-day conditions are actually upgrades on what awaited the Angola 3 when they were initially placed in solitary confinement.

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[7] While the practice of isolation has been longstanding, nomenclature used to describe the practice has been ever changing. Today, many correctional facilities reject the use the term solitary confinement in favor of administrative segregation, punitive segregation, disciplinary segregation, extended lockdown, closed cell restriction, special housing unit, special management unit or intensive management unit.

[8] *Wilkerson v. Stalder*, 2013 WL 6665452, n.5 (M.D.La., Dec 17, 2013).

As told by the late Herman Wallace, there was "no hot water, no televisions, no fans, no review board, no outside exercise periods, no contact visits, a limit of six books per inmate" and "food was served under the door by sliding a tray on the floor as one would feed as animal."[9]

It is noteworthy that Special Rapporteur Mendez, in his remarks about the Angola 3 case, ascribed the above-referenced conditions as solitary confinement. Louisiana officials have taken a difference course. Louisiana officials have chosen to simply deny the existence of solitary confinement.[10] This method has been tested

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[9] *See* Letter from the late Herman Wallace, Angola 3 member, to Angela A. Allen-Bell (Jan. 10, 2013) (on file with the author).

[10] In 2013, the following email was sent by the state's attorney general to a number of persons who signed a petition in support of the Angola 3:

> **Contrary to popular lore, Woodfox and Wallace have never been held in solitary confinement** while in the Louisiana penal system. They have been held in protective cell units known as CCR. These units were designed to protect inmates as well as correctional officers. They have always been able to communicate freely with other inmates and prison staff as frequently as they want. They have televisions on the tiers which they watch through their cell doors. In their cells they can have radios and headsets, reading and writing materials, stamps, newspapers, magazines and books. They also can shop at the canteen store a couple of times per week where they can purchase grocery and personal hygiene items which they keep in their cells.
>
> These convicted murderers have an hour outside of their cells each day where they can exercise in the hall, talk on the phone, shower, and visit with the other 10 to 14 inmates on the tier. At least three times per week they can go outside on the yard and exercise and enjoy the sun if they want. This is all in addition to the couple of days set aside for visitations each week.
>
> These inmates are frequently visited by spiritual advisors, medical personnel and social workers. They have had frequent and extensive contact with numerous individuals from all over the world, by telephone, mail, and face-to-face personal visits. They even now have email capability. Contrary to numerous reports, this is not solitary confinement.
>
> *****
>
> [T]hese convicted murderers filed a civil lawsuit alleging they have been denied due process and have been mistreated. It is important to know that if they win this civil case they could possibly receive money and a change in their housing assignments. This lawsuit WILL NOT result in their release from prison.
>
> *****
>
> Let me be clear, **Woodfox and Wallace...have NEVER been held in solitary confinement**....
>
> Sincerely,
>
> James D. "Buddy" Caldwell
>
> Louisiana Attorney General
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before. People have reacted with denial when confronted with the unexpected death of a loved one or after being informed of an unfavorable prognosis. What these people soon learned is that denial served but a momentary purpose; it does nothing for the long term. Once denial ceases, the problem just stares you in the face. And this is where we are—the truth about solitary confinement is just staring us in the face. This is but one reason a uniform definition is needed. It is needed to catapult this discussion of reforms to a long overdue starting point, not just in Louisiana, but in any jurisdiction where linguistic stalemates or vernacular has obliterated conversations about needed policy changes on this subject.

As a definition of solitary confinement, I propose:

> The various forms of segregation practices used in penal institutions where inmates are housed separately from the general population and involuntarily confined to their cells in excess of twenty-two hours a day and where meaningful interaction with other humans is nonexistent or severely limited and meaningful programming is removed as a result of disciplinary or administrative action.

This definition is consistent with credible research and scholarship on this topic.[11] This is not to suggest that arriving at a definition will equate with unveiling a

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E-mail from The Louisiana Department of Justice (March 21, 2013, 11:02 a.m. CST) (on file with author) (emphasis added); *See also* Bill Lodge, *Louisiana Inmates Attract World Attention*, The Advocate, http://theadvocate.com/csp/mediapool/sites/Advocate/assets/templates/FullStoryPrint.csp?cid=5535507&preview=y (accessed Feb. 24, 2014).

[11] *See* Sharon Shalev, A *Sourcebook on Solitary Confinement* 2 (Mannheim Centre for Criminology 2008), *available at* http://solitaryconfinement.org/uploads/sourcebook_web.pdf (accessed Feb. 24, 2014) ("[S]solitary confinement is defined as a form of confinement where prisoners spend 22 to 24 hours a day alone in their cell in separation from each other."); Solitary Watch, *available at* http://solitarywatch.com/facts/faq/ ("Solitary confinement is the practice of isolating inmates in closed cells for 22-24 hours a day, virtually free of human contact, for periods of time ranging from days to decades.") (accessed Feb. 24, 2014); *Growing Up Locked Down Youth in Solitary Confinement in Jails and Prisons Across the United States*, Human Rights Watch, 1 n.1 http://www.hrw.org/sites/default/files/reports/us1012ForUpload.pdf (accessed Feb. 24, 2014) (uses solitary confinement to "describe physical and social isolation for 22 to 24 hours per day and for one or more days, regardless of the purpose for which it is imposed."); *Black Law's Dictionary* (Bryan A. Garner ed., 9th ed., West 2009) (Defines solitary confinement as "Separate confinement that gives a prisoner extremely limited access to other people; esp., the complete isolation of a prisoner.")

solution. That is far from the case. There are numerous other ills to be remedied, which leads me to my next area of concern.

Secondly, I write to again urge awareness of and attention to a multitude of constitutional and human rights violations, as well as procedural shortcomings associated with current solitary confinement practices. There are problems with the arbitrary selection of people for placement into solitary confinement. There are concerns with the review process used to decide if one should be released from solitary confinement. There are adverse medical, psychological and fiscal concerns. There are constitutional shortcomings (including, but not limited to the 8th and 14th Amendment violations) and human rights implications and violations (including but not limited to violations of treaties, as well as the use of torture). Many of these things are discussed in a detailed way in my article, "*Perception Profiling & Prolonged Solitary Confinement Viewed Through The Lens of The Angola 3 Case: When Prison Officials Become Judges, Judges Become Visually Challenged and Justice Becomes Legally Blind.*" It is my hope that the committee will review my article in its entirety. [12]

My final concern is a legislative remedy. This is desperately needed since courts have failed to offer necessary protections.[13] In short, such legislation should end the practice of institutions having sole authority over decisions regarding an inmate's exodus from solitary confinement. As an alternative, a tiered approach is

[12] *See* Angela A. Allen-Bell, *Perception Profiling & Prolonged Solitary Confinement Viewed Through The Lens of The Angola 3 Case: When Prison Officials Become Judges, Judges Become Visually Challenged and Justice Becomes Legally Blind*, 39 Hastings Const. L.Q. 763 (Spring 2012), *available at* http://angola3news.blogspot.com/2012/06/hastings-constitutional-law-quarterly.html (accessed Feb. 24, 2014).

[13] I have authored a legislative proposal. It is contained in the above-referenced article.

advocated whereby prison officials make the initial decision to place a prisoner in isolation and retain authority over the first periodic review; thereafter, other eyes begin to watch, other ears begin to listen, and other minds begin to ponder the fate of the isolated inmate. The legislative proposal would also require institutions to inform an inmate being placed in solitary confinement of the reason for the placement and the duration of their sentence to solitary confinement, and said inmate would be provided with a case plan enumerating exactly what must be done to earn their exodus. Placement in solitary confinement as a result of perceptions that are not incident to actual actions or specific, actual, and legitimate security or penological concerns would be prohibited. Continued placement in solitary confinement based on dated security concerns would not be allowed. The proposed legislation I envision would also institute burdens of proof during review hearings.

Concluding Remarks

The late Herman Wallace (Angola 3 member) was full of hope about the prospects for progress and change that "*Reassessing Solitary Confinement I*" promised. His 41 years in solitary confinement came to an end in October 2013 when a Louisiana court invalidated the conviction that sent him to solitary confinement. He died two days later, never seeing a change to the system that he suffered in and under for 41 horrific years. After his death, there was a national tribute:

> [W]e...commemorate and celebrate the life and contributions of Herman Wallace, one of the bravest champions for justice and human rights whom we have ever met...On behalf of all who believe in fundamental fairness and justice, we commend Mr. Wallace's courage and determination to keep fighting through 41 long years of solitary confinement. He is an

> inspiration to all of us...Because of Mr. Wallace's work, those of us in Congress who have called for his freedom will dedicate our future efforts to ensuring that no one anywhere in the United States is subjected to the unjust and inhumane treatment that he has endured...[I] ask my colleagues to join me in honoring Mr. Wallace for his many-decades-long fight for the humane treatment of prisoners. We, and all of us, owe Mr. Wallace a debt of gratitude. [14]

Poignant—no doubt—but Herman Wallace never wanted recognition. Herman Wallace wanted far-reaching change and meaningful reforms to a system riddled with frailties. In short, Herman Wallace wanted a modern day revolution within detention centers and penal and corrections systems. Martin Luther King warned that there are fitting times for such. As he reflected on the 1963 Birmingham, Alabama civil rights campaign, Dr. King said: "This Revolution is genuine because it was born from the same womb that always gives birth to massive social upheavals the womb of intolerable conditions and unendurable situations."[15]

In one of his final letters to me, 72-year-old, cancer-stricken Herman Wallace wrote: "I am a soldier...a servant of the people and if I am taken down any time soon, my only wish is that the struggle does not end with me."[16] An elderly, frail man, who a court said should have never been held in prison for the larger part of his stay, locked in a prison within a prison for 41 years, instead of being concerned with self in his last days, expressed concern about conditions for the rest of humanity? A lesson awaits. And it behooves us not to miss it. As we embark upon

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[14] *See Celebrating The Life of Herman Wallace*, 159 Cong. Rec. E1439-03, (Oct. 4, 2013) (speech by John Conyers), *available at* 2013 WL 5502164.

[15] Martin Luther King, Jr., *Why We Can't Wait* 156 (Beacon Press 1963).

[16] *See* Letter from the late Herman Wallace, Angola 3 member to Angela A. Allen-Bell (April 4, 2013) (on file with the author).

this ever important journey, may Herman Wallace's words amplify with such intensity that they mute the voices of those who wish to impede progress and awaken those who can navigate the pathway to revolutionary change within detention centers and penal and corrections systems.

As a people, we have, by omission and inaction, been silent signatories to a grave "human wrong." Inmates have done all they can to advocate for change—some have sued, some have held hunger strikes and some have even stitched their lips in protest. Others have paid the ultimate price. This, while free people, actively engage in disengagement. At the very least, may we be collectively called to raise our voices in order that those locked away without a voice—in the womb of intolerable conditions and unendurable situations—may finally be heard. The world has now become our audience.

Written Statement of Raphael Sperry, AIA

before the Unites States Senate
Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights

hearing on

Reassessing Solitary Confinement II: The Human Rights, Fiscal, and Public Safety Consequences

Submitted via e-mail to: Stephanie_Trifone@Judiciary-dem.Senate.gov

February 24, 2014

Dear Chairman Durbin,

I am Raphael Sperry, a resident of and licensed architect in the state of California. I am a member of the American Institute of Architects (AIA), and a member of the AIA's Academy of Architecture for Justice, the professional network of architects who design prisons and other buildings for the justice system, where I was an author of the AIA-AAJ *Green Guide to Justice Facilities* and the AIA-AAJ *Sustainable Justice Guidelines*. I am also President of the national non-profit organization Architects / Designers / Planners for Social Responsibility (ADPSR). ADPSR was incorporated in 1981 with the mission of working for peace, environmental protection, social justice, and the development of healthy communities. I write as a representative of ADPSR. We very much appreciate you holding a hearing on this important topic.

ADPSR is leading a nation-wide campaign that will prohibit the participation of architects in the design of prisons intended for prolonged solitary confinement. The AIA Code of Ethics states that "members should uphold human rights in all their professional endeavors."[1] As the United Nations Special Rapporteur on Torture and various other international Human Rights bodies have concluded, the level of psychological harm caused by solitary confinement over fifteen days rises to the level of torture or cruel, inhuman and degrading treatment, while juveniles and the mentally ill should never be placed in solitary confinement at all. Accordingly, designing places especially intended for solitary confinement of juveniles or the mentally ill, or for confinement of healthy adults for over 15 days, would be to plan a human rights violation. ADPSR's petition to ban the design of "supermax" prisons has been signed by over 1,200 architects, allied professionals, professors, and others.

According to the research of Prof. Keramet Reiter (who testified at the previous hearing on this subject), there are approximately 60 "supermax" prison facilities in the United States that are buildings designed specifically for prolonged solitary confinement, holding a total of almost 30,000 people. (Other portions of more conventional prisons hold many thousands of more people in isolation as well.) Simply put, as architects we feel that these are buildings that should never have been built. They create a sterile

[1] AIA Code of Ethics and Professional Conduct, Ethical Standard 1.4: Human Rights, available at http://www.aia.org/about/ethicsandbylaws/index.htm

environment so shorn of sensory stimulation that it produces rapid and extreme psychological deterioration in all but the most resilient of their occupants. The possibility of human contact has been so thoroughly designed out of these buildings' intended operations that occupants can go for years or even decades without touching another human being.

To some observers, the seemingly sanitary and completely controlled environments of these prisons sets them apart from the obviously degrading dark, dank, and dirty isolation cells of many American prisons prior to the wave of prison reform of the 1970s (not to mention earlier historical eras). Certainly this new kind of prison environment requires a much higher level of design and planning skill to create: the combination of advanced features such as automatic door operators, electronic controls, and abuse-resistant plumbing and lighting fixtures within cast concrete construction requires the integration of multiple engineering disciplines under skilled architectural leadership. Yet these technical advances over the prison construction of earlier eras do not mean that the space itself is any more humane. The history of the twentieth century is replete with examples of technical innovations leading to new forms of inhumanity, from mustard gas to atomic warfare. It is essential to question the ends to which new technical capabilities are employed, and the technical professionals who deploy these new capabilities are have a critically important perspective to share on the ethics of technical innovations.

The ability to create and maintain environments of extremely limited social interaction and sensory stimulation is not something to be proud of. Perhaps when the first generation of "supermax" prisons were designed in the mid-1980s it was not clear exactly what the experience of living in these kinds of spaces would be. But it is precisely the experience of the past twenty-five years of forcing tens of thousands of people to live in these environments that has brought about the deeply disturbing conclusions from the mental health professionals that have studied their impact on prisoners, and then the condemnation of international human rights groups that is such an embarrassment to the United States today. Technical professionals are dedicated to continuing education and incorporating new knowledge about our fields into our professional practice and standards. If there were ever a case in which the architectural profession has received new knowledge that certain design features can lead to unhealthy and dangerous conditions for members of the public, and even to human rights violations, the case of prisons intended for prolonged solitary confinement is surely one.

Architects are aware that a portion of the American public expects prisons to lack many of the elements of comfort that we typically provide in buildings. In addition, we are well aware of the special security needs of prison facilities that are intended to protect prisoners and staff. However, as the AIA Academy of Architecture for Justice states in the *Green Guide to Justice*,[2] "the physical needs, health, dignity, and human potential of all who come in contact with the justice system [must be] respected and given opportunity to flourish. This applies equally to staff, detainees, visitors, service providers, media, jurors, and court support agencies." In other words, security requirements should not be allowed to undermine human dignity for any reason.

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[2] AIA's publication *Sustainable Justice 2030: Green Guide to Justice*, p.4, available at http://network.aia.org/Go.aspx?c=ViewDocument&DocumentKey=2a4629b8-8c4f-4bae-9ad3-658fc849ec41

Among Federal prisons, the Administrative Maximum prison or "ADX" in Florence, CO, is an extremely technically complex building intended for solitary confinement. A number of architectural features of its design demonstrate the ways that design deepens the degrading isolation of prisoners.[3] Specifically: 1) while the inclusion of shower stalls within the prison cells would seem to allow prisoners the opportunity to have better personal hygiene, the placement of showers within the cell removes the opportunity prisoners would otherwise have had to leave their cells – even if only briefly – to use a shower down the hall and perhaps exchange a word or two with another person in passing. 2) the vestibules between the barred cell doors and the solid doors leading to the hallway are areas where prisoners and/or staff can stand for cuffing / uncuffing procedures, indicating a security purpose. However, they also serve to keep prisoners away from the small windows to the hallway, severely limiting the opportunity to view even the small range of activities that occur outside their cells. Also, by removing the need for a slot in the solid cell-hallway door, they increase soundproofing which further isolates prisoners. 3) the outside windows in each cell are generally seen as an improvement over the windowless cells of some state-level supermax prisons. However, the courtyards outside the windows are arranged to ensure that there is no view of human activity or the natural environment; the only view is across bare ground to a blank wall, vitiating the opportunity to lessen the experience of isolation.

While ADPSR again believes that this type of prison should never have been built in the first place, if prisoners are to continue to be held at ADX Florence, the isolation and sensory deprivation of the interior environment should obviously be ameliorated. While many needed changes would be operational in nature and not within the scope of architecture, some aspects of the architecture would also need to be modified to produce a humane environment. Most importantly, group activity space should be provided so that prisoners can have a reasonable amount of social interaction with prison staff and other prisoners, at least in small groups, both indoors and outdoors, in safe and secure conditions. In addition, a normal range of environmental conditions should be provided including color, texture, lighting and control of lighting, sound, and temperature, among others, to remove the harmful effects of sensory deprivation.

We are also concerned about Thomson Correctional Center in Illinois, as news reports indicate that it may be renovated to be more like ADX Florence. Creating additional "supermax" spaces at Thomson would be a tragic mistake and a misuse of architectural services. Experience indicates that "supermax" prisons end up operating even worse than their design intent. For instance, while the architects of California's Pelican Bay State Prison – another supermax facility—were told that prisoners would be held there for periods up to 18 months, in actual operation hundreds of prisoners have been held there for one or even two decades.

The need for additional prison space at FBOP is questionable given the increasing success of evidence-based alternatives to incarceration, a declining crime rate, and the prospect of much-needed sentencing reform, among other factors. But the question of need for any space at Thomson prison aside, from an architectural perspective, under no circumstances should the facility be made more inhumane or more isolating than a typical maximum-security prison. The layout of Thomson prison is already poor in

[3] as described and diagrammed in by Prof. Norman Johnston, *Forms of Constroint: A History of Prison Architecture*, University of Illinois Press, 2006, p. 158

program and outdoor recreation spaces for prisoners. The cell blocks do not appear to contain dayrooms where prisoners can have social time. The small, walled, all-concrete yards have no sun or rain protection, do not include meaningful views, and have almost no fixed recreation equipment. Access from cell blocks to visiting and other central services is via uncovered walkways, making winter-time out-of-block activities extremely limited. If renovations are to be done to Thomson, they should introduce opportunities for social interaction and sensory stimulation while meeting security requirements. This would be an appropriate use of architectural services; building a human rights violation would not.

Human rights are of great concern to ADPSR's members and to the broader architectural profession. We are deeply troubled that international human rights observers have found U.S. prisons (including FBOP as well as many states) failing to meet basic standards of decent treatment of prisoners because of our use of solitary confinement. We urge you to work to limit solitary confinement to fifteen days maximum, as recommended by the UN Special Rapportuer on Torture, and to eliminate solitary confinement of especially vulnerable people including juveniles and the mentally ill.

Architecture is a profession dedicated to protecting public health, safety, and welfare and to making the world a better and more beautiful place through design. In recognition of this commitment to the public, governments license design professionals in order to further ensure that our specialized expertise is used exclusively within limits that protect public health and safety. (Architects have this in common with medical professionals – who also have a strong ethical prohibition against participating in cruel, inhuman, and degrading treatment.) We design places that shelter and support human comfort and productivity. My colleagues who design prisons recognize that some diminution of comfort and enforced idleness are necessary components of the institutions' intended function. But the idea that the goal of a prison design would be total solitary confinement is deeply shocking to our professional conscience. It is not appropriate for government agencies – in this case, state corrections departments and the Federal Bureau of Prisons – to ask design professionals to violate our rules of professional ethics or to put any building occupants at risk of harm by consigning them to solitary isolation. Architects should not design torture chambers or spaces intended to degrade anyone, so on behalf of my profession I would respectfully ask that the U.S. government – as well as states and local governments – stop asking us to do so.

Sincerely yours,

Raphael Sperry, AIA
President, Architects / Designers / Planners for Social Responsibility (www.adpsr.org)

ASSOCIATION OF STATE CORRECTIONAL ADMINISTRATORS

Written Testimony of:

Gary C. Mohr, Director

Ohio Department of Rehabilitation and Correction

On Behalf of

The Association of State Correctional Administrators

Provided to:

Subcommittee on the Constitution, Civil Rights, and Human Rights
Committee on the Judiciary; United States Senate

For a Hearing on:

Reassessing Solitary Confinement

Prepared on:

March 3, 2014

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Introduction

Chairman Durbin, Ranking Member Cruz, and members of the Subcommittee, I appreciate the opportunity to submit this written statement on behalf of the Association of State Correctional Administrators [ASCA]. We understand that there have been multiple references to ASCA during the proceedings of this Subcommittee and as a result felt it important to provide our position on this very significant matter under your consideration. ASCA is the membership association for state correctional commissioners, the Federal Bureau of Prisons and select large city correctional systems. Our members participate in established committees and attend association meetings and trainings multiple times each year. ASCA is committed to providing a safe and programmatically rich environment with a mission to reduce recidivism for those placed in our custody and care.

I have the privilege of serving as the Chair of the ASCA Legal, Legislation and Policy Committee. In this capacity, I have had the opportunity to work with some very dedicated Commissioners of Corrections as well as Professor Judith Resnik, Director Hope Metcalf and the team representing the Arthur Liman Public Interest Program at Yale Law School on the matter of "Restrictive Housing". The Liman Public Interest Program has had the opportunity to analyze state agency policies on restrictive housing including the type of offenses that generate assignment to a restrictive unit, processes to approve placement and release, programs and services provided to inmates in this status, including access to visiting and mental health services and other issues related to this restrictive setting. The analysis conducted by this team from Yale Law School provided a foundation for correctional administrators to consider individual state practices within a national framework. The work on restrictive housing in the past year by ASCA is best described as collaborative, spirited, intense and committed to provide a framework for change.

The members of ASCA uniformly recognize the need to maintain a placement where offenders who act out in a manner that seriously jeopardizes the safety and security of those staff and offenders under our care can be safely and effectively managed. Given our responsibility for reducing recidivism, it is imperative that our prisons maintain a climate that supports the delivery of evidenced-based programs and the participation of community partners to assist with transition from prison to the community. In order for that to occur, inmates, often associated with security threat groups, who are committed to disrupting facility operations and programs must not be allowed to cause intimidation and interface with the rehabilitative process. Correctional administrators also recognize and understand that our work does not end

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with the transfer of inmates to restrictive housing. Our responsibility extends to providing a pathway to a positive transition out of this status.

ASCA recognized that effectively managing inmates who are placed in restrictive housing must be a priority of our organization. Our members consistently state that the number of dangerous incidents is higher in restrictive housing. These incidents include assaults on staff and inmates. Also of serious concern is the elevated rate of suicides beyond that in general population settings. Suicides are a tragic indicator of failure and are devastating both to families who have planned on the safe return home of their loved ones and to the staff who supervise and work with these offenders.

Restrictive housing by its purpose is a controlling environment. It includes real limitations on the freedom of movement of inmate occupants and access to other inmates and staff. It has also historically reduced inmate access to programs and services as well as to visiting. The analysis of these restrictions was depicted in the study conducted by Yale Law School. As ASCA continued to drill down into the implications of restrictive housing, we determined that more often than many of us realized inmates released from a restrictive housing status were actually discharged directly into our communities. In fact, Ohio found this number to be 20%. Some states actually discovered a higher rate. This practice does not support a successful transition for the inmates to their families and neighborhoods and increases the risk to the public whom we are committed to protect.

It became clear to the membership of ASCA that the issues surrounding restrictive housing must be a priority of our organization and that we have a clear calling to assist our members in creating an environment of hope and positive transition into the future for those who reside in these settings. In its most recent gathering, the American Correctional Association [ACA] also recognized the need to address this issue. In fact, a plenary session on this topic was held at the Mid-Winter ACA Congress. In addition, the ACA Standards Committee replaced terms such as segregation and isolation with the term restrictive housing.

ASCA Approach to Address Restrictive Housing Issues

Phase I – Commitment to Reform

To move forward on almost any significant challenge, it is imperative first to recognize that the subject at hand needs to be addressed. In the past two years, ASCA has inserted this topic into all of its meeting agendas, with presenters who were not only commissioners but also with partners at Yale Law School and its Liman Public Interest Program. These sessions have provided a framework for initiating meaningful approaches to improve the quality of operations

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and conditions in restrictive housing. As ASCA considered the matter of balancing the necessity of restricting those inmates who pose a threat to others or to facility operations with the fundamental belief that people can change and the environment in restrictive housing should support positive change, several themes arose. These themes included the following:

- We should reduce the number of inmates in restrictive housing. As Tom Clements, former Director of Colorado Department of Corrections said during an early meeting of our ASCA Restrictive Housing Committee, "We should ensure those inmates in restrictive placement are those we have reason to fear and not those we are mad at".
- The intent of restrictive housing is to protect others and preserve order and not to punish.
- Inmates in restrictive housing require the attention of medical and mental health staff to monitor their wellness and to support their transition to a general population setting.
- Inmates should not be released from restrictive housing directly to the community unless extraordinary circumstances exist.
- Inmates should have access to family and pro-social community sources while in restrictive housing.
- Inmates should have access to programming that is consistent with their transition out of restrictive housing into a general population setting.
- Inmates in restrictive housing should have access, consistent with security needs, to congregate programs and activities in order to prepare them for transitioning to general population when their conduct allows.

Phase II – Approval of Guiding Principles for Restrictive Housing

The ASCA Committee on Restrictive Housing drew on the energy generated by the many association sessions held with the collaboration of Yale Law School and the thoughtful discussions that accompanied those gatherings to begin to forge some general parameters for our members to consider and further debate. This committee was committed to developing a set of principles that could be used by any correctional system to evaluate current practices and to design new approaches aimed at creating a rehabilitative environment in restrictive housing. The process utilized by the committee was first to draft guiding principles that achieved consensus of the team and then to send out these statements to the ASCA membership for refinement and further debate. This approach led to evolving versions of the Guiding Principles which served as the centerpiece for multiple sessions held in person with our ASCA members.

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Finally, during our ASCA Summer Meetings in August 2013, the Guiding Principles for Restrictive Housing were presented for membership consideration in advance of a formal resolution to accept them. Shortly following the presentations to the Executive Committee and then to the ASCA membership a ballot was distributed to 100% of our members for a vote to accept. The following Guiding Principles were overwhelmingly endorsed by ASCA members as a framework for systems to use in reforming their practices.

1. Provide a process, a separate review for decisions to place an offender in restrictive housing
2. Provide periodic classification reviews of offenders in restrictive housing every 180 days or less
3. Provide in-person mental health assessments, by trained personnel within 72 hours of an offender being placed in restrictive housing and periodic mental health assessments thereafter including an appropriate mental health treatment plan
4. Provide structured and progressive levels that include increased privileges as an incentive for positive behavior and/or program participation
5. Determine an offender's length of stay in restrictive housing on the nature and level of threat to the safe and orderly operation of the general population as well as program participation, rule compliance and recommendation of the person[s] assigned to conduct classification review as opposed to strictly held time periods
6. Provide appropriate access to medical and mental health staff and services
7. Provide access to visiting opportunities
8. Provide appropriate exercise opportunities
9. Provide the ability to provide proper hygiene
10. Provide program opportunities appropriate to support transition back to a general population setting or to the community
11. Collect sufficient data to assess the effectiveness of implementation of these Guiding Principles
12. Conduct an objective review of all offenders in restrictive housing by persons independent of the placement authority to determine the offenders' need for continued placement in restrictive housing
13. Require all staff assigned to work in restrictive housing units to receive appropriate training in managing offenders on restrictive status housing

Phase III – Creating Best Practices Suitable for Replication

The ASCA Committee on Restrictive Housing understands that the Guiding Principles are only the beginning of an effort to reform operations in restrictive housing. It is simply a template for

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systems to evaluate their operations and begin to put basic services and practices in place. ASCA is committed to continue discussing challenges and opportunities related to restrictive housing and has launched Phase III: the development of best practices that will push a continuous improvement process in our principles. We are calling for systems to provide practices that can be certified by the ASCA Committee on Restrictive Housing and placed on the ASCA web-site to assist members with replication and refinement of those approaches in their respective organizations. Best practices include specific strategies for mental health inmates, effective programs that can be delivered to assist with transitioning, congregate programs for those assigned to restrictive housing and training initiatives to assist staff with their role in this developmental process. The designers of these practices will have the opportunity to present their programs in person to other commissioners at upcoming meetings of ASCA.

Phase IV – Collaboration and Continuous Refinement

The foundation for positive change has been established through on-going meetings, development of the Guiding Principles and now the process of collecting best practices that can be used and adapted by systems around the country. As we move forward, ASCA is dedicated to working with interested parties such as Yale Law School. In fact, as of the preparation of this written testimony, some correctional systems have embarked on a relationship with The Liman Public Interest Program that includes inviting participants into our restrictive housing units in order to review our practices. Given the interest from both Yale and these commissioners, we anticipate that reform of restrictive housing will be on-going and accelerated.

Closing

The membership of ASCA is committed to the continuous process of improving our operations by creating safer environments for all offenders. We are far from finished in our on-going work with this most difficult population. We also recognize that providing effective programming and a sense of hope for those inmates who have committed serious offenses and infractions while incarcerated can assist with a more positive environment for our staff and inmates and will ultimately create a safer community for the residents of our jurisdictions. The metrics of our work are expected to reveal fewer inmates in restrictive housing, smoother transition from this status to general population and ultimately a safer environment for staff, inmates and the public we serve.

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Testimony Of Senator Bill Perkins Before The United States Senate Committee On The Judiciary | Subcommittee On The Constitution, Civil Rights And Human Rights | RE: "Reassessing Solitary Confinement II: The Human Rights, Fiscal, And Public Safety Consequences

Good afternoon. My name is Senator Bill Perkins and I have the honor of representing the communities of Harlem, Washington Heights and the Upper West Side of Manhattan in the New York State Senate. The issue of solitary confinement is one that is acutely felt in our communities as so many of our sons and daughters—and their family and friends—have had their lives irreparably affected by the inhumane, tortuous and counterproductive practice of solitary confinement. My testimony will focus on New York-specific solitary confinement examples, including challenges and solutions which I believe are directly relatable and scalable to all levels of our justice and rehabilitation systems.

The issue of solitary confinement has been a priority of mine for many years and represents three extensive experiences I have had in my life: (1) The deplorable conditions I have witnessed in my many years advocating for the rights of political prisoners; (2) The unbearable stories of pain told to me by constituents who have a loved one who is incarcerated; and (3) Attending the presentation of the report by the United Nations Special Rapporteur on Torture in 2011. Each of these experiences only reinforced what I already knew at a personal and gut level: solitary confinement is torture in practice and in the great majority of cases is entirely inappropriate, inhumane and counterproductive. Furthermore, in New York and elsewhere it is used with a regularity, interminability and capriciousness that shocks the conscience—it has disproportionate damaging effects on vulnerable populations and communities of color; it has no positive or rehabilitative aspects—it only prolongs harm and encourages harmful behaviors. It is a practice that must be fundamentally reformed. Fortunately, due to the tireless efforts of the New York Campaign for Alternatives to Isolated Confinement (CAIC) we have introduced model reform legislation in New York State in the form of Senate Bill 6466 | Assembly Bill 8588 (by Assembly Member Jeff Aubry) , the "Humane Alternatives to Long Term (HALT) Solitary Confinement Act.

There are five chief policy pillars to the HALT Solitary Confinement Act; all five work in harmony with each other to move from a punitive, punishing and tortuous environment to one that is supportive, rational and rehabilitative. Specifically our legislation calls for: (1) A systems change from an isolation model to one that is focused on healthy and supportive holistic treatment, through the creation of Residential Rehabilitation Units (RRUs) that provide individuals with six hours of out of cell programming and therapeutic models targeted to their needs; (2) Dramatically reducing the use of overbroad and arbitrary criteria that lead individuals to be heedlessly placed in isolation in the first

instance; restricting placement in RRUs to those who commit the most serious acts—those who need intense levels of therapeutic intervention— and through the therapeutic model work on the core issues that lead to the precipitating behaviors with the goal of helping the individual heal and grow; (3) Pursuant to the findings of the UN Special Rapporteur on Torture, and common sense humanity, limit the use of long term isolation to no longer than 15 consecutive days and no more than 20 days in any 60 day time period; (4) A complete bar on the isolation of vulnerable populations, where such isolation would be exceedingly damaging because of certain inherent conditions, applicable to: youths, seniors, anyone with a physical, mental or medical disability, anyone who is pregnant and anyone who is or is perceived to be LGBTI; (5) Totally reorient the way that our system approaches solitary confinement through training of officers and personnel to ensure they know how to work with and respond to those with needs who may engage in perceived problematic behavior, ensuring that all manner of due process protections are afforded individuals who are placed in solitary, and letting the sun shine in on these processes by ensuring greater transparency, accountability and oversight. The current process isolates not only the directly affected individuals but everyone else: staff, administrators, therapeutic caregivers, family, friends, legislative oversight bodies, advocates and the general public. We are counting on our HALT Solitary Confinement Act to be the sunlight antidote to practices born in the dark ages.

I am confident that our legislation is a model not only for New York but for the Country. In fact, a recent stipulation entered into by New York State with solitary confinement reform advocates who brought litigation on behalf of tortured individuals—validates much of what we have been fighting for over the past few years and provides yet another timely example for this Subcommittee to consider.

In addition to my legislation, on February 19, 2014 New York State struck a historical and imperative blow toward limiting and possibly ending the capricious and tortuous use of solitary confinement as the primary method of discpline in prisons across the state. This victory is due in large part to the tireless efforts of NYCLU and numerous advocates including the CAIC. In a stipulation for a 2 year stay of litigation with condition in the case of *Peoples, et al., v. Fischer,* New York State's Department of Corrections and Community Supervision (DOCCS) took an extraordinary stand and agreed to action on the critical need to re-evaluate, re-think and most importantly limit and regulate the use of Special Housing Units (SHUs) as a method of discipline for individuals. For purposes of this testimony, I would like to briefly highlight several key components of this stipulation.

The stipulation mandates significant reforms regarding certain vulnerable populations, including incarcerated individuals who are pregnant, young and/ or mentally/developmentally disabled. DOCCS will be required to develop and advance a new policy that prohibits placing inmates who are pregnant, in SHU for disciplinary purposes. Additionally, DOCCS will need to develop guidelines limiting the amount of time that inmates under the age of 18 and/or those who are developmentally and intellectually challenged can be in disciplinary segregated isolation and mandating specific timeframes for outside programming and rehabilitation. It also calls on DOCCS to develop alternatives to placement in SHU for youth and disabled inmates geared more toward rehabilitation instead of punishment. This specific segment of the prison population (pregnant, youth, mentally and developmentally disabled) are some of the most vulnerable and susceptible to the mental anguish and distress that is well documented to occur as a result of isolation.

The stipulation also requires DOCCS to work with two experts of national acclaim in the field of corrections—one selected by the plaintiffs attorney and the NYCLU and one selected by DOCCS. These experts will provide recommendations to enable DOCCS to reform its use of segregated isolation via SHU and to develop humane and rehabilitative alternatives. This is a particularly critical aspect of the stipulation because of the roughly 3,800 New York State inmates currently in SHU across the state and the deleterious and irreparable harm associated with solitary confinement.

Furthermore, the stipulation requires the formation of a new office within DOCCS called the Office of Central Oversight. The new office will require the creation of two new and critical positions: an Assistant Commissioner and research position both of whom will "oversee and monitor the disciplinary system throughout the state by data collection and performance tracking procedures with the goals of promoting consistency and fairness of SHU confinement sanctions and the health, safety and security of inmates and staff." This is a crucial step in remediating the capricious nature in which solitary confinement is imposed in New York State prisons.

As a result of this monumental stipulation and the introduction of the HALT Solitary Confinement Act, New York State is finally taking some of the long overdue steps to protect the vulnerable and reform the use of solitary confinement in New York State, I can say that New York has recently come a long way since your first hearing on the issue in 2012. However, I strongly believe that there is more work to be done, in the form of passing the HALT Solitary Confinement Act and specifically an end to the use of solitary confinement as punishment in all prisons across New York and the United States in favor of truly humane and rehabilitative alternatives.

Black & Pink

An open family of LGBTQ prisoners and free world allies who support each other
www.blackandpink.org

Testimony of Black and Pink before the Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights

Reassessing Solitary Confinement II:
The Human Rights, Fiscal, and Public Safety Consequences

Overview:

Black and Pink is a national organization of Lesbian, Gay, Bisexual, Transgender, Queer, Two Spirit, and Gender Non-conforming (LGBTQ) prisoners and free world allies. Black and Pink was founded in January 2005 and now reaches over 4,500 LGBTQ prisoners across the country, with incarcerated members in every state. Our work toward the abolition of the prison industrial complex is rooted in the experience of currently and formerly incarcerated people. We are outraged by the specific violence of the prison industrial complex against LGBTQ people, and respond through advocacy, education, direct service, and organizing. We submit this testimony to voice our support for the complete abolition of solitary confinement. We oppose the use of solitary confinement under any circumstances. Nearly 12% of our members report being held in some form of solitary confinement, which is three times the national average.[1] It is very clear to us, despite the lack of funded research, that LGBTQ prisoners are disproportionately held in solitary confinement in nearly every state. The book *Queer (In)Justice: The Criminalization of LGBT People in the United* States, explores the use of solitary confinement among LGBTQ prisoners. The writers state,

> In all too many instances, transgender and gay individuals at risk of sexual violence are placed in administrative segregation units, also known as ad-seg. The ostensible purpose of such units, particularly those described as protective custody, is to separate vulnerable or at-risk individuals from the general population... [A]d-seg serves as the functional equivalent to solitary confinement, featuring smaller cells and depriving individuals of any meaningful human interaction, access to communal activities, recreational time, religious services, or participation in what few vocational or educational programs are offered. Denial of access to such programs has far reaching consequences, as their completion may provide opportunities for early release on 'good time credits,' and to secure future employment.[2]

The use of solitary confinement for one's protection assumes that solitary confinement is a safe place, a claim that has been refuted by countless studies, medical experts, and even the United Nations Special Rapporteur on torture. Solitary confinement for one's protection also assumes that prisoners need protection from other prisoners, however the most recent Bureau of Justice Statistics report on sexual violence in prison shows that prison staff make up half of the substantiated sexual assaults.[3]

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1 *Confronting Confinement: A Report of The Commission Safety and Abuse in America's Prisons* John J. Gibbons, Nicholas de B. Katzenbach commission Co-Chairs. Vera Institute of Justice (June 2006) page 56

2 *Queer (In)Justice: The Criminalization of LGBT People in the United States.* Joey L. Mogul, Andrea J. Ritchie, & Kay Whitlock.

3 *Survey of Sexual Violence in Adult Correctional Facilities, 2009 – 11* Allen J. Beck, Ph.D., Ramona R. Rantala Bureau of Justice Statistics (January 2014)

Not only are LGBTQ prisoners house in ad-seg, they are also subjected to harsher disciplinary practices within the prison. Certainly prison staff bias against LGBTQ people has an impact on the excessive punishment LGBTQ prisoners receive. However, individual bias, or the "rotten apple" theory cannot account for what is an apparent systematic targeting of LGBTQ prisoners across the country. Transgender women and gay men are disproportionately impacted by the use of solitary confinement. Transgender women are regularly disciplined for contesting denial of healthcare, attempting to affirm their gender presentation by their own means (i.e. creating dresses from oversized shirts, creating make up, etc.), and self injury. Gay men receive sanctions and are placed in solitary confinement for consensual contact between prisoners, educating one another about safer sex practices, and challenging homophobic treatment by prison staff. Black and Pink hears stories from prisoners across the country that detail the type of harm they experience from the excessive punishment.

This following are seven stories submitted by seven different prisoners held in seven different states. The analysis of medical experts and human rights advocates are essential to this process of addressing the harm caused by solitary confinement, but the stories of incarcerated people are the most important as they have experienced the torture of solitary cells. Identifying information has been removed in order to protect the prisoner from retaliation.

Billy, Texas

After spending 11 years in that box, still to this day, that box is with me. Imagine walking in each room you enter and counting everything, including the cracks on the wall. Even though I was in that room the day before, I would count it once again hoping for just one new small crack- why? It gave me the sense of change. I've been out now for 6 years. I still go nights without sleep. Those years stole things from my very soul. Now in the crowded day rooms, endless lines for my basic needs- food, medicine, etc. I pray for refuge to be alone. In lines sometimes my anxiety overcomes me and I have to give up my seizure meds, placing me at risk of further harm. I will cry for no damn reason at all. One of the scariest things, I know I'm not crazy, but I can't get my head out of that cell. It's gotten so hard lately to even call home, I think they know I'm damaged somehow. When I used to get visits there would be periods of silence because I had forgotten how to even hold a conversation with my family. They don't visit anymore.

It's time everybody quit talking about studying the effects of solitary confinement- it's time for something, anything, to be done. Most of the time when I try and speak of my time in Ad Seg, when trying to share the darkness I continue to fight my way out of, those who try to help cannot see into that darkness. So, I'm passed along from one mental health professional to the next. I even tried to make myself feel bad about myself as if it was all my fault. I was sentenced to do time, yes, I get that, but not be tortured or abused.

JD, Michigan

I am a gay, HIV+ prisoner. I have been incarcerated with the MDOC for over 15 years. In April I was classified to administrative segregation pursuant to MDOC Policy Directive 03.04.120 "Control of Communicable Bloodborne Diseases" for an alleged sexual misconduct with another prisoner. [redacted]

PD 03.04.120 contains a presumption that "actual or attempted sexual penetration" could transmit HIV. Prisoners who are found guilty of sexual misconduct that "could transmit HIV" are indefinitely confined to administrative segregation. In other words, HIV+ prisoners who are found guilty of sexual misconduct are permanently classified to administrative segregation. Further, PD 03.04.120 does not afford for any type of review of a prisoner's confinement to administrative segregation.

Sarah, Indiana

The Indiana Dept of Corrections has held me in solitary for 5 years now because a male guard aided my escape from prison. He drove me out of the gates to the parking lot where my wife was waiting to ferry me away. The IDOC and police- and media- glommed onto my sexuality as if I had used it as a weapon to seduce an upstanding law enforcement officer into doing my bidding, vilifying me and painting him as a helpless victim! The former officer and my wife are now at home after 3 years in prison and 2 years parole, while I am still in isolation indefinitely, [redacted]. Instead of policing their own employees to discourage sexual misconduct, they continually punish me, despite the cruel and inhuman nature of solitary confinement.

[redacted]

Currently, we have patriarchal executive, legislative, and judicial systems based on fundamentalist Judeo-Christian ideas of sin and punishment. A restorative justice system would be rooted in universal compassion and forgiveness. Until then, we'll never see the abolition of the Prison Industrial Complex and its dehumanizing machinations.

Jenni, California

Initially, I was convicted for the crime of armed robbery and sentenced to seven years in state prison. Subsequently, however, that "7 years" was extended to an indeterminate term of 104 years-to-life under the draconian "Three Strikes" law for prison behavior (e.g. weapon possession, assault, etc.) I have now been incarcerated for over 22 years, including more than 14 years of experience in solitary confinement at Pelican Bay State Prison and other institutions, and never raped or killed anyone.

As a survivor myself, I can state from personal experience, there is no question that long-term isolation in prison "control units", under severe punitive conditions, is TORTURE! I've suffered beatings, food deprivation, inadequate medical and mental health care, and other forms of inhumane treatment similar to the abuses described in the case of Madrid v. Gomez, 889 F.Supp. 1146 (N.D. Cal. 1995).

Thanks to that legal victory, due in part to the expert testimony of Dr. Stuart Grassian, I was released from the Pelican Bay Security Housing Unit (SHU) in 2003, and my exacerbated mental illness improved after being provided acute psychiatric care for suicide attempts, post-traumatic stress symptoms, and Gender Identity Disorder.

Although my current prison circumstances have improved, and I now have the prospect of a sentence reduction under California's newly passed Proposition 36 (the "Three Strikes Reform Act of 2012"), thousands of other inmates continue to languish in long-term solitary confinement.
Since the Pelican Bay Prisoner Hunger Strike began in 2011, more than 12,000 prisoners in thirteen different California prisons have participated in intermittent hunger strikes to protest the conditions of solitary confinement. At least three inmates committed suicide.

On February 2, 2012, inmate Christian Gomez died during a hunger strike at Corcoran, which houses 1400 in the SHU, and an additional 350 in the Administrative Segregation Unit (ASU).
The continued and expanded use of extended solitary confinement in control units across the United States, and particularly in California where the courts have found illegal and inhumane conditions, violates international human rights law, the Convention Against Torture (CAT), and the Standard Minimum Rules for the Treatment of Prisoners.

Furthermore, in the case of transgender inmates, the use of non-disciplinary safety concerns or refusal of unsafe housing unit/cell assignments to justify placement in solitary confinement violates the Prison Rape Elimination Act of 2003 (PREA) national standards (recently adopted federal regulations, of the U.S. Department of Justice).

In conclusion, I urge all to please join the struggle to ABOLISH CONTROL UNITS in the United States, which hold at least 25,000 prisoners in isolation at various supermax prisons, and an additional 50,000 to 80,000 in restrictive segregation units.

Williams, New York

New York State Department of Corrections has an unfair disciplinary system. A system that is reactionary and it has become desensitized to the serious repercussions of prolonged solitary confinement. The practice of handing out massive amounts of Solitary Confinement has a direct effect on the deterioration of inmates' mental health as well as recidivism.

In the early 1980's New York State prison population was 33,000 with 32 adult prisons. The average amount of Solitary Confinement given was 30 days up to 6 months for more serious misbehavior. Fast forward 18 years later there was approximately 70,000 prisoners and 70 prisons. Solitary Confinement time increased from 2 months on average to 5 months, and 6.7 % of the prison population was held in Solitary Confinement.

Today the prison population has decreased to 55,000 but Solitary Confinement has continued to increase to 18 months to 2 years as a common minimum. Approximately 4,180 inmates, 7.8 % of the prison population are currently being held in Solitary Confinement.

As an inmate who has been in Solitary Confinement for 2 and a half years, I know first hand the psychological and mental health problems caused by massive amounts of box time- Depression, Schizophrenia, Anti-social Personality Disorder, and other serious mental disorders.

When I first arrived at Southport Correctional facility (a prison that holds solitary confinement inmates only), I was introduced to the most horrible conditions in my life. The only way I can describe it is as a physical manifestation of hell. I became very anti-social because if you say the wrong things you may get feces thrown on you or the C.O.'s may not feed you. Then the depression hit me hard along with other mental health problems, I no longer felt the desire to live. After a year of trying to get help, I met a good person that got me into a program. So now I'm getting help for my mental health problems.

Prisoner's Legal Services of New York and disability advocates filed a lawsuit against DOC of New York on this issue and they won (settled out). The court mandated that all inmates with serious mental health disorders (Axis I and Axis II Diagnoses from the Diagnostic and Statistical Manual of Mental Disorders, a handbook categorizing mental disorders) be placed in "special programs" called Residential Mental Health Units (RMHU) and Behavioral Health Units (BHU). The problem with this is that these programs combined only hold approximately 270 cells. There are numerous inmates with mental health problems in facilities that have been built solely to house prisoners in Solitary Confinement and these men are clearly a danger to themselves as well as others, but their not getting help because these human warehouses are understaffed to the point that it holds about 10 mental health staff with no mental health doctor on hand.

So where do these inmates end up? Some of the lucky ones get one of these 270 beds in a program. But the majority end up back on the streets and may struggle with homelessness and drugs and for the most part end up back in jail. This is how we deal with mental health inmates in New York State prison system. Is this some kind of sick form of job security? I have to ask, how is it that in the best country in the world and in a progressive, liberal state, that this is the only method to maintain order in the prison system? There has to be a better way than putting someone in a human box for 23 hours a day for a year in Solitary Confinement for a positive drug test or up to 24 months for gang material. New York State has yet to come up with a proactive, cost effective way to deter inmates from going to Solitary Confinement. I ask another question- is it in the best interest of D.O.C.'s to take a proactive approach to helping prisoners become successful when released?

Let's take a look at the U.S. Constitution. The 8th Amendment speaks out against cruel and

unusual punishment. But now we have to ask, is mental torment in violation of the Amendment? When the time comes that will be up to the courts to decide. There is another part that will have major influence on the above decision and it is the 13th Amendment, Section 1 states "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction." The 13th Amendment limits the rights of prisoners there for giving the state government control over an inmate. Which makes room for systematic abuse and corruption. All civilized nations must have a form of justice system. But when the scales of Lady Justice have become unbalanced with this abuse and corruption, then we as a people have to ask- what are we using our justice system for?

Blue Eagle, Colorado

My name is Blue Eagle. I'm a 29 year old Spanish/Lakota Sioux mix. I'm also Bisexual. I'm in Ad-Seg (Solitary/Lock Down), due to a crime, self-defense, of 1st Degree Assault. The courts ruled that since I injured the guy so severely that I was the guilty party. Regardless of the fact that I'd already been raped in prison (3 times), and that because of my sexuality, I must have not really been raped at all. So- I was given 16 years for essentially "defending" myself, when the staff would not help me. I even was told by the "Housing Captain" and "Case Manager" to stop trying to tell on people or they'd see to it that I'd be housed with "sexual predators" and feel what it is like to truly be "raped."

I've been in Ad-Seg for over 7 years now and don't have any hope of going to "G.P." anytime soon, as the Colorado prison system does not have a "P.C." program for anyone that has more than 5-7 years remaining in prison, stating "It's far too expensive to place inmates in P.C. for extended periods of time." This seems stupid to me as it's more expensive to house Ad-Seg inmates. Due to my long-term placement in Ad-Seg and the lack of proper housing/P.C. programs, I am basically forced to remain in Ad-Seg for the next 7-15 years, so that I will be safe from harm and/or death. I've even developed acute Anxiety, Depression (Bi-polar), and Borderline Personality disorders due to the abuse and long term placement in Solitary/Ad-Seg.

Miko, Pennsylvania

I'm currently being housed in the RHU or restricted housing unit. The Hole. When I try to inquire as to the reason, I am ignored. Originally it was for my "own protection." On July 3rd I filled out a form saying I had no enemies and did not fear for my safety. Nothing. A funny thing has happened these last 90 days. We all walk around feeling like we are so self-aware, but get a little sensory deprivation in your life, and you will see just how superficially you have been living. You also get to look around and see how other people's psychosis manifests itself.

The truth is, a too-high percentage of people need mental help. The kind of help that isn't available anymore. Now people are just housed here. They have a block called SNU or special needs unit. It's nothing more than a farce. Another ploy from the prison industrial complex to gain funds from the state, government coffers. Those that won't fit on the SNU end up out on other blocks and end up in the long term RHU.

Conclusion:

It is common for advocacy organizations to only choose "model" prisoners to highlight the harm caused by solitary confinement. We, however, have chosen to share stories from many prisoners who are part of Black and Pink, including one who is being disciplined for an escape. Under ***no*** circumstances is it acceptable for the state to torture an individual. The days, weeks, months, years, and even decades that prisoners spend in solitary confinement is legalized torture ongoing in prisons across the United States. Black and Pink is not seeking special review of how LGBTQ prisoners are treated in solitary confinement. The only appropriate action moving forward is to make a short term plan to eliminate the use of solitary confinement. It is our hope that this committee will release

recommendations with details on how to effectively shut down all solitary confinement cells. It is an essential step on the road to healing our larger communities for us to end the harm caused by these punitive isolation measures.

WRITTEN STATEMENT OF THE CALIFORNIA ALLIANCE FOR YOUTH AND COMMUNITY JUSTICE

to

United States Senate Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights and Human Rights

February 25, 2013

The California Alliance for Youth and Community Justice (CAYCJ) is a statewide alliance of organizations and individuals with the mission to drastically reduce incarceration and improve outcomes for system-involved youth in California.

Organization members of the CAYCJ include policy and legal advocacy groups, community organizing non-profits, as well as organizations comprised of formerly incarcerated youth and their families.

We are grateful to the Committee for the opportunity to submit this short statement. Our collective experience with countless efforts over decades to improve the treatment of incarcerated youth provides the basis for our testimony.

As a result of our experiences and expertise, we share a common conclusion: The use of solitary confinement on youth in juvenile and adult facilities should be, and can safely be, eliminated.

Solitary confinement used to punish young people who are incarcerated is inhumane. It leads to despair, self-harm and suicide. It damages growth and inflicts psychological harm. It increases anger and anti-social behavior, and exacerbates the symptoms of mental disability. It inflicts trauma on youth, the vast majority of whom have suffered traumatic experiences prior to their incarceration. And there are far more effective interventions to control chaotic facilities and to redirect youth who have made poor choices in prison.

In sum, the CAYCJ echoes the well-documented testimony of our colleagues who have submitted statements to this committee calling for the elimination of solitary confinement on youth in custody. We thank you for the opportunity to lend the collective voice of the California Alliance for Youth and Community Justice to this call.

Respectfully submitted, David Muhammad and Pat Arthur, Co-Directors of the CAYCJ on behalf of our members:

Advancement Project
Alliance for Boys and Men of Color
Anti-Recidivism Coalition
California Conference for Equality and Justice
Center for Juvenile Law and Policy
Center on Juvenile and Criminal Justice

Center for Young Women's Development
Children's Defense Fund -- California
Communities United for Restorative Youth Justice
Contra Costa County Public Defender
Ella Baker Center
Fathers & Families of San Joaquin
Haywood Burns Institute
Homeboy Industries
Homies Unidos
Human Rights Watch
Immigrant Legal Resource Center
InsideOUT Writers
Justice for Families
National Center for Lesbian Rights
National Center for Youth Law
National Council on Crime and Delinquency
New Roads for New Visions
Office of Restorative Justice, Archdiocese of LA
PICO California
Policy Link
Prison Law Office
Public Counsel Law Center
Santa Cruz Barrios Unidos
7th Generation Peace Warriors
The Mentoring Center
Violence Prevention Coalition of Greater LA
Youth Justice Coalition
Youth Law Center

Statement to:

U.S. Senate Subcommittee on the Constitution, Civil Rights, and Human Rights

Regarding Hearing on:

Reassessing Solitary Confinement II:

The Human Rights, Fiscal, and Public Safety Consequences

From:

California Prison Focus
1904 Franklin Street, Suite 507
Oakland, California 94612

February 25, 2014

Dear Chairman Durbin, Ranking Member Cruz, and Honorable Members of the Subcommittee:

We would like to thank all of you Members of the Subcommittee for following up on your initial hearings on the use of solitary confinement and your commitment to hold others in the future. We remain hopeful that federal legislation and guidelines can emerge from these hearings so that the concerns expressed both at this and the 2012 hearing on solitary confinement will prompt badly needed yet practical and very doable reforms.

California Prison Focus is a non-profit, grass roots, all volunteer human rights organization founded in 1991 and dedicated to abolishing the torture of long term solitary confinement in the state of California and our nation. We have over 23 years experience interviewing hundreds of prisoners in California SuperMax prisons. We investigate and report on the processes by which individuals are placed in solitary confinement, and the conditions prisoners must endure while there.

We refer Members of the Subcommittee to our statement submitted in June of 2012, which we will not repeat here. Nevertheless, we would like to emphasize a few points and bring the Members up to date on recent reforms in California that, in our view, are a long way from resolving the issue of unjust use of solitary confinement here.[1]

We begin by noting our agreement with you, Senator Durbin, when you say that our prisons, to the extent that they must exist at all, must be safe for both incarcerated individuals and staff. We believe, however, that the manner in which prisons are constructed and run bear ample responsibility for the very problems that solitary confinement is meant to solve. Beginning with the architectural style of California prisons (i.e., thousands of people locked up in a huge, unpainted concrete facilities), these Mega-warehouses of human cages set the stage for an atmosphere of stress, ill treatment, provocation, and degrading treatment by some prison personnel, creating exactly the kind of inhumane, violence inducing, and unsafe conditions that we find today. And yet prison officials claim to stem violence and misbehavior by transferring *allegedly* dangerous individuals to solitary confinement.

Probably the greatest *myth* around the use of solitary confinement is that it is reserved only for the so-called "worst of the worst." By these words, most people understand that only people who present a consistent and constant threat of serious harm to other prisoners or staff are sent to solitary confinement. Our investigations over more than two decades proves without a shadow of a doubt that this assertion *is absolutely and utterly false*. Moreover, this falsehood leads to dramatic negative consequences in terms of inducing mental illness, lost opportunities for rehabilitation, and wasting scarce resources on high security housing when it could be spent on prisoner education and re-entry programs that are badly underfunded where they exist at all.

[1] In California, these units are called Security Housing Units (SHUs). Prisoners in SHU are typically locked down for 22 1/2 to 23 hours a day with very few privileges, no contact visits, no phone calls, and no interaction with other prisoners. The rest of this statement uses the terms "SHU" and "solitary confinement" as interchangeable, even though sadly the Secretary of the California Department of Corrections and Rehabilitation (CDCR), Dr. Jeffrey Beard, will not admit that locking men down in this fashion constitutes solitary confinement.

If not the most dangerous, who goes to SHU? What evidence can land one in solitary confinement? A recent investigative report noted that many rather innocuous behaviors can lead to SHU assignment, usually based on bogus claims of prison gang affiliation. We provide a short summary of some key findings here:[2]

> **1. A Christmas card**: In the yuletide season of December 2009, the investigative services unit at Pleasant Valley State Prison intercepted an outgoing piece of mail from inmate Sean Dunne, a suspected associate of the Northern Structure prison gang. Of particular interest to prison officials was the appearance of stars in an illustration on a Christmas card, which also featured a Santa hat, Hershey's Kisses, a prominent candy cane, and carol notes. ... An assistant institutional gang investigator label[ed] each of the "Northern Stars," explain[ed] how they are symbolic of Dunne's association, and conclude[d] that the card will count as one source document in his validation.
>
> **2. Political books and writing from black sources**: Officials from Centinela State Prison informed inmate Ricky Gray in May 2005 that his possession of [several books and articles by prison liberation writers] was jeopardizing "the safety and security of the institution" and represented his "continued association with the Black Guerilla Family [BGF, a prison gang] and their beliefs." Most of the titles mentioned in the report are written by or relate to the experiences of black prisoners, like the late George Jackson.
>
> **3. The huelga bird and the number 14:** Former inmate Ernesto Lira was validated as a Northern Structure gang member on the basis of a drawing which featured the huelga bird, the number 14, and, again, the "Northern Star." The judge ... rul[ed] to expunge Lira's gang validation in September 2009, after he had been released on parole.
>
> **4. Newspaper article**: According to prison regulations, at least one of the three items necessary for a gang validation must demonstrate a "direct link" with another gang member or associate. The gang investigator who prepared inmate Dietrich Pennington's validation package cites Pennington's possession of a newspaper clipping from the *San Francisco Bay View*, an African American weekly, as evidence of BGF association because it is written by another validated inmate. In this response to Pennington's legal petition, California Attorney General Kamala Harris ... argue[d] that his case should be dismissed.
>
> **5. Dragon Tumbler**: Another item cited in Pennington's validation was a drinking cup with a dragon etched on it. According to the investigator, the dragon is "the most common identifying symbol" used by BGF. In Harris' response, she included a poorly photocopied image of the cup.

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[2] Jacobs, Ryan. "7 Surprising Items That Get Prisoners Thrown In Solitary." *Mother Jones*, Oct. 18, 2012. Available at http://www.motherjones.com/politics/2012/10/7-surprising-items-get-prisoners-thrown-solitary.

6. Journal Musings: Pennington's third questionable validation item was a notebook, in which he had pondered the oppression of prison life and copied quotes from black prisoners, like George Jackson.

7. Statements from confidential "informants": After inmate Ricky Gray was validated in 2006, a warden asked a staff assistant to review the package. Crucial statements about Gray actively recruiting other BGF members came from two confidential informants. When interviewed later, they maintained they did not know Gray or the officer who purportedly interviewed them.

In addition, interviews with prisoners by California Prison Focus have revealed a very disturbing pattern about who ends up getting validated as a prison gang affiliate (member or associate). When prisoners stand up for their rights by submitting official complaints or filing a lawsuit about their ill treatment, or when prisoners reach out to others to help those who are in need of rights protection, suddenly "evidence" appears of "gang activity" to "demonstrate" that these individuals present a "threat" to the security of the institution.

Importantly, the great majority of the items used to validate prisoners as gang affiliates are not considered contraband per se, and have been duly ordered and paid for by prisoners and delivered to them after screening by prison officials. Thus, CDCR willingly and knowingly allows prisoners to receive books, articles, and Christmas cards which they know they will use later as evidence of gang affiliation and SHU placement. Even our organization's newsletter, *Prison Focus*, was claimed to be evidence of "gang activity" in a prisoner's validation case because the name George Jackson had appeared in the issue.

One prisoner with a serious health condition began to wonder about the medical doctor who was treating him. He wrote to the California Medical Board to determine if the rumors he had heard about the doctor's misconduct were true. If so, he would request the doctor not treat prisoners. He said that guards told him not to keep looking into the matter as he would probably otherwise end up in SHU. He persisted. Indeed, the medical doctor in question was under probation and had four instances of misconduct on his record. Shortly thereafter, the prisoner was validated as an associate of the Nazi low rider prison gang, even though he is half Jewish.

One prisoner, who was placed in solitary confinement for disciplinary reasons, was offered a book off the library cart during his time there. Unbeknownst to him, the book had names written in it from previous lenders. That book was used in part to validate him as a prison gang member and turn his determinate term into an indeterminate SHU term. He remains in SHU today.

One prisoner noted in a recent interview that he had never done anything violent to another person in his life, either inside or outside the prison. Nevertheless, he was placed in solitary confinement and spent years in Pelican Bay's notorious SHU building where none of the individual cells have windows. After a period of months, this individual started to show signs of mental illness including hearing voices, and having thoughts of suicide or cutting himself. He was transferred then to Corcoran SHU where the cells are about the same size, but at least each cell has a small window slit that provides a tiny glimpse to the outside world. The isolation,

however, continues and the small window is not a sufficient difference to prevent much less heal the mental illness created by long term isolation.[3] Indeed, our investigations show that many prisoners do begin to suffer mental illness after being in SHU at Pelican Bay, and the response is often the same: transfer them to another SHU prison. Such transfers do nothing to relieve the permanent damage to their psychological and physical well being. This treatment can only be understood as cruel and unusual.

In short, we believe that the prison gang validation system, which was created to control and manage prison gangs, has been usurped by prison personnel who want to punish or remove certain individuals off their yards because they stand up for their rights. In this way, by the time the hunger strikes started in 2011, some 3,100 alleged gang associates and 1,400 alleged gang members were placed in solitary confinement on an indeterminate basis.

The strikes brought badly needed attention to the abusive use of solitary confinement and exposed long term solitary confinement for what it really is: torture. The courageous and powerful actions of the prisoners who went on strike even in the face of promised punishment helped to push CDCR to reconsider its gang management and SHU placement policies. In addition, representatives of different racial and geographical groups came together in October of 2012 and negotiated an "End of Hostilities" agreement, aimed at reducing violence among prisoners. Instead of applauding and supporting their initiative, CDCR refused the prisoners' request to disseminate the agreement and even further punished those individuals who signed it--a punishment that includes more SHU time.

Some changes that move in the right direction resulted from the hunger strikes. For example, not all prisoners who have been validated as gang associates are placed automatically in SHU. Instead, alleged associates must show specific gang related behavior to be placed in SHU. To date, this new regulation adopted under a pilot program has released some 300+ prisoners from solitary confinement back to the general population.

The difficulty is that these same regulations confuse gang behavior and violent or criminal behavior or activity. We are not arguing in favor of prison gang behavior. We are arguing that solitary confinement should only be used as a *last resort* when no other avenues for temporarily restraining a very dangerous or violent person exist. And then, only for the shortest amount of time possible. The proposed regulations do not fulfill this objective.

Under the *newly* proposed regulations, which replace the term "prison gang" with "Security Threat Group" or STG, any *one* of the following acts can result in *four years or more* in solitary confinement:[4]

1. STG related tattoo or body marking that is new.
2. Harassment of another person, group, or entity either directly or indirectly through the use of the mail, telephone or other means.
3. Leading an STG roll call.

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[3] The literature on the ill effects of long term solitary confinement is vast and to long to summarize adequately here. We refer the committee to the work of Craig Haney, Terry Kupers, and Stuart Grassian, inter alia.

[4] California Department of Corrections and Rehabilitation "Notice of Change to Regulations," Number 14-02, January 31, 2014.

4. Personal possession of written material including roll call lists, constitution, organizational structures, training material, etc.
5. Personal possession of mail, notes, greeting cards, or other communication which include coded or explicit messages evidencing active STG behavior.
6. Proven attempts to commit or someone who conspires to commit the above list of offenses (1-5).
7. Willfully resisting, delaying, or obstructing any peace officer in the performance of duties.

Under the *newly* proposed regulations, any *two* of the following acts can result in *four years or more* in solitary confinement:

8. Active participation in STG roll call.[5]
9. Participating in STG Group Exercise.[6]
10. Using hand signs, gestures, handshakes, slogans, distinctive clothing, graffiti which specifically relate to an STG.
11. Wearing, possessing, using, distributing, displaying, or selling any clothing, jewelry, emblems, badges, certified symbols, signs, or other STG items which promote affiliation in a STG.
12. In possession of artwork, mail, notes, greeting cards, letters or other STG items clearly depicting certified STG symbols.
13. In possession of photographs that depict STG association. Must include STG connotations such as insignia, certified symbols, or other validated STG affiliates.
14. In possession of contact information (i.e., addresses, telephone numbers, etc.) for validated STG affiliates or individuals who have been confirmed to have assisted the STG in illicit behavior.

Again, we are not saying that the prison should tolerate Security Threat Group behavior. We are arguing that reaching for solitary confinement as the *initial consequence* instead of *last resort* is not only inappropriate but counterproductive. These new regulations have already led to terrible consequences. For example, one mother with two sons in prison told us that one of her sons was validated. She now refuses to write to her other son for fear that based on receiving a letter from the same address with which the now validated son corresponds, the second son will also get validated as an STG affiliate and also be sent to SHU. Parents and loved ones are now afraid to send greeting cards, letters of support, etc., because street gangs may be operating near where they live and such a connection could land their loved one in solitary confinement. Thus, even these new regulations break down family ties, hinder the support that prisoners vitally need, and ultimate obstruct and hinder instead of provide and nurture opportunities for rehabilitation and successful re-entry.

The conclusion that solitary confinement should only be used as a last resort and only for the most minimal time period possible comes directly from the recommendations of the 2006 report of the bipartisan Commission on Safety and Abuse in America's Prisons.[7] It was echoed

[5] A roll call consists of calling names out loud and prisoners responding.
[6] For example, doing jumping jacks or push-ups in unison with others.
[7] Vera Institute. 2006. "Confronting Confinement," pages 52-61. Available at http://www.vera.org/sites/default/files/resources/downloads/Confronting_Confinement.pdf

as well as one of the five core demands of the hunger strikers in 2011 and 2013--a demand for which they received punishment in the form of longer sentences in solitary confinement. Our struggle seeks to fulfill both the spirit and letter of Commission's recommendations. Indeed, recent examples, including the Tamms Correctional Facility in Illinois and Unit 32 in Mississippi, have demonstrated that solitary confinement units can be shut down while also reducing prison violence and increasing safety.[8] The mindset of CDCR is that placing people in SHU keeps prisons safe, while the experience of other states have proven that we need to do the exact opposite: abolish it.

Abolishing all forms of long term solitary confinement must be our common goal. The era of the SuperMax lockdown prison, previously upheld as the most modern, high-tech, and state-of-the-art prison, is over. That model has failed miserably. This type of incarceration directly violates constitutional and legal prohibitions at the national and international level against torture, and cruel and unusual punishment. This practice is morally repugnant and flatly inhumane. We must continue to shut down these prisons. We believe that with the help of federal legislation and guidelines, federal regulations, and fiscal incentives provided by the federal government, states can make significant progress toward reducing and ultimately eliminating the use of solitary confinement.

We remain grateful for your continual efforts to expose the constitutional and human rights violations caused by assigning prisoners to solitary confinement and keeping them there for months, years, and even decades. We petition the Subcommittee with the greatest urgency to work in a bipartisan fashion to end solitary confinement in our country and its torturous effects on the people who currently endure it.

Sincerely,

Ronald E. Ahnen, PhD
President, California Prison Focus

[8] Kupers, Terry. 2009. "Beyond SuperMax Administrative Segregation: Mississippi's Experience Rethinking Prison Classification and Creating Alternative Mental Health Program." *Criminal and Justice Behavior*, doi:10.1177/0093854809341938

CAMPAIGN FOR
YOUTH JUSTICE

Statement of Carmen E. Daugherty, Policy Director, Campaign for Youth Justice
Hearing before the
Senate Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights and Human Rights
"Reassessing Solitary Confinement II:
The Human Rights, Fiscal, and Public Safety Consequences"
February 25, 2014

The Campaign for Youth Justice (CFYJ) is a national organization working to end the practice of trying, sentencing and incarcerating youth in the adult criminal justice system. Every state has laws that require some youth to be prosecuted in adult criminal court. These policies place thousands of young people at risk of facing harmful and irreversible consequences, often for minor mistakes. Despite overwhelming research demonstrating that these policies have failed, statutes that permit prosecution of youth in the adult criminal justice system and place them in adult jails and prisons still remain on the books and in force.

Youth in Solitary Confinement in Adult Jails and Prisons

Researchers estimate that roughly 250,000 youth are prosecuted in the adult criminal justice system every year and approximately 100,000 youth are held in adult jails and prisons each year. Although the federal Juvenile Justice and Delinquency Prevention Act (JJDPA) requires that youth in the juvenile justice system be removed from adult jails or be sight-and-sound separated from other adults, these protections do not apply to youth prosecuted in the adult criminal justice system.

Youth inside adult prisons and jails often experience a variety of dangers. These include physical and sexual abuse, mental health erosion, and a dearth of drug treatment and educational services, and more. The widespread consensus among correctional, mental health and juvenile detention organizations is that adult facilities are simply not equipped to safely detain youth.

One step taken by corrections staff to protect youth from the physical dangers of an adult corrections facility is to place them in solitary confinement. But solitary confinement puts youth at additional risk. In 2012, the American Academy of Child and Adolescent Psychiatry adopted a policy that states that no child should be placed in solitary confinement,

> [t]he potential psychiatric consequences of prolonged solitary confinement are well recognized and include depression, anxiety and psychosis. Due to their developmental vulnerability, juvenile offenders are at particular risk of such adverse reactions

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> Furthermore, the majority of suicides in juvenile correctional facilities occur when the individual is isolated or in solitary confinement.

The U.S. Department of Justice has stated,

> While confining youth to their cells is the easiest method of protecting them from sexual abuse, such protection comes at a cost. Isolation is known to be dangerous to mental health, especially among youth. Among other things, isolation puts youth at greater risk of committing suicide.[i]

The pervasive use of solitary confinement of children in adult facilities is often attributed to the lack of trained staff, inappropriate programming options for youth, and the staff's inability to effectively supervise what is usually a small population of youth in adult facilities. Thus, it is easier to simply place them in solitary confinement rather than worry about what can happen to the youth once outside of the cell. However, adolescent brains are particularly sensitive to the traumatic impact of physical isolation, and even a short stay in solitary confinement can have a long term traumatic impact on an adolescent.

Many children who are placed in solitary confinement experience harmful consequences; for some children this has meant death. Youth in solitary confinement are frequently locked down 23 hours a day in small cells with no natural light. A young person placed in a sterile, cement cell suffers from anxiety, paranoia, and the surroundings exacerbate existing mental disorders that put youth at a high risk of suicide.

Family after family has shared a story with us regarding the unnecessary harm caused to their young ones when placed in solitary confinement in an adult jail or prison. In 2012, this Committee received testimony from several parents who lost their children due to suicide after being placed in solitary confinement for both long and short periods of time.

Recognizing these hazards and choosing to avoid these tragedies, New York state ended the use of solitary confinement for youth and other vulnerable people. In February 2014, the New York Civil Liberties Union and the New York State Department of Community Corrections (DOCCS) announced an unprecedented agreement to reform the way solitary confinement is used in New York State's prisons, with the state taking immediate steps to remove youth, pregnant inmates and developmentally disabled and intellectually challenged prisoners from extreme isolation. With the agreement, New York State becomes the largest prison system in the United States to prohibit the use of solitary confinement as a disciplinary measure against prisoners who are younger than 18.[ii]

Complete Removal of Youth from Adult Facilities

When youth are placed with adults in adult facilities, they are at risk of physical and sexual assault. According to the Bureau of Justice Statistics, 21% of all substantiated victims of inmate-on-inmate sexual violence in jails in 2005, were youth under the age of 18 (surprisingly high since only 1% of jail inmates are juveniles). Additionally, a recent BJS study stated that two-thirds of youth ages 16 and 17 in adult jails and prisons who had been victimized reported being victimized more than once by other inmates and three-quarters were victimized by staff more than once.[iii]

Again, according to the U. S. Department of Justice:

> Based on the BJS Deaths in Custody Reporting Program, 2000-2007, 36 under-18 inmates held in local jails died as a result of suicide (with the number varying from 3 to 7 each year). The suicide rate of youth in jails was 63.0 per 100,000 under-18 inmates, as compared to 42.1 per 100,000 inmates overall, and 31 per 100,000 inmates aged 18-24. (By contrast, in the general population, the suicide risk is twice as high for persons aged 18-24 than for persons under 18.) The suicide rate of youth was approximately six times as high in jails than among 15- to 19-year-olds in the U.S. resident population with a comparable gender distribution (10.4 per 100,000 in 2007).[iv]

Professional Association Positions

Jailers and Corrections officials are faced with a "no win" situation when youth are placed in adult facilities: they simply can't keep youth safe and segregating youth in isolation/solitary confinement creates a different, but equally harmful result. All of the major national stakeholder associations that deal with juvenile or adult detention or corrections such as American Correctional Association, Council of Juvenile Correctional Administrators, National Juvenile Detention Association, and the American Jail Association have policies on this issue.

The American Correctional Association's policy states that, "The ACA supports separate housing and special programming for youths under the age of majority who are transferred or sentenced to adult criminal jurisdiction. [The ACA supports] placing people under the age of majority who are detained or sentenced as adults in an appropriate juvenile detention/correctional system or youthful offender system distinct from the adult system."

The Council of Juvenile Correctional Administrators' policy states that, "The juvenile justice system is the most appropriate system to hold youths accountable and receive age-appropriate and effective treatment and rehabilitation opportunities."

Additionally, prominent national associations agree that placing youth in adult facilities is inappropriate and harmful. For example, the National Association of Counties states, "It is harmful to public safety, as well as young offenders, to confine youth in adult jails, where they are eight

times more likely to commit suicide, five times more likely to be sexually assaulted, and, upon release, much more likely to re-offend than youth in juvenile detention. NACo supports the reform of state laws that inappropriately send far too many youth under the age of 18, including first-time and non-violent offenders into the adult criminal justice system."

Prison Rape Elimination Act

Ten year ago, Congress unanimously passed the Prison Rape Elimination Act (PREA) to stop sexual violence behind bars, and one of its main concerns was the risk youth face when housed in adult jails and prisons. The National Prison Rape Elimination Commission (NPREC), established by the Prison Rape Elimination Act (PREA) in 2003, found that "more than any other group of incarcerated persons, youth incarcerated with adults are probably at the highest risk for sexual abuse" and said that youth must be housed apart from adults.

For the adult facility standards, the Department adopted a new standard, the Youthful Inmate Standard (§115.14), to protect youth from sexual abuse by limiting contact between youth and adults in adult facilities through three specific requirements:

1. Banning the housing of youth in the general adult population.
2. Prohibiting contact between youth and adults in common areas, and ensuring youth are constantly supervised by staff.
3. Limiting the use of isolation which causes or exacerbates mental health problems for youth.

The regulations go a long way in addressing one of the major human rights violations occurring in the United States today. However, in the effort to eliminate sexual violence behind bars, the standards unfortunately promote another dangerous practice: solitary confinement for youth in adult jails and prisons. PREA regulations do not prohibit solitary confinement or isolation; it only encourages the limited use of this practice. While the purpose of PREA is to protect incarcerated individuals from unfair, unjust, and unconscionable treatment, Congress did not intend for the Department to rely on one dangerous practice in an attempt to eliminate another.

Recommendations

Today, we have the benefit of research about the impact of sending kids to the adult criminal justice system that tells us that the vast majority of youth are better served in the juvenile justice system. We now know that youth placed in the adult system are more likely to reoffend, reoffend more frequently, and commit more serious offenses. A 2007 U.S. Centers for Disease Control report found that laws that charge juveniles as adults are counterproductive to reducing juvenile violence and enhancing public safety and "do more harm than good."[v] In 2008, the Department of Justice's Office of Juvenile Justice and Delinquency Prevention released a research bulletin which mirrored those in the CDC report: laws that make it easier to transfer youth to the adult criminal court

system have little or no general deterrent effect, meaning they do not prevent youth from engaging in criminal behavior.[vi]

Over the last decade, we have also learned a tremendous amount about what works to prevent and reduce juvenile delinquency. From the growing body of research on child and youth development, the development of the adolescent brain, and effective programs and practice, we now have more evidence about what works in turning these young lives around and correcting their behavior than we did a decade ago.

In the past eight years, state policymakers have appeared to be less devoted to "tough on crime" policies, choosing to substitute them with policies that are instead "smart on crime." Given the breadth and scope of the changes, these trends are not short-term anomalies but evidence of a long-term restructuring of the juvenile justice system. In the past eight years, nearly thirty states have changed their state policies. These changes are occurring in all regions of the country spearheaded by state and local officials of both major parties and supported by a bipartisan group of governors.[vii]

Despite the trends towards keeping kids out of the adult criminal justice system, there are still too many kids placed in adult jails and prisons without proper care, mental health services, educational services, or opportunities for rehabilitation. Solitary confinement of these youth have been used as a tool to prevent them from being harmed by others, however, it has had the opposite effect. Youth in solitary have a higher risk of suicide. Youth with mental health disorders see their symptoms exacerbated when placed in a cell for upwards for 23 hours a day. The psychological effects are often irreversible.

The vast majority of these youth will be back in the communities and we must ask, at what cost? Incarcerating youth in adult jails and prisons and holding them in solitary confinement is the most expensive option that consistently produces the worst results. These harsh measures do more harm than good and cost the community much more in real dollars in incarceration costs and future crime.

Fortunately, public opinion overwhelming supports major policy reforms to remove youth from automatic prosecution in adult criminal court and placement in adult jails and prisons. In a recent poll conducted by GBA Strategies, it was found that the public supports independent oversight to ensure youth are protected from abuse while in state or local custody (84%); and the public rejects placement of youth in adult jails and prisons (69%).

Therefore, I urge the committee to:

(1) Update the Juvenile Justice & Delinquency Prevention Act (JJDPA) to ban the placement of youth in adult jails and adult prisons;

(2) Restore federal juvenile justice block grants for states and localities to incentivize their use of best practices and evidence-based approaches that rely on the least restrictive setting for youth in conflict with the law;

(3) Support increased federal oversight, monitoring, transparency, and funding for alternatives for solitary confinement by requiring Federal, state, and local prisons, jails, detention centers, and juvenile facilities to report to the Bureau of Justice Statistics who is held in solitary confinement and for what reason and how long, as well as the impact of the practice on cost, facility safety, incidents of self-harm, and recidivism.

(4) Hold a hearing to monitor the progress of PREA implementation, including the Youthful Inmate Standard after the May 15th Governor certification of compliance deadline;

(5) Ensure that the U.S. Department of Justice provide concrete recommendations and best practices on implementing PREA's Youthful Inmate Standard with an emphasis on eliminating the use of solitary confinement; and

(6) Call for rulemaking by the U.S. Department of Justice to create the development of smart, humane and evidence-based national best practices and regulations that will limit the use of all forms of isolation and solitary confinement.

Thank you again for holding today's hearing and focusing on such a critically important issue.

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[i] National Standards to Prevent, Detect, and Respond to Prison Rape, 28 CFR Part 115 (2012).
[ii] *"NYCLU Lawsuit Secures Historic Reforms to Solitary Confinement,"* at http://www.nyclu.org/node/4783 (Feb. 2014).
[iii] Beck, A.J., Berzofsky, M., (2012, May). *Sexual Victimization in Prisons and Jails Reported by Inmates, 2011–12*, Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics.
[iv] National Standards to Prevent, Detect, and Respond to Prison Rape, 28 CFR Part 115 (2012).
[v] Department of Health and Human Services, Centers for Disease Control and Prevention, Effects on Violence of Laws and Policies Facilitating the Transfer of Youth of From the Juvenile to Adult Justice System p. 8 (2007)
[vi] Richard E. Redding, Juvenile transfer laws: An effective deterrent to delinquency? (Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention) (June 2010)
[vii] Daugherty, Carmen (2013). *State Trends: Legislative Victories from 2011-2013 Removing Youth from the Adult Criminal Justice System*, Washington, DC: Campaign for Youth Justice.

CENTER FOR Children's Law and Policy

Testimony of the Center for Children's Law and Policy
for the Subcommittee on the Constitution, Civil Rights, and Human Rights
of the Senate Judiciary Committee

February 21, 2014

Chairman Durbin and Members of the Subcommittee:

We submit this testimony on behalf of the Center for Children's Law and Policy (CCLP), a national public interest law and policy organization located in Washington, DC. The Center works to reform juvenile justice and other systems that affect troubled and at-risk children and to protect the rights of children in those systems. Our staff members have decades of experience working to remedy dangerous conditions of confinement – including the misuse of solitary confinement (also described in this testimony as "isolation" and "room confinement") – in facilities that house youth. We have done so through training, technical assistance, administrative and legislative advocacy, litigation, research, writing, public education, and media advocacy.

The Center is widely recognized for our expertise on issues related to conditions of confinement of youth. We drafted the extensive Juvenile Detention Facility Standards used by the Annie E. Casey Foundation in its Juvenile Detention Alternatives Initiative (JDAI), which operates in more than 200 sites across the country. We have advised various federal agencies, the National Prison Rape Elimination Commission, and many state and local governments on strategies to improve conditions of juvenile confinement. For example, we recently worked with legislatively established task forces in Louisiana and Mississippi to draft licensing standards for juvenile detention facilities in each of those states. We have also written about unsafe juvenile conditions in professional and lay publications.

We appreciate the opportunity to contribute to the Subcommittee's review of solitary confinement in U.S. prisons, jails, and detention centers. We submit testimony to address three important questions related to the solitary confinement of children in the juvenile and adult criminal justice systems:

(1) How does solitary confinement harm young people?

(2) Why do some juvenile facility administrators and staff rely heavily on solitary confinement, while others use it rarely or do not use it at all?

(3) What are the most effective ways of reducing and eliminating the inappropriate and excessive use of solitary confinement of children?

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Our answers reflect our observations of the solitary confinement of youth in dozens of facilities throughout the country, as well as our efforts to support laws, policies, and practices to reduce its use.

I. How does solitary confinement harm young people?

Administrators and staff charged with supervising youth in the juvenile justice system have a fundamental responsibility to ensure the safety and security of the youth in their care. The inappropriate and excessive use of solitary confinement not only undermines that goal, but can result in psychological harm and emotional trauma to youth. In some cases, it has led to serious injury and death. Inappropriate and excessive isolation violate youth's rights to be free from unnecessary restraint and to be protected from harm while incarcerated. In addition, facilities often fail to provide due process to youth subjected to isolation as a sanction. Frequently, youth are denied access to legally-required education and other rehabilitative programming while isolated. Furthermore, isolating youth with disabilities can also constitute a denial of their federal rights to equal opportunities. In sum, the use of solitary confinement can harm youth's physical and mental health, violate their legally protected rights, and derail the rehabilitative goals upon which the juvenile justice system stands.

When we refer to the "inappropriate" use of isolation, we are referring to its use in situations when a youth does not present a serious risk of imminent harm to the youth or others. "Excessive" isolation refers to its use beyond the amount of time necessary for the youth to regain self-control and no longer pose a threat to self or others. These definitions recognize that it may be necessary to briefly isolate youth in certain situations. For example, if a youth is in a fit of rage because of bad news from home, or has gotten into a violent physical confrontation with another youth, it may be necessary to put that youth into his room by himself until he can gain self-control, for his own protection as well as the safety of others in the facility.

Some facilities also use room confinement as a sanction for violating facility rules. In these situations, staff are not using room confinement to control immediate acting out behavior. They are using room confinement solely as a form of punishment. It is the Center's opinion that solitary room confinement is never appropriate as a punishment or disciplinary sanction.

It is our experience, though, that some facilities use solitary confinement in a broad range of circumstances. Facilities may refer to the practice by a variety of names, including "isolation," "segregation," "medical quarantine," "seclusion," "protective custody," "room time," "room confinement," and many others. Whatever they are called, we are concerned about the use of these practices whenever they are not necessary to protect youth and those around them from imminent harm. One needs to look no further than recent investigations by the Special Litigation Section of the U.S. Department of Justice's Civil Rights Division to find numerous examples of the inappropriate and excessive use of solitary confinement:

- At the Oakley and Columbia Training Schools in Mississippi, staff punished girls for acting out or being suicidal by stripping them naked and placing them in a cell called the "dark room," a locked, windowless isolation cell cleared of everything but a drain in the floor that served as a toilet.[1]

- At the Indiana Juvenile Correctional Facility, staff isolated youth for consecutive periods of up to 53 days – long stays that the Justice Department characterized as "short-sighted way[s] to control behavior" that "serve[d] no rehabilitative purpose."[2]

- At the W.J. Maxey Training School in Michigan, staff regularly placed youth with severe mental illnesses in the facility's isolation unit because of inadequate staffing and resources to meet youth's needs – a practice that the Justice Department characterized as equivalent to "punish[ing youth] for their disability."[3]

Our experiences in dozens of facilities around the country confirm that these incidents are not unique. For example, our Executive Director, Mark Soler, successfully litigated against the South Dakota State Training School, which routinely relied on a combination of pepper spray, groups of black-helmeted staff, and extended periods of isolation to manage even minor youth misbehavior. That training school has since been closed. However, we continue to see examples of facilities that use solitary confinement in inappropriate and excessive ways.

Other recent examples include the Iowa Juvenile Home, a state-operated facility that houses children in need of supervision and adjudicated youth. The facility held hundreds of youth in isolation between 2011 and 2012, according to an internal Iowa Department of Human Services report.[4] An investigation by Disabilities Rights Iowa, the federally-funded protection and advocacy organization for people with disabilities in Iowa, revealed that in November 2012, the facility held three girls in extended solitary confinement. The rooms in which youth were confined consisted of walls and floors of concrete, with only a raised platform for a bed and a thin mattress to sleep on at night. Two of the girls remained in isolation for approximately two months. The facility held the third girl in isolation for almost one year, allowing her out only one hour per day for hygiene and exercise. Two of the three girls received no education during their stays in isolation.[5]

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[1] Findings Letter from Ralph F. Boyd, Jr., Assistant Attorney General, U.S. Department of Justice, Civil Rights Division, to Ronnie Musgrove, Governor, State of Mississippi (June 19, 2003), *available at* http://www.justice.gov/crt/about/spl/documents/oak_colu_miss_findinglet.pdf.

[2] Findings Letter from Thomas E. Perez, Assistant Attorney General, U.S. Department of Justice, Civil Rights Division, to Mitch Daniels, Governor, State of Indiana (Jan. 29, 2010), *available at* http://www.justice.gov/crt/about/spl/documents/Indianapolis_findlet_01-29-10.pdf.

[3] Findings Letter from R. Alexander Acosta, Assistant Attorney General, U.S. Department of Justice, Civil Rights Division, to Jennifer M. Granholm, Governor, State of Michigan (Apr. 19, 2004), *available at* http://www.justice.gov/crt/about/spl/documents/granholm_findinglet.pdf.

[4] Clark Kauffman, *Register Investigation: Youths Isolated and 'forgotten' at the Iowa Juvenile Home*, THE DES MOINES REGISTER, Jul. 21, 2013, http://www.desmoinesregister.com/viewart/D2/20130721/NEWS/307210045/Register-Investigation-Youths-Isolated-forgotten-Iowa-Juvenile-Home.

[5] *Id.*

In December 2013, the U.S. District Court in New Jersey approved a settlement of a lawsuit by plaintiffs Troy D. and O'Neill S. against the New Jersey Juvenile Justice Commission and its health care providers.[6] The plaintiffs asserted that during their solitary confinement for 178 days and 55 days, respectively, they often had no access to education, treatment or other therapeutic support. Despite noted diagnoses of serious mental health issues upon intake, Troy D. received almost no individual therapy, never received group therapy, and was denied the opportunity to speak with the psychiatrist about his medications. They were frequently denied personal possessions and proper clothing, nutrition and medical care, and were allowed no physical recreation or exercise or other interaction with their peers. Staff told them that if they continued their requests for mental health care or other services, their stays in room confinement would be extended.[7]

The misuse of solitary confinement in facilities that house youth is particularly troublesome for three primary reasons. First, isolation poses serious safety risks for children, including increased opportunities to engage in self-harm and suicide, and re-traumatizing youth who were previously victimized. A February 2009 report from the Department of Justice's Office of Juvenile Justice and Delinquency Prevention described a "strong relationship between juvenile suicide and room confinement." The study, which reviewed 110 suicides of children in juvenile facilities, found that approximately half of the victims were on room confinement status at the time of their death.[8] The Justice Department reiterated these safety concerns in its comments accompanying the Prison Rape Elimination Act standards, stating that "long periods of isolation have negative and, at times, dangerous consequences for confined youth."[9]

The Attorney General's Task Force on Children Exposed to Violence made similar observations in a 2012 report, acknowledging that, "detention facilities and the justice system, through their routine practices, can bring additional harm to already traumatized youth. For example, the use of solitary confinement, isolation, and improper restraints can have devastating effects on these youth. Detention facilities must maintain safety without relying on practices that are dangerous and that compromise the mental and physical well-being of the youth in their care."[10] The report further stated, "[n]owhere is the damaging impact of incarceration on vulnerable children more obvious than when it involves solitary confinement."[11]

Second, isolation has particularly negative consequences for youth with mental health needs – youth who are disproportionately represented in the juvenile justice system. In one study, 70% of youth entering juvenile detention met the criteria for a mental health disorder, with 27%

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[6] Juvenile Law Center, "Juvenile Law Center Negotiates Final Settlement of Civil Rights Lawsuit Challenging Solitary Confinement of 2 Boys in Custody of NJ Juvenile Justice Commission," http://www.jlc.org/blog/juvenile-law-center-negotiates-final-settlement-civil-rights-lawsuit-challenging-solitary-confi (accessed Feb. 20, 2014, 11:42 AM).

[7] *Id.*; *T.D. and O.S. v. Mickens et al.*, (D.N.J., Civil Ac. No.1:10-cv-02902-JEI-AMD), Second Amended Complaint (filed Dec. 14, 2011) 1-3.

[8] Lindsay M. Hayes, Juvenile Suicide in Confinement: A National Survey, Office of Juvenile Justice and Delinquency Prevention (February 2009).

[9] U.S. Department of Justice, *National Standards to Prevent, Detect, and Respond to Prison Rape* 96 (May 16, 2012), *available at* http://www.ojp.usdoj.gov/programs/pdfs/prea_final_rule.pdf.

[10] Robert L. Listenbee, Jr., *Report of the Attorney General's National Task Force on Children Exposed to Violence* (Dec. 12, 2012) 175, 178 (footnotes omitted).

[11] *Id.*

of detained youth having a disorder severe enough to require immediate treatment.[12] The use of isolation only exacerbates those conditions. For this reason, many mental health associations advocate against its use. For example, the American Academy of Child and Adolescent Psychiatry opposes the use of solitary confinement in correctional facilities for youth, noting that children are "at a particular risk of . . . adverse reactions" including depression, anxiety, psychosis, and suicide.[13] Similarly, the American Psychiatric Association has stated that "[c]hildren should not be subjected to isolation, which is a form of punishment that is likely to produce lasting psychiatric symptoms."[14] Thus, the effects of solitary confinement run counter to a key goal of juvenile justice systems: to provide rehabilitation to youth in their care.

Third, the use of isolation undercuts the primary goal of facility administrators and staff who employ it: preserving the safety and security of an institution. A study from the *Archives of Psychiatric Nursing* noted that a majority of researchers who had studied the effect of isolation and restraint on youth concluded that the practices were "detrimental and anxiety producing to children, and can actually have the paradoxical effect of being a negative reinforcer that increases misbehavior."[15] Relying on isolation as a behavior management tool ignores the existence of less restrictive and more effective alternatives to keeping youth and staff safe.

Isolation of youth alone in a locked room or other space where they are not free to leave violates numerous rights of incarcerated children when that isolation is not necessary to prevent imminent risk of harm to the youth or others. First, youth have a right to be free from unsafe conditions of confinement and undue restraint.[16] As we outline above, youth placed alone in locked rooms are in danger both because of the trauma such sensory deprivation may cause and because of the retraumatizing effect it may have on youth who were previously subjected to abusive isolation. Insufficiently supervised solitary confinement is also unsafe because youth may engage in self-harm, and including attempted suicide. Youth are entitled to humane conditions of confinement, and officials must not place confined individuals in conditions that threaten to cause future harm.[17] Leaving a youth alone without human interaction and engaging activity is inhumane, and may lead to deterioration of the youth's mental health.

In our experience, some juvenile justice facilities do not provide sufficient opportunity for youth to tell their side of the story or bring witnesses to speak on their behalf before they are placed in disciplinary room confinement. Others do not provide an opportunity to appeal

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[12] Jennie L. Shufelt & Joseph J. Cocozza, *Youth with Mental Health Disorders in the Juvenile Justice System: Results from a Multi-State Prevalence Study* (Nat'l Ctr. for Mental Health & Juvenile Justice, Delmar, N.Y.), June 2006, at 2.

[13] American Academy of Child and Adolescent Psychiatry, Juvenile Justice Reform Committee, *Solitary Confinement of Juvenile Offenders* (Apr. 2012), available at http://www.aacap.org/cs/root/policy_statements/solitary_confinement_of_juvenile_offenders.

[14] Press Release, American Psychiatric Association, Incarcerated Juveniles Belong in Juvenile Facilities (Feb. 27, 2009), *available at* http://www.psych.org/MainMenu/Newsroom/NewsReleases/2009NewsReleases/IncarceratedJuveniles.aspx.

[15] Wanda K. Mohr et al., *A Restraint on Restraints: The Need to Reconsider the Use of Restrictive Interventions*, 12 ARCHIVES OF PSYCHIATRIC NURSING 95, 103 (1998) (citations omitted).

[16] U.S. Const. Am. 8, 14; *Youngberg v. Romeo*, 457 U.S. 307, 316-319 (1982).

[17] U.S. Const. Am. 5, 14; *Farmer v. Brennan*, 511 U.S. 825, 832 (1994); *Helling v. McKinney*, 509 U.S. 25, 33-35 (1993).

decisions subjecting them to solitary confinement. Where facilities do not provide these opportunities, they also violate youth's rights to procedural due process.[18]

We have also observed that youth in solitary room confinement rarely receive adequate education while confined alone. Facilities will often provide a packet of written work for the youth, with little or no instruction to help the youth complete the work or feedback once the work is done. Such practices violate youths' rights under state education laws, and, where youth have disabilities, their federal rights under the Individuals with Disabilities Education Act and Americans with Disabilities Act (ADA) as well.[19] Furthermore, under Title II of the ADA, facilities must ensure that their services, programs, and activities do not discriminate against qualified youth with disabilities.[20] When facilities fail to consider and implement reasonable modifications that would prevent qualified youth with disabilities from being placed in disciplinary room confinement because of their disability-related behaviors, they further violate youths' rights under the ADA.[21]

II. Why do some juvenile facility administrators and staff rely heavily on solitary confinement, while others use it rarely or do not use it at all?

Our experiences with secure facilities confirm that the inappropriate and excessive use of solitary confinement of children is widespread. Our experiences also confirm that the misuse of solitary confinement usually stems from a discrete set of problems:

- **Inadequate staff training on effective de-escalation techniques.** In almost every jurisdiction, staff members receive some type of training on techniques for physically managing disruptive or confrontational behavior. However, those training curricula vary widely and are often weighted heavily toward the use physical restraints and holds, not verbal de-escalation and crisis management. Without adequate training, staff lack the skills to respond to situations without resorting to restrictive interventions such as solitary confinement.

- **Policies that do not limit the use of isolation to short periods and situations that immediately threaten the safety of youth or others.** In our experience, staff tend to gravitate toward the most restrictive intervention available to them when confronted with disruptive behavior. When facility administrators do not place clear limits on the use of solitary confinement, staff will often view it as the "go-to" intervention, even for minor misconduct. Once a child is in isolation, staff do not take care to release the child as soon as the child calms down.

- **Insufficient numbers of direct care staff to adequately supervise youth.** In facilities that are overcrowded, or that suffer from staffing shortages, staff are under enormous pressure to keep the peace at all costs. In such situations, staff members feel compelled

[18] U.S. Const. Am. 14.
[19] 20 U.S.C. § 1400(d)(1)(A); 20 U.S.C. § 1415(k); 34 C.F.R. §§ 300.101-102, § 300.324 (d)(1)(i).
[20] Americans with Disabilities Act, Title II, 42 U.S.C. § 12132; *Pa. Dep't of Corr. v. Yeskey*, 524 U.S. 206, 210 (1998); *Lee v. City of Los Angeles*, 250 F.3d 668, 691 (9th Cir. 2001).
[21] 28 C.F.R. § 35.130.

to react immediately with force to minor misbehavior, out of fear that a small disturbance will become more widespread. Staff who are pulled in too many directions lack the opportunity to interact in meaningful ways with youth, to hear about their problems, and to detect conflict or unrest before it escalates into a serious incident. Moreover, staff in under-resourced facilities often feel that they must isolate youth with the highest needs, such as youth at risk of victimization by other youth and children with mental health disorders, because staff cannot provide them with adequate supervision.

- **Too few qualified mental health professionals to meet youths' needs.** Although youth with mental health needs are overrepresented in secure facilities, many officials and agency administrators do not or cannot employ sufficient numbers of qualified mental health professionals. Without regular access to mental health professionals, children with emotional disorders often deteriorate markedly. This prompts staff to rely on solitary confinement as a response to acting out behavior, which can further exacerbate youths' mental health conditions.

- **A failure to incorporate mental health staff in interventions for youth who present challenging behavior.** Secure juvenile justice facilities should not house children with serious mental health disorders. Those children should be served in mental health facilities that can meet their needs. However, mental health professionals can help craft behavior management programs for youth with less serious mental health needs that may make a stay in a secure facility particularly challenging. In our experience, facility managers often fail to set up opportunities for staff and mental health professionals to collaborate in this way.

- **Poorly designed behavioral management programs.** Research shows that acknowledging and rewarding compliance is a more powerful tool to change behavior than the use of sanctions alone. Nevertheless, many facility administrators employ behavior management systems focused solely on punishments. Others rely on systems that do not apply sanctions and rewards in a consistent manner, which undercuts the goal of ensuring compliance with facility rules.

- **Few activities to keep youth busy.** Fights in secure facilities often emerge when youth are bored, and many facilities lack programming beyond school, television, and gym time. Without a range of engaging activities, youth may resort to horseplay and other behavior that can lead them to conflicts and ultimately to solitary confinement.

III. What are the most effective ways of reducing and eliminating the inappropriate and excessive use of solitary confinement of children in secure facilities?

Although many facility administrators and staff rely excessively on isolation of children, certain strategies can dramatically reduce or eliminate its use.

First, staff should receive regular, comprehensive training on effective de-escalation techniques. High quality staff training curricula, such as Safe Crisis Management, focus heavily on topics such as verbal de-escalation of confrontations, crisis intervention, and adolescent

development. Trainings such as these are essential to build staff members' skills to manage incidents without resorting to solitary confinement or other restrictive interventions.

Second, officials should place clear limits on the use of solitary confinement of children. Federal regulations governing the use of isolation already exist for psychiatric treatment facilities and "non-medical community-based facilities for children and youth" that receive federal funding.[22] The rules, promulgated by the Department of Health and Human Services under the Children's Health Act of 2000, reflect the consensus of professionals and experts from the medical and mental health care communities. Unfortunately, they do not extend to juvenile detention and correctional facilities, despite the fact that substantial numbers of mentally ill youth are housed in those facilities.

Third, officials should devote more resources to increasing the number of direct care staff and qualified mental health professionals, and to enhance structured programming and positive behavior management. As described above, the use of solitary confinement often stems from situations that could have been prevented through increasing supervision, keeping youth engaged in activity, incentivizing appropriate behavior and providing opportunities for treatment.

Finally, officials should ensure that there is independent monitoring of facilities that house youth. Independent monitoring systems are entities that are fully autonomous and that have sufficient authority and resources to investigate and remedy harmful conditions. We have recommended various models of independent monitoring in our work to improve conditions of confinement, including independent ombudsmen, state juvenile justice monitoring units, cabinet-level Offices of the Child Advocate, public defenders based inside juvenile facilities, involvement of Protection and Advocacy offices in juvenile justice, and teams of juvenile justice, medical, mental health, and education professionals and representatives of the community.[23]

Many juvenile justice facilities and agencies have followed these strategies and eliminated or substantially reduced the use of solitary confinement. A 2012 report noted that facilities participating in the Council of Juvenile Correctional Administrators' Performance-based Standards (PbS) program had cut in half the amount of time that youth spent in isolation and room confinement from 2008 to 2012.[24] Facilities that participate in PbS work to monitor and improve conditions for incarcerated youth using national standards, data collection, outcome measures, and continual self-assessment.

Some agencies, such as the Commonwealth of Massachusetts Department of Youth Services (DYS), have been so successful in adopting these strategies that they have all but eliminated the use of solitary confinement. DYS officials prohibit the use of room confinement as a form of discipline.[25] The agency does permit limited periods of isolation when a youth

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[22] 24 C.F.R. §§ 483.352-483.376.

[23] For an overview of models of independent monitoring systems, see Center for Children's Law and Policy, Fact Sheet: Independent Monitoring Systems for Juvenile Facilities (Apr. 9, 2010), *available at* http://www.cclp.org/documents/Conditions/IM.pdf.

[24] PbS Learning Institute, Reducing Isolation and Room Confinement 2 (Sept. 2012), *available at* http://pbstandards.org/uploads/documents/PbS_Reducing_Isolation_Room_Confinement_201209.pdf.

[25] Massachusetts Department of Youth Services, Policy #03.03.01(a): Involuntary Room Confinement 1 (Mar. 15, 2013), *available at* http://www.mass.gov/eohhs/docs/dys/policies/030301-involuntary-room-confine.doc.

exhibits dangerous and disruptive behavior and less restrictive alternatives to control the behavior have failed.[26] However, staff must obtain authorization from agency administrators to use isolation for periods longer than 15 minutes, and staff must secure approvals from more senior officials outside of the facility as the requested time increases.[27] DYS leadership has shown that this policy, when combined with training on de-escalation techniques, a strong behavior management program, adequate numbers of direct care and mental health staff, and careful facility oversight, has meant that facilities are able to avoid use of solitary confinement for discipline and limit the time necessary for isolation when youth are out of control. In data reported in 2013, facilities rarely used isolation for more than 2 hours.[28]

Conclusion

Unfortunately, the inappropriate and excessive solitary confinement of children is not a new phenomenon. In 1970, a federal judge in New York held that confining a 14-year-old girl in a 6' x 9' room for 24 hours a day for two weeks violated the Eighth Amendment's prohibition on cruel and unusual punishment.[29] More than 40 years later, we are still a long way from eradicating this dangerous and ineffective practice.

We urge the Subcommittee to develop ways to support the interventions described above, which can dramatically reduce the solitary confinement of children. We are ready to assist with your efforts in any way that we can.

Sincerely,

Mark Soler
Executive Director
Center for Children's Law and Policy

Dana Shoenberg
Deputy Director
Center for Children's Law and Policy

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[26] *Id.*
[27] *Id.* at 5-6.
[28] Presentation of Nancy Carter, Director of Residential Operations, Massachusetts Department of Youth Services, Juvenile Detention Alternatives Initiative Intersite Conference, April 18, 2013.
[29] *Lollis v. New York State Department of Social Services*, 322 F. Supp. 473 (S.D.N.Y. 1970).

Jason Szanyi
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centerforconstitutionalrights
on the front lines for social justice

Reassessing Solitary Confinement II:
The Human Rights, Fiscal, and Public Safety Consequences

Hearing Before the Senate Judiciary Subcommittee on the
Constitution, Civil Rights, and Human Rights
February 25, 2014

Statement of the Center for Constitutional Rights

Chairman Durbin and Members of the Subcommittee:

The Center for Constitutional Rights (CCR) would like to thank Chairman Dick Durbin and Members of the Subcommittee for holding this important follow-up hearing on the human rights, fiscal, and public safety consequences of solitary confinement in US prisons, jails, and detention centers. The June 2012 hearing before the Subcommittee was a critical step in raising national consciousness about this important human rights issue. We sincerely hope that this follow-up hearing will result in a fundamental reassessment of the widespread use of solitary confinement in the United States, and serve as a catalyst to end the brutalizing use of isolation for unconscionable periods of time in U.S. prisons, jails, and detention centers.

CCR submitted a lengthy statement[1] at the June 2012 hearing that addressed some of the human rights and constitutional implications of solitary confinement, and the kind of prolonged solitary confinement that our clients at the notorious Pelican Bay Security Housing Unit in California are suffering in particular.[2] We refer the Subcommittee back to that Statement. Here, we would like to briefly apprise the Subcommittee of developments in California since the last hearing. While this update focuses on California, it highlights the need for swift and meaningful Congressional action to limit the use of solitary confinement across the country.

Like prisoners placed in isolation units around the country, prisoners at the Pelican Bay SHU are confined to windowless cells for between 22½ and 24 hours a day, without access to natural light, telephone calls, contact visits, and vocational, recreational, or educational programming. At Pelican Bay, hundreds of prisoners have been held in solitary confinement for over a decade; 78 prisoners have languished under these conditions for over 20 years – in contravention of human rights standards.[3] They are retained in the SHU on the basis of flimsy evidence of "gang affiliation." Evidence used by the California Department of Corrections

[1] Statement of the Center for Constitutional Rights, June 19, 2012, available at http://www.ccrjustice.org/ccr-written-testimony-solitary-confinement-us-congress.

[2] In May 2012, CCR raised a constitutional challenge to prolonged solitary confinement in a federal class action complaint on behalf of prisoners at California's notorious Pelican Bay SHU facility. *Ashker et al. v. Brown et al.*, 09-cv-5796 (N.D. Cal.) (Wilken, J.). That litigation is ongoing.

[3] As noted in our June 2012 submission, the U.N. Special Rapporteur of the Human Rights Council on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment has found that prolonged solitary confinement is prohibited by Article 7 of the International Covenant on Civil and Political Rights (ICCPR) and Article 1 of the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT). The U.S. has ratified both the ICCPR and CAT. Moreover, the U.N. Special Rapporteur has also previously proposed a "15-day deadline for solitary confinement." Interim Report of the Special Rapporteur of the Human Rights Council on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Aug. 2011).

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and Rehabilitation (CDCR) to purportedly demonstrate gang affiliation – and keep these prisoners in brutalizing conditions for *decades* at a time – includes appearance on lists of alleged gang members discovered in an undisclosed prisoners' cell or possession of allegedly gang-related drawings.

The psychological and physical effects of this prolonged isolation have been drastic. Professor Craig Haney, who testified before the Subcommittee in June 2012, interviewed a number of prisoners in the Pelican Bay SHU in the context of our litigation. In a Declaration to the Court, he reported:

> The magnitude of the suffering that they have endured, and the full measure of what they have lost over the course of the last two decades of their lives, is difficult to fathom. They are all men in their 50s who have matured into middle age without having had any of the adult experiences that lend meaning to that stage of someone's life. Because they could not remain connected in a meaningful way to the social world and social contexts in which they were raised and from which they came—the network of people and places that in essence, created them—they have lost a connection to the basic sense of who they "were." Yet, because of the bizarre asocial world in which they have lived, it is not at all clear to most of them who they now "are." There is a certain flatness or numbness to the way most of them talk about their emotions—they "feel" things, but at a distanced or disembodied way. The form of "social death" to which they were subjected has left them disconnected from other people, whom they regard more or less as "abstractions" rather than as real. Very few of them have had consistent social visits over the many years during which they have been in isolated confinement, so they have lost contact with the outside world, with the social world of even a mainline prison, and with themselves.[4]

Professor Haney's observations comport with what is now clearly established about the impact of solitary confinement. The incidence of suicides, attempted suicides and the development of mental illness are much higher amongst prisoners in solitary confinement than those held in the general population. A new peer-reviewed study published in the American Journal of Public Health has found that the risk of self-harm among prisoners (such as "ingestion of a potentially poisonous substance or object leading to a metabolic disturbance, hanging with evidence of trauma from ligature, wound requiring sutures after laceration near critical vasculature, or death") is significantly higher for prisoners in isolation units.[5] Moreover, as Professor Huda Akil, a neuroscientist at the University of Michigan, recently explained at the American Association for the Advancement of Science annual meeting, there is an increased understanding that the lack of physical interaction with the natural world, the lack of social interaction, and the lack of touch and visual stimulation associated by solitary confinement are each sufficient to dramatically change the brain.[6] The drastic effects of this practice on a prisoner's brain and personality violate the U.S.'s obligations under the Convention Against Torture.

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[4] Declaration of Craig Haney, Ph.D., J.D., In Support of Plaintiffs' Motion for Class Certification, *Ashker*, Dkt. No. 195-4.
[5] Fatos Kaba, MA, Andrea Lewis, PhD, Sarah Glowa-Kollisch, MPH, et. al, *Solitary Confinement and Risk of Self-Harm Among Jail Inmates*, 104 AM. J. PUB. HEALTH 442, 443 (Mar. 2014).
[6] http://thinkprogress.org/justice/2014/02/18/3303721/solitary-confinement-dramatically-alter-brain-shape-just-days-neuroscientist-says/#

In 2011, as a result of the severe psychological distress, desperation, and hopelessness that they experience from languishing in the SHU for decades, hundreds of Pelican Bay prisoners engaged in two sustained hunger strikes. Those hunger strikes ended after CDCR promised to engage with prisoners and issue meaningful reforms to conditions and procedures. But CDCR has failed to so. Hundreds of men are still languishing at the Pelican Bay SHU, and other isolation units in California. CDCR still uses the same affiliation-based evidence to retain prisoners at the SHU indefinitely. And so, on July 8, 2013, some 30,000 prisoners went on hunger strike in the largest prisoner protest in history. Many refused food for 60 days. Their protest resulted in unprecedented media coverage, a visit to California by Juan Mendez, the United Nations Special Rapporteur on Torture, and a promise by legislators to take action on the issue. Two legislative hearings were held in Sacramento to address the disgraceful conditions in California's isolation units, and California Assemblymember Tom Ammiano has since proposed legislation that could significantly restrict how solitary confinement is used in California prisons.

Our clients, and many other prisoners, reported that the possibility of death by starvation was a worthwhile risk to draw attention to their plight, illustrating the gravity of their situation and the need for swift action on this issue. The prisoners have made five core demands.[7] Central among these demands are that solitary confinement must be used as a last resort, for a determinate period of time, and in response to specific acts of misconduct; and that it cannot involve torturous and punitive conditions such as deprivation of natural light, phone calls, physical contact with family, group recreation, educational programming, significant out-of-cell time that allows for normal human conversations with others, lack of adequate medical care, and lack of adequate and nutritious food.

We join the many other human rights, civil rights, and prisoners' rights groups who are submitting statements today in urging Congress to:

- Support increased federal oversight, monitoring, transparency, and funding for alternatives for solitary confinement;
- Require reforms to the use of solitary confinement in federal facilities operated by the Bureau of Prisons (BOP);
- Ensure that the United States fully engages in the international effort to reform the use of solitary confinement; and
- Support rulemaking to reduce the use of solitary confinement in U.S. prisons, jails, detention centers and juvenile facilities.

Such measures will be in important step in ending the harmful, and indefensible, use of solitary confinement in California's prisons, and in jails, prisons, and detention centers around the country.

With strong leadership, effective policies, and sound practices, U.S. prisons can develop ways to house prisoners in settings that are less restrictive and more humane than solitary confinement, and thereby meet international human rights and Constitutional standards. We hope that today's hearing represents another important step in that direction.

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[7] For a detailed explanation of these demands, please visit http://prisonerhungerstrikesolidarity.wordpress.com/the-prisoners-demands-2/

Lois DeMott
President/Co-Founder, Citizens for Prison Reform
P.O. Box 80414 Lansing, MI 48908

February 24, 2014

Dear Chairman Durbin, Ranking Member Graham, and Members of the Subcommittee on the Constitution, Civil Rights and Human Rights:

I thank you for holding this hearing on the matter of solitary confinement within the U.S. My name is Lois DeMott. I am the President and Co-Founder of a Michigan statewide family-run organization, Citizens for Prison Reform. Most importantly, I am the mother of a son who went into the prison system, with a known significant mental illness, at the age of 15. His minimum sentence was 5 months. Kevin wound up doing a total of five years due to the fact that he was not on the proper medications, and was not given adequate treatment. His treatment included 13 months in long-term segregation, better described as "solitary confinement".

We began to see the disparities that exist within this system of mass incarceration. We saw firsthand that by far long-term segregation is utilized to hold those who have significant mental illness, some diagnosed and others undiagnosed, African Americans, and those with significant disabilities. If they do not go into solitary with disabilities, many come out with a diagnosable illness.

Today I am sharing the visuals that gripped my heart and soul, and these wrongs are why I continue my work today, even though my son is released and now doing quite well upon receiving a new medication regimen and therapeutic treatment, rather than utilizing punishment by solitary to try and "fix" him. This only happened when he nearly lost his life due to severe cutting. Kevin will suffer, likely forever, from PTSD and emotional distress after seeing and experiencing all that he did beginning at such a young age. It is a miracle my son made it out. He nearly lost his life numerous times. He is an amazing individual.

We continue to know there are thousands in Michigan alone, and many thousands more nationwide, who are in these same conditions. They are wasting away in isolation without programming or therapy or access to medications that could assist the when they become anxious or mentally unstable. Instead, barbaric methods of hogtying, hard restraints, gassing,

withholding food, utilizing sound, temperature and light deprivation as methods to "treat" and correct behavior. In certain prisons, visits while in segregation are only for two hours, when families must drive up to 9 hours to get to the location. This all goes against the known facts that rehabilitation, programming, and family supports and connectedness play as significant role in a prisoner's success. The effects of isolation have been proven to be life changing and causes significant trauma- there are no other words than inhumane.

A new system is being utilized in some states, making it seem as if prisons are addressing the numbers in segregation by creating incentive programs that prisoners can work through to get out of segregation. The problem with these programs are not addressing if the person is properly medicated, and include such incentive steps as writing a report, yet many of these prisoners cannot read or write. They simply will never make it out because of their inability to fulfill the steps in the incentive programs, thus allowing states to hold people much longer in solitary. The walls within solitary are much higher, prison staff and officers are less accountable and there is little oversight.

There are clearly programs, such as Secure Status Treatment Program, where prisoners are out in shackles and gotten into groups and classes and over time given more freedoms that are significantly more humane and rehabilitative than utilizing total lock down in isolation. I recommend these programs become law and mandatory, moving people out of segregation and into a rehabilitative model. I would like to recommend that every prison having long-term segregation be monitored by someone outside of the Department, such as Red Cross or advocacy organizations. These are our prisons- we as taxpayers are footing the bill for this inhumane treatment, yet we have no ability or access to see what is occurring so often within. There is little oversight for accountability for what occurs.

I am requesting that there be federal legislation putting stops on the use of solitary confinement as it is currently practiced and carried out. Thank you again for this opportunity to testify on behalf of Michigan's prisoners and

Lois DeMott
Prison Mother and Advocate
Co-Founder /President- Citizens for Prison Reform

VANDERBILT UNIVERSITY

February 20, 2014

Senator Durbin and Honorable Members of the Senate:

I have studied indefinite solitary and supermax confinement since 1996 when I began writing about the Arizona state prison system. My last book, *The Law is a White Dog: How Legal Rituals Make and Unmake Persons* (Princeton, 2011), deals with the suffering of prisoners and the questions of cruel and unusual punishment and due process in such "special management" or "special housing" units (http://press.princeton.edu/titles/9450.html).

Relevant recent articles of mine deal with the legal evasion of obvious Eighth Amendment violations (http://bostonreview.net/BR29.5/dayan.php) and the remarkable curtailing of the First Amendment in a case about a Pennsylvania super-max unit (http://bostonreview.net/BR32.6/dayan.php).

In summer June 2011, when the more than 2,000 prisoners in California—some of whom had been in solitary confinement for over 20 years without hope of redress—went on hunger strike, I wrote an op-ed for the NY Times, called "Barbarous Confinement" (http://www.nytimes.com/2011/07/18/opinion/18dayan.html). As I have argued over the years, no matter what claims we make of humane treatment and evolving standards of decency, we are guilty as a nation of the most horrific treatment of prisoners in the civilized world.

And, again, last summer 30,000 inmates in California prisons stopped eating to publicize their demands for decent treatment. Internal complaints, appeals, even court orders had all failed in their purpose. Their demands were simple. Roughly 4,000 inmates in California prisons—that is to say, three in every hundred--are in solitary, many in Security Housing Units (SHUs), often indefinitely. They sit there for no penal reason, though prison officials offer all kinds of different justifications. Solitary forms no part of any legally mandated punishment. Indeed if it did, it would be actionable under the Eighth Amendment prohibition on "cruel and unusual punishment." Instead it is defined, by a legally untouchable and elegantly beastly linguistic sleight of hand that has become fashionable in this country since the presidency of Ronald Reagan, as "administrative segregation."

What the striking prisoners are asking for is incredibly little: putting an end to administratively (and arbitrarily) imposed long-term solitary confinement; ending collective punishment for individual violations of rules; modifying the validation process for active/inactive gang status and abolishing de-briefing; implementing the findings of the 2006 US Commission on Safety and Abuse in prisons; providing adequate, nutritious food and suitable health care; and, finally, expanding programs and privileges for those held in indefinite solitary. None of these presents the slightest form of security risk. All of them belong to what the meanest person among us would regard as the most fundamental elements of human decency.

Supermax detention is the harshest weapon in the American punitive armory. The severe sensory deprivations of the supermax have been repeatedly condemned since the 1980s by the

United Nations Committee Against Torture, Human Rights Watch, Amnesty International, the American Civil Liberties Union, and the Center for Constitutional Rights. The UN Convention Against Torture (May 2006) and the UN Human Rights Committee (July 2006) documented in detail the torturous psychological effects of this practice. In 2006, as one of its primary recommendations, the bipartisan US Commission on Safety and Abuse in Prisons called for substantial reforms to the practice of solitary confinement. Segregation from the general prison population, it said, should be "a last resort."

Once, solitary confinement affected few prisoners for relatively short periods of time. Today, most prisoners can expect to face solitary, for longer periods than before, and under conditions that make old-time solitary seem almost attractive. The contemporary state-of-the-art supermax is a clean, well-lighted place. There is no decay or dirt. And there is often no way out. Prisons in the United States have always contained harsh solitary punishment cells where prisoners are sent for breaking rules. But what distinguishes the new generation of supermaxes are the increasingly long time prisoners spend in them, their use as a management tool rather than just for disciplinary purposes, and their sophisticated technology for enforcing isolation and control.

This is not the "hole" portrayed in movies like *Murder in the First* or *The Shawshank Rdemption.* Under the sign of professionalism and advanced technology, extreme isolation and sensory deprivation constitute the "treatment" in these units. As early as 1995, a federal judge, Thelton E. Henderson, writing about the Special Housing Unit in Pelican Bay, California, conceded that

"supermax" confinement "may well hover on the edge of what is humanly tolerable." It is now over that edge. Supermaxes more generally substantially modify inmates' spatial and temporal framework, severely damaging their sense of themselves: a terrible violence against the spirit and a betrayal of our constitutional and moral responsibility to ourselves as a nation and as human beings.

How much can you take away from a prisoner without running afoul of the law? Solitary confinement has now been transmuted from an occasional tool of discipline into a widespread form of preventive detention. For more than two decades, the Supreme Court has whittled steadily away at the rights of inmates, surrendering to prison administrators virtually all control over what is done to those held in "secure segregation." Since this is not defined as punishment for a crime, it does not fall under "cruel and unusual punishment," the reasoning goes.

Officials claim that those incarcerated in these 23-hour lockdown units are "the worst of the worst." But it is often the most vulnerable, especially the mentally ill, not the most violent, who end up in indefinite isolation. Those who are not mentally ill going in can hardly avoid being mentally destroyed once there. Placement is haphazard and arbitrary; it focuses on those perceived as troublemakers or simply disliked by correctional officers and, most of all, alleged gang members. Often, the decisions are not based on evidence. And before the inmates are released from isolation into normal prison conditions, they are expected to "debrief," or spill the beans on other gang members.

But how can a prisoner debrief if he is not a gang member? Those in isolation can get out by naming names, but if they do so they will likely be killed when returned to a normal facility. To "debrief" is to be targeted for death by gang members, so the prisoners are moved to "protective custody"—that is, another form of solitary confinement.

More seriously still, though, many of these prisoners have been sent to virtually total isolation and enforced idleness for no crime, not even for alleged infractions of prison regulations. Their isolation, which can last for decades, is often not explicitly disciplinary and therefore not subject to court oversight. Their treatment is merely a matter of administrative convenience.

In the summer of 1996, I visited two "special management units" at the Arizona State Prison Complex in Florence, Arizona. Escorted by deputy wardens, I completed a series of interviews in an attempt to understand this new version of solitary confinement. There, prisoners are locked alone in their cells for twenty-three hours a day. They eat alone. Their food is delivered through a food slot in the door of their eighty square foot cell. They stare at the unpainted concrete, the windowless walls onto which nothing can be put. They look through doors of perforated steel, what one officer described to me as "irregular-shaped swiss cheese." Except for the occasional touch of a guard's hand as they are handcuffed and chained when they leave their cells, they have no contact with another human being.

In this condition of enforced idleness, prisoners are not eligible for vocational programs. They have no educational opportunities, and books and newspapers are severely limited, post and telephone communication virtually non-existent. Locked in their cells for as many as 161 of the 168 hours in a week, they spend most of the brief time out of their cells in shackles, with perhaps as much as eight minutes to shower. An empty exercise room (twelve feet by twenty feet)—a high-walled cage with a mesh screening overhead, also known as the "dog pen"--is available for "recreation." As an inmate later wrote me, "People go crazy here in lockdown. People who weren't violent become violent and do strange things. This is a city within a city, another world inside of a larger one where people could care less about what goes on in here. This is an alternate world of hate, pain, and mistreatment."

Special Management Unit 1 in Arizona was surpassed by Special Management Unit 2 (SMU 2), completed in 1996. A 768-bed unit, it cost taxpayers $40 million. Given the cost of building supermaxes, one official in Arizona suggested: 'Why don't we just freeze-dry 'em?' In a Special Security Unit there, another officer showed me a sign set above photos of prisoners who had mutilated themselves – row after row of slit wrists, first-degree burns, punctured faces, bodies smeared with faeces, eyes pouring blood. It read: 'Idle Minds Make for Busy Hands.'

Situated on forty acres of desert, SMU 2 is surrounded by two rings of twenty-foot-high fence topped with razor wire, like a nuclear waste storage facility. During my visits there, I learned that those who have *not* violated prison rules—often jailhouse lawyers or political activists—find

themselves placed apart from other prisoners, sometimes for what is claimed their own protection, sometimes for what is alleged to be the administrative convenience of prison officials, sometimes for baseless, unproven, and generally unprovable, claims of gang membership.

In choosing to focus on supermax confinement as a punishment worse than death, my argument is against the tendency in our courts and in our prisons to reduce constitutional claims to the most basic terms: bodies emptied of minds, destruction of will, removal of responsibility, and of everything that defines persons as social beings. Designed for basic needs and nothing more, the structure of supermaxes dramatizes the minimal requirements of the courts. Awash in natural light, everything in these units—what can be seen and how, its location and design—coerces in the most unremitting and damaging way possible. These are locales for perpetual incapacitation, where obligations to society, the duties of husband, father, or lover are no longer recognized.

We are proud of our history as citizens of the United States. We are a nation of laws. But what kind of laws? Laws that permit solitary confinement, with cell doors, unit doors, and shower doors operated remotely from a control center, with severely limited and often abusive physical contact. Inmates have described life in the massive, windowless supermax prison as akin to "living in a tomb," "circling in space," or "being freeze-dried." Has the current attention to the death penalty allowed us to forget the gradual destruction of mind and loss of personal dignity in solitary confinement, including such symptoms as hallucinations, paranoia, and delusions? It is

to the mind-destroying settings of the supermax penitentiary that I draw your attention, to the "cruel, inhuman, and degrading" treatment that most often bears no relation to crime. I recall the words of former Supreme Court Justice Sandra Day O'Connor warning that prisoners' rights must be considered: "Prison walls do not form a barrier separating prison inmates from the protections of the Constitution." Justice William Douglas put it more starkly: "Prisoners are still 'persons'."

Two centuries ago, Jeremy Bentham came to believe that solitude was "torture in effect." Other nineteenth-century observers, including Charles Dickens and Alexis de Tocqueville, used images of premature burial, the tomb and the shroud to represent the death-in-life of solitary confinement. There are now some 25,000 inmates in long-term isolation in America's supermax prisons and as many as 80,000 more in solitary confinement in other facilities.

We need to ask not only why this torture continues, but how it has been normalized for an ever-larger group of prisoners.

Sincerely,

Colin Dayan
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Testimony by Scott Paltrowitz, Associate Director, Prison Visiting Project
The Correctional Association of New York
Before the Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights and Human Rights
Reassessing Solitary Confinement II: The Human Rights, Fiscal, and Public Safety Consequences February 25, 2014

The Correctional Association of New York (CA) would like to thank the Subcommittee for the opportunity to present testimony about the need for fundamental reform of the abuse of solitary confinement at the federal, state, and local levels. The CA has had statutory authority since 1846 to visit New York State's prisons and to report its findings and recommendations to the legislature, other state policymakers, and the public. Our access provides us with a unique opportunity to observe and document actual prison practices and to learn from incarcerated persons and staff. As we documented in our testimony to this Subcommittee in June 2012, New York State both exemplifies the abuse of solitary confinement and the possibilities of reform. Given the more extensive testimony on the use of solitary in NYS in our June 2012 testimony – including an overview of the use of solitary and the positive aspects and limitations of the SHU Exclusion Law limiting the solitary confinement of people with the most severe mental health needs[1] – this submission will give a brief summary update on the ongoing use of solitary in NYS, and then will focus on suggestions for comprehensive reform. Specifically, the testimony will outline and explain five key components that should be implemented at the federal, state, and local levels across the country to end the inhumane and counterproductive use of solitary confinement and to create more humane and effective alternatives. For each component, the testimony will also utilize newly proposed legislation in New York, the Humane Alternatives to Long Term (HALT) Solitary Confinement Act, A08588 (Aubry) / S06466 (Perkins)[2] as a model for such implementation. Finally, the testimony will offer some concrete steps that Congress itself can take to move toward fundamental reform of the use of solitary confinement.

Summary Update of Use of Solitary Confinement in NYS

Based on the CA's investigations of prisons in NYS, the inhumane and counterproductive use of solitary confinement[3] in NYS has generally continued since the time of the last Congressional hearing on solitary before this Subcommittee, although there have been some limited positive changes

[1] Testimony by the Correctional Association of New York, Before the Senate Judiciary Committee's Subcommittee on the Constitution, Civil Rights, and Human Rights Reassessing Solitary Confinement, June 19, 2012, *available at*: http://www.correctionalassociation.org/wp-content/uploads/2012/10/testimony-solitary-confinement-june-2012.pdf.

[2] An electronic version of the proposed legislation is attached to this testimony and is also *available at*: http://assembly.state.ny.us/leg/?default_fld=&bn=A08588&term=&Summary=Y&Actions=Y&Votes=Y&Memo=Y&Text=Y.

[3] In New York State, many individuals are confined in double cells and are held in conditions of isolation with that second person. People in such confinement are still locked in their cells 23 or 24 hours per day, without meaningful human interaction or programming, and the negative effects of such isolation have been shown to be as harmful or sometimes more harmful than solitary confinement of a single person. In this testimony we will thus sometimes use the term "isolated confinement" in place of solitary confinement.

and positive steps toward potential future change. Specifically, whether for disciplinary confinement, administrative segregation, or protective custody reasons, people in either Special Housing Units (SHU) or keeplock[4] in NYS prisons continue to spend 22 to 24 hours per day locked in a cell, without any meaningful human interaction, programming, therapy, or generally even the ability to make phone calls, and generally being allowed only non-contact visits if they receive visits at all. The sensory deprivation, lack of normal human interaction, and extreme idleness has long been proven to lead to intense suffering and psychological damage. A recent study conducted in New York City jails, written by authors affiliated with the New York City Department of Health and Mental Hygiene, and published in the American Journal of Public Health, found that people who were held in solitary confinement were nearly seven times more likely to harm themselves and more than six times more likely to commit potentially fatal self-harm than their counterparts in general confinement, after controlling for length of jail stay, serious mental illness status, age, and race/ethnicity.[5]

Although there appear to have been some decreases in the use of SHU in NYS prisons since the time of the last hearing before this Subcommittee on solitary, there are still far too many people who are subjected to isolated confinement – with more than 3,800 people in SHU as of September 2013, in addition to the many others in state prison who are subjected to keeplock, and the thousands who are in solitary in local city and county jails. Contrary to popular belief, isolated confinement is not primarily used to address chronically violent behavior or serious safety or security concerns, but continues to often come in response to non-violent prison rule violations, or even retaliation for questioning authority, talking back to staff, or filing grievances. Although the United Nations Special Rapporteur on Torture has concluded that isolated confinement beyond 15 days amounts to cruel, inhuman, or degrading treatment, or torture, people in NYS prisons regularly remain in isolated confinement for months and years, and sometimes even decades. The people subjected to isolated confinement are disproportionately African Americans, representing 60% of the people in SHU compared to the already vastly disproportionate 50% of people in NYS prisons and 18% of the total NYS population. The people subjected to isolated confinement also include people particularly vulnerable to either the effects of isolation itself or additional abuse while in isolation, including young and elderly people, people with physical, mental, or medical disabilities, pregnant women, and members of the LGBTI community.

On February 19, 2014, the NYS Department of Corrections and Community Supervision (DOCCS) agreed to an interim stipulation with the New York Civil Liberties Union and the their incarcerated person clients in a potential class-action lawsuit about the use of solitary in NYS prisons.[6] Some of the key components of the stipulation include: creating alternative diseiplinary units with some additional out-of-cell time for 16 and 17 year olds and people with developmental disabilities;

[4] Keeplock refers to individuals confined for 23 or 24 hours a day either in their same cell in the general prison population or in a separate cellblock.

[5] Homer Venters, et. al., *Solitary Confinement and Risk of Self-Harm Among Jail Inmates*, American Journal of Public Health, Mar. 2014, Vol. 104, No. 3, *available at*: http://ajph.aphapublications.org/doi/pdf/10.2105/AJPH.2013.301742. A separate recent panel of scientists at the annual meeting of the American Association for the Advancement of Science also further reported on the harmful psychological and neurological effects of solitary. *See* Joseph Stromberg, *The Science of Solitary Confinement*, Smithsonian Magazine, Feb. 19, 2014, *available at*: http://www.smithsonianmag.com/science-nature/science-solitary-confinement-180949793/#.Uwoq5RsSWaQ.email.

[6] *Leroy Peoples, et. al.v. Brian Fischer, et. al.*, Docket Number 11-CV-2964 (SAS), Stipulation for a Stay with Conditions, *available at*: http://www.nyclu.org/files/releases/Solitary_Stipulation.pdf.

establishing a presumption against solitary confinement of pregnant women; and calling upon experts to offer recommendations for more comprehensive reforms.[7]

These provisions of the stipulation are a positive step forward, and at the same time much more fundamental reform is still needed. Specifically, positively, the stipulation essentially recognizes the inhumane and counterproductive nature of solitary and the need for alternatives that include additional out-of-cell time and improved conditions and services. The stipulation also positively recognizes that solitary has particularly negative effects on young people, people with developmental disabilities, and pregnant women and that there should be limitations on the use of solitary for people who are part of such particularly vulnerable groups. Moreover, the stipulation recognizes that the provisions of the stipulation are initial steps and that more comprehensive reform is needed.

All of these positive recognitions are important first steps and should be expanded upon. For example, as will be discussed in further detail in the next section, the recognition of the need for more humane and effective alternatives to solitary confinement should be expanded both in terms of applying to all people who are separated from the general prison population and in terms of the nature of those alternatives and the amount of out-of-cell time offered. Also, the recognition that certain vulnerable groups should not be placed in solitary confinement should be expanded to include additional vulnerable groups discussed below and to ensure that such groups are never placed in solitary for any length of time. Specifically pertaining to young people, the recognition that 16 and 17 year olds need to receive different treatment than others should be expanded to raise the age of criminal responsibility entirely, such that 16 and 17 year olds are never placed in prison at all, and instead are always in supportive, non-punitive, developmentally appropriate small group environments with specially trained staff.[8] Similarly, the recognition that young people need to be treated as young people and not subjected to inhumane treatment should be expanded to include not only 16 and 17 year olds but all young people into their mid-twenties, in line with what brain and youth development research has recognized that young people continue to develop mentally, emotionally, and socially into their mid-twenties.[9] In addition, the recognition that placing people in solitary confinement for extended lengths of time can have detrimental effects needs to be expanded to recognize that long term solitary harms *all* people subjected to it and thus there needs to be dramatic reductions in the lengths of time any person, whether part of a particularly vulnerable group or not, spends in solitary confinement. Moreover, given that the provisions of the stipulation are currently conditional in nature and often settlements are time limited, it is crucial that all positive reforms made should become permanent policy changes, preferably through legislation. Overall, the steps already taken in NYS and this new stipulation are positive developments that need to be expanded upon in NYS and across the country.

A Proposed Model for Comprehensive Reform Across the Country

The ongoing crisis of solitary confinement across the country is in need of dramatic reform in order to end the torture currently taking place. The steps already taken in NYS can serve as an initial model for other jurisdictions, and much more fundamental reform is needed, including in line with the

[7] *Ibid.* For more information about the interim stipulation, please see the testimony submitted to the Subcommittee by the New York Civil Liberties Union.

[8] *See, e.g.*, Gabrielle Horowitz-Prisco, *Treating youth like youth: why it's time to 'raise the age' in New York*, July 2013, *available at*: http://www.correctionalassociation.org/wp-content/uploads/2013/07/CANY_Raise-the-Age-in-brief_July-2013_FINAL.pdf.

[9] *See, e.g.*, Vincent Schiraldi, Commissioner, NYC Department of Probation, *What about Older Adolescents?*, p. 3-5, Nov. 19, 2013, *available at*: http://johnjayresearch.org/pri/files/2014/01/Vincent-Schiraldi-speech_11.19.13.pdf.

principles drawn from the stipulation discussed above. Specifically, prisons, jails, and detention centers across the country at the federal, state, and local level should:

1) Fundamentally transform the response to people's needs and behaviors by creating rehabilitative and therapeutic units as alternatives to isolation and deprivation;

2) Restrict the criteria that can result in separation from the general prison population to the most egregious conduct in need of an intensive intervention;

3) End long term isolated confinement beyond 15 consecutive days in line with the recommendations of the UN Special Rapporteur on Torture;

4) Ban solitary confinement of people who are especially vulnerable either to the effects of isolation itself or to potential abuse while in isolation; and

5) Better equip staff to work with incarcerated persons, and make the processes resulting in solitary confinement fairer (including via legal representation), more transparent (including via mandatory reporting), and with more accountability (including via outside oversight).

1. Fundamental Transformation Through the Creation of Alternative Units

There needs to be a fundamental transformation in how correctional agencies across the country respond to people's needs and/or alleged problematic behaviors inside prisons, jails, and detention centers. People who have allegedly engaged in the most egregious conduct should not be subjected to inhumane and counterproductive isolation and deprivation that will only exacerbate their needs or behaviors. Rather, these individuals need additional support, programs, and therapy that are both humane and effective. Thus, if there are people who are such a risk to others that they need to be removed from the general prison population, they should be separated, rather than isolated, into safe, secure therapeutic and rehabilitative units that have substantial out-of-cell time and meaningful human interaction, programs, and therapy.

The HALT Solitary Confinement Act would help create this fundamentally transformed response inside of prisons and jails by requiring that any person separated from the general prison population for more than 15 continuous days must be placed in a separate secure Residential Rehabilitation Unit (RRU).[10] The RRU would be a rehabilitative and therapeutic unit aimed at providing residents with additional programs, therapy, and support to address the underlying causes of their behavior.[11] People in RRUs would work with an assessment committee upon entering an RRU to develop a rehabilitation plan,[12] and then would be required to receive six hours per day of out-of-cell programming, plus an additional one hour of out-of-cell congregate recreation, to carry out that plan.[13] In addition, people who are in segregated confinement for shorter periods of time would have their out-of-cell time increased to four hours per day, including at least one hour of congregate recreation, and all people who are in either segregated confinement or RRUs would have comparable access to services, property, and materials as in general population.[14]

[10] Humane Alternatives to Long Term (HALT) Solitary Confinement Act, A08588 (Aubry) / S06466 (Perkins), §2(36).
[11] §2(36); §137(6)(i)(i-viii).
[12] §137(6)(i)(iv).
[13] §137(6)(i)(ii).
[14] §137(6)(i)(iii).

2. Restricting the criteria that results in separation

All jurisdictions need to stop placing people in solitary confinement or at the very least drastically restrict the criteria that can result in solitary confinement or separation to the most violent or egregious conduct. Again at the very least, punishment, deprivation, and isolation, and even separation to alternatives to solitary, should no longer be the response to most purported justifications for solitary confinement given by various correctional agencies, whether they be alleged rule violations or certain classifications or designations. If there are people who truly need to be separated because they pose such a risk to others, then the focus should be on those individuals who are actually in need of an intensive rehabilitative and therapeutic intervention in order to decrease the risk posed and help those individuals be better prepared to return to the general prison population and ultimately their community. A person who talks back to an officer or who has too many postage stamps, for example, or indeed who engages in the bulk of non-violent rule violations or classifications that result in isolation, does not require an intensive intervention, so resources should be focused on those who need and could benefit from such an intervention.

The HALT Solitary Confinement Act would drastically restrict the criteria of conduct that can result in isolated confinement or placement in the Residential Rehabilitation Units (RRUs). HALT divides segregated confinement into three categories: emergency confinement, short term segregated confinement, and extended segregated confinement. People could be placed in emergency confinement for up to 24 hours if such placement is necessary to immediately diffuse a substantial and imminent threat.[15] People could be placed in short term segregated confinement for up to three days for a department rule violation if the penalty is proportionate to the violation.[16] Finally, people could be placed in extended segregated confinement for up to 15 days or be placed in an RRU for more serious acts of physical injury, forced sexual acts, extortion, coercion, inciting serious disturbance, procuring deadly weapons or dangerous contraband, or escape.[17] In addition to these restricted criteria, the HALT Solitary Confinement Act would make clear that persons may not be placed in segregated confinement for purposes of protective custody, and that any location used for protective custody must at least comply with the standards for RRUs.[18]

3. Ending long term isolated confinement beyond 15 days

No person should ever be subjected to torture or cruel, inhuman or degrading treatment in any prison, jail, or detention facility in the United States. Given that the UN Special Rapporteur on Torture has defined any use of solitary beyond 15 days to amount to torture or cruel, inhuman or degrading treatment, 15 days should be the absolute limit for isolated confinement.

The HALT Solitary Confinement Act mandates that no person may be held in isolation more than 15 consecutive days, nor more than 20 days total in any 60 day period (the latter of which is to

[15] §137(6)(j)(i), §2(33).
[16] §137(6)(j)(ii), §2(34).
[17] §137(6)(j)(iii), §2(35). These restricted criteria for the maximum length of time in isolated confinement or placement in the RRUs was derived from the criteria put forward by James Austin during litigation in Mississippi that resulted in a settlement agreement and a dramatic reduction in the number of people in solitary confinement.
[18] §137(6)(j)(iv).

ensure that a person is not cycled in and out of solitary).[19] At these limits, a person must be released back to the general prison population or sent to an RRU.[20]

4. Banning the placement of especially vulnerable groups in isolation

Certain people should never be placed in isolation because either isolation itself can have more devastating effects on them or they are more vulnerable to abuse while in isolation. For example, brain research has demonstrated that a young person continues to develop mentally and socially through their mid-20s and as such a young person who is 19 years old, for example, should not ever be placed in isolation because of the particularly negative effects on that person's psychological and social development. Similarly, a person who has mental health needs or physical disabilities that are only going to be exacerbated by being placed in isolation should not ever be subjected to such confinement. In a similar but different way, members of the LGBTI community have often faced additional abuse by staff by being placed in isolation, even when placed in isolated confinement purportedly for their own protection. Overall, young people, elderly people, people with disabilities, people with mental health needs, pregnant women, and members of the LGBTI community should never be placed in isolated confinement.

The HALT Solitary Confinement Act bans any length of isolated confinement of people in such vulnerable groups, including any person: (a) 21 years or younger; (b) 55 or over; (c) with a physical, mental, or medical disability; (d) who is pregnant; or (e) who is or is perceived to be LGBTI.[21]

5. Enhancing staff skills, procedural protections, transparency, and accountability

In addition to all of the substantive changes in the use of solitary confinement described above, the environment and processes that surround the use of solitary confinement also need substantial reform, including with respect to the capabilities of staff to effectively work with incarcerated persons, protections during proceedings resulting in solitary, and transparency and accountability in the operation of isolation and separation.

a. Staff Skills, Tools, and Capabilities

As one important component, correction officers and other staff need additional skills, tools, and capabilities to work with people with serious needs, those who engage in problematic behavior, and all people who are incarcerated. Currently, staff too often use force, discipline, punishment, and isolation in response to problems that arise inside of prisons and jails. Staff need additional training, skills, and capabilities related to, for example, trauma-informed programs and care; the practices and goals of mental health treatment and cognitive and behavioral therapy; inter-personal and communication skills; and de-escalation techniques, dispute resolution, and methods to diffuse difficult situations and to interact in a diffusing, non-confrontational way.

The HALT Solitary Confinement Act would require that all staff working in segregated confinement or RRU units receive 40 hours of initial training, and 24 hours of annual training, on such topics as trauma, dispute resolution, restorative justice, and the purposes and goals of a non-punitive

[19] §137(h), §2(35).
[20] §137(h).
[21] §137(g), §2(32).

therapeutic environment.[22] In addition, HALT requires all hearing officers to receive 40 hours of initial training, and eight hours annual training, on such topics as the physical and psychological effects of isolation, procedural and due process rights, and restorative justice remedies.[23]

b. Procedural Protections

In addition, there must be additional procedural protections in the hearings and administrative proceedings that result in solitary confinement. Such procedures should be conducted by neutral-decision makers, provide meaningful due process, and allow incarcerated persons to be represented by legal counsel. Similarly, once someone is in isolated confinement or otherwise separated from the general prison population, that person should be provided specific plans for how s/he can earn release, and there must be meaningful mechanisms of review to determine whether an individual must remain separated or should return to the general prison population.

The HALT Solitary Confinement Act would require that all hearings that could result in solitary confinement and all assessments to determine if someone is in one of the categories of vulnerable groups who are banned from solitary, must generally take place prior placement in solitary.[24] In addition, HALT would allow incarcerated persons to have legal representation by pro bono lawyers, law students, or approved paralegals or peer advocates during proceedings that could result in solitary.[25] Also, HALT would provide for various mechanisms of release from RRUs back to the general prison population, including the expiration of a disciplinary sentence, periodic reviews by different levels of reviewing committees, earning release through the completion of specified programs, treatment, and/or corrective action, and a one year maximum length of stay absent exceptional circumstances and approval by an independent outside agency.[26] Moreover, HALT provides that a person released from the RRU will have her or his good time restored if s/he had substantially completed the programmatic requirements in the RRU.[27] Also of note, HALT would apply to all types and locations of isolated confinement beyond 17 hours, including disciplinary SHU confinement, administrative segregation, and keeplock.[28]

c. Transparency and Accountability

Moreover, there must be greater transparency and accountability for how isolation and separation are used. There should be mandatory, regular public reporting on how many people are isolated or separated, how long they have been isolated or separated, the demographics of who is being isolated or separated, the justifications for isolation or separation, and the impacts of the use of isolation and separation on costs, safety, self-harm, and recidivism. Also, there should be outside oversight of the use of isolation and separation by entities independent of correctional agencies.

The HALT Solitary Confinement Act would require state and local corrections departments to periodically report on the number of people in isolated confinement and the RRUs, the characteristics of people in such confinement (including related to age, race, gender, and mental health, health, pregnancy, and LGBTI status), and the lengths of stay in isolated confinement and RRUs. Moreover,

[22] §137(m).
[23] §137(m).
[24] §137(k)(i), §137(k)(ii).
[25] §137(k)(i).
[26] §137(l)(i-vi).
[27] §137(l)(vi).
[28] §2(23).

HALT would require that independent, outside agencies monitor and issue public reports regarding compliance with all aspects of the use of segregated confinement and the RRUs described above.[29]

Overall, the interrelated components of the HALT Solitary Confinement Act – creating alternatives to solitary, restricting the criteria for isolation or separation, ending long-term solitary confinement, banning the solitary confinement of particularly vulnerable groups, and enhancing staff capabilities, procedural protections, and transparency and accountability – can serve as a model for other states and localities as well as the federal government for ending the torture of solitary confinement and replacing it with more humane and effective alternatives.

Necessary Action by Congress

Congress has an opportunity and responsibility to take action to reduce the inhumane and counterproductive use of solitary confinement in federal, state, and local prisons, jails, and detention centers across the country. In line with the above model, Congress should enact laws to: 1) limit the use of solitary confinement and create alternatives in federal prisons operated by the Bureau of Prisons (BOP); 2) establish best practices and provide funding for limiting the use of solitary confinement and creating more humane and effective alternatives in states and localities across the country; 3) close federal prisons operated by the BOP that have proven to be so abusive that they are beyond the possibility of reform, such as ADX Florence; and 4) ensure transparency and oversight of federal, state, and local prisons, jails, and detention centers.

1) Federal BOP Prisons

Congress should enact legislation in line with the model components described above in order to end the inhumane and counterproductive use of solitary confinement and create more humane and effective alternatives in all federal BOP prisons and immigration and other detention centers. Specifically, Congress should require that federal prisons and detention centers create more humane and effective alternatives to solitary that involve substantial amounts of out-of-cell time, end long-term solitary confinement, ban the solitary confinement of people in the vulnerable groups outlined above, including young people and people with mental health needs, and restrict the criteria that can result in being separated from the general population. At the very least, Congress should require the BOP to immediately: stop using solitary confinement during pre-trial detention; enhance conditions of confinement by expanding out-of-cell time and programming and eliminating Special Administrative Measures (SAMs); review the classifications of everyone in solitary and immediately remove those individuals who have not engaged in the most egregious conduct while incarcerated; and begin a process for creating more humane and effective alternatives that can replace solitary for all people.

2) State and Local Prisons and Jails

Congress should also enact legislation requiring the U.S. Department of Justice to engage in rule-making to establish national standards for state and local prisons and jails in line with each of the model components described above. In addition, Congress should provide federal funding through the Bureau of Justice Assistance or another federal agency to incentivize and support the reduction in the use of solitary and the creation of humane and effective alternatives by states and localities.

[29] §401-a(4); §45(4-a).

3) Closure of Abusive Federal Prisons

Some federal prisons have proven to be so abusive and problematic in their use of solitary confinement that Congress should require the BOP to close these facilities. The federal supermax prison, United States Penitentiary, Administrative Maximum Facility (ADX) in Florence, Colorado is an example of such a facility. As others will discuss in more detail in their testimony to this Subcommittee, ADX has long been condemned for the abuse of solitary confinement taking place there and the facility needs to be closed in order to end the torturous conditions.[30] In addition, Congress should prohibit the BOP from opening any supermax prisons in the future and specifically in the immediate term should prohibit the BOP from using the recently acquired facility at Thomson, Illinois as a supermax prison and require that Thomson only be used as a federal prison if any forms of separation are in compliance with the model standards discussed above.

4) Transparency and Oversight

Congress should require that all federal, state, and local prisons, jails, detention centers, and juvenile facilities publicly report the types of information related to the use of solitary described above and provide such information directly to the Bureau of Justice Statistics (BJS). In turn, the BJS should be required to compile such information and at least annually publish the data and a statistical analysis of the data so that the public is able to have an understanding of how solitary confinement and/or alternatives are being utilized around the country. In addition to such reporting, Congress should grant independent, non-profit or community entities access to monitor conditions of confinement, including the use of solitary confinement, in federal, state, and local facilities as one mechanism to foster greater transparency and accountability. The CA's access to monitor conditions in New York State prisons could serve as a model for other states, localities, and the federal government to grant access to outside entities to play a monitoring role. Moreover, Congress should formally call upon the U.S. Department of State to: grant the request by the U.N. Special Rapporteur on Torture to visit prisons in the United States to investigate the use of solitary confinement, and help facilitate full-access site visits to any and all federal, state, and local prisons, jails, and detention requested to be seen by the Special Rapporteur.

Conclusion

The use of solitary confinement is not only inhumane but runs directly counter to one of the main purposes of correctional facilities across the country, namely to help prepare the people who are incarcerated for successful return to their communities. As one person who is incarcerated and held in solitary confinement in a New York State prison recently commented,

> *One day, most of us will be released back into society . . . if I had to make the choice, I'd rather have a person who committed a crime living next to me if he was rehabilitated, offered a trade, education, and was given fair, humane treatment, one who has something to give back to the community as opposed to one who was locked in a cage, treated like an animal and abused physically, mentally, verbally, and emotionally . . . that kind of treatment will only make a [person] worse!* – Person held in solitary confinement in New York State prison.

[30] *See, e.g.*, Pardiss Kebriaei, "The Torture that Flourishes from Gitmo to an American Supermax, Jan. 30, 2014, *available at*: http://www.motherjones.com/politics/2013/05/10-worst-prisons-america-part-1-adx; James Ridgeway and Jean Casella, "America's 10 Worst Prisons: ADX: A Federal isolation facility that's 'pretty close' to hell," May 1, 2013, *available at*: http://www.motherjones.com/politics/2013/05/10-worst-prisons-america-part-1-adx.

Today, as this hearing takes place, our public institutions are subjecting tens of thousands of people to the torture of solitary confinement, inflicting severe harm on these individuals, and in turn making our prisons and our communities less safe. Congress needs to take action towards ending the widespread, racially disproportionate use of solitary at the federal, state, and local level, and to shift the paradigm of how our public institutions operate from one of inhumane and counterproductive punishment, isolation, and deprivation, to one of humane and effective rehabilitation and treatment.

Moreover, Congress must recognize that solitary confinement is but one severe component of a broader broken system of mass incarceration, racial injustice, and a paradigm of punishment over rehabilitation and treatment, and that the fundamental transformation necessary for reform of solitary confinement should be applied to a myriad of other policies and practices. In the same way that Congress must take action to reduce the use of solitary confinement and create more humane and effective alternatives, Congress must also act to, for example, reduce sentence lengths, promote the release of more people on parole who have demonstrated their rehabilitation and low risk to society, foster alternatives to incarceration and the use of restorative justice, restore access to Pell grants to people who are incarcerated, and ultimately begin a process of de-carceration, racial justice through healing and community empowerment, and a paradigm shift from punishment, warehousing, and the infliction of harm toward rehabilitation, treatment, and empowerment.

Ultimately, we need a fundamental transformation in how we address social challenges, people's needs, and difficult behaviors in our correctional institutions and in our communities. The Humane Alternatives to Long Term (HALT) Solitary Confinement provides an example of moving toward that transformation by taking a comprehensive approach to reducing the use of solitary confinement and creating more humane and effective alternatives. Congress should adopt, adapt, and apply the key principles from the HALT Solitary Confinement Act – creating alternatives to solitary, restricting the criteria that can result in solitary, ending long-term solitary, prohibiting solitary for particularly vulnerable groups, and enhancing staff capabilities, procedural protections, and transparency and accountability – and thereby begin a process of ending the torture of solitary confinement at the federal, state, and local levels and creating more humane and effective alternatives.

STATE OF NEW YORK

8588

IN ASSEMBLY

January 24, 2014

Introduced by M. of A. AUBRY -- read once and referred to the Committee on Correction

AN ACT to amend the correction law, in relation to restricting the use of segregated confinement and creating alternative therapeutic and rehabilitative confinement options

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 137 of the correction law is amended by adding a new subdivision 5-a to read as follows:

5-A. THE USE OF SEGREGATED CONFINEMENT, EXCLUSION OF CERTAIN SPECIAL POPULATIONS, AND LENGTH OF TIME ANY PERSON CAN SPEND IN SEGREGATED CONFINEMENT SHALL BE RESTRICTED IN ACCORDANCE WITH PARAGRAPHS (G), (H), (I), (J), (K), (L), (M), AND (N) OF SUBDIVISION SIX OF THIS SECTION OR ANY OTHER APPLICABLE LAW.

S 2. Subdivision 23 of section 2 of the correction law, as added by chapter 1 of the laws of 2008, is amended to read as follows:

23. "Segregated confinement" means the [disciplinary] confinement, OTHER THAN FOR EMERGENCY CONFINEMENT AS DEFINED IN SUBDIVISION THIRTY-THREE OF THIS SECTION, OR FOR DOCUMENTED MEDICAL REASONS OR MENTAL HEALTH EMERGENCIES, of an inmate in a special housing unit or in a separate keeplock housing unit OR ANY FORM OF KEEPLOCK, OR CELL CONFINEMENT FOR MORE THAN SEVENTEEN HOURS A DAY OTHER THAN IN A FACILITY-WIDE LOCKDOWN. Special housing units and separate keeplock units are housing units that consist of cells grouped so as to provide separation from the general population, and may be used to house inmates confined pursuant to the disciplinary procedures described in regulations.

S 3. Section 2 of the correction law is amended by adding five new subdivisions 32, 33, 34, 35, and 36 to read as follows:

32. "SPECIAL POPULATIONS" MEANS ANY PERSON: (A) TWENTY-ONE YEARS OF AGE OR YOUNGER; (B) FIFTY-FIVE YEARS OF AGE OR OLDER; (C) WITH A DISABILITY AS DEFINED IN SUBDIVISION TWENTY-ONE OF SECTION TWO HUNDRED NINETY-TWO OF THE EXECUTIVE LAW, INCLUDING BUT NOT LIMITED TO, FOR PURPOSES OF MENTAL IMPAIRMENT, PERSONS WITH A SERIOUS MENTAL ILLNESS AS DEFINED IN PARAGRAPH (E) OF SUBDIVISION SIX OF SECTION ONE HUNDRED THIRTY-SEVEN

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

LBD13381-02-4

OF THIS CHAPTER; (D) WHO IS PREGNANT; OR (E) WHO IS OR IS PERCEIVED TO BE LESBIAN, GAY, BISEXUAL, TRANSGENDER, OR INTERSEX.

33. "EMERGENCY CONFINEMENT" MEANS CONFINEMENT IN ANY CELL FOR NO MORE

THAN TWENTY-FOUR CONSECUTIVE HOURS AND NO MORE THAN FORTY-EIGHT TOTAL HOURS IN ANY FIFTEEN DAY PERIOD, WITH AT LEAST ONE HOUR OF OUT-OF-CELL RECREATION FOR EVERY TWENTY-FOUR HOURS.

34. "SHORT-TERM SEGREGATED CONFINEMENT" MEANS SEGREGATED CONFINEMENT OF NO MORE THAN THREE CONSECUTIVE DAYS AND SIX DAYS TOTAL WITHIN ANY THIRTY DAY PERIOD.

35. "EXTENDED SEGREGATED CONFINEMENT" MEANS SEGREGATED CONFINEMENT OF NO MORE THAN FIFTEEN CONSECUTIVE DAYS AND TWENTY DAYS TOTAL WITHIN ANY SIXTY DAY PERIOD.

36. "RESIDENTIAL REHABILITATION UNIT" MEANS SECURE AND SEPARATE UNITS USED FOR THERAPY, TREATMENT, AND REHABILITATIVE PROGRAMMING OF PEOPLE WHO WOULD BE PLACED IN SEGREGATED CONFINEMENT FOR MORE THAN FIFTEEN DAYS. SUCH UNITS ARE THERAPEUTIC AND TRAUMA-INFORMED, AND AIM TO ADDRESS INDIVIDUAL TREATMENT AND REHABILITATION NEEDS AND UNDERLYING CAUSES OF PROBLEMATIC BEHAVIORS.

S 4. Subdivision 6 of section 137 of the correction law is amended by adding eight new paragraphs (g), (h), (i), (j), (k), (l), (m), and (n) to read as follows:

(G) PERSONS IN A SPECIAL POPULATION AS DEFINED IN SUBDIVISION THIRTY-TWO OF SECTION TWO OF THIS CHAPTER SHALL NOT BE PLACED IN SEGREGATED CONFINEMENT FOR ANY LENGTH OF TIME. ANY SUCH PERSONS THE DEPARTMENT WOULD OTHERWISE PLACE IN SEGREGATED CONFINEMENT SHALL REMAIN IN GENERAL POPULATION OR BE DIVERTED TO A RESIDENTIAL REHABILITATION UNIT. IF A PERSON IN A SPECIAL POPULATION IS PLACED IN EMERGENCY CONFINEMENT FOR MORE THAN SIXTEEN HOURS, HE OR SHE SHALL BE ALLOWED OUT-OF-CELL AT LEAST FOUR HOURS.

(H) NO PERSON MAY BE IN SEGREGATED CONFINEMENT FOR LONGER THAN NECESSARY AND NEVER MORE THAN FIFTEEN CONSECUTIVE DAYS NOR TWENTY TOTAL DAYS WITHIN ANY SIXTY DAY PERIOD. AT THESE LIMITS, PERSONS MUST BE RELEASED FROM SEGREGATED CONFINEMENT OR DIVERTED TO A SEPARATE SECURE RESIDENTIAL REHABILITATION UNIT.

(I) (I) ALL SEGREGATED CONFINEMENT AND RESIDENTIAL REHABILITATION UNITS SHALL CREATE THE LEAST RESTRICTIVE ENVIRONMENT NECESSARY FOR THE SAFETY OF RESIDENTS, STAFF, AND THE SECURITY OF THE FACILITY.

(II) PERSONS IN SEGREGATED CONFINEMENT SHALL BE ALLOWED OUT-OF-CELL AT LEAST FOUR HOURS PER DAY, INCLUDING AT LEAST ONE HOUR FOR RECREATION. PERSONS IN RESIDENTIAL REHABILITATION UNITS SHALL BE ALLOWED AT LEAST SIX HOURS PER DAY OUT-OF-CELL FOR PROGRAMMING, SERVICES, TREATMENT, AND/OR MEALS, AND AN ADDITIONAL MINIMUM OF ONE HOUR FOR RECREATION. RECREATION IN ALL UNITS SHALL TAKE PLACE IN A CONGREGATE SETTING, UNLESS EXCEPTIONAL CIRCUMSTANCES MEAN DOING SO WOULD CREATE A SIGNIFICANT AND UNREASONABLE RISK TO THE SAFETY AND SECURITY OF OTHER INCARCERATED PERSONS, STAFF, OR THE FACILITY.

(III) PERSONS IN SEGREGATED CONFINEMENT AND RESIDENTIAL REHABILITATION UNITS SHALL: (A) RECEIVE AT LEAST COMPARABLE MEDICAL AND MENTAL HEALTH CARE TO GENERAL POPULATION, INCLUDING OBSTETRICAL AND GYNECOLOGICAL SERVICES, IN A SETTING ENSURING PRIVACY AND CONFIDENTIALITY; (B) HAVE THEIR BASIC NEEDS MET IN A MANNER COMPARABLE TO GENERAL POPULATION, AND NEVER HAVE RESTRICTED DIETS NOR ANY ORDER RESTRICTING ANY BASIC NEED IMPOSED AS A FORM OF PUNISHMENT; (C) IF IN A RESIDENTIAL REHABILITATION UNIT BE ABLE TO RETAIN ALL THEIR PROPERTY WITH THEM; (D) HAVE COMPARABLE ACCESS TO ALL SERVICES AND MATERIALS AS IN GENERAL POPULATION; AND (E) BE ABLE TO RETAIN PROGRAM MATERIALS, COMPLETE PROGRAM ASSIGNMENTS, AND

CONTINUE UPON RETURN ALL UNCOMPLETED PROGRAMS THEY WERE IN PRIOR TO PLACEMENT IN SEGREGATED CONFINEMENT OR A RESIDENTIAL REHABILITATION

UNIT.

(IV) WITHIN TEN DAYS OF ADMISSION TO A RESIDENTIAL REHABILITATION UNIT, AN ASSESSMENT COMMITTEE COMPRISED OF PROGRAM, REHABILITATION, MENTAL HEALTH, AND SECURITY STAFF SHALL ADMINISTER AN ASSESSMENT AND DEVELOP IN COLLABORATION WITH THE RESIDENT AN INDIVIDUAL REHABILITATION PLAN, BASED UPON THE PERSON'S MEDICAL, MENTAL HEALTH, AND PROGRAMMING NEEDS, THAT IDENTIFIES SPECIFIC GOALS AND PROGRAMS, TREATMENT, AND SERVICES TO BE OFFERED, WITH PROJECTED TIME FRAMES FOR COMPLETION AND RELEASE FROM THE RESIDENTIAL REHABILITATION UNIT.

(V) RESIDENTS IN RESIDENTIAL REHABILITATION UNITS SHALL HAVE ACCESS TO PROGRAMS AND JOBS COMPARABLE TO ALL CORE OUT-OF-CELL PROGRAMS IN GENERAL POPULATION. SUCH RESIDENTS SHALL ALSO HAVE ACCESS TO ADDITIONAL OUT-OF-CELL, TRAUMA-INFORMED THERAPEUTIC PROGRAMMING AIMED AT PROMOTING PERSONAL DEVELOPMENT, ADDRESSING UNDERLYING CAUSES OF PROBLEMATIC BEHAVIOR RESULTING IN PLACEMENT IN A RESIDENTIAL REHABILITATION UNIT, AND HELPING PREPARE FOR DISCHARGE FROM THE UNIT AND TO THE COMMUNITY.

(VI) IF THE DEPARTMENT ESTABLISHES THAT A PERSON COMMITTED AN ACT DEFINED IN SUBPARAGRAPH (III) OF PARAGRAPH (J) OF THIS SUBDIVISION WHILE IN SEGREGATED CONFINEMENT OR A RESIDENTIAL REHABILITATION UNIT AND POSES A SIGNIFICANT AND UNREASONABLE RISK TO THE SAFETY AND SECURITY OF OTHER RESIDENTS OR STAFF, THE DEPARTMENT MAY RESTRICT THAT PERSON'S PARTICIPATION IN PROGRAMMING AND OUT-OF-CELL TIME AS NECESSARY FOR THE SAFETY OF OTHER RESIDENTS AND STAFF. IF RESTRICTIONS ARE IMPOSED IN SEGREGATED CONFINEMENT, THE DEPARTMENT MUST STILL PROVIDE AT LEAST TWO HOURS OUT-OF-CELL TIME. IF RESTRICTIONS ARE IMPOSED IN A RESIDENTIAL REHABILITATION UNIT, THE DEPARTMENT SHALL DEVELOP A NEW REHABILITATION PLAN, PROVIDE AT LEAST THREE HOURS OUT-OF-CELL TIME, AND ON EACH DAY PROGRAMMING RESTRICTIONS ARE IMPOSED PROVIDE AT LEAST TWO HOURS OF OUT-OF-CELL ONE-ON-ONE THERAPY WITH THE RESIDENT AND ONE HOUR OF OUT-OF-CELL RECREATION. THE DEPARTMENT SHALL REMOVE ALL RESTRICTIONS WITHIN FIFTEEN DAYS, AND MAY NOT IMPOSE NEW RESTRICTIONS UNLESS THE PERSON COMMITS A NEW ACT DEFINED IN SUBPARAGRAPH (III) OF PARAGRAPH (J) OF THIS SUBDIVISION.

(VII) RESTRAINTS SHALL NOT BE USED WHEN RESIDENTS LEAVE A CELL OR HOUSING AREA FOR ON-UNIT OPERATIONS, UNLESS A RESIDENT WAS FOUND AT A HEARING TO HAVE COMMITTED AN ACT OF VIOLENCE ON THE RESIDENTIAL REHABILITATION UNIT WITHIN THE PREVIOUS SEVEN DAYS OR IS CURRENTLY ACTING IN AN UNACCEPTABLY VIOLENT MANNER, AND NOT USING RESTRAINTS WOULD CREATE A SIGNIFICANT AND UNREASONABLE RISK TO THE SAFETY AND SECURITY OF OTHER RESIDENTS OR STAFF.

(VIII) THERE SHALL BE A PRESUMPTION AGAINST THE IMPOSITION OF MISBEHAVIOR REPORTS, PURSUIT OF DISCIPLINARY CHARGES, OR IMPOSITION OF ADDITIONAL TIME IN SEGREGATED CONFINEMENT FOR INDIVIDUALS IN SEGREGATED CONFINEMENT OR RESIDENTIAL REHABILITATION UNITS. THE DEPARTMENT SHALL USE OTHER NON-DISCIPLINARY INTERVENTIONS TO ADDRESS ANY PROBLEMATIC BEHAVIOR. NO RESIDENT SHALL RECEIVE SEGREGATED CONFINEMENT TIME WHILE IN SEGREGATED CONFINEMENT OR A RESIDENTIAL REHABILITATION UNIT EXCEPT WHERE IT IS DETERMINED PURSUANT TO A DISCIPLINARY HEARING THAT HE OR SHE COMMITTED ONE OR MORE ACT LISTED IN SUBPARAGRAPH (III) OF PARAGRAPH (J) OF THIS SUBDIVISION WHILE ON THE UNIT, AND THAT HE OR SHE POSES A SIGNIFICANT AND UNREASONABLE RISK TO THE SAFETY OF RESIDENTS OR STAFF, OR THE SECURITY OF THE FACILITY.

(J) (I) THE DEPARTMENT MAY PLACE A PERSON IN EMERGENCY CONFINEMENT WITHOUT A HEARING IF NECESSARY FOR IMMEDIATELY DEFUSING A SUBSTANTIAL

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AND IMMINENT THREAT TO SAFETY OR SECURITY OF INCARCERATED PERSONS OR STAFF.

(II) THE DEPARTMENT IS ENCOURAGED TO USE RESPONSES OTHER THAN SEGREGATED CONFINEMENT IN RESPONSE TO DEPARTMENT RULE VIOLATIONS. THE DEPARTMENT MAY PLACE A PERSON IN SHORT TERM SEGREGATED CONFINEMENT IF IT DETERMINES, PURSUANT TO AN EVIDENTIARY HEARING, THAT THE PERSON COMMITTED A DEPARTMENT RULE VIOLATION WARRANTING SUCH CONFINEMENT AND THE LENGTH OF SEGREGATED CONFINEMENT IMPOSED IS PROPORTIONATE TO THE VIOLATION.

(III) THE DEPARTMENT MAY PLACE A PERSON IN EXTENDED SEGREGATED CONFINEMENT OR A RESIDENTIAL REHABILITATION UNIT ONLY IF, PURSUANT TO AN EVIDENTIARY HEARING, IT DETERMINES THE PERSON COMMITTED, WHILE UNDER DEPARTMENT CUSTODY, OR PRIOR TO CUSTODY IF THE COMMISSIONER OR HIS OR HER DESIGNEE DETERMINES IN WRITING BASED ON SPECIFIC OBJECTIVE CRITERIA THE ACTS WERE SO HEINOUS OR DESTRUCTIVE THAT GENERAL POPULATION HOUSING CREATES A SIGNIFICANT RISK OF IMMINENT SERIOUS PHYSICAL INJURY TO STAFF OR OTHER INCARCERATED PERSONS, ONE OF THE FOLLOWING ACTS: (A) CAUSING OR ATTEMPTING TO CAUSE SERIOUS PHYSICAL INJURY OR DEATH TO ANOTHER PERSON; (B) COMPELLING OR ATTEMPTING TO COMPEL ANOTHER PERSON, BY FORCE OR THREAT OF FORCE, TO ENGAGE IN A SEXUAL ACT; (C) EXTORTING ANOTHER, BY FORCE OR THREAT OF FORCE, FOR PROPERTY OR MONEY; (D) COERCING ANOTHER, BY FORCE OR THREAT OF FORCE, TO VIOLATE ANY RULE; (E) LEADING, ORGANIZING, OR INCITING A SERIOUS DISTURBANCE THAT RESULTS IN THE TAKING OF A HOSTAGE, MAJOR PROPERTY DAMAGE, OR PHYSICAL HARM TO ANOTHER PERSON; (F) PROCURING DEADLY WEAPONS OR OTHER DANGEROUS CONTRABAND THAT POSES A SERIOUS THREAT TO THE SECURITY OF THE INSTITUTION; OR (G) ESCAPING, ATTEMPTING TO ESCAPE OR FACILITATING AN ESCAPE FROM A FACILITY, OR WHILE UNDER SUPERVISION OUTSIDE OF SUCH A FACILITY, RESULTING IN PHYSICAL HARM OR THREATENED PHYSICAL HARM TO OTHERS, OR IN MAJOR DESTRUCTION TO THE PHYSICAL PLANT.

(IV) NO PERSON MAY BE HELD IN SEGREGATED CONFINEMENT FOR PROTECTIVE CUSTODY. ANY UNIT USED FOR PROTECTIVE CUSTODY MUST, AT A MINIMUM, CONFORM TO REQUIREMENTS GOVERNING RESIDENTIAL REHABILITATION UNITS UNDER PARAGRAPHS (I), (L), (M), AND (N) OF THIS SUBDIVISION. WHEN APPLIED TO A PERSON IN PROTECTIVE CUSTODY, THE CRITERIA IN SUBPARAGRAPH (II) AND CLAUSE (A) OF SUBPARAGRAPH (III) OF PARAGRAPH (L) OF THIS SUBDIVISION SHALL BE THAT "THE PERSON STILL IS IN NEED OF PROTECTIVE CUSTODY"; AND THE CRITERIA IN SUBPARAGRAPH (IV) OF PARAGRAPH (1) OF THIS SUBDIVISION SHALL BE THAT "THE PERSON IS IN VOLUNTARY PROTECTIVE CUSTODY."

(K) (I) ALL HEARINGS TO DETERMINE IF A PERSON MAY BE PLACED IN SHORT TERM OR EXTENDED SEGREGATED CONFINEMENT SHALL OCCUR PRIOR TO PLACEMENT IN SEGREGATED CONFINEMENT UNLESS A SECURITY SUPERVISOR, WITH WRITTEN APPROVAL OF A FACILITY SUPERINTENDENT OR DESIGNEE, REASONABLY BELIEVES THE PERSON FITS THE CRITERIA FOR EXTENDED SEGREGATED CONFINEMENT. IF A HEARING DOES NOT TAKE PLACE PRIOR TO PLACEMENT, IT SHALL OCCUR AS SOON AS REASONABLY PRACTICABLE AND AT MOST WITHIN FIVE DAYS OF TRANSFER UNLESS THE CHARGED PERSON SEEKS MORE TIME. ALL HEARINGS SHALL AT A MINIMUM COMPLY WITH THE STANDARDS OF ALL DEPARTMENT RULES FOR DISCIPLINARY HEARINGS AS OF JANUARY FIRST, TWO THOUSAND FIFTEEN. PERSONS AT ALL HEARINGS SHALL BE PERMITTED TO BE REPRESENTED BY ANY PRO BONO OR RETAINED ATTORNEY, OR LAW STUDENT; OR ANY PARALEGAL OR INCARCERATED PERSON UNLESS THE DEPARTMENT REASONABLY DISAPPROVES OF SUCH PARALEGAL OR INCARCERATED PERSON BASED UPON OBJECTIVE WRITTEN CRITERIA DEVELOPED BY THE DEPARTMENT CONCERNING QUALIFICATIONS TO BE AN ASSISTANT AT A HEARING.

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(II) ON NOTIFICATION A PERSON IS TO BE PLACED IN SEGREGATED CONFINEMENT AND PRIOR TO SUCH PLACEMENT, HE OR SHE SHALL BE ASSESSED BY RELE-

VANT LICENSED MEDICAL, SOCIAL, AND/OR MENTAL HEALTH PROFESSIONALS TO DETERMINE WHETHER HE OR SHE BELONGS TO ANY SPECIAL POPULATION AS DEFINED IN SUBDIVISION THIRTY-TWO OF SECTION TWO OF THIS CHAPTER. IF A PERSON DISPUTES A DETERMINATION THAT HE OR SHE IS NOT IN A SPECIAL POPULATION, HE OR SHE SHALL BE PROVIDED A HEARING WITHIN SEVENTY-TWO HOURS OF PLACEMENT IN SEGREGATED CONFINEMENT TO CHALLENGE SUCH DETERMINATION.

(L) (I) ANY SANCTION IMPOSED ON AN INCARCERATED PERSON REQUIRING SEGREGATED CONFINEMENT SHALL RUN WHILE THE PERSON IS IN A RESIDENTIAL REHABILITATION UNIT AND THE PERSON SHALL BE DISCHARGED FROM THE UNIT BEFORE OR AT THE TIME THAT SANCTION EXPIRES.

(II) WITHIN THIRTY DAYS OF ADMISSION TO A RESIDENTIAL REHABILITATION UNIT AND EVERY SIXTY DAYS THEREAFTER, THE ASSESSMENT COMMITTEE SHALL REVIEW EACH RESIDENT'S PROGRESS AND DISCHARGE A RESIDENT UNLESS IT DETERMINES IN WRITING THROUGH CREDIBLE AND RELIABLE EVIDENCE THAT THERE IS CURRENTLY A SUBSTANTIAL LIKELIHOOD THAT THE RESIDENT WILL COMMIT AN ACT LISTED IN SUBPARAGRAPH (III) OF PARAGRAPH (J) OF THIS SUBDIVISION.

(III) WITHIN ONE HUNDRED DAYS AFTER ADMISSION TO A RESIDENTIAL REHABILITATION UNIT AND EVERY ONE HUNDRED TWENTY DAYS THEREAFTER, A REHABILITATION REVIEW COMMITTEE, COMPRISED OF CORRECTIONAL FACILITY EXECUTIVE LEVEL PROGRAM, REHABILITATION, AND SECURITY STAFF SHALL DISCHARGE A RESIDENT FROM A RESIDENTIAL REHABILITATION UNIT UNLESS IT DETERMINES IN WRITING, AFTER CONSIDERING THE RESIDENT'S ORAL STATEMENT AND ANY WRITTEN SUBMISSIONS BY THE RESIDENT OR OTHERS, THAT: (A) THERE IS CURRENTLY A SUBSTANTIAL LIKELIHOOD THAT THE RESIDENT WILL COMMIT AN ACT LISTED IN SUBPARAGRAPH (III) OF PARAGRAPH (J) OF THIS SUBDIVISION, SIGNIFICANT THERAPEUTIC REASONS EXIST FOR KEEPING THE RESIDENT IN THE UNIT TO COMPLETE SPECIFIC PROGRAM OR TREATMENT GOALS, AND REMAINING IN THE UNIT IS IN THE BEST INTEREST OF THE RESIDENT; OR (B) THE RESIDENT HAS COMMITTED AN ACT LISTED IN SUBPARAGRAPH (III) OF PARAGRAPH (J) OF THIS SUBDIVISION DURING THE ONE HUNDRED TWENTY DAYS PRIOR TO THE REVIEW.

(IV) IF A RESIDENT HAS SPENT ONE YEAR IN A RESIDENTIAL REHABILITATION UNIT OR IS WITHIN SIXTY DAYS OF A FIXED OR TENTATIVELY APPROVED DATE FOR RELEASE FROM A CORRECTIONAL FACILITY, HE SHALL BE DISCHARGED FROM THE UNIT UNLESS HE OR SHE COMMITTED AN ACT LISTED IN SUBPARAGRAPH (III) OF PARAGRAPH (J) OF THIS SUBDIVISION WITHIN THE PRIOR ONE HUNDRED EIGHTY DAYS OR HE OR SHE CAUSED THE DEATH OF ANOTHER PERSON WHILE UNDER DEPARTMENT CUSTODY OR ESCAPED OR ATTEMPTED TO ESCAPE FROM DEPARTMENT OR OTHER POLICE CUSTODY AND THE REHABILITATION REVIEW COMMITTEE DETERMINES HE OR SHE POSES A SIGNIFICANT AND UNREASONABLE RISK TO THE SAFETY OR SECURITY OF INCARCERATED PERSONS OR STAFF, BUT IN ANY SUCH CASE THE DECISION NOT TO DISCHARGE SUCH PERSON SHALL BE IMMEDIATELY AND AUTOMATICALLY SUBJECTED TO AN INDEPENDENT REVIEW BY THE JUSTICE CENTER ENTITY WITH OVERSIGHT RESPONSIBILITIES UNDER SECTION FOUR HUNDRED ONE-A OF THIS CHAPTER, WITH TIMELY NOTICE GIVEN TO THE INCARCERATED PERSON OF THE SUBMISSION OF THE CASE TO THE JUSTICE CENTER AND OF THE DECISION OF THE JUSTICE CENTER. IF THE JUSTICE CENTER DISAGREES WITH THE DECISION TO NOT DISCHARGE, THE RESIDENT WILL BE IMMEDIATELY RELEASED FROM THE RESIDENTIAL REHABILITATION UNIT. IF THE JUSTICE CENTER AGREES WITH THE DECISION TO NOT DISCHARGE, THE DISCHARGE PROCEDURES SET FORTH IN THIS PARAGRAPH SHALL APPLY INCLUDING ANNUAL REVIEWS BY THE JUSTICE CENTER OF A DECISION BY THE REHABILITATION REVIEW COMMITTEE TO REFUSE TO RELEASE A RESIDENT, HOWEVER, UNDER NO CIRCUMSTANCES SHALL ANY SUCH PERSON BE HELD IN THE RESIDENTIAL REHABILITATION UNIT FOR MORE THAN THREE YEARS UNLESS THE REHABILITATION REVIEW COMMITTEE DETERMINES HE OR SHE COMMITTED AN

ACT LISTED IN SUBPARAGRAPH (III) OF PARAGRAPH (J) OF THIS SUBDIVISION

WITHIN ONE HUNDRED EIGHTY DAYS PRIOR TO THE EXPIRATION OF THE THREE YEAR PERIOD AND POSES A SIGNIFICANT AND UNREASONABLE RISK TO THE SAFETY OR SECURITY OF INCARCERATED PERSONS OR STAFF.

(V) AFTER EACH ASSESSMENT COMMITTEE AND REHABILITATION REVIEW COMMITTEE DECISION, IF A RESIDENT IS NOT DISCHARGED FROM THE RESIDENTIAL REHABILITATION UNIT, THE RESPECTIVE COMMITTEE SHALL SPECIFY IN WRITING (A) THE REASONS FOR THE DETERMINATION AND (B) THE PROGRAM, TREATMENT, SERVICE, AND/OR CORRECTIVE ACTION REQUIREMENTS FOR DISCHARGE. THE RESIDENT SHALL BE GIVEN ACCESS TO THE PROGRAMS, TREATMENT AND SERVICES SPECIFIED, AND SHALL BE DISCHARGED FROM THE RESIDENTIAL REHABILITATION UNIT UPON COMPLETION UNLESS THE RESIDENT HAS COMMITTED AN ACT LISTED IN SUBPARAGRAPH (III) OF PARAGRAPH (J) OF THIS SUBDIVISION DURING THE PREVIOUS ONE HUNDRED TWENTY DAYS.

(VI) WHEN A RESIDENT IS DISCHARGED FROM A RESIDENTIAL REHABILITATION UNIT, ANY REMAINING SENTENCE TO SEGREGATED CONFINEMENT TIME WILL BE DISMISSED. IF A RESIDENT SUBSTANTIALLY COMPLETES HIS REHABILITATION PLAN, HE OR SHE WILL HAVE ALL GOOD TIME RESTORED UPON DISCHARGE FROM THE UNIT.

(M) ALL STAFF, INCLUDING SUPERVISORY STAFF, WORKING IN A SEGREGATED CONFINEMENT OR RESIDENTIAL REHABILITATION UNIT SHALL UNDERGO A MINIMUM OF FORTY HOURS OF TRAINING PRIOR TO WORKING ON THE UNIT AND TWENTY-FOUR HOURS ANNUALLY THEREAFTER, ON SUBSTANTIVE CONTENT DEVELOPED IN CONSULTATION WITH RELEVANT EXPERTS, INCLUDING TRAUMA, PSYCHIATRIC AND RESTORATIVE JUSTICE EXPERTS, ON TOPICS INCLUDING, BUT NOT LIMITED TO, THE PURPOSE AND GOALS OF THE NON-PUNITIVE THERAPEUTIC ENVIRONMENT AND DISPUTE RESOLUTION METHODS. PRIOR TO PRESIDING OVER ANY HEARINGS, ALL HEARING OFFICERS SHALL UNDERGO A MINIMUM OF FORTY HOURS OF TRAINING, AND EIGHT HOURS ANNUALLY THEREAFTER, ON RELEVANT TOPICS, INCLUDING BUT NOT LIMITED TO, THE PHYSICAL AND PSYCHOLOGICAL EFFECTS OF SEGREGATED CONFINEMENT, PROCEDURAL AND DUE PROCESS RIGHTS OF THE ACCUSED, AND RESTORATIVE JUSTICE REMEDIES.

(N) THE DEPARTMENT SHALL MAKE PUBLICLY AVAILABLE MONTHLY REPORTS OF THE NUMBER OF PEOPLE AS OF THE FIRST DAY OF EACH MONTH, AND SEMI-ANNUAL AND ANNUAL CUMULATIVE REPORTS OF THE TOTAL NUMBER OF PEOPLE, WHO ARE (I) IN SEGREGATED CONFINEMENT; AND (II) IN RESIDENTIAL REHABILITATION UNITS; ALONG WITH A BREAKDOWN OF THE NUMBER OF PEOPLE (III) IN SEGREGATED CONFINEMENT AND (IV) IN RESIDENTIAL REHABILITATION UNITS BY (A) AGE; (B) RACE; (C) GENDER; (D) MENTAL HEALTH LEVEL; (E) HEALTH STATUS; (F) DRUG ADDICTION STATUS; (G) PREGNANCY STATUS; (H) LESBIAN, GAY, BISEXUAL, TRANSGENDER, OR INTERSEX STATUS; AND (I) TOTAL CONTINUOUS LENGTH OF STAY, AND TOTAL LENGTH OF STAY IN THE PAST SIXTY DAYS, IN SEGREGATED CONFINEMENT OR A RESIDENTIAL REHABILITATION UNIT.

S 5. Section 401-a of the correction law is amended by adding a new subdivision 4 to read as follows:

4. THE JUSTICE CENTER SHALL ASSESS COMPLIANCE WITH THE TERMS OF, AND AT LEAST ANNUALLY REPORT ON AND MAKE RECOMMENDATIONS TO THE DEPARTMENT, LEGISLATURE, AND PUBLIC IN WRITING, REGARDING ALL ASPECTS OF SEGREGATED CONFINEMENT AND RESIDENTIAL REHABILITATION UNITS IN STATE CORRECTIONAL FACILITIES PURSUANT TO SECTION ONE HUNDRED THIRTY-SEVEN OF THIS CHAPTER, INCLUDING BUT NOT LIMITED TO POLICIES AND PRACTICES REGARDING: (A) PLACEMENT OF PERSONS; (B) SPECIAL POPULATIONS; (C) LENGTH OF TIME SPENT; (D) HEARINGS AND PROCEDURES; (E) CONDITIONS, PROGRAMS, SERVICES, CARE, AND TREATMENT; AND (F) ASSESSMENTS AND REHABILITATION PLANS, AND PROCEDURES AND DETERMINATIONS MADE AS TO WHETHER PERSONS SHOULD REMAIN IN RESIDENTIAL REHABILITATION UNITS.

S 6. Subdivision 4 of section 45 of the correction law, as amended by section 15 of subpart A of part C of chapter 62 of the laws of 2011, is amended to read as follows:

4. (A) Establish procedures to assure effective investigation of grievances of, and conditions affecting, inmates of local correctional facilities. Such procedures shall include but not be limited to receipt of written complaints, interviews of persons, and on-site monitoring of conditions. In addition, the commission shall establish procedures for the speedy and impartial review of grievances referred to it by the commissioner of the department of corrections and community supervision.

(B) THE COMMISSION SHALL ALSO ASSESS COMPLIANCE WITH THE TERMS OF, AND AT LEAST ANNUALLY REPORT ON AND MAKE RECOMMENDATIONS TO THE DEPARTMENT, LEGISLATURE, AND PUBLIC, REGARDING ALL ASPECTS OF SEGREGATED CONFINEMENT AND RESIDENTIAL REHABILITATION UNITS IN FACILITIES GOVERNED BY SECTION FIVE HUNDRED-K OF THIS CHAPTER, INCLUDING BUT NOT LIMITED TO POLICIES AND PRACTICES FOR BOTH REGARDING: (I) PLACEMENT OF PERSONS; (II) SPECIAL POPULATIONS; (III) LENGTH OF TIME SPENT; (IV) HEARINGS AND PROCEDURES; (V) CONDITIONS, PROGRAMS, SERVICES, CARE, AND TREATMENT; AND (VI) ASSESSMENTS AND REHABILITATION PLANS, AND PROCEDURES AND DETERMINATIONS MADE AS TO WHETHER PERSONS SHOULD REMAIN IN RESIDENTIAL REHABILITATION UNITS.

S 7. This act shall take effect immediately.

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February 21, 2014

To: Chairman Durbin, Ranking Member Cruz and Members of the Subcommittee

I am a civil rights lawyer who has been practicing in the area of constitutional violations associated with solitary confinement for the last ten years. On a weekly basis I receive numerous requests for help from people whose loved ones are incarcerated in a segregation setting in a New Mexico prison or jail. I also receive letters from people across the country desperately seeking help for a family member whose mental health is failing as a result of long term segregation.

In New Mexico solitary confinement is routinely used for pre trial detainees with mental health problems. The most vulnerable population to the toxic effects of solitary confinement is paradoxically the one most likely to be placed in isolation. Jail administrators with no mental health training tend to treat the symptoms of mental disorders with punitive sanctions and lengthy solitary terms. This has a devastating effect on certain members of the population who end up permanently damaged by their time spent as a pre trial detainee.

One of the most striking examples of this type of damage is my former client Stephen Slevin whose case reached national and international attention after a jury awarded him $22 million in 2012. As a result of his segregation, Mr. Slevin's mental state deteriorated to the point he could no longer advocate for himself. He spent months at a time without ever leaving his concrete cell. His toe nails grew so long they curled under his feet, he developed bed sores and a fungus on his skin. He was forced to pull out his own tooth.

Unfortunately Mr. Slevin's case is not unique. Jan Green just settled her New Mexico solitary confinement case for $1.6 million. Her lengthy time in solitary resulted in a PTSD diagnosis to add to her existing mental health problems. She was a 50 year old woman with no criminal history, yet she was

subjected to a punishment that will stay with her for the rest of her life.

Another victim of solitary confinement I represented was a child by the name of Orlando Salas. This 15 year old boy was subjected to long periods of solitary confinement coupled with the use of a restraint chair. When this boy's mental health deteriorated he became difficult to control and staff resorted to strapping him in a restraint chair for long periods of time. Orlando successfully sued the juvenile detention center where he was held for inhumane use of solitary confinement and eventually settled his case for $450,000.

Despite these large financial payouts these individuals still suffer from the abuse they received from their government. Disappointingly, these large payouts have yet to put a stop to this inhumane practice in New Mexico. Rather than a technique of last resort, solitary confinement in New Mexico is still used as a matter of routine.

The United States of America needs legislation to curb these abuses of our citizens. We need to act federally to limit the use of solitary confinement to unusual situations rather than a routine form of incarceration. We need the kind of law that applies to both jails and prisons in all parts of the country.

Thank you for your attention in this matter.

Yours truly,

Matthew E. Coyte
Coyte Law P.C.

FEDERAL BUREAU OF PRISONS, U.S. DEPARTMENT OF JUSTICE, FACT SHEET

Interests/Questions Submitted by Sen. Durbin's Staff

- **Policies for determining which inmates are placed at ADX, in SHUs, and in SMUs and**
- **To what extent are there subsequent reviews of placement?**

Special Housing Units (SHU)

SHUs house two broad categories of inmates: (1) inmates who are in disciplinary segregation status, and (2) inmates who are in administrative detention status. An inmate can submit a formal grievance challenging his or her placement in the SHU through the Administrative Remedy Program, outlined in 28 Code of Federal Regulations, part 542.

Disciplinary segregation (DS) is a sanction for an inmate's commission of a prohibited act in a correctional facility. Prohibited acts include assault, possession of contraband, fighting, and refusing direct orders from staff, among others.

Administrative detention (AD) is not punitive; inmates are generally placed in AD status for three reasons: 1) for investigation of potential misconduct, 2) for protection of themselves or other inmates until appropriate steps can be taken to transfer them to another facility, or 3) until further information is available about their background that allows us to determine a safe and appropriate facility to house them.

Within seven days of placement in AD or DS, the inmate's status is reviewed at a hearing the inmate can attend. Inmates who are being protected from the general population can request another hearing at any time if they feel their placement in the SHU as a protection case is unnecessary. After these initial reviews, every inmate in both AD and DS receives recurring seven day reviews to ensure basic necessities are met, including sufficient recreation, meals, and showers. Every thirty days the inmate's status is reviewed at a hearing the inmate can attend.

Psychology staff makes weekly rounds in SHU. Every 30 days these staff examine each inmate in a personal interview, or more often as needed or requested for the inmate. We are in the process of implementing a new protocol for psychologists to conduct comprehensive mental health reviews of inmates in SHU for 6 months or more.

Special Management Unit (SMU)

In fiscal year 2008 the Bureau began converting some existing bed space to Special Management Units (SMUs). These units are part of a 4 stage program lasting 18-24 months, which is designed to assist inmates in modifying behavior that has proven to be confrontational, resistant to authority and disregardful of institution rules. Many of these inmates have participated or had leadership roles in gang-related activity and therefore, present unique security and management concerns.

Inmates are referred for consideration for placement in SMU after a review by the warden and the Regional Director. A trained Hearing Administrator notifies the inmate prior to the SMU placement hearing and provides the inmate with specific evidence supporting such placement (unless such information would jeopardize the safety and security or endanger staff or others). The inmate has the opportunity to be present during the hearing, make an oral statement, and present documentary evidence to the Hearing Administrator. The inmate may also have a staff representative to compile evidence and witness statements for the hearing. Following the hearing,

the Regional Director makes the final determination whether or not the evidence supports the SMU placement. The inmate is informed of the decision and his right to appeal the designation through the Bureau's Administrative Remedy Program.

Following completion of the four phase SMU program, inmates may be considered for redesignation to a less restrictive facility. To qualify for consideration, the inmate must have, for a period of 12-18 months, abstained from gang-related activity, serious or disruptive misconduct, and group misconduct that adversely affect the orderly operations of the prison. The inmate must also demonstrate a sustained ability to coexist with other inmates and staff. Upon meeting those qualifications, the Unit Team, with the concurrence of the warden, submits a request for redesignation to another facility. If the inmate is not deemed appropriate for redesignation after 24 months of SMU placement, the Regional Director may approve continued SMU housing for that inmate or recommend transfer to another appropriate facility.

U.S. Penitentiary – Administrative Maximum (ADX) in Florence, Colorado

All inmates who are designated to the ADX receive a due process hearing prior to their placement at the facility. In order to be considered for placement in a less restrictive environment, inmates must maintain clear conduct, participate in a variety of programming opportunities, and demonstrate an overall positive institutional adjustment.

This institution has three types of housing units: *General Population, Special Security, and Control Unit.*

General Population (ADX GP)

An inmate may be referred to the ADX GP at any time during their incarceration because their placement in other correctional facilities creates a risk to institutional security, or the safety of staff, inmates, or the public; inmates may also be designated to the ADX if the nature of their offences precludes their safe housing at another institution. ADX GP is a four phase program; during the final two phases the inmates are housed in the less restrictive environment of the USP where staff can monitor their adjustment prior to transferring them to another facility.

Inmates are referred for consideration for placement in ADX GP after a review by the institution warden and the Regional Director. Central Office (Bureau headquarters) staff then conducts a preliminary review of the case, and if it appears the inmate may be appropriate for ADX GP, a trained Hearing Administrator conducts a hearing where the inmate may be present, make an oral statement, and present documentary evidence. The inmate may also have a staff representative compile evidence and witness statements for the hearing. The hearing report and recommendations are provided to the inmate, and forwarded to the National Disciplinary Hearing Administrator. The Assistant Director of the Correctional Program Division within Central Office makes the final placement determination. The inmate is informed of the decision and his right to appeal the designation through the Bureau's Administrative Remedy Program.

Control Unit Program:

Within the ADX, the Control Unit houses the most disruptive individuals within the Federal prison system. Inmates who are unable to function in a less restrictive environment are designated to the unit as a result of serious misconduct during service of their sentence (e.g., murdering an inmate with high risk for a repeat offense, murder of a staff member, extraordinarily extreme flight

risk). Designation to the Control Unit requires approval by the North Central Region Regional Director and Assistant Director of the Correctional Programs Division.

The Control Unit referral procedures are similar to the ADX GP referral procedures described above, but must include a psychologist's review of the inmate's mental status. Inmates currently suffering from active significant mental disorders or major physical disabilities are not referred to the Control Unit. As with other ADX referrals, the inmate may be present and provide evidence at the hearing, is informed of the final decision, and may appeal the decision through the Administrative Remedy Program.

Once transferred to the Control Unit, inmates are evaluated by a psychologist every thirty days. The Control Unit team also meets with the inmate and makes an assessment of his progress every thirty days. At least once every 60-90 days, the Regional Director and Assistant Director review the status of the Control Unit inmate to determine the readiness for release from the unit. The inmate is normally interviewed in person.

Only the Regional and Assistant Director may authorize an inmate's release from the Control Unit. In making this decision, they consider involvement in work, recreation, and program assignments, interactions with others (inmates and staff), adherence to policy, personal grooming and cleanliness, and quarters' sanitation. The period of time an inmate is assigned to the Control Unit is determined based on the severity of the misconduct that caused his placement in the unit.

Special Security

The Special Security Unit houses up to 64 offenders (with an additional 32 cells available) who have Special Administrative Measures (SAMs) imposed by the Attorney General. The referral process is similar to the other ADX referral procedures.

- **How many BOP inmates are currently in each type of housing above, and what percentage of BOP inmates spend at least some time in each of the above?**

  SHU = 9,213 (February 2014); 5.3% of the population.
  SMU = 1,591 (February 2014); 0.9% of the population.
  ADX = 409 (February 2014); 0.2% of the population.

- **Demographics for each type of housing, including race, age, gender?**

	BOP	ADX	ADX SSU	SHU	SMU
Asian Pacific Is.	1.5%	1.07%	5.71%	0.84%	0.57%
Black	41.55%	39.04%	22.86%	38.88%	48.08%
American Indian	2.12%	2.14%	0.00%	4.03%	5.53%
White	54.83%	57.75%	71.43%	56.25%	45.82%
18 to 29 Years	17.67%	3.74%	5.71%	25.51%	18.54%
30 to 39 Years	36.99%	28.88%	17.14%	41.69%	50.09%
40 to 49 Years	26.46%	35.83%	28.57%	22.78%	23.76%
50 to 59 Years	13.25%	22.19%	20.00%	7.87%	6.54%
60 to 69 Years	4.61%	7.49%	22.86%	1.88%	1.01%
70 Years and Older	1.01%	1.87%	5.71%	0.26%	0.06%

All are male except SHU; only 2.01% of the current SHU population is female (185). This is 1.5% of the BOP female population (12,271).

- **What are the conditions and restrictions for each type of housing?**

SHU - SHU units are supervised by correctional officers who are present in the SHU 24 hours per day and who monitor inmates every thirty minutes. Additionally, correctional staff is available to meet with SHU inmates when requested by the inmate.

Inmates are not only visited by correctional officers, but also by unit team staff and programming staff. A unit team staff visits with the inmates on their caseload once per day. Programming staff visit with inmates for recreation, education, and chaplaincy needs. Every morning and evening all SHU inmates receive a visit from a health services staff member to ensure any medical needs are promptly addressed. Emergency medical care is always available and inmates are provided prescribed medications in a SHU. Additionally, mental health and psychology staff makes weekly rounds in SHU and examine each inmate in a personal interview every 30 days of continuous placement in a SHU, or more often as needed or requested for the inmate. All inmates in a SHU receive the opportunity to exercise outside their cells at least five hours per week. This usually occurs in five one-hour periods throughout the week, and a SHU inmate generally shares the recreation area with at least one other inmate

SMU - Conditions of confinement for SMU inmates is more restrictive than for general population inmates. An inmate's individual conditions are limited as necessary to ensure the safety of others, to protect the security or orderly operation of the institution, or protection of the public, but all inmates continue to have access to Bureau reentry programming, including drug treatment, medical and mental health care, education, religious services, legal, recreation, commissary, correspondence, social visiting, and telephone privileges. While privileges are initially limited (e.g., less personal property, less commissary), inmates may gradually earn more privileges and are allowed to interact with one another based on their involvement in educational and counseling programs as well as their adherence to institution rules and regulations. Because of the extra supervision SMU inmates require, additional psychologists, counselors, and correctional officers are assigned to the units. The additional staff not only increase security, but also improves the chances of successfully modifying the inmates' behavior.

ADX-GP - ADX GP inmates receive up to 10 hours of out-of-cell exercise weekly, and are able to converse with other inmates in adjoining recreation areas. They also receive two monitored 15-minute telephone calls monthly. If an inmate maintains clear conduct, positive adjustment, and successful programming (generally for a minimum of 12 months), he is eligible for placement into the institution's step-down component of the general population program.

Inmates assigned to the Step-Down component are afforded up to 15 hours out-of-cell exercise weekly, and three 15-minute telephone calls monthly. Inmates who adhere to these provisions for six months may progress to the Transitional phase of the step-down component. Both the transitional phase and the final pre-transfer phase occur at the USP.

The transitional phase allows inmates increased out-of-cell time and four telephone calls per month. Inmates who adhere to the programming requirements for six months may be moved to the Pre-Transfer phase.

The Pre-Transfer phase is the final phase of the step-down component. Ordinarily, this is the final program requirement prior to transfer out of the ADX to the GP of another high security facility. Inmates in this phase are allowed to utilize common recreation areas and barbering facilities, and are provide 300 minutes per month for telephone calls. Inmates in this phase are

usually required to remain in this unit for 12 months before being considered for transfer to another institution. During this 12-month phase, staff can sufficiently monitor each inmate's adjustment in the least restrictive environment within the institution prior to transferring him to another facility.

ADX-Control - Control Unit inmates are afforded individual recreational opportunities up to seven hours a week and receive one 15-minute telephone call monthly. When moved outside of their cells, these inmates are restrained and escorted by three staff. Only the North Central Region Regional Director and Correctional Programs Division Assistant Director may authorize an inmate's release from the Control Unit. The period of time an inmate is assigned to the Control Unit is determined based on the severity of the misconduct that caused his placement in the unit.

ADX-SSU - The Special Security Unit houses offenders who have Special Administrative Measures (SAMs) imposed by the Attorney General. SAMs restrict access to mail, media, telephone, and/or visitors, depending upon the specific risk factors. The referral process is similar to the other ADX referral procedures.

- **How many hours are spent in "isolation," for each?**

As noted above, "isolation" is very rarely used within the Bureau and only when absolutely necessary for the safety of the inmate. However, it is not coded in our database in a searchable manner.

- **To what extent do these conditions involve single-inmate housing?**

Single-inmate housing is used only at the ADX. Inmates in SHUs and SMUs are almost always double-bunked except in extremely rare occasions when safety and security require the use of a single cell (for example, the inmate has demonstrated a risk of violence toward cellmates). And even in those cases, we work diligently to return the inmate to double-bunk status.

- **What is the cost for each of the above, also as compared with the average daily cost of less restrictive confinement?**

The BOP does not have separate budgets or a mechanism in place to trace all costs associated with the operation and management of various housing units within each facility or correctional complex. Each facility or complex has one budget for salaries and operations and each discipline/program area supports all units within the facility or complex. Costs are tracked for each discipline/program area, but are not tracked down to the unit level. However, in response to a Government Accountability Office request, we recently developed estimated daily inmate costs as follows:

BOP Estimated Daily Inmate Costs per Capita in Selection of Institutions and Different Types of Segregated Housing Units, by Security Level for Fiscal Year 2012

	Estimated daily costs per inmate at sample BOP facilities		
Bop Sample Institution and Security Level	General Population Units	Segregated Housing Units	Total Facility, including General Population and Segregated Housing Units
Sample Medium Security, Federal Correctional Institution (FCI) Beckley	$57.41	$78.21 (SHU)	$58.74
Sample High Security Facility, U.S. Penitentiary (USP) Lee	$69.41	$93.04 (SHU)	$72.39
Sample Special Management Unit (SMU) Facility, (USP) Lewisburg	n/a	$119.71 (SMU)	$97.51
Federal Correctional Complex (FCC), Florence, including the Administrative Maximum Facility (ADX)	$85.74	$216.12 (ADX)	$105.25

- **Data on the number of inmates requiring medication for mental health conditions?**

This data is not readily available. Although we can search our medical records by type of medication, psychotropic medications may also be prescribed for non-psychiatric conditions, (e.g., pain management), thus we cannot determine this number without conducting an individual file review.

- **Data on the number diagnosed with mental retardation?**

As of March, 2013, there are 91 inmates with a diagnosis of Mental Retardation.

- **Data on the number of suicides? (FY 2006 – 2013 Totals)**

ADX: 4
SMU: 3
SHU: 62
ALL OTHERS: 72
BOP TOTALS: 141

- **Data on the number of attempted suicides/those placed on suicide watch?**

This data is not encoded in the Psychology database in such a way that it can be searched by specific housing unit type. Rather, it is encoded by institution. Since most of the SMU beds exist as a unit within an institution, it was not possible without an individual file review to determine SHU or SMU suicide watch numbers except at USP Lewisburg, Pennsylvania because that entire facility functions as a SMU.

LEW SMU Suicide Watches.

2010 14
2011 20
2012 28
2013 15

ADX Suicide Watches.

2009 10
2010 11
2011 18
2012 18
2013 40

- **Data on the number of instances of self-harm?**

Self harm data is not encoded in the Psychology Services database as a separate, identifiable entry. However, the database will be undergoing an enhancement in April, 2014, at which time we will begin being able to identify instances of self-harm.

- **Data on the instances of required forced feeding?**

Similar to self harm, this data is not encoded in the medical database as a separate, identifiable entry. We could only determine this number by conducting an individual file review on every inmate housed within ADX, SHUs, and SMUs.

- **Data regarding the amount of time between placement in these types of housing and release?**

This data is not encoded in our SENTRY system in a readily searchable manner.

- **Is placement at the above types of housing intended to be a permanent designation or is it only for a temporary period?**

All of these placements are intended to be temporary. We recognize that GP is generally the best and most efficient housing option in terms of both inmate programming and staffing costs. Our staff work diligently with these offenders to assist them in modifying their behavior and programming appropriately so that they can move back to GP as quickly as possible.

- **Comparative statistics for attacks on BOP officials in the types of housing listed above versus the general population.**

Guilty Findings for Assault and Weapon Prohibited Acts for SMUs and Highs
Data from February 2014 CDR Unload

Fiscal Year=2008

Security Level/SMU/ADX	Average Daily Pop.	Serious Assaults on Inmate (#)	Serious Assaults on Inmate (Rate/1000)	Serious Assaults on Staff (#)	Serious Assaults on Staff (Rate/1000)	Weapons (#)	Weapons (Rate/1000
ADX	462.58	2	4.32	3	6.49	11	23.78
HIG	20564.67	312	15.17	61	2.97	2562	124.58
SMU	79.00	0	0.00	0	0.00	3	37.97
year		**314**		64		**2576**	

Fiscal Year=2009

Security Level/SMU/ADX	Average Daily Pop.	Serious Assaults on Inmate (#)	Serious Assaults on Inmate (Rate/1000)	Serious Assaults on Staff (#)	Serious Assaults on Staff (Rate/1000)	Weapons (#)	Weapons (Rate/1000
ADX	428.25	1	2.34	1	2.34	14	32.69
HIG	20239.50	340	16.80	58	2.87	2727	134.74
SMU	413.00	29	70.22	10	24.21	73	176.76
year		**370**		**69**		**2814**	

Fiscal Year=2010

Security Level/SMU/ADX	Average Daily Pop.	Serious Assaults on Inmate (#)	Serious Assaults on Inmate (Rate/1000)	Serious Assaults on Staff (#)	Serious Assaults on Staff (Rate/1000)	Weapons (#)	Weapons (Rate/1000
ADX	413.08	2	4.84	1	2.42	13	31.47
HIG	20066.42	242	12.06	50	2.49	2068	103.06
SMU	1148.83	32	27.85	13	11.32	390	339.47
year		**276**		**64**		**2471**	

Fiscal Year=2011

Security Level/SMU/ADX	Average Daily Pop.	Serious Assaults on Inmate (#)	Serious Assaults on Inmate (Rate/1000)	Serious Assaults on Staff (#)	Serious Assaults on Staff (Rate/1000)	Weapons (#)	Weapons (Rate/1000
ADX	418.00	2	4.78	0	0.00	9	21.53
HIG	19873.42	235	11.82	33	1.66	1723	86.70
SMU	1279.42	36	28.14	6	4.69	302	236.05
year		**273**		**39**		**2034**	

Fiscal Year=2012

Security Level/SMU/ADX	Average Daily Pop.	Serious Assaults on Inmate (#)	Serious Assaults on Inmate (Rate/1000)	Serious Assaults on Staff (#)	Serious Assaults on Staff (Rate/1000)	Weapons (#)	Weapons (Rate/1000
ADX	375.33	6	15.99	3	7.99	1	2.66
HIG	19261.83	183	9.50	21	1.09	1357	70.45
SMU	1610.33	12	7.45	7	4.35	217	134.75
year		**201**		**31**		**1575**	

Fiscal Year=2013

Security Level/SMU/ADX	Average Daily Pop.	Serious Assaults on Inmate (#)	Serious Assaults on Inmate (Rate/1000)	Serious Assaults on Staff (#)	Serious Assaults on Staff (Rate/1000)	Weapons (#)	Weapons (Rate/1000
ADX	379.75	1	2.63	1	2.63	13	34.23
HIG	19072.17	139	7.29	19	1.00	1657	86.88
SMU	1789.83	14	7.82	0	0.00	152	84.92
year		**154**		**20**		**1822**	
		1588		**287**		**13292**	

Serious Assaults include Prohibited Act codes 100 and 101

- **Can inmate in one of these designations move back to general population? What is the policy for this process?**

Yes, inmates in all three categories can move back to GP and that is our primary goal for these offenders. We recognize that GP is generally the best and most efficient housing option in terms of both inmate programming and staffing costs. Our staff work diligently with these offenders to assist them in modifying their behavior and programming appropriately so that they can move back to GP as quickly as possible.

- **Can an inmate challenge assignment to these types of housing, and what is the procedure for doing so?**

SHU - Within seven days of placement in AD or DS, the inmate's status is reviewed at a hearing the inmate can attend. Inmates who are being protected from the general population can request another hearing at any time if they feel their placement in the SHU as a protection case is unnecessary. After these initial reviews, every inmate in both AD and DS receives recurring seven day reviews to ensure basic necessities are met, including sufficient recreation, meals, and showers. Every thirty days the inmate's status is reviewed at a hearing the inmate can attend. The inmate has the right to pursue his placement, seek redress of complaints, and have a formal review of his/her concerns through the Bureau's Administrative Remedy Program.

SMU - Inmates are referred for consideration for placement in SMU after a review by the institution warden and the Regional Director. A trained Hearing Administrator notifies the inmate prior to the SMU placement hearing and provides the inmate with specific evidence (unless such information would jeopardize the safety and security or endanger staff or others). The inmate has the opportunity to be present during the hearing, make an oral statement, and present documentary evidence to the Hearing Administrator. The inmate may also have a staff representative to compile evidence and witness statements for the hearing. Following the hearing, the Regional Director makes the final determination regarding whether or not the evidence supports the appropriateness of SMU placement. The inmate is informed of the decision and his right to appeal the designation through the Bureau's Administrative Remedy Program.

ADX-GP - Inmates are referred for consideration for placement in ADX GP after a review by the institution warden and the Regional Director. Central Office (Bureau headquarters) staff then conducts a preliminary review of the case, and if it appears the inmate may be appropriate for ADX GP, a trained Hearing Administrator conducts a hearing where the inmate may be present, make an oral statement, and present documentary evidence. The inmate may also have a staff representative compile evidence and witness statements for the hearing. The hearing report and recommendations are provided to the inmate, and forwarded to the National Disciplinary Hearing Administrator. The Assistant Director of the Correctional Program Division within Central Office makes the final placement determination. The inmate is informed of the decision and his right to appeal the designation through the Bureau's Administrative Remedy Program

ADX-Control Unit - The Control Unit referral procedures are similar to the ADX GP referral procedures described above, but must include a psychologist's review of the inmate's mental status. Inmates currently suffering from active significant mental disorders or major physical disabilities are not referred to the Control Unit. As with other ADX referrals, the inmate may be present and provide evidence at the hearing, is informed of the final decision, and may appeal the decision through the Administrative Remedy Program.

ADX-SSU – These inmates have Special Administrative Measures put in place by the Attorney General. The referral process is similar to the other ADX referral procedures and these inmates have the same Administrative Remedy appeal opportunities.

- **Who does mental health assessments for BOP? What kind of mental health staff does BOP have? How many part- and full-time psychologists and psychiatrists are on staff?**

All institutions are staffed with a doctoral level, license eligible, chief psychologist. The staffing complement of the department is based on the institution's specific mission, size, and any specialty programs. Most institutions have a core staffing complement of a chief psychologist, drug abuse program coordinator, 1-3 staff psychologists, a drug treatment specialist, and an administrative support staff member (part-time or full-time).

In the field, there are 433 doctoral level psychologists whose primary mission is to provide mental health services (assessment, management, and treatment). There are an additional 74 clinicians and bachelors and masters degrees working in specialized treatment programs for mentally ill inmates. These numbers include Challenge Program staff who have a dual mission of mental health and substance abuse treatment. These numbers do not include drug treatment staff working in dual diagnosis RDAPs. In addition, the BOP provides training for students pursuing doctoral degrees in psychology through its formal pre-doctoral psychology internship programs. At present, the BOP provides this training for 45 interns, who provide mental health services for BOP inmates under the supervision of licensed BOP psychologists.

The above numbers refer to allocated positions, not filled positions. Due largely to budget constraints, a number of positions are vacant. As of pay period 3 in FY 2014, 12% of Psychology Services positions were vacant.

Mental health evaluations, such as forensic examinations, suicide risk assessments, and segregation reviews, are all conducted by doctoral level BOP psychologists.

Approximately 93% of Bureau psychologists are licensed or actively pursuing licensure; all BOP psychologists must be license eligible.

DETENTION
WATCH NETWORK
www.detentionwatchnetwork.org

Statement for Hearing

Submitted by
Detention Watch Network

"REASSESSING SOLITARY CONFINEMENT II:
THE HUMAN RIGHTS, FISCAL, AND PUBLIC SAFETY CONSEQUENCES"

Before the Senate Committee on the Judiciary,
Subcommittee on the Constitution, Civil Rights, and Human Rights

February 25, 2014

3333 14th Street NW, Suite 205 | Washington, DC, 20010 | (202) 350-9055

Detention Watch Network (DWN) is national coalition of organizations and individual members working to expose and challenge the injustices of the U.S. immigration detention and deportation system and advocate for profound change that promotes the rights and dignity of all persons. DWN was founded in 1997 in response to the explosive growth of the immigration detention and deportation system in the United States. Today, DWN is the only national network that focuses exclusively on immigration detention and deportation issues. It serves as an important resource on detention issues by media and policymakers and is known as a critical national advocate for just policies that promote an eventual end to immigration detention. As a member-led network, we unite diverse constituencies to advance the civil and human rights of those impacted by the immigration detention and deportation system through collective advocacy, public education, communications, and field-and-network-building.

The United States' immigration policies should reflect this country's values of due process and respect for human dignity. DWN supports an end to solitary confinement and submits this statement to highlight the alarming use of this practice inside the U.S. immigration detention system.

Background on the U.S. Immigration Detention System

In Fiscal Year (FY) 2012, the U.S. government incarcerated 478,000 individuals in immigration custody in a network of over 250 immigration detention facilities. Immigrants in ICE custody are in civil detention; they are incarcerated for the sole purpose of ensuring immigration court appearances and compliance with court decisions, and not as a sentence for any crime. Detention facilities are often contracted out by U.S. Immigration and Customs Enforcement (ICE) to for-profit prison corporations and county jails and hold a broad range of individuals, including asylum seekers, U.S. permanent residents, immigrants with mental health conditions, LGBTQ individuals, elderly immigrants, pregnant women, and survivors of human trafficking.

In the last two decades, Congress has enacted and expanded mandatory detention laws that categorically prohibit immigration judges from making individualized assessments of ICE's need to detain. Additionally, over the past several years, Congress has significantly increased funding for ICE detention beds, from 20,800 beds per day in FY 2006 to 34,000 beds per day in the FY 2014 omnibus spending bill, costing U.S. taxpayers nearly $2 billion a year and nearly $5.5 million per day. Congressional language appropriating funds for 34,000 beds has been interpreted by ICE as a detention bed quota to be filled. Immigration detention costs U.S. taxpayers an average of $160 per person per day. Community-based programs that offer effective and more humane alternatives to detention (ATDs) result in a nearly 95 percent appearance rate and are significantly less expensive, costing as little as between 70 cents to $17 per day.

The United States' immigration detention system is riddled with systemic failures to protect human rights and overused in a time when lawmakers consistently call for more fiscal responsibility. The system is based on a penal model of corrections failing to address the needs of a population detained for civil status violations. Progress toward reform has been slow, failing to address the need to reduce the numbers of detained migrants, end the government's reliance on detention, and halt the expansion of facilities around the country. As a result of our detention and deportation policies, immigrants are living in inhumane and abusive conditions in detention centers around the country, while the private prison industry is profiting.

ICE's Alarming Use of Solitary Confinement

In 2012, more than 300 immigrants were held in solitary confinement on any given day in the 50 largest immigration detention facilities, with nearly half isolated for 15 days or more and with 11 percent suffering from mental health issues.[1] According to the United Nations Special Rapporteur on Torture, solitary confinement of 15 days or more can amount to torture, due to the risk of permanent psychological damage from such extended periods of isolation.[2] Although ICE shifted its solitary confinement policies in September of 2013, the use of solitary confinement, including for prolonged segregation, is still in place and remains a significant concern to DWN.

Administrative and disciplinary segregation, both used in ICE detention facilities, mirror punitive forms of solitary confinement imposed in the penal context.[3] Detained immigrants are confined alone in tiny cells for up to twenty-three hours a day.[4] Phone privileges, access to legal counsel, and recreational time are often restricted or completely denied.[5] Freedom of movement can be so severely limited that even trips to the bathroom may require shackles and a staff escort. Making matters worse, when such detained immigrants express depression or hopelessness from this extreme isolation, they are often placed on suicide watch, which can mean further limitations on their privacy and freedom of movement.[6] Once in administrative segregation, it becomes extremely difficult to get out.[7]

Of particular concern is the practice of placing transgender immigrants in solitary confinement.[8] Transgender individuals may be placed into "administrative segregation" without any individualized assessment[9] or may face administrative segregation after being attacked or expressing fear for personal safety.[10] One transgender woman, Ana Luisa,[11] was placed in administrative segregation after being assaulted by a male detainee in a bias attack. Ana Luisa, rather than her assailant, was placed in solitary confinement after this attack, further victimizing her.

In November 2012, DWN released a series of reports as part of its Expose and Close campaign to highlight poor conditions and regular mistreatment in immigration detention facilities across the country. One year later, DWN members revisited the detention facilities and found that conditions had not improved, despite ICE's promise to send in special assessment teams and address violations

of ICE's internal detention standards. Even more concerning, conditions had actually worsened at many facilities. The misuse and overuse of solitary confinement was one of the most prevalent problems throughout our reports. Individuals interviewed by DWN members reported spending weeks in segregation, sometimes for "disciplinary" reasons and sometimes as retaliation for complaints they had filed against about detention center conditions. One of the most concerning pretexts for solitary confinement is the "protection" of certain especially vulnerable people – such as lesbian, gay or transgendered individuals or immigrants with mental illness. Solitary confinement in immigration detention centers is a serious problem in a system rife with abuses that are not fixed due to ICE's minimal oversight and accountability mechanisms. **There are real people suffering from this lack of oversight and accountability.**

For example, in researching one of the Expose and Close reports, DWN members and staff visited the Etowah County Detention Center (Etowah) in Alabama. Etowah is used primarily by ICE to hold individuals subjected to prolonged or indefinite detention; many immigrants are held there for several months or even years. Nearly every detained immigrant interviewed had spent time in solitary confinement. One man from Brooklyn reported spending more than 20 days in segregation – a stretch of time that the UN Special Rapporteur has said can amount to torture – for yelling at a guard who refused to allow him to see his wife, after she spent hundreds of dollars and 15 hours travelling all the way from New York for a visit with him. Another man, who had been previously diagnosed as schizophrenic reported being kept in solitary confinement for multiple three day stints, as an attempt to contain the "disruptive outbursts" that resulted from his being denied his medication. A father of three told DWN members that he was put into solitary confinement after he went on hunger strike to protest the injustice of his incarceration.[12] After he developed gastrointestinal bleeding, the jail staff informed him he would not be released from solitary and that he would be denied medical care unless he agreed to end his hunger strike.[13]

These kinds of stories are unfortunately quite common among those who have spent any length of time in ICE custody, at any of the over 250 facilities across the country. Most immigrants in detention lack immigration status and legal representation, and many do not speak English. The use of solitary confinement further isolates these individuals and encourages them to "give up" on pursuing their cases, accepting deportation to countries that are often dangerous, provide few opportunities, and to which they might have little or no connection other than birth.

New ICE Directive on Solitary Confinement

On September 4, 2013, ICE issued policy guidelines regarding its use of solitary confinement, promising more oversight and regulation of the system. The directive called for such improvements as a system for centralized review, the consideration and use of ATDs, heightened justifications for solitary confinement and requirements for release, and other important measures, such as attorney notification in certain instances. The new policy falls short in several critical respects and is not in

line with United Nations guidance. First, the ICE policy does not prohibit the use of the practice nor establish specific limits on the length of solitary confinement, even for immigrants with mental illnesses, who are the most impacted by long periods of segregation. The new guidelines also continue to allow the alarming use of solitary confinement as "protective custody" for vulnerable individuals, such as victims of sexual assault, lesbian, gay or transgender immigrants, elderly individuals, pregnant or nursing women, and individuals with mental illness or those at risk of suicide. Finally, and perhaps most significant, the guidelines are not legally enforceable and do not provide for effective remedial action against facilities or officers that violate them.

DWN calls on Congress to end the practice of placing immigrants in solitary confinement. In the meantime, DWN would encourage DHS to reevaluate its directive and consider the proposed amendment Blumenthal 2 (Title III) to S.744, The Border Security, Economic Opportunity, and Immigration Modernization Act. The amendment sets fixed terms for the length of allowable detention, the number of weekly visits by doctors and mental health professionals, conditions triggering release, and other measure to reduce the amount of and mitigate the damage of solitary confinement.

We further encourage Congress to reduce funding for immigration detention, repeal mandatory detention laws to allow for judicial discretion, and to enact binding civil detention standards holding facilities legally accountable for improper use of solitary confinement. Finally, we encourage DHS to withhold funding for, impose financial penalties on, or terminate contracts with, detention facilities that violate these segregation policies. We join immigrants and their families, and the other groups and individuals testifying today to urge that DHS end the inhumane and harmful practice of solitary confinement.

For more information, please contact Madhuri Grewal, DWN Policy Counsel at mgrewal@detentionwatchnetwork.org or (202) 350-9057.

[1] Urbina, Ian and Catherine Rentz, "Immigrants Held In Solitary Confinement," *New York Times*, 23 March 2013, *available at* http://www.nytimes.com/2013/03/24/us/immigrants-held-in-solitary-cells-often-for-weeks.html.
[2] *See* Juan E. Méndez, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *available at* http://www.ohchr.org/Documents/Issues/SRTorture/A-HRC-19-61.pdf.
[3] *See, e.g.*, Georgia Detention Watch, Report on the December 2008 Humanitarian Visit to the Stewart Detention Center, at 6. *Available at* http://www.acluga.org/Georgia_Detention_Watch_Report_on_Stewart.pdf.
[4] Immigration Equality, Conditions of Detention, http://www.immigrationequality.org/issues/detention/conditions-of-detention/ (last visited Jan. 27, 2012).
[5] Clement Lee, Legal Fellow, Immigration Equality, Addresss at the New York City Council Hearing (Dec. 13, 2011) (transcript availabe at http://www.scribd.com/doc/75669146/Testimony-on-LGBT-Detention-Issues).
[6] Clement Lee, Legal Fellow, Immigration Equality, Addresss at the New York City Council Hearing (Dec. 13, 2011) (transcript availabe at http://www.scribd.com/doc/75669146/Testimony-on-LGBT-Detention-Issues); *see also* Detention Watch Network, *Expase & Close: One Year Later*, November 2013, at 10, *available at* www.detentionwatchnetwork.org/ExposeandClose2013.
[7] Immigration Equality, Conditions of Detention, http://www.immigrationequality.org/issues/detention/conditions-of-detention/ (last visited Jan. 27, 2012).
[8] *2008 Operations Manual ICE Performance Based Natianal Detention Standards, (PBNDS),* available at http://www.ice.gov/doclib/dro/detention-standards/pdf/special_management_units.pdf. (last visited Jan. 27, 2012).
[9] IMMIGRATION LAW & THE TRANSGENDER CLIENT 90 (Victoria Neilson ed., 2008).
[10] *Id.*
[11] Immigration Equality, a national organization that advocates for the rights of gay, lesbian, bisexual, transgender, and HIV positive immigrants, has either conducted an intake with these individuals or directly represented them in their immigration cases.
[12] Detention Watch Network, *Expose & Close: One Year Later*, at 10.
[13] *Id.*

February 25, 2013

Richard Durbin
United States Senator
Washington, D.C.

Dear Senator Durbin:

This letter is written to you and your committee on behalf of my wife and myself. IT would have been my desire to attend these hearings regarding prison safety in person, however, today I and my family are attending graveside memorial ceremonies for our son, Corrections Officer Eric Williams. On this date, one year ago today, Eric was brutally murdered, stabbed one hundred and twenty-nine times and having his skull crushed, by an inmate at USP Canaan, in Pennsylvania.

When the Warden and two other representatives from Canaan informed us of Eric's death, they pointed out that these things were "rare" that an officer was murdered in the line of duty. Once past the initial shock, our question later became that "if a line of duty death is so rare, then obviously something went wrong. Human error or a system failure. Which one was it? "

Here is an overview some facts and factors, as I understand them, that, to me, are major contributors in my son's death:

1, The government and the Bureau of Prisons had reduced staff radically under a program that became known as Mission Critical.

2. The prisons are overcrowded, and my son was working ALONE with one hundred and twenty five of this nations most dangerous individuals.

3. My son had no tools to defend himself, no proper body armor, pepper spray, etc.

4. These inmates were in a common area with the expectation that one corrections officer can safely manage that population.

5. Due to the lack of another officer present, Eric was ambushed from behind, thrown down a flight of stairs, and repeatedly assaulted.

6. Not ONE of the other inmates stepped up to help or interfere. No one sounded an alarm or called for help.

7. An understaffed control center failed to pickup the particular incident.

8. My son lay on the floor bleeding, his brain swelling, for twenty minutes before he was even discovered.

9. Thirty-four year old Eric Williams, who had his whole life ahead of him, died.

10. Eric's family is devastated. The staff at Canaan is devastated. We need answers; we need change.

I was never good at math, so I may need help in understanding this equation: We have increased the number of inmates in the Federal Penitentiaries far beyond the proper numbers, while at the same time we reduce the number of staff to manage them, and we expert that this environment is a safe workplace, and to help accomplish this goal we take away funding from the Bureau of Prisons budget.

We now talk about our concerns for those inmates being placed in solitary confinement, fearing for their emotional well being. Perhaps it is their own criminal behavior and danger to others that indicates they belong there. These people are not victims of society, they are volunteers. Is there anyone concerned about the mental and emotional well being of my wife and children, or that of the Rivera family in California, and the Albarati family in Puerto Rico.

Do you know why one hundred and twenty five of these men stood by and watched my son be murdered? Two reasons. One, is they have no concern about another human being whatsoever. Secondly, they have their own set of rules and their own system in the prison. They are not afraid to hold each other accountable if an inmate breaks their rules. Justice on their terms is swift and final. Do you honestly believe that the few federal employees on grounds are actually in charge of the prison. No way. The INAMTES ARE IN CHARGE. We've got it wrong, ladies and gentlemen. The system is upside down, the mission is not being accomplished, and it needs an overhaul.

The lack of insight on the part of lawmakers is appalling. The poor communication and distorted interpretation of directions I have seen in my visits to Washington is an indicator that the system is broken. Why don't the statistics reflect the truth about the assaults on staff, other inmates, and continual violations that take place in the cell blocks that make it impossible for this limited amount of staff to manage properly.

In summary, our son is gone. There is nothing you, or anyone, can do FOR Eric. But there are some things you can do ABOUT Eric. Here are some suggestions:

1. Properly staff these penal institutions so that this increasingly dangerous population can be managed in a more safe and efficient way.

2. Think hard before removing such sanctions as solitary confinement or the death penalty. (If there had not been overcrowding and restrictions on solitary confinement, Jesse Con Ui, Eric's killer, may have been doing his time there and not available to kill my son.) If Jesse Con Ui, a two time killer who is already serving a life sentence is NOT given the death penalty, then literally nothing will be done or my son's murder. As a parent and a Vietnam Veteran, I will not accept that. If he is not held accountable to the maximum of the law, you will place every corrections officer at greater risk than they already are.

3. Give these men and women of corrections the best protective equipment that they so badly need.

4. Improve awareness of the growing problem within our prison system.

5. Reduce the numbers by no putting minor offenders in with hardened criminals. Keep the focus on corrections, not making victims out of these people who have harmed out society.

6. Improve communications and talk with and visit the persons "on the ground" who carry out the day to day operations of these institutions.

Thank you for your attention to these concerns.

Don Williams
(570) 417-8611

Jean Williams

VANDERBILT UNIVERSITY College of Arts and Science
Philosophy Department

February 23, 2014

Dear Chairman Durbin, Ranking Member Cruz, and Members of the Subcommittee,

I am an Associate Professor of Philosophy at Vanderbilt University and the author of *Solitary Confinement: Social Death and its Afterlives* (University of Minnesota Press, 2013). The main argument of the book is that solitary confinement is a form of violence against the relational structure of Being-in-the-world. It treats the inmate as an isolated individual rather than a social being who relies upon his or her relationships with others – not just for survival, but for *meaning*. In so doing, solitary confinement undermines the possibility of a meaningful sense of accountability, which is rooted in the act of *giving an account of oneself* to others. The extreme isolation of a relational Being-in-the-world amounts to a living death sentence which reinforces patterns of civil and social death for those who are disproportionately incarcerated and isolated: poor people, people of color, and people with mental illness and cognitive impairment. By civil and social death, I mean the effect of exclusionary structures such as racism and poverty, which restrict the life chances of some populations while amplifying the privilege of others. The practice of solitary confinement is a particularly intense node in these structures of civil and social death.

Much has happened in the two years since the first Senate Subcommittee hearing on solitary confinement. On one hand, New York state has introduced new limits on solitary confinement for young people, pregnant women, and people with developmental disabilities (New York Times). On the other hand, the California Department of Corrections and Rehabilitation continues to resist making substantive reforms in the use of solitary confinement and gang validation procedures, despite an historic 60-day hunger strike in which thousands of inmates participated, and despite two recent hearings on solitary confinement (Solitary Watch). It is possible to hold *hearings* without actually *listening* to the testimony of those who are most

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directly affected by extreme isolation: the prisoners themselves and their friends, family, and supporters on the outside.

The current Senate Subcommittee hearings are an excellent opportunity for the federal government to support the initiative of New York state and to provide leadership for other states, including California, to undertake meaningful reforms limiting solitary confinement to only the most extreme cases, and then only for a strictly-limited period of time. Juan Mendez, the UN Special Rapporteur on Torture, and other cruel, inhuman and degrading treatment or punishment, has recommended a maximum of 15 days' isolation for any prisoner, and an absolute prohibition on the isolation of juveniles and people with mental disabilities (UN News). The strongest way forward for the federal Bureau of Prisons would be to take this recommendation as its guideline, and to build in other reforms to support the rehabilitation of inmates and their reintegration into the community, including entrepreneurship programs (such as PEP: www.prisonentrepreneurship.org), and opportunities for secondary and post-secondary education (such as the Bard Prison Initiative: bpi.bard.edu).

Ultimately, 95% of all prisoners will be released from prison. Even from a purely self-interested perspective, it makes sense to prepare these people for meaningful reintegration into the community rather than intensifying their isolation further. But a philosophical analysis of our existence as Being-in-the-world can help us to reflect more deeply on the relation between individual autonomy and community support. As long as my inherent capacities are respected and amplified by others, I am free to believe in myself as a self-made individual. I can indulge in the myth of individual self-sufficiency, without having to *live* that myth. Only the prisoner in solitary confinement is forced to occupy the position of an isolated individual, and to bear the full weight of their existence alone, without the support of others, taking the blame for their own collapse should they prove unable or unwilling to do so. But as long as our own freedom is secured through the isolation of others – even, or especially, if these others remain invisible to us – it is a false sense of freedom, and it diminishes our own capacities for critical awareness.

As Emerson wrote, "The health of the eye seems to demand a horizon. We are never tired, so long as we can see far enough." The practice of solitary confinement threatens to exhaust the world's horizon; it literally blocks the prisoners to see into the distance and to build

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meaningful relations of mutual accountability with others. But prisons are part of our world; like it or not, they are on our horizon. Over 80,000 Americans are being held in solitary confinement right now. The health of our own eye demands that we see them.

Sincerely,

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Comments by Dr. Terry Kupers to the February 25, 2014 Hearing Before the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights: Reassessing Solitary Confinement - The Human Rights, Fiscal, and Public Safety Consequences

Greetings Hon. Senators:

Again, as when I submitted written testimony for the June 19, 2012 Subcommittee Hearing, I regret that because of the shortness of notice and professional commitments I will not be able to testify in person at this important subcommittee meeting. I would be happy to meet with the Subcommittee or staff in the future. And again, thank you for taking on this timely and important topic. I am a forensic psychiatrist with extensive experience investigating supermaximum security units in many states and testifying in litigation about the psychiatric damage caused by long-term solitary confinement. I am Institute Professor at The Wright Institute, Distinguished Life Fellow of the American Psychiatric Association and among books I have authored is Prison Madness: The Mental Health Crisis Behind Bars and What We Must Do About It. I attach my written comments from June 19, 2012, which contain a summary of my qualifications and a discussion of the harmful effects of long-term solitary confinement.

I believe long-term penal isolation is a very bad idea. It does not accomplish any good "penological objective," as I spelled out in my previous comments to this Subcommittee, it causes immeasurable harm to the significant proportion of the prison population who are prone to mental illness as well as to the rest, and it constitutes a human rights abuse that violates the U.S. Constitution and is tantamount to torture. I have published extensively on this topic, so I will not provide here another summary of the known damage.[1] The shift in the 1980s in the USA toward increasing isolative confinement, especially in supermax prisons, constitutes a historic wrong turn in penology. It was a response to the unprecedented violence and mental breakdown in corrections in the 1980s, but that violence and madness were clearly the result of the wholesale consignment of people with serious mental illness to correctional settings as

well as massive crowding of the prisons. A more effective and humane response would have been to alleviate the crowding with more rational sentencing guidelines, to divert individuals with mental illness into treatment settings and bring correctional mental health care up to the standard in the community, and to re-instate the rehabilitation programs that were being dismantled at the time because of accusations that rehabilitation constitutes "coddling criminals."

Of course there are some dangerous individuals in prison, and the safety and smooth operation of the institutions must be a major priority. But most of the prisoners I meet in solitary confinement units around the country are actually not very dangerous. Though they are required to wear handcuffs, leg irons and a belly chain when they exit their cell, and though they must be accompanied by two or more officers, I find that a very large majority of the prisoners I meet in solitary confinement settings do not pose much of a threat of violence. In other words, they are being excessively demonized and the relatively exceptional very dangerous individuals among them are presented as "poster boys" for solitary, proof that Departments of Correction need to continue to consign an inappropriately high proportion of prisoners to almost total isolation and idleness.

The very large number of individuals confined in solitary circumstances, or segregation, for very long periods do not actually pose much of a threat to the security of the institutions. They are being retained in segregation because of outdated and foolhardy policies, because many departments of correction are incapable of correcting a wrong decision to place one or another prisoner in solitary, because mental health services are inadequate and prisoners with mental illness are being punished with

segregation for inappropriate behaviors that flow from their psychiatric disability, because a self-fulfilling prophecy is set in motion whereby an individual placed in segregation is led by the harsh conditions to act out in unacceptable ways and thereby to draw ever longer sentences to segregation, and because a culture of punishment in the prisons is played out by designating certain prisoners "the worst of the worst" and then visiting increasingly abusive punishments upon them.

In the Mississippi Department of Correction (DOC), as a result of the Presley v. Epps litigation, proper classification procedures were finally enacted and the majority of prisoners serving long sentences in the supermax Unit 32 at Mississippi State Penitentiary were returned to general population. Contrary to the logic that informs the rush to build supermaxes - i.e. they are needed to control wanton violence - the violence rate in the entire DOC diminished, and the rate of disciplinary infractions on the part of prisoners released from Unit 32 also declined precipitously. DOC Commissioner Christopher Epps testified at this Sub-Committee's June 19, 2012 hearing about this phenomenon.[2]

I simply do not understand how depriving an individual with a violent record of any view of the outside world and any contact with nature (i.e. there are often no windows in the cells and the individual never gets to an outdoor recreation area), making him sleep on an uncomfortable concrete slab, condemning him to loud noises every night and severely restricting his visits with loved ones can have any positive effect on his behavior. There is no rational reason to make the prisoner miserable in these and many other ways, yet these harsh conditions are fairly typical in today's prison isolation units. The absence of logic here is a big part of the reason I have

concluded that the main thing to notice is an irrational culture of punishment. These are presumed to be "bad actors," and consequently the staff feels they need to punish them harshly. All too often the harsh isolative conditions cause psychiatric breakdown or suicide in previously mentally stable individuals.

There is too little attention to the long-term effects of solitary confinement. Consider the bad-acting prisoner who has a 20 year prison sentence, beginning when he is around 20 years of age. He is released at 40, having spent the entire 20 years idle and in isolation. Do we seriously expect him to be more capable of conforming his behavior to the acceptable norms in the community after he is released? Why not provide him with pro-social and productive activities during his prison term, albeit in a safe setting, so there is more likelihood he will be able to succeed at going straight when he is released?

One of the strongest correlations in criminology is that between prisoners maintaining quality contact with loved ones during their prison tenure and their success at "going straight" after they are released. When I admit a patient to a psychiatric hospital and he acts out and becomes assaultive, unless there is a highly dysfunctional family I invite and encourage the family to come and visit him because we know that contact with loved ones tends to ameliorate bad behavior. What sense does it make to keep the prisoners who are presumably the worst-behaving in solitary confinement and, as further punishment, denying them meaningful contact with their loved ones?

Of course there are a small proportion of prisoners who will merely take advantage of the freedoms of general population to victimize other prisoners and continue criminal pursuits. There is no credible evidence that long-term solitary

confinement prevents this relatively small group from pursuing their criminal objectives. Meanwhile, the vast majority of prisoners spending inordinate time in solitary confinement today would be much better prepared for a productive life after release were they to be provided with congregate rehabilitative programs during their time behind bars.

Prohibitions against cruel and unusual punishment and protocols on torture are written precisely to protect human beings who the authorities believe are bad enough actors to seemingly deserve very harsh treatment. But no matter how bad the actor, eighth amendment violations and torture are not permissible. There is a need for enhanced security in relation to a certain number of prisoners with proven records of assaultive behavior or worse. But separating them from potential victims does not require that they be consigned to very harsh isolative conditions. On average, a long stint in solitary makes them more dangerous after they are released to the prison yard or the community.

In order to explain this point, let us skip to prisoners who are consigned to protection and placed in solitary confinement units. This is not an acceptable correctional practice, but it occurs in all too many prisons. (The Prison Rape Elimination Commission took the precaution of forbidding this kind of protective isolation in the case of women prisoners who allege sexual assault by staff.) According to standards and a reigning consensus on acceptable practices in the field of corrections, individuals who require protection must be housed in units that are separated from their potential enemies, but those protection units must contain all the programs and amenities the protected prisoners are entitled to, consistent with their security level. Likewise, I

believe that to the extent possible, while maintaining safety in the facilities, individual prisoners deemed especially dangerous should be separated from the places and prisoners where they pose a grave danger, but should be provided the programs and amenities that they are entitled to as human beings – i.e. a certain amount of meaningful social interaction and productive activities as well as visits with loved ones.

I will not enter here into a discussion of the proper measures to control violence and criminal activity in the relatively small subpopulation of prisoners who are not amenable to rehabilitation, except to say that there are such measures and they need to be carefully planned and enacted. Toch and Adams wisely counsel that the more difficult it is to manage a particular prisoner's unacceptable behaviors, the more time is required for meetings and interventions on the part of custody and mental health staff.[3] Too often, instead of committing that kind of concentrated staff energy, the troublesome prisoner is merely warehoused in an isolation cell, where the previously stable prisoner is driven by the conditions to become stark raving mad. Since this is the expectable outcome of extreme isolative measures, the practice would seem to be prohibited by the U.S. Constitution and international agreements prohibiting torture.

There is actually no credible evidence that isolation increases safety in the prisons. Rather, it gives the culture of punishment a *raison d'etre*. It has long been a basic tenet of psychology that positive rewards are much more effective in attaining desired behavior change than are harsh punishments. That lesson from psychology could inform a very successful effort at rehabilitation in corrections. Incremental rewards could be designed to help previously law-breaking and rule-violating prisoners become peaceful, productive citizens. For a very small fraction of the cost of

supermaximum security units, intensive substance abuse programs could be installed in the prisons (in recent decades, the proportion of prisoners benefitting from substance abuse treatment has declined) that make it possible for a significant number of prisoners to stay "clean and sober" and succeed at "going straight" after they are released from prison. Likewise, if this society is intent on locking up the population suffering from serious mental illness instead of providing an adequate public mental health system and affordable housing, an adequate correctional mental health program would have much more beneficial outcomes than long-term solitary confinement. Instead, today a very large number of prisoners who are not especially dangerous are warehoused in isolation for much of their prison tenure, they are severely damaged by the forced isolation and idleness, and predictably, the parole revocation and recidivism rates have been rising precipitously during the same two or three recent decades that have witnessed the widespread use of solitary confinement in our prisons.

In conclusion, once again, I urge the Subcommittee to promote legislation that will reduce reliance on supermaximum security facilities, reduce the abuses that have accompanied the trend toward long-term prisoner isolation, and require reasonable sentences and effective rehabilitation programs for prisoners.

Thank you for considering these comments.

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STATEMENT OF FRED COHEN, LL.B., LL.M[1]

Reassessing Solitary Confinement: The Human Rights, Fiscal and Public Safety Consequences
Hearing Before the Senate Judiciary Subcommittee on the Constitution Civil Rights, and Human Rights

Chairman: The Honorable Dick Durbin
February 20, 2014

My name is Fred Cohen and I am a graduate of the Temple and Yale Law Schools (LL.M. 1961). I have taught at a number of excellent law schools and helped found, then retired from, the S.U.N.Y. at Albany, School of Criminal Justice (2000). I have written a number of articles and books on law and corrections and serve as the Executive Editor of the *Correctional Law Reporter* and the *Correctional Mental Health Report*. Much of my more recent writing has focused on what I term penal isolation.

Since 1995 I have served as a federal court monitor, expert witness, and litigation consultant in a number of states with an emphasis on the mentally ill in prison. Most recently, I was appointed as the principal investigator in the case of **Rasho v. Walker**, No. 1:07-CV-1298-MMM-JAG (C.D. Illinois 2011). Our Team spent nine months visiting and observing Illinois' prisons, studying files, interviewing staff and inmates.

I authored a 180-page Report, which issued on March 6, 2012 and made explicit findings about the conditions in Illinois prisons including the hundreds of inmates with serious mental illness (SMI) who are held for extended terms in segregation. The parties to the **Rasho** litigation are now engaged in settlement discussions, as I understand it, with a particular urgency regarding those inmates with SMI held for extended periods of isolation.

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[1] Much of this testimony was presented in statement to the Committee in June, 2012.

The June/July 2014 issue of the Correctional Law Reporter will contain an interesting feature that is relevant to this committee's work. Experts (James Austin, Martin Horn, Terry Kupers, David Fathi, Andrew Coyle) have prepared answers to three vignettes I created posing issues in the use of extended isolation. The proposed solutions are imaginative and also practical. They should provide an excellent resource for this Committee and I would like to make them available just prior to publication.

I congratulate this Committee for its historic decision to conduct hearings on the human rights, fiscal and public safety consequences of the extraordinary use of solitary confinement in our penal institutions. The precise number of inmates in solitary confinement is not known but about 82,000 is a reasonable estimate for the state and federal prison systems. *See,* How Many Prisoners Are in Solitary Confinement in the United States? (Solitary Watch, Feb. 1, 2012)

In my experience and based on my studies, the contemporary use of penal isolation is one of the most psychologically damaging, penologically unnecessary, and needlessly expensive correctional measures currently in use. Whether analyzed from a human rights or an empirical perspective, our current practices with penal isolation are properly subject to condemnation and candidates for early reform.

Clearly, some inmates must be separated from each other and staff for legitimate reasons of security. A short-term restriction on movement and loss of amenity can be a useful disciplinary sanction, especially when accompanied by a process that encourages and rewards positive behavior. Inmates may need to be <u>insulated</u> from each other, and for a variety of valid reasons, but <u>insulation</u> (separation) and contemporary penal <u>isolation</u> are quite different

concepts and operations. The process of insulation need not lead ineluctably to conditions of extreme social and sensory deprivation.

Being locked down in an archaic, 6' x 9' cell with another inmate for 23 hours a day (or more), seven days a week, with limited showers and exercise opportunities, no congregate meals or other activities is a recipe for madness. Safety is not enhanced by such barbaric, inhumane measures.

An Illinois inmate I recently interviewed and who is subjected to such a regimen concluded with me by saying, "I just don't know who I am anymore." Another such inmate explaining to me why he rejected outdoor exercise in what he (and others) call the "dog run" explained, "They do a full body search going in and out. I'm not going to let them inspect parts of my body I've never seen." He is not alone.

Whether the physical confines of extended penal isolation are the antiseptic sterility of the newer Supermax variety or the medieval-like cells in prisons like Menard, Pontiac, or Stateville in Illinois, the negative impact on the individual appears to be the same. There is a retreat into the recesses of one's psyche and either the "discovery" of a hiding place or of demons so frightening that self-destruction and unimaginable self–abasement emerge. Bodies are smeared with one's own excrement; arms are mutilated; suicides attempted and some completed; objects inserted in the penis; stitches repeatedly ripped from recent surgery; a shoulder partly eaten away.

Even Edward Munch's "The Scream" fails to capture the hidden horrors emerging from some of the men and women in longer-term (over 30 days) penal isolation. Every example I just gave comes from actual cases I have encountered.

It is very expensive to control inmates in a high security classification or segregation. There are two, perhaps three, officers assigned to every such inmate who for whatever reason must leave his or her cell (e.g., a dental or medical appointment, a visit, a disciplinary hearing). I recently observed such prison disciplinary hearings and they moved with the speed of light with each inmate-defendant manacled and a different pair of officers at each shoulder.

There is no enhancement to public safety for our current reliance on penal isolation. Indeed, the anger that is created in these subjects suggest public safety is diminished. For corrections, segregation is an easy response and requires no thinking or planning; no work at changing offenders' behaviors. For some officers, it is an ideal assignment: no real interaction with inmates, nothing but control is on the daily menu.

Officers' unions, not surprisingly, are not opposed to the current use of segregation.

Judicial decisions have brought some relief in this area to juveniles and inmates who are SMI or even especially psychologically vulnerable to extended and right-less confinement. For others, Professor Mushlin correctly writes, "Virtually every court which has considered the issue has held that the imposition of solitary confinement, without more, does not violate the Eighth Amendment. Arguments that isolation offends evolving standards of decency; that it constitutes psychological torture and that it is excessive because less severe sanctions would be equally efficacious, have routinely failed."[2]

In **Austin v. Wilkinson**, 545 U.S. 209 (2005), the Supreme Court did recognize a liberty interest in the avoidance of confinement at Ohio's Supermax (OSP). The due process response

[2] Michael B. Mushlin, Rights of Prisoners, 92-93 (3rd ed 2002)

is a paper-review type of procedure. Even a more stringent procedural solution than **Austin** to a substantive problem — i.e., the very conditions to be endured — is hardly a solution.

The destructive dimensions of this practice and the magnitude of the problem sit astride a correctional system that either welcomes or condones the practice. Is this a cancer that can be removed without more basic reform; more rehabilitative and educational opportunities, less time served for less serious offenses, for example? Yes, I believe so and if reform undertaken here is labeled "mere tinkering" I would insist on a survey of those inmates whose incarcerative lives might acquire the normality of "mere imprisonment."

A Federal Approach

The federal government can play a vital role in affecting change here. First, the government can solicit proposals for a first-rate national study of the number of state and federal prisoners held in penal isolation. It should not be difficult to arrive at criteria for data inclusion on long-term penal isolation and to then survey the states.

Second, the federal government could convene a National Commission to draft national standards for jails and prisons on the use of penal isolation (or whatever term is deemed felicitous). The ABA Standards for Criminal Justice, which I assisted with, Standard 23-3.8, "Segregated Housing" is a good starting reference point.

Federal funding for corrections can be tied to the adoption, oversight, and enforcement of such standards. In this fashion, constitutional minima and constant judicial intervention and oversight might be obviated.

James B. Jacobs and Kerry T. Cooperman in "A Proposed National Corrections College," 38 New Eng. J. on Crim & Civil Confinement 57 (2012), make a very persuasive case for a full-

fledged, national-level training and research institution devoted to making our corrections systems as effective and humane as possible. My earlier suggestion for a temporary Commission to create national standards is fully consonant with the more ambitious Jacobs and Cooperman, national academic and training institution.

The National Institute of Corrections (NIC), in my view, is far too invested in nuts-and-bolts, how-to-do-it training to serve as the vehicle for the college these authors propose. There was a day when the School of Criminal Justice (SCJ) in Albany, N.Y. might have been a "partner" in something like this. Where the NIC is too parochial, the SCJ has evolved into just another school of criminology and ranks high on the opacity scale for many of its research products.

There is a vital role here for the federal government. States have shown some willingness to make changes in penal isolation, particularly where juveniles and the mentally ill are involved. The expensive whip of judicial intervention, however, typically is the driving force. In the next section, I suggest some basic guiding principles for the reform of penal isolation. I believe those principles should be considered as a critical requirement for any state or local reform effort seeking federal funding.

Suggested Guiding Principles for Reform

Initially, recognize the utilitarian basis for the separation of some inmates from others and staff for reasons of safety. The separation itself is the objective and not the infliction of the extreme pain and psychological harm caused by the extended duration of confinement and the extreme conditions of such confinement.

Next, recognize that individuals change. Without some hope of improving their lives, even in the straightened conditions of any prison, we enhance the danger to staff and other

inmates; foster serious management problems; and, in effect, we have given up on these individuals. Many of these individuals do return to the community and the results at times are gruesome.

See the extreme case of Nikko James who killed three people weeks after his release from segregation in a Nebraska prison. I attach as Appendix A my analysis of his case and the Report of the Nebraska Ombusdman.

Thus, terms of isolation should be relatively brief (30 to 90 days); there must be review at the end of each such term and the review should be based on the inmate's conduct and compliance with behavioral markers provided to him; if the isolation is to continue, the reviewers must provide a clear, easily understood basis for the decision and what must occur for a change in isolation.

There must be a commitment of treatment-rehabilitation staff to work with such inmates and help direct them in a positive fashion. This will cost time and money but it is money that can be well spent. Grants to jurisdictions willing to undertake this reform are to be encouraged.

There should be stages in the strictness of the isolation whereby the inmate may move toward greater freedom of movement and association and enhanced amenities. Even the least amenable stage, however, should exceed the conditions previously described herein.

Thus, we must learn much more about the "dangerous" inmate and we must put that knowledge to work with programs and staff to reduce the danger to others and enable the inmate to function in an increasingly independent fashion. Rewarding compliance and life altering, positive behavior is more likely to succeed than socially burying a troubled inmate and,

in effect, renouncing the need to help. Staff enhancement and staff training here is absolutely vital as an oversight.

The current situation, however, is so venal, so destructive in its results, that it must end.

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Appendix A

The Nebraska Ombudsman Report
Denial of Needed Mental Health Care, Excessive Segregation and Predictable Tragedy

by Fred Cohen

Introduction

We should always be cautious about drawing general conclusions from an extreme case. The extreme case, however, should be accommodated in a solution. The case of Nikko Jenkins, 27, is extreme: He killed four people in three separate shootings some three weeks after he was tumultuously released from the Nebraska prison system.

Jenkins had served more than a decade on robbery, weapons, and assault charges. He appeared to have been dangerously psychotic for much of his prison term. Although he desperately sought treatment, he was far more likely to be placed untreated in segregation. Indeed, he was released to the street directly from a two-year stint in segregation. Excerpted from a fascinating report issued by Nebraska's Ombudsman[1] here is what occurred just prior to his release,

> Beginning on March 7, 2013, Kathy Foster, a Department of Correctional Services social worker met with Mr. Jenkins to begin planning for his release. This planning was supposed to cover matters like where Mr. Jenkins would reside after his release, and what community services might be available to him after release. (At the time, Mr. Jenkins' tentative release date was set at July 30, 2013.) Ms. Foster made extensive notes of her visits with Mr. Jenkins to help him prepare a discharge plan, and her notes from March 7 include the statement

that Mr. Jenkins said that he "does not want to discharge to the community because he will kill people and cannibalize them and drink their blood." He also made a statement to her "of intended violence that he will commit if he is discharged to the community," and told her that he was seeking a Mental Health Board commitment. Ms. Foster's notes indicate that she intended to "look into potential community services for discharge follow-up," and that she would be contacting Mr. Jenkins' mother. Ms. Foster did contact Mr. Jenkins' mother, Lori Jenkins, by telephone on March 15, and talked with her about issues relating to her son's eventual place of residence (either Lincoln or Omaha), about treatment resources, about securing identification documentation for Mr. Jenkins, and about helping Mr. Jenkins to apply for Social Security and Medicaid. (Report, pp. 23-24)

Jenkins, in effect, is pleading then to not be released. The report goes on to state,

In a letter written by Mr. Jenkins and addressed to Ms. Ester Casmer of the Nebraska Board of Parole on March 10, 2013, Mr. Jenkins stated that he was "now in a very seriously severe emergency need," because he was "set to be released July 30th 2013." (It should be mentioned that this communication had nothing to do with a parole, since by this point in his sentence it was clear that Mr. Jenkins was not going to be paroled.) In this letter, Mr. Jenkins explained that he was in "isolation 23 hour lockdown (with) no medication," and with no "therapeutic sessions of psychological treatment for the very severe psychosis condition of (his) schizophrenia disease as well as bipolar disorder and PTSD."

> Mr. Jenkins claimed that he was "deteriorating daily physically psychologically and emotionally," and that he had experienced "another self-harming psychotic episode of self-mutilation that resulted in 11 more stitches in (his) face." Mr. Jenkins stated that he had "carved...facial wounds into my face with a piece of tile from the gallery floor," and that a correctional officer "had to spray (him) with pepper spray to get (him) to stop carving into (his) face."In this letter, Mr. Jenkins also stated that he had filed an "emergency protective custody petition in Johnson County to...be submitted to the Mental Health Board," under the Nebraska statutes dealing with "dangerous persons of mental illness," in order to have a "hearing on grounds of release to the psychiatric hospital for mental health treatment." (Report, p. 24)

Jenkins' subsequent killing spree is extreme; his expressed insight into his own illness and terrors is extraordinary; and the DOC's passivity was equally extreme. Thus, while we should not revise policy and procedure driven by cases that seem to resemble Jenkins, we certainly should have a way to deal with a Jenkins. Clearly, stuffing a Jenkins into a solitary cell for extended periods with no semblance of treatment or programming is wrong; dangerously wrong. Releasing Jenkins in the face of his murderous threats and cries for help; his specific cry for hospitalization is tragic, even if only rarely encountered.

The Larger Framework

Since 1969, Nebraska has operated the Office of the Public Counsel; in effect, an Ombudsman's office. The office is independent with broad authority to investigate state

administrative offices. The Ombudsman is appointed by the legislature for a six-year term and may be removed for good cause, but only on a two-thirds vote of the legislature.

Marshall Lux has held this office since 1980 and he is the author of a stunning 62-page report on the Jenkins affair. The report's January 2014 release moved outgoing Governor Dave Heineman to rip into the document crying out that Lux may be soft on crime and care more about criminals than victims but he (Heineman) cares for families and victims.[2] In turn, key legislators said it was stupid to call Lux soft on crime; the Governor went on a "political diatribe" and was "stupid and simple-minded."[3] Strange stuff and more like we expect from a California or New York response than from Nebraska.

This extraordinary report gives an exquisitely detailed account of Nikko Jenkins' life and his journey through the juvenile and the adult correction systems. Jenkins' life was trouble virtually from the beginning. His experience in the system, it would seem, not only did not help, it made him worse. The absence of a credible effort to treat and the regular imposition of often prolonged periods of penal isolation stand out as the prominent negative factors.

The report makes, p. 33, the important point that it is not primarily about Mr. Jenkins. It is about the Nebraska Department of Correctional Services (NDCS) and how it managed a terribly troubled and troubling inmate.

The floridly ill Jenkins spent 60% of total NDCS time in segregation. The Administrative Segregation designation by-passed nominal procedures and relied on a correctional decision as to his dangerousness.

Nebraska has anger management/violence reduction programs, sex offender programs, and substance abuse programs. Only 13% of Nebraska's inmates receive any programming and of the 619 inmates programming, 450 are in substance abuse programs.

The NDCS is 150% over design capacity and severely budget restricted. The report wonders if programming for inmates in segregation, particularly those who are clearly dangerous like Jenkins, wouldn't be money well spent. Mr. Lux actually puts the artificial dilemma in colorless prose, free of hyperbole, and still is attacked by the Governor.

Interestingly, the report rarely uses the term treatment for what Mr. Jenkins required. It is almost always *programming*. There is no talk of deliberate indifference or even malpractice (nee negligence). I suspect this is to avoid making the total case for plaintiffs' counsel, one of whom, Vince Powers, has already filed a claim based on the tort of negligent release.[4]

Mr. Lux makes the important point that counseling/therapy should be given those in segregation whether or not there is a diagnosis of a major mental illness or a "mere" behavioral problem. The report then takes a step beyond Mr. Jenkins, questioning whether prolonged periods of segregation may actually produce mental illness that, as here, goes essentially untreated.

The report states,

- Because the segregation units in Nebraska's correctional facilities often contain some of the system's most troubled and dangerous inmates, it is suggested that the Department of Correctional Services take steps to immediately provide programming of all types to its segregation inmates. The Department should also develop a process for the identification of

long-term segregation inmates who are, or may be, experiencing post-traumatic stress disorder, and to address the effects of this post-traumatic stress disorder before they are released from custody.

- The Department of Correctional Services needs to provide comprehensive ongoing mental health/behavioral health therapy/counseling to the inmates in its segregation units. It is emphasized that this therapy/counseling should be available not only to inmates who are identified as having a "serious mental illness," but also to those segregation inmates who are identified as having "behavioral" problems.
- Although there are differences of opinion on whether mentally ill inmates in segregation will "decompensate" due to the nature of their segregated environment, the Department of Correctional Services should take the "conservative approach," by confronting this risk directly, rather than simply hoping that decompensation will not occur. With this concern in mind, Nebraska's Department of Corrections should move forward to implement the recommendation of the American Psychiatric Association, and require its mental health staff to work closely with the agency's administrative custody staff to maximize access to clinically indicated programming and recreation for these individuals. (Report, pp. 40-41)

The logical next step, one not taken, is to simply question the extent to which long-term (30 days or more) segregation is used at all and to face the issue of how to provide a humane

environment for a Jenkins that is also safe for him and others. The resource allocation issue is the profound question: Do we spend money where the need is greatest and the payoff not always obvious but amost always prolonged?

Nebraska's Good Time Dilemma

The report notes that, like nearly all of the inmates in the Nebraska correctional system, Mr. Jenkins was given "good time" credits which substantially reduced his sentence as pronounced by the courts. (In addition, his term of confinement was also reduced by his being given credit for time served in jail prior to sentencing, as is allowable under Nebraska law.) Given the ultimate length of his sentence, if he had received all of his possible good time credits, it appears that Mr. Jenkins would have been able to discharge from custody perhaps as early as January of 2012. If all of his good time had been forfeited, then Mr. Jenkins would not have been subject to discharge until the end of his full maximum term (less jail credit), or sometime in 2024 (although an inmate that loses all of his/her good time is an *extremely rare* occurrence).

Nebraska credits inmates with good time upfront and the credits are deemed vested subject to loss only after a due process proceeding. The report notes that a Nebraska sentence of, say, 10 to 20 years is de facto 5 to 10 given the 1 for 1 good time ratio and vesting.

This approach is thought to foster good order in the prison setting with inmates reluctant to lose what they have versus earning future credits for early release.

More Mental Health

There was dissonance among the clinicians over time regarding Mr. Jenkins' condition. The report reviews the opinions of four psychiatrists, as follows,

Dr. Baker expressed the opinion that Mr. Jenkins' symptoms were "inconsistent and more behavioral/Axis II in nature," and that Mr. Jenkins was attempting to use his mental health symptoms "for secondary gain, including to avoid legal consequences in court for (his) recent behaviors." Dr. Moore said that it was his opinion that "there is the possibility that Mr. Jenkins does indeed have a psychotic illness, (but) I don't think this is a very good possibility," and that Mr. Jenkins' "major diagnosis is Antisocial Personality Disorder," with "doubt" concerning "the presence of psychosis." When Dr. Wetzel examined Mr. Jenkins, he said that his diagnosis was "Bipolar Disorder NOS, Probable; PTSD, Probable; Antisocial and Narcissistic PD (personality disorder) Traits; and Polysubstance Dependence in a Controlled Environment." Dr Wetzel also said that when he examined Mr. Jenkins, there was "enough objective evidence of disruption in sleep cycle, mood and behavior to suggest an element of major mood disorder influencing the clinical picture." When Dr. Oliveto saw Mr. Jenkins on April 23, 2010, his diagnosis of Mr. Jenkins' condition was "Axis I – Schitzoaffective disorder vs. bipolar I; Axis II – Anti-social/Impulsive/Obsessive." Later, on September 22, 2010, Dr. Oliveto gave a diagnosis of Mr. Jenkins' condition as being "Axis I - Schitzoaffective disorder vs. paranoid schizophrenia; Axis II – Antisocial/Obsessive/Impulsively dangerous to others/Explosive," and his Follow-up Notes described Mr. Jenkins as being "psychotically obsessed with plot to kill him or set him up to kill others," and as being "psychotic, delusional." (Of course, it was also Dr. Oliveto who recommended that Mr. Jenkins should be transferred

to the Lincoln Regional Center "before his discharge to stabilize him so he is not dangerous to others.") (Report, pp. 47-48)

While the diagnosis may be open to some debate, the record of Jenkins' manifestation of dangerousness is clear as is his constant search for help, even as he faced leaving prison.

Civil Commitment

It appears to me that Mr. Jenkins was an obvious candidate for civil commitment. Under Neb. Rev. Stat. §71-921(1), "any person who believes that another person is mentally ill and dangerous may communicate such belief to the county attorney," and "if the county attorney concurs that such person is mentally ill and dangerous...he or she shall file a petition," as provided in Neb. Rev. Stat. §71-921(3), including a "statement that the beliefs of the county attorney are based on specific behavior, acts, attempts, or threats which shall be specified and described." Following the filing of that petition by the county attorney, Neb. Rev. Stat. §71-924 provides that "a hearing shall be held by the mental health board to determine whether there is clear and convincing evidence that the subject is mentally ill and dangerous as alleged in the petition." According to Neb. Rev. Stat. §71-925(1), "the state has the burden to prove by clear and convincing evidence that (a) the subject is mentally ill and dangerous and (b) neither voluntary hospitalization nor other treatment alternatives less restrictive of the subject's liberty than inpatient or outpatient treatment...would suffice to prevent...harm." Since the clear standard for a civil commitment is that the person in question is both mentally ill and dangerous, the Nebraska Mental Health Commitment Act includes specific definitions of those two concepts. In that regard, Neb. Rev. Stat. §71-907 provides that "mentally ill" means "having a psychiatric disorder that involves a severe or substantial impairment of a person's thought

processes, sensory input, mood balance, memory, or ability to reason which substantially interferes with such person's ability to meet the ordinary demands of living or interferes with the safety or well-being of others." And according to Neb. Rev. Stat. §71-908 "mentally ill and dangerous person" means "a person who is mentally ill...and because of such mental illness...presents: (1) A substantial risk of serious harm to another person or persons within the near future as manifested by evidence of recent violent acts or threats of violence or by placing others in reasonable fear of such harm; or (2) A substantial risk of serious harm to himself or herself within the near future as manifested by evidence of recent attempts at, or threats of, suicide or serious bodily harm or evidence of inability to provide for his or her basic human needs." The burden of proof in civil commitment proceedings is on the county attorney who has filed the petition and requires clear and convincing evidence that the person in question is both mentally ill and dangerous. However, the standard for the county attorney in deciding to go forward with a civil commitment proceeding is "probable cause to believe that the subject of the petition is mentally ill and dangerous."

The report simply recommends that a process be developed to standardize referrals for civil commitment and that the process would surely encompass a Jenkins.

The case is sad for Jenkins and tragic beyond words for the victims and their families. This report is a must for every department of corrections and a virtual command to reform segregation, enhance treatment, provide transition from even limited use of segregation, and obtain secure hospitalization at the extreme ends of illness and misconduct.

Good job Mr. Lux, may your voice be heard above the political din that has been generated.

Endnotes

1. Full report available at http://www.ketv.com/blob/view/-/23815324/data/20715701/-/ehg5sh/-/PDF---Nikko-Report.pdf.
2. See http://nebraskaradionetwork.com.
3. See http://journalstar.com/news/local/911/lawmakers-lash-out-at-governor-for-comments-about-state-ombudsman/article_ff10b173-0b63-56d4-81cf-1b0cbd9c4927.html.
4. For an excellent summary of the law on point see, 6 A.L.R. 4th 1155 (originally published in 1981).

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FRIENDS COMMITTEE ON NATIONAL LEGISLATION
. . . a Quaker lobby in the public interest

Statement on behalf of the Friends Committee on National Legislation
Ruth Flower, Associate Executive Secretary
submitted for the hearing on

Reassessing Solitary Confinement II:
The Human Rights, Fiscal and Public Safety Consequences

United States Senate Judiciary Subcommittee
on the Constitution, Civil Rights and Human Rights

February 25, 2014

Thank you, Chairman Durbin, Ranking Member Cruz and members of the subcommittee for holding this important hearing on the use of solitary confinement and its consequences.

The Friends Committee on National Legislation is a Quaker lobby in the public interest. Grounded in the faith values of the Religious Society of Friends, we are active in our public witness and advocacy for a world that more closely reflects these values –shared not just among Quakers, but also among people of many faiths and persuasions. We offer testimony today because we are concerned by the continued and expanded use of solitary confinement and the consequences of this practice.

Quakers are often credited with inventing solitary confinement. Actually, we borrowed the idea from other faith leaders in the 18th century, who promoted it as an alternative to the widespread use of the death penalty and an improvement over other punishments which maimed, debased and otherwise utterly humiliated accused criminals. But history does record that the first prison in the U.S. entirely constructed for the purpose of solitary confinement – the first "supermax" – was largely designed and operated under the leadership of Quakers. The Eastern Pennsylvania Penitentiary opened in 1829, 185 years ago.

Think of all that has changed since 1829, when that first super-max prison was built. As a nation we have completely re-invented our ways of being in society with one another. We have learned more about almost every aspect of living – very little has been left unchanged in that time. Think of how we teach and learn in schools; how we communicate – both person to person and in mass media; how we get around –in our cities, state to state, and globally. Think about advances in food and medicine, the

eradication of diseases, better understanding of psychology and neurology; the explosion of knowledge in the sciences and the expanding boundaries of the "known world" through space exploration. The society we all live in now is nothing that any of us could have imagined 185 years ago.

And yet, we've kept solitary confinement and even increased its use.

Quakers moved away from solitary confinement within a few years of the opening of the Eastern Pennsylvania Penitentiary. By 1838, leading Quaker Elizabeth Fry was already speaking out against solitary confinement. She lobbied the British House of Commons and she traveled in England and Scotland to meet with policy makers and public audiences, to call out the dangers of this practice. Even before the fields of psychology and neurology developed, she pointed to the deprivations inherent in being completely alone for so long a time, and called specific attention to suicides that she learned of in her visits to women's prisons.[i]

In the intervening decades, Quakers have been active in movements for criminal justice reform, seeking alternatives to prison, drug addiction treatment, diversion of mentally ill arrestees out of the criminal justice process and into treatment options, an end to mandatory and lengthy sentences, improved conditions in prisons and jails, education and training for prisoners, support for families of people who are in prison, assistance for ex-prisoners when they return to the community, reconciliation between victims and offenders, and a reduction of violence in prison and in communities.

Why the increase in solitary confinement?

Super max prisons grew out of super maxed sentences. In the last 30 years, long and mandatory prison terms, primarily for drug related crimes, have increased the federal prison population by a factor of nine. The federal prison population in 1980 was about 24,000. By 1989, the population had doubled to 58,000, and in the 1990s, it *more* than doubled again – to 136,000. By now, the federal prison population is over 215,000 and still growing.

The Bureau of Prisons (BOP) reports[ii] that just over half of its inmates are serving time for drug related crimes. Eleven percent are imprisoned for immigration offenses, with less than seven percent for violent crimes including homicide, aggravated assault, kidnapping and robbery. The largest group – nearly half – are servings sentences from five to fifteen years.

Both prison overcrowding and the length of sentences frustrate rehabilitative programs that enable inmates to work toward a shorter, rational release date. Languishing in prison for long terms, prisoners are less engaged in activities that they find useful, and prison staff turn more attention to the management of the population. With inadequate funds for programs and privileges to use as disciplinary rewards and sanctions, prison systems turn to more restrictions, and as a result, increase the risk for prison staff. Ironically, states that cut funding for prison education programs, vocational training, and work opportunities have found ways to support capital projects for super max prisons, and

for the ongoing cost of more intense staffing. States that turn to solitary confinement to manage more prisoners are repeating an experiment that failed 180 years ago.

The Friends Committee on National Legislation joins with people of many faiths and with people devoted to respecting the human rights of all, to call for an end to solitary confinement as it is used today.

How is solitary confinement used today?

Far too many people are held in solitary confinement. As of 2012, about 81,000 people were held in solitary confinement nationwide.[iii] The GAO reported in 2013 that 12,460 people were held in "segregation" in the Bureau of Prisons (BOP) system. The BOP decreased that number by about 25 percent by the end of last year[iv] by changing the criteria for transfers into Secure Housing Units (SHU). The Bureau is engaged in consultations on best practices to further reduce the number of people held in isolation. We urge the committee to ensure that the Bureau does not increase its capacity for solitary confinement, while discerning additional ways to *reduce* the population in these units.

It's easy to get in, and hard to get out. Prisoners are assigned to secure or segregated or restricted units for three types of reasons: (1) for discipline, (2) because they are mentally ill, or (3) because they belong (or are alleged to belong) to a group or a class that is segregated. A few individuals are disciplined in solitary confinement due to violent behavior toward staff or other inmates. But most disciplinary isolation is due to a violation of prison rules, such as failing to stand for the "count," possessing contraband (such as having more than five dollars without authorization), ignoring orders or using profanity. In cases in Virginia and California, men were placed in solitary confinement because they refused to cut their hair because to do so would violate their religious beliefs. In Virginia, the men had been in solitary confinement for 10 years before a suit was brought.

Mentally ill prisoners constitute another large group of prisoners held in solitary, as identified by Professor Haney in a presentation to the American Academy for the Advancement of Sciences.[v] In the past 30 years, the options for treatment of mental illness have diminished, bringing unacceptable and sometimes bizarre behavior to the attention of local law enforcement. Lacking other options, local courts often sentence these individuals to prison. Once in prison, these individuals – who have perhaps more difficulty than anyone conforming to institutional expectations – are frequently place in isolation. Haney estimates that as many as a third of isolated prisoners are mentally ill.

Classification also leads to the isolation of many inmates. When inmates are identified as a member of a gang by another inmate, even if their behavior in prison has been exemplary, the accused inmate can spend his or her entire sentence in solitary. In California, more than half of the prisoners in the Secure Housing Unit (SHU) are being held for up to six years for "gang validation." If a tattoo, or a chance comment, marks them as gang members, they will be held for an indeterminate time until they agree to tell to gang investigators everything they know about gang activities. In these coerced "debriefing sessions," inmates often point to each other, or to rivals, further increasing the population of the SHU.

If they insist that they know nothing about gang activity, they will be held for six years in solitary confinement, when their case will be reviewed to determine whether they are "inactive" gang members.[vi]

If an inmate has a "history of violence," he or she can be segregated, whether or not the prison staff has seen any evidence of violence in prison, and whether the "history" comprises convictions or hearsay. The determinations of the appropriateness of segregated placements are made internally, by staff, generally without external oversight and often without objective criteria.

No way to earn a ticket out. Once confined to the segregated unit, a prisoner cannot work at a prison job, attend education or vocational training classes, or participate in other programming that could result in "good time" reductions of the person's sentence. The staff decision to isolate the prisoner, therefore, has the effect of extending his or her sentence – without an opportunity for appeal or a judicial review of the need for isolation. As a result, a significant percentage of inmates serve out their entire sentence in isolation, and then are released directly to the street, without any education, training or support, and without human contact over the last several years. In Colorado, executive director of corrections estimated that this happened with about 40 percent of inmates held in long-term isolation.

People spend way too long in solitary confinement. Since time in solitary is largely unregulated and inconsistently reported, investigators do not have a clear picture of the amount of time spent in solitary confinement, whether for punishment, administrative classification, or non-voluntary protection. The California Department of Corrections and Rehabilitation released a count of the inmates in the SHU as of September 2011. Of 1,111 inmates, 78 had already served more than 20 years in that unit; another 435 had been there longer than 10 years, but less than 20; 544 had been isolated for at least 5 years. In the Arizona supermax units, the average term is 5 years. The supermax in Virginia (Red Onion State Prison) records an average term of 2.7 years, with terms ranging from 2 weeks to 7 years.

We know better now.

Best practices are being discovered and developed in many states. As this committee heard in 2012, Mississippi is a standout case. In 2007, after a rash of serious violence in the prisons, the state prison commissioner Christopher Epps ordered a lifting of restrictions instead of more lockdowns. Instead of spending more on higher security units, Epps invested in common areas, recreation, and program opportunities. Examining the files of each person in long term isolation, the prison staff ultimately released 70 percent of them to the general population. Violence has gone down and the state has saved millions of dollars.

Sometimes in response to lawsuits, sometimes under court orders, and sometimes by their own policy and fiscal decisions, more states are finding ways to ease the pressure of overcrowding in the prisons, and reviewing the necessity of keeping such a large population in isolation units. These states include Colorado, Ohio, Washington, Maine, and New York. The concept is still hotly debated, however. The governor of Illinois closed the state's only maximum security prison in 2013, but found that without a

way to ease overcrowding, and without the support of correctional staff, the prison's future is not yet settled.

What should Congress do?

Congress can help turn this picture around, for the Federal Bureau of Prisons, and for state prisons and local jails.

In direct oversight and budgeting role for the Federal Bureau of Prisons, Congress should

- develop a framework of standards for conditions, limits, accountability, and transparency for solitary confinement;
- ensure that the BOP has access to the funds it needs to support education, training and recreational programming in federal prisons, in order to reduce recidivism (and thus reduce pressures on prison population) and to support a full range of management options. Solitary confinement should not be necessary as a disciplinary option;
- address the mental needs of people with illnesses who end up in the prison system for lack of other options. These individuals should be diverted out of the criminal justice system at the time of arrest or arraignment, but once in the system, they should receive treatment, not punishment for their illness; and finally,
- end mandatory minimum sentences and reduce the length of sentences for drug related crimes.

Through training, incentives, and technical support, Congress can and should help states to move away from abuse of solitary confinement. Congress can provide incentives to state and local jurisdictions by conditioning grants on the adoption of solitary confinement standards consistent with new federal standards.

Standards for solitary confinement should include:

- a disciplinary system built on privileges and sanctions, rather than isolation;
- separation from the general prison population only to the degree necessary for the physical safety of staff and other inmates;
- a strict limit on the amount of time that a prisoner may confined in isolation;
- an end to forced "cell extractions"
- conditions of solitary confinement that includes access to natural light and air, human contact, an ability to occupy time, and other identified factors that mitigate the psychological destruction that occurs in solitary, even in short periods of time;
- daily monitoring of placements in solitary confinement by a third party not employed by the prison system;
- a review of each isolation, the reasons for it, and the inmate's own version of events (without retaliation) by the prison warden, with records to be open to an outside reviewing authority.

Maine's Department of Corrections has adopted most of these standards, and has cut the number of people held in isolation nearly in half.

In keeping with the recommendations of Juan Mendez, the UN Special Rapporteur on Torture and Cruel, Inhuman, and Degrading Treatment in March 2012, certain individuals should never be placed in solitary confinement: juveniles and those with mental illness or a mental disability. The state of New York has just agreed to limit its use of solitary confinement; it also includes pregnant women in its list of people who should never be isolated.

It's a 185-year-old experiment. It failed. It's time to turn it around as Mississippi did, as Maine is doing, as other states are considering. This society knows how to require each other to be accountable for our actions, without destroying the people inside our prisons.

Thank you for holding this important hearing and providing the opportunity for non-governmental organizations to contribute ideas about how to curtail and end the widespread use solitary confinement.

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[i] Elizabeth Gurney Fry, Katharine Fry, Rachel Elizabeth Cresswell, *Memoir of the Life of Elizabeth Fry: With Extracts from Her Letters and Journal*, p. 365. https://archive.org/details/memoirlifeeliza06cresgoog

[ii] Bureau of Prisons, Inmate Population Report. http://www.bop.gov/about/statistics/population_statistics.jsp

[iii] Angela Browne, Alissa Cambier and Suzanne Agha, *Prisons Within Prisons: The Use of Segregation in the United States,* Federal Sentencing Reporter, Vol. 24 No. 1, October 2011, pp. 46-49. http://www.jstor.org/stable/10.1525/fsr.2011.24.1.46

[iv] Testimony of Charles E. Samuels, Director, BOP, Senate Committee on the Judiciary Oversight Hearing, November 6, 2013, http://www.judiciary.senate.gov/pdf/11-6-13SamuelsTestimony.pdf

[v] Joseph Stromberg, "The Science of Solitary Confinement," Smithsonian Magazine, February 19, 2014. http://www.smithsonianmag.com/science-nature/science-solitary-confinement-180949793/

[vi] Laura Magnani, "Buried Alive: Long Term Isolation in California's youth and Adult Prisons," American Friends Service Committee, May 2008. http://afsc.org/sites/afsc.civicactions.net/files/documents/Buried%20Alive%20%20PMRO%20May08%20.pdf

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Statement of Rev. Dr. Susan Henry-Crowe, General Secretary of the United Methodist Church, General Board of Church & Society

Before the United States Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights

Hearing on

Reassessing Solitary Confinement II: The Human Rights, Fiscal and Public Safety Consequences

February 25, 2014

Thank you Chairman Durbin, Ranking Member Cruz and members of the Subcommittee for this important opportunity to submit testimony on behalf of the United Methodist Church, General Board of Church and Society concerning the use of solitary confinement in our nation's prisons.

The United Methodist Church is the third largest denomination in the United States and has over 11 million members worldwide. Throughout this country our members dedicate countless hours to aiding, ministering to and advocating for prisoners and their families. We believe inexcusably high rates of incarceration, overly punitive sentences and prison policies, and imprisonment of adults and children in facilities often ill-equipped to provide the basic necessities of life, including adequate physical and mental health care, is a moral affront. Added to this scenario is the isolation and deprivation encountered by over 80,000 Americans incarcerated in segregated housing units, one-third of who are believed to be mentally ill. We find this practice to be morally reprehensible and we urge lawmakers and corrections officials to end all cruel and degrading conditions in U.S. prisons and jails.

Across the United States people enduring solitary confinement are confined in small cells for 22-24 hours per day for weeks, months, years, even decades at a time. Human contact is significantly limited because out of cell activity is restricted which includes bars on programming and even eating with other prisoners. Typical conditions while in solitary

confinement include reduced or no natural light, restrictions or bans on reading material, television, radio and other property, as well as severe constraints on visitation and phone calls.

Numerous studies have shown the harmful impact of solitary confinement. A recent panel of scientists presenting before the American Association for the Advancement of Science's annual meeting concluded "that solitary is both ineffective as a rehabilitation technique and indelibly harmful to the mental health of those detained."[i] Craig Haney, a psychologist at the University of California Santa Cruz who submitted testimony to this subcommittee previously on this topic, has studied the mental impact of solitary confinement and found severe psychological stress imposed on those people put in isolation that manifests almost immediately and fails to subside over time. Some of the symptoms include dizziness, heart palpitations, chronic depression, hallucinations, paranoia, panic attacks, and suicidal ideation. One newly released report found that isolated prisoners are seven times more likely to harm themselves or attempt suicide than those housed in general population.[ii] Indeed, the 2006 Commission on Safety and Abuse in America's Prisons noted that among the dozens of studies on the use of solitary confinement conducted since the 1970s, there was not a single study of non-voluntary solitary confinement lasting more than 10 days that did not document negative psychiatric symptoms in its subjects.[iii]

The devastating consequences of solitary confinement also impacts public safety because people crippled by isolation will not be equipped to successfully re-enter their communities. Inmates who have been held in solitary confinement are significantly more likely to recommit crimes than those who have been held in the general prison population. For example, a Washington state study of over 8,000 former prisoners found that people who were released directly from solitary confinement had a much higher rate of recidivism than individuals who spent some time in the general prison population before returning to the community.[iv] Public safety is best enhanced when those who are currently incarcerated are given access to educational classes and social programs to prepare them for a successful re-entry to society and with their families.

Since this Committee last considered the issue of solitary confinement in 2012, the Government Accountability Office (GAO) undertook a review of segregation practices within the Federal Bureau of Prisons (BOP). According to GAO's 2013 report, the population housed in segregation increased 17% from fiscal year 2008 through February 2013 - 10,659 to 12,460 people. During this same time period, the total BOP population increased only 6%.[v] This recent increase in the segregated population is especially troubling given the additional finding in the GAO's report that the BOP had not tracked the impact of the increase in segregation, either on institutional safety or on prisoners' well-being. The consequence of this substantial investment was unknown.

While the BOP is considering, as the GAO recommended, conducting an assessment of long-term isolation on prisoners' well-being, the BOP must do more to protect prisoners. If it takes place, we are concerned that the long-term assessment will only look at prisoners housed in

segregation for more than 12 months consecutively. Given the high rates of mental illness among the incarcerated population and the evidence that even significantly shorter stays in segregation, equaling just a few weeks, can have a damaging impact on prisoners' health, the BOP should conduct broader evaluations on the effects of segregation that do not exclude shorter stays in segregation.

BOP must also provide evidence that its substantial use of segregation is necessary for institutional security. As the GAO has documented, several state corrections departments have successfully limited their segregated population without an increase in violence in recent years. Just last week the state of New York agreed to significantly curtail its use of segregation. No longer will corrections officials impose solitary confinement as a disciplinary measure for those under 18 or pregnant, and they will significantly limit its use for developmentally disabled prisoners. Moreover, New York has agreed to guidelines that specify the length of stay in segregation for specific infractions and establishes a maximum length that sentences in segregation may last.[vi] The kinds of changes happening in New York should serve as a model for the BOP. According to the GAO, "the length of stay inmates serve in segregated housing units varies, and BOP does not track an inmate's total length of stay or establish a maximum length of stay for inmates in any type of segregated housing unit."[vii] The BOP has operated for decades under the assumption that adding more and more prisoners to segregation for extensive periods of time was penologically necessary but they cannot provide documentation to substantiate that claim.

We are encouraged by testimony provided by BOP Director Charles Samuels in November during an oversight hearing that a new initiative to bring down the segregated population had decreased the number of people in segregation by 25%, to 9,300. We applaud the new development and urge the Director to take further action to continue to reduce the number of people confined in segregated housing.

However, during this same oversight hearing in the Senate Judiciary Committee, Dir. Samuels was asked a question about a new federal prison purchased in Thomson, Illinois. His response to the question indicated that the BOP's plan for the new facility was for it to be used as an Administrative Maximum facility (ADX). ADX is the BOP's most restrictive segregation facility. Currently, the BOP has one other ADX facility which is located in Florence, Colorado. The facility has 623 cells and currently houses 450 prisoners. The GAO's recent report indicated a 5% decline in population at ADX Florence from fiscal year 2008 through February 2013. Given the exorbitant cost and extreme isolation and deprivation that exist at this type of facility, and the lack of obvious need for these types of security beds, we urge the BOP and Congress to end its plan to retrofit the Thomson prison as an ADX facility.

The United Methodist Church has long held the importance of recognizing and protecting the sacred worth of each individual, especially among those who are incarcerated. We work and advocate for the creation of a genuinely new system for the care and restoration of victims, offenders, criminal justice officials and the community as a whole. Solitary confinement is not

restorative, but rather is retributive and does not recognize or protect the sacred worth of each individual.

Considering the severe harm done to individuals through the use of solitary confinement its use must be condemned. Scriptures are clear that we must regard the inherent value of each person as sacred. "Remember those in prison as though you were in prison with them; those who are being tortured, as though you yourselves were being tortured" (Hebrews 13:3).

We urge this Subcommittee to utilize its influence with your congressional colleagues, the Bureau of Prisons and leaders across this country to systematically assess the impacts of solitary confinement in this country on those living and working in correctional institutions and on public resources and safety. Decades of research tells us that great harm is inflicted on those forced to endure segregation. Corrections officials cannot legitimately deny the impact being imposed. We must all work together to end the creation of new solitary or segregated housing units, including supermax prisons like the one being considered in Thomson, Illinois. Moreover, initiatives that substantially reduce the population confined in segregation are critically important and must be encouraged by Congress and the Administration through financial incentives and by providing expertise on how to adequately conduct such downsizing. We are pleased that the BOP has taken a first step but more must be done.

Thank you for holding today's important hearing and for providing us this opportunity to offer our perspective.

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[i] Joseph Stromberg, "The Science of Solitary Confinement," *Smithsonian Magazine* (2014)

[ii] *Id.*

[iii] Commission on Safety and Abuse in America's Prisons, Confronting Confinement (2006), *available at:* http://www.vera.org/download?file=2845/Confronting_Confinement.pdf.

[iv] *Id.*

[v] Government Accountability Office (GAO), "Bureau of Prisons: Improvements Needed in Bureau of Prisons' Monitoring and Evaluation of Impact of Segregated Housing" (2013)

[vi] Benjamin Weiser, "New York State in Deal to Limit Solitary Confinement," *The New York Times* (2014)

[vii] GAO, *supra* note iii, at 59

Reassessing Solitary Confinement II: The Human Rights, Fiscal and Public Safety Consequences

Testimony of Talila A. Lewis for Helping Educate to Advance the Rights of the Deaf for the Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights

February 25, 2013

I would like to thank you for your leadership on the issues of prisoner and disability justice. I write to add to the chorus of voices who advocate for the humane treatment of *all* people.

As the creator of the only national database of deaf and deaf-blind prisoners, Helping Educate to Advance the Rights of the Deaf ("HEARD")[1] hereby submits this testimony on behalf of tens of thousands of deaf[2] prisoners across the nation who are disproportionately represented in solitary confinement populations.

Deaf prisoners customarily experience discrimination and abuse in our prisons. They are punished for failure to obey oral commands that they cannot hear, for using sign language to communicate, for failure to follow rules that were never conveyed to them, for missing counts that they were unaware of, and for filing grievances about these persistent inequities. They are denied interpreter services, deprived of access to medical and mental health services, denied access to education and reentry programs, and cut off from access to even the most basic human interaction. All of this, coupled with the expensive and inaccessible telephone systems[3] that exist in departments of corrections

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1 HEARD is an all-volunteer nonprofit organization that that promotes equal access to the justice system for deaf defendants, prisoners, and returning citizens across the nation. HEARD works to correct and prevent deaf wrongful convictions, advocates on behalf of deaf defendants and prisoners, and educates justice, legal corrections professionals about deaf culture and communication. HEARD created and maintains the only national database of deaf and deaf-blind prisoners.

2 Historically, "Deaf" has been used to refer to the Culture and Community of Deaf people collectively; while "deaf and hard of hearing" has been used to refer to the level of audiological function and hearing ability by any one individual. For the sake of this testimony, "deaf" means: all individuals with hearing loss and includes deaf, hard of hearing and deaf-blind individuals.

3 *In the Matter of Rates for Interstate Calling Services*, WC Docket. No. 12-375. See HEARD Public Comment Re Rates for and Access to Interstate Calling Services for Prisoners with Disabilities, March 25,

across the nation, transforms the traditionally grim ordeal of incarceration into a nightmare of extreme language deprivation, horrendous physical and sexual abuse, and depressing solitude.[4]

Sadly, solitary confinement is often used as a substitute for the provision of accommodations for and protection to deaf prisoners. Deaf prisoners spend extended periods of time in solitary confinement, customarily after reporting incidents of physical and sexual abuse or threats thereof. Not surprisingly, the deleterious effects of solitary confinement tend to manifest even more quickly for people with sensory disabilities because they have fewer senses for the government to dispossess.

Hearing prisoners in solitary hear screams of tortured souls around them and corrections officers extracting those experiencing their umpteenth psychotic episode. Deaf prisoners do not have such wretched providence. Resultantly, deaf prisoners experience dramatic and rapid decompensating in solitary confinement. Countless deaf detainees and prisoners housed in solitary confinement have committed or attempted suicide within weeks of being placed in solitary.[5] This practice punishes deaf prisoners for being deaf and for reporting physical and sexual assault, leaving deaf prisoners in an even more vulnerable situation in our prisons.

DISCUSSION

Over the past forty years, Congress has enacted legislation to protect the rights of people with disabilities and to ensure that this population has the same access to

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2013; HEARD Deaf Prisoner Comments on Rates for and Access to Interstate Calling Services for Prisoners with Disabilities, March 25, 2013; HEARD Comment on the Commission's Further Notice of Proposed Rulemaking Re Inmate Calling Services for Prisoners with Disabilities, December 20, 2014; HEARD Community Sign-On Letter on the Commission's Further Notice of Proposed Rulemaking Re Inmate Calling Services for Prisoners with Disabilities, December 20, 2014; and EARD Reply Comment, January 14, 2014.

4 See McCay Vernon, *The Horror of being Deaf and In Prison*, American Annals of the Deaf, Vol. 155, No. 3 (2010).

5 In December 2013, Al Jazeera America aired a powerful three-part series, "Deaf in Prison." In addition to exposing systemic abuse of deaf prisoners that necessitates contact with advocates and attorneys, the series revealed the heartbreaking impact of solitary confinement on deaf prisoners.

One mother recounted receiving the horrifying call from an Ohio jail that—after just six days at an Ohio jail—her deaf son had hung himself. He survived, she said, but upon his transfer to prison, he was denied access to a telephone for forty-two days at a facility where hearing prisoners can make calls anytime. The mother said that all she wanted was for her son to be treated as hearing prisoners are treated.

Al Jazeera journalists concluded—after an extensive three-year investigation—that as a result of prison and jail failure to provide interpreters, accommodations and access to accessible telecommunication, deaf prisoners "are left in their own silent prison behind bars."

programs, activities, services, public facilities and other resources available to the general population.[6] Not surprisingly, prisons, private prison companies, prison administrators, correctional officers, wardens, and directors of departments of corrections continue to ignore these laws.[7]

HEARD's efforts have not been enough to ensure that deaf prisoners are provided equal access, or to ensure their protection from rape and other forms of victimization. HEARD's Deaf and Deaf-Blind Prisoner Database includes information on more than four hundred men and women. Our research shows clear patterns and practices of abuse, isolation, and neglect of deaf prisoners. HEARD has written hundreds of letters to correctional officers, unit managers, counselors, case managers, ADA coordinators, wardens, directors of departments of corrections, and legislators about the horrendous conditions of confinement for deaf and disabled individuals. HEARD has also worked to educate prison staff across the nation about deaf culture and communication. Yet still, inequities and abuse persist—often worsening after prisoners and advocates report these violations.

Only a handful of prisons or jails provide accommodations for deaf prisoners. More often than not, in both state and federal facilities, there are no interpreters to make programs, classes, mental health and medical services accessible; no communication devices such as videophones to contact family; and no basic human interaction because prisons seldom group deaf prisoners together. Consequently, deaf prisoners cannot communicate with the outside world or with those within prisons. In effect, this is a form of solitary confinement—a "prison within a prison." Worse still, because they are inherently vulnerable, deaf prisoners are the preferred targets for rapes and other forms of sexual and physical abuse by prisoners and guards alike.

Prisons must be held accountable for civil and human rights violations against people with disabilities.

RECOMMENDATIONS

Our leadership must speak out against abuse of prisoners with disabilities. This means Congress must demand compliance with federal laws that protect this vulnerable group and state that prisoners with disabilities shall not be segregated. HEARD recommends the deployment of cost-effective models in every state correction system, and within the Federal Bureau of Prisons. In 2010, the Virginia Department of Corrections ("DOC") radically reformed the way deaf prisoners are managed and served in prison by implementing one such plan.

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6 The United States Supreme Court has found that these laws do, in fact, extend to prisons. *See Pennsylvania Dept. of Corrections v. Yeskey*, 504 U.S. 206 (1998).

7 Prisons tend to have policy manuals regarding the standards of procedures for prisoners with disabilities; however, these policies are rarely followed or enforced.

Virginia now houses deaf prisoners at one facility, and provides interpreters a few days per week. In addition, the DOC provides sign language interpretation of rules and instructions; visual notifications of meals, emergencies, and events; and a videophone to enable prisoners to communicate with their loved ones. Although these reforms might not be adaptable in every system – particularly where they might require deaf prisoners to be housed unimaginably far from their homes – other cost effective approaches, such as simply training staff in sign language and deaf culture, could easily be implemented.

The Americans with Disabilities Act, the Rehabilitation Act, and other federal and state laws already exist to protect the rights of people with disabilities. HEARD suggests that all detention facilities be required to assemble and report data regarding the compliance of the facility with federal and state laws that protect people with disabilities. This report should be submitted to an entity with oversight and enforcement capabilities. We need mechanisms in place to assure compliance with these laws in all aspects of the government, including, the courts, law enforcement, and the penal system.

Deaf prisoners and prisoners with disabilities should not be housed in solitary confinement as a means of "protecting them from physical and sexual assaults." Instead, every department of corrections should have a plan in place to ensure that they are provided accommodations and protection without being subjected to cruel and inhumane treatment. Beyond that, *no* prisoner should be placed in solitary for reporting sexual and physical abuse. Finally, no prisoner – especially those with disabilities – should, for any reason, be housed in solitary confinement for extended periods of time.

Thousands are depending on you to remedy these issues and I trust that you will not let us down.

Thank you.

Written Statement of
Allison Herwitt
Vice President, Government Affairs
Human Rights Campaign

To the
U.S. Senate Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights, and Human Rights
"Reassessing Solitary Confinement II: The Human Rights, Fiscal, and Public Safety Consequences"

February 25, 2014

Mr. Chairman and Members of the Committee:

My name is Allison Herwitt, and I am the Vice President for Government Affairs at the Human Rights Campaign, America's largest civil rights organization working to achieve lesbian, gay, bisexual and transgender (LGBT) equality. By inspiring and engaging all Americans, HRC strives to end discrimination against LGBT citizens and realize a nation that achieves fundamental fairness and equality for all. On behalf of our over one million members and supporters nationwide, I am honored to submit this statement into the record for this important hearing, "Reassessing Solitary Confinement: The Human Rights, Fiscal, and Public Safety Consequences." Today's hearing is a vital step toward evaluating the pervasive use and abuse of solitary confinement in corrections facilities across the country.

The persistent use of solitary confinement in prisons and detention facilities across the country, often for non-violent offenders, is a clear infringement of human rights and places often vulnerable populations at an even higher risk for mental health disorders following release. State correctional departments across the country are re-evaluating the frequency and nature of solitary confinement in their systems. Just last week, the New York State Department of Corrections announced sweeping reforms to the state's solitary confinement policies—particularly those impacting vulnerable populations. The U.S. Immigration and Customs Enforcement (ICE) also recently addressed the use of solitary confinement for vulnerable detainees in a 2013 directive. This directive states, "Placement in administrative segregation due to a special vulnerability should be used only as a last resort and when no other viable housing options exist." It also directs ICE to "take additional steps to ensure appropriate review and oversight of decisions to retain detainees in segregated housing for over 14 days."[1]

Solitary confinement is, by nature, punitive. Traditionally reserved for violent offenders or those who consistently break prison rules, the use of solitary confinement to house LGBT and gender nonconforming inmates has become a default "quick fix" to the systemic violence and abuse of LGBT people in American prisons. Citing safety concerns for the individual, LGBT inmates are routinely placed in this restricted housing that often involves up to 23 hours in a windowless cell without access to supportive services and programs like job training, education, and enrichment

[1] United States Dept. of Immigration and Customs Enforcement, Review of the Use of Segregation for ICE Detainees (Sept. 4, 2014) available at http://www.ice.gov/doclib/detention-reform/pdf/segregation_directive.pdf

that are available to other inmates. Basic privileges like telephone access, family visitation, and access to legal counsel are also severely restricted and are often only made available in the late hours of the night. Transgender inmates housed in solitary confinement also report limited access to critical medications like hormone therapy and related care. We recognize the unique safety needs of LGBT inmates, however the consistent use of involuntary solitary confinement for the sake of safety must be used only as a last resort—never as a default safe housing option.

Prison rape survivors, who are disproportionately LGBT[2], report being placed in solitary confinement as retaliation for "making trouble." Segregated from the general population, these survivors are also at a heightened risk for abuse by guards and prison staff. Inmates who are housed in solitary confinement following a sexual assault tend to suffer additional distress including fear, anxiety and heightened trauma. They have decreased access to rape crisis services and are less likely to file a formal complaint or cooperate with any investigation.

If solitary confinement must be used to protect an abused inmate from additional violence, it must be temporary and severe time restrictions must be in place. An inmate who has survived abuse or violence should experience punitive restrictions only until less restrictive, safe housing is made available. Appropriate health care services, access to programs and services, and contact with a rape crisis provider must be made available. The Department of Justice's (DOJ) recently released Prison Rape Elimination Act (PREA) standards meet some, but not all, of these conditions.[3] The PREA standards call on corrections officials to provide survivors with access to services and programs and to move these inmates to less restrictive housing as soon as possible.[4] The standards also mandate the provision of emergency and follow-up medical and mental health care, including contact with support services.[5]

However, these standards fail to place strong limits on the time a survivor may involuntarily be placed in solitary confinement. The PREA standards generally limit involuntary solitary confinement for survivors to 30 days.[6] Placing a victim of sexual abuse in a punitive, highly restrictive, and purposefully isolating environment for a month is unacceptable. A more appropriate time limit would be 72 hours. This would still allow facilities to make other, safe housing available. Although the standards do require ongoing, regularly scheduled reviews of whether a survivor should be kept in solitary confinement beyond 30 days, this review is only required to take place once every 30 days.[7] A more appropriate review schedule would be every 10 days to prevent the victim from needlessly languishing alone after an assault.

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[2] *National Former Prisoner Survey: Sexual Victimization Reported by Former State Prisoners, 2008*. U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics. Available at: http://www.bjs.gov/content/pub/pdf/svrfsp08.pdf. Finding that compared to their straight counterparts, gay and bisexual men are 10 times more likely to be victims of sexual abuse by other inmates. A shocking 34 percent of bisexual men and 39 percent of gay men report being victimized by other inmates, compared to 3.5 percent of straight male inmates. Lesbians and bisexual women also face increased risk of sexual abuse and violence.

[3] The Prison Rape Elimination Act Standards available at www.ojp.usdoj.gov/programs/pdfs/prea_final_rule.pdf (last viewed on June 11, 2012).

[4] *Id.* As an example, see the relevant adult jail and prison standard at 115.43.

[5] *Id* at 115.53, 115.83, and 115.83.

[6] *Id* at 115.68 (referencing 115.43).

[7] *Ibid.*

Providing safe housing to inmates is the most basic, but vital responsibility of corrections officials. Many corrections officials faced with a particularly vulnerable inmate, believe that solitary confinement is in the best interest of the inmate. Too often, however, solitary confinement is seen as a "quick fix" to the systemic problem of violence and abuse against vulnerable populations. When solitary confinement is the default policy in place to protect LGBT and other vulnerable populations, little consideration is given to the serious harm caused by this restrictive housing. Rarely are modifications made to correct for the punitive nature of solitary confinement and to ensure that the inmate retains access to programs and services.

Proactive reinvestment of scarce resources to implement basic policies and procedures aimed at preventing sexual abuse and other forms of violence is vitally important. Engaging the issue of safety, rather than abusing solitary confinement makes sense economically and it makes sense for the individuals who are at the mercy of the corrections system every day. The Human Rights Campaign urges strong leadership and the commitment to developing effective policies that will ensure that every inmate has access to safe housing that is not also unnecessarily punitive.

STATEMENT
OF THE
HUMAN RIGHTS DEFENSE CENTER

Reassessing Solitary Confinement II: The Human Rights, Fiscal, and Public Safety Consequences

BEFORE THE

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS

PRESENTED ON

February 25, 2014

STATEMENT OF THE
HUMAN RIGHTS DEFENSE CENTER

"We're all of us sentenced to solitary confinement inside our own skins, for life."
— Tennessee Williams, Orpheus Descending

Chairman Durbin, Ranking Member Cruz and Members of the Subcommittee:

The Human Rights Defense Center (HRDC) is a 501(c)(3) non-profit organization dedicated to protecting the rights of persons incarcerated in prisons, jails and other detention facilities. HRDC publishes *Prison Legal News* (PLN), a monthly print magazine that reports on issues related to criminal justice and prisoners' rights. Since 1990, PLN has extensively covered topics regarding solitary confinement and isolation units in the U.S. prison system.

HRDC submitted a comprehensive statement for the record of the first Subcommittee hearing on solitary confinement, held on June 19, 2012, which we incorporate by reference here. We did not address the financial implications of solitary confinement in our prior statement, as our research and reporting over the past several decades has found that prison officials are willing to inflict torturous punishments on prisoners regardless of the expense, even if those punishments, such as solitary confinement, are unnecessary or even counterproductive.

To address the totality of issues related to solitary confinement, however, this Statement presents a brief discussion of the financial costs of solitary. Additionally, appended to this Statement are three articles concerning solitary confinement published in *Prison Legal News* between October 2012 and February 2014, which we believe are particularly relevant to this topic.

The Financial Costs of Solitary Confinement

Beyond the many documented problems with solitary confinement, including adverse effects on prisoners' mental health and increased recidivism rates that endanger public safety, solitary is much more expensive than housing prisoners in general population units.[1]

For example, according to a 2006 study by the Urban Institute, the average cost of housing a prisoner in the supermax unit at the Ohio State Penitentiary (OSP) was more than twice as high ($149 per day) than the cost of incarcerating a prisoner in general population ($63 per day).[2]

The costs are higher because solitary confinement units typically have higher staff-to-prisoner ratios, resulting in elevated staffing expenses. According to the Urban Institute study,

[1] www.solitarywatch.com/wp-content/uploads/2012/01/fact-sheet-the-high-cost-of-solitary-confinement.pdf
[2] www.urban.org/UploadedPDF/411326_supermax_prisons.pdf

"[The] increased cost of the OSP is due, in part, to the fact that it has a staff-to-prisoner ratio 50 percent higher than that of the state's maximum-security prison."[3]

As noted by the ACLU in its written statement for the June 2012 Subcommittee hearing on solitary confinement: "[A] 2007 estimate from Arizona put the annual cost of holding a prisoner in solitary confinement at approximately $50,000 compared to only about $20,000 for the average prisoner. In Maryland, the average cost of housing a prisoner in the state's segregation units is three times greater than in a general population facility; in Ohio it is twice as high; and in Texas the costs are 45% greater. In Connecticut the cost of solitary is nearly twice as much as the average daily expenditure per prisoner; and in Illinois it is three times the statewide average." [internal footnotes omitted][4]

In California, according to 2010-2011 data, the average annual cost for housing prisoners in Administrative Segregation Units (ASUs) at Pelican Bay State Prison was $77,740, which was 33% higher than the average general population per-prisoner cost of $58,324.[5] Further, a 2009 report by California's Office of the Inspector General estimated "the annual correctional staff cost of a standard ASU bed to be at least $14,600 more than the equivalent general population bed. For the 8,878 ASU beds statewide, this additional cost equates to nearly $130 million a year. While ASUs are an important part of prison population management, unnecessary ASU housing is a waste of taxpayer dollars."[6]

Further, supermax facilities and other prisons with solitary confinement units are more expensive to build. According to Solitary Watch,[7] the federal Bureau of Prisons' ADX Florence facility was constructed at a cost of $60 million, or more than $122,000 per bed; the supermax Pelican Bay State Prison in California cost $230 million to build, or over $217,000 per bed; and the Tamms Correctional Center in Illinois was built at a cost of $73 million, or around $146,000 per bed.[8] These costs are significantly higher than the typical cost of constructing medium-security prisons, which is around $65,000 per bed.[9]

Therefore, unsurprisingly, closing supermax or solitary confinement units can result in substantial savings. According to Mississippi DOC Commissioner Christopher Epps, the 2010 closure of Unit 32 at the Mississippi State Penitentiary at Parchman, a segregation unit, resulted in annual savings of approximately $5.6 million.[10] And when Illinois Governor Pat Quinn ordered the closure of the Tamms supermax facility in June 2012, he cited estimated savings of $21.6 million during the current fiscal year and $26.6 million in 2014.[11]

Despite the high costs of building and operating supermax prisons and keeping prisoners in solitary confinement for lengthy periods of time, most states apparently are willing to pay such expenses due to a lack of political will and capitulation to corrections officials who contend the systemic use of segregation is necessary to maintain safety and security.

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[3] *Id.*

[4] www.aclu.org/files/assets/aclu_testimony__for_solitary_confinement_hearing-_final.pdf

[5] www.cdcr.ca.gov/COMIO/Uploadfile/pdfs/Pelican_Bay.pdf

[6] http://www.oig.ca.gov/media/reports/ARCHIVE/BOA/Reviews/Management%20of%20the%20California%20Department%20of%20Corrections%20and%20Rehabilitation's%20Administrative%20Segregation%20Unit%20Population.pdf

[7] www.solitarywatch.com

[8] www.solitarywatch.com/wp-content/uploads/2012/01/fact-sheet-the-high-cost-of-solitary-confinement.pdf

[9] www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/State-based_policy/PSPP_prison_projections_0207.pdf

[10] www.judiciary.senate.gov/pdf/12-6-19EppsTestimony.pdf

[11] http://thesouthern.com/news/local/quinn-s-office-claims-m-in-savings/article_6c2e1cb8-d92e-11e1-bba0-0019bb2963f4.html

This Statement is submitted on behalf of the
Human Rights Defense Center by:

Executive Director Paul Wright. Mr. Wright founded the Human Rights Defense Center and serves as the editor of *Prison Legal News*. He was incarcerated for 17 years in the Washington State prison system.

Associate Director Alex Friedmann. Mr. Friedmann serves as the managing editor of *Prison Legal News* and president of the Private Corrections Institute. He was incarcerated for 10 years in Tennessee.

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ADDENDUM

Published in Prison Legal News, October 2012, p.16

Solitary Confinement: Bad for Chimps, Okay for Humans?

by Lance Tapley

Maine Republican Senator Susan Collins is a key cosponsor of legislation that, among other provisions, would outlaw psychologically damaging solitary confinement for more than 500 chimpanzees caged for research in federally supported laboratories. In July 2012 the bill bipartisanly passed the Senate's Environment and Public Works Committee on its way to a floor vote.

But the legislation, which also protects gorillas and other ape species if they are used for research, doesn't protect the dominant primate species, Homo sapiens. Experts say at least 80,000 prisoners are in solitary confinement in tiny cells in this country.

Some prisoner-rights advocates think it's ironic when laws give rights to animals that aren't extended to humans. Prison Legal News editor Paul Wright noted that, for example, "there are existing laws saying how much living space primates should have in captivity. By contrast, no such laws apply to humans in captivity."

He concluded: "Sadly, I don't think most people, at least not in this country, see any connection between animal and human rights."

Laurie Jo Reynolds, an anti-solitary-confinement activist in Illinois who also is a strong supporter of animal rights, said, "Acknowledging that we must stop inflicting solitary confinement on chimpanzees is also a recognition that we must stop the practice for humans."

S. 810, the Great Ape Protection Act, "corrects the pain and psychological damage that apes often experience as a result of needless experiments and solitary confinement," Senator Collins said in a recent statement. Repeated requests to her office for her views on human solitary confinement did not get a response.

But Maine's First District Democratic Representative Chellie Pingree, who is a cosponsor of a parallel bill in the House, H.R. 1513, agreed that the damaging effects of solitary confinement extend to humans: "A growing number of experts describe it as cruel and unusual punishment, and I agree with them."

Michael Michaud, Maine's Second District congressman, is also a H.R. 1513 cosponsor. In repeated attempts, he could not be reached on the question of whether human solitary confinement should also be banned.

A ban or restrictions on prisoner isolation, however, may soon be debated in Congress. In June 2012, Senator Richard Durbin, the Illinois Democrat and chairman of the Senate's Subcommittee

on the Constitution, Civil Rights and Human Rights, presided over the first-ever congressional hearing on solitary confinement. He's preparing legislation to reform its use.

Wayne Pacelle, president of the Humane Society of the United States, said he refers to the damaging effects of solitary confinement on humans in his speeches in support of S. 810, but banning isolation of chimpanzees was "really not the impetus" for the legislation.

He said forbidding the invasive experiments chimps are subject to is a more important motivation behind the bill. These include, as the bill's language states, experiments that cause injury, trauma or death in drug testing, "intentional exposure" to harmful substances, and removing body parts.

But S. 810 would also ban "isolation" and "social deprivation" that "may be detrimental to the health or psychological well-being of a great ape." The legislation notes that apes are "highly intelligent and social animals."

Kathleen Conlee, vice president of the Humane Society, pointed to research appearing in the Journal of Trauma & Dissociation that shows how chimps subject to laboratory conditions express Post Traumatic Stress Disorder-like symptoms. Isolation is listed as a common stress.

Chimpanzee PTSD symptoms include violence, self-injury, screaming and "highly anxious states" – symptoms humans often show after long-term solitary confinement.

"Great apes" is a term encompassing gorillas, bonobos, orangutans, gibbons and chimpanzees, but only chimpanzees are currently kept for research, according to the Humane Society. The federal Institute of Medicine has concluded that most chimp research is unnecessary. Violations of the Great Ape Protection Act could result in a fine of $10,000 a day for each animal mistreated.

S. 810's full title is the Great Ape Protection and Cost Saving Act of 2011. Proponents claim it would save the government $25 million a year by relocating chimpanzees from laboratories to wildlife sanctuaries, which have freer living conditions. Proponents of ending human solitary confinement also say there are cost-saving reasons to stop that practice. The cage-like cells of "supermax" prisons and prison units are so labor-intensive for guards that they cost two times as much as regular imprisonment, experts say.

Independent Senator Bernard Sanders of Vermont, like Collins another S. 810 lead cosponsor, was quoted in a recent Humane Society press release: "We remain the only country besides Gabon to continue holding these animals in laboratories as possible subjects for invasive research."

Similarly, the U.S. is the only nation that practices human solitary confinement in large numbers. Pingree said it's time to take a careful look at how prisons use solitary confinement: "Perhaps there are some times when it is important to temporarily isolate a prisoner for his safety or the safety of other inmates, but using solitary confinement as a routine punishment technique is too harsh."

She added, "If one of the goals of putting people in prison is to rehabilitate, long-term solitary confinement doesn't advance that goal."

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Published in Prison Legal News, August 2013, p.15

Report: BOP Fails to Monitor Effects, Conditions of Segregated Housing

by Derek Gilna

In May, 2013, the U.S. Government Accountability Office (GAO) issued a report critical of the federal Bureau of Prisons' (BOP) use of segregated housing. The report found that the percentage of prisoners held in segregated housing, including Special Housing Units (SHUs), Special Management Units (SMUs) and Administrative Maximum (ADX), had increased 17% over the past five years from 10,659 to 12,460, while the BOP's overall population had increased 6% in the same time period.

BOP prisoners held in segregated housing are generally confined to their cells for 23 hours per day, for indeterminate lengths of time.

The GAO criticized the BOP for failing to consistently manage or implement its regulations uniformly from institution to institution and for not having adequate controls in place to address what the GAO termed "document deficiencies." The BOP was unable to show that it provided "minimum conditions of confinement and procedural protections" for segregated prisoners, or that it had implemented adequate computer systems to monitor its compliance with written procedures for segregated housing.

Human rights activists have long advocated the abolition of most forms of segregation based upon studies that show prolonged isolation "may have an adverse effect on the overall mental status of some individuals." [See, e.g., *PLN*, Oct. 2012, p.1]. The BOP has acknowledged that it has no data regarding the psychological effects of such isolation, but stated as of January 2013 that it plans to study segregated housing and is "considering conducting mental health case reviews for inmates held in SHUs or ADX for more than 12 continuous months." Additionally, the BOP began using a new software program to "document conditions of confinement in SHUs and SMUs."

The GAO also noted that the BOP, although claiming that segregated housing enhances the protection of prisoners, staff and the general public, "cannot determine the extent to which segregated housing achieves its stated purpose." SHUs are generally used for shorter-term stays for disciplinary or administrative reasons, SMUs are often used to transition prisoners to a lower-level security and ADX units provide the highest level of security for allegedly more dangerous prisoners.

The GAO made several recommendations for the correction of the problems it identified in its report, including "(1) develop ADX-specific monitoring requirements; (2) develop a plan that clarifies how BOP will address documentation concerns GAO identified, through the new software program; (3) ensure that any current study to assess segregated housing also includes reviews of its impact on institutional safety; and (4) assess the impact of long-term segregation."

What stands out in the report is the lack of apparent concern on the part of the BOP – and by extension the Justice Department, Attorney General and the executive branch of the federal government – for the more than 12,400 federal prisoners who are confined in segregation. In

an era where many states, including Illinois and Maine among others, are phasing out segregated housing, the BOP has increased the number of prisoners held in segregation units.

David Fathi, director of the ACLU's National Prison Project, is especially critical of the use of segregation. "It's astonishing that the [BOP] has steadily increased its use of solitary confinement and other segregated housing while failing to assess whether this expensive and inhumane practice has any actual effect on prison safety. The Bureau needs to follow the lead of the growing number of states that have reduced solitary confinement while preserving prison safety and saving millions of dollars in the process."

Left unaddressed by the GAO report is the incalculable psychological damage being inflicted on BOP prisoners held in segregation, and the human and financial costs stemming from their confinement in segregated housing.

Sources: *"Improvements Needed in Bureau of Prisons' Monitoring and Evaluation of Impact of Segregated Housing," Government Accountability Office (May 1, 2013); www.dcaclu.org*

Published in Prison Legal News, Feb. 2014, p.48

Solitary Confinement's Invisible Scars

I spent more than five years of my sentence in "the box," for trivial violations. It's time we saw this casual abuse for what it is: torture.

by Five Oman Mualimm-ak

As kids, many of us imagine having superpowers. An avid comic book reader, I often imagined being invisible. I never thought I would actually experience it, but I did.

It wasn't in a parallel universe – although it often felt that way – but right here in the Empire State, my home. While serving time in New York's prisons, I spent 2,054 days in solitary and other forms of isolated confinement, out of sight and invisible to other human beings – and eventually, even to myself.

After only a short time in solitary, I felt all of my senses begin to diminish. There was nothing to see but gray walls. In New York's so-called special housing units, or SHUs, most cells have solid steel doors, and many do not have windows. You cannot even tape up pictures or photographs; they must be kept in an envelope. To fight the blankness, I counted bricks and measured the walls. I stared obsessively at the bolts on the door to my cell.

There was nothing to hear except empty, echoing voices from other parts of the prison. I was so lonely that I hallucinated words coming out of the wind. They sounded like whispers. Sometimes I smelled the paint on the wall, but more often I just smelled myself, revolted by my own scent.

There was no touch. My food was pushed through a slot. Doors were activated by buzzers, even the one that led to a literal cage directly outside of my cell for one hour per day of "recreation."

Even time had no meaning in the SHU. The lights were kept on for 24 hours. I often found myself wondering if an event I was recollecting had happened that morning or days before. I talked to myself. I began to get scared that the guards would come in and kill me and leave me hanging in the cell. Who would know if something happened to me? Just as I was invisible, so was the space I inhabited.

The very essence of life, I came to learn during those seemingly endless days, is human contact, and the affirmation of existence that comes with it. Losing that contact, you lose your sense of identity. You become nothing.

Everyone knows that prison is supposed to take away your freedom. But solitary doesn't just confine your body; it kills your soul.

Yet neither a judge nor a jury of my peers handed down this sentence to me. Each of the tormented 23 hours per day that I spent in a bathroom-sized room, without any contact with the outside world, was determined by prison staff.

Anyone lacking familiarity with our state prison system would probably guess I must have been a pretty scary, out-of-control prisoner. But I never committed one act of violence during my

entire sentence. Instead, a series of "tickets," or disciplinary write-ups for prison rule violations, were punished with a total of more than five years in "the box."

In New York, guards give out tickets like penny candy. During my nine years in prison I received an endless stream of tickets, each one more absurd than the last. When I tried to use artwork to stay sane, I was ticketed for having too many pencils. Another time, I had too many postage stamps.

One day I ate an entire apple – including the core – because I was starving for lack of nutrition. I received a ticket for eating the core since apple seeds contain arsenic, as spelled out in the prison handbook. The next time I received an apple, fearful of another ticket, I simply left it on the tray. I received a ticket for "refusing to eat."

For the five years I spent in the box, I received insulin shots for my diabetes by extending my arm through the food slot in the cell's door ("therapy" for prisoners with mental illness is often conducted this way, as well). One day, the person who gave me the shot yanked roughly on my arm through the small opening and I instinctively pulled back. This earned me another ticket for "refusing medical attention," adding additional time to my solitary sentence.

My case is far from unusual. A 2012 study by the New York Civil Liberties Union found that five out of six of the 13,000 SHU sentences handed out each year are for nonviolent misbehavior, rather than violent acts. This brutal approach to discipline means that New York isolates its prisoners at rates well above the national average.

On any given day, some 4,300 men, women and children are in isolated confinement in the state, many for months or years. Those with more serious prison offenses have been held in solitary for 20 years or more.

Using this form of punishment is particularly absurd for minor rule infractions. But in truth, no one should be subjected to the kind of extreme isolation that is practiced in New York's prisons today. I have no doubt that what is going on in prisons all over our state is torture. Many national and international human rights groups – including UN Special Rapporteur on Torture Juan E. Méndez – concur. Yet it continues, unseen and largely ignored by the public.

The scars that isolated confinement leaves behind may be invisible, too, but they are no less painful or permanent than physical scars. Even now that I am out of prison, I suffer major psychological consequences from those years in isolation.

I know that I have irreparable memory damage. I can hardly sleep. I have a short temper. I do not like people to touch me. I cannot listen to music or watch television or sports. I am only beginning to recover my ability to talk on the phone. I no longer feel connected to people.

Even though I am a free man now, I often feel as though I remain invisible, going through the motions of life. Feeling tormented by a punishment that has ended is a strange and unnerving anguish. But there are thousands like me, and until New Yorkers choose to bear witness to the soul-destroying torture taking place in their own backyards, our suffering, too, will remain invisible.

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human rights *first*
American ideals. Universal values.

Statement of Human Rights First

Hearing before the Senate Judiciary
Subcommittee on the Constitution, Civil Rights and Human Rights

Reassessing Solitary Confinement II: The Human Rights, Fiscal and Public Safety Consequences

February 24, 2014

Introduction

Human Rights First commends Senator Durbin (D-IL) and the Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights for holding this important follow-up hearing on the use of solitary confinement in U.S. prisons, jails, and immigration detention facilities. Human Rights First is an independent advocacy organization that challenges the United States to live up to its ideals. We press American institutions – including government and business – to respect human rights, seeking to close the gap between values and action. Consistent with this principle, Human Rights First advocates on behalf of refugees and asylum seekers, including by running a legal representation program for detained and non-detained asylum seekers, partnering with law firms in New York, New Jersey, and Washington D.C. to provide pro bono legal assistance to refugees from countries all over the world who are seeking asylum in the United States. For many years, Human Rights First has also pressed the U.S. government to reform its detention practices and to bring the immigration detention system in line with international human rights standards. We have long highlighted our concerns about the detention of asylum seekers and other immigrants in jails and jail-like facilities, the lack of individualized assessments and independent review of the need to detain, the insufficient use of effective and less costly alternatives to detention, and the major challenges that detained asylum seekers and other immigrants face in accessing legal counsel.

Overview of U.S. Immigration Detention

U.S. Immigration and Customs Enforcement (ICE), the interior enforcement agency within the Department of Homeland Security (DHS), detains up to 34,000 immigrants and asylum seekers each day – over 400,000 annually – in approximately 250 jails and jail-like facilities nationwide. These detainees are not being held on criminal charges; they are held pursuant to DHS's authority under civil immigration laws. Their detention is considered civil or administrative in nature. The purpose of immigration detention, according to ICE and DHS, is limited: to ensure that detainees show up for their deportation hearings, and that they comply with deportation orders if necessary. Despite its 2009 reform commitment to move away from a "penal" model of detention, and some subsequent improvements, ICE continues to hold approximately 50 percent of its daily civil detention population in actual jails. The majority of the remaining 50 percent are held in jail-like facilities.[1] In these facilities, individuals live behind locked doors in thick cement-walled housing units, typically spending

[1] Human Rights First, "Jails and Jumpsuits: Transforming the U.S. Immigration Detention System – A Two-Year Review," (October 2011), p. 24, available at http://www.humanrightsfirst.org/wp-content/uploads/pdf/HRF-Jails-and-Jumpsuits-report.pdf. [hereinafter "Jails and Jumpsuits"]

23 hours a day in the same room where they eat, sleep, shower, and use the toilet without privacy. They wear prison uniforms and are often handcuffed or shackled when transported. In many cases their freedom of movement within the facility is limited to the crowded "pod" where they live. Under minimum requirements, they receive an hour a day of outside recreation, and "outside" may be a room with an opening to the sky. Often, when family members visit, even children, detainees are only allowed to speak to them by phone, looking through a Plexiglas barrier. At an average cost of over $160 per person, per day, the U.S. immigration detention system costs taxpayers over $2 billion annually, despite the availability of less costly, less restrictive, and highly successful alternative to detention programs.

Over the years, a range of non-partisan and bipartisan groups have issued reports detailing chronic problems in the immigration detention system, including challenges related to accessing legal counsel and telephones, excessive transfers, noncompliance with existing standards, interference with the open practice of religion, pervasive use of shackles, and overuse of strip searches and solitary confinement.[2] Given that the focus of this hearing is solitary confinement, this testimony is limited to that particular issue. It is worth noting, however, that the challenges related to solitary confinement in immigration detention are part of a larger problem – ICE's flawed paradigm of detention, in which civil immigration detainees are held in jails and jail-like facilities.

Use and Impact of Solitary Confinement in U.S. Immigration Detention

In 2011, the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment submitted a report on the use of solitary confinement to the UN General Assembly. He observed that solitary confinement is often used to punish a detained or incarcerated individual who has violated a facility rule, as well as to separate vulnerable individuals, including LGBT individuals, from the general population.[3] The Special Rapporteur found that "where the physical conditions and the prison regime of solitary confinement cause severe mental and physical pain or suffering, when used as a punishment, during pre-trial detention, indefinitely, prolonged, on juveniles or persons with mental disabilities, it can amount to cruel, inhuman or degrading treatment or punishment and even torture."[4] This statement implicates the U.S. immigration detention system; the segregation of immigration detainees for unspecified periods of time, or for prolonged periods of time ("prolonged" is more than 15 days, according to the report), and the segregation of immigration detainees with mental disabilities, is not uncommon, as detailed below. Moreover, given that the use of segregation can amount to cruel, inhuman, or degrading treatment or punishment and even torture when utilized in the context of pre-trial detention, it would certainly raise these concerns in the context of administrative immigration detention.

The Special Rapporteur noted that solitary confinement can lead to anxiety, depression, anger, cognitive disturbances, perceptual distortions, paranoia and psychosis, and self-harm for any population. Others have examined the particular negative health effects of solitary confinement for individuals who have already

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[2] U.S. Commission on International Religious Freedom, *Asylum Seekers in Expedited Removal, Volume I: Findings & Recommendations* (Washington, DC: USCIRF, 2005), p. 189; Council on Foreign Relations Independent Task Force on U.S. Immigration Policy, *Independent Task Force Report No. 63—U.S. Immigration Policy* (New York: CFR, 2009), p. 32; Constitution Project, *Recommendations for Reforming Our Immigration Detention System and Promoting Access to Counsel in Immigration Proceedings* (Washington, DC: Constitution Project, 2009), p. 1.

[3] Interim report to the UN General Assembly of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, A/66/268, Aug. 5, 2011, p. 13. [hereinafter "Special Rapporteur report"]

[4] "Special Rapporteur report" at 2. The Special Rapporteur in fact recommends an end to the use of solitary confinement as a disciplinary measure. (p. 22)

suffered torture or abuse, such as asylum seekers and refugees.[5] In its 2005 study, *Asylum Seekers in Expedited Removal*, the bipartisan U.S. Commission on International Religious Freedom explained that incarceration and a prison-like environment may have the effect of re-traumatizing people who have experienced severe traumas – such as refugees – leading to "disabling psychological reactions and consequences of those earlier damaging experiences."[6] Solitary confinement can be particularly severe and serve to exacerbate the mental anguish of people who have suffered torture or other egregious human rights abuses.

The widely respected organization Physicians for Human Rights (PHR) has noted that "[a]lthough both psychiatrists and prison experts have comprehensively documented and acknowledged the detrimental effects of solitary confinement on prisoners and the negative health outcomes that result, prisons and detention centers around the world continue to use solitary confinement as a means of control."[7] PHR observed that asylum seekers and survivors of torture in detention generally experience high levels of stress, depression, and mental health issues. "Much of their anguish relates back to the human rights abuses, including placement in solitary confinement, suffered in their country of origin," PHR explained. "Therefore, reintroduction of this harmful method of control, this time at the hands of U.S. detention center staff, frequently re-awakens their trauma and serves to greatly worsen their mental health issues."[8]

The U.S. immigration detention system is far from immune to this practice. In recent years, several reports have documented widespread misuse and abuse of solitary confinement or segregation in ICE facilities:

- Former DHS Special Advisor Dr. Dora Schriro, a longtime expert on prison systems, expressed significant concern regarding the treatment of detainees with mental illness and ICE's use of segregation cells. In 2009 she reported, "Segregation cells are often used for purposes other than discipline. For example, segregation cells are often used to detain special populations whose unique medical, mental health, and protective custody requirements cannot be accommodated in general population housing."[9] Similarly she found that "[f]ew beds are available for in-house psychiatric care for the mentally ill. Aliens with mental illness are often assigned to segregation, as are aliens on suicide watch."[10] Dr. Schriro recommended that ICE immediately discontinue the use of segregation cells for medical isolation or observation.[11]
- In its 2010 report on protecting the rights of persons with disabilities in immigration detention, Texas Appleseed quoted a detention center nurse stating, "When they are crazy and cannot be managed they go to 'seg' [segregation] when there is not room for them in the short stay unit."[12]

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[5] "Special Rapporteur report" at 26-27.

[6] U.S. Commission on International Religious Freedom, *Report on Asylum Seekers in Expedited Removal,* Vol. I, p. 191 (February 2005).

[7] Physicians for Human Rights, *Dual Loyalties in U.S. Immigration Detention*, pp. 22-23, available at http://physiciansforhumanrights.org/asylum/dual-loyalties-immigration-detention.html (March 2011). [hereinafter "PHR Dual Loyalties"]

[8] Id.

[9] Dr. Dora Schriro had previously run the corrections systems in Arizona, Missouri, and New York City, and she currently serves as Commissioner for Emergency Services and Public Protection in Connecticut. See *Immigration Detention Overview and Recommendations* (Washington, DC: Immigration and Customs Enforcement, 2009), p. 26, available at http://www.ice.gov/doclib/about/offices/odpp/pdf/ice-detention-rpt.pdf.

[10] Id.

[11] Id.

[12] Texas Appleseed, Justice for Immigration's Hidden Population: Protecting the Rights of Persons with Disabilities within the Immigration Court and Detention System, p. 21, available at http://www.texasappleseed.net/index.php?option=com_docman&task=doc_download&gid=313&Itemid= (March 2010).

- In 2010, the Inter-American Commission on Human Rights found the condition of basic medical care in U.S. immigration detention centers to be "very alarming," noting, "[It] has learned that various immigrant detainees with mental illnesses spend a significant portion of their time in solitary confinement ("administrative segregation") and are allowed out of their cells for an hour every day. The condition of many of these detainees deteriorates in solitary confinement, which also delays their immigration proceedings due to competency concerns."[13] The Commission's report explained, "[D]uring its visits to the detention centers in Texas and Arizona the IACHR was alarmed to receive information about the use of solitary confinement for mentally ill detainees. The Inter-American Commission must emphasize that solitary confinement takes a terrible mental and physical toll on the person, and would remind the State that solitary confinement must be used as a measure of last resort, for very limited periods of time and subject to judicial review."[14]

- A 2011 report by PHR found that "[d]etainees who complain or act out due to mental conditions beyond their control are frequently sent to segregation units or held down in restraints because staff is unable or unwilling to help them control their behavior. Even those on suicide watch are routinely assigned to segregation in place of receiving necessary psychiatric care. In many cases, security or even medical staff send mentally disabled people to solitary confinement for prolonged periods of time, where they remain without access to mental health professionals or even to other detainees. In these stark conditions, detainees' mental health often degenerates even further because they are starved for human interaction."[15] PHR recommended that health care workers "[r]efuse to participate in any security-focused or non-therapeutic activities (use of restraints, forced medication, segregation, etc.) related to detainees. Health professionals are the guardians charged with ensuring that their patients receive the best care possible, and they are expected, by both society and the law, to adhere to a high code of legal, moral, and ethical considerations."[16] In an earlier report on the U.S. detention of asylum seekers, PHR recommended, "Segregation/solitary confinement should be restricted to cases where it is absolutely necessary for the safety of the asylum seeker or the facility."[17]

- A 2011 report by the ACLU of Arizona reported that "[a] major problem discovered in Arizona facilities affecting LGBT immigrants is the overuse of segregation, either in a Special Housing Unit or isolated cell. LGBT persons are sometimes placed in segregation based on their sexual identity, with the stated reason of protecting the detainee from harassment or threats by other detainees – often called 'protective custody.' While in 'protective custody,' however, detainees are often subjected to prolonged periods of isolation and treated harshly, and their physical and emotional well-being and safety are threatened."[18]

- In April 2011, the National Immigrant Justice Center (NIJC) filed 13 complaints with DHS's Office of Civil Rights and Civil Liberties and Office of Inspector General demanding that the Obama administration investigate abuse allegations and take action to protect LGBT immigrants in ICE custody. The 13 complaints describe violations including sexual assault, denial of medical and mental health treatment,

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[13] Organization of American States, Inter-American Commission on Human Rights, *Report on Immigration in the United Stotes: Detention and Due Process*, OEA/Ser.L/V/II. Doc 78/10, December 30, 2010, ¶ 292, p. 104.
[14] Id.
[15] "PHR Dual Loyalties" at 20.
[16] Id. at 32.
[17] Physicians for Human Rights, *From Persecution to Prison*, p. 19, available at: https://s3.amazonaws.com/PHR_Reports/persecution-to-prison-US-2003.pdf (2004).
[18] American Civil Liberties Union – Arizona, *In Their Own Words: Enduring Abuse in Arizona Immigration Detention Centers*, pg 4, available at http://www.aclu.org/blog/prisoners-rights-immigrants-rights/trauma-compounded-plight-lgbt-immigration-detainees (2011).

arbitrary long-term solitary confinement, and frequent harassment by officers and facility personnel.[19] NIJC's complaint included the case of a gay Peruvian asylum seeker who was held in solitary confinement for almost six weeks due to his HIV-positive status. He was not released from solitary confinement until he won his immigration case. The complaint also included an asylum seeker from Mexico who was kept on a daily 22-hour lockdown which one officer allegedly told her was punishment to "teach her not to be transgender."[20]

- In a September 2012 report on the use of segregation and solitary confinement in the immigration detention system, PHR and NIJC found, based on extensive research, that "solitary confinement in immigration detention facilities is often arbitrarily applied, significantly overused, harmful to detainees' health, and inadequately monitored. Some people give up and stop fighting their immigration cases so they will not have to spend another day in 'the hole.' These individuals are then deported to countries they may not remember, or worse, to countries where they may have been persecuted or tortured."[21]

- In a November 2013 report documenting the trauma experienced by detained torture survivors, the Center for Victims of Torture highlighted the case of a detained torture survivor who reported frequent threats of segregation in retaliation by facility staff, and reported that a fellow detainee missed his court date due to being in segregation on that day.[22]

- Finally, in March 2013, the *New York Times* published an article revealing that approximately 300 immigration detainees are held in solitary confinement in the nation's 50 largest immigration detention facilities each day. The article further said that "nearly half are isolated for 15 days or more, the point at which psychiatric experts say they are at risk for severe mental harm, with about 35 detainees kept for more than 75 days." The article described several case stories of immigrants kept in solitary confinement for long periods of time or in inappropriate conditions, including one case of a man kept in the dark in only his underwear.[23]

Immigration and Customs Enforcement Segregation Directive

In September 2013, U.S. Immigration and Customs Enforcement issued and began to implement a new directive relating to its segregation practices, based on a review of segregation in ICE custody following the March 2013 reporting. The directive states that "placement of detainees in segregated housing is a serious step that requires careful consideration of alternatives. Placement in segregation should only occur when necessary and in compliance with applicable detention standards. In particular, placement in administrative

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[19] National Immigrant Justice Center (NIJC), "Mass Civil Rights Complaint Details Systemic Abuse of Sexual Minorities in Immigration Detention," available at http://www.immigrantjustice.org/press_releases/mass-civil-rights-complaint-details-systemic-abuse-sexual-minorities-us-immigration-d (April 2011).

[20] Id.

[21] NIJC and PHR. "Invisible in Isolation: the Use of Segregation and Solitary Confinement in Immigration Detention," available at https://www.immigrantjustice.org/sites/immigrantjustice.org/files/Invisible%20in%20Isolation-The%20Use%20of%20Segregation%20and%20Solitary%20Confinement%20in%20Immigration%20Detention.September%202012_7.pdf. September 2012.

[22] Center for Victims of Torture and TAASC International, "Tortured and Detained: Survivor Stories of U.S. Immigration Detention," available at http://www.cvt.org/sites/cvt.org/files/Report_TorturedAndDetained_Nov2013.pdf. November 2013.

[23] Ian Urbina and Catherine Rentz. "Immigrants Held in Solitary Cells, Often for Weeks." *The New York Times*. Available at http://www.nytimes.com/2013/03/24/us/immigrants-held-in-solitary-cells-often-for-weeks.html?pagewanted=all&_r=0. March 23, 2013.

segregation due to a special vulnerability should be used only as a last resort and when no other viable housing options exist."[24]

The directive creates a number of changes to ICE segregation practices that, if implemented meaningfully, would be positive reforms to the system, including:

- Required reporting on the use of segregation by facilities with ICE detainees for any detainee in segregation for more than 14 days at a time;
- An evaluation of whether less-restrictive options exist instead of segregation;
- Special reporting requirements for the use of segregation for vulnerable detainees, such as victims of sexual assault or those with medical or mental illnesses;
- More careful oversight where mentally and medically ill detainees are in segregation; and
- A regular review of longer placements in segregation.

ICE's directive on segregation is a positive step to curb the government's harmful practices of solitary confinement for immigration detainees, with stricter oversight and reporting mechanisms than were previously in place. As the directive was issued six months ago, it is too soon to analyze its long-term impact on ICE's segregation practices. Furthermore, as outlined above and below, the current paradigm for immigration detention creates an environment in which positive efforts such as ICE's segregation directives may be difficult to implement with effective oversight and accountability. It is critical that the directive be implemented as proscribed in order to impact detention practices and constitute reform.

Conclusion and Recommendations

The conditions and practices of U.S. immigration detention have long been out of step with America's fundamental values and long-standing vision of liberty. In recent years, ICE has taken steps to address some of the deficiencies in the immigration detention system, and notably, its September 2013 segregation directive to address solitary confinement practices. But more needs to be done to improve conditions and to address challenges in the system broadly. Human Rights First recommends that ICE should:

- End the use of solitary confinement in place of protective administrative segregation for vulnerable individuals;
- End the use of non-medical segregation cells for medical isolation or observation;
- Use solitary confinement or segregation only in very exceptional cases, as a last resort, and for the briefest time possible[25];
- Forbid the use of solitary confinement or segregation for mentally ill detainees;
- Forbid continuous solitary confinement or segregation for more than 15 days[26];
- Ensure, that any individual placed in solitary confinement or segregation is afforded the same access to medical and mental health care, telephones, law library, legal presentations, legal visits, and outdoor recreation, as the general population; when an individual is separated for non-disciplinary purposes, he or she should have the same access to all services and privileges as the general population;
- Implement and enforce the reporting requirements, oversight mechanisms, and policies and

[24] U.S. Immigration and Customs Enforcement. "Review of the Use of Segregation for ICE Detainees." September 4, 2013. Available at http://www.ice.gov/doclib/detention-reform/pdf/segregation_directive.pdf

[25] The American Bar Association's Standard 23-2.6 (a) on the Treatment of Prisoners suggests that "Segregated housing should be for the briefest term and under the least restrictive conditions practicable and consistent with the rationale for placement and with the progress achieved by the prisoner," available at http://www.americanbar.org/publications/criminal_justice_section_archive/crimjust_standards_treatmentprisoners.html

[26] The UN Special Rapporteur noted that after 15 days, according to medical literature, "some of the harmful psychological effects of isolation can become irreversible." Special Rapporteur report at 9.

procedures relating to the use of segregation in the September 2013 segregation directive; and
- Prevent the misuse of solitary confinement or segregation for vulnerable populations, expand the use of alternatives to detention and, when detention is necessary, only detain those populations in facilities that can accommodate their unique needs.

Further, Human Rights First recommends that Congress:

- Pass the provisions relating to solitary confinement protections found in S. 744, the Border Security, Economic Opportunity, and Immigration Modernization Act. While mindful of the operational needs of facilities that hold immigration detainees, these provisions would prohibit the use of solitary confinement for minors and place limits on its use for those with mental illness. They would further require timely review of individuals placed in segregation and provide for increased attention to the mental health concerns of those in segregation.

These steps, however, will have limited impact because the core of problems related to the misuse and abuse of solitary confinement in ICE facilities is the flawed paradigm of the U.S. immigration detention system. As currently structured, the system will always be vulnerable to inappropriate use of segregation and solitary confinement and the potential for abuse and inadequate oversight of these practices. Human Rights First reiterates the following recommendations for detention reform:

- **Stop Using Prisons, Jails, and Jail-like Facilities, and When Detention Is Necessary Use Facilities with Conditions Appropriate for Civil Immigration Law Detainees.** ICE should end the use of prisons, jails, and jail-like facilities to hold detainees. After an individualized assessment of the need to detain, ICE should use facilities that provide a more appropriate normalized environment. Detainees should be permitted to wear their own clothing, move freely among various areas within a secure facility, access true outdoor recreation for extended periods of time, access programming and email, have some privacy in toilets and showers, and have contact visits with family and friends. ICE should develop and implement new standards not modeled on corrections standards to specify conditions appropriate for civil immigration detention.

- **Prevent Unnecessary Costs by Ensuring that Asylum Seekers and Other Immigrants Are Not Detained Unnecessarily.** ICE should create an effective nationwide system of Alternatives to Detention for those who cannot be released without additional supervision, and Congress should ensure that cost savings are realized in the program's expansion by eliminating the immigration detention bed "quota" and granting flexibility between the enforcement and removal budget and the ATD budget. Congress should enact legislation to provide arriving asylum seekers and other immigration detainees with the chance to have their custody reviewed in a hearing before an immigration court. Congress should revise laws so that an asylum seeker or other immigrant may be detained only after an assessment of the need for detention in his or her individual case, rather than through automatic or mandatory detention.

- **Improve Access to Legal Assistance and Fair Procedures.** Congress should ensure that detained asylum seekers and other immigration detainees have sufficient access to legal representation, legal information, and in-person hearings of their asylum claims and deportation cases, including by ending the use of facilities in remote locations that undermine access to legal representation, medical care, and family; ensuring that Legal Orientation Presentations are funded and in place at all facilities detaining asylum seekers and other immigration detainees; and ensuring that in-person Immigration Judges and Asylum Officers are available for all detained asylum seekers or other immigration detainees.

Written Statement of

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Before the

United States Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights

Hearing on

Reassessing Solitary Confinement II: The Human Rights, Fiscal, and Public Safety Consequences

Tuesday, February 25, 2014

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I am grateful for this opportunity to present written testimony before the Senate Judiciary Committee Subcommittee on the Constitution, Civil Rights, and Human Rights for this hearing on solitary confinement in the United States. This is an extremely important issue and one on which both the United States Legislative and Executive Branches should and could take immediate action.

My testimony today will focus on the solitary confinement of children in the United States. In the last few years, I have interviewed or corresponded with scores of young people who were subjected to solitary confinement while they were under age 18 in juvenile facilities, as well as in jails and prisons in 20 states across the country. I want to share my perspective and some of their stories with this Subcommittee.

* * *

Every day in this country, young people under the age of 18 are held in solitary confinement in juvenile facilities, jails and prisons.* In solitary confinement, children spend 22 or more hours a day alone, usually in a small cell, isolated both physically and socially – and this can extend for days, weeks or months. Sometimes a window allows natural light to filter in or a view of the outside. Sometimes children can communicate with each other – yelling to other children, voices distorted, reverberating against concrete and metal. In some facilities, children get a book, or maybe just a bible, or perhaps study materials slipped under their door. But in solitary confinement, few contours distinguish one hour, day or week from the next.

I use the term 'solitary confinement' to refer to physical and social isolation of 22 to 24 hours per day for one day or more. Juvenile facilities, jails and prisons in the United States generally use solitary confinement for three purposes: to discipline, to manage or to treat. Children are held in solitary confinement to punish them when they break the rules inside a facility; to manage them, either to protect them from adults or one another or because they are deemed to require segregation when officials don't know how else to handle them; or to medically treat them, such as when they threaten to take their own life. Some facilities, sometimes in addition to using solitary confinement, use various, shorter forms of physical and social isolation that can be imposed for many hours – though fewer than 22.

Much of the national discussion about solitary confinement focuses on the use of prolonged physical and social isolation to manage individuals in state and federal prisons: a practice which, in its most extreme iterations, involves near-complete isolation for decades. But, and although I have met those whose isolation began in their childhood and continued long into adulthood, the alarming truth is that children all across the United States, in juvenile facilities, jails and prisons, are subjected to a range of shorter solitary confinement practices, and with devastating consequences.

The solitary confinement of children is a serious and widespread problem in the United States. Extended isolation of children can have a devastating impact – inhibiting healthy growth, development and rehabilitation and causing serious pain and suffering, or worse. All isolation practices are problematic; prolonged isolation is inconsistent with medical and correctional best-practices and can violate both constitutional and international human rights law.

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* In the United States, the term 'juvenile facility' generally refers to a facility in which individuals subject to the jurisdiction of the juvenile justice system are held; the term 'jail' generally refers to a facility in which individuals subject to the criminal justice system are held either before trial or for short periods of post-conviction incarceration (usually less than one year) and the term 'prison' generally refers to a facility in which individuals convicted of an offense in the criminal justice system are held for long-term incarceration. In this testimony, I use the terms 'child,' 'adolescent,' 'youth,' and 'young people' interchangeably to refer to youth under the age of 18.

The Solitary Confinement of Children is Widespread and Harmful

There is no comprehensive national data on the solitary confinement of children in this country. But what research there is suggests that thousands of children each year are subjected to the practice.

In *Growing Up Locked Down: Youth in Solitary Confinement in Jails and Prisons Across the United States*, the only national study of the solitary confinement of children in the United States, which I authored, Human Rights Watch and the American Civil Liberties Union estimated (using Bureau of Justice Statistic data through 2011) that in recent years nearly 100,000 children – each year – are held in jails and prisons where they are at risk of being subjected to solitary confinement.[i] Jail and prison officials nationwide reported using the same techniques to manage children and adults in their care, including solitary confinement.[ii] Those few states in which data is available suggest that a striking percentage of children may be held in solitary confinement in adult jails and prisons each year – with some large state jail and prison systems reporting that well over 10% of children in their care are subjected to the practice and some small jail facilities holding 100% of children in their care in solitary.[iii]

With regard to juvenile facilities, a recent briefing paper by the American Civil Liberties Union, *Alone and Afraid: Children Held in Solitary Confinement and Isolation in Juvenile Detention and Correctional Facilities*, gathers the best data available on both solitary confinement and other isolation practices, including from a number of states.[iv] The most recent comprehensive estimate from Bureau of Justice Statistics data suggests that in 2003 an estimated 35,000 young people between the ages of 10 and 20 were held in isolation in juvenile facilities in the United States with over half – or an estimated more than 17,000 children – held for more than 24 hours in a form of solitary confinement.[v]

The children I have spoken with about their experience of solitary confinement in adult jails and prisons were haunting in their descriptions of the practice as harmful and counterproductive.

Young people told me about just how difficult it was for them to cope in solitary. Several described losing touch with reality while isolated. Carter, who entered prison when he was 14 years old, told me:

> "I felt like I was going mad. Nothing but a wall to stare at… I started to see pictures in the little bumps. Eventually, I said the hell with it and started acting insane. I made little characters with my hands and acted out video games I used to play on the outside."[vi]

I spoke with at least a dozen young people in detail about their suicidal thoughts or attempts. This sad fact is no surprise, as there is widespread agreement that suicide is highly correlated with solitary confinement among youth in juvenile and adult facilities.[vii]

Many of those who had attempted suicide, and a few others, had repeatedly cut themselves with staples or razors. One young man, Landon, showed me his arms while we spoke. One was covered in small cuts and scars. He said that when he was in solitary confinement, "I would hear stuff. When no one was around it was harder to control. When I was by myself, I would hear stuff and see stuff *more*."[viii] Landon said he had struggled with these auditory and visual hallucinations for many years, but that solitary confinement "is not a place that you want to go."[ix] He said, "It's like mind torture."[x]

And young people described that solitary confinement brought back memories and pain from past trauma. One young girl, Melanie, was held in protective solitary confinement for three months when she was 15. She said, "when I was eleven, I was raped. And it happened again in 2008 and 2009."[xi] She said that when she was isolated, the memories came back. "I was so upset … and a lot was surfacing from my past… I don't like feeling alone. That's a feeling I try to stay away from. I hate that feeling."[xii]

Because physical isolation is a defining feature of solitary, it is perhaps not surprising that the practice is unhealthy for growing bodies. Indeed, restriction of physical exercise is ubiquitous. I did not identify a single adult jail or prison through my research that encouraged the kind of strenuous aerobic physical activity recommended by the Department of Health and Human Services. Teens talked about only being allowed to exercise in small metal cages, alone, a few times a week.

Young people described barriers to care and programming. Not surprisingly, adult jails and prisons have little, if any, age-differentiated services or programming. But once young people are placed in solitary confinement in any detention setting they are more likely to be cut off (or have much greater difficulty accessing) whatever resources are available. This makes normal growth and development – social, emotional, educational – all but impossible.

One of the most striking effects of this is that young people in solitary confinement have a harder time getting access to mental health services. This can makes suffering worse than it may otherwise have been. One girl told me:

> "Sometimes you have to [cut yourself] to go to [medical solitary confinement for suicide watch] … get psychological attention… because if you have a psychological emergency or you need to talk to somebody they won't let you. [So I] cut myself on my arm [when] I be thinking in my head I need to talk to someone before I do something I don't want to do."[xiii]

Young people described being prevented from going to school or participating in any activity that promotes growth or change. Henry said that then:

> "The only thing left to do is go crazy – just sit and talk to the walls. I catch myself talking to the walls every now and again. It's starting to become a habit because I have nothing else to do. I can't read a book. I work out and try to make the best of it, but there is no best. Sometimes I go crazy and I can't even control my anger anymore… . I feel like I am alone, like no one cares about me – sometimes I feel like, why am I even living?"[xiv]

Finally, young people in adult jails and prisons reported being denied contact with their families. Sean said, "It was very depressing not being able to give them a hug. I would cry about that."[xv] Lauren said: "visits behind glass were torture."[xvi] Again and again, young people who *did* get family visits told me that they gave them the will to live.

The Solitary Confinement of Children is Inadequately Regulated

While standards and policy at both the state and federal levels address the use of isolation, and while both international and constitutional law have been interpreted to ban the practice, there is a great need for a strong and unequivocal national ban on the solitary confinement of children.

Every set of national standards governing age-appropriate and developmentally-appropriate practices to manage children in rehabilitative and/or correctional settings strictly regulate and limit all forms of isolation.[xvii] The Department of Justice Standards for the Administration of Juvenile Justice limit isolation to a maximum period of 24 hours.[xviii] Notably, standards governing the isolation of children in medical and mental health facilities and educational settings are even more restrictive.[xix] The American Academy of Child and Adolescent Psychiatry has recommended a ban on solitary confinement.[xx] These standards show not just the consensus against this practice, but also that it is possible to manage and care for youth without reliance on solitary confinement or other harmful isolation practices.[xxi]

No state prohibits the solitary confinement of children in adult jails and prisons by statute. Two states – Mississippi and Montana – currently impose some limitations on the use of solitary confinement in adult prisons, pursuant to agreements reached and reforms implemented following litigation, with a third – New York – set to do the same in the coming months.[xxii] State juvenile justice agencies in recent years have implemented policy changes increasingly limiting isolation practices, with a majority of state agencies limiting isolation to a maximum of five days.[xxiii] Only six states – Alaska, Connecticut, Maine, Nevada, Oklahoma, and West Virginia – have prohibited certain forms of isolation, such as solitary confinement, in juvenile facilities by statute.[xxiv]

On the federal level, the Juvenile Justice and Delinquency Prevention Act (JJDPA) creates financial incentives for states to treat some young people differently from adults, including by diverting those subject to the jurisdiction of the juvenile justice system (and certain categories of misdemeanants) from adult facilities.[xxv] But no provision of either the JJDPA – or any other federal law or implementing regulation – prohibits solitary confinement or isolation of children in juvenile detention facilities, jails or prisons.

Fortunately, regulations implementing the Prison Rape Elimination Act (PREA) do include provisions regulating isolation.[xxvi] With regard to adult jails and prisons, the regulations require that adult facilities maintain sight, sound and physical separation between "youthful inmates" and adults and that officials should use their "best efforts" to avoid placing children in isolation to comply with the regulations.[xxvii] The regulations also require that any young person separated or isolated in an adult facility must receive, absent exigent circumstances, daily large-muscle exercise, any legally-required special education services, and, to the extent possible, access to other programming and work opportunities.[xxviii]

With regard to juvenile facilities, the PREA regulations require that any young person separated or isolated in a juvenile facility as a disciplinary sanction or protective measure must receive daily large-muscle exercise, access to legally-mandated educational programming or special education services, daily visits from a medical or mental health care clinician, and, to the extent possible, access to other programs and work opportunities.[xxix] There is as yet no data indicating whether these regulations have had an impact on the solitary confinement of youth. It is also important to note that, while a step in the right direction with regard to solitary confinement, the regulations are inconsistent in the way they protect youth, as they contain significant gaps that still leave children vulnerable to solitary confinement and the harmful conditions associated with prolonged isolation.

The Department of Justice has repeatedly recognized that isolation is not appropriate for youth (and the work of its Special Litigation Section deserves plaudits), [xxx] yet the Department has neither banned this practice for youth in the custody of its Bureau of Prisons (who are held in contract facilities), nor has it issued clear guidance prohibiting the practice in juvenile facilities, jails or prisons across the country.[xxxi]

The U.S. Constitution protects persons deprived of their liberty, both before and after conviction. It also provides extra protections for children charged with crimes. Although no decision of the Supreme Court has considered the constitutionality of the solitary confinement of children, in its recent decisions on children in conflict with the law, the Supreme Court has ruled that the Constitution's protections apply differently to children in that context because of the legal and developmental differences between children and adults. In cases involving the juvenile death penalty,[xxxii] juvenile life without parole,[xxxiii] and custodial interrogations,[xxxiv] the Court has held that punishing or questioning children without acknowledging their age, developmental differences, or individual characteristics is unconstitutional.

The Fifth and Fourteenth Amendment protections against deprivation of liberty without due process of law establish the constitutional protections generally applicable to conditions of confinement for children.[xxxv] Children in confinement have a "liberty interest in safety and freedom from [unreasonable]

bodily restraint."[xxxvi] Conditions of confinement are unreasonable when they are "a substantial departure from accepted professional judgment, practice or standards."[xxxvii] The Supreme Court has also held that government conduct violates substantive due process when it "shocks the conscience."[xxxviii] As with evaluation of the most extreme sentences, efforts to determine when extreme isolation practices breach professional standards and shock the conscience must take into account the developmental differences and individual characteristics of children.

A small number federal courts have ruled that solitary confinement and isolation practices used in juvenile detention facilities are unconstitutional.[xxxix] Few courts have considered this issue recently.[xl] However, an increasing number of federal district courts have recently found that the solitary confinement of adults with serious mental health problems violates the Eighth Amendment (which protects individuals who are convicted of an offense in the criminal justice system) because persons with mental disabilities have greater difficulty adjusting to solitary and because solitary can make mental health problems worse.[xli] I a sense similar to persons with mental disabilities, and because they are still growing and developing, children are especially vulnerable to the negative consequences of solitary confinement and other harmful isolation practices.

International human rights law, which identifies anyone below the age of 18 years as a child, recognizes that children, by reason of their physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth.[xlii] The International Covenant on Civil and Political Rights (ICCPR), a treaty ratified by the United States, acknowledges the need for special treatment of children in the criminal justice system and emphasizes the importance of their rehabilitation.[xliii] The Convention on the Rights of the Child (CRC), a treaty signed by the United States, also addresses the particular rights and needs of children who come into conflict with the law.[xliv]

A number of international instruments and human rights organizations have declared that the solitary confinement of children violates human rights laws and standards governing the protection of children, including those prohibiting cruel, inhuman or degrading treatment, and have thus called for the practice to be banned, including: the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines),[xlv] the Committee on the Rights of the Child,[xlvi] the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the Beijing Rules),[xlvii] and the Inter-American Commission on Human Rights.[xlviii] Based on the harmful physical and psychological effects of solitary confinement and the particular vulnerability of children, the Office of the U.N. Special Rapporteur on Torture has repeatedly called for the abolition of solitary confinement of persons under age 18.[xlix] This international consensus is important to legislators and policymakers because U.S. courts, including the Supreme Court, have repeatedly relied on international law and practice on children's rights to affirm their reasoning that certain domestic practices violate the Constitution.[l]

Solitary confinement is extreme—well outside of the range of acceptable best practices for caring for and managing children—and it carries a high risk of physical, developmental, and psychological harm, and even death. Laws and practices that subject children to this inherently cruel and punitive treatment shock the conscience. There is a clear international consensus that the practice violates the rights of children under human rights law, including under treaty and customary international law obligations binding on the United States. There is clear support for the view that the solitary confinement of children should be seen to violate both the substantive due process protections and the prohibition again cruel and unusual punishment in the U.S. Constitution. Indeed, in conjunction with the growing recognition that the practice is widespread and the broad consensus regarding how harmful it is for children, recent jurisprudence recognizing that 'kids are different' may well pave the way for clearer doctrinal recognition of the ways in which the practice violates the constitution – or at least waves of litigation seeking to protect children from the practice in juvenile facilities, jails and prisons.

In sum, the solitary confinement of children can and should no longer be the dark secret of our juvenile and criminal justice systems: It works against the rehabilitation of thousands of children each year. Congress must act to end the practice.

Recommendations

Congress should ban the solitary confinement of children and support increased federal oversight, monitoring, transparency and funding for alternatives to solitary confinement generally.

Congress should clearly prohibit the detention of children in adult facilities, as it has done with regard to juvenile delinquents and all children in the custody of the Attorney General.

Congress should mandate that federal, state, and local prisons, jails, detention centers and juvenile facilities report to the Department of Justice who is held in solitary confinement, for what reasons and how long, as well as the impact of the practices on cost, facility safety, incidents of self-harm and recidivism. This data must include the numbers of children who are subjected to solitary confinement and other forms of prolonged isolation.

Congress should require reforms of the use of solitary confinement in federal facilities. This should include a ban on the solitary confinement of children and the strict regulation of the use of other isolation practices on children held under the jurisdiction of the Federal government, including in the care of the Bureau of Prisons, the Department of Homeland Security, the Department of Defense, and the Department of Health and Human Services' Office of Refugee Resettlement.

Congress should encourage rulemaking by the Department of Justice to promulgate regulations that limit solitary confinement under existing or new statutory authority, and which provide for effective, evidence-based alternatives to isolation practices. These actions must include a ban on the solitary confinement of children and the strict regulation of the use of other isolation practices on children.

Congress should allocate federal funding to Department of Justice to support federal, state and local efforts to reduce the use of solitary confinement, with a focus on alternatives. This allocation should specifically direct the Department of Justice to seek the implementation of a national ban on the solitary confinement of children and the strict regulation of the use of other forms of isolation on children.

Congress must ensure that the United States fully engages in the international effort to reduce and reform the use of physical and social isolation, including solitary confinement. This must include constructive engagement in the process of updating the United Nations Standard Minimum Rules on the Treatment of Prisoners and facilitating a visit to the United States by the United Nations Special Rapporteur on Torture to investigate solitary confinement in the United States, including the solitary confinement of children.

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[i] HUMAN RIGHTS WATCH & THE AMERICAN CIVIL LIBERTIES UNION, GROWING UP LOCKED DOWN: YOUTH IN SOLITARY CONFINEMENT IN JAILS AND PRISONS ACROSS THE UNITED STATES 106-12 (2012), *available at* http://www.aclu.org/growinguplockeddown.

[ii] Id. 53-54. Some data suggests that in some jurisdictions, youth may actually be subjected to higher rates of solitary confinement than adults because their behavior leads to more disciplinary infractions associated with solitary confinement. Attapol Kuanliang et al., *Juvenile Inmates in an Adult Prison System: Rates of Disciplinary Misconduct and Violence*, 35 CRIMINAL JUSTICE & BEHAVIOR 1186, 93 (2008), *available at* http://cjb.sagepub.com/content/35/9/1186.full.pdf (finding that—per year—youth under age 18 are found guilty of "potentially violent rule violations" at a rate of 353.17 per 1,000 and of "assaultive rule violations" at a rate of 109.38 per 1,000 – both higher than the relevant rates for adults).

[iii] GROWING UP LOCKED DOWN, *supra* note 1 at 64-65 (citing examples from Florida, New York, Ohio, and Pennsylvania).

[iv] THE AMERICAN CIVIL LIBERTIES UNION, ALONE AND AFRAID 7 (2013), *available at* https://www.aclu.org/files/assets/Alone and Afraid COMPLETE FINAL.pdf (citing national data and data from California, Ohio and Texas).

[v] DEP'T OF JUSTICE OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, CONDITIONS OF CONFINEMENT: FINDINGS FROM THE SURVEY OF YOUTH IN RESIDENTIAL PLACEMENT 9 (2010), *available at* https://www.ncjrs.gov/pdffiles1/ojjdp/227729.pdf. The study, based on a nationally-representative sample of more than 7,000 young people ages 10-20, finds that in 2003 more than one-third (35 percent) of youth in juvenile facilities reported being isolated as a punishment and that more than half of those children were held for longer than 24 hours –amounting to more than 17,000 young people held in solitary confinement. In response to a 2010 Department of Justice census (the most recent year for which there is data) of close to 4,000 juvenile facilities, more than 850 facilities indicated that they locked young people in their room in certain circumstances and more than 430 facilities reported locking young people alone for more than 4 hours at a time in certain circumstances. JUVENILE RESIDENTIAL FACILITY CENSUS CODEBOOK, US DEP'T OF JUSTICE, INTER-UNIVERSITY CONSORTIUM FOR POLITICAL AND SOCIAL RESEARCH 42, 156-57 (2010), *available at* http://www.icpsr.umich.edu/cgibin/file?comp=none&study=34449&ds=1&file_id=1097802.

[vi] GROWING UP LOCKED DOWN, *supra* note 1 at 25.

[vii] Homer Venters et al., Solitary Confinement and Risk of Self-Harm Among Jail Inmates, 104 Am. J. Pub. Health 442 (2014), *available at* http://ajph.aphapublications.org/doi/full/10.2105/AJPH.2013.301742; LINDSAY M. HAYES, DEP'T OF JUSTICE OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, JUVENILE SUICIDES IN CONFINEMENT: A NATIONAL SURVEY (2009), *available at* https://www.ncjrs.gov/pdffiles1/ojjdp/213691.pdf; Seena Fazel, Julia Cartwright, et al., *Suicide in Prisoners: A systematic review of Risk Factors*, 69 J. CLIN. PSYCHIATRY 1721 (2008), *available at* http://www.ncbi.nlm.nih.gov/pubmed/19026254; Christopher Muola, US DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, SUICIDE AND HOMICIDE IN STATE PRISONS AND LOCAL JAILS (2005), *available at* http://bjs.ojp.usdoj.gov/content/pub/pdf/shsplj.pdf.

[viii] GROWING UP LOCKED DOWN, *supra* note 1 at 33.

[ix] *Id.*

[x] *Id.*

[xi] *Id.* at 34.

[xii] *Id.*

[xiii] *Id.* at 36.

[xiv] *Id.* at 22.

[xv] *Id.* at 42.

[xvi] *Id.*

[xvii] JUVENILE DET. ALT. INITIATIVE, JUVENILE DETENTION ALTERNATIVES INITIATIVE FACILITY SITE ASSESSMENT, Standard VII(E) (2006), *available at* http://www.cclp.org/documents/Conditions/JDAI%20Standards.pdf; PBS LEARNING INST., PBS GOALS, STANDARDS, OUTCOME MEASURES, EXPECTED PRACTICES AND PROCESSES 10 (2007), available at http://sccounty01.co.santa-cruz.ca.us/prb/media%5CGoalsStandardsOutcome%20Measures.pdf; PERFORMANCE-BASED STANDARDS, REDUCING ISOLATION AND ROOM CONFINEMENT 2 (Sept. 2012),*available at* *http://pbstandards.org/uploads/documents/PbS_Reducing_Isolation_Room_Confinement_201209.pdf* ("PbS standards are clear: isolating or confining a youth to his/her room should be used only to protect the youth from harming himself or others and if used, should be brief and supervised. Any time a youth is alone for 15 minutes or more is a reportable PbS event and is documented").

[xviii] DEP'T OF JUSTICE OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, STANDARDS FOR THE ADMINISTRATION OF JUVENILE JUSTICE, Standard 4.52 (1980), *available at* http://catalog.hathitrust.org/Record/000127687 ("juveniles should be placed in room confinement only when no less restrictive measure is sufficient to protect the safety of the facility and the persons residing or employed therein … Room confinement of more than twenty-four hours should never be imposed.").

[xix] 42 C.F.R. 482.13(e) (2012), *available at* http://www.ecfr.gov/cgibin/textidx?c=ecfr&SID=5ba18485f8033f30fb496dba3e87c626&rgn=div8&view=text&node=42:5.0.1.1.1.2.4.3&idno=42 (implementing 42 U.S.C. 1395x § 1861(e)(9)(A)) (Prohibiting isolation used for coercion, discipline, convenience or retaliation and allowing involuntary isolation only (1) when less restrictive interventions have been determined to be ineffective, (2) to ensure the immediate physical safety of the patient, staff member, or others, and (3) must be discontinued at the earliest possible time. The regulations also limit involuntary isolation to a total maximum of 24 hours and limit individual instances of involuntary isolation to 2 hours for children and adolescents age 9 to 17); NAT'L COMM. ON CORR. HEALTH CARE, STANDARDS FOR HEALTH SERVICES IN JUVENILE DETENTION AND CONFINEMENT FACILITIES, Standard Y-E-09 (2011); NAT'L COMM. ON CORR. HEALTH CARE, STANDARDS FOR HEALTH SERVICES IN JUVENILE DETENTION AND CONFINEMENT FACILITIES, Standard Y-39 (1995), *available at* http://www.jdcap.org/SiteCollectionDocuments/Health%20Standards%20for%20Detention.pdf (Requiring that segregation policies should state that isolation is to be reserved for incidents in which the youth's behavior has escalated beyond the staff's ability to control the youth by counseling or disciplinary measures and presents a risk of injury to the youth or others); US DEP'T OF EDUCATION, RESTRAINT AND SECLUSION: RESOURCE DOCUMENT 11-23 (2012), *available at* http://www2.ed.gov/policy/seclusion/restraints-and-seclusion-resources.pdf (Stating that isolation should not be used as a punishment or convenience and is appropriate only in situations where a child's behavior poses an imminent danger of serious physical harm to self or others, where other interventions are ineffective, and should be discontinued as soon as the imminent danger of harm has dissipated).

[xx] AM. ACAD. OF CHILD & ADOLESCENT PSYCHIATRY, POLICY STATEMENTS: SOLITARY CONFINEMENT OF JUVENILE OFFENDERS (Apr. 2012), *available at* http://www.aacap.org/cs/root/policy_statements/solitary_confinement_of_juvenile_offenders.

[xxi] *See, e.g.*, Paul DeMuro, *Towards Abolishing the Use of Disciplinary Isolation in Juvenile Institutions: Some Initial Ideas*, Youth Advocate Program, Inc. (Jan. 22, 2014), *available at* http://www.yapinc.org/Portals/0/Documents/News/Abolishing%20Isolation%20Juvenile%20Justice%20Demuro.pdf.

[xxii] *See* Consent Decree, C.B., et al. v. Walnut Grove Corr. Facility, No. 3:10-cv-663 (S.D. Miss. 2012) (prohibiting solitary confinement of children); Settlement Agreement, Raistlen Katka v. Montana State Prison, No. BDV 2009-1163 (Apr. 12, 2012), *available at* http://www.aclumontana.org/images/stories/documents/litigation/katkasettlement.pdf (limiting the use of isolation and requiring special permission); Benjamin Weiser, *New York State in Deal to Limit Solitary Confinement*, N.Y. TIMES, Feb. 19, 2014, *available at* http://www.nytimes.com/2014/02/20/nyregion/new-york-state-agrees-to-big-changes-in-how-prisons-discipline-inmates.html?_r=0.

[xxiii] PERFORMANCE-BASED STANDARDS, REDUCING ISOLATION AND ROOM CONFINEMENT, *supra* note 17 at 4.

[xxiv] These states at a minimum either ban punitive solitary confinement or heavily restrict its use. *See* Alaska Delinquency Rule 13 (Oct. 15, 2012) ("A juvenile may not be confined in solitary confinement for punitive reasons"); Conn. Gen. Stat. Ann. § 46b-133 (2012) ("no child shall at any time be held in solitary confinement"); Me. Rev. Stat. tit. 34-A § 3032 (5) (2006) (including "segregation" in the list of punishments for adults, but not in the list for children); Nev. Rev. Stat. § 62B (2013) ("A child who is detained in a local or regional facility for the detention of children may be subjected to corrective room restriction only if all other less-restrictive options have been exhausted and only [for listed purposes]."); Okla. Admin. Code § 377:35-11-4 (2013) ("Solitary confinement is a serious and extreme measure to be imposed only in emergency situations."); W. Va. Code § 49-5-16a (1998) ("A juvenile may not be punished by . . . imposition of solitary confinement and except for sleeping hours, a juvenile in a state facility may not be locked alone in a room unless that juvenile is not amenable to reasonable direction and control.").

[xxv] Coalition for Juvenile Justice, *The JJDPA: Federal Juvenile Justice and Delinquency Prevention Act* (2007), *available at* www.juvjustice.org/media/.../CJJ%20Hill%20Packet--Handouts.doc.

[xxvi] The regulations include detailed requirements for the prevention, detection, and investigation of sexual abuse in both adult and juvenile correctional facilities. *See* US Dep't of Justice, *Press Release: Justice Department Releases Final Rule to Prevent, Detect and Respond to Prison Rape* (May 17, 2012), *available at* http://www.justice.gov/opa/pr/2012/May/12-ag-635.html (providing a summary of regulations).

[xxvii] 28 C.F.R. § 115.14 (2012), *available at* http://www.ojp.usdoj.gov/programs/pdfs/prea_final_rule.pdf.

[xxviii] *Id.*

[xxix] *Compare* 28 C.F.R. § 115.378(b) (2012), *available at* http://www.ojp.usdoj.gov/programs/pdfs/prea_final_rule.pdf.

[xxx] *See* Letter from Robert L. Listenbee, Administrator, US Department of Justice, to Jesselyn McCurdy, Senior Legislative Counsel, American Civil Liberties Union 1 (Jul. 5, 2013), *available at* https://www.aclu.org/sites/default/files/assets/doj_ojjdp_response_on_jj_solitary.pdf; Letter from Thomas E. Perez, Assistant Att'y Gen., to Hon. Mitch Daniels, Governor, State of Indiana, Investigation of the Pendleton Juvenile Correctional Facility 8 (Aug. 22, 2012), *available at* http://www.justice.gov/crt/about/spl/documents/pendleton_findings_8-22-12.pdf (Finding excessively long periods of isolation of suicidal youth. Stating that, "the use of isolation often not only escalates the youth's sense of alienation and despair, but also further removes youth from proper staff observation. . . . Segregating suicidal youth in either of these locations is punitive, anti-therapeutic, and likely to aggravate the youth's desperate mental state."); Letter from Thomas E. Perez, Assistant Att'y Gen., to Hon. Chairman Moore, Leflore County Board of Supervisors, Investigation of the Leflore County Juvenile Detention Center 2, 7 (Mar. 31, 2011), *available at* http://www.justice.gov/crt/about/spl/documents/LeFloreJDC_findlet_03-31-11.pdf (Finding that isolation is used excessively for punishment and control, and the facility has unfettered discretion to impose such punishment without process); Letter from Thomas E. Perez, Assistant Att'y Gen., to Hon. Michael Claudet, President, Terrebonne Parish, Terrebonne Parish Juvenile Detention Center, Houma, Louisiana 12-13 (Jan.18, 2011), *available at* http://www.justice.gov/crt/about/spl/documents/TerrebonneJDC_findlet_01-18-11.pdf (Finding excessive use of isolation as punishment or for control – at four times the national average – and that the duration of such sanctions is far in excess of acceptable practice for such minor violations, and violates youths' constitutional rights and stating, "Isolation in juvenile facilities should only be used when the youth poses an imminent danger to staff or other youth, or when less severe interventions have failed."); Letter from Thomas E. Perez, Assistant Att'y Gen., to Hon. Mitch Daniels, Governor, State of Indiana, Investigation of the Indianapolis Juvenile Correctional Facility, Indianapolis, Indiana 21-22 (Jan. 29, 2010), *available at* http://www.justice.gov/crt/about/spl/documents/Indianapolis_findlet_01-29-10.pdf (Finding that facility subjected youth to excessively long periods of isolation without adequate process and stating, "generally accepted juvenile justice practices dictate that [isolation] should be used only in the most extreme circumstances and only when less restrictive interventions have failed or are not practicable."); Letter from Grace Chung Becker, Acting Assistant Att'y Gen., to Yvonne B. Burke, Chairperson, Los Angeles County Board of Supervisors, Investigation of the Los Angeles County Probation Camps 42-45 (Oct. 31, 2008), *available at* http://www.justice.gov/crt/about/spl/documents/lacamps_findings_10-31-08.pdf (Finding inadequate supervision of youth isolated in seclusion or on suicide watch); Letter from Wan J. Kim, Assistant Att'y Gen., to Marion County Executive Committee Members and County Council President, Marion County Juvenile Detention Center, Indianapolis, Indiana 10-12 (Aug. 6, 2007), *available at* http://www.justice.gov/crt/about/spl/documents/marion_juve_ind_findlet_8-6-07.pdf (Finding that isolation practices substantially departed from generally acceptable professional standards and that use of isolation was excessive and lacked essential procedural safeguards and stating, "Regardless of the name used to describe it, the facility excessively relies

on isolation as a means of attempting to control youth behavior' and that ‚Based on the review of housing assignments in January and February 2007, on any given day, approximately 15 to 20 percent of the youth population was in some form of isolation."); Letter from Bradley J. Scholzman, Acting Assistant Att'y Gen., to Hon. Linda Lingle, Governor, State of Hawaii, Investigation of the Hawaii Youth Correctional Facility, Kailua, Hawaii 17-18 (Aug. 4, 2005), *available at* http://www.justice.gov/crt/about/spl/documents/hawaii_youth_findlet_8-4-05.pdf (Finding excessive use of disciplinary isolation without adequate process); Letter from Alexander Acosta, Assistant Atty Gen., to Hon. Jennifer Granholm, Governor, State of Michigan, CRIPA Investigation of W.J. Maxey Training School, Whitmore Lake, MI 4-5 (Apr. 19, 2004), *available at* http://www.justice.gov/crt/about/spl/documents/granholm_findinglet.pdf (Finding excessive use of isolation for disciplinary purposes, often without process and for arbitrary reasons and durations.); Letter from Thomas E. Perez, Assistant Att'y Gen., to Janet Napolitano, Governor, State of Arizona, CRIPA Investigation of Adobe Mountain School and Black Canyon School in Phoenix, Arizona; and Catalina Mountain School in Tuscon, Arizona (Jan. 23, 2004), *available at* http://www.justice.gov/crt/about/spl/documents/ariz_findings.pdf (Finding that youth are kept in isolation for extended and inappropriate periods of time that fly in the face of generally accepted professional standards.).

[xxxi] Ian Kysel, Ban Solitary Confinement for Youth in the Care of the Federal Government , THE HILL (Apr. 11, 2013), *available at* http://thehill.com/blogs/congress-blog/judicial/293395-ban-solitary-confinement-for-youth-incare-of-the-federal-government; Letter from The American Civil Liberties Union et al. to Eric H. Holder, Jr., Attorney General, US Department of Justice, (Oct. 11, 2013).

[xxxii] *Roper v. Simmons*, 453 U.S. 551 (2005).

[xxxiii] *Miller v. Alabama*, 132 S.Ct. 2455 (2012); *Graham v. Florida*, 130 S.Ct. 2011 (2010).

[xxxiv] *J.D.B. v. North Carolina*, 564 U.S. __ (2011).

[xxxv] *Schall v. Martin*, 467 U.S. 253, 269 (1984) (Holding that the state has a legitimate interest in detaining youth prior to delinquency proceedings but that their conditions of confinement must not amount to punishment.). Notably, some courts apply both the Substantive Due Process protections as well as the prohibition against Cruel and Unusual punishment to conditions claims of post-adjudication youth. *Morgan v. Sproat*, 432 F.Supp. 1130, 1135 (S.D.Miss. 1977).

[xxxvi] *Youngberg v. Romeo*, 457 U.S. 307, 323 (1982) (the case, while focused on the treatment of persons held in mental health facilities, has repeatedly been used to evaluate conditions of confinement for youth).

[xxxvii] *Id.*

[xxxviii] *County of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998).

[xxxix] *See, e.g. , D.B. v. Tewksbury*, 545 F.Supp. 896, 905 (D.Or.1982) (ruling that "[p]lacement of younger children in isolation cells as a means of protecting them from older children' violates plaintiffs' Due Process rights under the fourteenth amendment."); *Inmates of Boys' Training School v. Affleck*, 346 F.Supp. 1354 (D.C.R.I.1972); *Lollis v. N.Y. State Dep't of Soc. Servs.*, 322 F.Supp. 473, 480-82 (S.D.N.Y.1970).

[xl] *R.G. v. Koller*, 415 F. Supp. 2d 1129, 1155-56 (D. Haw. 2006) (Concluding that, "The expert evidence before the court uniformly indicates that long-term segregation or isolation of youth is inherently punitive and is well outside the range of accepted professional practices… Defendants' practices are, at best, an excessive, and therefore unconstitutional, response to legitimate safety needs of the institution."); *Hughes v. Judd*, 8:12–cv–568–T–23MAP, 2013 WL 1821077 (M.D.Fl. 2013); *Troy D. and O'Neill S. v. Mickens et al.*, Civil Action No.: 1:10-cv-02902-JEI-AMD (D. N.J. 2013).

[xli] *See, e.g. , Ruiz v. Johnson*, 37 F. Supp. 2d. 855, 915 (S.D. Tex. 1999), *rev'd on other grounds , Ruiz v. Johnson*, 243 F.3d 941 (5th Cir. 2001), *adhered to on remand, Ruiz v. Johnson*, 154 F. Supp. 2d 975 (S.D. Tex. 2001) ("Conditions in TDCJ-ID's administrative segregation units clearly violate constitutional standards when imposed on the subgroup of the plaintiff's class made up of mentally-ill prisoners"); *Coleman v. Wilson*, 912 F. Supp. 1282, 1320-21 (E.D. Cal. 1995); *Madrid v. Gomez*, 889 F. Supp. 1146, 1265-66 (N.D. Cal. 1995); *Casey v. Lewis*, 834 F. Supp. 1477, 1549-50 (D. Ariz. 1993); *Langley v. Coughlin*, 715 F. Supp. 522, 540 (S.D.N.Y. 1988) (holding that evidence of prison officials' failure to screen out from SHU "those individuals who, by virtue of their mental condition, are likely to be severely and adversely affected by placement there" states an Eighth amendment claim).

[xlii] United Nations Declaration on the Rights of the Child, G.A. Res. 1386 (XIV), U.N. Doc. A/4354 (Nov. 20, 1959). Similarly, The American Convention on Human Rights ("Pact of San José, Costa Rica"), Article 19, states, "Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state." Organization of American States, American Convention on Human Rights, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123 (entered into force July 18, 1978), reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 25 (1992).

[xliii] International Covenant on Civil and Political Rights, Arts. 10, 14(4), opened for signature Dec. 16, 1966, S. Exec. Rep. 102-23, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976) (ratified by U.S. June 8, 1992) ("ICCPR"). The Human Rights Committee has interpreted the ICCPR's provisions on child offenders to apply to all persons under the age of 18. UN Human Rights Comm., 44th Sess., General Comment No. 1, U.N. Doc. HRI/GEN/1/Rev.1 at 155 (1994), available at http://www1.umn.edu/humanrts/gencomm/hrcoim20.htm. Treaties signed and ratified by the United States are the "supreme Law of the Land." U.S. CONST. art. VI cl. 2.

[xliv] Convention on the Rights of the Child (CRC), opened for signature Nov. 20, 1989, 1577 U.N.T.S. 3 (entered into force Sept. 2, 1990) ("CRC"). The United States signed the CRC in 1995 but has not ratified.

[xlv] U.N. Guidelines for the Prevention of Juvenile Delinquency, G.A. Res. 45/112, Annex, 45 U.N. GAOR Supp. (No. 49A), U.N. Doc. A/45/49, at 201 (Dec. 14, 1990) ("The Riyadh Guidelines").

[xlvi] U.N. Comm. on the Rights of the Child, 44th Sess., General Comment No. 10, Children's rights in juvenile justice, U.N. Doc. CRC/C/GC/10 (2007).

[xlvii] U.N. Rules for the Protection of Juveniles Deprived of their Liberty, G.A. Res. 45/113, Annex, 45 U.N. GAOR Supp. (No. 49A), U.N. Doc. A/45/49, ¶ 67 (Dec. 14, 1990) ("The Beijing Rules").

[xlviii] Press Release, Annex to the Press Release Issued at the Close of the 147th Session (Apr. 5, 2013), *available at* http://www.oas.org/en/iachr/media_center/PReleases/2013/023A.asp (incorporating the definition of the United Nations Special Rapporteur on Torture, Mr. Juan Mendez, into the IACHR *corpus juris*).

[xlix] Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Interim Rep. of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment , ¶¶ 78-85, Annex (Istanbul Statement on the Use and Effects of Solitary Confinement), U.N. Doc A/63/175 (July 28, 2008) (by Manfred Nowak), *available at* http://www.unhcr.org/refworld/pdfid/48db99e82.pdf; Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Interim Rep. of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment , ¶ 77, U.N.Doc. A/66/268 (Aug. 5, 2011) (by Juan Mendez), *available at* http://solitaryconfinement.org/uploads/SpecRapTortureAug2011.pdf.

[l] *Graham v. Florida,* 130 S.Ct. at 2034; *Roper v. Simmons*, 543 U.S. at 575 (*citing Trop v. Dulles,* 356 U.S. 86, 102- 103 (1958)). These cases start from the supposition that, whether a punishment is "cruel and unusual" is a determination informed by "evolving standards of decency that mark the progress of a maturing society." *Trop v. Dulles*, 356 U.S. 86, 101 (1958) (plurality opinion).

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Testimony submitted to U.S. Senate Judiciary Committee, Subcommittee on the Constitution, Civil Rights and Human Rights

Hearing: "Reassessing Solitary Confinement II: The Human Rights, Fiscal, and Public Safety Consequences"

Tuesday, February 25, 2014

Immigration Equality is a national organization that advocates for the rights of lesbian, gay, bisexual, transgender, (LGBT) and HIV positive immigrants. Immigration Equality runs a pro bono asylum project, provides technical assistance to attorneys, maintains an informational website, and fields questions from LGBT and HIV-positive individuals from around the world. Additionally, through education, outreach and advocacy, Immigration Equality works to change the laws that unfairly impact LGBT and HIV-positive immigrants. Immigration Equality runs a national hotline that provides free legal information for detained LGBT and HIV-positive immigrants, regularly provides direct representation for detainees, and matches low-income asylum seekers in detention with volunteer attorneys. Immigration Equality has helped draft training materials for detention staff who work with LGBT immigrants and has authored the leading manual on preparing sexual-orientation-based and HIV-based asylum claims.

We submit this testimony to urge both Congress and the Department of Homeland Security to take steps to limit the use of solitary confinement for LGBT detainees held in the custody of Immigration and Customs Enforcement (ICE). Given that solitary confinement is a form of punishment normally reserved for those who are a threat to others, this practice effectively punishes LGBT detainees in the name of protecting them.

Transgender immigrants are among those most routinely subjected to solitary confinement in immigration detention. Because ICE detention facilities almost invariably house transgender detainees by sex assigned at birth, they are often singled out for abuse when housed with the general population. For transgender women in particular, this means a heightened risk of sexual assault in detention. [1] In November 2013, the Government Accountability Office published its findings of an investigation into the frequency of sexual abuse of immigrant detainees, reporting that 20% of the substantiated complaints in the investigation involved transgender victims.[2] Detention centers have often sought to mitigate the risk to transgender detainees by housing them in isolating forms of administrative

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[1] Valerie Jenness et al. , VIOLENCE IN CALIFORNIA CORRECTIONAL FACILITIES: AN EMPIRICAL EXAMINATION OF SEXUAL ASSAULT, 3, UNIV. OF CAL., IRVINE, CTR. FOR EVIDENCE-BASED CORRECTIONS (2007), http://ucicorrections.seweb.uci.edu/files/2013/06/Jenness-et-al._PREA-Report.pdf (finding that in California men's prisons, "[s]exual assault is *13 times* more prevalent among transgender inmates, with 59% reporting being sexually assaulted") (emphasis added).

[2] IMMIGRATION DETENTION: ADDITIONAL ACTIONS COULD STRENGTHEN DHS EFFORTS TO ADDRESS SEXUAL ABUSE, 60-62. (2013), http://gao.gov/assets/660/659145.pdf.

segregation that are harmful to their mental and physical health. [3] Detainees are placed in a small cell for up to 23 hours per day, for weeks, or even months at a time. They commonly lack access to services and programs, external support systems, or any human interaction. Their extraordinary isolation acts as a barrier to access counsel, which deprives them of representation that could help them put an end to their solitary confinement. It is psychologically damaging and exacerbates the fear and anxiety felt by an already vulnerable group. The fear of mistreatment in detention leaves transgender individuals with the bleak choice of enduring months of isolation, harassment, and assault in detention, or giving up and accepting deportation to a country where they fear persecution and torture.

Immigration Equality has represented many clients who have been traumatized by solitary confinement. One example is Maria (not her real name), a transgender woman escaping from persecution in Mexico who was detained at York Detention Center in Pennsylvania. Prior to being detained, she had access to hormone therapy treatment and lived her life as a woman. Among other medical procedures, she had surgeries to feminize her face and to augment her breasts. She had changed her name from Eric to Maria, and wore women's clothing. Upon arrival at York, Maria was processed through the center's intake procedures, placed in the male facility and asked whether she wanted to be placed in solitary confinement. She said no. Despite this, and without any individualized risk assessment, the detention officer placed Maria in solitary confinement, where she was subject to 23 hour lockdown.

Maria stayed in solitary confinement for a total of three months, the entirety of her stay at York. During this time, she had no social interaction with other detainees, and she was denied both her HIV treatment and her gender-affirming hormone therapy. Unsurprisingly, Maria started having nightmares. In her nightmares she dreamed that she would be returned to Mexico and would again be abused and killed due to her status as a transgender woman. At one point Maria expressed her frustration at being in 23 hour lockdown by banging her head against a wall and screaming.

Without an individualized psychiatric evaluation of Maria's mental state, detention officers placed her in a smaller solitary confinement cell. The suicide watch cell she was placed in was about 10 feet by 10 feet. Additionally, Maria was stripped of her clothing and subject to checks by officers every 15 minutes. Maria remained on suicide watch in solitary confinement for a total of 15 days. Finally, after obtaining legal counsel through Immigration Equality, Maria was released from detention and placed on an electronic monitoring unit. Had it not been for Immigration Equality's intervention she would have remained in solitary confinement.

Maria's descent into depression due to being placed in solitary confinement is an all too common occurrence. Another one of our clients at Immigration Equality, Manuela (not her real name), is a transgender woman from Mexico who was detained in an all male prison in Georgia. When she was attacked by another detainee, it was Manuela and not the attacker who was placed in disciplinary detention. There, her isolation caused her to become depressed, at which point she was put on suicide watch and forced to wear an anti-suicide smock. Understandably, this made Manuela feel degraded and

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[3]Sharita Gruberg, DIGNITY DENIED: LGBT IMMIGRANTS IN U.S. IMMIGRATION DETENTION , CTR. FOR AMERICAN PROGRESS (2013), (reporting that transgender detainees are placed in isolating forms of administrative segregation at a disproportionately high frequency).

magnified her depression. This damaging cycle only ended when Immigration Equality secured her release.

The mental and emotional damage caused by solitary confinement has been well documented. Studies of prisoners in solitary confinement show that they develop psychopathologies at almost twice the rate of those in the general prison population.[4] They have also been found to engage in self-mutilation at higher rates.[5] Data also indicates that solitary confinement is a major factor in suicidal ideation and suicide attempts.[6] An extensive study of prisoners in solitary confinement in California found that they had "high anxiety, nervous-ness [sic], obsessive ruminations, anger, violent fantasies, nightmares, trouble sleeping, as well as dizziness, perspiring hands, and heart palpitations".[7] We at Immigration Equality have seen these effects first hand. One of our clients, Carmen (not her real name) was placed in solitary detention in Essex County, New Jersey, for two weeks after being constantly harassed. When she came out of detention to meet with us, she was shaking all over and found it difficult to form words. The damage done to Carmen's mental health was evident.

Even when LGBT detainees "voluntarily" request solitary confinement, such requests are often made in the face of grave safety concerns in detention that exert strong pressure on them to request protective housing. One of Immigration Equality's Jamaican clients, Mark (not his real name), was a gay and HIV positive man terrified of being beaten by the other detainees at York County Detention Center in Pennsylvania. Because he often had to communicate about his HIV diagnosis and his sexual orientation with his counsel by phone in a non-confidential setting, he feared that other detainees would quickly learn that he was gay and HIV positive and subject him to abuse. His fears were made worse by the fact that he was housed with other homophobic Jamaican immigrants whom he feared might kill him in Jamaica if the immigration court did not grant him the right to stay in the United States. Immigration Equality was able to secure his transfer to another immigration detention center where a judge eventually granted him permission to stay in the United States. However, for many *pro se* litigants, prolonged solitary confinement can be a reality.

Immigration Equality commends ICE's 2011 Performance Based National Detention Standards for recommending that solitary confinement be reserved as a housing classification of last resort for LGBT detainees. However, these standards are merely recommendations not implemented at many detention facilities, and they do not carry the binding force of law. The Department of Homeland Security's Prison Rape Elimination Act (PREA) regulations provide stronger protections for transgender immigrants in ICE detention. As of February 24, 2014, they remain pending and have not yet been implemented. Swift implementation of the PREA regulations will go far to protect LGBT immigrants from being placed in solitary confinement out of misguided notions that it is the best way to ensure their safety and well-being. Immigration Equality continues to recommend that ICE not detain LGBT

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[4] H.S. Andersen, D. D. Sestoft, T. T. Lillebæk, G. G. Gabrielsen, R. R. Hemmingsen & P. P. Kramp, *A Longitudinal Study of Prisoners on Remand: Psychiatric Prevalence, Incidence and Psycho-pathology in Solitary vs. Non-Solitary Confinement*, 102(1) ACTA PSYCHIATRICA SCANDINAVICA 19 (2000).

[5] C. Haney & M. Lynch, *Regulating Prisons of the Future: A Psychological Analysis of Supermax and Solitary Confinement*, 23 NEW YORK UNIVERSITY REVIEW OF LAW AND SOCIAL CHANGE 477-570 (1997).

[6] I. Suto, Inmates Who Attempted Suicide in Prison: A Qualitative Study, 46 (2007) (paper on file with the School of Professional Psychology).

[7] S. Rodriguez, *Fact Sheet: Psychological Effects of Solitary Confinement*, SOLITARY WATCH (2011), http://solitarywatch.com/wp-content/uploads/2011/06/fact-sheet-psychological-effects-of-solitary-confinement2.pdf.

immigrants if it cannot house them safely. Alternatives to detention, such as electronic monitoring devices and regular telephonic and in-person check-ins, are a more appropriate way to ensure that vulnerable LGBT immigrants show up for their court hearings. However, for those LGBT people whom ICE does detain, solitary confinement is an inappropriate and inhumane method of housing that should only be used as a last resort when no other safe housing methods are possible.

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Religious Communities must stop blessing war and violence!

ICUJP Statement on Prolonged Solitary Confinement

Prolonged solitary confinement, as practiced in U.S. prisons, is a form of torture and a moral affront to the conscience of our country.

We applaud Senator Durbin and the Judicial Committee for holding these hearings. We urge you to work with states and partner communities to develop legislation that will end this torture.

Interfaith Communities United for Justice and Peace (ICUJP), a Los Angeles organization of religious leaders, clergy and lay, of many faiths dedicated to restoring justice through nonviolent means, is working in close partnership with the National Religious Campaign Against Torture to end this barbaric practice through organized protests, appeals to government officials, letters and op-ed pieces in newspapers, and dramatic presentations.

The dehumanizing effects of confinement, for as long as 30 years at a time, in windowless solitary housing units (SHUs) 23 out of 24 hours a day, have been eloquently voiced in letters from prisoners, which have been compiled by ICUJP into a dramatic reading series called "If the SHU Fits-Voices from Solitary Confinement"

Prolonged solitary confinement causes incalculable psychological and emotional distress, exacerbating pre-existing symptoms of mental illness and creating new ones.

As interfaith leaders we are united by our common religious belief in the fundamental dignity of each human being and in our opposition to the cruel, inhuman and degrading treatment of prisoners subjected to prolonged solitary confinement.

Written Testimony of Professor Jeanne Theoharis
For the Senate Judiciary Committee,
Subcommittee on the Constitution, Civil Rights, and Human Rights

Second Hearing on Reassessing Solitary Confinement:
Scheduled for February 25, 2014

Chairman Durbin and Honorable Committee members,

We want to begin by thanking the Committee for holding this important hearing. In concert with colleagues and human rights advocates across the country who are drawing attention to other key issues related to the use of solitary confinement, we submit findings on the pre-trial treatment that people accused of terrorism encounter in federal prisons, which often involves years of pre-trial solitary confinement, often additionally layered with Special Administrative Measures (SAMs). It is this often-overlooked pre-trial use of solitary confinement that is the subject of this written testimony, which we hope will prompt further investigation and needed oversight by the Committee.

We are devoting this testimony to the pre-trial use of solitary confinement, including SAMs, in terrorism-related cases, specifically as it is practiced at the Metropolitan Correctional Center (MCC) in New York City. Amnesty International and other researchers, United Nations experts, and members of the media have requested to visit the MCC and to interview detainees held in pre-trial solitary confinement there. These requests have all been denied, which has contributed to a dearth of publicly-available information about the nature of these pre-trial conditions and their impact on defendants' health and rights.

In the past twelve years since the tragedy of 9/11, we have witnessed the use of prolonged pre-trial solitary confinement in a increasing sample of cases where people are facing terrorism-related charges.[1] Solitary confinement in the cases we have observed is typically instituted at the beginning of the pre-trial detention, and appears to be related to the fact of a terrorism charge and not necessarily to the specific allegations at issue or the behavior in custody. Despite legal challenges in some of these cases, the solitary confinement has lasted the entire duration of the pre-trial confinement. This raises significant human rights and due process concerns.

We turn our attention to a federal penitentiary with some of the harshest of these pre-trial conditions -- the treatment of suspects at the Metropolitan Correctional Center (MCC) in lower Manhattan. Many terrorism cases post-9/11 have originated in the Southern District of New York (SDNY), and defendants facing charges in the SDNY are held in the MCC. Within that facility, people accused of terrorism are often held in the highly

[1] A partial list of defendants held in prolonged pre-trial solitary confinement includes the cases of Syed Hashmi, Oussama Kassir, Tarek Mehanna, Talha Ahsan, Babar Ahmad, Abdel Bary, Ahmed Ghailani, Sheikh al-Moayad, Mohammed Warsame, Uzair Paracha, Ali al-Marri, Zacarias Moussaoui, Jose Padilla, Tarik Shah, Aafia Siddiqui, Ahmed Warsame, Ricardo Palmera.

restrictive "10 South" wing of the prison; there is also a "Special Housing Unit" where detainees are also held in solitary confinement.

The isolation in 10 South is severe. Based on information received from some detainees and their lawyers, we understand that suspects spend 23 hours a day in their cells. Detainees shower inside their cells, so that they are literally alone in their cells almost all of the time. They are allowed one hour of recreation out of their cells, which takes place in an indoor solitary recreation cage. Recreation is periodically denied, so detainees can go days without leaving their cells. No outdoor recreation is allowed for detainees in 10 South, and cell windows are frosted. The only fresh air is through a window in the indoor recreation cage.

Detainees are strip-searched each time they go to court. These kinds of regular searches can be traumatizing and degrading. Defendants in some cases have requested not to attend their own court hearings because of these strip searches.[2] The conditions at the MCC are dirty and decrepit; detainees and lawyers report that the temperature is not sufficiently regulated and varies between extremely cold and hot. Legal visits are typically non-contact.

Many terrorism suspects in 10 South have also been placed under SAMs or SAMs-like conditions. SAMs are prisoner-specific confinement and communication rules, imposed by the Attorney General but carried out by the Bureau of Prisons (BOP).[3] Pursuant to 28 C.F.R. § 501.3, the Attorney General may authorize the Director of the BOP to implement SAMs only upon written notification "that there is a substantial risk that a prisoner's communications or contacts with persons could result in death or serious bodily injury to persons, or substantial damage to property that would entail the risk of death or serious bodily injury to persons." The SAMs "may include housing the inmate in administrative detention and/or limiting certain privileges, including but not limited to correspondence, visiting, interviews with representatives of the news media, and use of the telephone, as is reasonably necessary to protect persons against the risk of acts of violence or terrorism."[4] Page after page, a prisoner's SAMs spell out in intricate detail the nature of his isolation, down to how many pages of paper he can use in a letter or what part of the newspaper he is allowed to read and after what sort of delay. It does not have to spell out the reasons for those particular restrictions.[5]

Originally, the federal government created SAMs to target gang leaders and prisoners in

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[2] Benjamin Weiser, *Federal Judge Rejects Terrorism Suspect's Plea to Halt His Strip-Searches,* N.Y TIMES, June 17, 2010.

[3] 28 C.F.R. § 501.3. The statutory authority for the SAMs derives mainly from 5 U.S.C. § 301, which grants the heads of executive departments the power to create regulations designed to assist them in fulfilling their official functions and those of their departments, and 18 U.S.C. § 4001, which vests control of federal prisons in the Attorney General and allows him to promulgate rules governing those prisons.

[4] 28 C.F.R. § 501.3(a).

[5] 28 C.F.R. § 501.3(b) ("Designated staff shall provide to the affected inmate . . . written notification of the restrictions imposed and the basis for these restrictions. The notice's statement as to the basis may be limited in the interest of prison security or safety or to protect against acts of violence or terrorism").

cases where "there is a substantial risk that an inmate's communication or contacts with persons could result in death or serious bodily injury to persons." [6] They instituted these restrictions on the communications of prisoners with a demonstrated reach beyond prison. [7] Civil libertarians raised a series of alarms in 1996 when the SAMs regulations were first promulgated by the Department of Justice (DOJ), particularly around prisoners' First Amendment rights to free speech and their Sixth Amendment right to counsel. But during the notice and comment process, there was no explicit discussion of these measures being used pre-trial.

After 9/11, DOJ substantially changed the standard for imposing and renewing SAMs. Finding the SAMs application and renewal process "burdensome" and "unnecessarily static," they relaxed the standards considerably and expanded their use. [8] The government now could impose SAMs for a year (previously it had been 120 days). And for renewals, which can recur annually without limit, the government did not have to demonstrate that the original reason the person was put under SAMs still existed, only that there existed a reason to maintain the measures. Significantly, the government expanded their use pre-trial. Cases in which the government asserted a relationship of the accused to "terrorist activities," particularly alleged connections to al Qaeda, could be enough to justify these measures pre-trial. The requirement of establishing "demonstrated reach" was effectively jettisoned in the cases we observed.

Under SAMs -- which, in cases we have observed, are layered on top of solitary confinement -- detainee isolation grows even more profound, as communication with the outside world is severely circumscribed. Detainees at the MCC under SAMs do not get television or radio, and access to newspapers is delayed and censored. There is electronic surveillance inside and outside of their cells, so everything (going to the bathroom, showering, talking) is monitored. Detainees have also been punished for speaking through the walls. One man was given a four-month punishment for saying "Asalaam Aleikum" to another detainee. Another was reprimanded for making the call to prayer. Detainees are not always punished for talking through walls or doors, but there is always the threat of punishment, and sometimes guards exercise their prerogative to do so. Detainees report going months without any talking with other inmates. In response to these harsh conditions, there have been hunger strikes at the MCC as well as force feedings, but little public attention because information on the MCC is so circumscribed.

These conditions can be devastating and result in mental health degradation—which is particularly destabilizing for people with pre-existing mental health issues. There is no independent outside medical oversight, and motions to get independent medical experts inside to provide evaluations and to help ameliorate defendants' pre-trial conditions were

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[6] Prevention of Acts of Violence and Terrorism, 61 Fed. Reg. 25,120 (interim rule with request for comments) (May 17, 1996).

[7] The legal standard was established in *United States v. Felipe*, a case that upheld extraordinarily restrictive conditions of confinement for a leader of the Latin Kings with a demonstrated history of directing murderous conspiracies from prison and communicating with an extensive network of co-conspirators inside and outside of prison.

[8] National Security; Prevention of Acts of Violence and Terrorism, 72 Fed. Reg. 16,271-75 (Apr. 4, 2007).

generally denied by the court in the cases we observed.

The use of prolonged solitary confinement and SAMs during pre-trial detention thus raises significant due process concerns. Such conditions compromise the ability of defendants to participate actively and effectively in their own defense. The use of prolonged pre-trial solitary confinement can also exert extraordinary pressure on a defendant to cooperate or take a plea bargain to escape these conditions. Moreover, it compromises the right to a presumption of innocence, as pre-trial solitary and SAMs – extreme conditions that are punitive in their effect – are imposed on defendants whose charges have not been proven.

Such confinement has serious health effects, as documented by virtually every mental health study that has examined long-term solitary confinement. Having conducted his own empirical research as well as an exhaustive review of the psychological literature from "researchers from several different continents [with] diverse academic backgrounds and a wide range of professional expertise,"[9] Dr. Craig Haney, a psychologist at UC-Santa Cruz who has studied the effects of solitary confinement for decades, summarizes the types of psychological harms suffered by prisoners held in long-term solitary confinement. These include "appetite and sleep disturbances, anxiety, panic, rage, loss of control, paranoia, hallucinations, and self- mutilations," as well as "cognitive dysfunction, hallucinations, . . . , aggression and rage, paranoia, hopelessness, a sense of impending emotional breakdown, self-mutilation, and suicidal ideation and behavior."[10] This constellation of symptoms, referred to as "isolation panic" by social psychologist Hans Toch, "mark[s] an important dichotomy for prisoners: the "distinction between imprisonment, which is tolerable, and isolation, which is not."[11]

Haney has extensively documented the use of isolation as an interrogation and torture technique, explaining that "many of the negative effects of solitary confinement are analogous to the acute reactions suffered by torture and trauma victims." Research suggests such effects are clear after 60 days. Indeed, Haney concludes, "There is not a single published study of solitary or supermax-like confinement . . . that failed to result in negative psychological effects." Psychological studies have repeatedly found that prolonged solitary confinement and sensory deprivation can cause or exacerbate mental illness. Stuart Grassian, former faculty member at Harvard Medical School, has done extensive research with prisoners in solitary confinement. He has documented a specific psychiatric condition brought on by solitary confinement, even among people with no previous psychiatric issues. This includes hyperresponsivity to external stimuli, illusions and hallucinations, panic attacks, difficulty concentrating, intrusive obsessional and aggressive thoughts, paranoia, and problems with impulse control. Across the board,

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[9] Expert Report of Dr. Craig Haney, *Silverstein v. Bureau of Prisons*, 07-cv-2471-PAB-KMT (Apr. 13, 2009), citing CHRISTOPHER BURNEY, SOLITARY CONFINEMENT (1961); Frank Rundle, "The Roots of Violence at Soledad," in THE POLITICS OF PUNISHMENT: A CRITICAL ANALYSIS OF PRISONS IN AMERICA,163-172 (1973); Robert Slater, *Abuses of Psychiatry in a Correctional Setting*, 7(3) Am. J. of Forensic Psych. 41-47 (1986).

[10] *Id.* (citing both U.S. and international literature on the adverse effects of solitary confinement).

[11] *Id.*

solitary confinement has these effects. [12]

In a pre-trial situation, these effects then raise a host of due process issues, both in terms of punishment before conviction and the ways these conditions abridge a suspect's due process and other fair trial rights. As Amnesty International has observed, "[t]he conditions also appear incompatible with the presumption of innocence in the case of untried prisoners who have not committed offences within the institution and whose detention should not be a form of punishment." [13]

What is also troubling about the use of pre-trial isolation is its potential as a coercive tool. These conditions of prolonged isolation are designed to produce stress and cooperation. The use of solitary confinement can help create the landscape for convictions by making it difficult for defendants to participate effectively in their own defense, severely impairing their mental health and judgment. And such impaired judgment has obvious implications for the voluntariness of plea deals and the legitimacy of those resulting convictions.

Pre-trial solitary confinement also raises questions regarding the United States' human rights standing in the world. Cases before the European Court of Human Rights, by suspects fighting extradition to face charges in the United States, have raised the issue of treatment of suspects and the use of solitary confinement in US prisons. As more people encounter this pre-trial treatment, one can expect growing international attention. The UN Special Rapporteur on Torture recently issued a public statement about the conditions of confinement of one previous defendant, Syed Hashmi, who was kept for three years pre-trial at the MCC in solitary confinement under SAMs:

> I found no justification for the fact that he was kept in solitary confinement during his prolonged pre-trial detention (in the US although not in the UK during his pre-extradition detention), and that he was later placed under "special administrative measures" amounting to solitary confinement under another name, after a conviction based on a negotiated plea. The explanation I was given made no mention of Mr. Hashmi's behavior in custody as a reason for any disciplinary sanction; it appears that his harsh conditions of detention are related exclusively to the seriousness of the charges he faced. If that is so, then solitary confinement with its oppressive consequences on the psyche of the detainee is no more than a punitive measure that is unworthy of the United States as a civilized democracy.

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[12] *See, e.g.*, Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 J. L. & POL'Y 325, 331 (2006) (noting that "even a few days of solitary confinement will predictably shift the EEG pattern toward an abnormal pattern characteristic of stupor and delirium").

[13] Amnesty International statement *available at:* http://www.amnesty.org/en/library/asset/AMR51/029/2011/en/867a8f0e-9fd1-4dbf-a084-cfe644c774b0/amr51029201len.pdf

Amnesty International in a letter to Attorney General Holder addressed the pre-trial conditions of confinement that existed in MCC 10 South, which "fall short of the USA's obligations [to international law] in this regard and the combined effects of prolonged confinement to sparse cells with little natural light, no outdoor exercise and extreme social isolation amount to cruel, inhuman or degrading treatment." In our view, the years-long pre-trial solitary confinement of defendants in MCC 10 South also rises to the level of torture by international standards. As Amnesty International stated in their letter:

> The USA has ratified the Convention against Torture and the International Covenant on Civil and Political Rights (ICCPR), both of which affirm the absolute prohibition of torture or cruel, inhuman or degrading treatment. …[The UN Human Rights Committee] has noted that prolonged solitary confinement may amount to torture or other ill-treatment prohibited under Article 7 of the ICCPR (General Comment 20/44, 1992). The UN Committee against Torture has made similar statements, with particular reference to the use of solitary confinement during pre-trial detention. [14]

In sum, we have documented the use of prolonged pre-trial solitary confinement, including SAMs, on people facing terrorism charges; the significant rights issues this treatment raises; and the potential coercive climate that pre-trial solitary confinement creates. We hope that the Committee will investigate and provide oversight and regulation on the use of solitary confinement in this context, as well as other contexts being described by other submissions and testimony to this hearing.

Jeanne Theoharis, Professor of Political Science at Brooklyn College of the City University of New York and Co-Founder of Educators for Civil Liberties

Pardiss Kebriaei, Senior Staff Attorney at the Center for Constitutional Rights

Bill Quigley, Professor of Law and Director of the Law Clinic and the Gillis Long Poverty Law Center at Loyola University New Orleans

Saskia Sassen, Robert S. Lynd Professor of Sociology and Co-Chair of the Committee on Social Thought at Columbia University

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[14] Amnesty International statement *available at:* http://www.amnesty.org/en/library/asset/AMR51/029/2011/en/867a8f0e-9fd1-4dbf-a084-cfe644c774b0/amr510292011en.pdf

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Written Statement of the John Howard Association of Illinois (JHA)

"Reassessing Solitary Confinement II: The Human Rights, Fiscal, and Public Safety Consequences."

Before the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights

February, 2014

Honorable Members of the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights:

The John Howard Association of Illinois (JHA) is Illinois' oldest prison reform group and the only independent organization that monitors the state's juvenile and adult correctional systems. Our mission is to achieve a fair, humane and cost-effective criminal justice system by promoting adult and juvenile prison reforms that lead to successful re-integration of inmates upon release and enhanced community safety.

Through our regular prison monitoring of the Illinois Department of Corrections (IDOC), JHA has documented the effects of long-term isolation in solitary confinement. Based on our work and the prevailing body of evidence in the fields of criminology, medicine, science, psychology, and sociology linking long-term isolation to the promotion and exacerbation of serious mental and physical illness, JHA believes that the practice of long-term isolation serves no legitimate correctional purpose and should be abolished. JHA therefore recommends that correctional agencies place strict limits on the use of solitary confinement consistent with United Nations guidelines, including an absolute prohibition against the use of long-term isolation with mentally ill inmates.[1]

In 2013, Illinois took significant action by closing the state's only "super max" prison Tamms Correctional Facility. As JHA previously testified before the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights in 2012, long term solitary confinement at Tamms and other facilities is not only expensive to sustain, but it also produces harmful effects that far exceed the legitimate purposes of punishment,

[1] Report of the Special Rapporteur of the Human Rights Council on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (August, 2011), available at: http://solitaryconfinement.org/uploads/SpecRapTortureAug2011.pdf

incapacitation, deterrence, retribution or reformation. When Tamms first opened in 1998 at the height of states' enthusiasm for supermax prisons, less was known about the effects of long-time isolation on inmates' physical and mental health and its impact on mentally ill inmates. Since that time, a compelling body of data, literature, study, and research has emerged establishing that long-term isolation has severely detrimental effects on inmates' physical and mental health, and is particularly hazardous for inmates with preexisting mental illness. Even the judiciary which, by its nature, is a conservative body and usually last to acknowledge consensus on issues of empirical fact, now uniformly recognizes that long-term isolation can cause grave psychological and physical harm.[2]

Unfortunately, the closure of Tamms did not end Illinois' overreliance on solitary confinement. Many Illinois inmates, including inmates incarcerated for low-level offenses, are housed in conditions that meet the definition of "solitary confinement" as defined by the United Nations — that is, physical and social isolation of individuals who are confined to their cells for 22 to 24 hours a day, with many being confined in "prolonged solitary confinement" of a period greater than 15 days. In IDOC, these inmates are scattered between facilities in various housing units, including disciplinary segregation, administrative detention, mental health housing, protective custody, and reception and classification units.

JHA therefore continues to advocate: (1) that the use of long-term isolation be prohibited with inmates who have a history of mental illness, (2) that the use of isolation be strictly circumscribed with all prisoners and used cautiously, for minimal periods of time, and only when absolutely required to preserve inmate and staff safety, and (3) that inmates held in segregation be monitored for developing mental health issues. These recommendations are supported by evidence that long-term isolation tends to severely exacerbate mental illness and causes serious mental and physical illness in otherwise healthy individuals. Further, we echo the Federal General Accounting Office's 2013 recommendations based on their audit of the Bureau of Prison's use of segregation: prisons must do a better job documenting justifications and use of segregation and there must be an assessment of the impact of segregation use on institutional safety and on

[2] See, for example, McClary v. Kelly, 4 F.Supp.2d 195, 208 (1998) ("[the fact that] prolonged isolation from social and environmental stimulation increases the risk of developing mental illness does not strike this Court as rocket science."); Davenport v. DeRobertis, 844 F.2d, 1310, 1313 (7th Cir. 1988) ("[T]he record shows, what anyway seems pretty obvious, that isolating a human being from other human beings year after year or even month after month can cause substantial psychological damage . . . ."); Jones'El v. Burge, 164 F. Supp. 2d 1096, 1118 (2001) ("Confinement in a supermaximum security prison ... is known to cause severe psychiatric morbidity, disability, suffering and mortality."); Madrid v. Gomez, 889 F. Supp. 1146, 1265 (N.D. Cal. 1995) (observing that placing inmates who are mentally-ill, have borderline personality disorders, brain damage, mental retardation, impulse ridden personalities, chronic depression or a history of prior psychiatric problems in supermax confinement is "[t]he mental equivalent of putting an asthmatic in a place with little air to breathe."). See also Westefer v. Snyder, 725 F.Supp.2d 735, 748-50 (S.D. Ill. 2010); Comer v. Stewart, 215 F. 3d 910, 915 (2000); Koch v. Lewis, 216 F. Supp. 2d 994, 1001 (D. Arizona 2001) (all recognizing same).

inmates. Without this, how could we possibly know if the purported benefits outweigh the demonstrated costs?[3]

[3] Federal General Accounting Office, *Improvements Needed in Bureau of Prisons' Monitoring and Evaluation of Impact of Segregated Housing*, 1-59 (May, 2013), available at: http://www.gao.gov/assets/660/654349.pdf

Solitary Confinement on Texas Death Row

Submission From:

The American Civil Liberties Union of Texas, the Texas Civil Rights Project, and Texas Defender Service

Before the United States Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights

Hearing On:
Reassessing Solitary Confinement II:
The Human Rights, Fiscal, and Public Safety Consequences

February 25, 2014

The American Civil Liberties Union of Texas, the Texas Civil Rights Project, and Texas Defender Service write together to update the Senate Judiciary Committee on proposed reforms to Texas death row.

Texas death-row prisoners once had most of the same privileges as people in general population. But then in 1999, the Texas Department of Criminal Justice moved all death row inmates to a new facility, where it automatically confined everyone to permanent solitary confinement until their execution. Ever since, death-row prisoners, regardless of their good behavior, cannot work, recreate together, participate in communal religious services, or have contact visits with their families. Because of the lengthy nature of post-conviction proceedings, these prisoners are housed in extreme isolation for years, often over a decade. While Texas death row is more restrictive than other death rows—it is only one of two death rows in the country that deprives its inmates of television—many other states also place inmates condemned to death in permanent solitary confinement.[1]

The Texas Department of Criminal Justice is currently revising its Death Row Plan, which governs all aspects of life on death row. In response, a coalition of Texas organizations submitted a letter asking that TDCJ amend the death row plan so that inmates can move toward increased privileges based on good behavior. The coalition also submitted 11 supporting letters from security experts, the correctional officers' union, family members of people in prison, mental health experts, the faith community, and habeas attorneys. A selection of those letters is attached.

[1] *See* American Civil Liberties Union, *A Death Before Dying: Solitary Confinement on Death Row* (July 2013), *available at* https://www.aclu.org/files/assets/deathbeforedying-report.pdf.

But TDCJ announced that it does not intend to adopt the recommendations supported by this broad coalition. In ignoring these recommendations, TDCJ made a big mistake.

Some people may wonder why it matters how Texas or other states house death-row inmates—often thought of as "the worst of the worst"—before they die. There are at least two important reasons that states must cease housing death-row inmates in permanent solitary confinement: The safety of correctional staff, and the United States Constitution.

I. Safety of Correctional Staff

First, Texas and other states must reform conditions on death row to **protect the prison guards who are on the front lines.** Correctional officers and security experts agree that extreme isolation undermines safety on the row. Lance Lowry, president of the correctional officers' union, contributed a letter to TDCJ in support of the coalition's efforts. He wrote: "As a result of the changes to the Texas death row plan, inmates have very few privileges to lose and staff become an easy target." Jeanne Woodford, former Warden of San Quentin and former Director of the California Department of Corrections, wrote about how death-row inmates in California have most of the privileges of general population inmates. She explained that

> allowing inmates privileges based on good behavior *enhances* security because it creates incentives for inmates to comply with prison regulations. When inmates are permanently and automatically housed in highly restrictive environments—as they are in Texas—it is more difficult to control their behavior. To make matters worse, complete idleness breeds mental illness, causing inmates to act out and putting correctional officers at risk.

And according to security expert and former death-row prison guard Steve Martin in an op ed published in the *Houston Chronicle* and the *Dallas Morning News*, "[T]he officers working on death row, not state prison executives, are in harm's way because of poor policy making by agency leaders."[2] Martin explained:

> The problem with the current policies is that death row inmates have no incentive to behave well, and that endangers prison staff. . . . [C]ompliance with existing security rules gets the prisoner nothing - just more of the same: solitary confinement.

Martin discussed how the death-row work program in place before 1999 actually encouraged prisoners to follow prison rules: "Those who worked protected that privilege by acting peacefully, while others tried hard to conform to prison regulations so that they would be designated as work-eligible."

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[2] Steve Martin, "Texas Should End Solitary Confinement on Death Row," *The Houston Chronicle* (Feb. 8, 2014), *available at* http://www.chron.com/opinion/outlook/article/Martin-Texas-should-end-solitary-confinement-on-5217201.php.

Permanent solitary confinement arose in response to a security concern, but in fact, it has made conditions on death row less safe. Instead of addressing the specific issues that resulted in the 1999 security concerns—in particular, lack of training of correctional staff—TDCJ employed a blanket solution that puts correctional officers at risk.

II. United States Constitution

Second, Texas and other states must reform conditions on death row because they are **unconstitutional.** In a significant ruling this November, the District Court for the Eastern District of Virginia determined that the Fourteenth Amendment protects people on death row from being confined to permanent solitary confinement without any due-process review.[3] Alfredo Prieto, an inmate who had been on death row for half a decade, filed a lawsuit arguing that the Virginia department of corrections violated his right to due process by automatically housing him in near-complete isolation, without offering him any opportunity to review his placement. The district court agreed. The *Prieto* decision indicates that states violate the due-process rights of death-row inmates by housing them in permanent solitary confinement, rather than giving them an individualized assessment and housing them based on their actual behavior and security risk.

Also, courts across the country have held that states violate the Eighth Amendment when they house seriously mentally ill people in solitary confinement.[4] According to a recent information request by the Texas Civil Rights Project, 51 of 274 prisoners on Texas death row take psychotropic medications for a serious mental illness or other psychological issue. The Eighth Amendment protects death-row prisoners just as much as prisoners in general population. Texas violates the Eighth Amendment by failing to give individual mental-health assessments to death-row prisoners, and diverting those with serious mental illness out of solitary confinement to more appropriate housing.

Extreme isolation has a severe impact on death-row prisoners, especially those with mental illness. Some prisoners drop their appeals, preferring death to a life in permanent solitary confinement. Anthony Graves, who spent years on Texas' death row for a crime he did not commit, described the impact of solitary confinement on inmates: "I saw guys come to prison sane, and leave this world insane, talking nonsense on the execution gurney. One guy suffered some of his last days smearing feces, lying naked in the recreation yard, and urinating on himself."[5] In interviews with the Texas Civil Rights Project, death-row inmates described how solitary confinement led some death-row prisoners to gain hundreds of pounds and refuse to

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[3] *See Prieto v. Clarke*, No. 1:12-cv-01199-LMB-IDD, Doc. No. 91 (E.D. Va. Nov. 11, 2013).

[4] *See Indiana Protection and Advocacy Services Commission v. Commissioner,* No. 1:08-cv-01317-TWP-MJD, 2012 WL 6738517 (S.D. Ind. Dec. 31, 2013); *Jones'El v. Berge*, 164 F. Supp. 2d 1096 (W.D. Wis. 2001); *Ruiz v. Johnson*, 37 F. Supp. 2d 855, 912 (S.D. Tex. 1999), *rev'd on other grounds*, 243 F.3d 941 (5th Cir. 2001); *Madrid v. Gomez*, 889 F. Supp. 1146 (N.D. Cal. 1995).

[5] *See* "A Death Before Dying," *supra* n.1, at 3.

leave their cells, while others mentally deteriorated until all they possessed were what other prisoners described as their "animal instincts."

To see the horrific impacts of solitary confinement on death-row inmates with mental illness, one needs to look no further than the case of Andre Thomas, who had a history of paranoid schizophrenia and auditory hallucinations. In the Grayson County Jail, Thomas gouged out one of his eyes. He was nonetheless found competent to stand trial, and convicted. Then, Thomas was sent to Texas death row, where little notice appears to have been taken of the description by jail medical staff in Grayson County that he was a "paranoid schizophrenic." In solitary confinement, he tried slitting his wrists and cut his throat. On December 1, 2008, he threatened to commit suicide. Days later, a correctional officer found him with blood on his face and took him to the infirmary. Thomas had pulled out his remaining eye and eaten it.[6]

III. Conclusion

The American Civil Liberties Union of Texas, the Texas Civil Rights Project, and the Texas Defender Service urge Congress to take a close look at solitary confinement of death-row inmates. The practices of states like Texas—of housing all death-row inmates in solitary confinement until their execution—present a serious threat to the safety of correctional officers and violate the United States Constitution.

[6] Brandi Grissom, "Andre Thomas: Struggling to Maintain Sanity in Prison," *The Texas Tribune* (Feb. 25, 2013), *available at* http://www.texastribune.org/2013/02/25/andre-thomas-part-5/.

Attachments:

- **January 27, 2014 Letter to TDCJ re: Solitary Confinement on Death Row** from the ACLU of Texas, Texas Civil Rights Project, Texas Coalition to Abolish the Death Penalty, Texas Criminal Justice Coalition, Texas Defender Service, and Texas Impact

- **January 27, 2014 Supporting Letter to TDCJ** from Lance Lowry, President of Correctional Officers' Union

- **January 27, 2014 Supporting Letter to TDCJ** from Jeanne Woodford, Former Warden of San Quentin and Former Director of California Department of Corrections

January 27, 2014

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SUBJECT: REVISION TO TDCJ'S DEATH ROW PLAN

Dear Mr. Livingston, Mr. Collier, and Mr. Bell:

In light of the upcoming revisions to the Death Row Plan, we, members of the undersigned organizations, are writing to submit suggested revisions to the plan. Security experts, correctional officers, religious leaders, mental-health professionals, civil-rights advocates, and lawyers understand the import of maintaining security in all TDCJ facilities. It is our belief, based on accepted research and proven methods used in other jurisdictions, that the following revisions will make things safer and in no way compromise security, reduce the filing of grievances, and even improve the lives of correctional staff, who currently must work in the most hostile and tense of environments.

As you are aware, until 1999, inmates on Texas death row were housed at the Ellis Unit, where inmates could work in manufacturing jobs, eat with other inmates, participate in communal religious services, and recreate together in outdoor recreation yards and in the dayroom. Following the move to the Polunsky unit, all individuals on death row, regardless of their prison record, are housed in what amounts to permanent solitary confinement. They are not allowed to work, they eat their meals alone, they cannot practice their faith with others, and they are not permitted to recreate with one another.

Inmates on death row have stated, "[t]here is no incentive for good behavior at Polunsky" because all inmates are housed in punitive conditions. And research has found that removing inmates from solitary confinement to more humane and less restrictive housing can improve security, whereas "on average, long-term administrative segregation—especially if prisoners perceive it as being unfair and indefinite—

will in many cases exacerbate misconduct and psychiatric dysfunction."[1] More privileges for people on death row will improve security by giving people an incentive to comply with prison regulations.

We ask TDCJ to implement a formal classification system that allows people on death row to move toward increased privileges, based on good behavior while housed at the Polunsky Unit. These changes should not compromise security, as these privileges will not apply to all individuals on death row, but only to those who have demonstrated through their behavior that they do not present a security risk. Moreover, individuals on the female death-row unit already have the capability of moving toward similar increased privileges, and there have been no security issues associated with such a policy on that unit. Privileges should include permitting individuals to work towards:

- **Contact visits with families:** People on death row used to be allowed to have contact visits with families at Ellis, but now they can only meet their families from behind a glass window. This isolation has a profound impact not just on inmates, but on their families.
- **Communal recreational activities:** In the Ellis unit, inmates were able to recreate with one another. At the Polunsky Unit, inmates are completely alone during their recreational time.
- **Work capability:** People on death row were allowed to work on the Ellis Unit. Working provided a sense of purpose and community, and an incentive for good behavior. Although the new death row unit may not be constructed for manufacturing jobs, people on death row could still usefully participate in chores on their own unit, like cleaning, kitchen, and laundry.
- **Religious services:** People on death row participated in communal religious services in the Ellis Unit, but inmates report this is no longer the case at the Polunsky Unit.
- **Television:** At the Ellis Unit, people were able to watch television in the dayroom, and the televisions were also visible from their cells. For people on death row, television is not just entertainment; it is a life-line. As Anthony Graves explained, "television [at Ellis] was really important. It kept us all connected to the outside world. It kept us sane." Now death-row inmates are not allowed to watch television at all.
- **Wide range of in-cell arts and crafts:** Inmates on death row used to have access to a wider range of arts and crafts. Arts were a meaningful activity. At Polunsky, the craft program is greatly circumscribed.
- **Phone privileges:** There is no phone in the day room. This is extremely troubling for people on death row, who often need to communicate urgently with their counsel, or may need to quickly find new counsel if their current attorney drops their appeal. Also, inmates are rarely allowed to call their families. TDCJ should increase phone privileges for inmates both for legal and personal calls.

In addition to the above suggestions, conditions in death row are a significant concern to a broad range of individuals. We ask the Department to facilitate dialogue with outside groups regarding death row policies and conditions. Among other matters for discussion, organizations have reported that people are not receiving their **psychotropic medications** upon their transfer to death row. We are also concerned

[1] Terry A. Kupers et al., "Beyond Supermax Administrative Segregation: Mississippi's Experience Rethinking Prison Classification and Creating Alternative Mental Health Programs," *Criminal Justice and Behavior* (July 21, 2009), at 12.

about lawyers' ability to meet with their clients in **confidential attorney meeting rooms.** Attorneys used to be able to meet with their clients in confidential meeting rooms, where their attorney-client communications could not be overheard by other visitors or TDCJ staff. Now, attorneys can only communicate with their clients in the general meeting area, where they have no privacy to discuss confidential issues in their clients' criminal cases. Moreover, attorneys used to be able to buy snacks and beverages for their clients during their often-times lengthy meetings. Lately, attorneys have been told that they can no longer provide snacks or beverages for their clients. Finally, we are concerned about inmates' reports that their **mail** is being held up to 72 hours before being distributed to them, inhibiting their communication with counsel about urgent matters and causing them to miss court deadlines.

We urge TDCJ to incorporate these changes in the upcoming Death Row Plan review. Please contact Cindy Eigler of Texas Impact to follow up on the progress of our request, at 512-472-3903 or cindy@texasinterfaith.org. Also, we have enclosed letters of support from the following broad range of advocates and organizations:

- Jeanne Woodford, Former Warden and Former Director of California's Department of Corrections
- AFSCME Correction Employees Union Local 3807
- National Alliance on Mental Illness (NAMI) Texas
- Mental Health America of Texas
- Texas Inmate Family Association
- The Criminal Justice Ministry of the Diocese of Beaumont
- Catholic Pastoral Center, Diocese of Beaumont
- Texas Impact
- Texas Defender Service
- Richard Burr, Attorney
- Texas Civil Rights Project

Sincerely,

American Civil Liberties Union of Texas
Texas Civil Rights Project
Texas Coalition to Abolish the Death Penalty
Texas Criminal Justice Coalition
Texas Defender Service
Texas Impact

Enclosures: 11

cc: Gary Hunter, Warden, Polunsky Unit
State Senator John Whitmire
State Representative Tan Parker
Tom Mechler, Vice-Chairman, TBCJ
Leopoldo Vasquez III, Secretary, TBCJ
Eric Gambrell, TBCJ
Judge Lawrence Gist, TBCJ
Carmen Villanueva-Hiles, TBCJ
Janice Harris Lord, TBCJ
R. Terrell McCombs, TBCJ

AFSCME Texas
Correctional Employees
Local 3807
"We Patrol Texas' Toughest Beat"

January 20, 2014

Greetings,

As the president of the largest correctional professional organization in Texas I am calling on the Texas Department of Criminal Justice to change the death row plan to positively impact both the correctional staff and offenders on Texas death row. After the November 1998 escape of Offender Martin Gurule, the Texas Department of Criminal Justice engaged in a knee jerk reaction regarding the administration of Texas death row inmates.

Staff incompetency and lack of proper security equipment were the biggest factors resulting in Gurule's escape from the O.B. Ellis death row. As a result of the escape the agency ignored the root of the problem and addressed the lack of security equipment by increasing the physical perimeter security, in addition to the number of firearm rounds issued to perimeter pickets. Lack of staff competency was never addressed in a positive manner and has resulted in a less experienced force securing Texas death row.

The changes in the death row plan following the Gurule escape have resulted in the solitary housing of "D1" offenders who were capable and had additional privileges which could be used as management tools for negative behavior. As a result of the changes to the Texas death row plan, inmates have very few privileges to lose and staff become an easy targets.

The Texas death row plan needs to address tools that can manage positive behavior. D1 offenders who are work capable should be utilized. Housing death row D1 offenders in a solitary cell is a waste of valuable security personnel and money. D1 offenders should be housed 2 offenders to a cell and treated similar to G3 offenders in terms of privileges such as work assignment and allowed TV privileges by streaming over the air television to a computer tablet using a closed WiFi network. Use of technologies such as computer tablets and streaming TV should be offered to offenders who exhibit positive behavior. Lack of visual or audio stimulation result in increased psychological incidents and results in costly crisis management.

Staff incompetency should be addressed by offering death row officers a salary differential and substantially increase their training for staff committed to working death row. A greater pay differential will insure we have the best officers watching Texas most dangerous population. Other correctional agencies have successfully used differentials to address staffing issues. Let's make Texas a model for successful death row criminal justice reforms.

Respectfully,
Lance L Lowry
Lance Lowry
President Local 3807

1314 Tenth, Street, Suite 110, Huntsville, Texas 77320
(936) 295-5265 ☏ 1-800-374-9772

To Whom It May Concern:

I am the former warden of San Quentin, which houses the largest death-row population in the country. I have also served as Director of the California Department of Corrections and the Undersecretary of the California Department of Corrections and Rehabilitation, the largest correctional system in the United States. I have over 30 years of experience in criminal justice.

I write to support this coalition's demand that Texas cease to house death-row inmates in permanent solitary confinement. Based on my experience as a warden in California, I believe automatically housing death-row inmates in permanent solitary confinement decreases prison security.

Unlike inmates on Texas death row, death-row prisoners in California are classified into different security levels based on their behavior. Those inmates who demonstrate good behavior have greater privileges, including group recreation, contact visits, communal religious programming, and the ability to purchase televisions. These privileges do not present a security concern.

Indeed, allowing inmates privileges based on good behavior *enhances* security because it creates incentives for inmates to comply with prison regulations. When inmates are permanently and automatically housed in highly restrictive environments—as they are in Texas—it is more difficult to control their behavior. To make matters worse, complete idleness breeds mental illness, causing inmates to act out and putting correctional officers at risk.

I recommend that the Texas Department of Criminal Justice create a classification system that allows inmates increased privileges based on good behavior. These changes will benefit TDCJ by making it easier for correctional officers to manage death-row inmates.

Sincerely,

Jeanne Woodford

Jeanne Woodford

Testimony of Organizations Supporting LGBT Equality

For the Hearing:
Reassessing Solitary Confinement II: The Human Rights, Fiscal, and Public Safety Consequences
Senate Judiciary Subcommittee on the
Constitution, Civil Rights, and Human Rights

February 25, 2014

Mr. Durbin and members of the Judiciary Committee:

We thank Chairman Durbin and the Judiciary Committee for holding this Senate hearing to consider the extensive human rights, fiscal, and public safety consequences of solitary confinement in U.S. prisons, jails, and detention centers. The undersigned organizations working to secure policies that benefit the lives of lesbian, gay, bisexual, and transgender (LGBT) people urge the Committee to not only consider the detrimental consequences of solitary confinement for the general prison population, but to also consider the especially severe effect on LGBT prisoners and LGBT immigrant detainees.

Administrative and solitary confinement are punitive and destructive forms of housing, yet they are commonly abused by correctional facilities in the U.S. at a high financial cost to the institutions and severe psychological, physical, and emotional costs to those confined. As this hearing will demonstrate, the effects of solitary confinement are devastating and far-reaching, as prison officials corral more vulnerable inmates into confinement as a means to protect them rather than working to ensure a safer general population. This is especially true for transgender inmates.

When we speak of transgender people, we refer to an umbrella term for people whose gender identity, expression or behavior is different from those typically associated with their assigned sex at birth. Transgender people face the threat of disrespect, discrimination, violence, and sexual assault because of their real or perceived gender identity. For these reasons, transgender prisoners are often kept in solitary confinement, a form of involuntary segregation with devastating mental and emotional effects.

We urge the Committee to not only seriously consider solitary confinement's consequences to the general prison population, but also the especially severe consequences for transgender prisoners. Placing transgender prisoners in solitary confinement causes excessive harm by denying them services and programs, external support systems, and human interactions upon which they rely for survival. Solitary confinement should only be used as a last measure to ensure inmate welfare and not as a routine procedure, as is so commonly the case across the United States. The Committee's timely hearing will demonstrate the dire need for U.S. correctional facilities to protect inmates from the long-term damage caused by solitary confinement.

Transgender Individuals are Disproportionately Incarcerated and Placed in Solitary Confinement

Transgender people are disproportionately incarcerated because of systemic discrimination

that limits educational opportunities, disrupts support networks, and prevents access to and maintenance of employment and essential services. They are more likely than the general population to be homeless and to participate in street economies.[1] Transgender inmates are much more likely to be in prison because of property crimes, are less likely to be identified as gang members, and are more likely to have low security classifications.[2] They are categorically low-threat, but they are very likely to be confined in isolation. Placing transgender inmates in solitary confinement amounts to punishing them for their transgender status.

Recent data from the groundbreaking report *Injustice at Every Turn: A Report from the National Transgender Discrimination Survey*, conducted by the National Gay and Lesbian Task Force and the National Center for Transgender Equality, found transgender people are more likely to be imprisoned than non-transgender people. Of the 6,450 transgender people surveyed, 16% reported being sent to jail or prison "for any reason," with rates of incarceration at 47% for Black respondents and 30% for American Indians.[3] Comparatively, a 2003 Department of Justice report shows 2.7% of the general population is imprisoned at some point in life.[4] Because transgender people are incarcerated at higher rates than the general population, they are disproportionately represented in prison populations.

LGBT Inmates are at a Much Higher Risk of Sexual Assault

Nearly all transgender inmates are placed in sex-segregated facilities based on their sex assigned at birth and not on their gender identity. Transgender women are frequently placed in men's facilities, and transgender men are frequently placed in women's facilities.[5] When prison officials make these incongruous placements, inmates are singled-out for scrutiny, harassment, and abuse by other inmates and prison staff.

The impact of placing transgender inmates in facilities inconsistent with their gender identity

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[1] Jamie M. Grant, Lisa A. Motet, Justin Tanis, *Injustice at Every Turn: A Report of the National Transgender Discrimination Study*, National Center for Transgender Equality (2011), http://transequality.org/PDFs/Executive_Summary.pdf.

[2] L. Sexton, V. Jenness & J.M. Sumner, Where the Margins Meet: A Demographic Assessment of Transgender Inmates in Men's Prisons, JUSTICE QUARTERLY, 27:6 (2010).

[3] Grant, supra note 1.

[4] Thomas P. Bonczar, Prevalence of Imprisonment in the U.S. Population, 1974-2001, Bureau of Justice Statistics, 1 (2003) *available at* http://www.bjs.gov/content/pub/pdf/piusp01.pdf.

[5] Ally Windsor Howell, *A Comparison of the Treatment of Transgender Persons in the Criminal Justice Systems of Ontario, Canada, New York, and California,* 28 Buff. Pub. Int. L.J. 133, 145 (2010) citing Amnesty Int'l USA, *Stonewalled: Police Abuse and Misconduct Against Lesbian, Gay, Bisexual and Transgender People in the U.S.* 59-63 (2005), *available at* http://www.amnesty.org/en/library/info/AMR51/122/2005; Stop Prisoner Rape & the National Prison Project of the ACLU, *Still in Danger: The Ongoing Threat of Sexual Violence against Transgender Prisoners* (2005), http://www.justdetention.org/pdf/stillindanger.pdf; Human Rights Campaign Found.*Transgender Americans: A Handbook for Understanding* 44-46 (2005), *available at* http://www.hrc.org/documents/Transgender_handbook.pdf. For examples of anecdotal evidence, see Oliver Libaw, *Prisons Face Dilemma with Transgender Inmates: Inmates Who Look Like Women, Housed with Men*, ABC News (Jan. 22, 2005), http://abcnews.go.com/US/story? id=90919&page=1; Cosmo Garvin. *What's she doing in the men's jail?* News Review, (Feb.13, 2003), http://www.newsreview.com/sacramento/whats-she-doing-in-the-mens-jail/content?oid=14229.

is evident in the data. Of transgender women housed in men's facilities, 21% reported experiencing physical abuse and 20% reported incidents of sexual abuse. For transgender men, 11% of those placed in women's facilities reported physical abuse, and 6% reported sexual abuse. In addition transgender men are more often in danger of assault *by prison staff* than transgender women. The U.S. Department of Justice reported that in men's facilities, inmates who are smaller in stature, display feminine traits or features, or are known to be gay are at higher risk for physical and sexual assault.[6] *Injustice at Every Turn* found 16% of transgender people in prisons or jails were physically assaulted and 15% were sexually assaulted.[7] For Black transgender respondents, 34% reported sexual abuse while in prison or jail.[8]

While solitary confinement arguably "protects" transgender prisoners from assault perpetrated by the general population, it increases inmates' risk for assault and harassment by prison staff, a documented source of abuse for transgender inmates.[9] As confirmed by *Injustice at Every Turn*, of respondents who went to jail and/or prison, 37% reported being harassed by correctional officers or staff. Respondents of color experienced higher rates of officer/staff harassment than their white peers, with Latinas/os at 56%, black respondents reporting 50%, and multiracial individuals reporting 44%. Transgender male inmates experienced officer/staff harassment at higher incidence (44%) than their transgender female (40%) peers.[10]

Solitary confinement has become U.S. correctional facilities' quick fix for "protecting" transgender inmates from the unsafe conditions of the general prison population that remain unaddressed, effectively punishing inmates for their identities and for being victims of abuse. It is not acceptable to trade the violence and cruelty of prison rape for the violence and cruelty of long-term solitary confinement.

Treatment of Transgender Inmates While in Custody

By its nature, involuntary solitary confinement is punitive. It removes people from common human contact, from even the comfort of conversation. It severely restricts the movements and privileges of transgender inmates on the basis of their marginalized identities. Like other inmates who are placed in solitary confinement, transgender inmates are allowed at most an hour outside of their cell per day, with some inmates reporting as little as five to ten minutes each day.[11] If inmates are fortunate, they may be able to shower once a week, but often times,

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[6] *Id.* at 151.
[7] Grant, *supra* note 1, at 5.
[8] *Id.*
[9] Christine Peek, *Breaking Out of the Prison Hierarchy: Transgender Prisoners, Rape, and the Eighth Amendment*, 44 Santa Clara L. Rev. 1211, 1240 (2004) citing Schwenk v. Hartford, 204 F.3d 1187, 1192 (9th Cir. 2000) (transsexual plaintiff alleged attempted rape by a Washington state prison guard); Darren Rosenblum, *"Trapped in Sing Sing: Transgendered Prisoners Caught in the Gender Binarism* 6 Mich. J. Gender & L. 499, 525 (2000) (citing Meriwether, 821 F.2d at 410). *See also* James Robertson, *A Clean Heart and an Empty Head: The Supreme Court and Sexual Terrorism in Prison*, 81 N.C. L. Rev. 433, nt. 101,at 446 (2003). "Because transsexuality and homosexuality are often conflated, officials may also consider transgender inmates appropriate targets."
[10] Grant, *supra* note 1.
[11] Howell, *supra* note 3 at 191-92.

showers are less frequent.[12] While in solitary confinement, inmate access to prison programming, such as educational classes, laundry, the prison library, and other prison facilities, is severely restricted or denied altogether. Necessary medical care is also sometimes altogether denied while in solitary confinement.[13]

The denial of medical care that is often inherent in the use of solitary confinement may have additional disturbing consequences for transgender people. Twelve percent (12%) of transgender respondents surveyed in jail or prison reported being denied routine non-transition related healthcare and 17% reported being denied hormone treatment. Transgender people of color also reported higher rates of denial of hormone treatment with American Indians reporting 36% denial and Black respondents at 30% denial.[14] The general denial of necessary medical care for inmates in solitary confinement compounded with the rates of medical care denial for transgender inmates in the general prison population implies there may be even more dire consequences for transgender inmates.

The use of involuntary protective custody also prevents many vulnerable inmates from accessing essential programs and work assignments, thereby reducing their chances of rehabilitation and lengthening their sentences. Programs are usually the only means for inmates to earn money, which can allow them to buy basic products like shampoo and pay debts that they owe as a result of their convictions. Without successful completion of programs, it is also difficult or impossible to obtain parole or conditional release, so inmates who are not permitted to participate in programming spend more time in prison. Programs also interrupt the deadening boredom of incarceration by providing some level of meaningful activity. They can also help inmates develop skills critical for successful reintegration into the community upon release, improving their lives and others.

Effects of Solitary Confinement on Transgender Prisoners

The isolation that vulnerable inmates endure, purportedly "for their own good," can destroy their mental health and ability to function, with consequences that will continue to affect them for the rest of their lives. There is an overwhelming wealth of research indicating solitary confinement is a significant factor leading to a multitude of psychological effects, including hyper-sensitivity to external stimuli, hallucinations, panic attacks, obsessive thoughts, and paranoia.[15] The U.N. Special Rapporteur on torture concluded solitary confinement becomes "prolonged" at 15 days, after which the psychological effects may become irreversible.[16]

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[12] *Id.*
[13] *Id.*
[14] Grant, *supra* note 1.
[15] Christy Carnegie Fujio, Kristine Huskey, and Mike Corradini, *Buried Alive: Solitary Confinement in the US Detention System,* Physicians for Human Rights (April, 2013), https://s3.amazonaws.com/PHR_Reports/Solitary-Confinement-April-2013-full.pdf.
[16] Interim Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 63rd Sess., UN Doc. A/63/175 (July 28, 2008), at 77.

Prisoners in solitary confinement develop psychopathologies at higher rates than those in the general population (28% v. 15%),[17] and have been found to engage in self-mutilation at rates higher than the general population.[18] In an extensive study of the Pelican Bay State Prison in Del Norte, California, researcher Dr. Stuart Grassian found that prisoners who had been in solitary confinement had "high anxiety, nervous-ness [sic], obsessive ruminations, anger, violent fantasies, nightmares, trouble sleeping, as well as dizziness, perspiring hands, and heart palpitations."[19]

Psychologists and psychiatrists alike have testified about the nature, magnitude, and long-term consequences of the acute negative effects of solitary confinement in various prison systems across the country.[20] One study analyzed the effects of solitary confinement in case studies of prisoners who were held indefinitely in a Maine prison.[21] Many had been given no reason for their isolation. Almost every prisoner in the isolation unit had attempted suicide,[22] and the prisoners often acted out in seemingly irrational ways such as smashing their heads against concrete walls and destroying their beds and light fixtures.[23]

An analysis of conditions in a variety of segregation units in Canada also detailed prisoners' psychological reactions to their confinement. Prisoners reported difficulties concentrating on even simple tasks, experienced headaches, mental and physical deterioration, emotional flatness, lability, breakdowns, hallucinations, paranoia, hostility and rage, and some were beset with thoughts of self-mutilation and suicide (which, in some instances, they acted upon).[24]

A review of the medical records of inmates in the New York City jail system from January 1, 2010, through January 31, 2013 found only 7.3% of admissions included any solitary confinement, however 53.3% of acts of self-harm and 45.0% of acts of potentially fatal self-harm occurred within this group.[25] The New York City jail system has changed its policy in

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[17] H. S. Andersen, D. Sestoft, T. Lillebæk, G. Gabrielsen, R. Hemmingsen, & P. Kramp, *A Longitudinal Study of Prisoners on Remand: Psychiatric Prevalence, Incidence and Psycho-pathology in Solitary vs.Non-Solitary Confinement.* Acta Psychiatrica Scandinavica, 102(1), 19 (2000).

[18] Craig Haney & Mona Lynch, *Regulating Prisons of the Future: A Psychological Analysis of Supermax and Solitary Confinement.*New York University Review of Law and Social Change 23: 477-570 (1997).

[19] Sal Rodriguez, *Fact Sheet: Psychological Effects of Solitary Confinement.* Solitary Watch (Feb. 22. 2014) http://solitarywatch.com/wp-content/uploads/2011/06/fact-sheet-psychological-effects-of-solitary-confinement.pdf.

[20] *Id.*

[21] Thomas B. Benjamin & Kenneth Lux, *Constitutional and Psychological Implications of the Use of Solitary Confinement* 9 Clearinghouse Rev. 83 (1975-76).

[22] *Id.* at 84. One nearly died from loss of blood after cutting himself with his broken light bulb, another swallowed glass, and a number of prisoners attempted hanging themselves. Several were successful.

[23] *Id.*

[24] Haney, *supra* note 18, at 512-513 citing Michael Jackson, *Prisoners of Isolation: Solitary Confinement in Canada* 13, 64-80 (1983).

[25] Fatoa Kaba , Andrea Lewis, Sarah Glowa-Kollisc, S., James Hadler, David Lee, Howard Alper, Daniel Selling, Ross MacDonald, Angela Solimo, Amanda Parsons & Homer Venters, *Solitary Confinement and Risk of Self-Harm Among Jail Inmates. American Journal of Public Health*, 104(3),

light of these findings. [26]

Recent data suggests a correlation between solitary confinement and suicide attempts. A recent study from 2005 of the 44 inmates who committed suicide in the California prison system showed 70% were housed in solitary confinement.[27] Another study from 2007 on suicide attempts in prison documented that solitary confinement is a major factor in suicidal ideation and suicide attempts.[28]

Given the overuse of solitary confinement as placement for vulnerable transgender inmates and the prevalence of suicide attempts among the transgender population, the correlative data on suicide and solitary confinement is especially troubling. Data from *Injustice at Every Turn* reflects a staggering 41% of transgender people had attempted suicide, compared to 1.6% of the general population.[29] Suicide attempts were even higher for transgender people of color, with rates at 56% for American Indians and 54% of multiracial people.[30]

Of all transgender people who were incarcerated at some point, the suicide attempt rate rises to 52%.[31] However, for those who were incarcerated 3-5 years, the suicide attempt rate is 60% [32] and for those who were incarcerated for 5 or more years, the suicide attempt rate was 70%. It is possible tthe over-usage of solitary confinement during imprisonment contributes to the increased suicide attempts.

Isolation has a deep psychological impact on all people, but it compounds the trauma suffered by those who have been abused. Transgender inmates are 13 times more likely to be sexually assaulted in custody and sometimes they are placed in solitary confinement because they have been raped.[33] Survivors of sexual abuse suffer distress, anxiety, fear, and other forms of emotional trauma.[34] Solitary confinement can make these feelings worse due to isolation and the inability to be comforted by other people. [35] The fear of solitary confinement and the trauma of isolation make abuse survivors less likely to report their abuse and escape ongoing abusive situations.

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442 (2014).

[26] *Id.*

[27] Don Thompson. *Convict Suicides in State Prison Hit Record High.* Associated Press, (January 3, 2006).

[28] I. Suto, *Inmates Who Attempted Suicide in Prison: A Qualitative Study.* (A doctoral Dissertation, Pacific University) (2007), a*vailable at*
http://commons.pacificu.edu/cgi/viewcontent.cgi?article=1061&context=spp

[29] Grant, *supra* note 1.

[30] *Id.*

[31] *Id.*

[32] *Id.*

[33] Valerie Jenness Cheryl L Mason, Kristy N. Matsuda & Jennifer Macy Sumner, *Violence in California Correctional Facilities: An Empirical Examination of Sexual Assault* UC Irvine Center for Evidence-Based Corrections (2007), http://www.prearesourcecenter.org/sites/default/files/library/55-preapresentationpreareportucijennessetal.pdf

[34] *See e.g.* Patricia A. Resnick & Monica K Schnike. *Treating Symptoms in Adult Victims of Sexual Assault.* J Interpers Violence 1990 5: 488; Patricia A. Resnick. *The Psychological Impact of Rape.* J Interpers Violence 1993 8: 223.

[35] Carly B. Dierkhising, Andrea Lane & Misaki N. Natsuaki,, (2013, December 30). *Victims Behind Bars: A Preliminary Study on Abuse During Juvenile Incarceration and Post-Release Social and Emotional Functioning.* Psychology, Public Policy, and Law (Dec. 30, 2013 advanced online publication), http://psycnet.apa.org/psycinfo/2013-45451-001/.

Prison Rape Elimination Act (PREA) Standards are Insufficient

The Prison Rape Elimination Act (PREA) Standards are not sufficient to ensure rape survivors experience the least restrictive environment and least duration in isolation necessary for their safety. The standards provide no concrete rules for the maximum duration of isolation and the circumstances under which transgender inmates may be safely housed either in or out of solitary confinement. PREA requires facilities to document the services and programs inmates have been denied as a result of isolation, but it does not mandate these services and programs be made available.

The PREA standards[36] call on corrections officials to provide survivors with access to services and programs and to move them to less restrictive housing as soon as possible.[37] They also mandate the provision of emergency and follow-up medical and mental health care, including contact with support services.[38] However, the standards do not place strong enough limits on the time a survivor may involuntarily be placed in solitary confinement. The PREA standards generally limit involuntary solitary confinement for survivors to 30 days.[39] A more appropriate time limit is 72 hours. The standards do call for ongoing, regularly scheduled reviews of whether a survivor should be kept in solitary confinement every 30 days.[40] A more appropriate review schedule would be every 10 days.

In addition, most corrections agencies have failed to meaningfully implement PREA requirements for ensuring safe alternatives to solitary confinement for transgender prisoners. The standards require agencies to make case-by-case decisions regarding whether a given transgender prisoner should be housed in a women's or men's facilities, giving serious consideration to the prisoner's own view of where they would be more safely housed, and not making placements solely based on a prisoner's anatomy.[41] While a few agencies around the country have implemented meaningful procedures for making such case-by-case decisions,[42] most—including the Federal Bureau of Prisons—have either ignored this requirement or incorporated the text of the standards into internal policies without any corresponding procedure to ensure adequate case-by-case consideration. Accordingly, the intention of the PREA standards—that more transgender prisoners would be housed in a manner consistent with their gender identity and outward presentation—has not been met. Failure to implement these requirements only further ensures that agencies will continue to rely on solitary confinement as the only means to protect transgender people from physical and sexual abuse.

Solitary Confinement for Transgender Immigrant Detainees

While placements of transgender inmates in solitary confinement within prisons, jails, and

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[36] Dept. of Justice [DOJ], *The Prison Rape Elimination Act Standards*, 28 CFR Part 115 *available at* www.ojp.usdoj.gov/programs/pdfs/prea_final_rule.pdf.
[37] *Id.* As an example, see the relevant adult jail and prison standard at 34 C.F.R. §§ 115.43, 115.68.
[38] 34 C.F.R. §§ 115.53, 115.82-115.83.
[39] 34 C.F.R. § 115.43.
[40] *Id.*
[41] 34 C.F.R. § 115.42(c)-(f).
[42] A few examples include the Sheriff's Departments of Harris County, Tx., City and County of Denver, Co., and Cumberland, Me, and juvenile facilities in Hawaii, New Orleans, La., and Santa Clara County, Ca.

correctional facilities around the U.S. are generally unwarranted and create lasting detrimental consequences, transgender immigrant detainees placed in solitary confinement in detention facilities also experience negative outcomes.

Many of the approximately 32,000 immigrant detainees being held in the United States have not committed any criminal offense, but are awaiting a judge's determination of deportation proceedings.[43] Although Immigration and Customs Enforcement detention is not designed to be punitive, many of the detainees are treated as criminals. Transgender immigrant detainees are no exception to this practice and are often treated far worse; they may be placed in solitary confinement for the same reasons as transgender inmates: convenience for prison officials, consequences of housing placements based on sex assigned at birth, and refusal to address safety issues in the general detainee population that make transgender detainees more vulnerable to physical and sexual assault.

Cases of transgender immigrant detainees experiencing sexual assault at the hands of detention officers, and denial of health care have been reported.[44] A complaint from the National Immigrant Justice Center detailed the mistreatment of more than a dozen LGB and transgender detainees in California, Pennsylvania, Texas and other states. The complaint gives accounts of prison officials' ignorance, or in some cases total indifference, to the needs and vulnerable status of transgender detainees.[45]

In an appalling account, Victoria Arellano, a 23-year-old HIV-positive transgender undocumented immigrant was detained at a traffic stop. While in detention for two months, Arellano's health quickly deteriorated, and she was not sent to the infirmary until her fellow detainees staged a protest. When she finally was taken to a hospital two days later, it was too late and she died of an AIDS-related infection. Her family filed a wrongful death lawsuit in federal court.[46]

A 2013 directive from the U.S. Immigration and Customs Enforcement (ICE) addresses the use of solitary confinement for vulnerable inmates and is an essential step toward improving the problem. The directive states, "Placement in administrative segregation due to a special vulnerability should be used only as a last resort and when no other viable housing options exist." It also directs ICE to "take additional steps to ensure appropriate review and oversight of decisions to retain detainees in segregated housing for over 14 days".[47] Facilities must also

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[43] Andrew Harmon, *Eight Months in Solitary,* The Advocate. (May 7, 2012) *available at* http://www.advocate.com/news/news-features/2012/05/07/transgender-detainees-face-challenges-broken-immigration-system?page=0,0

[44] Restore Faimess. *A transgender detainee speaks out.* Breakthrough TV (2009), *available at* http://vimeo.com/7551045.

[45] *See e.g.* Harmon, Andrew "Eight Months in Solitary" The Advocate (May 7, 2012) http://www.advocate.com/news/news-features/2012/05/07/transgender-detainees-face-challenges-broken-immigration-system?page=0,0; citing "Stop Abusing of LGBT Immigrants." National Immigrant Justice Center *available at* http://www.immigrantjustice.org/stop-abuse-detained-lgbt-immigrants; Alisa Solomon, *Nightmare in Miami*, Village Voice, (Mar. 19, 2002), http://www.villagevoice.com/content/printVersion/168959.

[46] Hernandez, Sandra, *A lethal limbo*. Los Angeles Times. (2008), http://articles.latimes.com/2008/jun/01/opinion/op-hernandez1.

[47] United States Dept. of Immigration and Customs Enforcement, *Review of the Use of Segregation for ICE Detainees* (Sept. 4, 2014) *available at* http://www.ice.gov/doclib/detention-

provide special reporting requirements for vulnerable populations, including those who might be at risk of harm due to sexual orientation or gender identity. Although this directive is good first step, it stops short of eliminating the use of long-term "protective" solitary confinement and does not legally bind ICE's contract facilities. We are also concerned that the 30-day reporting period it establishes exceeds the 15 days which the UN Special Rapporteur on Torture has determined can have serious and irreversible effects on an individual's health.

Involuntary Segregation as a Due Process Concern

Transgender inmates are consistently placed in solitary confinement without the due process procedures given to those who are isolated due to misconduct. Miki Ann DiMarco was housed in a women's correctional facility in general population until it was discovered she had anatomically male genitalia, at which point she was placed in solitary confinement with severely limited privileges.[48] Prior to her transfer to solitary confinement, there were no reported incidents, and DiMarco "got along just fine with the other female inmates."[49] DiMarco spent 438 days in solitary confinement.[50] She, "unlike those involved in a mandatory disciplinary hearing, did not violate prison rules but simply arrived at the [prison] with certain physical characteristics that she did not choose. [She] should have been allowed to at least let her thoughts and concerns be heard prior to the [prison's] final decision to place [her] in solitary confinement.[51]

Solitary confinement further deprives inmates of their liberty. There must be adequate procedures in place to assure this deprivation is reasonable and necessary. Punitive measures should never be used based solely on an individuals' identity or presentation.

Costs to Prisons

There are significant financial costs to institutions that abuse solitary confinement. These costs could be diverted toward productive measures to secure the safety of inmates within the general population if the use of solitary confinement was limited.

In a 2009 report, the California Inspector General estimated that, based on needs for increased staffing and greater physical space, the annual costs per inmate in administrative segregation averaged at least $14,600 more than the annual costs per inmate in the general population.[52] The California Inspector General concluded the overuse of solitary confinement

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reform/pdf/segregation_directive.pdf

[48] *DiMarco v. Wyoming Dep't of Corr. Div. of Prisons, Wyo. Women's Ctr.*, 300 F. Supp. 2d 1183 (D. Wyo. 2004), *rev'd sub nom. Estate of DiMarco v. Wyoming Dep't of Corr., Div. of Prisons*, 473 F.3d 1187 (10th Cir. 2007).

[49] *Id.* at 1187.

[50] *Id.* at 1189

[51] *Id.* at 1194-95

[52] California Office Of The Inspector General, *Management of the California Department of Corrections and Rehabilitation's Administrative Segregation Population,* Office of the Inspector General State of California (Jan. 2009), *available at* http://www.oig.ca.gov/media/reports/ARCHIVE/BOA/Reviews/Management%20of%20the%20California%20Department%20of%20Corrections%20and%20Rehabilitation's%20Administrative%20Segregation%20Unit%20Population.pdf

cost the California Department of Corrections and Rehabilitation nearly $11 million every year.[53]

Funds spent on the inappropriate and abusive use of solitary confinement could be used to establish and implement basic policies and procedures aimed at preventing sexual abuse and other forms of violence. Such reinvestment of scarce resources would lead to much safer confinement. They would also prevent the negative physical, emotional and mental consequences inmates who are inappropriately placed in long-term solitary confinement endure. Corrections administrators should be encouraged to begin shifting expenditures in this direction.

Conclusion

Solitary confinement affects many people incarcerated in U.S. jails, prisons, and detention facilities, but none so significantly as transgender inmates and immigrant detainees involuntarily confined not because of their actions, but because of their identities. A full review of the inhumane practice of solitary confinement and its far-reaching consequences cannot ignore the experiences of these extremely vulnerable groups of people.

The United States must discontinue the discriminatory use of solitary confinement for housing transgender inmates and immigrant detainees. Prison officials and staff must commit to changing the dangerous and abusive conditions of the general prison population, rather than punishing transgender inmates and detainees for their very existence. By creating prison environments sensitive to the experiences and identities of transgender inmates and detainees, sexual abuse reporting and enforcement becomes transparent.

We applaud the Committee for taking this important step by holding this hearing. However, important work still remains to ensure transgender inmates and detainees are exposed to solitary confinement only in extreme and rare circumstances, and never for prolonged periods.

Sincerely,

Transgender Law Center
National Gay and Lesbian Task Force Action Fund
National Center for Transgender Equality
National Center for Lesbian Rights
National Latina Institute for Reproductive Health
Sylvia Rivera Law Project

[53] *Id.*

Solitary Confinement and Survivors of Sexual Abuse: Excessive and Abusive Use Persists

Written Statement of
Just Detention International

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Reassessing Solitary Confinement II:
The Human Rights, Fiscal, and Public Safety Consequences

Hearing Before the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights

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Dirksen Senate Office Building
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Chairman Durbin, Ranking Member Cruz, and Members of the Subcommittee:

Just Detention International (JDI) is a health and human rights organization that seeks to end sexual abuse in all forms of detention. JDI was founded more than 30 years ago by survivors of prisoner rape. To this day, it remains the only organization in the U.S. dedicated to ending this type of abuse. JDI was instrumental in developing and securing passage of the Prison Rape Elimination Act (PREA) of 2003 and has since remained at the forefront of the effort to implement this landmark law – including by advocating for strong national standards to prevent and address sexual abuse in detention. The release of standards, mandated by PREA, in May 2012 by the Department of Justice (DOJ) represented a milestone in JDI's work and in the overall effort to end – once and for all – the sexual abuse that plagues U.S. corrections facilities.

Sexual abuse in detention is a nationwide human rights crisis. A 2012 report from the DOJ found that almost one in ten former state prisoners was sexually abused during his or her most recent period of incarceration.[1] The DOJ estimates that 200,000 men, women, and children are sexually abused in U.S. prisons, jails, and juvenile detention facilities every year. Many more are assaulted in immigration detention facilities, police lock-ups, military prisons, tribal jails, and community corrections facilities. JDI receives well over 2,000 unsolicited letters every year from survivors of sexual abuse in detention. Many of them report devastating assaults directly related to excessive or abusive solitary confinement.

Survivors of sexual abuse who are placed in solitary confinement (sometimes referred to as administrative segregation or protective custody) tend to suffer significant distress. The same is true for inmates who are placed in solitary confinement simply because they are perceived to be vulnerable to sexual victimization. Today's hearing is an important continuation of the conversation the Subcommittee began in June of 2012 with *Reassessing Solitary Confinement*.

Harm caused to survivors of sexual abuse

As JDI explained more fully in its 2012 testimony, excessive or abusive use of solitary confinement harms survivors of sexual abuse and those thought to be at elevated risk of sexual abuse. In many corrections facilities, survivors of sexual abuse are routinely placed in solitary confinement in the aftermath of an assault, ostensibly for their own protection – and frequently against their own will. While there, they tend to suffer significant distress, including fear, anxiety, and heightened trauma.

This knee-jerk use of solitary confinement is often perceived by the survivor and other inmates in the facility as a punitive measure. Corrections officials themselves acknowledge this. For instance, in a 2011 hearing of the Review Panel on Prison Rape, Harold Clarke, Director of the Virginia Department of Corrections, indicated "fear of being placed in administrative

[1] *Sexual Victimization Reported by Former State Prisoners, 2008*, DOJ's Bureau of Justice Statistics, p. 5. Available at: http://bjs.ojp.usdoj.gov/content/pub/pdf/svrfsp08.pdf.

segregation during the investigation of a reported incident," as one reason why an inmate would not report sexual abuse to prison authorities.[2]

Wendy Hobbs, the Warden of Fluvanna Correctional Center for Women in Virginia, explained further that even though placement in segregation during an investigation is not punishment, inmates understandably perceive it as such because they are removed from the general population.[3] Underscoring the Warden's point, inmates in Fluvanna told the Panel that reporting sexual abuse to officials included risks. One inmate commented, "If you dial the PREA number, it's a ticket to SEG."[4]

As one example of a pervasive fear of reporting sexual abuse, the DOJ's study of former state prisoners reveals that about two thirds of survivors abused by another inmate did not report the abuse. Even more alarming, nearly 95 percent of survivors abused by a staff member did not report the abuse.[5] Scores of letters from survivors to JDI make clear that fear of inappropriate use of solitary confinement is a serious contributing factor to these low reporting rates.

One survivor who was abused in a Colorado facility wrote to JDI, "I was treated like the perpetrator. I was thrown in segregation. I felt so humiliated." Many times, sexual abuse survivors are kept in solitary confinement for long periods of time. A survivor raped in a Texas facility wrote to JDI, "I am in lock-up or segregation or whatever it is called. I'm being told I will spend over 100 days here before I'm transferred. You would think that I attacked someone from the way they are treating me." In many cases, the stark physical conditions of solitary confinement further adds to the trauma. A survivor who was abused in Pennsylvania and Florida wrote, "I did not request protective custody. It was imposed on me. I'm in a very small cell with a concrete slab for a bed."

Some accounts from inmates indicate that it is not only survivors of abuse who are subjected to solitary confinement but also third parties who report on their behalf. JDI was recently contacted by two Bureau of Prisons inmates. Both men took the unusual and brave step of reporting on behalf of another inmate who they knew was being regularly sexually abused by his cellmate. Not long after they reported anonymously, they were called into a meeting with a Captain at the facility. The Captain asked whether they had been the ones to report the abuse. When they said they had, the Captain reportedly told them that they should not have gone outside of the facility with this information.

Soon after this meeting, both men were moved to the Special Housing Unit "for their own safety" and kept there for more than three months. Both men believe that they were housed in the SHU primarily because they reported the abuse of the third inmate. This use of solitary

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[2] *Report on Sexual Victimization in Prisons and Jails*, Review Panel on Prison Rape, April 2012, p. 19. Available at: http://ojp.gov/reviewpanel/pdfs/prea_finalreport_2012.pdf.
[3] Id p. 21.
[4] Id p. 25.
[5] *Sexual Victimization Reported by Former State Prisoners, 2008*, Table 17.

confinement discourages other inmates from filing potentially life-saving third-party reports and is dangerous to the health and well-being of the inmates held in such conditions against their will.

People subjected to solitary confinement exhibit a variety of negative physical and psychological reactions that include hypersensitivity to external stimuli, perceptual distortions and hallucinations, rage and irrational anger, severe and chronic depression, and self-mutilation.[6] After seven days of solitary confinement, prisoners show lower levels of brain function.[7] A 1997 survey of research concluded that every study of non-voluntary solitary confinement for more than ten days documented negative psychiatric symptoms among those isolated.[8]

Reform efforts since *Reassessing Solitary Confinement*

In the nearly two years since the Subcommittee's first hearing, a small but growing number of solitary confinement reform efforts have been launched by government agencies. This testimony addresses two of those efforts, the implementation of the DOJ's PREA standards and restrictions on the assignment of immigration detainees to solitary confinement. Even when fully implemented, neither of these efforts will address all of the harm caused to survivors of sexual abuse by excessive or abusive use of solitary confinement. However, both efforts mark important steps forward in ending solitary confinement abuses.

The DOJ's PREA standards address the issue of excessive or abusive use of solitary confinement for inmates at an increased risk of sexual abuse and inmates who are sexually abuse within the facility. The standards mandate that, "Inmates at high risk for sexual victimization shall not be placed in involuntary segregated housing unless an assessment of all available alternatives has been made, and a determination has been made that there is no available alternative means of separation from likely abusers." [9]

If an alternative is not available, inmates held in solitary confinement to protect them from sexual abuse must be provided "access to programs, privileges, education, and work opportunities to the extent possible" and the facility must document any denials. An inmate will generally be held in solitary confinement for this purpose for no more than 30 days and

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[6] *Reexamining Psychological Distress in the Current Conditions of Segregation*, Holly A. Miller, 1 J. of Correctional Healthcare, p. 39, 48 (1994); *The Association of Administrative Segregation Placement and Other Risk Factors with the Self-Injury-Free Time of Male Prisoners*, Eric Lanes, 48 J. of Offender Rehabilitation, p. 529, 539-40 (2009).

[7] *Changes in EEG Alpha Frequency and Evoked Response Latency During Solitary Confinement*, Paul Gendreau, N.L. Freedman, G.J.S. Wilde & G.D. Scott, 79 J. of Abnormal Psychology 54, 57-58 (1972).

[8] *Regulating Prisons of the Future: A Psychological Analysis of Supermax and Solitary Confinement*, Craig Haney and Mona Lynch, 23 N.Y.U. Review of Law and Social Change 477, 525 (1997).

[9] National Standards to Prevent, Detect, and Respond to Prison Rape, Department of Justice, Section 115.43(a). Available at www.ojp.usdoj.gov/programs/pdfs/prea_final_rule.pdf.

must have a means to request a review of any continued detention beyond that time.[10] The same restrictions apply to a survivor of abuse in detention.[11]

To compel enforcement with the standards, the DOJ requires that all facilities covered by PREA undergo an audit once every three years. The audit must be conducted by an auditor certified by the DOJ.[12] The auditor must review whether the agency has complied with these solitary confinement provisions and properly documented its compliance.[13] During the audit, the auditor is also directed to speak with a representative sample of inmates who were held in solitary confinement within the facility in the previous 12 months as protection from sexual abuse or in response to an incident of sexual abuse.[14]

However, these policies are only effective if they are fully and uniformly implemented. Such implementation is an ongoing process. For instance, the Bureau of Prisons was required to be in compliance with the PREA standards by the end of August 2012. However, the report above about the treatment of the third-party reporters is from the fall of 2013. Clear deficiencies continue to persist in BOP's implementation of these, and other, PREA provisions. If not corrected, these deficiencies could seriously limit the impact of PREA.

The DOJ is not the only federal agency that is taking steps to reform solitary confinement abuses. In 2013, Immigration and Custody Enforcement (ICE) released a directive to all facilities that hold immigration detainees.[15] The directive lays out significant oversight measures that seek to prevent excessive or abusive use of solitary confinement (termed segregation in the directive). For instance, the directive requires that ICE officials be notified within 14 days (72 hours if the detainee has a special vulnerability) of a detainee's placement in solitary confinement. In a particularly important step, survivors of sexual abuse, whether the incident occurred within our outside of a detention facility, are explicitly recognized as having a special vulnerability.

Upon notification, the official must conduct a thorough and ongoing review of the use of solitary confinement to determine if it is appropriate or excessive. If it is excessive, the official must consider whether the detainee can be moved to less restrictive housing, transferred to a different facility, or released pursuant to an "alternatives to detention" program. The official must also confirm that the use of segregation complies with the relevant ICE National Performance-Based National Detention Standards (PBNDS).

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[10] Id Section 115.43 (b-e).
[11] Id Section 115.68.
[12] Id Section 115.401-115.402.
[13] *PREA Audit: Auditor Compliance Tool*, Department of Justice, p. 48-50. Available at: http://www.prearesourcecenter.org/sites/default/files/library/auditorcompliancetoolfinal2.pdf.
[14] PREA Compliance Audit Tool – Questions for Inmates, Department of Justice, p. 7. Available at: http://www.prearesourcecenter.org/sites/default/files/library/preaauditinmateinterviewprotocolfinal2.pdf.
[15] *Review of the Use of Segregation for ICE Detainees*, U.S. Immigration and Customs Enforcement, 11065.1, 2013. Available at: http://www.ice.gov/doclib/detention-reform/pdf/segregation_directive.pdf.

For facilities governed by the 2011 PBNDS, detainees in administrative segregation (generally those in protective custody or awaiting adjudication) must be provided with the same privileges as detainees in the general population, including significant recreation time, other time out of segregation, work details, and phone privileges. Under the 2011 PBNDS, all detainees in segregation must also be provided with a face-to-face medical assessment every day and a mental health screening at least once every 30 days.[16]

As this Subcommittee knows, the United States Senate included similar provisions in last year's Border Security, Economic Opportunity, and Immigration Modernization Act.[17] The bill provides additional protections for immigration detainees, including a ban on use of solitary confinement for children and limitations on its use for detainees with a serious mental illness. This bill would also, generally, limit the use of solitary confinement to 15 days when it is used for a detainee's own protection. After passage in the Senate, the bill has stalled in the U.S. House of Representatives.

While these measures are positive, they must be implemented before they can have any effect on the lives of detainees. ICE continues to have difficulty fully implementing the 2011 PBNDS across its network of contract facilities that hold its detainees. Additionally while ICE does not need its contract facilities to officially adopt the agency's 2013 solitary confinement directive, it does need the facilities to provide accurate information to ICE officials and to cooperate with ICE reviews as outlined by the directive. As mentioned above, the Senate bill increasing protections for immigration detainees has not yet been passed by the House.

Even with the aforementioned limitations, the recent initiatives to end excessive or abusive use of solitary confinement are laudable. Now, the Subcommittee, and Congress as a whole, must demand that corrections and detention agencies throughout the United States adopt and meaningfully implement the principles at the foundation of these efforts.

Recommendations

In its testimony in 2012, JDI included detailed principles that should serve as touchstones for any solitary confinement program. In short, here are the recommendations that flow from those principles:

- Involuntary solitary confinement should be used only as "protective custody" as a last resort.
- Solitary confinement is not appropriate default housing for anyone at an elevated risk for sexual assault.

[16] *2011 Operations Manual ICE National Performance Based Detention Standards (PBNDS)*, U.S. Immigration and Customs Enforcement, Part 2.12. Available at: http://www.ice.gov/detention-standards/2011/.
[17] *Border Security, Economic Opportunity, and Immigration Modernization Act*, S. 744, Section 3717(b), p. 812-829. Available at: http://www.gpo.gov/fdsys/pkg/BILLS-113s744es/pdf/BILLS-113s744es.pdf.

- Solitary confinement must never be used as retaliation against anyone who reports problems at a facility or risks to safety, or as an expression of homophobia.
- Excessive or abusive use of solitary confinement must end because it is a human rights violation and a waste of resources that could be better used elsewhere within an agency.

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LONG-TERM SEGREGATION UNITS EFFECTS ON INMATES

REPORT By JUSTICE & MERCY, INC. 2014

Long-term segregation units are not helpful in changing negative behavior and, in fact, may be extremely detrimental, not only to the inmates but to prison staff and society as a whole when they are released. Intensive treatment programs, especially for the mentally ill assigned to solitary are required instead of continuing to perpetuate the escalating, futile cycle of violence and punishment.

We propose the use of solitary confinement to a maximum period of 90 days, and as disciplinary purposes only.

REASONS FOR PROPOSAL:
Three main purposes exist for prisons which are:

1. Punishment

2. Deterrence

3. Rehabilitation

Through these purposes, criminals are removed from society for public safety, deterred from committing more crimes through separation from their families and friends as well as from hardships in prison and rehabilitated so they can be productive, tax-paying and law-abiding citizens when they are released. At least, this is the theory.

Unfortunately, the reality is that prisons often do more harm than good. The recidivism rate is currently 66 – 67%. Inmates need to adapt to prison life which is much different that society. Ways they adapt are:

- Situational withdrawal in which prisoners minimize their interaction with others.
- Prisoners refuse to cooperate with staff and show hostility. Then they are placed in solitary confinement.

- Prisoners become institutionalized to be able to interact with prison staff and inmates. They begin to fit in better in prisons than society.
- Prisoners become what they think correctional officers want them to be.
- Prisoners stay out of trouble so they can eventually get out of prisons as quickly as possible with as little physical and psychological damage as possible. (Haralambos & Holborn, 1995:306)

Inmates may "do time" to avoid any trouble that would lengthen their sentences and make their time as easy as possible. Some may focus on self-improvement. Some inmates may not fit into the niches of other inmates and are disorganized. They tend to be mentally ill or have low IQs and are the most frequent violators of official prison rules. An estimated 16 to 20% of inmates in the state system are diagnosed mentally ill. Experts state that mentally ill prisoners end up in solitary confinement because of rule infractions stemming from their mental illness. Also, mentally ill inmates may be sent to solitary confinement as a more expedient, though much less effective, way to house them securely.

Confinement from society includes the loss of liberty, moral rejection and the fact prisoners are not trusted or respected. Sexual deprivation also places more pressure on inmates and loss of decision-making puts them under the control of prison staff. The circumstances of prison life may lead to a lack of what made them human. (Johnson, 1996).

Officers may have too much power over inmates and exercise it incorrectly and inhumanely. The Stanford Prison experiment showed that normal males became too powerful when they had the role of guards. Some of the group that had the role of prisoners experienced breakdowns. Good governance by correctional officers is the key to the maintenance of good prisons. (DiIulio 1987)

Inmates will get in groups with other inmates to help the pains of imprisonment become less severe. These groups may have a detrimental effect on inmates in which they learn how to be better criminals or develop more hostility toward society.

There are four identified sets of rules that govern prison life:

1. the official administrative rules and regulations (violations result in 30 to 180 days disciplinary action such as segregation or isolation)
2. the convict code (violations result in anything from stares to death by inmates)
3. the color or race code
4. gang membership rules (gangs are said to be responsible for about 85% of all prison violence)

Overcrowding: Pennsylvania has a severe overcrowding issue in the prisons. Studies have shown that increasing the number of inmates in correctional institutions has significantly increased negative psychological effects like stress, anxiety, tension,

depression, hostility, feelings of helplessness and emotional discomfort. (Bartol & Bartol, 1994)

When prisons are overcrowded, the rehabilitative programs are not able to reach all of the prisoners that are assessed as needing them. The Pa. Department Of Corrections agreed that many more people are assessed with needing specific programs than the DOC is able to provide these treatment programs. This is unfortunate since educational programs appear to be the most effective treatment programs. Vocational training programs have mixed results depending on what is being taught. For instance, computer data entry classes are producing higher employment rates for ex-offenders than food service training. Palmer studies (1991) found that counseling or treatment programs can work if they are adequately funded and run properly. However, generally, rehabilitative programs only reach 5% of the inmate population.

Riots can be caused by stressful and oppressive conditions that are exacerbated in overcrowded conditions. (Useem & Kimball 1989). Also, there are theories that the use of a snitch system by correctional officers against inmates is the main cause of violence in prison. (Rolland 1997)

In addition, overcrowding has lead to a shortage of correctional officers and new methods of ascertaining security in prisons which has lead to increased use of units of solitary confinement. They are considered to be cost effective due to technological changes which can make contact between the prison staff and inmates almost nonexistent. Therefore, serious medical conditions can go undetected and untreated and inmates' conflicts are not recognized.

Solitary Confinement:

There are four ways inmates can go to segregation units:

1. disciplinary (the most common)
2. voluntary (known as protective custody)
3. administrative (transfer based on inmate being classified as security risk)
4. medical (for elderly, infirm or seriously ill inmates)

It is estimated that almost half of segregation units are made up of mentally ill. People in supermax cells are too often not the "worst of the worst" but the "sickest of the sick". Two-thirds of the population in segregation units are minorities. Isolation can last for weeks, months or years. In some segregation units, stays are indefinite.

Segregation cells, about 8' x 10', are generally made to cut down on talking and reaching between cells with wire mesh windows about 20" x 30" being covered by Plexiglas spaced about 3" out from the mesh. This is to prevent projectiles directed by some inmates. A few inches below the cell window is a slot for the food tray. The inmate is confined alone in a cell 23 hours per day with little chance for social interaction or stimulation. None of the senses (sight, taste, touch, smell, sound) are stimulated in such a

place. Living conditions are usually harsh with a dim light on all the time, insects crawling and poorly functioning toilets. They are either sparse and cold or extremely hot. The lack of windows prevent air from circulating. In disciplinary segregation, inmates are entitled usually to one hour of outdoor recreation per day and most prisons have small, fenced-in yards like dog kennels. Sometimes, they were forced (per testimony in *Andy Torres v. SCI Pittsburgh Superintendent Phillip Johnson, et.al.* in PA) to choose between recreation or use of the law library. Recreation depends upon an inmate's good behavior. Deputy Attorney General Kemal Mericli said inmates must be shackled and escorted to be taken anywhere. He tried recently to uphold the PA DOC policy of inmates not having reading material in their cells.

Low wattage lights can remain on in cells 24 hours per day. Deprivation of healthy sleep patterns or use of sedating medication increases inmates' propensity for delirium.

Inmates are denied group exercise, work opportunities and corporate religious services. Even religious services have no physical contact with inmates. Holy Communion must come through the food slots. Access to treatment and social services is extremely limited. Inmates only speak to their family and friends during visitation behind Plexiglas windows with guards monitoring their conversations. Their phone calls are also severely limited.

In addition, according to Judge Colville of the Court of Common Please of Allegheny County, PA, Criminal Division, in the court case *Andy Torres v. SCI Pittsburgh Superintendent Phillip Johnson, et.al.*, inmates were sometimes placed in "alternative housing" which is a 'cell without the inmate's property or clothing, with a smock and no underwear to wear, a mattress and a "security blanket"' in order to punish the inmates. According to the segregation policy, if the inmate used a mattress to barricade himself in his room, the alternative housing cell would exclude a mattress and require the inmate to sleep on a metal bed frame or a concrete slab.

Solitary confinement has been shown through studies to cause adverse psychological effects due to sensory deprivation. Some of the effects are:

- delusions
- dissatisfaction with life
- claustrophobia
- depression (suicidal)
- feelings of panic
- madness
- vivid fantasies and vivid hallucinations
- hyperresponsivity to external stimuli
- cognitive impairment
- massive free-floating anxiety
- extreme motor restlessness
- delirium-like conditions (organic changes in the brain similar to stupor and delirium)
- vision impairment

- headaches
- memory loss
- emotional instability

These symptoms combine to produce chronophobia, a prison neurosis. Symptoms of solitary confinement including hearing voices, seeing ghosts, amnesia and violent psychosis. There are high rates of self-mutilation, head-banging and suicide. Individuals with emotionally chaotic lives are at risk for these psychotic symptoms. Hallucinating is common with inmates feeling like the walls are closing in on them. Inmates are reported to be nervous around people.

Dr. Stuart Grassian, a psychiatrist at Harvard Medical School, found inmates in isolation with these symptoms:

- hearing voices
- increased inability to tolerate ordinary stimuli like noise
- panic attacks
- difficulty in concentration and memory
- mind wanders
- aggressive fantasies of revenge, torture and/or mutilation of guards
- paranoia
- doubts in themselves
- out of touch with reality
- problems controlling impulses (which may lead to random violence)

Dr. Grassian found that more than half of the inmates interviewed who were in solitary confinement reported progressive inability to tolerate ordinary noises and more than half experienced panic attacks. Almost one-third reported hearing voices, often whispers saying frightening things to them.

In the opinion of Judge Colville of the Court of Common Please of Allegheny County, PA, Criminal Division, in the court cases *Andy Torres v. SCI Pittsburgh Superintendent Phillip Johnson, et.al.* and *Americo T. Rivera v. Pennsylvania Department of Corrections, Martin Horn, et. al.*, many of the inmates in long term segregation were described as suffering from mental or emotional illnesses, although the mentally ill are to be housed (theoretically) in a separate unit. The judge said it wasn't clear whether the mental and emotional conditions were caused by long term segregation because of the effects of solitary confinement are the cause of the behaviors that put inmates in segregation. The judge said the petitioners in both cases suffered from depression and other emotional and psychological problems and there was no or little treatment given to them by the Pa. DOC. Judge Colville expressed concern that long term segregation units do not help inmates, staff or society as a whole. The court was glad that the DOC is developing better programming than long term segregation. It cited the lack of psychological care for inmates that need a behavioral modification program, counseling or other help in order to assist them to conform their behavior to prison and the

community at large. The court also said inmates who most need these programs that could assist them in getting out of solitary confinement are excluded from them.

The severity of symptoms depend on the amount of time an inmate may spend in isolation. (Bartol & Bartol, 1994) Social psychologist Craig Haney said it usually takes six months or more for severe symptoms to manifest. The prisoner becomes increasingly depressed and dependent. He may lose many social restraints and begin to soil himself. It takes about four to six weeks to produce degenerate behavior. The mentally ill become sicker under solitary confinement and the psychologically healthy start to exhibit signs of acute mental illness. Haney also said that solitary confinement produces extreme psychological trauma and symptoms of psychopathology in persons subjected to it. Two key functions of the mind affected, said Dr. Grassien, are the ability to focus, which causes difficulty in concentration and memory loss, and the ability to shift attention, in which the inmate become fixated on something and can experience hypersensitivity to certain external stimuli. The inability to shift attention can include obsessive thinking, uncontrollable anger, paranoia, and sometimes, psychotic delirium.

Through simulations of the prison environment, lockups and isolation are shown to dehumanize prisoners by taking away their unique personalities and eventually their identity, and cause ill feelings by prisoners because of their rejection and condemnation by society. The effects also depend of inmates' interpretation of the confinement. If an inmate sees his situation as life-threatening, he is more likely to develop adverse psychiatric reactions. If the situation is perceived as non-threatening, the inmate is more likely to tolerate the circumstances. Mentally ill inmates in isolation are especially vulnerable to the effects. Many inmates in solitary confinement have been diagnosed with mental illness when very young and experience the gamut of the criminal justice system by the time they become adults. They are frequently treated harshly and end up in supermax cells. Many inmates can not handle the extreme conditions and attempt or commit suicide.

Many inmates are likely to suffer permanent harm as a result of being put in solitary confinement. They will begin to have intolerance for social interaction which affects how they can successfully adjust to being released, not only to general prison population, but to our communities as our neighbors. Dr. Grassian said that many prisoners from these segregation units are being released directly into the communities in these violent psychotic states. There's no follow-up since many serve their maximum sentences with no parole oversight. The DOC says it prefers to move these inmates to lower security units before release but this is not a guarantee. Judge Colville in his opinion in the court case *Andy Torres v. SCI Pittsburgh Superintendent Phillip Johnson, et.al.* also stated that letting inmates from long term segregation directly into society without the benefit of psychological or behavioral programs or treatments that can help them is at odds with the rehabilitation mission of the correctional system and is extremely detrimental to society.

Wisconsin Supermax District Judge Barbara Crabb noted in a 23-page ruling in 2001 regarding conditions in Wisconsin's supermax prison that prisoners experienced intensified mental illness including attempted suicides due to severe conditions in these

supermax units. She said some inmates, surprisingly, were still experiencing symptoms of mental illness despite being prescribed medication. In 2001, in fact, Wisconsin lawmakers voted to ask the Department of Corrections to revert the supermax prison back into a conventional prison.

Prolonged confinement can exacerbate mental illness in people who were not previously diagnosed with such an illness. They may cause paranoia, difficulty controlling impulses, agitation and irrational aggression to the prison staff. Social psychologist Craig Haney said inmates in solitary confinement can get fixated on revenge. Therefore, these environments tend to keep a cycle of violence going which is psychologically harmful to inmates, the prison staff and, ultimately, the public. These segregation units teach inmates to hate. Some DOC officers also tend to be inmate haters. Officers that report on their fellow officers for instigating violence against inmates tend to get retribution from the officers. There is an unspoken rule of standing by your fellow officers no matter what.

After repeated exposures, prison staff has become immune to methods of force used to bring inmates into line. Inmates may be subjected to stun guns, pepper spray, batons and violent beatings. It becomes routine and correctional officers ignore the violence. However, inmate insubordination in solitary confinement may be the effect of isolation and psychotic symptoms. To provoke reaction by guards may be a way for inmates to get external stimulation and prove they exist. Correctional officers need to ascertain who is mentally ill and who is just violent.

Many mentally ill prisoners can not understand and, therefore, follow prison rules. They are then more likely to be subjected to one of the most dangerous and violent prison procedures which is the cell extraction. At the minimum, guards use extraction shields, protective vests, helmets with face shields, gas masks, protective gloves, groin protectors, elbow and knee pads along with shin protectors, handcuffs, leg irons and/or flex cuffs OC (pepper)spray and batons.

Lorna A. Rhodes, author of "*Total Confinement: Madness and Reason in the Maximum Security Prison*", said inmates have little chance to earn their way out of these segregation units by good behavior as they are being driven mad by the isolation. Control by prison guards is so severe to limit individual choice. Or inmates lack the ability to make good choices as they are so psychotic. More treatment is necessary, Ms. Rhodes said.

Ms. Rhodes described in her book of a project in a control unit of a maximum-security prison in which officials cleaned up racist graffiti, made renovations so inmates couldn't throw feces at staff members and directed administrators to go to the inmates tiers once or twice per week to talk to inmates and deal with their problems. Educational programs were introduced. Four years later, the unit was experiencing dramatically less violence and use of force on prisoners. Many inmates were able to go back into general population.

Accountability: No one from the outside public has been allowed admittance to witness conditions in today's penal institutions. Psychologists and criminologists used to be allowed access to study the effects of confinement on the inmates. Researchers could study the rigid effects of solitary confinement versus other confinement systems to see which were effective. For instance, in the 1830s, the difference between Philadelphia Prison of rigid confinement and the Auburn system in New York at Auburn and Sing-Sing showed that the Philadelphia Prison had a higher rate of insanity in prisoners than the Auburn system.

In Germany, they documented the effects of solitary confinement and discovered psychosis.

Statistical evidence of many researchers showed that solitary confinement was the cause of very disturbing cases of insanity, physical disease and death.

The 1959 Manual of Standards of the American Correctional Association recommended a few days of punitive segregation for most infractions and a limit of 30 to 90 days for extraordinary circumstances. These limits recognized that solitary confinement has a devastating effect on inmates.

Per a court ruling following legal action, the Pa. DOC now said it tries to get inmates out of the segregation units as soon as possible and mental health services can contact prisoners five days per week. However, with the widespread effects of mental illness on inmates in solitary confinement and their increased propensity for violence as well as social services in prisons being overworked and understaffed due to the increased prison population, it is doubtful that inmates can practically be released into general population any more rapidly.

In October 2003, inmates from SCI Pittsburgh long term segregation unit sued the Pa. DOC for the policy that bans newspapers, magazines and personal photographs in these segregation units. The DOC argued in favor of the policy to the Third Circuit Court of Appeals saying that some inmates abuse them. However, the defense argued that not all the inmates in solitary confinement have abused the reading materials and, thus, it violates their First Amendment rights.

Human Rights Watch recommends bringing greater public scrutiny of prisons including solitary confinement and supermax units and facilities.

More accurate information is needed as more people are going to prison than ever before. We need to study the problem; however, researchers are faced with prison administration denying access for such studies, stating that they are concerned with security. The prisons need to be held accountable to the general public who will be directly affected if such prison programs do not work. The prisons should not monitor its own practices but need oversight. Too much partiality, predisposition and concern on jobs exist in the

prison system to allow psychiatrists paid by this same prison system to effectively and credibly evaluate the current status of the prison population. Research by outside sources can determine if the desired outcomes are being met by prison programs.

Effects on Society:
How many inmates housed in solitary confinement do not go to general population but straight to society? What is the transition from such a unit to our communities? Do inmates in solitary confinement have the skills to adjust to society after such an experience? Psychiatrist Terry Kupers said that most inmates in solitary confinement are released into society and emerge mentally destroyed and full of rage.

Dr. Lance Couturier retired from the Pa. DOC said as of as of 2004 that only 45% of seriously ill inmates are paroled versus 55% who do their maximum sentences (compared to 82% of inmates not diagnosed with mental illness who get paroled). Therefore, it is supposed that many of the inmates put in solitary confinement are diagnosed with mental illness either caused by solitary confinement or they were put there because they couldn't cope in general population. These inmates will not be able to transition into our communities and have no supervision to help them in their decision-making after leaving these segregation units. Dr. Couturier said in-reach care of case workers to prisons as well as outreach services are important before release of prisoners. These inmates need to be connected to develop life management skills so they don't get into trouble and commit worst, more horrendous crimes. The prison program appears to be set up to fail and thus recidivate these same inmates back into our institutions after causing more crime and more victims.

Justice & Mercy believes that there should be incentives for inmates in solitary confinement to graduate into general population through educational programs and rewards for good behavior. Pa. Deputy Attorney General Mericili, who was against inmates having reading material in their cells due to possible abuse, said that if inmates get few options for discipline, there are very few incentives for good behavior and advocated greater use of disciplinary force. He said the DOC through the use of solitary confinement is trying behavior modification. If that is true, the desired modification seems to be for more and greater negative behavior. Mericili also admitted the opportunities for good behavior for inmates is limited due to their limited contact by prison staff. Therefore, they only learn more violence and retribution and that "model" of behavior will be used when these same inmates are released back into our communities.

Correctional officers assigned to solitary confinement units may only receive the basic training of any correctional officer and perhaps an additional minimal segregation training which involves force and restraints to deal with the difficult inmate population. They may also receive an annual assessment. We believe that these correctional officers should be trained more thoroughly in therapeutic interaction with inmates and mental health issues so they are aware of the differences between inmates mentally ill or becoming mentally ill due to isolation and those inmates who are merely violent. Judge Colville in the court case *Andy Torres v. SCI Pittsburgh Superintendent Phillip Johnson,*

et.al., said that staff at LTSUs have little specialized training in dealing with the mental issues from this population. He recommended that the DOC develop a process to have prisoners from segregation work their way back to general population which could include specialized training for staff that work in this unit. In fact, the judge said that the prison may be feeding inmates' behaviors off each other by the nature of long term segregation units.

We understand that the Pa. DOC is trying to provide alternatives than segregation for mentally ill inmates with a propensity for violence. One of the prisons has a specific unit with a 24-month program for these types of inmates. There are levels in the program after which the goal is to place the inmates into general population or community placement. We advocate healthy alternatives to the current punishment model of behavior and recommend longitudinal studies from an outside source on the effect of such alternatives.

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Researched and submitted by Justice & Mercy, Inc.

Juvenile Law Center
advancing the rights and well-being of children in jeopardy

Juvenile Law Center Testimony on Use of Solitary Confinement for Juveniles

Submitted by Jessica Feierman and Kacey Mordecai

Our client, T.D., was 15 years old when he was first placed in solitary confinement in a juvenile justice facility in New Jersey. He remained there for almost 7 months. He was held in a seven-by-seven foot cell, alone, with no pen or paper, no books, no audio or visual stimulation. He was often denied clothing or provided a 'ferguson gown'- a Velcro strapped garment that severely restricted his physical movement. He was occasionally denied sheets, blankets or even a mattress. He was rarely let out of his cell, spending 23 or 24 hours a day there, his only respite a shower.

T.D. was purportedly isolated to address his mental health issues. Yet despite noted diagnoses of serious mental health issues upon intake, he received almost no individual therapy, never received group therapy, and was denied the opportunity to speak with the psychiatrist about his medications. Even when staff documented that T.D.'s behavior was appropriate for weeks at a time, they continued to hold him in isolation because of his past behavior.

At almost the same time, the Juvenile Justice Commission of New Jersey was also holding 16-year-old O.S. in isolation for minor behavioral infractions such as cursing or fighting with other youth -- even when he was the victim. Over and over, O.S. received "pre-hearing room restriction," a category of punishment that allowed facility staff to place him in isolation for days at a time before even giving him a hearing.

Extensive research has demonstrated that prolonged isolation can be devastating, even to healthy adults.[1] Juveniles are developmentally more immature and vulnerable than adults, and experts agree that adolescents "are at particular risk of such adverse reactions"[2] from prolonged isolation and

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[1] *See, e.g.* Stuart Grassian, *Psychopathological Effects of Solitary Canfinement*, 140 Am. J. Psychiatry 11 (1983); Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 Wash. U. J.L. & Pol'y 325 (2006).
[2] Am. Acad. Of Child & Adolescent Psychiatry, Policy Statements: Solitary Confinement of Juvenile Offenders.

solitary confinement. National and international standards also recognize the harms of isolation. Indeed, the United Nations Human Rights Committee has found that isolation of prisoners may be considered torture.[3]

After much time, and significant advocacy, Juvenile Law Center settled a civil rights action on both boys' behalf against the Juvenile Justice Commission and the mental health providers. But hours of litigation to ferret out the facts for individual cases cannot be the answer to a widespread systemic problem. We need strong federal policy limiting the use of isolation for juveniles in federal, state, and local facilities, and in juvenile as well as adult institutions. Such a prohibition should be accompanied by policies that support positive behavioral interventions and effective mental health treatment for confined youth. This work will improve outcomes for youth, which in turn, protects public safety.

[3] Interim Rep. of the Special Rapporteur of the Human Rights Council on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 18, 23, U.N. Doc. A/63/175 (July 28, 2008).

Statement of Prof. Keramet A. Reiter
Before the
United States Senate
Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights and Human Rights

Submitted via e-mail to: Stephanie_Trifone@Judiciary-dem.Senate.gov

February 21, 2014

Dear Chairman Durbin,

My name is Keramet Reiter. I am an Assistant Professor in the Department of Criminology, Law and Society and at the School of Law at the University of California, Irvine. I am an expert in the history and uses of solitary confinement in U.S. prisons; I have been researching and writing about this topic for more than ten years.

In this testimony, I will discuss, in turn, three aspects of solitary confinement in the United States on which I have a particular expertise: (1) the lack of evidence that the practice promotes safety, either in prisons or in communities; (2) the unprecedented scale of the practice – in terms of both numbers of people confined and durations of confinement; and (3) the history of the practice as an administrative (rather than legislative or judicial) innovation.

(1) There is Little Evidence that Solitary Confinement and Supermaxes Promote Public Safety

In legal cases and in public hearings like this one, correctional administrators justify extended uses of solitary confinement as necessary to maintain safety and security throughout a given state's prison system. However, there is little evidence that extended solitary confinement promotes safety and security, either within a given state prison system or within our communities.

Only a small handful of studies have looked at the potential relationship between *supermaxes* (long-term solitary confinement facilities) and in-prison violence (in Arizona, Illinois, Minnesota, and Utah). These studies have found no effects on inmate-on-inmate assaults, and minimal decreases in inmate-on-staff assaults in prison systems with supermaxes.[1] On the other hand, in states that have reduced or eliminated the use of long-term solitary confinement, in-prison violence has remained stable, or even decreased. In Mississippi, following the closure of Unit 32, a long-term solitary confinement facility, Kupers et. al. documented significant "reductions in rates of misconduct, violence, and use of force."[2] In 2011, the Maine Department of Corrections reduced its supermax population by 60 percent, with no detrimental effects on

[1] Chad S. Briggs, Jody L. Sundt, and Thomas C. Castellano, "The Effect of Supermaximum Security Prisons on Aggregate Levels of Institutional Violence," *Criminology*, Vol. 41 (2003): 1341-1376; Jody L. Sundt, Thomas C. Castellano, and Chad S. Briggs, "The Sociopolitical Context of Prison Violence and Its Control: A Case Study of Supermax and Its Effect in Illinois," *The Prison Journal*, Vol. 88.1 (2008): 94-122.

[2] Terry A. Kupers, Theresa Dronet, Margaret Winter, et. al., "Beyond Supermax Administrative Segregation: Mississippi's Experience Rethinking Prison Classification and Creating Alternative Mental Health Programs," *Criminal Justice and Behavior*, Vol. 20.2 (July 2009): 2-14.

institutional safety and security.[3] In California, over the past two years, the state has reviewed the files of 632 alleged gang members in isolation facilities and determined that 405 posed minimal threats to institutional safety and security and could be released back into the general prison population. Again, California has documented no detrimental impacts on institutional safety and security following these reforms. These successful reforms reveal that prison systems frequently misidentify the "worst of the worst" prisoners, and also exaggerate their prevalence.

But these are just preliminary conclusions. Most states do not systematically collect data about violence in and out of solitary confinement units, or post-release recidivism statistics. New York, Texas, and the federal Bureau of Prisons have recently initiated evaluations of the effectiveness of solitary confinement. Maryland is considering legislation requiring such an evaluation. These new studies explicitly acknowledge that we need more data – and less deference to the anecdotal claims of correctional administrators about the necessity of long-term solitary confinement. Little evidence supports the continued use of solitary confinement, at current scales and durations.

However, many studies have documented two serious, detrimental impacts of long-term solitary confinement on both in-prison violence and general public safety: unconstitutional prisoner abuse and permanent mental health deterioration. First, the harsh conditions in supermax prisons and the extreme discretionary control prison administrators have over supermax prisoners often open the door to unconstitutional abuses – clear violations of human rights – in these institutions. As a result, especially when supermax prisons first open, serious prisoner abuses often occur. In California, at Pelican Bay State Prison, one supermax prisoner was dipped in scalding water until his skin peeled off. Also in California, at Corcoran State Prison, supermax prisoners from rival gangs were set-up to fight to the death, in "gladiator" fights on small exercise yards.[4] Journalists and federal courts alike have documented similar incidents of abuse following supermax openings in Arkansas, Colorado, Connecticut, Florida, and Virginia, to name just a few examples.[5]

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[3] Lance Tapley, "Maine's Dramatic Reduction of Solitary Confinement," *The Crime Report*, Jul. 20, 2011, available online at: http://www.thecrimereport.org/news/inside-criminal-justice/2011-07-maines-dramatic-reduction-of-solitary-confinement.

[4] *See* "Former Inmate at Pelican Bay Wins Judgment Against State," *San Francisco Chronicle*, March 1, 1994: A-18; Matthew Heller, "They Shoot Prisoners, Don't They?" *Independent*, Jan. 28, 2001.

[5] *See* Andy Davis, "State settles pepper-spray suits: Ex-inmate at Varner Supermax Unit to get $4,000 for '05 cases," *Arkansas Democrat-Gazette*, Feb. 17, 2011, available online at: http://epaper.ardemgaz.com/webchannel/ShowStory.asp?Path=ArDemocrat/2011/02/17&ID=Ar00902 (last acessed 20 Feb. 2012); *U.S. v. LaVallee*, 269 F. Supp. 1297 (D. Colo. 2003) and *U.S. v. Verbickas*, 75 Fed. Appx. 705 (10th Cir. 2003) (detailing gruesome abuses of prisoners at the federal supermax facility in Colorado officers were sentenced to three-plus years in prison); American Civil Liberties Union, "ACLU Sues CT Corrections Chief Over Abuse of Prisoners Housed at Notorious Virginia 'Supermax,'" Press Release, Feb. 7, 2001, available online at: www.clearinghouse.net/chDocs/public/PC-CT-0001-0002.pdf (last accessed 22 Feb. 2012); *Osterback v. Moore*, Case No. 97-2806-CIV-HUCK (S.D. Fl.), Defendants Revised Offer of

Second, the harsh conditions in supermax prisons can cause severe mental health problems, or exacerbate existing mental health problems. Indeed, prisoners are often sent to solitary confinement *because* they have mental health problems that preclude their adjustment to standard prison life. Once in solitary confinement, these problems often worsen. And prisoners who did *not* have pre-existing mental health problems often start to experience problems – from hallucinations, to suicidal ideation, to suicide itself – the longer they spend time in isolation. Suicide rates in solitary confinement facilities are often two-to-three times higher than within the general prison population.[6]

These two problems inherent to supermax confinement lead to a third, with devastating social implications: prisoners are often released *directly* from solitary or supermax confinement onto parole, or to the streets. In California, between 50 and 100 prisoners *per month* were released directly from supermax institutions onto parole, between 1997 and 2007.[7] Colorado, Connecticut, Florida, Indiana, Massachusetts, and Pennsylvania, to name just a few documented examples, also release prisoners directly from long-term solitary confinement onto the streets.[8]

Given the documented mental health challenges these prisoners are likely to face, the potential public safety challenges of these policies can well be imagined, though little research has systematically investigated the recidivism statistics of this particular former prisoner population. One study, examining prisoners paroled in Washington State between 1997 and 1998, found that prisoners who have spent time in solitary confinement have significantly higher felony recidivism rates than prisoners who have not spent time in solitary confinement.[9] And in 2013,

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Judgment, Oct. 20, 2003, available online at: www.clearinghouse.net/chDocs/public/PC-FL-0011-0002.pdf (last accessed 23 Feb. 2012);

[6] Sal Rodriguez, "Fact Sheet: Psychological Effects of Solitary Confinement," *SolitaryWatch*, available online at: http://solitarywatch.com/wp-content/uploads/2011/06/fact-sheet-psychological-effects-of-solitary-confinement.pdf.

[7] Keramet Reiter, "Parole, Snitch, or Die: California's Supermax Prisons and Prisoners, 1997-2007," *Punishment & Society*, Vol. 14.5: 530-63 (Dec. 2012).

[8] Bonnie L. Barr, Chuck R. Gilbert and Maureen L. O'Keefe, *Statistical Report: Fiscal Year 2010* (Colorado Department of Corrections, Feb. 2011), available online at: http://www.doc.state.co.us/opa-publications/97 (last accessed 20 Feb. 2012); Connecticut Department of Correction, "Northern Correctional Insitution Admnistrative Segregtion Program," at 4, 6, available online at: www.ct.gov/doc/lib/doc/pdf/northernascc.pdf (last accessed 21 Feb. 2012); *Osterback v. Moore*, Case No. 97-2806-CIV-HUCK (S.D. Fl.), Second Report of Craig Haney, at para. 25 (on file with author); Jamie Fellner and Joanne Mariner, *Cold Storage: Supermaximum Security Confinement in Indiana* (New York: Human Rights Watch, 1997); Bruce Porter, "Is Solitary Confinement Driving Charlie Chase Crazy?" *New York Times Magazine*, Nov. 8, 1998: 52 (discussing Massachusetts supermax release policies); Terry Kupers, *Prison Madness: The Mental Health Crisis behind Bars and What We Must Do about It* (San Francisco: Jossey-Bass, 1999): 35 (discussing Pennsylvania supermax release policies).

[9] David Lovell, Clark Johnson and Kevin C. Cain, "Recidivism of Supermax Prisoners in Washington State," *Crime and Delinquency*, Vol. 53.4 (Oct. 2007): 633-56.

Statement of Prof. Keramet A. Reiter
Before the
United States Senate
Committee on the Judiciary
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Tom Clements, the Executive Director of the Colorado Department of Corrections, himself an advocate for solitary confinement reform, was murdered by a prisoner who had been released a few days before, directly from solitary confinement. Following Clements's murder, *The Denver Post* investigated recidivism statistics and found that half of parolees charged with murder in Colorado since 2002 had previously spent time in solitary confinement.[10] Again, the data about what happens to people released from solitary and supermax confinement is limited. What little we do know suggests that solitary confinement is at least as likely to inspire and exacerbate violence – in and out of prison – as to curb it.

In sum, although solitary confinement and supermaxes are often justified as necessary safety and security measures in a given state or federal prison system, there is little evidence that the practice of solitary confinement or the institution of the supermax provides this benefit. There is, however, abundant evidence that supermax institutions facilitate abuse of prisoners, cause or exacerbate mental health problems, and export these abused and ill prisoners back into society, significantly less adapted to healthy societal participation than they were before entering prison.

(2) The Scale of the Use of Solitary Confinement in the United States is Unprecedented

In California, prisoners released from solitary confinement or supermax prisons have spent an average of approximately two years in isolation. Many more California prisoners serving life sentences expect never to be released from solitary confinement. As of this writing, more than 500 prisoners in the state have each spent more than 10 years in continuous isolation.[11] Individual prisoners' challenges and journalistic investigations in states like Colorado, New York, and Virginia suggest that prisoners in other states spend comparably long periods – years to decades – in total solitary confinement.[12] Many states, however, do not even collect data about

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[10] Jennifer Brown and Karen E. Crummy, "Half of parolees who murdered spent time in solitary confinement," *The Denver Post*, Sept. 23, 2013, available online at: http://www.denverpost.com/parole/ci_24140370/half-parolees-who-murdered-spent-time-solitary-confinement.

[11] Reiter, *supra* note 7; Julie Small, "Under Scrutiny, Pelican Bay Prison Officials Say They Target Only Gang Leaders," 89.3 KPCC Southern California Public Radio, Aug. 23, 2011.

[12] James Austin, and Emmitt Sparkman, *Colorado Department of Corrections Administrative Segregation and Classification Review*, Technical Assistance No. 11P1022 (Washington, D.C.: NIC Prisons Division, Oct. 2011), available online at: http://www.aclu.org/prisoners-rights/colorado-department-corrections-administrative-segregation-and-classification (last accessed 14 Feb. 2012): 18 (documenting average length of stay in Colorado supermax of 24 months, or two years); *Lockdown New York: Disciplinary Confinement in New York State Prisons* (The Correctional Association, Oct. 2003), available online at: www.correctionalassociation.org/publications/download/pvp/issue_reports/lockdown-new-york_report.pdf (last accessed 14 Feb. 2012) (documenting average length of stay in one New York solitary confinement facility as 37 months, or more than 3 years); Adam Ebbin, Charniele Herring, and Patrick Hope, "Why All Virginians Should Care about the Overuse of Solitary

average lengths of stay of state prisoners in solitary confinement, so more systematic national data is simply not available.

By contrast, in New York in the 1820s, the experimental practice of solitary confinement was abandoned completely after 18 months, because so many prisoners suffered such obvious deterioration.[13] And in legal challenges to short-term solitary confinement in the 1970s, federal courts across the United States noted that prisoners usually only spent a few days, to a month at most, in solitary confinement.[14]

Not only do American prisoners today spend unprecedentedly long periods of time in solitary confinement, but unprecedentedly large numbers of prisoners are being held in these conditions. Whereas in the 1970s, prior to the American prison-building boom, a small handful of prisoners in the highest security prisons might have been held in solitary confinement, today thousands of prisoners in nearly every state are held in solitary confinement. All but nine states have a supermax unit or prison, with at least a few dozen, if not a thousand, beds dedicated to total, long-term solitary confinement in each of these states. Today, there are more than 20,000 prisoners being held in more than 50 supermax prisons across the United States. And an additional 50,000 prisoners, or more, are being held in solitary confinement or segregation in shorter-term, smaller facilities scattered throughout state prison systems.[15]

Both the long terms prisoners spend in solitary confinement in the United States and the large number of prisoners being held under these conditions deserve further scrutiny and oversight. Are these conditions constitutional, effective, or necessary? The answer to this question is, at the very best, that we do not know.

(3) Solitary Confinement & Supermaxes: An Administrative Innovation

In 1890, the U.S. Supreme Court noted that solitary confinement as a punishment "was found to be too severe" and had been eliminated across the United States. The case concerned a

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Confinement," *The Washington Post*, Jan. 20, 2012 (noting prisoners had been in solitary confinement as long as 12 years).

[13] Peter Scharff Smith, "The Effects of Solitary Confinement on Prison Inmates: A Brief History and Review of the Literature," *Crime & Justice*, Vol. 34 (2006): 441-528, at 457.

[14] Keramet Reiter, "The Most Restrictive Alternative: A Litigation History of Solitary Confinement in U.S. Prisons, 1960-2006," *Studies in Law, Politics and Society*, Vol. 57 (2012): 69-123.

[15] These numbers are based on the author's own unpublished research. For published estimates of the numbers of prisoners in segregation, solitary confinement, and supermaxes across the United States, *see* Chase Riveland, *Supermax Prisons: Overview and General Considerations* (U.S. Department of Justice, National Institute of Corrections, January 1999), available online at: http://www.nicic.org/pubs/1999/014937.pdf (last accessed 13 Feb. 2012); Alexandra Naday, Joshua D. Freilich, and Jeff Mellow, "The Elusive Data on Supermax Confinement," *The Prison Journal*, Vol. 88 (1): 69-92 (2008).

condemned prisoner who had been held in isolation for one month prior to his execution; the Court ordered Medley's release from prison.[16] And yet, more than a century later, there are tens of thousands of U.S. citizens being held in solitary confinement, from California to Maine. Moreover, these prisoners are spending not days or months in solitary confinement, but years and decades. In the United States today, 41 states and the federal prison system have at least one entire prison dedicated to confining people in long-term solitary confinement. These prisons range in size from a few dozen beds to more than 1,000 beds. Why did the United States return to this practice, so roundly condemned centuries earlier?

The answer lies at the intersection of mass incarceration and insufficient prison oversight. Between 1970 and 2010, the number of people in American prisons increased one-thousand-fold, from just over twenty thousand to just over two million.[17] Today, the United States has more people in prison than any other nation in the world (the closest second is China) and the highest *rate* of incarceration of any nation in the world (the closest second is Russia). Indeed, there are more people under correctional supervision in the United States today than there were in Stalin's gulags.[18] As the U.S. prison population rose throughout the 1980s and 1990s, states and the federal government built new prisons – often as fast as they could – to house this growing prisoner population.

During these prison-building years, forty-one of the fifty United States, as well as the federal prison system, built at least one *supermax* institution. Supermax prisons are explicitly designed to keep prisoners in solitary confinement, indefinitely. Arizona built the first supermax in 1986, and California built two more in 1988 and 1989. In both states, prison administrators, including wardens and high-level bureaucrats, collaborated with architects to design a new kind of prison. In both states, legislators had delegated control over prison design, location, and financing to correctional bureaucrats, as a means to expedite prison building.[19] In California and Arizona, prison administrators, not legislators or governors or judges, designed a newly punitive supermax prison, which reinstituted a policy that had been largely abandoned in the United States by the late nineteenth century.

Not only were the first supermax institutions designed by correctional administrators, but supermax institutions across the United States today are operated at the discretion of correctional

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[16] *In re: Medley*, 134 U.S. 160, 168, 161, 175 (1890).

[17] *See* Franklin E. Zimring and Gordon E. Hawkins, *The Scale of Imprisonment* (Chicago: University of Chicago Press, 1991), at Table 5.1; Heather C. West. & William J. Sabol, *Prison Inmates at Midyear 2008 - Statistical Tables* (Bureau of Justice Statistics, NCJ 225619, Mar. 2009).

[18] Adam Liptak, "U.S. Prison Population Dwarfs that of Other Nations," *New York Times*, Apr. 23, 2008; Adam Gopnik, "The Caging of America," *The New Yorker*, Jan. 30, 2012.

[19] *See* Mona Lynch, *Sunbelt Justice: Arizona and the Transformation of American Punishment* (Stanford: Stanford University Press, 2010); Keramet Reiter, "The Origins of and Need to Control Supermax Prisons," *California Journal of Politics and Policy*, Vol. 5.2: 146-67 (April 2013).

administrators, with little judicial oversight. Judges do not assign prisoners to long-term solitary confinement in supermaxes; prison guards do. A prisoner in a supermax has either (a) been found guilty, in an in-prison administrative hearing, of breaking a prison rule or (b) been labeled a dangerous gang member through an in-prison, administrative evaluation process. A prisoner labeled as a dangerous gang member is usually sent to a supermax indefinitely – either for the duration of his prison sentence, or until he consents to "de-brief," sharing incriminating information about other gang members.[20]

In reviewing the constitutionality of supermax prisons, federal courts have generally further expanded the discretion that correctional administrators have had to design supermaxes, and to assign prisoners to these institutions. Specifically, courts defer to administrators' safety-and-security justifications for the institutions, with little evidence that these institutions actually promote safety and security.[21] In sum, the administrative discretion underlying the design of supermax prisons has only been expanded over the last twenty years of supermax operation and burgeoning uses of solitary confinement across the United States.

Over the last two years, attention to solitary confinement and supermax incarceration has increased. Tens of thousands of prisoners in California's supermaxes refused food for weeks at a time in 2011 and 2013; the United Nations Special Rapporteur on Torture condemned extended uses of solitary confinement in the United States; state after state has re-examined the high cost, serious security risks, and potential abuse inherent in supermax incarceration; and Senator Durbin has now held two federal hearings examining the issue. But we still defer too much to administrative discretion in justifying and perpetuating solitary confinement policies, and we still know too little about whether these policies are justified.

In sum, I applaud the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights for hosting a hearing on solitary confinement in U.S. prisons. The use of solitary confinement in U.S. prisons is largely invisible, unchecked, and brutal. Congressional attention raises visibility, and will facilitate efforts to decrease the prevalence of civil and human rights violations in U.S. prisons.

Sincerely,

Keramet A. Reiter, J.D., Ph.D.
Assistant Professor, University of California, Irvine

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[20] For further discussion of this process, *see* Reiter, *supra* note 7.
[21] *See, e.g.*, *Madrid v. Gomez*, 889 F. Supp. 1146 (N.D. Cal. 1995) (finding the concept of California's supermax prisons to be fundamentally constitutional); *Austin v. Wilkinson*, 545 U.S. 209 (2005) (holding that placement in supermax prisons raises a liberty interest for prisoners, but is not unconstitutional).

Lambda Legal
making the case for equality

Written Statement of Lambda Legal Defense & Education Fund, Inc.
Before the United States Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights, and Human Rights

Hearing on

Reassessing Solitary Confinement II:
The Human Rights, Fiscal, and Public Safety Consequences
Tuesday, February 25, 2014
at 2:30 pm

Mr. Chairman Durbin, Ranking Member Cruz, and Members of the Judiciary Committee:

Thank you for devoting your time and attention to the human rights, fiscal, and public safety consequences of solitary confinement in U.S. jails, prisons, and detention centers. Lambda Legal Defense and Education Fund, Inc. ("Lambda Legal") appreciates the opportunity to weigh in on this pressing issue and highlight the deleterious consequences of solitary confinement for lesbian, gay, bisexual, and transgender ("LGBT") people, and people living with HIV. LGBT people are often placed in solitary confinement ostensibly for their protection. But, because of the physical, mental, and emotional toll solitary confinement takes on those subjected to it, it is not an appropriate solution to individual or systemic safety concerns. The safety of LGBT prisoners can and must be addressed through better alternative means.

Lambda Legal is the oldest and largest national organization committed to achieving full recognition of the civil rights of LGBT people and people living with HIV through impact litigation, education, and public policy work. Founded in 1973 and headquartered in New York City, Lambda Legal has offices in Los Angeles, Chicago, Atlanta, and Dallas. Lambda Legal has been directly involved in many cases advocating for prisoners' rights, including access to appropriate medical care for transgender individuals, desegregation of HIV-positive inmates in state facilities, and prisoners' rights to sue prison officials for sexual assault. Our Legal Help Desk receives more than 7,000 inquiries per year, roughly 2,000 of those inquires since 2009 have come from individuals detained in prisons, jails and/or immigration detention facilities, often in solitary confinement.

The Harms of Solitary Confinement Disproportionately Affect LGBT and HIV-Positive Prisoners

LGBT detainees are disproportionately placed in protective custody, often based on the false notion that protective custody is necessary for their safety. While it is well documented that LGBT prisoners are a vulnerable population, systemically confining LGBT detainees in solitary confinement does not increase their safety. In fact, it harms them.

It is well established that solitary confinement can cause a wide variety of negative physiological and psychological responses. In addition to a general increase in psychiatric symptoms, suicide rates and incidents of self-harm are much higher for prisoners in solitary confinement. In California, for example, 73% of all suicides in the prison population in 2004 were committed by prisoners being held in isolation units, even though less than 10% of the state's prison population was held in isolation units.[1]

Solitary confinement can exacerbate the psychological trauma already experienced by many LGBT prisoners. Gay men[2], lesbians[3], bisexuals[4], and HIV-positive people[5] already have higher incidences of depression, suicidality, and stigma. Suicidality rates are especially high among transgender people. Of the transgender respondents in *Injustice at Every Turn: A Report from the National Transgender Discrimination Survey*, the largest data collection of transgender individuals to date, 41% had attempted suicide, compared to 1.6% of non-transgender people.[6] These mental health risk factors make solitary confinement especially dangerous for LGBT and HIV-positive prisoners.

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[1] Expert Report of Professor Craig Haney at 45-46 n. 119, *Coleman v. Schwarzenegger*, 2008 WL 8697735 (E.D. Cal. 2010) (No: Civ S 90-0520 LKK-JFM P). *See also* Eric Lanes, *The Association of Administrative Segregation Placement and Other Risk Factors with the Self-Injury-Free Time of Male Prisoners*, 48 J. OFFENDER REHABILITATION 529, 539-40 (2009) (presenting findings that prisoners in solitary harm themselves on average 17 months earlier than prisoners in general population).

[2] *See, e.g.*, Cochran, S.D. et al., *Lifetime prevalence of suicide symptoms and affective disorders among men reporting same-sex sexual* partners, 90(4) AM. J. PUB. HEALTH. 573, 578 (Apr. 2000); Mills, T.C. et al., *Distress and depression in men who have sex with men: the Urban Men's Health Study*. 161(2) AM. J. PSYCHIATRY 278, 285 (2004); Paul, J.P. et al., *Suicide attempts among gay and bisexual men: lifetime prevalence and antecedents*. 92(8) AM. J. PUB. HEALTH 1338, 1345 (2002).

[3] *See, e.g.*, WOMENSHEALTH.GOV, *Lesbian and bisexual health fact sheet*, available at http://womenshealth.gov/publications/our-publications/fact-sheet/lesbian-bisexual-health.html (last updated July 16, 2012) (reporting that "lesbian and bisexual women report higher rates of depression and anxiety than other women do. Bisexual women are even more likely than lesbians to have had a mood or anxiety disorder. Depression and anxiety in lesbian and bisexual women may be due to . . . [s]ocial stigma, [r]ejection by family members, [a]buse and violence, [u]nfair treatment in the legal system, [s]tress from hiding some or all parts of one's life, [l]ack of health insurance[.]")

[4] *Id.*

[5] *See, e.g.*, Tsao, J.C. et al., *Stability of anxiety and depression in a national sample of adults with human immunodeficiency virus*, 192(2) J. NERV. MENT. DIS. 111, 118 (2004); NAT'L INST. OF MENTAL HEALTH, *Depression and HIV/AIDS*, available at http://www.nimh.nih.gov/health/publications/depression-and-aids/depression-and-hiv-aids.pdf (last accessed Feb. 20, 2014) (noting that "[s]tudies show that people who are infected with HIV are more likely than the general population to develop depression").

[6] *See* GRANT, JAMIE M. ET AL., INJUSTICE AT EVERY TURN: A REPORT OF THE NATIONAL TRANSGENDER DISCRIMINATION STUDY 2 (2011), available at http://www.thetaskforce.org/downloads/reports/reports/ntds_full.pdf.

On top of causing severe psychological harm, solitary confinement divorces LGBT and HIV-positive prisoners from the resources that support their health and well-being—exactly the opposite effect that it is supposed to have. Prisoners in solitary confinement are usually denied access to facilities and privileges available to the general population, including educational, vocational, and rehabilitation programs, phone use, and regular shower access.[7] The restrictions placed on LGBT prisoners in protective custody are often identical to those placed on inmates in solitary confinement for punishment. While inmates in the general population may be able to pursue a GED, participate in drug treatment programs, work, or attend religious services, inmates placed in "protective" solitary confinement are generally denied these opportunities. Moreover, because protective custody units are often not monitored by cameras, LGBT prisoners in protective custody become even more vulnerable to unchecked harassment, physical assault, and sexual assault by prison officials and staff.[8] This combination of punishment based on LGBT status and increased vulnerability is both dangerous and dehumanizing.

It is unconstitutional to deny a prisoner necessary medical care when it is possible to provide it.[9] Prisoners in solitary confinement are cut off from virtually all networks and, thus, may have greater difficulty advocating for their health care needs than inmates in the general population. The denial of medical care can have both physical and psychological consequences, especially for transgender and HIV-positive prisoners, who often need regular hormone treatment or HIV medication. The largest data collection from transgender individuals to date shows that 12% of respondents in jail or prison reported having been denied routine non-transition-related healthcare, and 17% reported having been denied hormone treatment.[10] The denial of healthcare to prisoners in the general population suggests that these numbers are even higher among transgender prisoners in isolation.

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[7] *See* Meriwether v. Faulkner, 821 F.2d 408, 416-17 (7th Cir. 1987) (citing *French v. Owens*, 777 F.2d 1250, 1256 (7th Cir. 1985) ("[P]risoners confined in protective custody have no right of equal access to the same vocational, academic and rehabilitation programs as those in the general prison population."); *see also* SYLVIA RIVERA LAW PROJECT, "IT'S WAR IN HERE": A REPORT ON THE MISTREATMENT OF TRANSGENDER AND INTERSEX PEOPLE IN NEW YORK STATE MEN'S PRISONS, 17-19 (2007); NYCLU.ORG, *NYCLU Lawsuit Secures Historic Reforms to Solitary Confinement* (Feb. 19, 2014), http://www.nyclu.org/news/nyclu-lawsuit-secures-historic-reforms-solitary-confinement.

[8] "IT'S WAR IN HERE," *supra* note 7, at 18.

[9] *Estelle v. Gamble*, 429 U.S. 97 (1976); *see also Fields v. Smith*, 653 F.3d 550, 555 (7th Cir. 2011) (holding that a Wisconsin statute barring prisoners from receiving medically necessary gender-transition-related care violated the Eighth Amendment's ban on cruel and unusual punishment); *Phillips v. Mich. Dep't of Corr.*, 731 F. Supp. 792, 800–01 (W.D. Mich. 1990) (granting transgender prisoner's request for a preliminary injunction requiring prison officials to provide her with estrogen therapy where she had taken estrogen for the 16 years prior to incarceration); *Gammett v. Idaho State Bd. of Corr.*, No. CV05-257-S-MHW, 2007 U.S. Dist. LEXIS 55564 (D. Idaho July 27, 2007) (*unpublished*) (granting prisoner's request for a preliminary injunction to provide estrogen therapy).

[10] *See* GRANT, *supra* note 6.

A transgender man, whom we'll call Diego, called Lambda Legal's Help desk for assistance. Diego was on probation for two charges for driving while intoxicated and was having difficulty recovering from alcoholism. As a condition of probation, Diego needed to participate in a rehabilitation program at a residential facility. However, Diego's parole officer could not find a facility that would accommodate him, which, the parole officer said, meant Diego's probation was being revoked. Diego was sent to jail, where he was told he could not be placed with either men or women because he is transgender. Diego was placed in solitary confinement. When he told prison officials he had been taking testosterone regularly and needed hormone treatment, Diego was told that hormone treatment was not medically necessary.

LGBT prisoners like Diego are all too frequently denied access to programs and resources, simply because of their LGBT status. LGBT and HIV-positive prisoners also often have mental and physical healthcare issues that can be exacerbated by solitary confinement, especially when solitary confinement is linked to a denial of healthcare services. The harms that solitary confinement causes are amplified for LGBT and HIV-positive prisoners not only because of their overrepresentation within solitary confinement but also because it compounds the physical and psychological harms that are already disproportionately suffered by those who are LGBT and HIV-positive.

The Department of Justice ("DOJ") has recognized that the mental, physical, and emotional harms caused by protective custody and solitary confinement mean that protective custody and solitary confinement are in no way solutions to systemic safety risks to LGBT prisoners. In 2012, the DOJ finalized regulations pursuant to the Prison Rape Elimination Act ("PREA").[11] As part of these regulations, the DOJ took special care to prohibit agencies from "plac[ing] lesbian, gay, bisexual, transgender, or intersex inmates in dedicated facilities, units, or wings," including solitary confinement or protective custody, "solely on the basis of such identification or status" unless the placement is court-ordered.[12] This provision explicitly responds to the disproportionate use of solitary confinement and protective custody to separate LGBT prisoners from the rest of the prison population, and recognizes that this is an urgent issue for prisons, jails, and detention facilities to address. Despite the implementation of PREA, Lambda Legal continues to receive calls from the families of detainees—particularly those in immigration detention—held in solitary confinement ostensibly for their protection.

LGBT Detainees Deserve Real Protection While Incarcerated

LGBT individuals are particularly vulnerable when incarcerated. A 2013 report by the Bureau of Justice Statistics ("BJS") found that non-heterosexual male prison and jail inmates were more than ten

[11] National Standards to Prevent, Detect and Respond to Prison Rape, Docket No. OAG-131, (May 16, 2012) (codified at 28 C.F.R. § 115 *et seq.*), available at http://www.ojp.usdoj.gov/programs/pdfs/prea_final_rule.pdf.

[12] 28 C.F.R. § 115.42 (g) ("The agency shall not place lesbian, gay, bisexual, transgender, or intersex inmates in dedicated facilities, units, or wings solely on the basis of such identification or status, unless such placement is in a dedicated facility, unit, or wing established in connection with a consent decree, legal settlement, or legal judgment for the purpose of protecting such inmates.").

times more likely to be the victims of inmate-on-inmate sexual assault than their heterosexual counterparts.[13] Non-heterosexual female inmates were nearly three times more likely to suffer inmate-on-inmate sexual assault than their heterosexual counterparts, and both groups were more than twice more likely to be sexually assaulted by a staff member than their heterosexual counterparts.[14]

Transgender prisoners are especially vulnerable. Of the 6,450 transgender respondents in the 2011 report *Injustice at Every Turn*, 16% of transgender respondents in prisons or jails were physically assaulted, and 15% were sexually assaulted.[15] Among black transgender respondents, 34% reported sexual abuse while in prison or jail.[16]

Transgender prisoners placed into sex-segregated facilities based on their sex assigned at birth, rather than their lived gender, are particularly vulnerable to harassment, abuse, and even assault. PREA requires correctional officers to undertake an individualized assessment of transgender inmates taking their gender identity into consideration, and not simply to assign them to a particular housing facility based on their genitals.[17] Oversimplified reliance on gender assigned at birth or genitals often leads to transgender women being assigned to men's facilities and transgender men being assigned to women's facilities, and their unnecessary, prolonged confinement in isolation.

Jason, a transgender man,[18] contacted Lambda Legal's Help Desk for help. After being arrested in Georgia, Jason told his arresting officer that he was a transgender man and that he should be placed in a men's facility. In spite of that, Jason was made to strip naked in front of a female officer, who decided to book him as female. In the women's facility, Jason was held in solitary confinement, on lockdown 23 hours a day, "for his own safety."

Another caller, whom we will call Larissa, is a transgender woman who was arrested in Texas after a fight with her ex-boyfriend. Even though Larissa's passport and Texas driver's license both reflected her female gender, when the arresting officers realized that Larissa was transgender, they

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[13] BUREAU OF JUSTICE STATISTICS, SEXUAL VICTIMIZATION IN PRISONS AND JAILS REPORTED BY INMATES, 2011–12 BJS NATIONAL INMATE SURVEY 30, May 2013, available at http://www.bjs.gov/content/pub/pdf/svpjri1112.pdf.

[14] *Id.*

[15] GRANT, *supra* note 6, at p. 167.

[16] *Id.*

[17] 28 C.F.R. § 115.42(c) ("In deciding whether to assign a transgender or intersex inmate to a facility for male or female inmates, and in making other housing and programming assignments, the agency shall consider on a case-by-case basis whether a placement would ensure the inmate's health and safety, and whether the placement would present management or security problems."); *see also* § 115.42(e) ("A transgender or intersex inmate's own views with respect to his or her own safety shall be given serious consideration.").

[18] A transgender man is a person assigned female at birth, who identifies as male. A transgender woman is a person assigned male at birth, whose gender identity is female.

booked her as male and coerced her into signing forms that said she was "homosexual" and in need of protective custody. After "parading" Larissa around both the men's and women's prisons and telling the inmates that she was "a half-and-half," the officers put Larissa in solitary confinement.

Jason and Larissa's stories highlight the factors that lead prison officials disproportionately to place LGBT and HIV-positive prisoners into solitary confinement: purported concerns for the prisoner's safety, purported concerns for the safety of other prisoners, and ignorance as to where to place transgender and gender non-conforming prisoners. Rather than protecting LGBT prisoners, however, solitary confinement as protective custody exposes them to a host of greater harms.

Solitary Confinement is Especially Harmful to LGBT and HIV-Positive Youth and Immigrant Detainees

When they enter detention centers, LGBT youth face many of the same challenges that LGBT adult prisoners face. LGBT youth are often segregated from the general population in detention facilities. According to the American Psychiatric Association, isolation of youth within juvenile justice facilities "is a form of punishment and is likely to produce lasting psychiatric symptoms."[19] Compounding these symptoms for LGBT youth is the perception—often a correct one—that the only reason they are being segregated is their LGBT status.[20]

Sometimes, LGBT youth are segregated "for their own safety."[21] Sometimes, they are isolated because they are perceived as a safety risk to others.[22] Neither of these is a valid reason to subject LGBT youth to solitary confinement. To protect gay youth from assault and harassment in juvenile justice facilities, facility and staff should not punish them by placing them in solitary confinement; rather, staff must implement more effective safety measures. What's more, isolating LGBT youth from the rest of the prison population can make gay youth more vulnerable by drawing attention to them.[23] And there is

[19] KATAYOON MAJD ET AL., HIDDEN INJUSTICE: LESBIAN, GAY, BISEXUAL, AND TRANSGENDER YOUTH IN JUVENILE COURTS, 106 (2009) (citing AMERICAN PSYCHIATRIC ASSOCIATION, *News Release No. 09-12: Incarcerated Juveniles Belong in Juvenile Facilities* (Feb. 27, 2009), available at http://www.njjn.org/uploads/digital-library/resource_1050.pdf.)

[20] *See id.* at 107.

[21] *Id.* at 106-07.

[22] *Id.* at 107 ("Interviewees from several jurisdictions reported that facilities routinely segregate LGBT youth from others, not to protect them, but because they hold a common but discredited stereotype that LGBT youth are sexually predatory. One youth, Frankie, put it simply, 'They were afraid that I would rape my cellmate [because of my sexual orientation and gender identity.]'").

[23] *Id.* ("Several youth explained that by isolating them, the facility only drew attention to the youth and made them more vulnerable to abuse. Twenty-two-year-old Tyler [a Native-American gay male youth] explained: 'It was horrible because I was the only one in detention that had my own room and everyone was wondering, 'Why doesn't he have a roommate?' Of course, if you're smart you try to keep to yourself and not talk about why you are in there. But that is kind of a dangerous situation because then the rumors start. . . .')

no need to "protect" the general population from gay youth; the idea that gay youth pose a special risk to other youth, or that they are predatory, is untrue and defamatory.

HIV-positive detainees also have a history of being segregated from the general prison population. One striking story is that of a gay Peruvian asylum seeker, who in 2011 was held in solitary confinement for almost six weeks on the sole basis that he was HIV-positive. Officers frequently prohibited him from leaving his cell to get his HIV medication. When he did seek medical treatment, the escorting officer refused to remove the shackles on his feet, waist, and hands, despite pleas from his doctor. He was only released from solitary confinement after winning his immigration case.[24] This kind of treatment is shocking and appalling. We and other organizations have taken the issue of segregating HIV-positive prisoners to the courts before, and prison officials and departments of corrections are realizing that it is unjustifiable. [25]

Immigrant detainees face many of the same challenges that prisoners and jail inmates face. While a new directive issued by the Department of Homeland Security in September 2013 explicitly forbidding placing immigrants in solitary confinement solely because of gender identity or sexual orientation is a step in the right direction, it remains to be seen how great an impact this directive will have when the vast majority of immigrant detainees lack representation to challenge the conditions of their confinement.[26] We are still receiving calls from Immigration and Customs Enforcement ("ICE") detainees who are being placed in solitary confinement because of their LGBT status. Within the past two weeks, we received a phone call from an ICE detainee, whom we will call Marta, who is being kept in protective custody because she is a transgender woman. In lockdown 23 hours a day, Marta has extremely limited access to resources, such as common space and telephones, made readily available to other detainees. As a result, she is unable to communicate with her family and her attorney to the same extent as other detainees. This disparity of treatment on the basis of sexual orientation and gender identity serves no legitimate purpose and is unconscionable.

Conclusion

Solitary confinement affects many people incarcerated in U.S. jails, prisons, and detention facilities, but it takes a particular toll on LGBT and HIV-positive inmates and immigrant detainees.

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[24] NAT'L IMMIGRANT JUSTICE CENTER, *Mass Civil Rights Complaint Details Systemic Abuse of Sexual Minorities in U.S. Immigration Detention* (April 13, 2011), https://www.immigrantjustice.org/press_releases/mass-civil-rights-complaint-details-systemic-abuse-sexual-minorities-us-immigration-d.

[25] *See, e.g.*, Brief for Lambda Legal Defense and Education Fund Inc. et al. as Amici Curiae Supporting Respondents, *Davis v. Hopper*, Case No. 98-9663, *cert. denied*, 528 S. Ct. 1114 (2000); ACLU.ORG, *Henderson et al. v. Thomas et al.*, https://www.aclu.org/hiv-aids-prisoners-rights/henderson-et-al-v-thomas-et-al (last accessed Feb. 21, 2014).

[26] U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, U.S. DEP'T OF HOMELAND SECURITY, *11065.1:Review of the Use of Segregation for ICE Detainees* (2013), available at http://www.ice.gov/doclib/detention-reform/pdf/segregation_directive.pdf.

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LGBT prisoners are still often involuntarily committed to solitary confinement solely on the basis of their LGBT status. The United States must discontinue the discriminatory use of solitary confinement for housing LGBT and HIV-positive prisoners and detainees. Instead of isolating these prisoners, prison officials and staff must commit to implementing more effective safeguards to prevent abuse and harassment.

We applaud the Committee for reflecting on the severe harms and costs of solitary confinement, and we hope your review takes into serious consideration the uniquely deleterious effects of solitary confinement on LGBT and HIV-positive prisoners.

Most respectfully,

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Written Testimony of Professor Laura Rovner
Before the United States Senate Judiciary Committee,
Subcommittee on the Constitution, Civil Rights, and Human Rights
Hearing on Reassessing Solitary Confinement II:
The Human Rights, Fiscal, and Public Safety Consequences

February 24, 2014

Chairman Durbin, Ranking Member Cruz, and Honorable Subcommittee members,

Thank you for the opportunity to submit testimony to the Subcommittee for its second hearing on Reassessing Solitary Confinement. I am an Associate Professor of Law and Director of Clinical Programs at the University of Denver Sturm College of Law, where I also founded and teach in the Civil Rights Clinic. The lawyers and students in the Civil Rights Clinic have represented a number of prisoners held in solitary confinement in cases asserting that the conditions in Colorado's state and federal supermax prisons violate the Eighth Amendment's prohibition against cruel and unusual punishment and the Due Process Clause, as well as the federal disability discrimination statutes.[1]

I want to begin by thanking the Committee for holding this second hearing. In the nearly two years that have elapsed since the Committee's first hearing, evidence has continued to mount about the devastating effects of solitary confinement. The last year alone has seen position statements from the American Psychiatric Association, the American Public Health Association, and the Society of Correctional Physicians (among others) condemning the use of solitary confinement, especially for people with mental illness.[2] And two weeks ago, researchers released the results of a study documenting that prisoners who are held in solitary confinement are seven

[1] *Silverstein v. Bureau of Prisons, et al.*, 07-cv-02471-PAB-KMT (D. Colo.) (lawsuit claiming that BOP's confinement of prisoner in extreme isolation for 28 years constitutes cruel and unusual punishment); *Saleh, et al. v. Bureau of Prisons*, 05-cv-02467-PAB-KLM (D. Colo.); *Rezaq v. Nalley*, 07-cv-02483-LTB-KLM (D. Colo.) (consolidated on appeal *Rezaq v. Nalley*, 677 F.3d 1001 (10th Cir. 2012)); *Anderson v. Colorado Dep't of Corrections* 887 F.Supp.2d 1133 (D. Colo. 2012); *Sardakowski v. Clements*, 12-cv-01326-RBJ-KLM (D. Colo); *Decoteau v. Raemisch*, 13-cv-03399-WJM-KMT (D. Colo); *Oakley v. Raemisch*, 10-cv-03052-CMA-MJW (D. Colo).

[2] Position Statement on Segregation of Prisoners with Mental Illness, American Psychiatric Ass'n, Dec. 2012 (mandating that mentally ill prisoners should never be subjected to long-term solitary or isolated confinement of more than 3-4 weeks except under the most extreme circumstances); AMERICAN PUBLIC HEALTH ASS'N, SOLITARY CONFINEMENT AS A PUBLIC HEALTH ISSUE, POLICY NO. 201310 (2013), (detailing the public-health harms of solitary confinement; urging correctional authorities to "climinate solitary confinement for security purposes unless no other less restrictive option is available to manage a current, serious, and ongoing threat to the safety of others"; and asserting that "[p]unitive segregation should be eliminated"); SOCIETY OF CORRECTIONAL PHYSICIANS, POSITION STATEMENT, RESTRICTED HOUSING OF MENTALLY ILL INMATES (2013) ("acknowledg[ing] that prolonged segregation of inmates with serious mental illness, with rare exceptions, violates basic tenets of mental health treatment," and recommending against holding these prisoners in segregated housing for more than four weeks).

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times more likely to engage in self-harm.[3] In short, the more we learn about long-term isolation, the worse the picture becomes.

The testimony I submitted for this Committee's first hearing in 2012 was devoted to the conditions of confinement at the ADX, the federal supermax prison in Florence, Colorado.[4] For this hearing, I seek to share some of the information about the use of solitary confinement by the Colorado Department of Corrections (CDOC). In the course of litigating several cases, our Legal Clinic has gathered a substantial body of evidence about CDOC's troubling use of long-term isolation for prisoners who are seriously mentally ill. As the testimony submitted about other states' correctional systems and the Bureau of Prisons makes clear, Colorado is not unique in this practice. But because Colorado has made significant representations about sweeping reforms in its use of isolation, especially for prisoners with mental illness, I want to urge some caution and a closer examination of exactly what is transpiring on the ground.

To do so, I draw on the experience of one of those prisoners – James Sardakowski—both because his situation is profoundly troubling and because we have learned through our experiences litigating against the CDOC that his situation is not unique. I also do so because the nature and location of this hearing makes it virtually impossible for the Subcommittee to hear from people who are currently in long-term isolation, especially those like Mr. Sardakowski who are seriously mentally ill. For that reason, I have tried throughout this testimony to quote verbatim from Mr. Sardakowski himself, so that the Subcommittee can hear about his experience, to the extent possible, in his own voice.

James Sardakowski's Experience As a Mentally Ill Prisoner in Solitary Confinement in the Colorado Department of Corrections

Mr. Sardakowski is seriously mentally ill and developmentally disabled, and he has been held in solitary confinement by CDOC for over four years. While the record is unclear about why Mr. Sardakowski initially was placed in administrative segregation in the Colorado State Penitentiary (CSP), many of the behaviors cited by prison officials relate to his mental illness. None of them constitutes an act of violence.

In a declaration provided in his case, Mr. Sardakowski describes his experience in CSP:

> *The cells in CSP were no bigger than 4 steps of mine . . . It's always back and forth. The solid furniture consisted of either cement or steel. There was basic furniture one needs to have to live in it, i.e. a toilet, a bed, a desk, and a few storage areas. All cell walls are white, and the cell doors change color by what unit you're in.*

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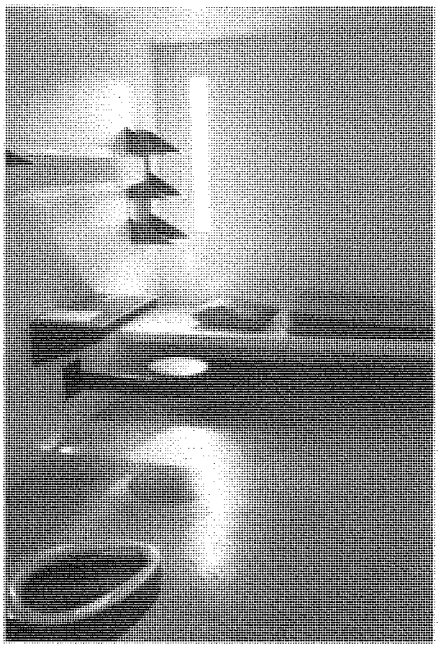
[3] *See* Homer Venters et al., *Solitary Confinement and Risk of Self-Harm Among Jail Inmates*, 104:3 AM. J. PUBLIC HEALTH 442, 442-447 (March 2014).

[4] One of the prisoners discussed in that testimony was Thomas Silverstein, a federal prisoner who at that time had been held in extreme isolation by the Bureau of Prisons for 28 years. Our clinic represents Mr. Silverstein in his lawsuit challenging the constitutionality of his prolonged isolation, which was dismissed by a federal district judge in 2011. *See Silverstein v. Bureau of Prisons, et al.*, 2011 WL 4552540 (D. Colo. 2011, Brimmer, J.). Nearly two years later, Mr. Silverstein remains at ADX and his conditions of confinement are unchanged. His case is currently on appeal to the U.S. Court of Appeals for the Tenth Circuit.

I'm allowed only two books and two magazines, which they need to swap out every time a new book or magazine has come in. One of my two personal books was a dictionary, and the other one was a Bible. I read my dictionary so much that I wore it out. They confiscated it because it was so worn out and taped. I sent a letter to Miriam Webster to ask for a donation so I can have a dictionary. It's like losing a best friend.

My days are consisted on getting up between 4:30 am and 5:30 am, and find something on TV, if I have one. If no TV, then I'll pick up a book or if I got legal stuff then I read that. I get breakfast around 6:30 am to 7:00 am, dependent on the day and unit you're in. Then I return the trays after about 30 to 45 minutes after delivery. Between the time I'm done eating and lunch I go watch more TV, or read and study the law or read a book if no TV. After lunch trays are returned I go back to sleep. This will be around 11:30 am to noon. I sleep until 2:30 to 3:30, then I repeat the breakfast and lunch time routine until medline and dinner are done. Then I go to sleep around 7:30 pm. Then the next day starts and continues as the same.[5]

This photo depicts a cell in CSP:

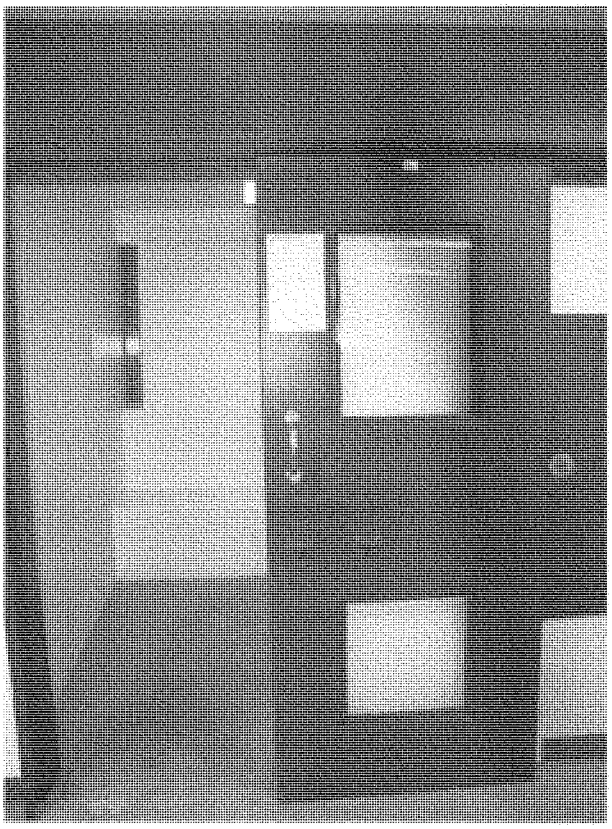


[5] *Sardakowski v. Clements*, 12-cv-1326-RBJ-KLM (D.Colo), Doc. 118, Decl. of James Sardakowski at 15-16.

Unsurprisingly, since being placed in isolation, Mr. Sardakowski's already-fragile mental condition has deteriorated. He has repeatedly engaged in self-harm, including attempted castration, banging his head against the wall, and biting his lips and hands until he bleeds.

CDOC's response to Mr. Sardakowski's self-harm has been to subject him to punitive (and even more isolating) conditions on "mental health watch," where he is placed in a small, windowless cell that is stark and completely barren. The "bunk" is a long, thin concrete slab with no mattress, and the bright lights inside the cell are kept on all the time. Mr. Sardakowski describes it as "*very cold in the suicide cells. So it's like punishment. It makes me feel subhuman.*"[6]

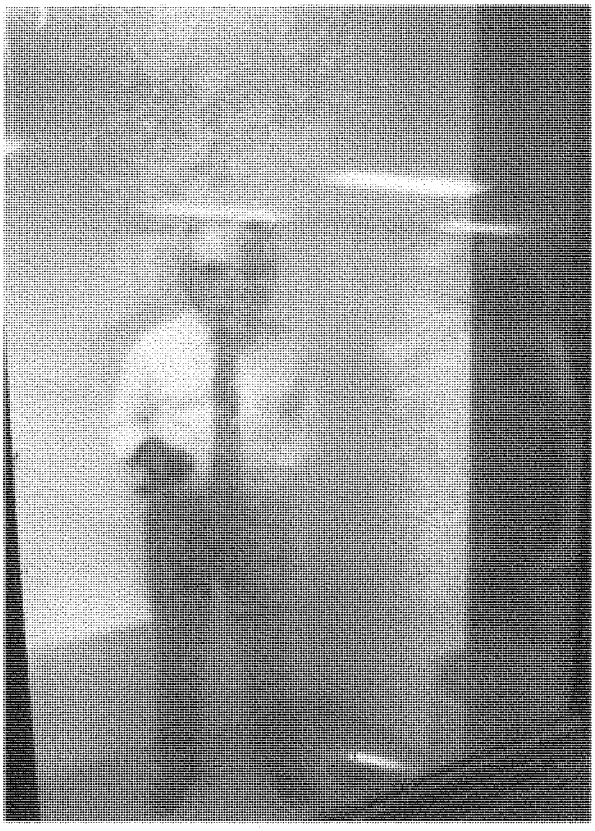
This is a photograph of the mental health watch cell:



[6] *Sardakowski v. Clements*, Decl. of James Sardakowski, attached as Exh. 1.

When Mr. Sardakowski is placed on mental health watch, he is given only a suicide smock and blanket but is otherwise naked. Sometimes he is placed in "ambulatory restraints" – a belly chain, leg irons, a motorcycle helmet covered in electrical tape, and "mitts" – tube-like devices placed on his hands that prevent him from grasping anything. He estimates that he has been put on mental health watch "*more than fifteen times I would say, less than forty though – or I hope that it is – while in CDOC.*"[7] Sometimes he has remained in these restraints in the mental health watch cell for days.

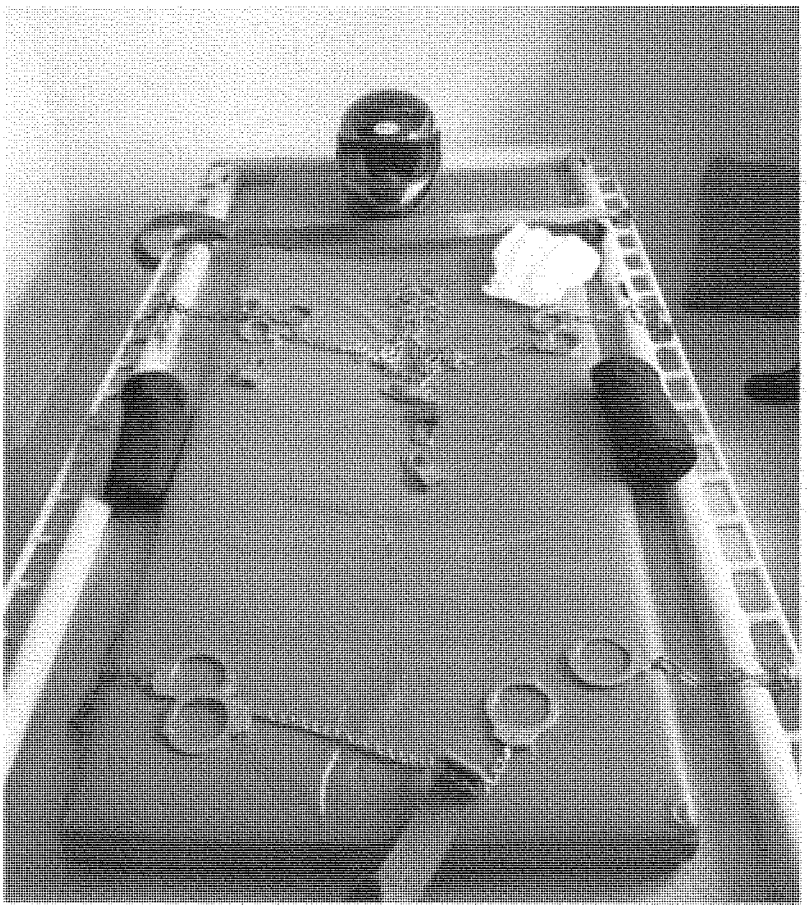
This is a photograph of the ambulatory restraints to which Mr. Sardakowski has been subjected:



On several occasions when Mr. Sardakowski has been taken to the infirmary for purported treatment after engaging in self-harm, CDOC staff have chained him to a bed with immobilizing

[7] *Id.* at 17.

four-point restraints, wearing a diaper, for days at a time. According to CDOC staff, there is no set maximum amount of time that a prisoner can be kept restrained this way. Describing his experience of being four-pointed, Mr. Sardakowski states, *"it makes me feel subhuman, like I'm some type of wild animal that needs to be controlled and tamed. . . . You are so tied down that every two hours staff must come in and pump your limbs."*[8]



If and when Mr. Sardakowski is able to "contract for safety" – that is, when he can promise CDOC staff that he will not hurt himself any further – he is returned to his solitary cell.

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[8] *Id.* at 19-20.

CDOC's Mental Health Treatment Program

In 2010, CDOC created the Offenders with Mental Illness (OMI) program at CSP, which was supposed to provide prisoners with serious mental illness both intensive mental health treatment as well as a way to progress out of solitary confinement. Mr. Sardakowski received neither. He was not the only one; by CDOC's own admission, the OMI program had a 61% failure rate.[9]

Recognizing the significant limitations of the OMI program (including CDOC staff's own admission that it is "hard to run mental health and ad seg programs at the same time in the same facility"), CDOC created a new program in February 2013 – the Residential Treatment Program (RTP). The new RTP removed mentally ill prisoners from administrative segregation at CSP and placed them in a prison across the street where they could presumably receive treatment for their psychiatric conditions. The RTP is described by CDOC as "a program [in] which offenders with mental illness receive individual and group therapy, educational programs and recreational activities in controlled conditions of confinement." Like the OMI program, the RTP uses "planned incentive level systems to promote pro-social behavior and meeting targeted behavioral goals."

One year ago, Mr. Sardakowski was placed in the RTP. Although the program is designed to take six months or less to complete, prisoners with serious mental illness like Mr. Sardakowski often cannot progress in linear fashion through the levels of the program precisely because of their mental disabilities. As Mr. Sardakowski explains:

> *It's hard for me to progress because the times are too far apart from level to level. I can comprehend two weeks, but beyond that it gets really stressful. I get too stressed out, trying to get the next level and stay out of trouble. The byproduct is my behavior, because of my stress. You say something wrong, you get your level taken. It's hard for me to control what I say. I'm stuck in this rut. I'm stressed about the timeframe and all the requirements. All these little stress factors build up to a volcano and I explode. I don't have nobody to talk to relieve my stress. The level system is too long for me to progress.*
>
> *The staff says you go back to GP [general population] if you pass your Level 8. This is like saying to me: "you will get released tomorrow and become the president tomorrow evening." It's not possible for me to get this notion.*[10]

For Mr. Sardakowski and other men with serious mental illness, the isolating conditions in the RTP perpetuate a vicious cycle that is seemingly impossible to break because those conditions contribute to the very behavior that perpetuates CDOC's decision to keep them in segregation:

> *I don't feel like I have control over my behavior. My behavior is randomly picked. If I feel upset then I act out behaviorally, i.e. tying off*[11] *[my testicles], etc. It's worse in ad seg, because I can't walk away from the situation to try to think rationally. You build up a lot of stress that you can't release. I implode, e.g. harm myself or explode, e.g. get*

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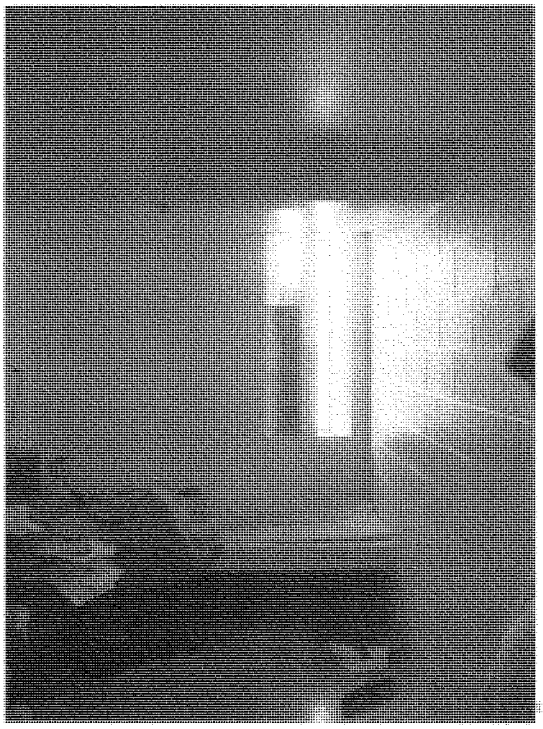
[9] Offenders with Mental Illness Report, submitted to House & Senate Jud. Committees Jan. 31, 2013, p. 5.
[10] Sardakowski Decl. at 30.
[11] This is the phrase that Mr. Sardakowski uses to describe his attempts at self-castration.

> *sprayed with pepper spray, which affects the rest of the facility (they have to go on lockdown to deal with me). I never reached this level of self-harming tactics until I got to ad seg. In GP I could get to the point where I could think about my actions, but here, what do I have? I can stand at the door, then walk back to my bunk.*[12]

If anything, the physical conditions of confinement in the RTP are as austere and oppressive as those in CSP's administrative segregation units, especially at the lower levels of the program where Mr. Sardakowski and other mentally ill men are consigned to stay when they are unable to comply with program requirements due to their mental illnesses.

Indeed, in the lower levels of the RTP, almost every condition of Mr. Sardakowski's confinement is the same as when he was in administrative segregation at CSP: he spends up to 23 hours per day locked in his single cell, which is roughly the same dimensions as his cell in CSP. This is a photo of his cell in the RTP:



[12] Sardakowski Decl. at 31.
[13] Sardakowski Decl. at 24.

As was the case when he was confined in administrative segregation at CSP, in RTP, Mr. Sardakowski eats his meals alone in his cell, next to where he uses the toilet. He is restrained and escorted anywhere he goes, including recreation, medical and legal visits. He explains that "*this makes me feel like a dangerous animal that has no control, and that will attack anything that dares to glance at me. Which I'm not. I'm not sub-human at all.*"[14]

CDOC Fails to Address Issues of People with Mental Illness in Solitary Confinement By Changing Definitions Rather Than Practices

Rather than address Mr. Sardakowski's situation, the Colorado Department of Corrections has chosen to fight the lawsuit he filed tooth and nail, twice filing motions to dismiss the case, which is currently scheduled to go to trial on March 17, 2014. One of the bases they cite for doing so is CDOC's claim that Mr. Sardakowski does not have a "major mental illness" (though the Department concedes that he is "seriously mentally ill").

The terminology is important because it is the terminology that allows for CDOC to assert that "we have gotten the number of severely mentally ill inmates in Ad Seg down to the single digits."[15] In fact, what has happened is that CDOC has created a new category of mentally ill people—those with what it calls "major mental illness." A person such as Mr. Sardakowski can still be seriously mentally ill—and many are—but if he has not been diagnosed by CDOC as having one of the particular mental health conditions that qualify as a "major mental illness," he isn't included among those considered mentally ill for purposes of CDOC's figures.

CDOC also employs a limited definition of "administrative segregation" that results in underreporting of the numbers of prisoners in solitary confinement. CDOC asserts that if a person is housed in the RTP, he is, by definition, not on "administrative segregation status." Although RTP is not called "administrative segregation," prisoners such as Mr. Sardakowski are held in classic solitary confinement conditions in the lower levels of that program. By asserting that the RTP is not administrative segregation, CDOC can represent that mentally ill prisoners in RTP (or elsewhere in CDOC) are not in solitary confinement. But doing so fails to account for all of those who are housed in the lower levels of the RTP, or are held elsewhere in CDOC in conditions like those I have described above.

I share this observation because changing definitions rather than practices helps no one – not this Subcommittee, which is endeavoring to understand the nature and scope of the issues related to long-term isolation; not the Colorado Department of Corrections, which has made a stated commitment to dramatically reducing (if not eliminating) the use of penal isolation for mentally ill prisoners; and certainly not Mr. Sardakowski and the seriously mentally ill men like him who continue to deteriorate in solitary confinement.

The Extreme Nature of the Solitary Confinement Conditions in America's Prisons Impacts Our International Credibility on Human Rights Issues

Harold Koh, legal advisor to the State Department, has described the United States as the world's indispensible force for human rights. Yet solitary confinement conditions like those in our state

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[14] *Id.* at 24-25.

[15] Rick Raemisch, *My Night In Solitary*, N.Y. TIMES, Feb. 20, 2014.

and federal supermax facilities are inconsistent with international human rights standards[16] and have been roundly condemned, including by the United Nations Special Rapporteur on Torture at the 19th session of the U.N Human Rights Council. At that session, the Special Rapporteur called on all countries to ban the use of solitary confinement, except in very exceptional circumstances, as a last resort, and for as short a time as possible. The Special Rapporteur concluded that solitary confinement is a harsh measure that may cause serious psychological and physiological adverse effects. He found that solitary confinement can amount to cruel, inhuman or degrading treatment or punishment and even torture. He recommended both the prohibition of solitary confinement and the implementation of alternative disciplinary sanctions. He also called for increased safeguards from abusive and prolonged solitary confinement, and the universal prohibition of solitary confinement exceeding 15 days.[17]

While the U.S. is dismissive of international criticism of its own prison conditions, in judging other countries' human rights records, the U.S. State Department has regularly treated the use of prolonged solitary confinement as a human rights violation.[18] If the U.S. is to continue to hold itself out to the world as a standard-bearer of human rights, we must look closely at the use of solitary confinement here at home.

Conclusion

It is clear that our state and federal correctional systems need to reduce the use of solitary confinement, especially for prisoners with mental illness. But it is equally clear that the path

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[16] The U.S. has ratified the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture, both of which prohibit torture or other cruel, inhuman or degrading treatment or punishment. Article 10 of the ICCPR further requires that "all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person." The UN Human Rights Committee, the ICCPR treaty monitoring body, has further emphasized that the absolute prohibition of torture or cruel, inhuman or degrading treatment under international law "... relates not only to acts that cause physical pain but also to acts that cause mental suffering ..." and that prolonged solitary confinement may amount to torture or other ill-treatment.

[17] Interim Rpt. of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, delivered to the General Assembly, U.N. Doc. A/66/268 (Aug. 5, 2011).

[18] Glenn Greenwald provides a powerful summary of this tendency:

> [T]he U.S. Government routinely condemns similar acts—the use of prolonged solitary confinement in its most extreme forms and lengthy pretrial detention—when used by other countries. See, for instance, the 2009 State Department Human Rights Report on Indonesia ("Officials held unruly detainees in solitary confinement for up to six days on a rice-and-water diet"); Iran ("Common methods of torture and abuse in prisons included prolonged solitary confinement with extreme sensory deprivation . . . Prison conditions were poor. Many prisoners were held in solitary confinement . . . Authorities routinely held political prisoners in solitary confinement for extended periods . . ."); . . . Israel ("Israeli human rights organizations reported that Israeli interrogators . . . kept prisoners in harsh conditions, including solitary confinement for long periods"); Iraq ("Individuals claimed to have been subjected to psychological and physical abuse, including . . . solitary confinement in Ashraf to discourage defections"); Yemen ("Sleep deprivation and solitary confinement were other forms of abuse reported in PSO prisons . . .").

U.N to Investigate Treatment of Bradley Manning, SALON (Dec. 23, 2010).

forward requires us to do so in ways that acknowledge the harm caused by prolonged isolation, regardless of the label we use to describe it.

Thank you again for holding this hearing. While I urge the Subcommittee to pursue an approach that dramatically reduces the use of solitary confinement in our nation's prisons, "[I] do so in a spirit that recognizes the enormous burden on those responsible for actual policy decisions. But in the end, in a democracy, that is all of us, and so we must all take responsibility for what we now do and become as a nation."[19]

[19] CHARLES FRIED & GREGORY FRIED, BECAUSE IT IS WRONG: TORTURE, PRIVACY AND PRESIDENTIAL POWER IN THE AGE OF TERROR 17 (2010).

Lutheran Immigration and Refugee Service

LIRS Statement for Hearing: "Reassessing Solitary Confinement II: The Human Rights, Fiscal, and Public Safety Consequences"

Senate Judiciary Committee, Subcommittee on the Constitution, Civil Rights and Human Rights

February 25, 2014, Washington D.C.—Lutheran Immigration and Refugee Service (LIRS), the national organization established by Lutheran churches in the United States to serve uprooted people, welcomes the Senate Judiciary Committee's continued attention to reducing the use of solitary confinement and exploring what more should be done to curb its overuse.

LIRS advocates for the humane and just enforcement of our immigration laws and has urged Congress to achieve this goal by reducing America's over-reliance all forms of immigration detention, especially solitary confinement, which often involves arbitrary, prolonged loss of liberty and is a barrier to full, fair, and just court proceedings. Given the swift and heavy toll that solitary confinement carries, it should only be used under the most exceptional circumstances. Wherever possible, we also advocate expanding community-based alternatives to detention programs that provide access to legal education and representation, housing, proper medical and mental health services, and other assistance to non-citizens facing deportation.

A March 2013 report published in the New York Times found that on any given day, about 300 immigrants are held in solitary confinement at the 50 largest detention facilities overseen by the Department of Homeland Security (DHS)'s Immigration and Customs Enforcement (ICE) officials. Nearly half of those held in solitary confinement are isolated for 15 days or more, the point at which psychiatric experts say they are at risk for severe mental harm, with about 35 detainees kept for more than 75 days.[1] ICE currently detains approximately 34,000 migrants each day, despite the fact that many are refugees, asylum seekers or survivors of torture or human trafficking.

Recent reform attempts, including a recent ICE directive and legislative language in the Senate-passed comprehensive immigration reform bill, have attempted significant improvements to the use of solitary confinement. While these attempts at reform are welcome, vigilance and more oversight is critical to ensure that solitary confinement is only used in the most exceptional circumstances and subject to strong accountability measurements.

Recent Changes to Reduce the Use of Solitary Confinement
On September 4, 2013 Immigration and Customs Enforcement (ICE) issued a new directive to improve federal oversight of the use of solitary confinement in immigration detention facilities. The new policy substantially increased ICE's monitoring of the use of solitary confinement and set important limits on the way it is used, especially for vulnerable populations such as individuals with mental disabilities and victims of sexual assault.

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[1] Ian Urbina and Catherine Rentz, "Immigrants Held in Solitary Cells, Often for Weeks," *New York Times*, March 23, 2013. http://www.nytimes.com/2013/03/24/us/immigrants-held-in-solitary-cells-often-for-weeks.html?hp&_r=1&

Lutheran Immigration and Refugee Service

The ICE directive contained promising provisions that required appropriate review and oversight of decisions to retain detainees in solitary confinement for over 14 days. It also required facilities to report on the use of solitary confinement for members of vulnerable populations, such as those with medical or mental issues and disabilities, those who may be at risk of harm due to sexual orientation or gender identity, or victims of sexual assault.

While this directive represents a large step forward in establishing more humane detention practices, it has yet to be fully implemented and enforced. Each ICE facility has different standards for who should be held in solitary confinement which can lead to little accountability. Precise guidelines and extensive oversight are crucial in immigration cases, where detention is not used as a punitive measure.

The Senate-passed comprehensive immigration reform bill, the Border Security, Economic Opportunity, and Immigration Modernization Act (S. 744), included many positive changes for migrants held in immigration detention including the operations of detention facilities and the use of alternatives to detention. Under the act, solitary confinement would be defined and limited to brief periods under the least restrictive means possible, excluding children and mentally ill individuals from the practice.

S.744 is a positive step towards reforming the use of solitary confinement. However, a broader look at the overall practice of detention in immigration cases is needed. In *Unlocking Liberty: A Way forward for U.S. Immigration Detention Policy*, a report examining the practice of detention and alternatives, LIRS highlights how the U.S. government can comply with its responsibility to enforce immigration laws while upholding our values of humane treatment of newcomers.

Placing refugees and migrants—some of them initially encountered by the immigration system for as little as a traffic violation—in solitary confinement for alleged violations of immigration law violates American values of fairness and respect for human dignity. In addition to potentially re-traumatizing vulnerable persons, it also treats with contempt the biblical exhortation to welcome the stranger that guides LIRS' work.

The story of Isatu Jalloh's experience in immigration detention illustrates how even extremely vulnerable individuals have been placed in solitary confinement.

> Isatu[2] grew up in Sierra Leone during the country's civil war. When she was 12 years old, she was raped by rebel soldiers and separated from her mother. Isatu later suffered female genital mutilation and was severely punished when she refused to perform the practice on other young women. Isatu fled to the United States, where upon expressing her intention to apply for asylum at the airport, she was detained by immigration authorities and sent to York County Prison in Pennsylvania. While in immigration detention, her post-traumatic stress disorder caused her attacks of anxiety and she was isolated in solitary confinement.

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[2] *Broken Promises: Seeking Political Asylum in America*, Ladies Home Journal, http://www.lhj.com/health/news/seeking-political-asylum-america, page=1 (Feb. 2010).

Lutheran Immigration and Refugee Service

The use of solitary confinement has been determined by mental health experts to be harmful, especially for those with pre-existing psychiatric disorders or survivors of torture, trafficking and abuse.[3] The U.N. Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has called for an absolute prohibition on prolonged solitary confinement as harmful psychological consequences may be irreversible. Given the grave effects of solitary confinement, any use of this practice requires strong accountability measurements and should be exercised only in the most extreme circumstances.

Alternatives to Detention

Alternatives to Detention (ATDs) not only provide a more humane and just alternative to the use of "protective" solitary confinement, they are also a proven and highly cost-effective approach for ensuring that individuals appear at immigration proceedings. There are a variety of options that ICE can utilize to encourage compliance with immigration court proceedings. Varying forms of supervision and monitoring range in cost from as low as 0.17 cents up to $17 dollars a day per individual[4]. Research has shown that ATDs are highly effective and yield an average 91% appearance rate for hearings and court proceedings[5]. Compared to the billions spent each year on detention operations, ATDs represent a smarter, cheaper, and more humane way to ensure compliance with U.S. immigration laws. ATDs are a compassionate alternative for vulnerable migrants such as asylum seekers, torture survivors, the elderly, individuals with medical and mental health needs, and other vulnerable groups.

LIRS nurtures and sustains a network of community support programs that provide case management services to individuals who have been released from immigration detention. This support assists individuals in understanding their obligations and matching them with the services they require.

LIRS Recommendations

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[3] National Immigrant Justice Center and Physicians for Human Rights. *Invisible in Isolation.* September 2012, pg 13. http://www.immigrantjustice.org/publications/report-invisible-isolation-use-segregation-and-solitary-confinement-immigration-detention#.UxcqGdiNOJo

[4]National Immigration Forum. *The Math of Immigration Detention: Runaway Costs for Immigration Detention Do Not Add Up to Sensible Policies.* August 2013. http://www.immigrationforum.org/images/uploads/mathofimmigrationdetention.pdf; DHS FY 2014 Budget Justification, pg. 6. https://www.dhs.gov/sites/default/files/publications/MGMT/DHS-%20Annual%20Performance%20Report%20and%20Congressional-Budget-Justification-FY2014.pdf

[5]Detention Watch Network. *Alternative to Detention Factsheet.* http://www.detentionwatchnetwork.org/sites/detentionwatchnetwork.org/files/background%20fact%20sheets.pdf

Lutheran Immigration and Refugee Service

LIRS's expertise, experience, and compassion drawn from decades of welcoming vulnerable newcomers inform our advocacy for just, humane treatment of people who seek protection in the United States. To ensure the protection of vulnerable migrants, prevent the overuse of solitary confinement, reduce costs and improve public safety, LIRS recommends that Congress enact reforms that:

- Maximize the use of community-based alternatives to detention, like those outlined in the LIRS report *Unlocking Liberty*
- Prohibit solitary confinement for survivors of torture and people with mental illness
- End prolonged solitary confinement
- Ensure basic rights such as access to counsel, food, and exercise for anyone consigned to solitary confinement
- Hold facilities that detain immigrants legally accountable for improper use of segregation and solitary confinement

For more information on U.S. immigration detention policy and alternatives to detention, please see the 2011 LIRS report *Unlocking Liberty*, available at www.lirs.org/dignity. If you have any questions about this statement, please contact Brittney Nystrom, LIRS Director for Advocacy at bnystrom@lirs.org or (202) 626-7943.

Maine Council of Churches

Seeking common ground, working for the common good

February 21, 2014

Senate Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights and Human Rights
Washington, D.C. 20515

Esteemed members of the subcommittee:

Recognizing that prolonged solitary confinement can cause serious harm to prisoners, it has long been considered a form of torture. As an organization representing Christians, we categorically oppose prolonged solitary confinement.

The Maine Council of Churches represents nine member denominations: Roman Catholics; Lutherans; Swedenborgians; Unitarian Universalists; Congregationalists; Episcopalians; Presbyterians; United Methodists; and Quakers.

Experts estimate that at least 36,000 people in the U.S. criminal justice system are currently being held in solitary confinement. The vast majority of these inmates are detained in state prison facilities. Prisoners held in solitary confinement are often detained in a cell by themselves for 23 hours a day. Some prisoners are kept in these conditions for months, years, or even decades. Medical experts have stated that prisoners held in isolation for extended periods experience symptoms akin to delirium, and the impact on mentally ill prisoners is especially damaging. Alarmingly, these prisoners are sometimes released from solitary confinement units directly to their communities when they complete their prison sentences.

We need to invest in humane alternatives that address the mental health needs of prisoners in a way that effectively contributes both to their rehabilitation and to their successful transition back into society. Because holding prisoners in solitary confinement units is significantly more expensive than keeping them in the general prison population, instituting humane alternatives makes sense, both financially and morally.

We must end the use of prolonged solitary confinement in all 50 states and the federal prison system. In our view, solitary confinement is morally indefensible.

Respectfully,

The Rev. Dr. William M. Barter
Executive Director

156 High Street ♦ Portland, Maine 04101 ♦ (207) 772-1918
www.mainecouncilofchurches.org

Maine Prisoner Advocacy Coalition (MPAC)

maineprisoneradvocacy.org

PO Box 52 . Morrill, ME 04952
Jim Bergin: 207-374-3608

June 15, 2012; updated February 22, 2014

***Testimony presented to*:**
Senator Dick Durbin and Members of the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights

From: **James Bergin of Blue Hill, Maine, Co-Coordinator, Maine Prisoner Advocacy Coalition (M-PAC)**

Representing the Board of Director of Maine Prisoner Advocacy Coalition (M-PAC, www.maineprisoneradvocacy.org) in the state of Maine, I am pleased to testify on the experience of M-PAC in helping move the Maine Department of Corrections (MDOC / DOC) to adopt a Policy restricting the use (and abuse) of solitary confinement (Special Management Unit) as a means of punishment and control. Thank you for accepting this testimony on this most important occasion.

In working as a volunteer Prisoner Advocate with my wife and colleague Judith Garvey, for the last twelve years, at the county level (Volunteers for Hancock County Jail Residents www.jailvolunteers.org), we had become increasing alarmed about the long term deleterious effects, in terms of psychological trauma and recidivism, as a direct consequence of severe sensory deprivation from being placed in solitary confinement.

We don't need to list here the types of destructive behaviors that are manifested as a result, but only to say that the use of solitary confinement actually creates, and stimulates, the dysfunctional behaviors it is supposed to "correct." In

addition, despite its failure to alter behavior in a positive way, housing a prisoner in a solitary confinement unit doubles or triples the costs to the taxpayers. And what we get for our money is what Senator John McCain described as the worst form of torture he experienced as a POW in North Vietnam.

As this Committee is aware, the use of solitary confinement is going on all across the United States, where it has nothing to do with rehabilitation: rather it causes anti-social behavior that, as we have seen, manifests itself in prison and in the community upon a prisoner's release. Solitary confinement is now a structural part of almost all prisons, and the Policy du jour in dealing with aberrant behavior.

And so it was in Maine, under the previous MDOC administration of Commissioner Martin Magnusson, and a Board of Visitors, under the chairmanship of Jon Wilson, that adhered to the status quo, despite protestations on the part of Prisoner Advocates. With an entrenched bureaucracy, a Board of overseers unwilling to initiate change, and the lack of transparency overall, the only recourse left to Advocates, outside of ongoing protests, was to propose legislation at the State level that would seek to limit and control the use of solitary at MSP.

This process was begun in 2009 through a Maine State Representative, James Schatz (D), and composed of a committee of Advocates who were soon joined by the ACLU of Maine, NAACP-Portland, Solitary Watch, CURE, Maine Council of Churches, Immigrant Legal Advocacy Coalition, and numerous other organizations, forming the Coalition "Mainers against Solitary Confinement," which later became Maine Prisoner Advocacy Coalition (M-PAC).

The resulting Bill – LD 1611 – was modest in that given the DOC's intransigence, Advocates were not optimistic in gaining a major transformation. It established necessary limits to the use of solitary based on the current research findings on

this form of deprivation, presumably before the point where severe psychological damage can take place. Advocates also wanted to ensure that each prisoner in solitary would be checked at regular intervals for mental and physical deterioration by a trained mental health practitioner. We also hoped to enforce an end to "cell extractions," "restraint chairs," and other so-called "tools." With this Bill, it seemed that we were not pushing the envelope too far, and that our legislation would be viewed as moderate and politically capable of passing through the state legislative process successfully, despite views to the contrary on the part of Maine's DOC.

With the great resources of the ACLU of Maine, M-PAC mustered a large group of volunteers, organizations, and experts on sensory deprivation to testify on behalf of LD 1611 in front of the Criminal Justice and Public Safety Committee of the Maine State Legislature. At the same time the MDOC, under then-Commissioner Martin Magnusson, turned out a veritable army of staff correction officers, administrators, and the Chairman of the Board to Visitors, Jon Wilson, to testify on the use of Solitary Confinement as an important "tool" that was necessary for the security of the prisons and the community.

"Security," as used by the MDOC, is a term common throughout the entire criminal justice system used to justify many forms of behavior, or policy, whether abusive, inhumane, or not. As it pertains to Maine's SMU, solitary was said to be for "the worst of the worst" from whom the rest of the Inmate population and staff needed protection. This is a common old saw which was repeated over and over at the LD 1611 Hearing as a way of perpetuating the stereotype of the out-of-control prisoners who need to be confined.

This argument gained some resonance with members of the Criminal Justice Committee who had backgrounds in law enforcement, while others on the Committee waffled from the somewhat intimidating display of uniformed force to the explanations of medical and psychological harm. The expert witnesses and

legal testimony, as well as Clergy who testified in support of the legislation gave pause for thought on the part of the committee. As a result, the Legislation, after numerous rewrites, was sent to the floor of the Legislature for a vote, where the Bill LD 1611 sustained one of the longest floor debates in recent legislative memory.

Finally, when the vote was taken the Bill did not pass; however, all was not lost. In response to the testimony, and the near majority of Legislators in favor of prison reform, a *Resolve* to study the use of solitary confinement and recommend changes was agreed to by legislators. The *Resolve*, while not the passage of the Bill Advocates had fought for, was critically considered as a move in the correct direction, pending the findings and recommendations of the committee selected to undertake the study. (For info on the process and history of Maine LD 1611: http://www.maineprisoneradvocacy.org/solitaryconfinement.html)

After months of anticipation, the *Report* coming from the *Resolve*, authored by Dr. Steven Sherrets and others, was issued, and much to advocates' surprise contained recommendations which, to a certain extent, reflected some of the reforms M-PAC advocated for, including a more humane and carefully monitored use of the SMU, citing in the *Report* the destructive effect of solitary confinement on Prisoners as the basis for these recommendations. The *Resolve*, subsequent *Report*, and the appointment of the new MDOC Commissioner, Joseph Ponte, created a "perfect storm" for reform of Maine's prisons, of the SMU, the Mental Health Unit (MHU), and other units in the prisons, to be enacted through *Policy* changes, the underpinning of which was now viewed by the MDOC as rehabilitation instead of punishment.

To do this, Commissioner Ponte formed a Working Committee to revise existing *Policy* and to advise on training of Staff that would stress different, more efficient forms of grievance resolution between Staff and Inmates. The purpose of this training is to provide Staff with new "tools" as a means of control, as opposed to

relying on the threat, and use, of an Inmate being thrown in the "hole" (solitary) for any transgression deemed unacceptable by Staff.

This Working Committee had weekly meetings through a year, meeting at Maine State Prison in Warren, Maine, and consisted of MDOC Administrative Staff, the Commissioner, Prison Warden Patricia Barnhart, Dr. Steven Sherrets, author of the *Report*, various prison Staff, Board of Visitors Chair Jon Wilson, and for the sake of transparency, two independent Advocates, Rachel Talbot-Ross, President of the Maine NAACP-Portland, and Jim Bergin, Co-Coordinator of the Maine Prisoner Advocacy Coalition (M-PAC). The presence of the two Advocates on the Committee, at the suggestion of Commissioner Ponte, was a radical innovation for the MDOC that was in marked contrast to the previous MDOC Administration for which "transparency" was a dirty word, and M-PAC was a problem that wouldn't go away.

The combination of Advocates and MDOC Administrators on the Committee made for an interesting dynamic for the former adversaries during the Legislative hearing for LD 1611, and on a multitude of actions by Advocates against MDOC for its overall treatment of Prisoners. The role of Advocates, as part of the Working Committee, evolved from quiet observation to a proactive role of representing Prisoners' concerns and objecting to certain policies that hinted of the same old way of doing business. With Advocates' presence at the table, a dialogue took place that energized the Committee's work and resulted in creating a "sea change" at Maine State Prison and throughout Maine's prison system that is still in process. Sitting at the table with MDOC was a constant balance for Advocates of continuing to speak strongly for change while not alienating those working for the MDOC. The concern was to avoid being "co-opted" by relationships formed with those who control the lives of Prisoners. This goal was successfully met.

As the meetings progressed, it became apparent that MDOC Administrators had suddenly, and seemingly miraculously, become transformed and were now speaking the language of reform under the guidance of the Committee Chair, Rod Bouffard, Director of Maine's Long Creek Juvenile Center, which was now being used as a model of reform having successfully been in the vanguard of eliminating the use of solitary confinement for its Juvenile Inmates. The Advocates almost immediately found common ground with Mr. Bouffard and offered him support and suggestions for his proposed policy changes to the other MDOC administrators on the Committee.

The subtext to the SMU Policy changes is ideally based on the potential of all but eliminating the use of solitary, and charting a gradual means through Policy changes and data collection to get there. The data collection is used as a means to measure the success or failure of the Policy changes, and where necessary to "tweak" the changes to effect the desired results. This process is referred to by the MDOC as evidence-based change, and is now reviewed by ongoing quarterly meetings of the Working Committee, which to date has met three times and then, unfortunately, was discontinued.

The participation of Prisoner Advocates at these Policy Meetings, and in subsequent MDOC committees dealing with aspects of prison life, was a major transformation toward transparency in the MDOC and speaks well for Maine's State Legislators taking the initiative of commissioning a *Resolve* to examine the Correctional system, and Commissioner Ponte, in response to this *Report*, having the experience and perspective to effect major changes in concert with Advocates. However, this is just a beginning, since longer range problems, some of which are beyond the range of Policy changes, still persist.

While Policy can be changed with the stroke of a pen, so to speak, the Staff on the floor with Prisoners, some of whom have been there for over thirty years, do not change so easily and are sometimes unwilling to leave their comfort zone in

response to Policy. The culture of Prisons will take time to change, but it has to start somewhere, and to that end enlightened leadership, along with involved Prisoner Advocates and citizens, is a good start. M-PAC in its distinct role of Prisoner Advocacy continues to independently monitor the effects of these Policy changes on the day-to-day lives of Inmates in terms of their treatment by correctional staff, healthcare providers, rehabilitative programs, and ultimately whether, upon release, they are equipped to readjust as productive members of their communities.

In looking to the future, M-PAC, ACLU-Maine, and the NAACP have been working hard to initiate a review of Maine sentencing guidelines as a hopeful prelude to enacting sentence reform. As M-PAC moves forward members are optimistic that the established collaboration in corrections reform between the MDOC and Prisoner Advocates will encourage an atmosphere for constructive change in the Criminal Justice System here in Maine and the rest of the country.

In sum, solitary confinement units throughout the USA must be closed as quickly as possible to protect the mental and physical health of prisoners, public safety in our communities, and financial security for states. Maine's Prisoner Advocates stand ready to assist other Advocacy groups on advocacy procedures used in Maine to greatly limit use of the "Special Management Units" in Maine's prisons.

Respectfully submitted,

James F. Bergin, Co-Coordinator
Maine Prisoner Advocacy Coalition (M-PAC)
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Written Statement of Martin F. Horn and Michael B. Mushlin
Before the United States Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights
Hearing on
Reassessing Solitary Confinement II:
The Human Rights, Fiscal, and Public Safety Consequences
Tuesday, February 25, 2014
at 2:30 pm

Chairman: The Honorable Dick Durbin
Ranking Member: The Honorable Lindsey Graham

February 24, 2014

Thank you for holding this important hearing and inviting us to submit written testimony. We have approached the issue of Solitary Confinement or extreme isolation from widely different perspectives. Yet through dialogue and discussion we have found that we share common views on this critical topic. One of us, (Martin F. Horn) has had a long and distinguished career in prison administration having served as the head of the Pennsylvania Prison system for five years and for over eight years as Commissioner of Correction and Probation for the City of New York City. In addition, Mr. Horn earlier served as executive director and chief operating officer for the New York State Division of Parole. The other of us (Michael B. Mushlin) is a law professor at Pace Law School, past project director of the New York City Legal Aid Society Prisoners' Rights Project, and author of

"Rights of Prisoners," a four volume legal treatise published by West Publishing Company.

Despite the different vantage points from which we view the corrections system in the United States, we both agree that extreme isolation as it is currently practiced, often called solitary confinement, is an inhumane practice that must end.[1] We, therefore, applaud this Subcommittee for holding this hearing and for creating a national platform from which to focus on this critical issue. We write to describe our view of how isolation can and cannot work.

An estimated 80,000 prisoners in this country are living close to 23 hours a day alone in their cells, many deprived of meaningful stimulation. These extreme conditions cause such suffering they have been called "torture." For the young, the mentally ill, and other vulnerable prisoners, extreme isolation is especially dangerous, often leaving permanent psychological damage.

The California and New York correction systems provide two paradigms of how solitary confinement is used in the United States. In California, officials resort to isolation to keep large groups of prisoners, such as gangs, from assembling, and from harming one another and staff. Historically, California placed prisoners

[1] We have recently expressed these views in an Op-Ed that we authored entitled "*Reform Prison Isolation*" (Albany Times Union, October 29, 2013).

affiliated with gangs in isolation until they disavowed their gang allegiance. Twice in the last year, California prisoners have engaged in a hunger strike to protest the worst abuses; more than 10,000 prisoners are believed to be in isolation.

New York uses extreme isolation to punish people for violating rules — some minor. According to the New York Civil Liberties Union, hundreds of prisoners were sent to isolation for having an "untidy cell or person," "littering," and hundreds more for "unreported illness." Approximately 4,300 New York prisoners are being punished this way.

The system can be reformed through a drastic cutback by prison officials in their dependence on isolation—no more applying it to minor, nonviolent offenses, no more using it for crowd control—with an acknowledgement by prisoners' rights advocates that some of the officials' safety concerns are legitimate, that certain violent prisoners must be isolated when they pose a serious danger. Even when isolation is needed, however we propose that prison administrators set new conditions for isolation without excessive deprivations. With these conditions, while isolated, prisoners should be allowed to read, receive visits, make phone calls, and have other forms of genuine human contact and stimulation. Time spent in isolation need not stretch into months or years. Periodic reviews to determine

whether danger persists would lead to far shorter periods of isolation for most prisoners.

To address gangs such as exist in California's prisons, we recommend continuation of efforts to reduce overcrowding and reconsider the isolation of gang members, as well as providing sufficient staff, properly trained and equipped to keep prisoners safe. In places like New York where prisoners are sentenced to extreme isolation for prison rule violations, prison administrators should use other punishments for breaking the rules in nonviolent ways, including greater use of alternative sanctions for nonviolent offenses like monetary penalties, restricted privileges, and the use of "conditional discharges" for first-time nonviolent offenders, offering them an opportunity to "cleanse" their record through continued good behavior. The recent settlement reached between the State of New York and the New York Civil Liberties Union in *Peoples v Fischer* (11-CV-2694) (Stipulation for Stay with Conditions) (S.D.N.Y. February 19, 2014) is an example of how corrections officials and advocates with foresight and thoughtfulness can begin to achieve these reforms.

Recommendation

Congress can play an important role in the reform of solitary confinement. A law addressed to solitary confinement requiring a study and survey of existing levels of

extreme isolation of prisoners, combined with the establishment of the basic conditions we have described above and the requirement of oversight, would lay the foundation for essential reform. We believe that these reforms will benefit our nation and when implemented will show the world that America has a prison system worthy of its values.

February 24, 2014

The Honorable Dick Durbin
United States Senate
711 Hart Senate Office Building
Washington, D.C. 20510-1304

Dear Senator Durbin,

I would like to thank you for chairing the hearing on Solitary Confinement.

My name is Rhonda Robinson; I am the mother of a son who suffers with mental illness. My son was diagnosed with bipolar disorder type 1 when he was in his twenties and he is now 41 years old. My son's first encounter with the criminal justice system was when he was sixteen. As a result of his incarceration, I founded Mothers of Incarcerated Sons Society (M.I.S.S.) in 1992, we are a 501©3 organization. We have an online social network support group that helps families to cope with the anguish of their loved-ones being incarcerated. We have over thirteen hundred online members nationwide and in Europe. Approximately sixty-five percent of our members have a mentally ill loved-one incarcerated.

Our current objective is to be a voice for the voiceless. We want to persuade our legislators to change the laws on how people who suffer with mental illness are being processed through the criminal justice system. The department of corrections seems to have become a warehouse for the mentally disabled. It's time we shift our thinking. We understand that de-institutionalization is not appropriate for all people suffering with mental illness. However, the government's approach to increase the use of jails and prisons for those deemed unmanageable with mental illness is unsatisfactory. Jail and prison personnel are not equipped to handle the complex nature of this disease.

If a person has a certifiable mental illness they should not be inhumanely treated for having this disease. In some cases, they are tortured by being put in isolation 23 out of 24 hours a day. The lack of social simulation is harmful regardless of the inmate's mental status, and studies show that isolation has been associated with many physical and psychological implications. The mentally disabled are extremely vulnerable to this type of punishment. It can actually exacerbate their already fragile mental condition; they should not be dehumanized because of their illness. Mental illness is a disease of the mind and should be treated as such. We don't punish people because they have diabetes, cancer, etc. So why is this country punishing the mentally ill? They are not disposable! They are human beings! How did this country reverse back to the barbaric abuses and neglects that were once denounced? It was those

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practices such as isolation that lead to the outcry for de-institutionalization in the first place. The repercussions of committing a crime should be the loss of one's freedom, mentally ill or not. But no one should be subjected to physical, emotional and psychological torture and pain! This type of inhumane treatment only breeds hatred and dysfunctional individuals. This country is housing inmates in a 6x9x12 steel cage like animals and then expecting them to act civilized when they are paroled directly out of solitary confinement back into society. This defies all logic.

We feel that solitary confinement constitutes "cruel and unusual punishment," which is prohibited in the eighth amendment of the U.S. Constitution.

I am attaching several letters from our M.I.S.S. members via email. Thank you for taking the time to read our testimonies.

Rhonda Robinson
M.I.S.S. Executive Director
Mothersofinmates.org

Limit the Use of Solitary Confinement in Prisons and Jails

Statement submitted to the Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights, and Human Rights

By Galen Carey
Vice President for Government Relations
National Association of Evangelicals

February 24, 2014

The National Association of Evangelicals (NAE), representing more than 45,000 congregations from 40 denominations, as well as nondenominational congregations, evangelical organizations, schools, and ministries with millions of constituents, commends Chairman Durbin, Ranking Member Cruz, and the Subcommittee members for holding this important new hearing. The Subcommittee's 2012 hearing brought to light important evidence on the human and social consequences of prolonged solitary confinement and sparked a significant national debate and movement for reform.

The human cost of keeping as many as 80,000 American prisoners in solitary confinement, deprived of nearly all human contact, is staggering. While we recognize that on rare occasions security concerns may require short-term use of solitary confinement, its widespread and prolonged use must end.

The NAE has long advocated for the humane treatment of prisoners. We recognize that all people, including prisoners, are created in God's image and must therefore be treated with human dignity (Genesis 1:27). Fifteen years ago the NAE issued a resolution titled "The Church's Responsibility to Prisoners."[i] This statement, which continues to guide evangelical engagement in prison ministry, recognizes that prisoners are human beings with the capacity for emotional and spiritual growth and transformation.

"Incarcerated believers who make up the 'church-behind-the-walls' have the same need as believers in the 'outside world' for instruction, for living by example, and for being equipped to do ministry. Local churches can play an important role not only in sharing the gospel with incarcerated non-believers, but also in supporting, teaching and equipping saints in the incarcerated church for ministry in their environment."[ii]

Evangelicals embrace the biblical mandate to visit those who are in prison. Jesus taught his followers that when we visit prisoners, we minister to Christ himself (Matthew 25:36). Through our prison ministries, we bring encouragement to prisoners and their families, and promote rehabilitation and reconciliation.

A substantial body of research indicates that prolonged solitary confinement is psychologically harmful to inmates.[iii,iv] Most prisoners come from troubled backgrounds, and experience further trauma due to the prison experience. Since most prisoners will one day be released into society, it is in everyone's interest to minimize further damage to the human spirit and to maximize

opportunities for rehabilitation. Solitary confinement precludes prisoner access to most educational and social programs aimed at preparing inmates for reentry.

External volunteers can also play an important role in prisoner rehabilitation. Prisons that adopt widespread use of solitary confinement, whether for punishment or for protection, limit volunteer access to those who are behind bars. This is counterproductive and wasteful of both human and financial resources.

We recognize the terrible toll caused by sexual violence in America's prisons. The NAE advocated for the Prison Rape Elimination Act and continues to push for implementation of the recently promulgated standards aimed at fully protecting all prisoners and detainees from rape and sexual abuse. However, solitary confinement as a protective strategy should be used only in rare circumstances and for short periods of time. It should never be the default option.

We understand that some prisoners are prone to violence and must be carefully watched. Wherever possible, this should be done in a way that does not rely on solitary confinement. There is no substitute for effective prison administration that combines security with respect for human dignity.

Prison violence is affected by overcrowding. Overcrowding limits access to recreation, religious services, and other activities that promote rehabilitation, while exacerbating tensions. As the Subcommittee explores potential legislative remedies to the overuse of solitary confinement, please also consider sentencing reforms, including appropriate use of alternatives to incarceration that could address overcrowding without requiring the construction of additional facilities.[v]

As you develop policies governing the use of solitary confinement by the Federal Bureau of Prisons, please consider the following recommendations:

- Grant prison chaplains special and rapid access to those placed in solitary confinement, normally within 24 hours.
- Allow prisoners placed in solitary confinement to contact family or legal counsel within 24 hours to inform them of their status.
- Conduct an in-person mental health assessment by qualified personnel within 24 hours of being placed in solitary confinement, to determine if solitary confinement is likely to exacerbate mental illness of the prisoner.
- Special care should be taken to avoid solitary confinement at the end of a prisoner's sentence. Direct release from solitary confinement may be damaging to the inmate and dangerous for the community.
- Where feasible, develop specialized housing options for prisoners at risk of sexual victimization, as well as for those with developmental delays or mental illness, where the special needs of these individuals can be met.
- Develop behavior management plans that prepared inmates not only for living in the general prison population, but also for success in society upon release.
- Where prisons are segregated for legitimate security reasons, provide opportunities for human interaction and productive activity, utilizing video and audio technology where live contact must be limited, and whenever possible, offering alternative responses to

disruptions such as anger management and behavior programs, reduction of privileges, or restricted movement in the prisoner's current housing.

Evangelicals believe that human beings were created to live in community. Friendship and social engagement are basic human needs, not optional extras. In our nation's best prisons, inmates have the opportunity to work, study and prepare themselves for the day when they are given a second chance to establish healthy, productive lives in the community.

Please be assured of our prayers as you consider new federal standards on the use of solitary confinement that promote humane treatment of prisoners while improving security in our communities by maximizing the prospects for effective prisoner rehabilitation and reentry.

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[i] Available at http://www.nae.net/government-relations/policy-resolutions/279-prisons-1997
[ii] Ibid.
[iii] Stuart Grassian & Nancy Friedman, *Effects of Sensory Deprivation in Psychiatric Seclusion and Solitary Confinement*, 8 INT'L J.L. & PSYCHIATRY 49 (1986), http://law.wustl.edu/journal/22/p325grassian.pdf
[iv] Craig Haney, Mental Health Issues in Long-Term Solitary and "Supermax" Confinement, 49 CRIME & DELINQ. 124 (2003),http://cad.sagepub.com/content/49/1/124.abstract
[v] The NAE's longstanding commitment to sentencing reform is reflected in our 1983 resolution, available at http://www.nae.net/government-relations/policy-resolutions/411-sentencing-reform-1983.

NCLR NATIONAL CENTER FOR LESBIAN RIGHTS

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February 24, 2014

The Honorable Richard Durbin, Chairman
Senate Judiciary Subcommittee on the Constitution,
Civil Rights and Human Rights
224 Dirkson Senate Office Building
Washington, D.C. 20510
Via email to: Stephanie_Trifone@Judiciary-dem.Senate.gov

Statement of the National Center for Lesbian Rights
Before the United State Senate
Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights and Human Rights
Reassessing Solitary Confinement II: The Human Rights, Fiscal, and Public Safety Consequences (February 25, 2014)

Dear Chairman Durbin, Ranking Member Graham, and members of the subcommittee:

The National Center for Lesbian Rights (NCLR) is grateful for this opportunity to again submit testimony on the human rights and public safety concerns posed by the use of solitary confinement in U.S. prisons, jails, and detention centers. As a national organization committed to advancing the rights of lesbian, gay, bisexual, and transgender (LGBT) people and their families, NCLR is aware of the devastating impact that solitary confinement has on the mental health of prisoners. LGBT prisoners and detainees are particularly vulnerable to abuses, including serious physical and psychological risks, resulting from overreliance and abuse of solitary confinement.

NCLR has received numerous complaints from LGBT people held in solitary confinement. We very much appreciate your efforts to shine a light on this extremely important human rights issue and the February 25, 2014 hearing is a vital step in the effort to stem the overuse and abuse of solitary confinement in U.S. correctional and detention facilities.

In 2012, NCLR provided a statement to the Committee that provided an overview of the ways that LGBT prisoners are particularly impacted by the use of solitary confinement, with an emphasis on the use of solitary confinement for survivors of sexual assault, for vulnerable prisoners, and as punishment for being associated with a disfavored group. NCLR recommended that solitary confinement not be used for these populations, except in the most extreme circumstances, and that when it is used, it is used for the shortest possible time (with frequent administrative reviews of the placement) and that prisoners be provided substantial access to programming, exercise, and work and educational opportunities on par with the general population.

Certain conditions have remained the same since the Committee's last hearing on this topic in 2012. Solitary confinement continues to be punitive and is ostensibly used to protect the safety

of transgender and gay prisoners but in practice results in a loss of services and programs and isolation from human interaction that is essential for mental health. Sexual abuse survivors continue to be placed in solitary confinement in the aftermath of an assault resulting in negative health consequences due to a lack of support and appropriate services. The PREA standards do not adequately address these consequences and must place shorter limits on the length of time a prisoner can be placed in isolation. Additionally, prisoners who are LGBT or seen as vulnerable to sexual abuse continue to be placed in solitary confinement, ostensibly for their own protection without sufficient efforts to punish their attackers. It also continues to be a common practice to subject many survivors of sexual abuse in detention and vulnerable prisoners to involuntary solitary confinement as a de facto punishment. This deplorable practice continues to be ignored by law enforcement officials who make no significant effort to prosecute abusive use of solitary confinement in facilities under their jurisdictions.

Finally, the use of solitary confinement in immigration detention facilities continues to be common-place. NCLR continues to hear from LGBT detainees in U.S. Immigration and Customs Enforcement (ICE) facilities. Many of those people seek asylum in this country based on persecution and physical violence, including sexual violence that they have suffered in their home countries on the basis of their sexuality or gender identity. We continue to hear from LGBT detainees, and particularly detainees who are transgender, that they are frequently placed in solitary confinement for months on end while they await decisions in their asylum or deportation cases. Such placements are devastating to the medical and mental health of those detainees. Immigration detention is not supposed to be a form of punishment—many people held in ICE facilities are asylum seekers fleeing desperate conditions, as well as older adults, people with failing health, and family members of U.S. citizens. Yet these detainees are subjected to conditions on par with the harshest conditions found in correctional institutions. It is essential that all of the protections against the abusive use of solitary confinement be extended to detainees in ICE facilities as well. There has been little to no movement on this issue since the Committee's last hearing on this topic.

In 2012 Professor Craig Haney, J.D., Ph.D., a world-renowned psychologist and prison conditions expert, provided powerful testimony to this Committee based on his over 30 years of experience studying solitary confinement units all over the United States and speaking to prisoners housed in those units. His testimony described in detail the deplorable physical and psychological conditions of confinement in these units. Dr. Haney emphasized that prisoners who have committed serious offenses in prison are the exception rather than the rule in these units. Significantly, he testified that a high percentage of them are mentally ill and/or disproportionately prisoners of color. He illustrated for the Committee how the results of solitary confinement are devastating and include serious forms of mental illness even where none was present before the confinement, self-mutilation and social pathologies that leave prisoners unable to function in the general prison population or in society once they are released. Dr. Haney underscored that in his professional opinion, there is no psychological theory, correctional rationale or conception of human nature that suggests that solitary confinement is neutral or benign or does not carry a significant risk of harm. In addition, he testified that in his experience, solitary confinement is a risk to public safety due to the lack of treatment that

significantly handicaps prisoners when they eventually transition to the free world. The irrational use of solitary confinement is event more apparent because there is simply no empirical evidence to suggest that its use reduces system-wide prison disorder or disciplinary infractions. In fact, the opposite is true. In at least one prison, a reduction in the use of solitary confinement has been shown to reduce misconduct and violence system-wide.

In sum, Dr. Haney recommended that, short of abolishing solitary confinement entirely, the most vulnerable prisoners be excluded; that the time all other prisoners are housed in solitary be significantly limited; that prisoners be provided with meaningful steps and pathways that they can pursue in to accelerate their release from solitary; that the nature of the isolation unites themselves be changed in order to mitigate the damage they inflict; and that prisoners be provided with effective transitional services upon their release into mainline prison populations or free world communities. Yet despite this persuasive testimony, none of Dr. Haney's recommendations have been implemented. Progress on this issue has stalled and in the meantime, people continue to suffer in these inhumane conditions of confinement.

Conclusion

Now more than ever, there is an urgent need for Congressional oversight and principled reform that incorporates the recommendations that the nation's foremost prison conditions expert has provided to this committee. We once again thank the committee for their work on this urgent human rights and mental health issue.

Sincerely,

Arcelia Hurtado, Esq.
Policy Advisor
National Center for Lesbian Rights

www.CivilFreedoms.Org

February 21, 2014

Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights and Human Rights
Attention: Stephanie Trifone; Owen Reilly
stephanie_trifone@judiciary-dem.senate.gov
owen_reilly@judiciary-dem.senate.gov

Re: Subcommittee Hearings on Solitary Confinement

Dear Members of the Subcommittee:

The National Coalition To Protect Civil Freedoms, (NCPCF), is a coalition of 18 Civil Rights, Peace, and Muslim Organizations focused on ending Preemptive Prosecution, Profiling and Prisoner Abuse including solitary confinement. Information about NCPCF and our member organizations can be found on our website at www.CivilFreedoms.Org. We wish to address the Subcommittee with respect to its hearings on the abuse of solitary confinement.[1]

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[1]Solitary confinement appears in state and federal prison systems under a variety of names:
Protective Custody - to protect the inmate from violence by other inmates;
Special Administrative Measures (SAMs) - to restrict the inmate in some specific way from communicating with others because of particular dangers that might result from such communication;
Special Housing Units (SHU) – to discipline inmates for some violation of prison rules;
Communication Management Units (CMU) – to hold certain prisoners in prisons isolated from contact with the outside world so that the voices and ideas of the inmates will be heard as little as possible outside the prison.
Supermax Prisons – High security prisons designed to hold all inmates in solitary confinement.

NCPCF is Generally Opposed to All Forms of Prolonged Solitary Confinement

Two reasons commonly cited by the Bureau of Prisons (BOP) for imposing solitary confinement are "prison security" and "disciplinary punishment". In practice, the courts give wide latitude to prison authorities to provide for their own security and prisoner punishment, and in the past have generally not interfered with decisions to impose solitary confinement on these bases.[2] As a result, the rationale to impose solitary confinement is often contrived. Before trial, an inmate can be placed in solitary confinement for protective custody, and then have SAMs added, supposedly for prison security reasons, then be placed in the SHU for disciplinary reasons, and then after conviction he may be placed in the CMU or the Supermax supposedly for security reasons. In practice, solitary confinement is often imposed arbitrarily or for improper reasons such as to break a defendant down to prevent his testimony at trial, or to interfere in defense preparation, or to prevent legitimate communication, or to force the defendant's cooperation in other cases.

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[2] The Constitutional framework for considering solitary confinement is set forth in *Turner v. Safley*, 482 U.S. 78 (1987), in which the Supreme Court held that courts can consider prison regulations that place a "burden on fundamental rights". The Courts must first examine whether the regulation in question (solitary confinement) is "reasonably related" to legitimate penological objectives, or whether it represents an "exaggerated response" to those concerns; second, whether there are alternative means for the prisoner to exercise the fundamental right at issue; third, the impact that the desired accommodation will have on guards, other inmates and prison resources; and fourth, the absence of "ready alternatives". Turner at 87-91. Where the prisoner is being held in solitary confinement before trial, an additional consideration is that the Due Process Clause of the US Constitution prohibits the inmate from being punished for the crime before being convicted of it. Punishment is a legitimate objective of solitary confinement only after conviction. *Bell v. Wolfish*, 441 U.S. 520, 537 n. 16 (1979). However, the *Turner* court also held that in conducting a review, the courts must give great deference to the Bureau of Prisons (BOP) determination because the courts are "ill-equipped to deal with the increasingly urgent problems of prison administration and reform." (*Turner* at 84-85). As a result few courts have overturned BOP decisions.

It has been well established that prolonged solitary confinement is detrimental to mental health, and can cause permanent mental health damage. It is considered a form of torture. For this reason the Geneva Conventions on treatment of prisoners of war prohibit solitary confinement for more than 15 days.[3] As a form of torture it is prohibited by many treaties and laws.

Notwithstanding the clear illegality of the practice, the last decade has seen torture and solitary confinement gain acceptance in military, penal and law enforcement practices, both in the US and through secret renditions abroad. Prolonged solitary confinement is now probably the most widely practice method of torture in the US. Numerous studies and the testimony of those who have experienced prolonged solitary confinement establish how powerful a form of torture it is to experience the intense pain, disorientation, confused thinking, loss of speech, paranoia, and induced insanity that accompanies prolonged solitary confinement. [4] As Psychologist Craig Haney of the University of California-Santa Cruz, an expert on long-term solitary confinement has stated:

> [Solitary confinement] is itself a painful and potentially harmful condition of confinement...[I]t has historically been a part of torture protocols. It was well documented in South Africa. It's been used to torture prisoners of war... it is a very painful experience....It's certainly profoundly damaging if people lose hold of their own sanity. For some people their sense of themselves changes so profoundly and so fundamentally that they are unable to regain it. [5]

The use of torture and solitary confinement does enormous damage to the United States of America. It destroys our moral authority, undermines due process and the rule of law, infects our legal system with coerced and false statements and pleas of guilty, and impairs our relationship with other countries and cultures that abhor torture, and question how they can cooperate with such a system without themselves becoming complicit.

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[3] 1948 Geneva Convention III – 1948 (Article 90).

[4] Craig Haney & Mona Lynch, *Regulating Prisons of the Future: A Psychological Analysis of Supermax and Solitary confinement, 23 N.Y.U. Rev. L. & Soc. Change 477, 531 (1997)*

[5] Quoted from "Solitary Confinement: The Invisible Torture" by Brandon Keim, Wired Science, April 29, 2009, http://www.wired.com/wiredscience/2009/04/solitary confinement/

Torture is so clearly illegal, (notwithstanding John Yoo's best efforts to opine otherwise), that the US government has made elaborate efforts to conceal its illegal torture activities, establishing hidden "black" sites, and secret illegal rendition agreements with other countries. Transparency and accountability have been lost. With no clear purpose or policy in place, the treatment of inmates has been left to whatever sadistic or vengeful motives may inhabit the authorities in charge. NCPCF opposes all forms of prolonged solitary confinement not only because it is torture, but because it is bad prison policy. It damages the prisoner's mental health, and fails to prepare them for eventual release. Why would the US deliberately damage prisoner's mental health only to release them back into society? It makes no sense.

With so many reasons to reject torture and solitary confinement why is the practice increasing? There are general reasons for this, including the increased use of private prisons, the warehousing of prisoners, and the abandonment of attempts to "correct" or "reform" prisoner's behavior. However, one reason seems to be the increased reliance by American law enforcement officers on coerced statements and cooperation from inmates to obtain information and convictions. Solitary confinement is thought to "soften" inmates up and make them more susceptible to giving information. As with any form of torture, solitary confinement may become so painful that inmates will agree to cooperate, but there is no guarantee that this cooperation will provide truthful information. Solitary confinement induces mental confusion, disorientation, and inability to think clearly. Interrogators believe that it can give them an advantage in planting ideas in an inmate's head, and extracting information that law enforcement officers want to hear.

As David Hicks stated about his experience with solitary confinement:

> Talking becomes difficult, so when conversations do take place you cannot form words or think…[C]oherent sentences become elusive and huge mental blanks become common, as though you are forgetting the very act of speaking. Everything you think and know is dictated by the interrogators. You become fully dependent with a childlike reliance on your captors…It was a constant struggle not to lose my sanity and go mad. It would have been so easy just to let it go; it offered the only escape. [6]

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[6] "*An Interview with former Guantanamo Detainee David Hicks*", by Jason Leopold, Truthout, February 16, 2011, http://www.truth-out.org/exclusive-an-interview-with-former-guantanamo-detainee-david -hicks67818.

Because interrogation under such circumstances is inherently coercive and brain-washing, there is great danger that testimony or information obtained in this manner will be unreliable or false.

Specific Objections Based on NCPCF's Mission

NCPCF would like to focus this statement on two aspects of solitary confinement that are of particularly concern to its mission:

1. Pre-trial Solitary Confinement, Protective Custody, and Special Administrative Measures (SAMs)

In the last decade, there has been a great increase in the use of prolonged solitary confinement for defendants **awaiting trial** at a time when the defendants, by law, are presumed innocent. In national security (terrorism) cases especially, federal prisons tend to place defendants in pre-trial solitary confinement for security reasons based solely on the allegations of the charges, disregarding the possibility that the defendant may be innocent or entrapped, and disregarding often substantial evidence that the defendants are only marginally involved and are not dangerous. To avoid the appearance that the defendants were placed in pre-trial solitary confinement as punishment (before having been found guilty which would be illegal), prisons often claim that the charges by themselves establish the defendant's dangerousness - that solitary confinement is necessary for security reasons and not as punishment for crimes yet untried. [7]

Until recently the courts have shown little inclination to interfere with such BOP determinations even when these claims are patently ridiculous. However in *US v. Viktor Bout,* (USDC, SDNY, 2012), a Court held on February 24, 2012, that a defendant was improperly held in solitary confinement in the SHU for 14 months (before and after conviction), notwithstanding that he was found guilty of terrorist related charges for conspiring to supply arms to kill American citizens. Prison authorities claimed that the defendant had to be held in solitary confinement because of the serious nature of the charges, the defendant's vast resources and

[7] See for example the recent case of two codefendants in which one co-defendant pleaded guilty and was released from solitary confinement, while the other refused to plead guilty and was forced to remain in solitary. http://www.timesunion.com/news/article/Attorney-Terror-suspect-isolated-for-a-year-3625138.php

connections with violent criminal associates, his leadership abilities both with the inmates and persons who might try to rescue him from outside, and his general ability to "control and influence people". (The Prison also noted that the case had received "broad publicity, which could place [the defendant] at risk and abuse by other inmates" – thus invoking the "Protective Custody" rationale describe above.) Notwithstanding these concerns, the Court directed that the defendant be returned to the general population of the prison, stating "There is no valid rational connection between the BOP's decision to keep Bout in the SHU for more than fourteen months and any legitimate governmental interests put forth to justify it". The BOP failed to give any particularized explanation as to why the defendant was a security risk requiring drastic measures. The judge also noted that "It is well documented that long periods of solitary confinement can have devastating effects on the mental well-being of a detainee". (Decision page 9)

Notwithstanding the *Bout* decision, many defendants, especially those charged in national security cases are placed in solitary confinement from the moment they are charged, based solely on the allegations of the criminal complaint. Defendants awaiting trial must focus their attention on cooperating with their lawyers to prepare a defense, and on preparing themselves to testify at their trial. Solitary confinement is a substantial burden on both these activities. Solitary confinement dulls the ability of many prisoners to think and communicate. Words are hard to form. Ideas become difficult to express. Speech is impaired. It becomes difficult to communicate with lawyers about possible defenses. Moreover, some defendants under prolonged solitary confinement experience panic attacks and paranoia. This paranoia may be directed against the lawyer. The defendant may think, "If my lawyer was really working on my behalf, why am I still in solitary confinement? Perhaps my lawyer is working against me." The trust necessary between the client and the lawyer is undermined.

Moreover at trial the defendant may find it impossible to speak articulately or to express thoughts in a way that the jury can understand. Solitary confinement can destroy a defendant's ability to communicate which may preclude the defendant from testifying on his own behalf. As a result the longer a defendant is held in solitary confinement, the greater the pressure grows to plead guilty to avoid a trial for which the defendant is ill prepared; the defendant may become so disoriented and unable to testify that they feel they have no alternative but to plead guilty. Even if they decide to go to trial, such defendants often do not testify in their own behalf. Prolonged pre-trial solitary confinement and the torture inherent in it amounts in many cases to a

denial of counsel, a denial of a fair trial, a denial of an opportunity for the defendant to testify in his or her own defense, and a denial of due process.

For example, in *US. v. Mohammed Warsame,* the government held the defendant in solitary confinement for 5 and 1/2 years, until the defendant asked to plead guilty to something so that he could escape the torture of solitary confinement. When the defendant was finally allowed to plead guilty he was released soon afterwards. Before he pleaded guilty, the BOP claimed that he was so dangerous by virtue of the charges against him that he could not be safely allowed to interact with anyone else. Once he pleaded guilty and served a few more months in jail, the government was willing to release him. This case and many others like it reflect the hypocrisy and unfairness of the government in falsely claiming that a defendant is dangerous based on the charges alone. The purpose of solitary confinement was obviously to pressure the defendant into cooperating or pleading guilty to a charge that the government was not prepared to prove.

The problems of preparing a defense are multiplied when the defendant is placed under Special Administrative Measures, or SAMs. SAMs were originally created to prevent organized crime figures from running their crime empires from jail, or from threatening witnesses not to testify; the SAMs were focused on specific security restrictions and were no more restrictive than necessary to meet the specific dangers presented. Today SAMs have evolved into a system to subvert the defense. Typically SAMs now require that people who have spoken to the defendant are prohibited from speaking to other people about the conversation – including the defendant's own lawyer. If the defendant's family becomes concerned about the defendant's mental condition, they cannot speak about it to the lawyer. If lawyers want to talk to witnesses they cannot refer to things which the defendant has told them. After consulting with the client the lawyer cannot even communicate information to members of the defense team. SAMs destroys zealous representation and the trust between attorney and client. How can a client have any trust in a lawyer who is so restricted and controlled by the prosecution that if the lawyer says publicly anything of which the client spoke, the lawyer can be prosecuted and given a long jail sentence? (See *US v. Lynne Stewart* for an example of a lawyer who made one public statement about a conversation with a client who was under SAMs, and was given a 10 year jail sentence.)

2. Post-trial Solitary Confinement – Supermax and CMUs

After trial defendants can be given years in jail in solitary confinement. Although the decision as to whether the defendant must serve the sentence in solitary is one of the most important aspects of the sentence, the courts have no control over it. Only the BOP decides where a sentence will be served, and if it will be served in a supermax or other prison where solitary is the norm. It is astonishing that the decision whether a defendant will potentially be tortured for the rest of his life in solitary is completely out of the control of the Courts. NCPCF believes that prolonged solitary confinement should be abolished in all its forms, but that if any solitary confinement issues remain, it should be imposed only on approval of the courts after a full due process hearing at which all sides can be heard. Allowing the BOP and the Department of Justice to determine whether prisoners should serve their sentence under solitary confinement gives the prosecution an enormously unfair advantage and a method of pressuring defendants into pleading guilty, or giving false testimony to escape the torture of solitary confinement.

In December 2006, the Bush Administration quietly opened a special prison in Terre Haute Indiana, designed primarily for Muslim prisoners. Called a Communication Management Unit, or CMU, this predominantly Muslim prison was designed to restrict communication between the inmates and the outside world in what might be described as a collective or group solitary confinement. The BOP opened the prison without complying with legal requirements, and in 2010, in *Aref et al. v. Holder et. al.* some inmates sue to close the CMU because it was illegally opened. In March 2011, a judge permitted the case to go to trial on a number of due process issues. A trial date is expected soon.

There are now two CMU – one at Terre Haute Indiana and one at Marion Illinois. The prisons were apparently designed to prevent prisoners who have ideologies abhorrent to the government from allowing their ideas to disseminate throughout the prison system and the general public. In fact, however, the restrictions on communications seem more designed to prevent the prisoners from demonstrating the unfairness of their convictions and their unjust treatment by the government. The restriction on communication puts a tremendous burden on their families. Moreover, placing both prisons in the middle of the United States, make it very difficult for families from the coasts of the US to visit their loved ones. A round trip by car from the coast can require as much as a week.

The two CMUs in some ways resemble the prison at Guantanamo Bay Cuba. At Guantanamo hundreds of Muslim prisoners were incarcerated for years under conditions amounting to torture although it is now known that approximately 80% of the prisoners there were innocent and the government knew that they were innocent. In the same way, the CMUs now houses hundreds of Muslim prisoners most of whom are innocent or grossly overcharged. Like the Guantanamo prison, the primary purpose of the CMUs seems to be to harass and abuse the prisoners over their Muslim faith. For example, although the two CMU have a majority of prisoners who are Muslim, the CMUs refuse to serve the inmates halal (or religiously correct) meals. In other prisons, other faiths receive meals appropriate for their religious beliefs, but in a CMU in a prison of mostly Muslim, religiously correct meals are not available!

Marion CMU prisoners have complained that the guards refuse to allow the prisoners to pray together although that is a basic requirement of Islam; Muslims can congregate together for other activities but not prayer. Other faiths can pray together; only Muslims cannot pray together. The prisoners have reported to us that the guards routinely show disrespect for the Muslims and their faith by regularly throwing the holy Koran on the floor, and by making insulting comments about the Prophet Mohammed and Islam. The guards will not make accommodations for Muslim who must break their fast only after sundown. Other religions receive accommodations for religious observances but not Muslims. In a prison in which a majority of prisoners are Muslim, there is simply no excuse for such disrespect.

To the extent that the CMU's are America's second ethnic prisons (the first being the internment of the Japanese during world war II), they are a disgrace which flaunt the equal protection clause of the Constitution and the freedom of religion clause of the Bill of Rights. To the extent that they are ideological prisons designed to repress dissidents, they violate the right of people, including prisoners to speak freely. CMUs serve no purpose, and should be closed. They are ideological and racial prisons that perpetuate racism and bigotry in this country

Recommendations

1. Prolonged solitary confinement should be prohibited as torture. Prisoners should not be subjected to solitary confinement for more than 15 days, and only for disciplinary punishment

after following proper due process requirements. High security prisons such as the supermax should no longer use solitary confinement as a standard method of housing inmates.

2. Pre-trial solitary confinement should be prohibited. SAMs should be imposed only by the court after a particularized showing of special circumstances as to why some restrictions of confinement are necessary. The court should be required to impose only the least restrictive conditions that will meet the particular needs proved by the government after a due process hearing. Since the defendant is entitled to the presumption of innocence, little or no weight should be given to the seriousness of the charges. Rather the issue should be what particular facts outside the charges require that restrictions be placed on the confinement of the defendant.

3. Congress should require that the CMUs be closed. Although a court trial is presently being scheduled as to whether the CMUs were illegally constituted, an eventual court decision may be inconclusive or a long way off. Congress should exercise its independent power now to close the two ethnic prisons that serve no purpose other than to allow guards to harass and humiliate Muslims for observing their faith.

4. Protective custody should be imposed only with the consent of the inmate.

Respectfully Submitted,

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National Council of the Churches of Christ in the USA

Written Testimony of the

National Council of the Churches of Christ in the USA

Submitted to the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights

Reassessing Solitary Confinement II: The Human Rights, Public Safety, and Fiscal Consequences

February 25, 2014

The National Council of Churches (NCC) expresses thanks to Chairman Durbin, Ranking Member Cruz, and the members of the subcommittee for convening this important hearing on the brutal and unjust use of solitary confinement in U.S. prisons and for the opportunity to submit written testimony expressing our position.

For more than 63 years the NCC has been the foremost expression of Christian unity in the United States. The NCC speaks with the voice of its 37 member denominations from Protestant, Anglican, Orthodox, Evangelical, historically African American, and Living Peace Church traditions that represent 40 million Christians in over 100,000 congregations. We seek to model unity and work together to promote God's justice, peace, and healing for the world.

Throughout its history, both on its own and with important coalitions such as the National Religious Campaign Against Torture (NRCAT), the NCC has called for an end to injustices apparent in the criminal justice system and sought to promote a vision of the peaceable kingdom and restorative rather than retributive justice. In November 1979 the NCC issued a statement entitled "Challenges to the Injustices of the Criminal Justice System." In this statement the NCC called on "...Christians to seek greater justice where the criminal justice system affects persons accused or convicted of unlawful conduct and to promote and protect a state of justice in society." Additionally, it stated that "(i)nequitable laws and arbitrary applications of law produce gross violations of human rights. Social injustice may be continued or increased by the policy and administration of criminal justice." This statement also applies to solitary confinement when it is administered in a manner that is arbitrary, violates human rights norms, and exacerbates social injustice.

In November 2007, the NCC adopted "A Social Creed for the 21st Century." Part of the creed called for "(a) system of criminal rehabilitation, based on restorative justice and an end to the death penalty." This commitment to rehabilitation and restoration rather than retribution is based on the biblical injunction to forgive and reconcile with others who commit wrong acts, all of whom are fearfully made in the image of God. In God's image humans are created to be in loving and just relationship with God and one another. Solitary confinement prohibits fulfillment of relationships, a way of being established by God. By seeing the image of God in our

relationships with others, even those incarcerated, it becomes immoral to try and kill that image through the mental, physical, and spiritual torture of solitary confinement.

Particularly troubling about the inhumane use of solitary confinement is its use against vulnerable prison populations, including victims of violence, the mentally ill, and women who are pregnant. At no time should a victim, a mentally ill person, or a pregnant woman be placed in solitary confinement. So called "protective" detention only worsens the condition of the mentally ill, degrades pregnant women, and prevents future victims from reporting abuse for fear of being placed in solitary confinement. New methodologies must be developed to protect these populations without recourse to solitary confinement and to treat rather than punish.

This year, the NCC is embarking on a new priority area, mass incarceration. We do so, in part, because people of color suffer disproportionately and unjustly at the hands of a system that protects the privileged dominant culture. Unfortunately, there is a lack of sufficient evidence on the racial makeup of inmates in solitary confinement. Given that people of color are disproportionately represented in prison, it could also be possible that they are disproportionately placed in solitary confinement. Additional studies should be mandated to examine whether solitary confinement is not only an "administrative" tool but a weapon of racial oppression meant to break the soul of an individual with the collateral damage of the trying to break the soul of a people. Moving forward, the NCC will seek ways to expose and begin to dismantle the system of oppression known as mass incarceration and refocus the work of prisons back to rehabilitation and restoration rather than the mere warehousing of undesirables and retribution.

So how can prisons move from just managing the warehousing of inmates to becoming facilities where rehabilitation and restoration can happen? First of all, more resources must be given to providing adequate staffing and access to inmates by mental health professionals. Even if inmates are not suicidal or homicidal, many suffer from depression or anxiety (conditions worsened by solitary confinement) that go untreated. Arguably, most inmates in prison have some type of either mental illness or other emotional issues that require attention as part of the rehabilitation process.

New procedures need to be instituted as well to protect rather than punish victims of abuse at the hands of other inmates or guards, especially in cases where women are the victims given the additional power dynamics between male guard staff and female inmates. Victims must be allowed to have an advocate from outside the prison work on their behalf, provided by the state or federal government if the inmate is destitute.

Congress also bears responsibility for responding to the overuse of solitary confinement. The use of private prisons concerned solely with the bottom line and not with rehabilitating inmates should cease. We ask Congress to allocate the funds necessary to provide adequate staffing and facilities to reduce overcrowding and provide more mental health services. It should also exercise its oversight powers to hold officials accountable for gross violations of human rights such as the overuse of solitary confinement and the punishment of victims of abuse.

While much remains to be done, we are thankful for progress already made in reforming the criminal justice system. The Smarter Sentencing Act sponsored by Senator Durbin and co-

sponsored by Senator Cruz is a good first step. Also, Attorney General Eric Holder's "Smart on Crime" initiative provides much needed progress as well. These measures should be viewed as a beginning point rather than an end. The NCC commits itself to continue to work with Congress and the Administration to alleviate suffering and end the horrible abuse wreaked by solitary confinement. In difficult struggles such as this, we continue to be inspired by Christ's call to show compassion to those who are in prison. We are our sisters and brothers keepers. May we have the grace to recognize the face of Christ and the presence of God even in some of the darkest corners humankind can construct, the solitary confinement cells of our nation's prisons.

Thank you again for this opportunity. May the peace of God be present to each of you and to those who yearn for justice.

Reassessing Solitary Confinement II: The Human Rights, Fiscal and Public Safety Consequences
Testimony Submitted to the Senate Committee on the Judiciary, Subcommittee on the Constitution, Civil Rights and Human Rights
Tuesday, February 25, 2014, 10:00 a.m.

The National Disability Rights Network (NDRN) would like to thank Senators Durbin and Cruz and the Senate Subcommittee on the Constitution, Civil Rights and Human Rights, for again focusing their attention on the human rights issues surrounding solitary confinement. NDRN is the national membership organization for the Protection and Advocacy (P&A) System, the nationwide network of congressionally mandated, legally based disability rights agencies. A P&A agency exists in every U.S. state and territory. P&A agencies have the authority to provide legal representation and other advocacy services, under all federal and state laws, to all people with disabilities.

All P&As maintain a presence in facilities that care for people with disabilities, where they monitor, investigate and attempt to remedy adverse conditions. These facilities include prisons, jails and detention centers. The P&A network is particularly concerned about the routinized placement of individuals with developmental disabilities and mental health issues in solitary confinement, due to the documented negative impact of solitary confinement on these populations. In addition, experts across the board recognize that solitary confinement is an inappropriate penological technique when used with juveniles due to their unique developmental needs,[1] and well as a factor in increasing suicide rates in both juvenile and criminal justice facilities.[2]

While the negative impacts of solitary confinement have been documented, its utility as a method for changing human behavior has been called into question.[3] In addition, states have

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[1] *See* Robert L. Listenbee, Jr., *Report of the Attorney General's Task Force on Children Exposed to Violence* at 178 (Dec. 12, 2012) (indicating the "damaging impact of incarceration on vulnerable children" is most obvious when it involves solitary confinement, and citing a 2002 investigation by the U.S. Department of Justice showing that juveniles experience paranoia, anxiety and depression even after very short periods of isolation).

[2] ACLU National Prison Project, "ACLU Briefing Paper: The Dangerous Overuse of Solitary Confinement in the United States," available at <http://www.aclu.org/files/pdfs/prison/stop_solitary_briefing_paper.pdf>; White T., Schimmel D., Frickey R.: "A Comprehensive Analysis of Suicide in Federal Prisons: A Fifteen-Year Review," J. CORRECT. HEALTH CARE 9: 321-43 (2002).

[3] Chad S. Briggs, et al., *The Effect of Supermaximum Security Prisons on Aggregate Levels of Institutional Violence*, 41 CRIMINOLOGY 1341, 1341-42 (2006).

found successful alternatives to the practice that do not negatively impact public safety and the safety of staff and prisoners.[4]

The P&A network has worked diligently to reduce the use of solitary confinement on people with disabilities and minimize its harmful effects. For example, staff at Disability Rights New Mexico helps inmates file appeals when they are classified as requiring isolation, and advocates to ensure that each prisoner is given notice of what the infraction was that caused them to be in isolation and what the period of isolation should be. In cases when these procedures were not followed, DRNM has successfully advocated for the prisoners to be released from isolation. In another example of P&A work, Disability Rights Network of Pennsylvania has filed a lawsuit against the Pennsylvania Department of Corrections in March 2013 regarding the segregation of prisoners with serious mental illness as well as other mental impairments. *See Disability Rights Network of Pennsylvania v. Wetzel*, Civ. Action No. 1:13-cv-00635-JEJ. Litigants in the case seek to reduce the punitive use of solitary confinement with individuals with serious mental illness, and are demonstrating to the court the harmful impact that this has had on Pennsylvania inmates in the past. The Department of Justice has filed a report in this case indicating that the use of solitary confinement of prisoners with mental illness across Pennsylvania is unconstitutional under the 8th Amendment and in violation of the Americans with Disabilities Act.[5]

As with the *Wetzel* case, P&As will continue to monitor facilities for excessive and inappropriate use of solitary confinement as part of their oversight of facilities in which individuals with disabilities live and to advocate for the use of more appropriate interventions.

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[4] *See, e.g.*, John Buntin, *Exodus: How America's Reddest State – And Its Most Notorious Prison – Became a Model of Corrections Reform*, 23 GOVERNING 20, 27 (2010); Terry A. Kupers, et al., *Beyond Supermax Administration Segregation: Mississippi's Experience Rethinking Prison Classification and Creating Alternative Mental Health Programs*, 36 CRIM. JUST. & BEHAV. 1037, 1041 (2009).

[5] Laura Benshoff, "Federal report condemns use of solitary confinement for mentally ill prisoners in Pennsylvania," Feb. 27, 2014, available at http://www.newsworks.org/index.php/health-science/item/65353-federal-report-condemns-use-of-solitary-confinement-for-mentally-ill-prisoners-in-pa.

NATIONAL
IMMIGRANT
JUSTICE CENTER
A HEARTLAND ALLIANCE PROGRAM

Statement of
Mary Meg McCarthy, Executive Director
Heartland Alliance's National Immigrant Justice Center

Senate Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights, and Human Rights
Hearing on "Reassessing Solitary Confinement II: The Human Rights, Fiscal, and Public Safety Consequences"

February 25, 2014

Chairman Durbin, Ranking Member Cruz, and members of the Subcommittee on the Constitution, Civil Rights, and Human Rights of the Senate Committee on the Judiciary:

Heartland Alliance's National Immigrant Justice Center (NIJC) applauds Senator Richard Durbin for his work to call attention to the important issue of solitary confinement. NIJC submitted testimony for the first congressional hearing on solitary confinement held by this Subcommittee on June 19, 2012.[1] While some important changes have occurred since that time, many of the problems we documented in our original testimony continue to exist in immigration detention facilities across the country.

NIJC is a non-governmental organization (NGO) dedicated to safeguarding the rights of noncitizens. With offices in Chicago, Indiana, and Washington, D.C., NIJC advocates for immigrants, refugees, asylum seekers, and victims of human trafficking through direct legal representation, policy reform, impact litigation, and public education. NIJC and its network of 1,500 *pro bono* attorneys provide legal counsel to approximately 10,000 noncitizens annually. NIJC conducts regular visits to jails detaining immigrants to provide "Know Your Rights" presentations. NIJC also works with colleagues across the country providing legal services to detained immigrants.

NIJC has played a major role in advocating for reform of the immigration detention system. As the co-convener of the Department of Homeland Security (DHS)/NGO Enforcement and Detention Working Group, NIJC facilitates advocacy and open dialogue between DHS and human rights organizations, legal aid providers, and immigrant rights groups. With a national membership of more than 100 NGOs, the Working Group advocates for the full protection of internationally recognized human rights, constitutional and statutory due process rights, and humane treatment of noncitizens.

Through our on-the-ground experience, NIJC has seen many instances of the misuse of solitary confinement with regard to immigrants detained in the custody of the DHS, especially among vulnerable individuals such as sexual minorities and those with mental

[1] Available at: http://www.immigrantjustice.org/nijc-testimony-submitted-senate-judiciary-committee-hearing-building-immigration-system-worthy-ameri

illness. We call on Congress to ensure that DHS ends the use of solitary confinement through legally binding detention standards and provide greater transparency and accountability.

I. Solitary Confinement in Immigration Detention

Immigration detention is the fasting growing incarceration system in the United States.[2] Every day, DHS holds an average of 34,000 individuals in immigration detention under a quota established in Congressional appropriations for fiscal year 2010 and renewed annually.[3] Roughly two-thirds of detainees are held in a network of approximately 250 state and local detention facilities, which contract with the U.S. Immigration and Enforcement (ICE) to house immigration detainees.[4] Other detainees are held in dedicated immigration detention facilities operated by ICE or contracted to private prison corporations.[5]

The purpose of immigration detention is not to punish immigrants, but to ensure that they appear for their hearings in immigration court and comply with orders issued by an immigration judge. Many detainees have never been convicted of a crime, and the vast majority pose no threat to public safety. In FY 2013, 41 percent of immigrants detained and deported had no criminal convictions.[6] Among those with a criminal record, 28 percent were for the least serious convictions that are punishable by less than one year, such as possession of fraudulent immigration documents, traffic offenses, and marijuana possession.[7] Despite the fact that immigration detention is not intended to be punitive, immigration detainees are held in jail-like conditions. In NIJC's experience, jail administrators and guards whose expertise and experience is with criminal incarceration, often are not equipped or trained to deal with the detained immigrant population. Solitary confinement too often becomes a default response when facilities are unable to contend with mental illness or psychological trauma among detainees. Individuals who struggle with these issues often include immigrant survivors of violence and persecution. Solitary confinement, often referred to as segregation, refers to a practice in which individuals separated from the general population and are held in total or near-total isolation.

As part of NIJC's 2012 report *Invisible in Isolation: The Use of Segregation and Solitary Confinement in Immigration Detention*,[8] NIJC filed requests under the Freedom of Information Act (FOIA) with 250 immigration detention facilities to gain a better understanding of the scope of use of solitary confinement. DHS provided information showing that at the time, roughly 300

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[2] *See "Lost in Detention,"* PBS Frontline (October 18, 2011), available at: http://www.pbs.org/wgbh/pages/frontline/race-multicultural/lost-in-detention/map-the-u-s-immigration-detention-boom/.

[3] Public Law 111-38: "Department of Homeland Security Appropriations Act, 2010." (123 Stat. 2142; Date 10/28/2009) Text from: U.S. Government Printing Office. Available from: http://www.gpo.gov/fdsys/pkg/PLAW-111publ83/pdf/PLAW-111publ83.pdf.

[4] ICE, "Fact Sheet: Detention Management" (November 2011), *available at* http://www.ice.gov/news/library/factsheets/detention-mgmt.htm.

[5] *Id.* According to ICE, about 3% of detainees are housed in Federal Bureau of Prison (BOP) facilities.

[6] "FY 2013 ICE Immigration Removals." Department of Homeland Security, ERO Annual Report, 2013, pg. 1. Available at: http://www.ice.gov/doclib/about/offices/ero/pdf/2013-ice-immigration-removals.pdf.

[7] Id.

[8] National Immigrant Justice Center, "Invisible in Isolation: The Use of Segregation and Solitary Confinement in Immigration Detention ," Sept. 2012. Available at: https://www.immigrantjustice.org/invisibleinisolation.

immigrants were held in solitary confinement on any given day.[9] Based on NIJC's experiences representing individuals in solitary confinement and responses to the FOIA requests for the solitary confinement policies for immigration detainees at county jails that contract with ICE, we learned that immigrants often are held in cells about the size of a parking spot for 23 hours a day. They have limited access to programming available to detainees held in general population, such as recreation, legal orientation programming, access to phones to contact family members and attorneys, access to law libraries, and visitation.

There are two forms of solitary confinement: administrative and disciplinary segregation. Administrative segregation is a "non-punitive" status to ensure the safety of an individual and/or security of the facility. Also referred to as "protective custody," LGBT immigrant detainees and individuals with medical and mental health conditions are often placed in administrative segregation as a form of protection from or for the general population. Disciplinary segregation is a punitive status that results from a violation of facility rules. Despite the fact that administrative segregation is not supposed to be punitive, it often is indistinguishable from disciplinary segregation. As a result, detainees who suffer abuse or otherwise are particularly vulnerable in the general population often will not raise their concerns with jail officials for fear of being placed in solitary confinement.

II. ICE Segregation Directive & Detention Standards

In September 2013, ICE took a significant step to improve oversight of the use of solitary confinement by issuing a directive titled "Review of the Use of Segregation for ICE Detainees" ("Segregation Directive").[10] This policy directs facility administrators and ICE personnel to notify ICE field office directors whenever detainees are in segregation for a period of 14 out of 21 days, again at 30 days, and at every 30-day interval thereafter. It states that age, physical disability, sexual orientation, gender identity, race, or religion may not provide the sole basis for placing individuals in involuntary segregation, and that detainees must be removed from segregation if it is believed to have caused deterioration in their mental health. Furthermore, facilities may not hold detainees who have been the victim of sexual assault in administrative segregation for more than five days except in unusual circumstances or at the detainees' request. Importantly, the directive explicitly states that solitary confinement should be used only as a last resort. In addition, the directive includes special reporting requirements for detainees with "special vulnerabilities," such as those with mental illness, severe medical illness or disability, pregnant or nursing women, elderly individuals, and those susceptible to harm due to their sexual orientation, gender identity, or because they have been victims of sexual assault.

While the Segregation Directive is a positive step in addressing the misuse of solitary confinement in immigration detention, challenges remain. The directive is not legally

[9] These findings were reported in a front-page article in *The New York Times*. Urbina, I. & C. Rentz. "Immigrants Held in Solitary Cells, Often for Weeks." *New York Times*. Mar. 23, 2013. Available at: http://www.nytimes.com/2013/03/24/us/immigrants-held-in-solitary-cells-often-for-weeks.html?pagewanted=all.

[10] U.S. Immigration and Customs Enforcement, *Review of the Use of Segregation for ICE Detainees*, Directive 11065.1, Sept. 4, 2013. Available at: http://www.ice.gov/doclib/detention-reform/pdf/segregation_directive.pdf.

enforceable and does not place an overall time limit on the use of solitary confinement. It does not prevent individuals from languishing in solitary confinement for stretches of time extending beyond 15 days, the point at which United Nations Special Rapporteur on Torture Juan Mendez has observed, based on scientific studies, that detainees may suffer irreversible damage to their mental health.[11] It likewise provides no oversight by the ICE field office director or headquarters for those in solitary confinement for up to 14 days unless a "special vulnerability" is identified. In addition, the directive does not mandate any mental health checks by specialists prior to placement in segregation or during their stay in solitary. Moreover, the ditective places an over-reliance on ICE to police itself without any accountability to an independent third party.

Finally, despite the new directive, there is a lack of independent oversight of the use of solitary confinement in immigration detention. While the directive permits the DHS Office of Civil Rights and Civil Liberties (CRCL) to participate in ICE meetings where segregation reports to headquarters are reviewed, CRCL is not authorized to use information learned in those meetings for the purposes of a CRCL investigation. Importantly, ICE and CRCL are offices within DHS and no independent entities or objective third parties have any functional oversight role. Allowing third parties to conduct site visits and participate in the oversight committee is critical to creating greater transparency and accountability in immigration detention.

In order to successfully eradicate the misuse of solitary confinement in the immigration detention system, not only must the ICE Segregation Directive be fully and meaningfully implemented, but so too must all other standards governing the detention of immigrants in ICE custody. Currently, ICE detention facilities are subject to the Performance-Based National Detention Standards (PBNDS), which have been amended on two occasions: the original version of the standards was promulgated in 2000, with revisions in 2008 and 2011. While the 2011 PBNDS are not as robust as NIJC would like – and continue to lack oversight and transparency provisions –they are an improvement on previous standards and should apply to all facilities.

III. Senator Blumenthal's (D-CT) Solitary Confinement Amendment to S. 744

Apart from ICE's Segregation Directive, the other significant development for immigration detainees facing solitary confinement was the bi-partisan passage in May 2013 of Senator Richard Blumenthal's (D-CT) amendment to the Senate's immigration reform bill S. 744, the Border Security, Economic Opportunity and Immigration Modernization Act.[12] That amendment categorically prohibits solitary confinement for immigration detainees under the age of 18 and places strict limitations on the length and conditions of solitary confinement for those with serious mental illness. The amendment further requires vigilant medical and mental health monitoring of those in segregation and oversight of solitary confinement practices by the Secretary of Homeland Security. It also included important oversight provisions, requiring an annual report to Congress on the prevalence, reasons for, and

[11] U.S. News Centre, "Solitary confinement should be banned in most cases, UN expert says," Oct. 8, 2011. Available at: https://www.un.org/apps/news/story.asp?NewsID=40097#.UwvPbG3ejoY
[12] Available at: http://www.judiciary.senate.gov/legislation/immigration/amendments/Blumenthal/Blumenthal2-(MDM13517).pdf

duration of solitary confinement. Although S. 744 has not been passed by the House or signed into law, this amendment is a noteworthy accomplishment in that its strong protections received wide bipartisan support and is therefore more likely to be included in any final immigration bill that passes Congress.

IV. Ongoing Human Rights Abuses in Solitary Confinement

While acknowledging that implementation of ICE's Segregation Directive is still in its earliest stages, NIJC reiterates the following key concerns expressed in testimony submitted to this Subcommittee in June 2012, which continue to be reported by individuals in DHS custody:

- **Administrative segregation continues to be used as an improper substitute for mental health and medical treatment.**

  Isolation is sometimes used as a substitute for proper medical treatment; detainees are isolated for observation or to contain the spread of disease. Facilities' medical amenities are often understaffed since an inadequate number of doctors are required to oversee more patients than they can handle. Because facilities often lack the capacity to handle the needs of detainees with mental illness or other medical issues, facility staff may place these individuals in solitary confinement in lieu of providing treatment.

  Solitary confinement is also often used instead of proper mental health services for detainees with severe mental illness and for those who become suicidal as a consequence of their isolation. The Inter-American Commission on Human Rights has held that the use of solitary confinement as part of a person's mental health rehabilitation plan can rise to the level of "inhuman and degrading treatment."[13] The on-site presence of a mental health practitioner such as a psychiatrist or psychologist is not mandated under ICE detention standards, so many facilities rely on off-site facilities and under-qualified on-site personnel to provide such care to detainees. Mental health evaluations of individuals held in segregation are often also extremely limited, at times merely requiring a medical staff member, often a nurse, to confirm the detainee is alive in his or her cell; these check-ins also only occur after the detainee has been in segregation for 30 days.

  Although PBNDS permits the use of solitary confinement for individuals who express suicidal ideations, such a practice is used too frequently and without meaningful consideration of the further consequences that placement in solitary confinement will cause. ICE should consider alternatives to solitary confinement for those who express a desire to hurt themselves. Solitary confinement may further exacerbate suicidal thoughts or psychological ailments. Studies have also shown that solitary confinement can lead to hallucinations, paranoia, memory loss, and random acts of violence and self-harm.

  Detainees in ICE custody may suffer from pre-existing psychological conditions, including issues related to past trauma or persecution, that have not been diagnosed. In detention, their symptoms begin to exhibit more prominently, and lead guards to believe they are lashing out, resulting in placement in solitary. Facilities are not required to have

[13] Inter-American Commission of Human Rights, *Rosario Congo v. Ecuador*, Report 63/99, Case 11.427 of April 13, 1999 at 59; *See also Keenan v. the United Kingdom*, European Court of Human Rights, April 3, 2001, Application No. 27229/95 at 113.

detainees undergo mental health evaluations prior to being placed in solitary, where the symptoms of their psychosis may worsen and continue to go untreated.

> *Samuel (pseudonym), a Jamaican national, came to the attention of an NGO which learned that Samuel was mentally ill and suffered from hallucinations. He had been placed in solitary confinement during the pendency of his immigration proceedings, but due to poor record keeping, his* pro bono *attorney had no idea how long he had been placed in segregation. He consistently begged his attorney to help get him out of solitary confinement, expressing a desire to be placed in the general population where he could have human contact with others; however, he remained detained in solitary confinement for more than four months, during which time his mental health declined substantially and he became incomprehensible. Samuel was finally released after his proceedings were terminated based on incompetence. Since then, Samuel is receiving medical attention for his mental illness and works with a social worker who helped him get into a program. He continues to participate in the program, and is doing much better.*

➢ **LGBT immigrants are inappropriately held in "protective custody."**

Administrative segregation is disproportionately used against the most vulnerable populations in immigration detention, such as LGBT individuals. U.N. Special Rapporteur Méndez noted that "Although segregation of [LGBT] individuals may be necessary for their safety, lesbian, gay, bisexual and transgender status does not justify limitations on… access to recreation, reading materials, legal counsel, or medical doctors."[14] NIJC maintains that if ICE is unable to hold individuals in a safe, humane manner, they should not be detained.

In April 2011, NIJC filed a mass complaint with CRCL on behalf of 13 detained LGBT immigrants who were targeted for physical, sexual, and emotional abuse in immigration detention.[15] In October 2011, four additional ICE detainees joined the civil rights complaint. Many of these individuals were inappropriately held in solitary confinement, often for months at a time without formal determinations of the necessity of solitary confinement and without an appeals process. To date, NIJC has not received a final response from DHS with regard to this complaint.

In NIJC's experience, alternatives to detention (ATDs), such as supervision or ankle bracelet monitors, are often a better arrangement for LGBT individuals and other vulnerable populations. It allows individuals to leave inappropriate housing situations where DHS may not be able to guarantee their safety. This is particularly an issue for transgender detainees, since individuals are not placed according to their self-identified gender. In addition, release on ATDs allows transgender detainees better access to hormone therapy. Other vulnerable populations enjoy increased access to mental health and medical treatment and the support of family members. Moreover, expanded use of ATDs would result in huge cost savings to

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[14] *See* Interim Report of the Special Rapporteur of the Human Rights Council on Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment at 19 (August 5, 2011) (available at: http://solitaryconfinement.org/uploads/SpecRapTortureAug2011.pdf)

[15] *See* http://immigrantjustice.org/sites/immigrantjustice.org/files/CRCL%20Global%20Complaint%20Letter%20April%202011%20FINAL%20REDACTED.pdf

taxpayers. In comparison to the $159 daily cost to detain an individual, ATDs cost as little as 70 cents to $17 per day.[16]

- **Facility officers inappropriately sentence immigrants to disciplinary segregation.**

NIJC continues to receive reports of cases in which individuals were placed in disciplinary segregation as punishment for minor, frivolous infractions. Furthermore, lack of proper investigation by detention officers means individuals sometimes are subjected to disciplinary segregation based on false accusations. Disciplinary segregation also continues to be used to punish individuals who complain or organize to protest harsh detention conditions or otherwise exercise their civil and religious rights.

> *Syed Maaz-Shah is a young Pakistani man. While in detention at Tensas Parish Detention Center (Waterproof, Louisiana), a large group of immigration detainees participated in a hunger strike to protest harsh detention conditions, including being given soiled and/or torn clothing; inadequate food; and exposure to second-hand smoke. Mr. Maaz-Shah calmed his fellow inmates down and encouraged them to engage in peaceful, non-violent hunger strikes rather than participate in a violent protest. Following the hunger strike, Mr. Maaz-Shah was transferred to another facility and placed in solitary confinement for a week. In violation of ICE's Performance-Based National Detention Standards (PBNDS), Mr. Maaz-Shah was never provided with information on why he was being placed in solitary confinement or information on the length of his confinement. In addition, he was not allowed to communicate with his attorney while in solitary. As of the time of writing, Mr. Maaz-Shah received notification that he will be deported on February 24, 2014.*

- **Detainees may be placed in solitary confinement arbitrarily and with no explanation.**

According to PBNDS 2011, individuals who are placed in segregation must be provided with a copy of the segregation order. Detainees should have an understanding of why they have been placed in segregation regardless of the purpose of placement. This is particularly important because detainees placed in administrative segregation, for instance, are given the right to challenge their placement in segregation. Without clarity and transparency, detainees cannot exercise their rights.

> *Charles (pseudonym) spent 41 days—30 of them in lockdown—in solitary confinement at a Federal Bureau of Prisons (BOP) facility in Oakdale, Louisiana with no explanation whatsoever. On his second day in segregation, an officer reviewed his case and said that he would make a recommendation to release him back into the general population, but he was never taken out. While in solitary, Charles was allowed to shower every three days, but was placed in shackles for the duration. When he wasn't in lockdown, he had one hour of recreation time daily. In addition, while in segregation, he was not able to access the law library. The BOP guards would not do anything to address his situation because he was under ICE custody, and responded that it wasn't their problem. Charles sent a letter to DHS complaining about his situation, but never heard back. Eventually, he was transferred to another facility after an NIJC attorney intervened.*

[16] National Immigration Forum. *The Math of Immigration Detention.* Aug. 2013. Available at: http://www.immigrationforum.org/images/uploads/mathofimmigrationdetention.pdf.

IV. Recommendations and Conclusion

ICE detention standards and the Segregation Directive offer only unenforceable guidelines for the operation and oversight of a massive detention system. In order to increase accountability and limit abuse, DHS and Congress must take immediate steps to address the misuse of solitary confinement in immigration detention.

1. Congress should require DHS to implement legally binding regulations to govern the use of solitary confinement and other conditions of confinement for individuals in DHS custody.

2. The 2013 ICE Segregation Directive establishes a Detention Monitoring Council, which is in part responsible for tracking and reporting on the use of solitary confinement for individuals in DHS custody. DHS should publicly report this body's findings at regular intervals. Independent third parties also should also be engaged in the oversight process.

3. DHS should end the use of solitary confinement for individuals with mental health and chronic medical conditions, LGBT detainees, and other vulnerable populations for whom release or alternatives to detention (ATDs) are more appropriate.

4. Solitary confinement should never be used as "protective custody" for transgender individuals. Transgender detainees should not be detained at all except in extraordinary circumstances. Those individuals who are should be housed according to their gender identity rather than their biological sex to ensure they are safe in the general population.

5. To the extent that administrative segregation remains necessary, individuals in that placement should be afforded the rights as other detainees, including equal access to recreational time, medical facilities, and legal orientation programs.

6. DHS should prohibit the use of disciplinary segregation for detainees who have serious mental illnesses and instead provide psychiatric care. If DHS cannot safely hold detainees as part of the general population, then they should release them on ATD programs.

7. DHS should prohibit the use of solitary confinement as punishment for participation in hunger strikes, political speech, or frivolous infractions.

8. DHS should require immigration detention facilities to properly investigate accusations against detainees before placing individuals in disciplinary segregation. DHS must also require facilities to afford detainees the opportunity to confront the evidence against them.

9. Congress should amend the immigration laws that require certain individuals to be held in mandatory detention and permit access custody reviews, including the consideration of ATDs, for individuals who cannot be safely detained with the general population.

10. Congress should increase funding for ATDs in order to facilitate ICE's expanded use of the program.

11. DHS should draw from the New York City Department of Corrections' recent reform efforts,[17] including:
    a. Prohibit the use of disciplinary segregation for detainees with mental illnesses and instead direct them to appropriate psychiatric care.
    b. Provide daily psychiatric monitoring of individuals in solitary confinement licensed medical professionals.
    c. Recognize that counseling services are medically necessary, and offer psychological treatment accordingly.

[17] "Solitary Jailing Curbed: New York City Department of Correction Stops Solitary Confinement for Mentally Ill Inmates Who Break Rules," *Wall Street Journal*, Jan. 5, 2014. Available at: http://online.wsj.com/news/articles/SB10001424052702304617404579302840425910088?mod=rss_newyork_main.

NATIONAL JUVENILE JUSTICE NETWORK

February 24, 2014

Assistant Majority Leader Durbin and Members of the Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights:

On behalf of the National Juvenile Justice Network, I submit the following testimony on the impact of solitary confinement practices on youth. The National Juvenile Justice Network is a membership group of 43 state-based organizations in 33 states across the country, all of whom work to ensure that the policies and practices of our juvenile justice systems are fair, equitable and developmentally appropriate. NJJN is committed to reducing institutionalization and racial disparities, recognizing and serving youth with special needs, and improving the conditions of confinement for detained and incarcerated youth.

Over 70,000 youth are held in juvenile detention facilities on a given day in the United States.[1] In a 2003 survey of youth in placement by the Office of Juvenile Justice and Delinquency Prevention, more than one-third of youth in custody report that they have been placed in isolation, and more than half of those that report being placed in isolation say it was for more than 24 hours.[2] The Department of Justice has opposed this practice, stating that, "isolation of children is dangerous and inconsistent with best practices and that excessive isolation can constitute cruel and unusual punishment."[3]

As the Subcommittee reviews solitary confinement practices in the United States, we appreciate the opportunity to discuss the negative impact these practices have on youth in the juvenile and adult criminal justice systems:

- According to the American Academy of Child and Adolescent Psychiatry, depression, anxiety, and psychosis are recognizable consequences of solitary confinement, and "due to their developmental vulnerability, youth are at particular risk of such adverse reactions."[4] These consequences are particularly severe due to the high rates of mental health problems faced by youth in detention centers. Approximately 65-70

[1] Reducing Youth Incarceration in the United States, Annie E. Casey Foundation (February 2013) available at http://www.aecf.org/~/media/Pubs/Initiatives/KIDS%20COUNT/R/ReducingYouthIncarcerationSnapshot/DataSnapshotYouthIncarceration.pdf

[2] Dep't of Justice Office of Juvenile Justice and Delinquency Prevention, Conditions of Confinement: Findings From the Survey of Youth In Residential Placement (May 2010), available at https://www.ncjrs.gov/pdffiles1/ojjdp/227729.pdf.

[3] Letter from Robert L. Listenbee, Administrator, US Department of Justice, to Jesselyn McCurdy, Senior Legislative Counsel, American Civil Liberties Union 1 (Jul. 5, 2013).

[4] Am. Acad. of Child & Adolescent Psychiatry, Policy Statements: Solitary Confinement of Juvenile Offenders (Apr. 2012).

[5] National Research Council. *Reforming Juvenile Justice: A Developmental Approach.* Washington, DC: The National Academies Press, 2013.

[6] Grassian, Stuart. "Psychiatric Effects of Solitary Confinement." Journal of Law and Policy. (2006): 325-383.

percent of youth in juvenile detention centers have at least one diagnosable mental health disorder, while over 60 percent meet criteria for three or more diagnosable disorders.[5] Solitary confinement aggravates these mental health issues.[6]

- Isolation poses severe safety issues for youth, such as the increased risk of suicide and self-harm. The Department of Justice reports that over 50 percent of all youth suicides in juvenile facilities occur in isolation.[7]
- Solitary confinement denies youth adequate educational opportunities, impacting their development and rehabilitation. Youth in isolation do not attend school, and although some youth may be provided with a packet of written work, their ability to learn the material without teacher interaction or coaching is dramatically impaired.
- In addition to inhibiting the development of youth in custody, isolation may also violate children' rights under federal law. The Individual with Disabilities Education Act (IDEA) and Americans with Disabilities Act (ADA) guarantees appropriate education for children with disabilities.[8] Specifically, Title II of the ADA guarantees that facilities' services, programs, and activities do not discriminate against youth with disabilities.[9] Thus facilities that place youth with disabilities in isolation and then fail to provide them with appropriate educational and other opportunities are in violation of federal law.
- The National Research Council of the National Academies found that "confinement under punitive conditions may increase recidivism."[10] When facilities use the extremely punitive approach of isolation, they are operating in a manner that is actually counterproductive to the goal of improved public safety.

Recent implementation guidelines for the Prison Rape Elimination Act (PREA) regulates the use of isolation by urging facilities to avoid placing youth in confinement and requiring facilities to provide young people in isolation daily large-muscle exercise, legally-mandated special education services, and access to other programs and work opportunities when possible. While individual states have implemented policy changes restricting the use of solitary confinement for youth, no federal law prohibits the use of solitary confinement of youth in juvenile facilities. Isolation is primarily used on youth in four ways:

- Solitary confinement is often used as a disciplinary measure for those who break facility rules. Facility staff may be ill-equipped to deal with behavioral issues and resort to the most restrictive punitive measure possible. In the cases of solitary confinement as a punishment, children are often denied their right to due process as they are unable to appeal their designated punishment.
- Facilities employ isolation as a way to manage youth with special needs or behavioral problems. Staff often place children in isolation to mitigate conflicts with other

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[7] Lindsay M. Hayes, Juvenile Suicide in Confinement: A National Survey, Office of Juvenile Justice and Delinquency Prevention (February 2009).
[8] 20 U.S.C. § 1400(d)(1)(A); 20 U.S.C. § 1415(k); 34 C.F.R. §§ 300.101-102, § 300.324 (d)(1)(i).
[9] Americans with Disabilities Act, Title II, 42 U.S.C. § 12132; *Pa. Dep't of Corr. v. Yeskey*, 524 U.S. 206, 210 (1998); *Lee v. City of Los Angeles*, 250 F.3d 668, 691 (9th Cir. 2001).
[10] Id.; National Research Council, supra, note 5.

children or youth engaging in disruptive behavior. LGBTQ youth are placed in isolation to protect them from increased risk of assault.[11]

- Facilities use isolation to address both physical and mental health needs. Youth may be medically quarantined when entering a facility, although, this practice may not be necessary.[12] Facilities that do not have adequate mental health resources for their youth may place those with more severe issues in isolation, a solution which only aggravates the problem.
- Adult facilities employ solitary confinement to administratively adhere to regulations requiring the "sight and sound" separation of youth and adults. Updated guidelines for the Prison Rape Elimination Act intend to eliminate the use of isolation to separate youth from adults, it is unclear if these policies have been sufficiently implemented.[13]

The horrific impact of the use of isolation on youth can be seen through the following three examples.

1. This past December 2013, the U.S. District Court in New Jersey approved a $400,000 settlement against the New Jersey Juvenile Justice Commission and the former University of Medicine and Dentistry of New Jersey in a civil rights lawsuit filed on behalf of Troy D. and O'Neil S., two youth held in solitary confinement for mental health issues for 178 days and minor behavioral infractions for 55 days, respectively.[14] TD received minimal individual therapy, no group therapy, and was denied the ability to consult with the psychiatrist about his medication despite a diagnosis of serious mental health issues noted during the intake. OS was repeatedly put in isolation for minor behavioral infractions before a due process hearing could be held. Both plaintiffs were frequently isolated for 23 or 24 hours a day and denied bed sheets and clothing, nutrition and medical care, access to education, treatment, or other therapeutic support. Staff threatened to extend their time in solitary confinement if they continued to request mental health care or services.[15]
2. Dayvon Williams of Los Angeles, California was placed in 24-hour solitary confinement for two weeks. While in isolation, he was denied appropriate medication and suffered from multiple epileptic seizures. He states, "I had several epileptic seizures while in solitary because sometimes they didn't bring my medicine on the time it was needed, or several times they didn't bring it at all. Stress is one of the main triggers of my seizures."

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[11] Opening Statement of Senator Dick Durbin, "Reassessing Solitary Confinement: The Human Rights, Fiscal and Public Safety Consequences," Hearing before the Senate Committee on the Judiciary, Subcommittee on the Constitution, Civil Rights and Human Rights, June 19, 2012

[12] Human Rights Watch and the American Civil Liberties Union, *Growing Up Locked Down* October, 2012, https://www.aclu.org/files/assets/us1012webwcover.pdf.

[13] U.S. Department of Justice, *National Standards to Prevent, Detect, and Respond to Prison Rape* 96 (May 16, 2012), *available at* http://www.ojp.usdoj.gov/programs/pdfs/prea_final_rule.pdf.

[14] Juvenile Law Center, "Juvenile Law Center Negotiates Final Settlement of Civil Rights Lawsuit Challenging Solitary Confinement of 2 Boys in Custody of NJ Juvenile Justice Commission," http://www.jlc.org/blog/juvenile-law-center-negotiates-final-settlement-civil-rights-lawsuit-challenging-solitary-confi (accessed Feb. 24, 2014, 7:17 PM).

[15] *Id.*; *T.D. and O.S. v. Mickens et al.*, (D.N.J., Civil Ac. No.1:10-cv-02902-JEI-AMD), Second Amended Complaint (filed Dec. 14, 2011) 1-3.

Dayvon reports that he immediately felt isolated and depressed upon entering isolation. He says that "after a few days in solitary confinement I started to feel like I was going crazy. I started to make up stories and started talking to myself." Guards covered up the only window in the room so that he was denied all external stimuli, and he was never given any reading or writing material. He states, "there were no books or paper to write or anything to address the complete boredom of being in the hole. Only 2 or 3 days would pass by and it felt like a week. I would never know if it was either day or night." Dayvon urges for the elimination of "the cruel punishment of solitary confinement," noting that "it would be much better to spend time in effective programs that focus on helping people to grow and change, than on investing in the torture of isolation."[16]

3. Ted Snyder's son was 15 years old when he was arrested and put into a facility in Los Angeles that placed all youth in solitary confinement. These youth were kept in isolation for 23 ½ hours a day and denied access to education, activities, and the outdoors for months. Mr. Snyder reports, "Within several weeks, many youth began to abuse themselves. Some banged their heads into the cinder block walls. Some cut or scraped deep wound into their arms. A few were said to have attempted suicide." .Mr. Snyder understands that "youth must be held accountable for their actions" but notes that, "all youth deserve to live in humane conditions and to be treated with respect."[17]

The Justice Department has stated that "long periods of isolation have negative and, at times, dangerous consequences for confined youth."[18] We urge the Subcommittee to develop strong standards to end the use of isolation and solitary confinement of youth in all facilities.

Sincerely,

Sarah Bryer

Sarah Bryer
Director, National Juvenile Justice Network

[16] Dayvon Williams. "Testimony on Solitary Confinement before the California Joint Hearing Senate and Assembly Public Safety Committees." (Date: 2/11/2014).
[17] Ted Snyder. "Testimony on Solitary Confinement before the California Joint Hearing Senate and Assembly Public Safety Committees." (Date: 2/11/2014).
[18] U.S. Department of Justice, *National Standards to Prevent, Detect, and Respond to Prison Rape* 96 (May 16, 2012), *available at* http://www.ojp.usdoj.gov/programs/pdfs/prea_final_rule.pdf.

NATIONAL LAWYERS GUILD

"...in the service of the people, to the end that human rights shall be regarded as more sacred than property interests." - Preamble to the NLG Constitution

Written Statement of the National Lawyers Guild

Before the United States Senate Judiciary Subcommittee on

the Constitution, Civil Rights, and Human Rights

Hearing on

REASSESSING SOLITARY CONFINEMENT II:

THE HUMAN RIGHTS, FISCAL, AND PUBLIC SAFETY CONSEQUENCES

Tuesday, February 25, 2014

at 2:30 p.m.

Dear Chairman Durbin, Ranking Member Graham, and Members of the Subcommittee:

The National Lawyers Guild thanks you for once again holding a hearing on the human rights, fiscal, and public safety consequences of solitary confinement.

The National Lawyers Guild (NLG) was founded in 1937 as the nation's first racially integrated voluntary bar association, with a mandate to advocate for the protection of rights granted by the United States Constitution and to defend fundamental human rights. Since then, the Guild has been at the forefront of efforts to develop and ensure respect for the rule of law and basic legal principles. As one of the non-governmental organizations selected to officially represent the American people at the founding of the United Nations in 1945, its members helped to draft the Universal Declaration of Human Rights.

The NLG recognizes that incarceration in the United States has reached epidemic proportions: The U.S. has the highest incarceration rate in the world, with less than 5% of the world's population and more than 25% of the world's prisoners.[1] Even more disturbing is that our criminal justice system disproportionately impacts already vulnerable and marginalized populations including African-Americans and other persons of color, LGBTI persons, immigrants, the poor, and persons with disabilities. Vulnerable groups also disproportionately suffer the torture of solitary confinement, particularly people with mentally illness.

As an organization, the NLG is committed to drawing attention to the systemic abuse of solitary confinement as a routine form of punishment, and the greater system of discriminatory over-incarceration. The NLG has been intimately involved in establishing fair guidelines for people in prison internationally[2] and has worked to defend the rights of incarcerated persons in the U.S.[3], often alongside jailhouse lawyers and hunger strikers within U.S. prisons.[4]

Along with medical experts other leading human rights groups, the NLG views use of solitary confinement in U.S. prisons, and around the world, as cruel, inhumane, and counterproductive. This statement outlines just a few of the ways in which the widespread use of solitary confinement undermines the most fundamental principles of our democracy.

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[1] Adam Liptak, *U.S. prison population dwarfs that of other nations* THE NEW YORK TIMES (April 28, 2012). http://www.nytimes.com/2008/04/23/world/americas/23iht-23prison.12253738.html?pagewanted=all

[2] For nearly two decades, the NLG has joined with the World Organization Against Torture to express concern about such conditions that violate guidelines for treatment set in the International Covenant on Civil and Political Rights as well as the UN Standard Minimum Rules for the Treatment of Prisoners.

[3] The NLG's Prison Law Project (PLP) receives hundreds of letters weekly from incarcerated people detailing inhumane conditions such as lack of health care and abuse by correctional officers. With the Center for Constitutional Rights (CCR), we publish the *Jailhouse Lawyer's Handbook*, a resource for people filing Section 1983 claims in federal court alleging violations of their constitutional rights in prison. With CCR, we send the *Handbook* to 700-800 inmates per month, in response to those who request it. This remains one of the few sources of free legal advice available to people in prison around the country. The letters we receive tell all-too-familiar narratives of the carceral state.

[4] Recently, the NLG has called for support of hunger strikers at Pelican Bay State Prison (Crescent City, California), Menard Correctional Center (Menard, Illinois), and Guantanamo detention camp.

A. Solitary Confinement is Torture and Inconsistent with Constitutional and Democratic Principles

"Solitary confinement" is an umbrella term that refers to a range of practices in prisons where people are isolated in closed cells for 22-24 hours a day, with limited human contact, for anywhere from a few days to several decades.[5] It is a practice that exists in some form in almost every jail, state prison, and federal prison in the country. It often includes further privations, such as limited exercise and showers, absence of natural light, and limited or eliminated privileges such as the phone, mail, commissary, education and drug treatment programming, and work duties. It may be imposed for purely punitive reasons or it may be imposed under the guise of necessary segregation or even protection.[6] Whatever form the practice takes, it is clear that the isolation that accompanies solitary confinement has severe physiological and physical effects, sometimes even leading to death.[7] Even our own Supreme Court recognized as early as 1890 that isolation has devastating effects on people in prison.[8]

Furthermore, Juan Méndez, UN Special Rapporteur on Torture and Other Cruel, Inhuman and Degrading Treatment, declared in August 2011 that even after just 15 days, solitary confinement amounts to torture; furthermore, any time served in isolation exceeding 15 days has serious and often permanent psychological and physical effects.[9]

Solitary confinement practices in our country amount to torture with alarming frequency. Most prisoners' time in isolation far exceeds Méndez's 15-day limit.[10] The decision to place a person in isolation is often made arbitrarily, with discretion vested solely in the hands of a single corrections officer acting with impunity.[11]

In a humane system of criminal justice, there would be a minimal to non-existent role for solitary confinement. Instead, this practice has reached epidemic proportions. As Senator Patrick Leahy stated at the first Judiciary Subcommittee on solitary confinement on June 19, 2012, "Although solitary confinement was developed as a method for handling highly dangerous

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[5] Sal Rodriguez, *Solitary Confinement FAQ*, SOLITARY WATCH, http://solitarywatch.com/facts/faq/ (last visited (Feb. 22, 2014).
[6] Joseph Stromberg, *The Science of Solitary Confinement*, SMITHSONIAN.COM (Feb. 19, 2014), http://www.smithsonianmag.com/science-nature/science-solitary-confinement-180949793.
[7] Kaba, Lewis, Glowa-Kollisch, et.al., *Solitary Confinement and Risk of Self Harm*, AM. J. OF PUB. HEALTH, Vol. 104, No. 3 (March 2014) (finding that in New York City's jails, over 50% of acts of self-harm occurred among jail inmates in solitary confinement, even though that group constituted only 7% of the jail population).
[8] *In re Medley*, 134 U.S. 160, 167 (1890) ("A considerable number of the prisoners fell, after even a short confinement, into a semi-fatuous condition, from which it was next to impossible to arouse them, and others became violently insane; others still, committed suicide; while those who stood the ordeal better were not generally reformed, and in most cases did not recover sufficient mental activity to be of any subsequent service to the community.").
[9] Press Release, California Jails: "Solitary confinement can amount to cruel punishment, even torture" - UN rights expert, United Nations Office of the High Commissioner for Human Rights (Aug. 23, 2013), *available at* http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13655. (urging the U.S. to abolish the use of prolonged solitary confinement in the midst of the Pelican Bay hunger strike).
[10] Sal Rodriguez, *Solitary Confinement FAQ, "How Long Do People Spend in Solitary Confinement?*, SOLITARY WATCH, http://solitarywatch.com/facts/faq/ (last visited (Feb. 22, 2014).
[11] Alex Friedman, *Solitary Confinement Subject of Unprecedented Congressional Hearing*, PRISON LEGAL NEWS, https://www.prisonlegalnews.org/24706_displayArticle.aspx (last visited Feb. 22, 2014).

prisoners, it is increasingly being used with inmates who do not pose a threat to staff or other inmates."[12]

Solitary confinement is especially damaging to individuals with mental illness. Experts estimate that one third of people in solitary have a mental illness.[13] The American Psychiatric Association recognizes the danger to people with serious mental illness, and the American Bar Association's *Standards for Criminal Justice, Treatment of Prisoners* places strict limits on the permissible amount of time in solitary for the mentally ill.[14] Even those who do not enter isolation with a mental illness are apt to develop one because of the trauma solitary confinement inflicts upon the human psyche.

Psychiatrist and expert on solitary confinement Dr. Stuart Grassian, contends that solitary confinement produces a unique disorder. The colloquial term "special housing unit syndrome" or "SHU syndrome" refers to the symptoms experienced by many people who have been held in isolation.[15] Dr. Grassian describes the syndrome as including visual and auditory hallucinations, hypersensitivity to noise and touch, insomnia and paranoia, uncontrollable feelings of rage and fear, distortions of time and perception, and increased risk of suicide.[16] Dr. Grassian notes that

> "[T]hese symptoms were very dramatic. Moreover, they appeared to form a discreet syndrome – that is, a constellation of symptoms occurring together and with a characteristic course over time, thus suggestive of a discreet illness. Moreover, *this syndrome was strikingly unique; some of the symptoms described above are found in virtually no other psychiatric illness*" (emphasis added).[17]

People in solitary confinement are frequently deprived of all social interaction, situational stimulation, education, vocational improvement, and any opportunities for rehabilitation. Once a prisoner leaves solitary confinement and reenters society, they face what psychiatrist Terry Kupers of the Wright Institute calls "the decimation of life skills" which "destroys one's capacity to relate socially, to work, to play, to hold a job or enjoy life."[18] It therefore comes as no surprise

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[12] Subcomm. on the Constitution, Civil Rights and Human Rights, *Reassessing Solitary Confinements: The Human Rights, Fiscal, and Public Safety Consequences*, S. JUD. COMM. (Jun. 19, 2012, 10:00 AM), http://www.judiciary.senate.gov/hearings/hearing.cfm?id=6517e7d97c06eac4ce9f60b09625ebe8.

[13] Joseph Stromberg, *The Science of Solitary Confinement*, SMITHSONIAN.COM (Feb. 19, 2014), http://www.smithsonianmag.com/science-nature/science-solitary-confinement-180949793.

[14] American Psychiatric Association, *Position Statement on Segregation of Prisoners with Mental Illness*, (Approved December 2012), *available at* http://www.dhcs.ca.gov/services/MH/Documents/2013_04_AC_06c_APA_ps2012_PrizSeg.pdf (last visited Feb. 24, 2014). American Bar Association, *Criminal Justice Standards on the Treatment of Prisoners* (Approved by ABA House of Delegates, Feb. 2010), *available at* http://www.americanbar.org/publications/criminal_justice_section_archive/crimjust_standards_treatmentprisoners.html.

[15] *Solitary Confinement Facts*, AM. FRIENDS SERV. COMM., https://afsc.org/resource/solitary-confinement-facts (last visited Feb. 22, 2014).

[16] Stuart Grassian, *Psychopathological Effects of Solitary Confinement*, 140 AM. J. PSYCHIATRY 1450-1454 (1983). Stuart Grassian & Nancy Friedman, *Effects of Sensory Deprivation in Psychiatric Seclusion and Solitary Confinement*, 9 INTER'L J. L. & PSYCHIATRY 49-65 (1986).

[17] Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 J.L. & POL. 325, 337 (2006), *available at* http://law.wustl.edu/journal/22/p325grassian.pdf (last visited Feb. 22, 2014).

[18] Dr. Kupers is another psychiatrist whose work documents the deterioration of previously healthy individuals after the torture of solitary. *See, e.g.* THE ROUTLEDGE HANDBOOK OF INTERNATIONAL CRIME AND JUSTICE STUDIES, 213-232 (Bruce Arrigo & Heather Bersot, ed., 2013) (chapter 10 by Dr. Kupers describes the inefficacy of solitary confinement). This quote is from Brandon Keim, *The Horrible Psychology of Solitary Confinement*, WIRED (Jun. 10, 2013, 4:10 PM), http://www.wired.com/wiredscience/2013/07/solitary-confinement-2/.

that although only 5-8% of prisoners are housed in long-term solitary confinement in the United States, 50% of all suicides in prison occur there.[19]
The United States fails miserably in respecting the basic human rights of the people it incarcerates, while the rest of the industrialized world condemns solitary confinement and the UN declares that it often amounts to torture and should be banned in most cases.[20] A nation that proclaims to be a stalwart of democracy, freedom, and justice should not have the highest per capita incarceration rate in the world, let alone more prisoners in solitary confinement that any other democratic nation.[21]

Solitary confinement is torture, in violation of domestic and international law. [22]

B. Solitary Confinement's Social and Financial Cost to Society is Unacceptably High

The National Lawyers Guild strongly urges that the issue of solitary confinement involves some moral questions where cost-benefit analyses are inappropriate. In other words, were solitary confinement practices remarkably cheap and effective at ending prisoner-on-prisoner and prisoner-on-guard violence altogether, the practice's violation of human rights and international law would still render its use unacceptable. However, even supporters of solitary confinement practices must recognize that they are extremely costly at every level and fail to reduce the incidence of violence in prison.

Administrators at prisons have acknowledged that over-use of solitary confinement in the state of Mississippi, for example, resulted in an increase in violence in the facilities. Officials found that they could save millions of dollars by reducing the use of solitary confinement while also yielding a 70 percent reduction in violence in the facility.[23]

Recidivism rates are also impacted by the use of solitary confinement. Solitary confinement may increase recidivism rates of those persons subjected to it.[24] Research in California suggests that recidivism for prisoners subjected to solitary confinement is as much as 20% higher than those held in the general population.[25] In Colorado, data suggests that prisoners released directly from

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[19] Shawn R. Griffith, *Solitary Confinement in Jails and Prisons*, CRIME MAGAZINE (Aug. 8, 2013) http://www.crimemagazine.com/solitary-confinement-jails-and-prisons.
[20] *Solitary confinement should be banned in most cases, UN expert says*, UN NEWS CTR., https://www.un.org/apps/news/story.asp?NewsID=40097 (last visited Feb. 22, 2014).
[21] Press Release, Sen. Dick Durbin, Durbin Chairs First-Ever Congressional Hearing on Solitary Confinement (June 19, 2012), *available at* http://www.durbin.senate.gov/public/index.cfm/pressreleases?ID=7d4f1128-4d15-4112-aa48-5315cb395142.
[22] Christy Carnegie, et al., *Buried Alive: Solitary Confinement in the US Detention System*, PHYSICIANS FOR HUMAN RIGHTS (April 2013), http://physiciansforhumanrights.org/library/reports/buried-alive-solitary-confinement-in-the-us-detention-system.html (last visited Feb. 22, 2014).
[23] N.M. Ctr. on L. & Poverty & ACLU of N.M., *Inside the Box: The Real Costs of Solitary Confinement in New Mexico's Prisons and Jails* (Oct. 2013, at 9), *available at* http://nmpovertylaw.org/WP-nmclp/wordpress/WP-nmclp/wordpress/wp-content/uploads/2013/10/Solitary_Confinement_Report_FINALsmallpdf.com_.pdf (last visited Feb. 24, 2014).
[24] Browne, Angela, et al., *Prisons Within Prisons: The Use of Segregation in the United States*, 24:1 FED. SENT'G REP. (Oct. 2011), *available at* http://www.vera.org/files/FSR-Editors-Observations-Sentencing-Within-Sentencing-October-2011.pdf (last visited Feb. 22, 2014).
[25] ACLU Nat'l Prison Project, *ACLU Briefing Paper: The Dangerous Use of Solitary Confinement in the United States*, at 8, *available at* https://www.aclu.org/files/assets/stop_solitary_briefing_paper.pdf (last visited Feb. 22, 2014).

solitary confinement returned to prison within three years, while those who transitioned from solitary to general population had a 6% reduction in their comparative recidivism rate.[26]

Research conducted on the effects of supermax prisons—super-maximum security prisons designed for primarily solitary confinement—further emphasize this fact. According to criminologist Hans Toch, "Supermax prisons may turn out to be the crucibles and breeding grounds of violent recidivism. ... [Prisoners] may become 'the worst of the worst' because they have been dealt with as such."[27] A 2007 study by researchers at the University of Washington found that prisoners released from supermax prisons into their communities committed new crimes sooner than prisoners who had been transferred first into the general prison population before reentering society.[28]

Evan Ebel, the man accused of shooting to death Tom Clements, former director of the Colorado Department of Corrections, was released directly to the community from solitary confinement. Mr. Ebel served an eight year prison term with much of his time in solitary confinement. In March 2011, Mr. Ebel's father, a lawyer, testified before a committee of the Colorado Legislature about solitary confinement, saying that during visits, his son "has a high level of paranoia and [is] extremely anxious. . . . He is so agitated that it will take an hour to an hour-and-a-half before we can actually talk," further noting that this behavior was uncharacteristic of his son prior to his confinement in isolation.[29] Solitary confinement could not be said to be the cause of Mr. Clements' death; however, from all that is known about Mr. Ebel, it played a role.

In the overuse of solitary confinement, people are suffering lifelong damage that they take home with them to their families, friends, and communities. Ninety-five percent of all people in prison are eventually released back into the public, rarely with any form of treatment or therapy that would ease the shock and facilitate the transition of returning to one's "normal" life.[30] This practice not only robs the community of the potential productive contributions of the formerly incarcerated, it introduces a risk to communities that, in most cases, is completely manufactured by the very practice designed as a protective mechanism.

The fiscal irresponsibility of solitary confinement should not go unremarked. The cost of housing people in supermax prisons can average three times the cost of housing them in general population. In general, people in solitary confinement must be escorted by at least two officers whenever they leave their cells. Work usually performed by prisoners must be taken over by paid personnel. As the length of time in solitary increases, in some cases to months and even years, so does the cost per person. Obviously, with an increase in the number of people housed in solitary confinement, so too does the overall cost rise.

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[26] *Ibid.*
[27] Pat Nolan, *Years in Solitary: Is It Justified? Does It Make Us Safer?*, JUSTICE FELLOWSHIP (Sep. 16, 2013), http://www.justicefellowship.org/content/years-solitary-it-justified-does-it-make-us-safer.
[28] Kirsten Weir, *Alone, in 'the hole,'* 43:5 AM. PSYCHOL. ASS'N 54 (MAY 2012), *available at* http://www.apa.org/monitor/2012/05/solitary.aspx (last visited Feb. 22, 2014).
[29] Brad Knickerbocker, *Colorado Shooting Suspect Evan Ebel had a Streak of Cruelty and Anger*, CHRISTIAN SCIENCE MONITOR (Mar. 24, 2013), http://www.csmonitor.com/USA/2013/0324/Colorado-shooting-suspect-Evan-Ebel-had-a-streak-of-cruelty-and-anger.
[30] Lisa Guenther, *The Living Death of Solitary Confinement*, THE NEW YORK TIMES (Aug. 26, 2012, 5:00 PM), http://opinionator.blogs.nytimes.com/2012/08/26/the-living-death-of-solitary-confinement/

Not only is solitary confinement a human rights crisis in this country, it does not work to maintain order in jails and prisons, it exacerbates recidivism, and it increases the costs of incarceration.

C. Alternatives to Solitary Confinement and Other Reforms Must be Implemented

This body and all authorities of the U.S. criminal justice system must reconsider solitary confinement within the framework of mass incarceration. The National Lawyers Guild is gratified that the Senate is taking up the important issue of solitary confinement; however, policymakers should recognize that this issue represents one small segment within the grossly problematic U.S. criminal "justice" system. Solitary confinement magnifies and exacerbates many of the problems of over-incarceration, but these problems will not be eliminated merely by reducing the use of isolation in prisons.

Since the 1970s, the goal of rehabilitation has taken a backseat in our penal system—prison populations have exploded[31] while programs aimed at rehabilitation and restorative justice were replaced by a relentless emphasis on incarceration and punishment.[32] The crisis of solitary confinement arises from many years of misbegotten policy, including the bipartisan "War on Drugs" and other "tough on crime" policies that disproportionately affect poor black communities and other marginalized groups.[33]

This crisis is rooted in our nation's legacy of racial discrimination and oppression. Michelle Alexander is the most recent writer to compare our penal system to the Jim Crow South.[34] The nearly limitless discretion afforded to police officers, prosecutors, corrections officers, and parole boards permits bias and other illegitimate considerations to infect their decision-making.[35] Additionally, conditions in prisons are worse than ever[36], and the strictures of the Prison Litigation Reform Act prevent people in prison from bringing suit in the courts.

Congress should take note that our penal system is creating a burgeoning underclass of incarcerated and formerly-incarcerated people unable to obtain employment or vote, often damaged by mental illness or addiction but lacking meaningful treatment.[37] That this predicament is disproportionately suffered by racial minorities, particularly African-Americans but also the poor, LGBTI persons, immigrants, and disabled people, is unacceptable.

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[31] E. Ann Carson & William J. Sabol, Bureau of Statistics, U.S. Dep't of Justice, NCJ 239808, Prisoners in 2011, at 6 tbl.6 (2012), available at http://www.bjs.gov/content/pub/pdf/p11.pdf.
[32] Michelle Alexander, THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS, The New Press (2010).
[33] Id. at 63-71; see also, Jamie Fellner, "Race, Drugs, and Law Enforcement in the United States, "20 Stan. L. & Pol'y Rev. 257, 269-70 (2009) (discussing greater black arrest/incarceration rates for drug crimes even though whites commit drug crimes in greater numbers).
[34] Alexander, *supra*.
[35] See William J. Stuntz, THE COLLAPSE OF AMERICAN CRIMINAL JUSTICE, Belknap Press (2011) (discussing how too much discretion for prosecutors has had a negative impact on the criminal justice system); see also, Anthony G. Greenwald & Linda Hamilton Krieger, "Implicit Bias: Scientific Foundations," 94 Calif. L. Rev. 945, 966 (2006) (discussing the way unconscious or implicit bias may motivate individuals).
[36] See, e.g. Brown v. Plata, 131 S. Ct. 1910 (2011) (Supreme Court's affirmation of order to reduce prison population in California because of inadequate health care).
[37] *See*, e.g., Edward E. Rhine & Anthony C. Thompson, "The Reentry Movement in Corrections: Resiliency, Fragility and Prospects," 47 No. 2 Crim. Law. Bulletin Art. 1 (Spring 2011) (Section III(A) catalogues challenges faced by people upon their release from prison.)

Solitary confinement will be an obsolete and wholly unnecessary practice when our government dedicates itself to eliminating racism from the criminal justice system and places more emphasis on rehabilitation, treatment for addiction, safe and effective reentry, and helping with housing and employment.

Congress has at its disposal many tools to control and ultimately eliminate the destructive practice of solitary confinement. As concrete first steps supported by a broad and interdisciplinary group, the NLG calls for the following:

Congressional support for increased federal oversight, monitoring, and transparency in to solitary confinement practices conducted by local and state facilities. The impacts of solitary confinement are in some ways masked due to the lack of data regarding who and for what reasons an individual is placed in solitary confinement. Data collection would help clarify the magnitude of the problem and minimize the extreme overuse of isolation. Further, funding dedicated to the exploration and implementation of alternatives to solitary confinement will allow prison administrators necessary tools for prison management without the unacceptable cost of human integrity and dignity.

Solitary confinement is used rampantly throughout the federal prison system. The Federal Bureau of Prisons (BOP) uses solitary confinement for punishment and in excess of international norms. Congress must require the BOP to reform their use of solitary confinement and put an end to this barbaric practice. Specifically,

- The BOP must change its policies on solitary confinement to conform to standards created by expert organizations, such as those developed by the American Bar Association.
- The BOP must also implement and execute policies that end the use of solitary confinement against vulnerable populations such as juveniles and people with mental illness. "No prisoner diagnosed with serious mental illness should be placed in long-term segregated housing" and no prisoner should be held in solitary for more than one day without a thorough mental health evaluation.[38]
- The BOP must close supermax facilities and refrain from establishing new ones.

Congress has the duty to ensure that the United States engages with the international community to reform its use of solitary confinement such that is in line with the obligations and expectations of a democratic nation.

Finally, Congress must support administrative rulemaking to minimize the use of solitary confinement in facilities across the country. Directing the Department of Justice to establish

[38] American Bar Association, *Criminal Justice Standards on the Treatment of Prisoners* (Approved by ABA House of Delegates, Feb. 2010), *available at* http://www.americanbar.org/publications/criminal_justice_section_archive/crimjust_standards_treatmentprisoners.html. *See specifically* "Standard 23-2.8 Segregated housing and mental health."

administrative rules that drastically reduce the use of solitary confinement will limit the abuses suffered by those currently in prisons and jails.

The National Lawyers Guild commends the Subcommittee for taking up the important issue of solitary confinement in the United States, and we hope that this will mark the beginning of desperately needed criminal justice reform.

Statement by:
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Prepared for:
SENATE COMMITTEE ON THE JUDICIARY
Subcommittee on the Constitution, Civil Rights, and Human Rights

Concerning the Hearing:
"REASSESSING SOLITARY CONFINEMENT II: THE HUMAN RIGHTS, FISCAL, AND PUBLIC SAFETY CONSEQUENCES," Tuesday, February 25th

Drafted on:
February 21, 2014

Chairman Durbin, Ranking Member Cruz, and distinguished members of the Subcommittee, it is both my privilege and my duty as an organizer on the issue of solitary confinement to address you with a message of gratitude and of urgent concern.

I am deeply thankful for your willingness to examine again the practice of prisoner isolation. I commend you all for this timely investigation, and I do so as a witness to the dozens of testimonies and letters I have read from prisoners housed in isolation in New Jersey. My gratitude is bolstered by my confidence that you will consider the surfeit of evidence that indicts this method of confinement as both wasteful and harmful at every level. Briefly, I distill this evidence into three key points:

1. Solitary Confinement is Inhumane
2. Solitary Confinement is Unnecessary
3. Solitary Confinement is Dangerous

1. SOLITARY CONFINEMENT IS INHUMANE

Irrespective to its various titles—special housing units, administrative segregation, disciplinary segregation, prisoner isolation, room restriction, close custody, protective custody, etc.—solitary confinement refers to the practice of isolating prisoners from contact with other humans, often in a closet-sized, windowless, concrete cell for an average of 23 hours a day. Access to education, religious services, health care, sufficient nutrition and hygiene, and employment is limited or restricted. Furthermore, many state administrative codes and inmate handbooks do not outline clear procedures for requesting and obtaining a housing reclassification, and the levels of monitoring and facility oversight have been dismally insufficient.[1] In short, despite arguments to the contrary, the practice of solitary confinement has earned and continues to live up to its two infamous epithets, "the box" and "the hole."

It might be tempting to assume that this practice is reserved for inmates who are especially dangerous or violent. Empirical research consistently suggests otherwise—that housing classifications tend to be based on arbitrary or politically motivated decisions;[ii] that racial profiling and harassment often weigh heavily in housing determinations;[iii] and that is it commonly the most "vulnerable" populations that are isolated in these torturous confines.[iv]

The use of the word "torture" to describe solitary confinement is fitting. In 2011 the U.N. Special Rapporteur on Torture concluded that this practice, especially in its prolonged and excessive use, can qualify as a method of torture.[v] For those who have suffered such trauma, sometimes over stretches of weeks, months, and years, no formal statements by national or international bodies are necessary to prove this distinction. Routinely I receive and read letters from inmates in New Jersey administrative segregation units that describe in graphic detail the mental and social deterioration engendered by conditions of isolation, sensory deprivation, and sub-human living environs.[vi]

2. SOLITARY CONFINEMENT IS UNNECESSARY

Not only is solitary confinement inhumane, tantamount to torture, but it is also avoidable, costly, and discordant with sound correctional praxis.

The 2013 report by the Government Accountability Office found that the fiscal cost of segregated housing units amounted, on average, to nearly double the cost per capita for other inmates in general population; in some facilities the proportional disparity reached closer to 3:1.[vii] One investigation by the New York Civil Liberties Union found that the annual operational costs of "Special Housing Units" in just two state prisons totaled approximately $76 million.[viii]

Scholar Lorna A. Rhodes suggests that the primary reason for the continued buildup of supermax (solitary confinement) facilities despite their enormous costs is their effectiveness in utilizing "new forms of intensive surveillance" for the absolute technological and physical control of prisoners' bodies.[ix] This commitment to more sophisticated forms of institutional surveillance stands in stark contradiction to the poorly maintained and meagerly monitored cells described ubiquitously by their inhabitants.

Regardless of the justifications for the frenetic growth in the use of solitary cells and supermax facilities, one thing remains clear: it has not proven useful for achieving correctional goals. Criminology theorists Heather Bersot and Bruce Arrigo challenge us to weigh correctional practice according to the ethical principles of commonsense justice, therapeutic jurisprudence, and restorative justice, concluding that solitary confinement is found wanting in each and every category.[x]

Moreover, in contrast to the institutional justifications set forth for prolonged isolation, alternative and humane correctional practices are both more cost-efficient and more effective for achieving institutional safety and behavioral rehabilitation. From developing specialized programming for mentally ill inmates in Mississippi,[xi] to the use of housing

alternatives for sexually and gender non-conforming inmates in California,[xii] to reviews and revisions considered in the classification and due process recourses for inmates in Maine[xiii] and Colorado.[xiv]

3. SOLITARY CONFINEMENT IS DANGEROUS

Supplementing this glut of evidence that exposes solitary confinement as inhumane and unnecessary, I am suggesting that this correctional practice is also actively endangering the American public. This argument rests on at least two points: its immediate danger to public safety and its clear threat to the undermining of the values of morality and justice.

First, contrary to popular myth, inmates are frequently released directly from long-term isolation to the streets outside. Countless reports detail the exceptionally difficult transition these inmates experience, linking solitary confinement directly to elevated recidivism rates.[xv]

Second, research suggests that institutional and societal violence are amplified, not limited, by housing violent offenders in extreme punitive conditions.[xvi] This phenomenon has even led some researchers to indict the entire philosophy of supermax-style housing as "a self-fulfilling prophecy."[xvii] Describing solitary confinement's impact on public safety at large, psychiatrist Stuart Grassian provides a poignant analogy:

> *It's kind of like kicking and beating a dog and keeping it in a cage until it gets crazy and vicious and wild as it can possibly get and then one day you take it out into the middle of the streets of San Francisco or Boston and you open the cage and you run away. That's no favor to the community.*[xviii]

Lastly, as a community organizer working specifically to educate and mobilize people of faith and moral conscience concerning issues of public policy, I strongly urge you as democratically elected leaders to consider the practice of solitary confinement from a historical and moral view. What might be the impact of condoning the use of prolonged solitary confinement, a practice largely condemned by national and international human rights groups, on our reputation and legacy in the coming years? How will we explain to our grandchildren our complicity in torturing and traumatizing fellow human beings, while wasting their economic and moral inheritance? Will we plead ignorance?

I urge you, as members of this distinguished subcommittee: consider the great opportunity and the great responsibility that is yours upon convening this hearing. The evidence is explicit. Solitary confinement is brutal and cruel. It is costly and ineffective. It is an offense to both human culture and moral conscience. It is time to bring prolonged solitary confinement to an end, and to invest in a brighter future by implementing more just and humane correctional alternatives.

NOTES

[i] This according to the recent audit of the Bureau of Prisons by the United States Government Accountability Office (U.S.G.A.O.), May, 2013.
[ii] A 1999 study by the National Institute of Corrections concluded that maximum security lock-down facilities (supermax), as the quintessence of the solitary confinement approach, have minimal directives or universal definitions on what types of prisoners should be housed in which cells. In fact, justifications for building and filling supermax prisons are often overtly financial and political in tone. (Riveland, 1999).
[iii] Rachel Kamel and Bonnie Kerness of the American Friends Service Committee chronicle the politically and racially discriminatory use of "tough on crime" rhetoric in the determination of what constitutes a "security threat." Facilities lean heavily on the administrative isolation of "gangs," but standards for this determination also cite Native Americans and Puerto Ricans as gang affiliates (Kamel & Kerness, 2003).
[iv] Vulnerable populations exposed disproportionately to solitary confinement include mentally ill inmates (Bersot & Arrigo, 2010), LGBTQ inmates (Just Detention International, 2009), and children (ACLU, 2013).
[v] Rapporteur Juan Mendez argued that the definition of torture "relates not only to acts that cause physical pain but also to acts that cause mental suffering," which unequivocally extends to solitary confinement as manifest in U.S. facilities (2011).
[vi] New Jersey inmates consistently complain of leaks, poor ventilation, extreme temperatures, sewage backups, rodents, and even the blood of other prisoners as conditions of their cells.
[vii] U.S.G.A.O., May, 2013.
[viii] New York Civil Liberties Union (NYCLU), 2012.
[ix] Rhodes uses the term "high tech" dually to signal both the dramatic, elaborate nature of this technological innovation and also its placement within the growing U.S. investment in expensive instruments of social control and surveillance (2007).
[x] Bersot & Arrigo, 2010.
[xi] Kupers, et al., 2009.
[xii] Sharon Dolovich (2011) admits the limits of this approach, but as an alternative to isolation it is a remarkably more conscionable practice.
[xiii] Department of Corrections, the State of Maine, 2010.
[xiv] Austin & Sparkman, 2011.
[xv] See the reports by the American Friends Service Committee in Arizona (2012) and the USDOJ report by Hughes & Wilson on reentry and recidivism (2003) for but a few examples.
[xvi] See the work of Wong, et al. (2005) and Briggs, et al. (2003).
[xvii] King, et al. (2008).
[xviii] Interview quoted in Kamel & Kerness (2003).

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Testimony of
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National Religious Campaign Against Torture,
Before the
Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights and Human Rights
Hearing on Reassessing Solitary Confinement
February 25, 2014

Mr. Chairman, Members of the Subcommittee, thank you for this opportunity to submit testimony on behalf of the National Religious Campaign Against Torture (NRCAT) concerning the devasting use of solitary confinement in our nation's prisons, jails, and detention centers. The Subcommittee's consideration of this issue at the federal level remains urgent as the negative impact that the federal system's use of solitary confinement is having on prisoners, correctional staff, our budget, and society at large, reveals it is both morally and economically wrong.

The National Religious Campaign Against Torture is a coalition of religious organizations committed to ending U.S.-sponsored torture and cruel, inhuman, or degrading treatment. Since its formation in January 2006, more than 320 religious organizations have joined NRCAT, including representatives from the Catholic, Protestant, Orthodox Christian, evangelical Christian, Buddhist, Hindu, Quaker, Unitarian, Jewish, Buddhist, Muslim, and Sikh communities. NRCAT member organizations include denominations and faith groups, national religious organizations, regional religious organizations, and congregations. Our various faith traditions hold in common a belief in the dignity and worth of each human person.

The use of solitary confinement in U.S. prisons, jails, and detention centers violates basic religious values of community, restorative justice, compassion, and healing. The faith-based members that belong to NRCAT are united in opposing treatment that violates our values as people of faith and as fellow human beings. This opposition inspired us in advance of the June 2012 Congressional hearing on solitary confinement to join with people of faith and religious leaders across the nation to participate in a 23-hour fast, symbolizing the 23 hours per day that tens of thousands of prisoners, inmates, and detainees are held in solitary confinement. As we have seen in recent prisoner hunger strikes, including the 2013 strike in California in which over 30,000 prisoners participated to protest conditions of long-term solitary confinement, refusing food is one of the only means prisoners have to protest conditions that constitute torture.

Highlighting a growing national consensus that long-term solitary confinement must be ended, the faith community expressed broad support for the 2013 California prisoner hunger strike. In July NRCAT, the American Friends Service Committee (AFSC), and California Families Against Solitary Confinement delivered, "A Religious Call for a Just and Humane End to the Hunger Strike in California Prisons," signed by more than 1,000 clergy from across the country, asking California officials to address conditions of prisoners in Secure Housing Units (SHU), many of whom have been in solitary confinement for decades. Actual numbers are not kept, but estimates suggest that 90% of inmates in Security Housing Units in California are people of color. The California Conference of Catholic Bishops stated: "We stand opposed to this treatment because it is not restorative. Placing humans in isolation in a Secure Housing Unit (SHU) has no restorative or rehabilitative purpose. International human rights standards consider more than 15 days in isolation to be torture. The world is watching California and the United States."[1]

The 2006 Commission on Safety and Abuse in America's Prisons (hereinafter "the Commission"), co-chaired by Nicholas Katzenbach, former Attorney General under President Lyndon Johnson, and John Gibbons, former Chief Judge for the 3rd Circuit Court of Appeals, produced a report that described life in a supermax prison like this:

> Conditions in segregation vary across the country. In the most severe conditions—which are more likely to occur in disciplinary segregation units and super-max prisons—individuals are locked down 23 or 24 hours a day in small cells between 48 and 80 square feet with no natural light, no control over the electric light in their cells, and no view outside of their cells. They have no contact with other prisoners—even verbal—and no meaningful contact with staff. They may be able to spend up to an hour every other day alone in a concrete exercise pen. Though there are some exceptions, access to books and writing materials is limited; radio and television are often banned; calls to and visits with family are very infrequent, when permitted at all.[2]

The United Nations Convention Against Torture and Cruel, Inhuman or Degrading Treatment was adopted by the UN General Assembly in 1984, was signed by the United States in 1988 and ratified by the U.S. in 1994. It defines torture as any act by which,

> . . . severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third

[1] California Bishops Issue Statement on Prison Hunger Strike and Isolation Policies, July 12, 2013. http://www.cacatholic.org/index.php/issues2/restorative-justice/712-hunger-strike

[2] COMM'N ON SAFETY AND ABUSE IN AMERICA'S PRISONS, VERA INSTITUTE OF JUSTICE, CONTRONTING CONFINEMENT at 57 (2006), http://www.vera.org/download?file=2845/Confronting_Confinement.pdf [hereinafter *Commission*].

> person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.[3]

In a 2011 report, the United Nations Special Rapporteur on Torture, Juan Mendez, cited 15 days or more of solitary confinement as "prolonged solitary confinement," noting that some of the psychological effects caused by isolation become irreversible at that point.[4] Futher, his report called for a prohibition against the use of solitary confinement for juveniles and individuals with mental illness. The severe pain and suffering caused by solitary confinement is clearly documented throughout history in literary, scientific, and legal sources.

In 2011 the United States Supreme Court stated that "[p]risoners retain the essence of human dignity inherent in all persons. Respect for that dignity animates the Eighth Amendment prohibition against cruel and unusual punishment."[5] United States case law dating as early as 1890 has specifically recognized solitary confinement's clear harm[6] and, in certain circumstances, has declared the practice as a violation of the Eighth Amendment.[7]

In 1829 the Eastern Pennsylvania Penitentiary was opened.[8] It was called a penitentiary because enlightenment voices, including Dr. Benjamin Rush and Benjamin Franklin, said they wanted inmates to spend time in isolation so they could think deeply about their crimes, commune with God, and become penitent.[9] However, instead of becoming remorseful while in solitary confinement, the prisoners developed serious mental health problems, with many going insane. In 1842, Charles Dickens visited the Eastern Pennsylvania Penitentiary and wrote, "The system here is rigid, strict and hopeless solitary confinement. I believe it . . . to be cruel and wrong. I hold this slow and daily tampering with the mysteries of the brain, to be immeasurably worse than any

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[3] Convention Against Torture and Other Cruel, Inhuman, and Degrading Treatment or Punishment, art. 1(1), Dec. 10 1984, 1465 U.N.T.S. 85.

[4] The Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman, and degrading treatment or punishment, *Interim Report*, ¶ 15, delivered to the General Assembly, U.N. Doc. A/66/268 (Aug. 5, 2011).

[5] Brown v. Plata, 131 S.Ct. 1910 (2011).

[6] *See In re* Medley, 134 U.S. 160, 168 (1890) (noting that prisoners held in isolation became violently insane and suffered some irreparable mental damage).

[7] *See, e.g.*, Jones'El v. Berge, 164 F. Supp. 2d 1096 (W.D. Wis. 2001) (finding that placing mentally ill prisoners in solitary confinement constitutes an Eighth Amendment violation); Madrid v. Gomez, 889 F. Supp. 1146, 1265 (N.D. Cal. 1995) (equating placing mentally-ill inmates in solitary confinement to placing asthmatics in a room with insufficient air); Ruiz v. Johnson, 37 F. Supp. 2d 855, 915 (S.D. Tex. 1999).

[8] Laura Sullivan, *Timeline: Solitary Confinement in U.S. Prisons*, NATIONAL PUBLIC RADIO, July 26, 2006, http://www.npr.org/templates/story/story.php?storyId=5579901.

[9] *Id.*

torture of the body."[10]

In 1890, the U.S. Supreme Court ruled the use of solitary confinement was "cruel and unusual punishment," stating that

> A considerable number of prisoners fell, after even short confinement, into a semi-fatuous condition, from which it was next to impossible to arouse them, and others became violently insane; others, still, committed suicide; while those who stood the ordeal better were not generally reformed and in most cases did not recover sufficient mental activity to be of any subsequent service to the community. (United States Supreme Court Center, 1890)

Bonnie Kerness and Bissonette Lewey explain that, according to the 1890 U.S. Supreme Court ruling, "isolation was so harmful that a person who had murdered and was sentenced to die should be freed and escape his death sentence because the additional burden of one month's incarceration in solitary confinement was so onerous as to demand redress."[11] Yet today, the same "daily tampering with the mysteries of the brain" is painstakingly evident in the countless letters sent to friends, family members, and organizations like NRCAT, from the tens of thousands of prisoners held within solitary confinement cells. Describing the impact of solitary confinement, one prisoner wrote:

> [P]rolonged isolation tears at my soul, mind, and ability to cope. The cell collapses on top of me. I don't breathe. I can't breathe from crushing anxiety, literally. I utilize all coping mechanisms I know, and some conjure up to no avail. The end result is self-mutilation to escape or an attempt on my life. I can do fine for five, six or eight months. Then all hell inside my head breaks loose. I'm not choosing to be suicidal. It's an unseen force which compels me to try to escape by any means.[12]

A 45- year-old mother of three who was housed in the segregation unit of a New Jersey prison described her experience in 2001, writing, "I never knew how painful it could be to be denied nature itself."

Many studies have documented the detrimental psychological and physiological effects of long-term segregation.[13] Nationally recognized expert Dr. Stuart Grassian was one of the pioneers in researching the harmful psychological effects of solitary

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[10] CHARLES DICKENS, AMERICAN NOTES 146 (Fromm Int'l 1985) (1842).

[11] Bonnie Kerness & Jamie Bissonette Lewey (2014) Race and the Politics of Isolation in U.S. Prisons, Atlantic Journal of Communication, 22:1, 26.

[12] Citing a letter from a prisoner during video interview by Steve Martin, Board Member, National Religious Campaign Against Torture, with Shaheed Omar in Roanoke, VA (January 10, 2012).

[13] *See e.g.*, Stuart Grassian & Nancy Friedman, *Effects of Sensory Deprivation in Psychiatric Seclusion and Solitary Confinement*, 8 INT'L J.L. & PSYCHIATRY 49 (1986); Craig Haney & Mona Lynch, Regulating Prisons of the Future: A Psychological Analysis of Supermax and Solitary Confinement, 23 NEW YORK UNIVERSITY REVIEW OF LAW AND SOCIAL CHANGE 477-570 (1997); Craig Haney, Mental Health Issues in Long-Term Solitary and "Supermax" Confinement, 49 CRIME & DELINQ. 124 (2003).

confinement in super-max prisons in the early 1980s.[14] In a statement submitted to the Commission, Dr. Grassian documented that nearly a third of the prisoners he evaluated experienced perceptual distortions, in which objects appear to change size or form.[15] This is particularly alarming, he noted, since this symptom is more commonly associated with neurological illnesses, such as brain tumors, than with primary psychiatric illness.[16]

Additionally, Dr. Craig Haney, social psychologist and Professor of Psychology at the University of California, Santa Cruz, has found extraordinarily high rates of symptoms of psychological trauma among prisoners held in long-term solitary confinement in his systematic analysis of prisoners held in super-max prison.[17] More than four out of five of those evaluated suffered from feelings of anxiety and nervousness, headaches, troubled sleep, and lethargy or chronic tiredness, and over half complained of nightmares, heart palpitations, and fear of impending nervous breakdowns.[18] Nearly half suffered from hallucinations and perceptual distortions, and a quarter of them experienced suicidal ideation.[19]

Dr. Atul Gawande, surgeon and staff writer for *The New Yorker*, asked in his 2009 article, "Hellhole," "If prolonged isolation is—as research and experience have confirmed for decades—so objectively horrifying, so intrinsically cruel, how did we end up with a prison system that may subject more of our own citizens to it than any other country in history has?"[20]

Over the past four decades the United States has engaged in a sentencing and corrections approach that has yielded the largest prison system in the world, with the U.S. holding more prisoners in solitary confinement than any other democratic nation. Such "dramatic expansion of solitary confinement is a human rights issue we can't ignore."[21]

It wasn't always this way. Following an attack on two correctional officers in 1983, Marion Prison in Illinois instituted a permanent lockdown of its entire facility in which all inmates were confined alone in their cells for 23 hours a day.[22] That practice caught on, and the use of solitary confinement has increased dramatically since then. Before 1980 the U.S. had one solitary confinement prison. In 1989, California built Pelican Bay Prison to house prisoners exclusively in solitary confinement cells. Other states followed suit, and today, there are more than 40 super-max prisons across the

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[14] See e.g., Stuart Grassian, *Psychopathological Effects of Solitary Confinement*, 140 AM. J. PSYCHIATRY 1450 (1983).

[15] Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 JOURNAL OF LAW AND POLICY 325, at 335 (2006), http://law.wustl.edu/journal/22/p325grassian.pdf.

[16] *Id.* at 338.

[17] Haney, *supra* note 8.

[18] *Id.* at 133.

[19] *Id.* at 134.

[20] Atul Gawande, *Hellhole*, NEW YORKER, March 30, 2009, http://www.newyorker.com/reporting/2009/03/30/090330fa_fact_gawande.

[21] Senator Dick Durbin, "Reassessing Solitary Confinement: The Human Rights, Fiscal and Public Safety Consequences." Senate Judiciary Committee: Subcommittee on the Constitution, Civil Rights and Human Rights, June 19, 2012.

[22] Sullivan, *supra* note 4.

country, including one federal facility, the Administrative Maximum Facility ("ADX"), located in Florence, Colorado.

The Commission on Safety and Abuse in America's Prisons noted that from 1995 to 2000 the growth rate of segregation units significantly surpassed the prison growth rate overall: 40% compared to 28%.[23] Long-term isolation has become a default management tool, not only as a response to violent behavior, but exceedingly as routine practice for minor rule infractions, involuntary protection, and as a means of managing difficult inmates, particularly those with mental illness. Walter Dickey, former secretary of the Wisconsin Department of Corrections, testified before the Commission that his state's super-max prison was filled with the wrong people, "the young, the pathetic, the mentally ill."[24] Similarly, psychiatrist Stuart Grassian told the Commission, "Many of these people who are said to be the 'worst of the worst' are simply the wretched of the earth. They're sick people."[25]

The notion that solitary confinement is a necessary evil to maintain safety in our prisons, jails and detention centers is not rooted in evidence. A study evaluating the impact of segregating prisoners in super-max facilities on prison violence in three different states found that segregation did not decrease prisoner-on-prisoner violence in any of the states and had divergent results on prisoner-on-staff assaults.[26]

In May 2013 a U.S. Government Accountability Office report on the use of segregation[27] concluded that the Federal Bureau of Prisons has failed to evaluate the impact of solitary confinement on institutional safety and the well-being of incarcerated persons despite a 17 percent increase in its use of solitary confinement between 2008 and 2013. In addition, the use of solitary confinement is economically costly though the effectiveness of its use has not been established. Supermax prisons, which are comprised exclusively of isolation cells, cost generally two or three times more to build and operate than traditional maximum security prisons.

Yet, at a November 6, 2013, Senate Committee on the Judiciary hearing[28] Bureau of Prisons Director Charles Samuels answered questions about plans for activating a new federal supermax prison in Thomson, Illinois, as an Administrative Maximum (ADX) facility. The only ADX facility currently within the BOP, located in Florence, Colorado, is comprised of 623 beds, 450 of which are filled. The new facility in Thomson is a 2,100 bed facility.

The religious community is strongly opposed to the addition of any new supermax

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[23] Commission, *supra* note 1, at 53.
[24] Commission, *supra* note 1, at 54.
[25] Commission, *supra* note 1, at 60.
[26] Chad Briggs, et al., *The Effect of Supermaximum Security Prisons on Aggregate Levels of Institutional Violence*. 41 CRIMINOLOGY 1341 (2003).
[27] Improvements Needed in Bureau of Prisons' Monitoring and Evaluation of Impact of Segregated Housing GAO-13-429: Published: May 1, 2013. Publicly Released: May 31, 2013.
[28] "Oversight of the Bureau of Prisons & Cost-Effective Strategies for Reducing Recidivism" hearing, November 6, 2013.

beds in the federal system. We believe the Bureau of Prisons must focus on reducing the number of people in isolation, not adding new segregation beds. We call on all members of this committee to lend their leadership in working with the BOP to ensure that the Thomson facility is given a lower security classification and not activated as an ADX supermax prison. To add 2,100 new supermax beds to the Federal system would only exacerbate the unconstitutional human rights crisis already faced in federal facilities. For people of faith, any action taken by the Federal system to open Thomson prison as an ADX supermax is morally inexcusable. We are additionally concerned that the inhumanity of an ADX supermax poses grave risk for the long-term psychological and spiritual well-being of residents of Thomson who will be employed at the facility.

Moreover, the 2013 GAO report indicated a 5% decline in population at ADX Florence between 2008 and 2013, further demonstrating the lack of need for ADX supermax beds. NRCAT believes the BOP must focus on reducing the number of people in isolation, not add new segregation beds.

Following the first-ever Congressional hearing on the use of solitary confinement in U.S. prisons in June 2012, Senator Durbin announced in February 2013 that the Federal Bureau of Prisons would undergo the first-ever independent and comprehensive assessment of the use of segregation in federal prisons. CNA was subcontracted by the National Institute of Corrections to carry out the assessment. NRCAT calls on CNA to consider the recommendations of the 2013 GAO report noting the lack of data related to institutional safety and the isolation impact on incarcerated persons in its assessment. In addition, we urge CNA to include data related to the impact on correctional officers working in environments of extreme isolation, understanding that such environments result in trauma not only for those in isolation but also for corrections officers and their families.

The demonstrated success of reducing the use of solitary confinement is evident among several states that have proven that not only are there safe alternatives, but there are more cost-effective options.[29] Mississippi experienced a decline in violence within its prisons after it drastically reduced its use of solitary confinement by 85 percent in one super-max unit; Mississippi eventually closed the facility all together.[30] "The [segregated housing] environment . . . actually increases the levels of hostility and anger among inmates and staff alike," Donald Cabana, former Mississippi Warden, told the Commission.[31] Maine and Colorado also have recently made significant reductions in the use of solitary confinement without jeopardizing prison safety.[32] Maine Department of

[29] Erica Goode, *Prisons Rethink Isolation, Saving Money, Lives and Sanity*, NEW YORK TIMES, March 10, 2012, http://www.nytimes.com/2012/03/11/us/rethinking-solitary-confinement.html.

[30] Terry A. Kupers, et al., *Beyond Supermax Administrative Segregation: Mississippi's Experience Rethinking Prison Classification and Creating Alternative Mental Health Programs*, 36 CRIM. JUST. & BEHAV. 1037, 1041 (2009); John Buntin, *Exodus: How America's Reddest State – And Its Most Notorious Prison – Became a Model of Corrections Reform*, 23 GOVERNING 20, 27 (2010).

[31] Commission, *supra* note 1, at 54.

[32] Lance Tapley, *Reform Comes to the Supermax*, PORTLAND PHOENIX, May 25, 2011, http://portland.thephoenix.com/news/121171-reform-comes-to-the-supermax/; COLORADO DEPARTMENT OF CORRECTIONS, REPORT ON THE IMPLEMENTATION OF ADMINISTRATIVE SEGREGATION PLAN 1-2 (2012),

Corrections Commissioner Joseph Ponte explained, "Over time, the more data we're pulling is showing that what we're doing now [through greatly reducing the use of solitary confinement] is safer than what we were doing before."[33]

The daily cost per inmate of solitary confinement far exceeds lower security facilities because individualized cells and increased correctional staff are required, and prisoners do not contribute to the ongoing maintenance of the facility, such as cleaning, cooking, and laundry. Indeed, Mississippi has reportedly saved more than $5 million by closing its super-max unit.[34] Thanks to the transfer of more than 400 prisoners out of solitary confinement, the Colorado Department of Corrections closed its super-max unit, Centennial Correctional Facility in 2013, resulting in savings of $4.5 million.[35]

State legislation continues to be introduced throughout the country to address the use of isolation at the state level indicating national support for reform. Bills to address juvenile solitary confinement have been introduced in states including California, Florida, and Montana. In Texas, a segregation study bill was passed in 2013. And in Maryland, where on any given day roughly 8.5% of people incarcerated in state facilities are subjected to solitary confinement, a study has been introduced to look at the use of isolation in state and local jurisdictions.

In California, Assemblymember Tom Ammiano has recently proposed legislation (Assembly Bill 1652) to restrict how solitary confinement is used in California prisons. In New Jersey NRCAT has joined the ACLU of New Jersey in filing a "Petition for Rulemaking." The petition, filed with the Juvenile Justice Commission of New Jersey, proposes five amendments to the New Jersey Administrative Code, including calling for the cessation of solitary confinement as it is currently used in juvenile detention facilities statewide. In Massachusetts "An Act Relative to the Appropriate Use of Solitary Confinement" has been introduced. The bill calls for appropriate standards prior to placing a prisoner in solitary confinement, decreases the extreme isolation of solitary, and encourages individualized rehabilitation programming and close mental health monitoring for people in solitary confinement.

In New York in January 2014, the "Humane Alternatives to Long-Term (HALT) Solitary Confinement Act" was introduced in the New York State Assembly. The bill is the most comprehensive legislative response to date to the nationwide problem of solitary confinement in prisons and jails. More than 5,000 people are currently being held in solitary and other forms of isolated confinement in New York's state prisons and local jails. The bill would limit the use of solitary confinement in the state's prisons and jails to 15 consecutive days for most inmates and bans the punishment outright for certain

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available at https://www.aclu.org/prisoners-rights/report-co-docs-implementation-administrative-segregation-plan.

[33] Video interview by Richard Killmer, Executive Director, National Religious Campaign Against Torture, with Joseph Ponte. Maine Department of Corrections Director, in Augusta, Maine (October 4, 2011).

[34] Erica Goode, *Prisons Rethink Isolation: Saving Money, Lives and Sanity*, NEW YORK TIMES, March 10, 2012, http://www.nytimes.com/2012/03/11/us/rethinking-solitary-confinement.html.

[35] Kristen Wyatt, *Colorado Closing Canon City Prison*, The Gazette, March 19, 2011, http://www.gazette.com/articles/colorado-135471-denver-prison.html.

inmate groups, complying with the U.N. Special Rapporteur's October 2011 report stating that solitary confinement in excess of 15 days "should [also] be subject to an absolute prohibition."

In May 2013 NRCAT joined more than three dozen representatives from criminal and juvenile justice reform advocacy and faith-based organizations in submitting a letter to Attorney General Eric Holder calling for the Department of Justice to adopt policies prohibiting the solitary confinement of youth in federal custody. The coalition of organizations asserted its belief that juvenile solitary confinement is "not only cruel, but counterproductive for both rehabilitation and facility security. ... Both law and the science of adolescent development recognize the need to treat juveniles differently from adults in the context of punishment and rehabilitation."

Mr. Chairman and members of the Subcommittee, as you can see, there is significant interest throughout the country to bring an end to the abusive use of solitary confinement. We hope that your leadership on this issue will extend beyond this hearing. To that end, we would strongly support your leadership in sponsoring legislation that would bring the federal system into compliance with the Constitution and basic international human rights standards. We urge Congress to support increased federal oversight, monitoring, transparency, and funding for alternatives to solitary confinement by taking the following steps:

- BOP should immediately implement a ban on the solitary confinement of juveniles, persons with serious mental illness, and pregnant women held in federal custody.

- BOP's newly acquired facility at Thomson, Illinois, should not be designated for use as an ADX (supermax) facility. Instead, it should be converted for use as a lower custody, general population prison.

- Federal, state, and local prisons, jails, detention centers, and juvenile facilities should be required to report to the Bureau of Justice Statistics (BJS) who is held in solitary confinement, for what reason, and how long, as well as the impact of the practice on cost, facility safety, incidents of self-harm, and recidivism.

- BJS should publish annually a comprehensive review (including raw data and a statistical analysis) of the use of solitary confinement in the United States. In conjunction with the release of this review, a panel of appointed experts should conduct public hearings to review the findings, hear from stakeholders, and issue recommendations.

- The Bureau of Justice Assistance (BJA) or another appropriate entity should provide federal funding to support federal, state, and local efforts to dramatically reduce the use of solitary confinement with a focus on programming and other alternatives.

- BOP should be required to reduce its use of solitary confinement and other forms of isolation in federal prisons by implementing reforms based on the standards for long-term segregated housing established by the American Bar Association, as well as the findings of the Government Accountability Office (GAO) and the ongoing study of BOP's use of segregation being conducted by outside contractors.

- DHS should reevaluate its directive and consider the proposed amendment Blumenthal 2 (Title III) to S.744, The Border Security, Economic Opportunity, and Immigration Modernization Act. The amendment contains important measures to reduce the use of solitary confinement. Congress should work to end the use of isolation in immigration detention.

- The Subcommittee should formally request that the Department of State play an active role in updating the United Nations Standard Minimum Rules for the Treatment of Prisoners. New provisions should be included to ban solitary confinement of juveniles, individuals with serious mental illness, and pregnant women and to protect against prolonged solitary confinement for all persons.

- The Subcommittee should formally request that the Department of State stop impeding the longstanding formal request by the United Nations Special Rapporteur on Torture to investigate of the use of solitary confinement in U.S. prisons.

- The Subcommittee should require rulemaking by the Department of Justice to ensure the development of smart, humane, and evidence-based national best practices and regulations that will limit the use of all forms of isolation and solitary confinement.

Mr. Chairman and members of the Subcommittee, the National Religious Campaign Against Torture believes strongly that the United States should do everything it can to end our nation's reliance on solitary confinement and focus scarce resources on rehabilitative alternatives and mental health treatment to increase community safety and bring an end to torture. Your hearing today is a very important step in that effort, and we thank you for the opportunity to contribute to it.

Testimony by the Campaign for Alternatives to Isolated Confinement
Submitted to the Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights and Human Rights
Reassessing Solitary Confinement II: The Human Rights, Fiscal, and
Public Safety Consequences
February 25, 2014

The New York Campaign for Alternatives to Isolated Confinement (CAIC) would like to thank Chairman Durbin, Ranking Member Cruz, and the members of the Subcommittee for the opportunity to provide written testimony regarding the urgent need to take action to address the problem of isolated confinement at the federal, state, and local levels.

Founded in 2013, the Campaign for Alternatives to Isolated Confinement consists of organizations and individuals who are working for sweeping reform of isolated confinement policies and practices in New York State. The leadership of the campaign includes individuals who have been directly affected by solitary confinement – people who themselves experienced solitary, and people who have family members or loved ones who are currently in solitary. It also includes concerned community members, lawyers, and individuals in the human rights, health, and faith communities throughout New York State.

Our testimony will summarize the key aspects of the problem using New York State as an example, and then outline the key components of meaningful reform, which are reflected in recently proposed legislation in New York State.

The Problem: The Torture of Solitary Confinement

The torture of solitary confinement and other forms of extreme isolation can be broken down into at least five key problem areas that are seen throughout the country, including in New York: 1) the conditions of solitary confinement are inhumane and counterproductive; 2) there are far too many people in solitary confinement; 3) people remain in solitary confinement for far too long – regularly months, years, and decades at a time; 4) even people particularly vulnerable to either the effects of isolation itself or additional abuse while in isolation are in solitary, including young and elderly people, people with disabilities or mental health or addiction needs, pregnant women, and members of the LGBTI community; and 5) the processes leading to isolation are arbitrary and unfair, involve insufficiently equipped staff, and are carried out with little transparency or accountability.

First, the conditions of solitary confinement are inhumane and counterproductive. The use of isolation is an extension and perpetuator of mass incarceration and a paradigm focused on punishment and dehumanization rather than rehabilitation, treatment, and support. In New York prisons and jails, as across the country, people are confined in a cell the size of an elevator for 22

to 24 hours a day, without any meaningful human contact, programs, or therapy. The one or two hours out of cell, if provided and utilized, take place alone in a recreation cage. In New York State prisons, people in solitary confinement are not even allowed to make phone calls. Such isolation has been proven to often cause deep and permanent psychological, physical, and social harm, and in turn exacerbate rather than effectively address the underlying causes of difficult behavior. A recent study published in the American Journal of Public Health found that people in solitary confinement in New York City jails were nearly seven times more likely to commit self-harm than people in the general jail population. People suffer not only in solitary but when they reenter a community setting, including those who spent long periods in isolation and those released directly from solitary to the community.

Second, there are far too many people subjected to these inhumane and counterproductive conditions, disproportionately people of color, and most often for alleged non-violent conduct. In New York State prisons alone, on any given day, there are around 3,800 people in one form of isolation, Special Housing Units (SHU), while many other people are in keeplock. In addition to the state prisons, thousands more people are held in solitary confinement in city and county jails, including New York City jails. The racial disparities are clear: although African Americans represent only around 18% of the total population of New York State, 50% of the people in NYS prisons are African American, and even more disproportionately, 60% of people in the SHU in NYS prisons are African American. Additionally of concern, five out of the six sentences that result in SHU sentences are for non-violent conduct. The most egregious examples include people having too many postage stamps, talking back to officers, refusing to give back a food tray, or speaking up for one's own or others' rights.

Third, people are held in solitary confinement for far too long. The United Nations Special Rapporteur on Torture has concluded that holding any person in solitary beyond 15 days amounts to cruel, inhuman, or degrading treatment, or torture. Yet, in New York State, as around the country, it is regular practice to hold people in isolation for months and years, and sometimes even for decades. In New York, the majority of individual SHU sentences are for 90 days or more, and many people receive additional SHU time while in solitary, again leading to regularly holding people in solitary for months and years.

Fourth, people are in solitary confinement who are particularly vulnerable either to the effects of isolation itself or to additional abuse while in isolation. Young people, elderly people, people with disabilities, people with mental health or addiction needs, pregnant women, and members of the LGBTI community are subjected to solitary confinement. In New York State, as of the latest available data, around 400 youth under the age of 21 are in isolation at any given time, and around 18% of the people in SHU are on the mental health caseload.

Finally, the processes resulting in solitary confinement are arbitrary and unfair, involve under-equipped staff, and take place with little transparency or accountability. The hearings or administrative procedures that result in placement in solitary confinement are not conducted by judges or other supposedly non-biased neutral decision-makers, but rather by corrections staff. In New York, around 95% of the people who are charged with rule violations are found guilty. In addition, security staff often do not have sufficient training to work with people with the most

serious needs or the most problematic behaviors, nor do they have or utilize sufficient tools other than punishment and isolation to work with incarcerated people more generally.

The Solution: Key Components of Meaningful Reform

In order to address the five key problem areas, meaningful reform across the country at the federal, state, and local level will need to include five key components: 1) fundamentally transforming how our institutions respond to people's needs and behaviors; 2) drastically restricting the criteria that can result in separation from the general prison population; 3) ending long term isolation beyond 15 days; 4) banning the placement of certain vulnerable people in solitary; and 5) better equipping staff and making the processes resulting in solitary fairer, more transparent, and with more accountability. The Humane Alternatives to Long Term (HALT) Solitary Confinement Act – newly proposed legislation in New York State, A08588 (Aubry) / S06466 (Perkins) – provides an example of comprehensive reform that incorporates these key components.

First, there needs to be a fundamental transformation in the response to people's needs and behaviors, from one that is focused on punishment, isolation, and deprivation, to one focused on accountability, rehabilitation, and treatment. The HALT Solitary Confinement Act would move towards that transformation by creating alternative rehabilitative and therapeutic units, called Residential Rehabilitation Units (RRUs), where people are guaranteed six hours of out-of-cell time for programs and therapy, plus an additional hour for recreation.

Second, there needs to be a drastic restriction in the criteria that can result in someone being separated from the general prison population. The HALT Solitary Confinement Act relies on and modifies the criteria developed by James Austin, an expert in the litigation about solitary in Mississippi. Specifically, people are only allowed to be placed in long term isolation up to 15 days or in RRUs if they engage in more serious acts of physical injury, forced sexual acts, extortion, coercion, inciting serious disturbance, procuring deadly weapons or dangerous contraband, or escape.

Third, there must be an end to long term solitary confinement. Given that the UN Special Rapporteur on Torture has concluded that solitary confinement for all people should be banned after 15 days because the devastating psychological effects of solitary can become permanent after that period of time, localities, states, and the federal government should never place someone in solitary for more than 15 days. The HALT Solitary Confinement Act would mandate that no person be held in isolation for more than 15 consecutive days, in line with the Special Rapporteur's recommendations.

Fourth, people from certain vulnerable groups should never be placed in solitary confinement for any length of time either because isolation itself can have more devastating effects on them or because they are more vulnerable to abuse while in isolation. The HALT Solitary Confinement Act bans the placement, for even one day, in solitary confinement of young people, elderly people, people with disabilities, people with mental health or addiction needs, pregnant women, and members of the LGBTI community.

Fifth, staff must be better equipped to work with people who are incarcerated, including those with the most serious needs or who engage in the most difficult behaviors, and the processes that result in solitary confinement must be fairer, more transparent, and conducted with more accountability. The HALT Solitary Confinement Act would require training of people working in the RRUs or isolation units as well as for hearing officers who make decisions that result in solitary confinement. It would also require additional procedural protections for people facing the possibility of solitary confinement, as well as mandatory public reporting of the use of isolation and separation and outside oversight of the implementation of the law by independent state entities. Also of note, the HALT Solitary Confinement Act would apply to all types and locations of solitary confinement, including disciplinary confinement in SHU, keeplock, and administrative segregation, and would cover both state prisons and local city and county jails in New York State.

Conclusion

The use and abuse of solitary confinement across the country is in need of dramatic reform and a fundamental transformation. Prisons and jails at the federal, state, and local levels can no longer use the inhumane and counterproductive practice of solitary confinement, and must create alternatives that are humane and effective. The HALT Solitary Confinement Act provides one example of a comprehensive approach toward ending the torture of solitary confinement in a humane and effective manner, and the growing movement of the Campaign for Alternatives to Isolated Confinement indicates that the time is ripe for fundamental change.

We submit this testimony to inspire change in how we treat people who are incarcerated, as well as people in our communities. We call on the Senate Judiciary Committee's Subcommittee on the Constitution, Civil Rights and Human Rights to explore the key components of the HALT Solitary Confinement Act as a model for humane and effective reform and to take action now in line with these components to move towards ending the torture of solitary confinement across the country.

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Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights
Reassessing Solitary Confinement II:
The Human Rights, Fiscal, and Public Safety Consequences
Testimony of the New York Civil Liberties Union

February 25, 2014

The New York Civil Liberties Union submits this testimony to the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights in conjunction with "Reassessing Solitary Confinement II: The Human Rights, Fiscal, and Public Safety Consequences." We thank the Senate Judiciary Subcommittee for this important and timely follow-up hearing, and for its continued leadership in examining the practice of solitary confinement in the United States.

We write to inform the Subcommittee about recent reforms to solitary confinement practices in New York state prisons. Under an agreement between the State and the New York Civil Liberties Union ("NYCLU") announced last week, New York is facing the issue head-on, taking immediate steps to curtail the use of extreme isolation for vulnerable populations and working with the NYCLU to develop and implement comprehensive reforms to solitary confinement practices that will benefit all prisoners. New York's prison system is the fourth largest in the country, and has been heavily dependent on the use of punitive extreme isolation for decades. The process now underway in the New York makes clear that a similar approach is possible in every detention system in the United States. The time for reform is now, and the Subcommittee's crucial leadership at this moment could lead to significant reforms throughout the country.

In light of the New York experience, we urge the Subcommittee to support the following concrete actions at the federal level that would have an immediate impact in addressing the harms, costs and public safety consequences of solitary confinement: (1) increase transparency by requiring the Bureau of Justice Statistics to gather, analyze and publish nationwide data on the use of solitary confinement; (2) provide federal funding for program-based alternatives to solitary confinement; (3) ensure the United States fully engages in international reform processes; and (4) support rulemaking to limit the use of all forms of isolation in state and local detention facilities.

Bringing solitary confinement to an end in the United States will alleviate the suffering of tens of thousands of individuals held in these conditions. It will also be a significant step forward in remedying decades of misguided criminal justice policies that have favored degrading and counterproductive punitive responses over evidence-based rehabilitative approaches that protect basic human dignity and improve public safety.

The New York Civil Liberties Union ("NYCLU") was founded in 1951 as the New York affiliate of the American Civil Liberties Union, and is a nonprofit, nonpartisan organization with nearly 50,000 members across the state. Our mission is to defend and promote the fundamental principles and values embodied in the Constitution, New York laws, and international human rights law on behalf of all New Yorkers.

In July 2012, the NYCLU submitted testimony to this Subcommittee discussing the preliminary findings of the NYCLU's in-depth investigation into solitary confinement practices in the state prison system.[1] In October 2012, the NYCLU published the complete results of that study, *Boxed In: The True Cost of Extreme Isolation in New York's Prisons*.[2] The report found that New York subjected thousands of individuals to prolonged extreme isolation as discipline for violating prison rules. Through comprehensive data analysis and over one hundred interviews with prisoners and corrections staff, the report documented that extreme isolation caused severe suffering, was used unnecessarily and in a racially disproportionate manner, and was counterproductive to rehabilitation and public safety.

Following the publication of *Boxed In*, the NYCLU filed a complaint regarding New York's practices with the United Nations Special Rapportuer on Torture,[3] submitted testimony to the Inter-American Commission on Human Rights,[4] and filed a federal class action lawsuit, *Peoples v. Fischer*, challenging the constitutionality of these practices.[5] The plaintiffs in that lawsuit, Leroy Peoples, Tonja Fenton, and Dewayne Richardson, all African-American, were just three of tens of thousands of prisoners in New York severely harmed by long sentences to extreme isolation in Special Housing Units ("SHUs") as punishment for non-violent misbehavior that demonstrated no threat of any kind to the safety of staff, other prisoners, or themselves.

The NYCLU's findings in *Boxed In*, and the claims asserted in the NYCLU's human rights complaints and the lawsuit, are consistent with overwhelming consensus of research studying the severe harms of solitary confinement. The damage these practices inflict is also vividly illustrated in nearly all the testimony currently before the Subcommittee. To the extent the Subcommittee seeks any additional information on the harms and costs of solitary confinement, the NYCLU respectfully directs the Subcommittee to *Boxed In*, the testimony of the American Civil Liberties Union's National Prison Project, and the testimony of other New York advocates including the Correctional Association of New York and Prisoners' Legal Services. The NYCLU submits this testimony specifically to inform the Subcommittee about recent developments regarding solitary confinement practices in New York and to urge the Subcommittee to take actions that will help initiate similar processes throughout the country.

Last week, the NYCLU and the New York State Department of Corrections and Community Supervision ("DOCCS") announced a joint agreement to suspend the NYCLU's lawsuit for two years to pursue a collaborative approach to reforming the use of extreme isolation within the prison system.[6] Under the agreement, DOCCS will prohibit the use of disciplinary SHU sentences for juveniles and pregnant women, and limit SHU sentences to no more than 30 days for developmentally disabled and intellectually challenged prisoners. Juveniles and developmentally disabled prisoners who pose serious behavioral problems or safety threats will

be diverted to alternative programs and confined in a less restrictive setting that includes out-of-cell group programming. These reforms mirror similar protections for the seriously mentally ill already in place under New York's "SHU Exclusion Law."[7]

In addition to the initial actions that will be taken on behalf of these vulnerable populations, the NYCLU and DOCCS have agreed that two nationally-recognized experts on reforms to solitary confinement—Dr. James Austin and Eldon Vail, former chief of the Washington State Department of Corrections—will issue recommendations for comprehensive reforms throughout the entire disciplinary system that would apply to all prisoners. Extensive data will be gathered, shared with the experts, and analyzed to guide these system-wide reforms. Initial expert recommendations are expected in late spring of this year.

The cooperative nature of the reform process getting underway in New York reflects the leadership of New York policymakers like Governor Andrew Cuomo and DOCCS Acting Commissioner Anthony Annucci, who have concluded that reforms to solitary confinement will make the prison system more humane, more successful in achieving rehabilitative aims, and safer for prison staff and the communities that will be home to prisoners upon their release.

What is happening in New York should send a message to policymakers and corrections administrators around the country: reform is possible. New York is the fourth-largest prison system in the United States. DOCCS incarcerates approximately 55,000 individuals, 3,800 of whom are in SHU at any given time.[8] DOCCS employs approximately 29,000 custody staff and other personnel. DOCCS operates 58 different facilities spread throughout the state, including two large SHU prisons and eight freestanding SHU facilities that were purpose-built solely to subject prisoners to extreme isolation, in addition to designated SHU cellblocks within twenty-nine other prisons. If New York can rise to meet the issue of solitary confinement head-on, every other prison or jail administrator in the country can also take a proactive approach to addressing this human rights crisis in their own facilities.

We are at a pivotal moment, and the leadership of this Subcommittee can have a tremendous impact. The Subcommittee should take concrete actions to support leaders like Commissioner Annucci who are decisively undertaking the hard work of addressing these decades-long practices. The Subcommittee should also require action from jurisdictions that have so far refused to acknowledge the profound nature of the problem or failed to initiate meaningful reforms. The NYCLU urges the Subcommittee to take the following actions.

1. **Congress should require centralized reporting on solitary confinement practices from all jurisdictions.**

The cavalier nature of solitary confinement practices in this country is reflected by the lack of a reliable periodic accounting of its use at both the national and state level.[9] Collecting data on who is placed into conditions of extreme isolation, for what reasons and for how long, and measuring the human, penological and fiscal impacts of those practices, is necessary to support comprehensive reform. For example, in New York the statistical data presented in *Boxed In*

shed much-needed light on the frequent use of extreme isolation sanctions and the troubling demographics of the isolated population. As part of the process announced last week, the NYCLU and DOCCS have agreed that robust data reporting and analysis will be a cornerstone for assessing current practices and guiding future evidence-based reforms.

Congress should set the stage for nationwide reform by ensuring there is a complete periodic accounting of solitary confinement practices. To achieve this goal, the Subcommittee should take steps to ensure that federal, state, and local facilities regularly report to the Bureau of Justice Statistics ("BJS") who is held in solitary confinement, for what reason, and how long. Facilities should also be required to report on the impacts of the practice based on uniform metrics such as fiscal cost, institutional safety, self-harm, and recidivism. This is particularly important as research continues to emerge about the serious health and public policy consequences of solitary confinement: both increased rates of self-harm and higher recidivism are linked to solitary confinement.[10] BJS should annually publish the data and analysis. In conjunction with the annual release of these statistics, a review panel of appointed experts should conduct public hearings to review the findings, hear from stakeholders, and issue recommendations.

2. **Congress should provide funding to incentivize alternatives to solitary confinement.**

Congress should make funding available to states that commit to reforming solitary confinement. This funding would aid states in reversing course on the 1990s-era federal policies that paid for state construction of costly new facilities purpose-built for extreme isolation.[11] Because of these federal financial incentives, many states, including New York, spent hundreds of millions of taxpayer dollars to build harshly punitive prisons.[12] Congress should now ensure that adequate funding is available for states committed to reform. To this end, the Subcommittee should provide federal funding through the Bureau of Justice Assistance ("BJA") or elsewhere to support state and local efforts to reduce the use of solitary confinement, with a focus on program-based alternatives to extreme isolation.

3. **Congress must ensure that the United States fully engages in international processes regarding solitary confinement.**

The prominent role of the United States in the international community underscores the importance of continued engagement at the international level regarding the rights of prisoners. There are two concrete actions the Subcommittee should take. First, the Subcommittee should formally request that the U.S. Department of State play an active role in the overdue process of updating the United Nations Standard Minimum Rules for the Treatment of Prisoners, including standards that restrict isolation. Second, the Subcommittee should formally request the U.S. Department of State grant the longstanding request by the United Nations Special Rapporteur on Torture to conduct site visits to U.S. prisons as part of an international investigation of the use of solitary confinement. These steps will increase transparency, strengthen fundamental protections for incarcerated populations across the globe, and demonstrate U.S. commitment to international law.

4. **Congress should support rulemaking to reduce the use of solitary confinement in all detention facilities in the United States.**

The use of solitary confinement in the United States has proven to be a human rights disaster, but no one suggests the correct response is uncomplicated. Prison and jail administrators interested in reform face difficult questions about how to ensure the well-being of prisoners and staff while effectively responding to serious safety threats in the general population. The federal government is uniquely positioned to develop best practices for state and local corrections officials seeking guidance. The Subcommittee should call for rulemaking by the U.S. Department of Justice that would ensure the promulgation of smart, humane and evidence-based regulations to limit the use of all forms of isolation.

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Solitary confinement is viciously and myopically punitive, and degrading to basic human dignity. Given the harm to individuals who are subjected to these practices and the overwhelming number of prisoners who will eventually return home, solitary confinement is also extremely short-sighted and costly from a corrections and public safety perspective.[13]

The United States cannot effectively address solitary confinement without also bringing about a significant shift in a decades-long focus on punitive incarceration. This is both a significant challenge and an important opportunity. Sweeping reforms to solitary confinement throughout U.S. will necessitate reorienting corrections policies away from punishment and isolation and toward treatment and intervention. For this reason, achieving success in reforming solitary confinement will also have broader benefits for our criminal justice and corrections systems as a whole.

Recent developments in New York show that reform is possible and that corrections leaders and advocates share a belief that the harms caused by extreme isolation must be comprehensively addressed. The leadership and support of the federal government on this issue is essential at this critical time. We respectfully urge the Subcommittee to take the steps outlined in this letter to support these reform efforts.

Sincerely,

Taylor Pendergrass
Senior Staff Attorney

Elena Landriscina
Legal Fellow

[1] *Reassessing Solitary Confinement: the Human Rights, Fiscal and Public Safety Consequences: Hearing Before the Subcomm. on the Constitution, Civil Rights and Human Rights of the S. Comm. on the Judiciary*, 112th Cong. (2012) (testimony of Taylor Pendergrass and Scarlet Kim, New York Civil Liberties Union), *available at* http://www.boxedinny.org/wp-content/uploads/2013/03/Testimony-before-Senate-Judiciar-Subcommittee-July-2012.pdf.

[2] SCARLET KIM, TAYLOR PENDERGRASS, & HELEN ZELON, NEW YORK CIVIL LIBERTIES UNION, BOXED IN: THE TRUE COST OF EXTREME ISOLATION IN NEW YORK'S PRISONS (2012), *available at* http://www.boxedinny.org/report/.

[3] Allegation Letter from New York Civil Liberties Union to United Nations Special Rapporteur on Torture Juan Mendez Concerning New York State Prisoners Held in Solitary Confinement and Other Forms of Extreme Isolation (Feb. 5, 2013), *available at* http://www.nyclu.org/files/releases/ExtremeIsolation_UNletter_2.5.13.pdf.

[4] *Solitary Confinement in the Americas: Heoring of the Inter-American Commission on Human Rights*, 147th Sess. (2013) (testimony of Taylor Pendergrass and Elena Landriscina, New York Civil Liberties Union), *available at* http://www.nyclu.org/content/testimony-iachr-thematic-hearing-solitary-confinement.

[5] Third Amended Class Action Complaint, Peoples v. Fischer, No. 11 Civ. 2694 (S.D.N.Y. Mar. 6. 2013), ECF No. 93, *available at* http://www.nyclu.org/files/releases/Third%20Amended%20Class%20Action%20Complaint..pdf.

[6] Stipulation for a Stay With Conditions, Peoples v. Fischer, No. 11 Civ. 2694 (S.D.N.Y. Feb. 19, 2014), ECF No. 124, *available at* http://www.nyclu.org/files/releases/Solitary_Stipulation.pdf.

[7] SHU Exclusion Law of 2008, codified as amendments to N.Y. Mental Hyg. Law § 45 (McKinney 2011) and N.Y. Correct. Law §§ 2, 137.6, 401, 401-a (McKinney 2011).

[8] New York State Dep't of Corrections & Community Supervision, DOCCS Fact Sheet (Feb. 1, 2014), *available at* http://www.doccs.ny.gov/FactSheets/PDF/currentfactsheet.pdf.

[9] This problem also exists in the federal system. U.S. GOV'T ACCOUNTABILITY OFFICE, BUREAU OF PRISONS: IMPROVEMENTS NEEDED IN BUREAU OF PRISONS' MONITORING AND EVALUATION OF IMPACT OF SEGREGATED HOUSING (2013).

[10] *See* Fatos Kaba et al., *Solitary Confinement and Risk of Self-Harm Among Jail Inmates*, 104 AM. J. PUBLIC HEALTH 442, 445 (2014) (finding that individuals placed in solitary confinement were 6.9 times more likely to engage in self-harm); *see* David Lovell & Clark Johnson, *Felony and Violent Recidivism Among Supermax Prison Inmates in Washington State: A Pilot Study* (2004) (indicating that rates of recidivism increase when prisoners are returned directly from isolated confinement to the community with no re-entry planning); *see* Craig Haney, *Mental Health Issues in Long-Term Solitary and 'Supermax' Confinement*, 49 CRIME & DELINQ. 124, 131 (2003) (noting the association of suicide and self-mutilation with isolated housing).

[11] *See* PAULA M. DITTON & DORIS JAMES, U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS SPECIAL REPORT: TRUTH IN SENTENCING IN STATE PRISONS 3 (1999) (noting that "the U.S. Congress authorized incentive grants to build or expand correctional facilities through the Violent Offender Incarceration and Truth-in-Sentencing Incentive Grants Program in the 1994 Crime Act" and that New York enacted a truth-in-sentencing law one year after the Crime Act, making the state eligible for federal incentive grants); U.S. GENERAL ACCOUNTING OFFICE, TRUTH IN SENTENCING: AVAILABILITY OF FEDERAL GRANTS INFLUENCED LAWS IN SOME STATES 2 (1998) (describing the Department of Justice's authority under the 1994 Crime Act to provide incentive grants for expanding prisons to "increase the secure confinement space for persons convicted of Part 1 violent crimes"); *see id.* at 4 (indicating that in 1996 and 1997, New York received more than $50 million in incentive grants).

[12] *See* CORRECTIONAL ASS'N OF NEW YORK, LOCKDOWN NEW YORK: DISCIPLINARY CONFINEMENT IN NEW YORK STATE PRISONS 13 (2003) (explaining that between 1996 and 2000, New York received nearly $200 million of federal grants, "all of which was spent on the construction of high-tech lockdown facilities"); *see also* KIM, PENDERGRASS, & ZELON, *supra* note 2, at 14 (noting that the federal grants were used to construct Upstate Correctional Facility and purpose-built "SHU 200" facilities).

[13] In New York, approximately 25,000 prisoners are released each year from DOCCS custody. *See* E. ANN CARSON & WILLIAM J. SABOL, U.S. DEP'T OF JUSTICE, PRISONERS IN 2011 30 (2012) (indicating that 24,460 individuals were released from New York state prison in 2011); *see* PAUL GUERINO, PAIGE M. HARRISON & WILLIAM J. SABOL, U.S. DEP'T OF JUSTICE, PRISONERS IN 2010 24 (2011) (reporting 25,481 prisoners released from New York state prisons in 2009 and 25,365 prisoners released in 2010).

PJDC
PACIFIC JUVENILE DEFENDER CENTER

Ensuring excellence in juvenile defense and promoting justice for all children

VIA EMAIL

February 21, 2014

The Honorable Richard Durbin, Chairman
Senate Judiciary Subcommittee on
The Constitution, Civil Rights, and Human Rights
224 Dirksen Senate Office Building
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Owen_Reilly@judiciary-dem.senate.gov

RE: Statement of the Pacific Juvenile Defender Center (PJDC) for Reassessing Solitary Confinement II: The Human Rights, Fiscal, and Public Safety Consequences,

Hearing Before the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights

Dear Chairman Durbin and Members of the Subcommittee:

The Pacific Juvenile Defender Center (PJDC) thanks the Subcommittee for holding this hearing on the use of solitary confinement in the prisons, jails, and juvenile halls of the United States. We write to offer our insight on the profound and permanently negative effects of solitary confinement upon children.

PJDC is the regional affiliate for California and Hawaii of the National Juvenile Defender Center based in Washington, D.C. PJDC works to build the capacity of the juvenile defense bar, and to improve access to counsel and quality of representation for children in the justice system. Collectively, PJDC's membership of more than 400 juvenile attorneys represents tens of thousands of children in California and Hawaii's delinquency and dependency courts.

Extensive research by mental health and medical professionals has shown that solitary confinement of adults is the most extreme form of criminal punishment besides death, and only should be used in the most limited of circumstances. (C. Haney, "Mental Health Issues in Long-Term Solitary and Supermax Confinement," 49 Crime & Delinquency 124 (2003).) When used with children, its effects are even more devastating. Anyone who has spent time

with a child realizes that their conception of time is very different from that of adults, and an hour is an eternity. The negative impacts seen in adults after a month in solitary can be seen in children after brief periods of solitary. (S. Simkins, M. Beyer, L. Geis, "The Harmful Use of Isolation in Juvenile Detention Facilities: The Need for Post-Disposition Representation," 38 WASH. U. J. OF L. & POL'Y 241 (2012).) The U.S. Supreme Court has repeatedly held that children *are* different than adults, and as a result they deserve different punishment. *Roper v. Simmons*, 543 U.S. 551 (2005); *Safford Unified School Dist. v. Redding*, 557 U.S. 364 (2009); *Graham v. Florida*, 560 U.S. ___, 130 S.Ct. 2011 (2010); *J.D.B. v. North Carolina*, __ U.S. __, 131 S.Ct. 2394 (2012).

Most youth who are isolated in solitary confinement at juvenile detention facilities have histories of abuse, trauma, and mental illness. However, even for children without mental illness or abuse histories, being isolated for 23 to 24 hours a day and denied the most basic of human contact induces grave and permanent results. Children in solitary confinement often are denied education or substance abuse and mental health treatment, rehabilitative services that would do the most good to prepare them for a successful return to their families and community.

One of the most common justifications for isolating youth in solitary confinement is that they are at risk of self-harm or suicide. Isolating these vulnerable children for days or weeks on end, rather than providing them appropriate mental health treatment, exacerbates their conditions. This practice flies in the face of extensive research by mental health and criminal justice experts. Furthermore, federal courts have found that prisons may not isolate seriously mentally ill adults; such reasoning surely applies to mentally ill children. *Madrid v. Gomez*, 889 F.Supp. 1146 (N.D. Calif., 1995); *Jones 'El v. Berge*, 164 F.Supp.2d 1096 (W.D. Wis. 2001); *Presley v. Epps*, No. 4:05CV148-JAD (N.D. Mississippi, 2005 & 2007). Isolating mentally ill children or children in crisis does nothing but compound their trauma.

Another common justification for isolating children in solitary confinement is ostensibly for their own protection. We have heard from all too many attorneys in California about how their clients are put in isolation because the child was attacked or threatened by other youth, because the child is very young or small for his or her age, or because the child is or is perceived to be gay, lesbian, or transgendered.

A recent national study of suicides in juvenile detention facilities published by the U.S. Department of Justice found that half of all youth who killed themselves in custody were subjected to isolation in disciplinary confinement, and that 75% of juvenile suicides were children who were confined to single-occupant cells. (L. Hayes, "Characteristics of Juvenile Suicides in Confinement," OJJDP Juvenile Justice Bulletin, Feb. 2009).

The federal government has taken steps to end the practice of "seclusion" of children in mental health institutions because of the permanent physical and mental harms that occur. The Children's Health Act of 2000 required Substance Abuse and Mental Health Services Administration (SAMHSA) and the Centers for Medicare & Medicaid Services (CMS) to develop regulations governing use of restraint and seclusion in health care facilities receiving federal dollars and in non-medical, community-based facilities for youth. CMS has established standards that prohibit hospitals and residential psychiatric treatment facilities for people under age 21 from using restraint and seclusion except for very brief periods of time to ensure safety during emergencies. SAMHSA's goal is to end the use of seclusion (and restraints) on children in mental health institutional settings.
(http://www.samhsa.gov/samhsanewsletter/Volume_18_Number_6/EndSeclusionRestraint.aspx).

Not all states isolate their children in juvenile detention facilities. For example, through programs such as the Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative, jurisdictions are moving away from using punitive solitary confinement and replacing it with positive behavior support programs. And the State of New York announced earlier this week that it would end the practice of isolating children.

The work by SAMHSA and CMS in mental health institutions, and the decision by the State of New York to end the use of isolation for children, provides a roadmap for how Congress could end the use of such punitive treatment of our children. Congress should reauthorize the Juvenile Justice and Delinquency Prevention Act (JJDPA) to condition federal funding to the states on greatly restricting or eliminating the use of solitary confinement of children. Congress can require juvenile detention facilities and jails to adhere to the strict requirements for "seclusion" now imposed on mental health treatment facilities. Congress can create transparency by requiring states and counties to provide data regarding the use of isolation on children, including collecting information such

as the child's age, gender, race, perceived or real sexual orientation, reason for being placed in isolation, and length of stay in isolation. Congress can similarly enact legislation that requires the Department of Justice (and other agencies) to promulgate standards, professional education, and technical assistance to end the isolation of children.

Thank you for your consideration of our comments on the issue of solitary confinement for children.

Sincerely yours,

/s/ Jonathan Laba
Jonathan Laba, Deputy Director

/s/ Corene Kendrick
Corene Kendrick, Board of Directors

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Using Science and Medicine to
Stop Human Rights Violations

Senate Judiciary Committee, Subcommittee on the Constitution, Civil Rights and Human Rights: Statement for the Record from Physicians for Human Rights – February 25, 2014

"Reassessing Solitary Confinement II: The Human Rights, Fiscal, and Public Safety Consequences"

Dear Chairman Durbin, Ranking Member Cruz, and distinguished Members of this Committee:

Physicians for Human Rights (PHR) appreciates this opportunity to join the growing chorus of calls to end the use of solitary confinement in America's prisons, jails, and detention facilities. As an independent organization that uses medicine and science to stop severe human rights human violations, PHR firmly believes that the well-documented psychological and physiological effects of even a brief period spent in solitary confinement are so detrimental that the practice must be prohibited, except when it is absolutely necessary to protect the lives or safety of others. As we work toward the ultimate goal of prohibiting the practice, we support intermediate steps that would create restrictions on its use that are informed by human rights and public health principles. Mr. Chairman, we applaud your leadership on this important human rights issue and look forward to your continued efforts to curb the use of solitary confinement.

Shane Bauer, an American imprisoned in Iran for over two years, reflects on the trauma of living in isolation. He says, "...no part of my experience – not the uncertainty of when I would be free again, not the tortured screams of other prisoners – was worse than the four months I spent in solitary confinement."

The devastation of solitary confinement is not limited to the prisons of repressive countries. American prisons, jails, and detention facilities use solitary confinement now more than ever, despite overwhelming evidence that it is ineffective, counterproductive, and causes severe mental and physical suffering. While the separation of dangerous or vulnerable inmates from the rest of the prison population is sometimes necessary to running a safe facility, our country's widespread use of solitary confinement veers far outside the realm of the necessary into the purely punitive.

As the title of this hearing acknowledges, the use of solitary confinement implicates human rights, fiscal, and public safety concerns. But the mere fact that solitary confinement violates fundamental human rights that apply to all individuals – including those in prisons, jails, and detention facilities – is alone enough to warrant an end to the practice in virtually all cases. In the way in which it is used

in the United States today, solitary confinement constitutes torture and/or cruel, inhuman, or degrading treatment, in violation of both international law and America's founding principles.

While clearly detrimental to all of the inmates held in isolation in prisons and jails, we note that the use of solitary confinement is particularly inappropriate for detainees in immigration detention facilities and national security detention facilities. Asylum seekers, for example, may have been tortured in their home countries and fled such abuse only to be detained in the US, where they may be subjected to solitary confinement. Detainees who have been tortured in the past or who suffer from mental illnesses may become particularly susceptible to the harmful psychological effects of solitary confinement. Oversight and avenues for judicial review in these facilities are sorely lacking, leaving detainees with few options for challenging their placement in solitary. We urge Congress to hold additional hearings to examine the use of solitary confinement in these specific settings.

Given Physicians for Human Rights' medical and scientific expertise, we will focus our testimony on the psychological and physiological effects of solitary on inmates and detainees. These effects are well-documented, pervasive, and uniformly negative across all populations held in solitary.

Psychological Effects

Almost since solitary confinement was first used in the early 19th century, its harmful psychological effects have been well-documented. In fact, shortly after solitary confinement was established in the United States as a means of incarceration, the high rates of severe mental disturbances resulting from solitary confinement caused it to fall into disuse.[1] Early observers noted that even among prisoners with no prior history of mental illness, those held in solitary confinement exhibited "severe confusional, paranoid, and hallucinatory features," as well as "random, impulsive, often self-directed violence."[2] For those who entered prison with a preexisting mental illness – as a disproportionately large portion of today's incarcerated population do – solitary confinement exacerbated those conditions.[3]

Recent research has confirmed that solitary confinement often results in a syndrome described as "prison psychosis," the symptoms of which include anxiety, depression, anger, cognitive disturbances, perceptual distortions, paranoia, psychosis, and self-harm.[4] Dr. Stuart Grassian, a noted expert on the psychological effects of solitary confinement, has identified a group of symptoms associated with solitary confinement:

Hyperresponsivity to external stimuli;
Perceptual distortions, illusions, and hallucinations;
Panic attacks;

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[1] Stuart Grassian, "Psychiatric Effects of Solitary Confinement," *Washington University Journal of Law and Policy* 22:325-383 (2006), at 328.
[2] Id.
[3] Id. at 329.
[4] Interim Report of the Special Rapporteur of the Human Rights Council on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ¶62, U.N. Doc. A/66/268 (August 5, 2011) (*prepared by* Juan Mendez) (*hereinafter* "Mendez Report"), *available at* http://www.ohchr.org/EN/Issues/Torture/SRTorture/Pages/SRTortureIndex.aspx.

Difficulties with thinking, concentration, and memory;
Intrusive obsessional thoughts;
Overt paranoia;
Problems with impulse control, including random violence and self-harm.[5]

This combination of symptoms – some of which Grassian notes are found in virtually no other psychiatric illnesses – together form a unique psychiatric syndrome resulting exclusively from solitary confinement.[6]

While the mental health effects of even a short, defined period of time in solitary confinement can be disastrous, many individuals are held in solitary for prolonged or indefinite lengths of time. These individuals "are in a sense in a prison within a prison,"[7] and the effects on mental health are correspondingly severe. The effects of prolonged solitary confinement, which the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment defines as solitary confinement lasting longer than 15 days,[8] include symptoms of post-traumatic stress such as flashbacks, chronic hypervigilance, and hopelessness; and continued intolerance of social interaction after release.[9]

Furthermore, the deleterious effects of solitary confinement can be even more pronounced among the high proportion of inmates and detainees in American prisons and detention facilities who suffer from preexisting personality disorders or other mental health problems.[10] Indeed, such inmates are the most likely to develop psychoses after being placed in solitary confinement.[11] But even inmates with histories of relatively strong psychological functioning suffer severe psychological trauma as a result of solitary confinement.[12]

Moreover, the negative mental health effects of solitary confinement often continue after an inmate is released. One notable study found that the symptoms of prison psychosis last long after release from solitary confinement, while personality changes resulting from solitary can permanently impair social interaction.[13] This not only inhibits an inmate's ability to adjust to life in the general prison population – where maladjustment often leads to disciplinary infractions, and therefore additional time in solitary confinement – but severely impairs a released inmate's ability to safely and successfully reintegrate into general society, effectively defeating any purported rehabilitative component of incarceration.[14] Instead of curing antisocial behavior, solitary confinement exacerbates it, perpetuating a cycle that results in more incarceration and more solitary confinement.

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[5] Grassian, "Psychiatric Effects of Solitary Confinement," at 335-36.
[6] Id. at 337.
[7] Mendez Report at ¶ 57.
[8] Mendez at ¶ 79.
[9] Grassian, "Psychiatric Effects of Solitary Confinement," at 353.
[10] Id. at 348.
[11] Id. at 349.
[12] Id. at 354.
[13] Sharon Shalev, "A Sourcebook on Solitary Confinement" (2008) (*hereinafter* "Sourcebook") at 13, 22, *available at* http://www.solitaryconfinement.org/sourcebook.
[14] Grassian, "Psychiatric Effects of Solitary Confinement," at 332-33.

Many inmates released from prison after spending time in solitary report having difficulty interacting with their families. One describes how he "curls up in a corner of his apartment, blinds drawn, alone," while another gave himself a black eye while on parole.[15] Eighteen months after being released back into society from solitary confinement, Brian Nelson describes how he feels every day: "People ask me what hurts. I say the box, the gray box. I can feel those walls and I can taste them every day of my life. I'm still there, really. And I'm not sure when I'm ever gonna get out."[16]

The potential for this cycle is particularly worrisome for those in immigration detention, the vast majority of whom are released after a relatively short period in detention. Safe reintegration into society, and thus public safety, is imperiled when these short-term detainees are isolated in solitary confinement.

The lack of social interaction that is the defining feature of solitary confinement causes severe psychological impairment in inmates and detainees that is disproportionately greater than any need to place them in solitary.

Physiological Effects

Solitary confinement also results in a number of serious and well-documented physiological effects as a result of both the physical manifestations of psychological problems, as well as common features of solitary confinement such as lack of access to fresh air and sunlight, and long periods of inactivity.[17]

Inmates and detainees held in solitary for even a short period of time commonly experience sleep disturbances, headaches, and lethargy. In one study, researchers found that over 80% of isolated inmates suffered from all three of these ailments, while more than half also suffered from dizziness and heart palpitations.[18] Inmates in solitary confinement often suffer from appetite loss, weight loss, and severe digestive problems, sometimes resulting from their inability to tolerate the smell or taste of food in an environment of near-total sensory deprivation. Other common signs and symptoms include heart palpitations, diaphoresis, back and joint pain, deterioration of eyesight, shaking, feeling cold, and aggravation of pre-existing medical problems.[19] Moreover, as a result of the psychological trauma common to inmates in solitary confinement, self-harm and suicide are more common in solitary than among the general prison population.[20]

Because inmates in solitary confinement are often kept in separate wings of prisons and detention facilities and are, by definition, separated from other inmates, they are more likely to be subjected to excessive force and other physical abuse by corrections officers and guards.[21] And because they have

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[15] Susan Greene, "The Gray Box: An Investigative Look at Solitary Confinement," January 24, 2012, *available at* http://www.dartsocietyreports.org/cms/2012/01/the-gray-box-an-original-investigation/.
[16] Id.
[17] Shalev, "Sourcebook" at 15.
[18] Id. at 11.
[19] Id. at 15.
[20] Craig Haney and Mona Lynch, "Regulating Prisons of the Future: A Psychological Analysis of Supermax and Solitary Confinement," *New York University Review of Law and Social Change* 23:477-570 (1997), at 525.
[21] Leena Kurki and Norval Morris, "The Purposes, Practices, and Problems of Supermax Prisons," *Crime & Justice* 28:385-424 (2001), at 409.

more limited access to medical services, both pre-existing illnesses and illnesses resulting from time spent in solitary confinement often go untreated.

Conclusion

The physiological and, especially, psychological harm caused by even a relatively short period in solitary confinement is indisputable. A review of the medical literature on solitary confinement by Dr. Craig Haney concludes that "there is not a single published study of solitary or supermax-like confinement in which nonvoluntary confinement lasting for longer than 10 days, where participants were unable to terminate their isolation at will, that failed to result in negative psychological effects."[22] There is no question that the harm caused to an inmate or detainee kept in solitary confinement outweighs any benefit in all but the most extreme cases. Social interaction is neither a right nor a privilege, it is a fundamental human need. "Simply to exist as a normal human being," writes Atul Gawande, "requires interaction with other people."[23]

Physicians for Human Rights urges members of Congress to work towards ending the use of solitary confinement in all facilities under federal jurisdiction, including federal prisons, immigration detention facilities, and national security detention facilities, in all but the most extreme cases. PHR believes that solitary confinement should never be used as a means of controlling mentally ill inmates and detainees, and that any use of solitary confinement should conform to the recommendation contained in the Istanbul Statement on the Use and Effects of Solitary Confinement: "As a general principle solitary confinement should only be used in very exceptional cases, for as short a time as possible and only as a last resort."[24]

While PHR firmly believes that solitary confinement should be used only in the rarest cases and only as a last resort, we recognize that it will continue to be used in prisons, jails, and detention facilities in the near future. Given the extremely harmful psychological and physiological effects of even a short period of time in solitary confinement, we emphasize that inmates and detainees held in solitary confinement must have the same or greater access to medical and mental health care as the general incarcerated or detained population. Individuals held in solitary must receive daily assessments from qualified medical and mental health professionals, whose ethical obligations are to their patients, not the detaining authority.

PHR applauds the Senate for passing S.744, which limits solitary confinement in immigration settings and excludes children and mentally ill individuals from being placed in isolation. This language provides an intermediate step that would limit the use of solitary confinement until broader legislative or administrative efforts may eliminate the practice in the future.

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[22] Craig Haney, "Mental Health Issues in Long-Term Solitary and 'Supermax' Confinement," *Crime & Delinquency* 49:124-156 (2003), at 132.
[23] Atul Gawande, "Hellhole," *The New Yorker* (March 30, 2009), *available at* http://www.newyorker.com/reporting/2009/03/30/090330fa_fact_gawande.
[24] The Istanbul Statement on the Use and Effects of Solitary Confinement (December 9, 2007), *available at* http://www.solitaryconfinement.org/istanbul.

We thank you for the opportunity to submit testimony for this important hearing, and are ready to engage with all congressional leaders to begin a serious dialogue focused on ending the use of this dangerous and counterproductive practice.

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Hearing Before the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights

TESTIMONY OF PRISONERS' LEGAL SERVICES OF NEW YORK

February 25, 2014

INTRODUCTION

Prisoners' Legal Services of New York (PLS) would like to thank Senator Durbin, Chair of the Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights, as well as other committee members, for holding this follow-up Congressional hearing on solitary confinement and for the opportunity to submit written testimony on this critically important civil and human rights issue. The continued use of solitary confinement in the United States prisons, jails and detention centers, despite the proven harm it causes, demands serious investigation and we applaud this committee's foresight and courage in continuing a public discussion on this topic.

PLS is a nonprofit legal services organization that was established in 1976 in response to the Attica uprising, a three-day siege that culminated on September 13, 1971, when then-Governor Nelson Rockefeller ordered state law enforcement agents to forcibly retake control of the Attica prison.[1] The events at Attica forced public attention on the inhumane treatment and living conditions of New York State prisoners and the creation of PLS, as a result, many of those conditions improved. We learned a great deal from "Attica," but with respect to the issue of prolonged solitary confinement, we have lost sight of the most important lesson of all: the need for our criminal justice system to continually assess the effects of the conditions of confinement on prisoners and to consider those effects in light of our evolving standards of decency.

PLS provides civil legal services to indigent prisoners in New York State correctional facilities on issues associated with their conditions of confinement. As a state-wide entity, PLS listens and responds to the concerns and grievances of all those incarcerated in New York State

[1]That day has come to be known as the day when "the bloodiest prison confrontation in U.S. history" occurred. As a result of the uprising, a special state Commission (the McKay Commission) was created to investigate and report on the incident. After dozens of hearings and thousands of pages of testimony, the McKay Commission issued a report chastising New York State prison authorities for: failing to provide adequate programming and education for prisoners; the lack of any procedures for prisoners to air or resolve their grievances; poor conditions in the prisons; and the overall mistreatment of prisoners.

prisons. One might think we have come a long way since Attica, but a review of the more than 10,000 letters PLS receives annually reveals how much there is left to do. PLS responds to every single request we receive. When a prisoner writes to us about a disciplinary disposition that has resulted in a lengthy sentence in solitary confinement or loss of good time, we investigate. If we find a violation of due process or regulatory protections, we file an appeal

In testimony PLS submitted at this committee's initial hearing on solitary confinement in June 2012, we set forth the sordid history of the use of solitary confinement and encouraged this committee to review that history in analyzing how w, as a nation, should address the issue.[2] We asserted then that the history regarding the use of solitary confinement, together with the drum-beat of constant reports from around the world about the effects of prolonged isolation on individual prisoners, required us to examine whether our evolving standards of decency have brought us to a place where we can no longer tolerate such punishment.

In the almost two years since we submitted testimony on this issue, the long-time concerns of corrections experts, medical and psychiatric expert, academic and religious scholars, and advocates regarding the harmful effects of solitary confinement have continued to be reinforced and legitimized.[3] In addition, there have been extensive investigations done and reports written, concerning the use of solitary confinement.[4] Finally, prominent organizations that had yet to weigh in on the issue have now done so.[5]

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[2] *See* Congressional Testimony of Prisoners' Legal Services of New York, June 19, 2012.

[3] *See*, for example, Bureau of Prisons: *Improvements Needed in Bureau of Prisons Monitoring and Evaluation of Impact of Segregated Housing*, May 1, 2013, available at: http://www.gao.gov/products/GAO-13-429; Berger, et. al., *Commentary: Toward an Improved Understanding of Administrative Segregation*, Psychiatry Law, vol. 41 no. 1, pp.61-64 (Response to O'Keefe, *A Longitudinal Study of Administrative Segregation*, et al., J. Am. Acad. Psychiatry Law, vol. 41 no. 1, pp. 49-60) Mar. 1, 2013;American Academy of Child and Adolescent Psychiatry, *Statement Against Youth in Solitary*, April 2012; American Psychiatric Association, *APA Position Statement on Segregation of Prisoners with Mental Illness* (2012); American Public Health Association, *Addressing Solitary Confinement as a Public Health Issue* (2013, Full Policy Statement Available in Early 2014) ;220th General Assembly of the Presbyterian Church (USA), *Commissioner's Resolution on Prolonged Solitary Confinement in US Prisons*, 2012; The National Catholic Review, *We Are One Body*, America July 15 – 22, 2013, available at: http://americamagazine.org/issue/we-are-one-body; New York State Council of Churches: Resolution Opposing the Use of Prolonged Solitary Confinement in the Correctional Facilities of New York State and New York City, Sept. 2012; ACLU, Stop Solitary Campaign available at: https://www.aclu.org/we-can-stop-solitary. For a complete list of the most up-to-date comments on solitary confinement see: ALCU, *Solitary Confinement Resource Materials.* available at: https://www.aclu.org/files/assets/Solitary%20Confinement%20Resource%20Materials%2012%2017%2013.pdf#page=14.

[4] *See*, for example, New York Civil Liberties Union, "*Boxed In – The True Cost of Extreme Isolation in New York's Prisons*" p. 8. (Oct. 3, 2012) available at: http://www.nyclu.org/publications/report-boxed-true-cost-of-extreme-isolation-new-yorks-prisons-2012

[5] *See*, for example, New York State Bar Association Committee on Civil Rights Report to the House of Delegates, *Solitary Confinement in New York State*, Presented to and Approved by the NYS Bar Association House of

We now have even more proof that individuals subjected to solitary confinement are more likely to engage in self-harm.[6] We have more proof that individuals subjected to long term isolation become more, rather than less, violent.[7] We have witnessed individuals who have spent their entire professional lives working in the field of corrections coming to the conclusion that solitary confinement does not rehabilitate.[8] We have learned that, in most cases, severe isolation actually increases, rather than decreases recidivism and thus threatens public safety.[9] We have learned that best practices do not support the use of solitary confinement and that evidence-based policies and treatment practices are what should govern our decision-making in the criminal justice sphere.[10] Finally, with respect to the use of solitary confinement in New York State, we have learned more about the racial disparities and arbitrariness in the imposition of solitary confinement penalties.[11]

Based on what we have learned, we assert that we have now arrived at the time and place where our evolving standards of decency will no longer allow us to tolerate the continued use of long-term solitary confinement.

SOLITARY CONFINEMENT IN NEW YORK IN 2014

Solitary confinement in New York State in 2014 is still confinement 23 hours a day in a cell the size of an elevator for single cells and a parking space for double cells, typically with no commissary, no phone, no package or privileges and no visits.[12] Although given different labels such as administrative segregation, voluntary or involuntary protective custody or disciplinary confinement, the conditions of the confinement are very similar. For most in solitary confinement

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Delegates, January 25, 2013, p. 1 & 6, available at: http://www.nysba.org/WorkArea/DownloadAsset.aspx?id=26699.

[6] Associated Press, *Inmates in Solitary Confinement 7 Times More Likely to Harm Themselves: Study,* Feb. 13, 2014, available at: http://www.cbsnews.com/news/inmates-in-solitary-confinement-7-times-more-likely-to-harm-themselves-study/ *citing* American Journal of Public Health peer-review study of New York City jail inmates confined to solitary confinement.

[7] Erica Goode, *Rethinking Solitary confinement*, N.Y TIMES, Mar. 11, 2012, at A1. This article is available online under the title, "*Prisons Rethink Isolation, Saving Money lives and Sanity*," *available at* http://www.nytimes.com/2012/03/11/us/rethinking-solitary-confinement.html?pagewanted=all.

[8] George H. Bohlinger, III, The *Cruelty of Solitary Confinement*, October 28, 2013, available at: http://www.washingtonpost.com/opinions/the-cruelty-of-solitary-confinement/2013/10/28/3c3e3ffa-3da6-11e3-b0e7-716179a2c2c7_story.html.

[9] Lovell & Johnson, "*Felony and Violent Recidivism Amount Supermax Prison Inmates in Washington State," available at:* http://www.son.washington.edu/faculty/fac-page-files/Lovell-SupermaxRecidivism-4-19-04.pdf.

[10] American Public Health Association Policy Statement 201310 Addressing Solitary Confinement as a Public Health Issue, Nov. 5, 2013, available at: http://www.apha.org/about/news/pressreleases/2013/2013adoptedpolicystatements.htm.

[11] NYCLU "*Boxed In*" *supra* note 4, pp. 23-25.

[12] New York State Bar Association Committee on Civil Rights Report to the House of Delegates, *Solitary Confinement in New York State*, Presented to and Approved by the NYS Bar Association House of Delegates, January 25, 2013, p. 1 & 6, available at: http://www.nysba.org/WorkArea/DownloadAsset.aspx?id=26699. *See also* NYCLU, "*Boxed In*" *supra* note 4, p.5 & 35.

there is little to no human contact, often for years at a time. The one hour of exercise that is allotted to those confined to solitary is done, for most, in a small cage attached to the back of the cell. As noted in our 2012 testimony, in New York State there is still no limit to the length of time a prisoner can be placed in solitary confinement.[13]

Over the past 30 years there has been a steady increase in the length of solitary confinement time that is imposed on prisoners in New York State for alleged misbehavior. Because of this, prisoners, who in the 1980's, were given 30 days in solitary confinement, are now often given years of solitary confinement time without any regard to whether such prolonged isolation will have any positive effect on prison security or the individual's future conduct.

In 2012, with a population of approximately 56,700, over 4,300 prisoners, or 7.6% of the prison population, were held in solitary confinement. In 2014 those numbers have decreased somewhat with a prison population of 53,959 and little over 7% or the population or, 3,804 currently being held in solitary confinement.

When citizens of the United States are facing a loss of liberty in the criminal context, they are provided, not only significant due process rights, but legal counsel to protect those rights. However, once a person is convicted and sent to prison, at least in New York State, those protections disappear. If a prisoner is the subject of an administrative segregation, protective custody or disciplinary hearing, his due process rights are minimal and he is not entitled to counsel either at the hearing or on appeal, even though he is facing a loss of liberty equal to, or arguably greater than that which we, as Americans, so highly protect on the outside.

A. Due Process & Regulatory Violations Result in Illegally Imposed Solitary Confinement

In 2013 PLS received 1,236 requests for assistance from prisoners sentenced to disciplinary solitary confinement, hundreds of who had been sentenced to years in isolation. PLS does not have the staff to investigate all of these requests but we do at least respond to every request. For the cases we reject, we either advise prisoners that they do not have a claim or we provide counsel and advice as to how they can proceed on their own. PLS provided counsel and advice in 857 of the 1,236 requests we received and accepted 220 cases for investigation. Upon full investigation, which involves reviewing all of the documents associated with the disciplinary hearing, listening to the tape of the hearing and often interviewing the accused and his witnesses, PLS found that 111 cases warranted further administrative advocacy; of those 111 cases, PLS prevailed, either administratively or in the courts, in 75 (68%) of them. The result was that over 89 years of solitary confinement time was expunged from prisoners' records and prisoners were, in turn, released from solitary

[13] Congressional Testimony of PLS *supra* note 2 at p. 2.

confinement and allowed to participate in the rehabilitative and educational programs that have been proven crucial to successful reentry.

While solitary confinement itself causes grave concerns, these statistics heighten those concerns by demonstrating that there are individuals being wrongfully held in solitary confinement as a result of due process violations. While PLS does what it can to accept as many cases as possible, there is a huge unmet need due to PLS' limited resources. As a result, it is more likely than not that there are thousands of New Yorkers currently wrongfully being held in solitary confinement as a result of due process violations.

B. Sentencing at Initial Hearings and Modifications on Appeal Are Often Arbitrary and Irrational

Although we welcome the administrative modifications or reversals of disciplinary hearings, they are insufficient to remedy the irreparable harm that has already occurred as a result of the solitary confinement time – often more than three months – that prisoners have been forced to serve prior to the modification or reversal. Moreover, the length of the penalties and the arbitrariness with which they are imposed and, in many instances, modified is cause for serious concern.

To illustrate the arbitrary and capricious nature of the disciplinary process in New York State, attached, as Exhibit A, is a chart showing the results of 18 disciplinary cases PLS handled this past year. As you can see, the imposed penalties are extraordinarily long, ranging from six months for "smuggling" – our client had a piece of candy in his pocket – to five years for participating in a disturbance in a prison yard and striking another prisoner and an officer. Equally as disturbing, however, is the arbitrariness and randomness of penalties. The chart shows an instance where three prisoners were given identical charges, but two of the prisoners were given three years in solitary while the third was given one. The chart also shows that a prisoner found in possession of an amount of marijuana that was so small it could not be weighed, and some gang materials, received the same one year penalty given to the prisoner who was involved in a disturbance in the yard throwing punches at an officer.

However, it is the bizarre nature of the modifications that occur during the administrative review process that really highlight the randomness of the imposition of disciplinary penalties in New York State. When it came to reviewing the penalties for the three prisoners who were accused of being involved in the disturbance in the yard, the prison administration modified the penalties for the two prisoners who were given three years in solitary by reducing one penalty to two years and the other to 18 months, but then refused to modify the one year penalty for the third prisoner. The result

was that three prisoners who were accused of engaging in the exact same misbehavior received solitary confinement times of two years, one year and six months, and one year, respectively.

Moreover, we should not lose site of the randomness of the initial penalties that are imposed. Where is the rationale for issuing a punishment of five years in solitary confinement for being involved in a yard disturbance and then cutting that penalty in half on appeal? Where did the five years come from? Where did the modified two and ½ year penalty come from? What is there to prevent a penalty of 20 years and then a reduction to 10? There is no rhyme or reason to the imposition of such penalties. There is no rational purpose being served, but there is great harm being done.

A poignant example of this is set forth in the administrative appeal (attached as Exhibit B) by a PLS attorney for the client identified as J.T. in Exhibit A. As the appeal demonstrates, the client was deteriorating in solitary confinement. For the first four years of his incarceration, the client had few disciplinary problems and had never been sentenced to solitary confinement. However, in 2012 he was found guilty of violent conduct, fighting, weapon possession, creating a disturbance and refusing a direct order and was given a penalty of 13 months in solitary. From that point on, his life seemed to spiral out of control. While serving the 13 months in solitary he accumulated an additional 28 months of solitary time resulting in his maximum release date being six months after his solitary confinement sentence expired. Although we presented clear and cogent arguments on the issue, citing not only the science surrounding the long-term effects of solitary confinement on one's mental health but also the public safety issue involved in releasing an individual from solitary directly into the community, our pleas were ignored.

C. Prisoners Suffering from Mental Illness are Still Being Subjected to Solitary Confinement

Pursuant to extensive litigation and the passage of what is referred to as the 2008 SHU Exclusion Law, there have been significant improvements in the area of the treatment of prisoners suffering from mental illness in New York State.[14] The 2008 SHU Exclusion Law prohibits the confinement of seriously mentally ill prisoners in solitary confinement. However, for some clients,

[14] In 2002, PLS, together with PRP, Disabilities Advocates, Inc. (DAI) and the law firm of Davis Polk, filed the case of Disability Advocates, Inc. v. New York State Office of Mental Health, S.D.N.Y. 02-CV-4002 (Lynch, J.), on behalf of prisoners with mental illness in New York. The lawsuit alleged that such prisoners are denied adequate mental health care, harshly punished for the symptoms of their mental illnesses and frequently confined under conditions amounting to cruel and unusual punishment. As a result, the suit charged, the mental health of mentally ill prisoners routinely deteriorates, sometimes to the point that the prisoners engage in self-mutilation or suicide. A private settlement agreement was reached in this case that included, *inter alia*, using diagnostic criteria to define serious mental illness (SMI), adding hundreds of treatment beds, offering the possibility of time cuts to SMI prisoners in long-term SHU or keeplock, and placing limits on the types of misconduct for which SMI prisoners may be punished.

the SHU Exclusion Law has become meaningless because, despite the fact that they were diagnosed with a serious mental illness when they came into prison, they were re-diagnosed while in prison and thus no longer benefit from the Exclusion Law. For others, although they suffer from mental illness, because their condition does not fall within the definition of "serious mental illness," they are not exempt from solitary confinement.

Below are examples of four cases that demonstrate the irrational, arbitrary and very arguably unconstitutional way in which solitary confinement sentences are presently being imposed on prisoners in New York State who suffer from mental illness or intellectual capacity issues:

Case No. 1

Our client received six months solitary confinement for fighting, creating a disturbance, assault on staff, unhygienic act and refusing a direct order. He failed to file a timely appeal due to extremely limited literacy skills. During our interview with him we learned that he was in the Special Needs Unit (SNU)[15] prior to receiving the misbehavior report at issue. We also learned that he was scheduled to be released from prison on February 14, 2014.

Due to our client's limited literacy and intellectual skills, we requested permission to file a late appeal, but our request was denied. We then sought a discretionary modification of the penalty asking for time served, noting that our client had already served nearly four months in solitary and would otherwise be forced to "max out" directly from solitary into the community. We stressed the benefit to both our client and the community of allowing our client to transition back to the SNU prior to release, rather than face release to the streets immediately following six months in solitary. Our request was denied. Our client maxed out on 2/14/14 as scheduled.

Case No. 2

Our client had multiple suicide attempts and a former diagnosis of schizophrenia but had been re-diagnosed to mood disorder NOS by DOCCS. He had been placed in solitary confinement three times over the past year. His letters when he was in solitary were deeply disturbing and often included suicidal ideation.

Case No. 3

Our client, who read at a second grade level and had a history of mental illness, was accused

[15] SNU provides "programs and housing areas for offenders who have intellectual and adaptive behavioral deficits and, as a result, may have significant difficulty adjusting to the prison environment. These units are therapeutic communities that provide short and long-term habilitative and rehabilitative services to offenders who have been identified as developmentally disabled or who possess significant intellectual and adaptive behavior deficits. These offenders generally present with an IQ below 70 and have adaptive behavior deficits that impair independent functioning in the general prison population. *See:* Department of Corrections and Community Supervision Report Pursuant to Chapters 130 and 132 of the Laws of 2010, October 6, 2011, available at: http://www.op.nysed.gov/surveys/mhpsw/doccsrpt.pdf.

of throwing a bar of soap at a corrections officer. He was found guilty at his hearing and sentenced to eight months in solitary. Despite the fact that our client was clearly not capable of communicating in English, the hearing was conducted in English and he was not offered a translator. Our client struggled to understand basic concepts throughout the hearing and the hearing officer was not able to understand many of our client's own words. Furthermore, although our client did not have a current mental health diagnosis at the time of the hearing, he has a long history of mental health problems. We submitted a supplemental appeal and the hearing was ultimately reversed, but not before our client served over five months in solitary.

Case No. 4

Our client was charged with smuggling, unhygienic act, refusing a direct order, weapon possession, altered item and two counts each of violent conduct and assault on staff. He was being transferred to the mental health unit when this incident took place. On appeal, his six year solitary confinement sentence resulted in a reduction to five years.

D. Juveniles and Other Vulnerable Populations, Including Sensorially Disabled and the Elderly, Are Not Exempt From Solitary Confinement

In our June 2012 testimony we set forth the position of the U.S. Supreme Court regarding the limited culpability of juveniles as well as the extensive scientific research that suggests that juveniles should not be held culpable for their conduct to the same degree that adults are because juveniles lack fully developed frontal lobes required for impulse control and because their brain structure is fundamentally and significantly different from that of adults.[16]

On February 19, 2014, the New York Civil Liberties Union and New York State DOCCS announced an historic settlement regarding the use of solitary confinement that, *inter alia*, will have some impact on 16 and 17 year old juveniles.[17] The agreement provides for the implementation of new comprehensive and prospective guidelines concerning solitary confinement penalties for all prisoners. However, those guidelines will still permit the imposition of solitary confinement penalties of months and, in many cases, years – penalties that significantly exceed the 15 day maximum suggested by the United Nations Special Rapporteur on torture, Juan E. Méndez.[18] The agreement also stays the pending litigation for two years while experts analyze the use of solitary confinement in New York State.

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[16] *See* Congressional Testimony of Prisoners' Legal Services of New York, pp. 5-7, June 19, 2012.

[17] Peoples, et. al v. Fischer, et. al, *Stipulation For a State With Conditions*, Docket Number 11-CV-2694, S.D.N.Y. (Scheindlin, J.) Feb. 19, 2014 available at: http://www.nyclu.org/news/nyclu-lawsuit-secures-historic-reforms-solitary-confinement.

[18] Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment, *Interim Rep. of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment*, U.N. Doc. A/66/268 (Aug. 5, 2011) (by Juan Mendez), available at http://solitaryconfinement.org/uploads/SpecRapTortureAug2011pdf.

While we are pleased that New York State is making steps toward addressing this issue and we commend NYCLU and NYS DOCCS on their efforts, there is still much to be done. The relief in the agreement, which will not be implemented for at least nine months, will allow for juveniles to be let out of their cells for up to five hours per day during the week for exercise, education and programming. But juveniles will still be held in solitary throughout the weekends and they will still be limited to only one hour of exercise per day, an amount we know is insufficient for their prospects of healthy development. In addition, they will still be subject to the imposition of years of 19 to 23 hour a day confinement which typically carries with it loss of packages, commissary and phone privileges and even sometimes visitation privileges. Such harsh penalties have been proven to cause serious medical and psychological harm and significantly interfere with a juvenile's ability to stay connected with his/her family – a connection that has been found to be instrumental to rehabilitation and successful reintegration into society upon release.

The above referenced settlement agreement also does not provide any immediate relief for youth between 18 and 21, sensorially disabled prisoners or elderly prisoners – all of whom continue to be harmed when subjected to long-term solitary confinement.

EVOLVING STANDARDS OF DECENCY

In our June 2012 testimony we wrote at length about how our evolving standards of decency were bringing us to a place where we could no longer tolerate the use of solitary confinement in our country.[19] Since that time, the New York State Bar House of Delegates has adopted a resolution calling upon all governmental officials charged with the operation of prisons and jails throughout New York State to profoundly restrict the use of long-term solitary confinement and urging that the imposition of long-term solitary confinement on persons in custody beyond 15 days be proscribed.[20] There has been legislation introduced in at least 12 states to reduce or eliminate the use of solitary confinement.[21] There has also been an extensive investigation into the use and abuse of solitary confinement in New York.[22] In light of this, we urge this committee to recognize that our evolving standards of decency can no longer tolerate the wide-spread use of long-term solitary confinement in our prisons and jails.

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[19] *See* Congressional Testimony of Prisoners' Legal Services of New York, pp. 7-10, June 19, 2012.
[20] New York State Bar Association Committee on Civil Rights Report to the House of Delegates, *Solitary Confinement in New York State*, *supra* note 12, p. 2.
[21] America Civil Liberties Union, *Solitary Confinement Resource Materials,* pp. 14-15,available at: https://www.aclu.org/files/assets/Solitary%20Confinement%20Resource%20Materials%2012%2017%2013.pdf#page=14
[22] NYCLU "*Boxed In*" *supra* note 4.

RECOMMENDATION

Our evolving standards of decency mandate Congressional reform in the area of solitary confinement. That reform should do the following:

1. Fundamentally transform how our public institutions respond to incarcerated people's needs and alleged behaviors/threats, from inhumane and counterproductive isolation and deprivation to alternative therapeutic and rehabilitative units that provide additional support, programs, and treatment together with meaningful out-of-cell time and human interaction;
2. Drastically restrict the criteria that can result in separation from the general prison population to the most egregious conduct;
3. End long term isolation beyond 15 days as called for by the UN Special Rapporteur;
4. Ban any length of time of solitary confinement for people who are more vulnerable either to the effects of isolation itself or additional abuses while in isolation, including young people, elderly people, people with physical disabilities, people with mental health or addiction needs, pregnant women, and members of the LGBTI community;
5. Better equip and train staff to effectively work with incarcerated persons;
6. Make the processes resulting in solitary fairer, including legal representation at hearings and upon appeal; and
7. Make the entire process involving the implementation of solitary confinement or separation more transparent, including mandatory reporting requirements with more accountability through independent outside oversight.

Dated: February 25, 2014

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OVERVIEW OF SELECTED DISCIPLINARY HEARINGS HELD IN NEW YORK STATE PRISONS JANUARY 2013 -- FEBRUARY 2014
EXHIBIT A - Congressional Testimony of PLS - February 2014

CLIENT	DESCRIPTION OF CHARGES &/OR INCIDENT	ORIGINAL PENALTY Solitary Confinement/Loss of Good Time in months	MODIFIED	TIME SAVED
J. B.	Disturbance in yard. Group of 25 inmates allegedly throwing closed fist punches at officers.	36/36	18/18	18/18
T. S.	Disturbance - same as above	36/36	18/18	18/18
O.M.	Disturbance - same as above	36/36	24/24	12/12
G. J.	Disturbance - same as above	12/12	No mod.	
I. S.	Disturbance – same as above but accused observed striking inmate and an officer	60/24	30/24	30/0
L. S.	Disturbance – same as above but observed striking an officer	48/24	24/24	24/0
C. W.	Disturbance – same as above but allegedly started the riot	36/24	24/24	12/0
J. J.	Disturbance – same as above but allegedly ran from officer and then assaulted him	18/18	12/6	6/12
S. A.	Yard Disturbance - no specific misconduct alleged	36/36	18/18	18/18
L. R.	Disciplined for smuggling. Had piece of candy in his pocket	6/3	3/3	3/0
D. L.	Possession of a razor, tattoo gun, ink and needles and a broom handle	24/24	9/9	15/15
T. A.	Possession of a weapon, assault on staff, violent conduct and interference	7/9	No	
K. S.	Contraband, marijuana (so little it couldn't be weighed), gang materials	15/15	Reversed	15/15
K. A.	Inmate in RMHU at time of incident. Charged with violent conduct, assault on staff creating a disturbance and altered item in connection with a cell extraction due to threats of self harm. Was placed in OBS cell after incident	12/36	Reversed	12/36
J. S.	Assault on another inmate	18/18	No	
W. W.	Possession of 2 match heads, two match strikers (from match books) a piece of electrical tape and a gang related note written by another inmate	12/12	No	
A. L.	Unsigned note attributed to AL which threatened and harassed a social worker.	4/1	2/1	2/0
J. T.	Appears to suffer from mental illness and was deteriorating in SHU. Requested recognition of this and reversal of recent 2 hearings. Denied	37 (8 hearings)	No	

Prisoners' Legal Services of New York

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Karen Murtagh-Monks
Executive Director

Betsy Hutchings
Managing Attorney

Elizabeth Watkins Price
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Kristina Moon
Staff Attorneys

December 9, 2013

Exhibit B
PLS- Congressional Testimony Feb. 25, 2014

Albert Prack, Director of Inmate Discipline
New York State Department of Corrections
and Community Supervision
Building #2, State Campus
Albany, New York 12226

Re:
Tier III Hearings

Dear Mr. Prack:

I am writing to ask that you significantly reduce the penalties imposed at Tier III hearings of and due to what appears to be a significant deterioration in in mental state during his incarceration at Southport C.F.

came into DOCCS custody in September 2008. Between his arrival at DOCCS and April 2012, conduct, while not exemplary, never resulted in a sanction of over 30 days keeplock. He had never been sent to disciplinary SHU.

In April 2012, while at Attica C.F., was found guilty of violent conduct, fighting, weapon, creating a disturbance and refusing a direct order; a penalty of 13 months SHU was imposed and was transferred to Southport.

adjustment to Southport C.F. has been poor. Since arriving there, he has been found guilty of unhygienic acts on three occasions (one act was the subject of the hearing), most recently on and was found guilty of creating a disturbance while on a trip to a community hospital. The factual basis for the charge of creating a disturbance while on the medical trip was that among other statements, threatened to blow up Southport C.F. and have a shoot-out with the officers.

In the approximately 1 year that has been at Southport, he has accumulated an additional 2 years and 4 months of SHU time. His SHU release date is 5/10/15, 6 months after his sentence expires.

It appears that has developed mental health issues that are likely related to and exacerbated by his long term isolated confinement at Southport C.F. See Argument in Support of Reducing SHU Sanction and supporting documents, attached. His conduct, as documented by the misbehavior reports, is both atypical of his behavior before he was placed in SHU and typical of an individual suffering from "SHU syndrome." In my experience, few inmates who are not mentally ill engage in repeated unhygienic acts or threaten far-fetched conduct such as blowing up a correctional facility and having a "shoot-out" with staff.

is scheduled to be released from DOCCS custody in November 2014. Unless you reduce the SHU sanctions of these two hearings, he is likely to be released from Southport C.F. For both sake and the sake of public safety, I urge you to reduce the penalties of these two hearings so that can spend some time in general population before his release. I also urge you to have transferred from Southport C.F. to a therapeutic setting where he can be assessed and treated.

Thank you for your attention to these concerns.

Sincerely,

Betsy Hutchings
Managing Attorney

ARGUMENT IN SUPPORT OF REDUCING THE SHU SANCTION OF THE SUBJECT HEARING

In further support of the request that you reduce the sentence at issue in this appeal, I refer you to the testimony of Craig Haney, professor of Psychology at University of California, Santa Cruz; the Statement from the Physicians for Human Rights;[1] and the decision in Peoples v. Fischer, 898 F.Supp.2d 618 (S.D.N.Y. 2012), disposing of the defendants' motion to reconsider the court's ruling on qualified immunity and other pre-trial issues. (Materials attached).

These materials, and the sources referenced in them, describe the psychological and physical consequences of long term isolated confinement. I ask that in light of the conclusions drawn by the enclosed testimony, you reduce the SHU sanction imposed to time served.

The statement from Physicians for Human Rights notes that individuals held in solitary confinement for even a short period of time commonly experience sleep disturbances, headaches, lethargy, heart palpitations, dizziness, diaphoresis (excessive sweating, such as that experienced by people in shock), back and joint pain, deterioration of eyesight, shaking, feeling cold and aggravation of pre-existing medical problems.[2]

Craig Haney writes that the level of suffering in the nation's solitary confinement units is palpable and profound.[3] The federal judge who heard the testimony about the conditions of solitary confinement at Pelican Bay Security Housing Unit concluded that the severe deprivation and oppressive control existing in such places "may press the outer bounds of what most humans can psychologically tolerate."[4] According to Mr. Haney, serious forms of mental illness can result from long term isolation. The symptoms of these illnesses include:

- self-mutilation and suicide;
- significantly increased negative attitudes and affect, irritability, anger, aggression and rage; and
- fear of impending emotional breakdowns, a loss of control and panic attacks.

---

[1] Craig Haney's testimony and the Statement of the Physicians for Human rights were made and submitted, respectively, to the Senate Judiciary Committee on the Constitution, Civil Rights and Human Rights Hearing on Solitary Confinement, June 19, 2012.

[2] See Statement of Physicians for Human Rights, pg. 5.

[3] Haney Testimony, pg. 9.

[4] See Haney Testimony, fn. 11, referencing Madrid v. Gomez, 889 F.Supp. 1146, 1267 (N.D. Cal. 1995).

Three quarters of the inmates in one of the studies that Mr. Haney conducted reported most of the following symptoms:

- severe and paralyzing discomfort around other people,
- self-imposed social withdrawal,
- extreme paranoia,
- hypersensitivity to noises, lights and smells,
- various forms of cognitive dysfunction,
- deep depression, and signs and symptoms of psychosis, including visual and auditory hallucinations.[5]

Judge Scheindlin's opinion in Leroy Peoples' Section 1983 challenge to long term isolated confinement imposed for violating the rules governing possession and use of U.C.C. materials, finds that long term segregated housing should be used sparingly after finding that a prisoner has committed a ***very severe*** disciplinary infraction, in which ***safety or security was seriously threatened*** and cites with approval the American Bar Association's Criminal Justice Standards for Prisoners (2010). The ABA standard concluded that only the most severe disciplinary offenses, in which safety and security are seriously threatened, ordinarily warrant a sanction that exceeds 30 days placement in disciplinary housing, and **no placement in disciplinary housing should exceed 1 year.**[6] According to Judge Sheindlin, the ABA standards "are not radical or fringe views: on the contrary the standards' unique contribution is to address all aspects of long term segregation by presenting solutions that embody a consensus view of representatives of all segments of the criminal justice community who worked on them together . . . ." (internal quotes omitted).[7]

The acts that this inmate was found guilty of committing, while serious, did not result in serious injuries or death. Applying the ABA standards would likely lead to an imposition of a SHU sanction far less severe than 12 months. Under the circumstances, I ask that if you do not reverse the subject hearing that you reduce the SHU sanction imposed at that hearing to time served and eliminate the recommended loss of good time.

---

[5] Haney Testimony, pg. 10-11.

[6] See Peoples v. Fischer, 2012 WL 2402593 *1.

[7] Id.

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Written Statement of Prisoners' Legal Services of Massachusetts

United States Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights
hearing on
Reassessing Solitary Confinement II: The Human Rights, Fiscal, and Public Safety Consequences, February 25, 2014

Prisoners Legal Services of Massachusetts welcomes this opportunity to submit written comments to the Subcommittee. The Massachusetts Department of Correction has created secure treatment units which divert many of the most seriously mentally ill prisoners from solitary confinement, with positive effects described below. However, both state and county facilities continue to over-rely on solitary confinement, wasting tax dollars and causing immeasurable, needless suffering. Federal leadership and resources are needed to help Massachusetts and other states shift from this punitive, counter-productive practice toward policies that help prisoners change their behavior and succeed in prison and after their release.

Massachusetts needs federal leadership to reduce over-reliance on solitary confinement

Massachusetts prisoners may be sanctioned with up to ten years of solitary confinement for a single disciplinary offense, with no determination during that time as to their dangerousness, so that they suffer and deteriorate in solitary years after they no longer pose a safety risk in the general population. Others are held in administrative segregation for months or years at the convenience of prison administrators, with only the most pro-forma review, no requirement that they be released if they do not pose a threat to security, and no way to earn their way out.

One prisoner held in administrative segregation, who suffers from chronic anxiety attacks, pleaded for relief in a prison grievance filed just last month:

> I am scared of being alone all the time when these attacks happen... I'm going insane and no one seems to care.....I'm terrified of my own mind and thoughts. I really need some help. Show me some coping skills that really work. Change my medication. Send me somewhere that can help me, give me some colored pencils so I can color with... I need something to occupy my time with. I'm reaching out to you for help, I pray my cries do not fall on deaf ears, I have nowhere else to turn, so please do not leave me alone like this.

Nobody should be subjected to such conditions. But at minimum, prisons must be required to segregate prisoners only while they pose an active threat and no longer, and must give each of them a path out of the sensory deprivation torture that is isolation.

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Massachusetts' new diversion units have greatly helped those diagnosed with serious mental illness but do not solve the problem

In response to litigation, the Massachusetts Department of Correction (DOC) has created two secure residential treatment programs for prisoners with serious mental illness who would otherwise be held in segregation. A recent study by the DOC's mental health contractor, MHM Services, Inc., found that prisoners in these treatment units had sharp decreases in the number of "use of force" incidents, assaults on prisoners, suicide precautions, and disciplinary reports. These decreases were dramatic both during their time in the treatment units and during the six months after their release from the units, as compared to the six months before their admission.[1] For example, the average participant was involved in 1.21 "use of force incidents" and 0.86 staff assaults during the six months before entering the unit; during the period 3-6 months after leaving the unit, they had no use of force incidents or staff assaults.

While these units are a positive model, they do not house all who suffer from serious mental health problems while in segregation, in part because the criteria for admission are narrow and because the number of beds available is extremely limited (only 29). Even prisoners who do not have a history of serious mental illness report severe psychological distress. PLS continues to hear from prisoners in solitary who say they "feel like I'm suffocating," "feel like my mind is racing all day and night," feel like "I can't focus , I can't even breath," and even some who report delusions.

Solitary confinement harms prison management and prisoner reentry

The MHM report referenced above shows that when prisoners are removed from solitary confinement and given rehabilitative programming, their self-harm, assaultiveness, and other disruptive behavior decreases. This confirms recent findings published in American Journal of Public Health which found that solitary confinement was highly associated with self-harm.[2] Mississippi reports that as it greatly reduced its segregation population, incidents of violence dropped by 70 percent. Maine cut its solitary confinement in half between 2010 and 2012 with no increase in prison violence.

In fact, a recent General Accounting Office study reported that investigators had interviewed officials in five states that have reduced reliance on segregation— Maine, Colorado, Kansas, Mississippi and Ohio – and was told in all five states there was no increase in violence when prisoners were moved to less restrictive housing.[3]

---

[1] *Secure Treatment Unit Outcomes: An Analysis of All STU Admissions 2008 to the Present*, MHM Services, Inc., to the Department of Correction Health Services Division (1/18/13).
[2] *Solitary Confinement and Risk of Harm Among Jail Inmates*, American Journal of Public Health, Vol. 104, no 3 (March 2014) p. 442.
[3] *Bureau of Prisons: Improvement Needed in Bureau of Prison 'Monitoring and Evaluation of Impact of Segregated Housing*, GAO-13-429 (General Accounting Office, May 2013) at 34..

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Prisoners held in solitary are set up to fail when released to their communities. In Massachusetts, as elsewhere, prisoners in solitary receive no in-person rehabilitative programming, no job training, and no education. Family contact, another key to successful reentry, is very limited, with few phone calls and visits, which take place only behind glass. Far too many are released directly from long-term solitary confinement to the street. While data is needed, it seems an obvious proposition that this highly traumatized population is far more likely to recidivate than prisoners given treatment, programs and job training instead of isolation.

Solitary confinement wastes public funds

Data is needed to establish the cost of solitary confinement, but it is clear that over-reliance on solitary wastes public funds in several ways.

- Highly staffed segregation units are far more expensive to run than general population units. The GAO study referenced above showed that, depending on the prison, it costs from 50 to over 250 percent more per day to house a prisoner in segregation than in the general prison population. Mississippi reduced the number in segregation from 1000 to 150 and officials now say they are saving about $8 million a year. Colorado is greatly reducing its numbers in segregation, and it expects that closing one segregation facility will save it $13.6 million this year.
- As documented in the MHM study in Massachusetts and the American Journal of Public Health study in New York, cited above, prisoners in solitary are more likely to engage in self-injurious, assaultive, and disruptive behaviors, which results in correctional staff overtime and medical expenses.
- The effects of solitary confinement on recidivism must be studied, but clearly there is a huge cost to sending prisoners into society traumatized by time in solitary confinement and without the therapeutic, educational and employment programs that could have prepared them for release. Prisoners in solitary confinement are destined to fail, and when they commit a new offense it is their victim and the taxpayer who will pay for their re-incarceration

States need federal oversight, monitoring and funding to reduce reliance on solitary confinement

Data collection: To promote more more rational policies in Massachusetts and elsewhere, data collection is necessary. Specifically, federal, state and local jails should be required to report to the Bureau of Justice Statistics:

- How many prisoners are held in solitary in each facility, for how long, and for what reason.
- How prisoners held in solitary compare to other prisoners in incidents of self-harm, assaultive conduct, other disruptive behavior in prison, and recidivism rates.

Funding: Federal funding through the Bureau of Justice Assistance or another federal body is needed to support the data collection and to support alternatives to segregation such as therapeutic units and enhanced programming.

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Comprehensive review of solitary confinement practices: The data described above should inform a comprehensive review of the use of solitary confinement in the United States. A panel of experts should be appointed to review findings and conduct public hearings with input from all stakeholders and issue recommendations.

U.S. Department of Justice Rulemaking: Rulemaking by the Department of Justice can establish evidence-based best practices and prevent abuses that occur daily in prisons throughout the country. Any prison, jail, detention center or juvenile facility receiving federal funds should be subject to regulation setting humane standards. The ABA's *Standards for Criminal Justice, Treatment of Prisoners* related to the use of "segregated housing" should be used as a guideline for policies and practices related to the use of solitary confinement.

Bureau of Prisons Reform: The GAO study suggests that solitary confinement is causing needless suffering and waste in the federal prison system. The BOP should be required to reduce its use of solitary confinement, exclude juveniles and those with mental illness from solitary confinement, and reduce rather than increase its ADX ("supermax") capacity.

PSYCHOLOGISTS FOR SOCIAL RESPONSIBILITY

Statement to:

U.S. Senate Subcommittee on the Constitution, Civil Rights, and Human Rights

Regarding Hearing on:

Reassessing Solitary Confinement II:

The Human Rights, Fiscal, and Public Safety Consequences

From:

Psychologists for Social Responsibility

Phone: 202-543-5347; Fax 312-361-3464

www.psysr.org info@psysr.org

March 4, 2014

PSYCHOLOGISTS FOR SOCIAL RESPONSIBILITY

March 4, 2014

U.S. Senate Subcommittee on the Constitution, Civil Rights, and Human Rights
Washington, D.C.

Dear Chairman Durbin, Ranking Member Cruz, and Honorable Members of the Subcommittee

Psychologists for Social Responsibility (PsySR) is profoundly concerned about the use of solitary confinement in U.S. prisons, including those in California. As psychologists, other mental health professionals, and behavioral scientists, we stand firmly against the use of solitary confinement as it has been proven to be destructive to mental health, even in relatively short periods. The use of solitary confinement is even more harmful when used for longer periods. As such, solitary confinement can be considered cruel, unusual and inhumane treatment, which is in violation of U.S. law.

Dr. Craig Haney, a psychologist and expert in the assessment of institutional environments has written:

> Empirical research on solitary and supermax-like confinement has consistently and unequivocally documented the harmful consequences of living in these kinds of environments. ...Evidence of these negative psychological effects comes from personal accounts, descriptive studies, and systematic research on solitary and supermax-type confinement, conducted over a period of four decades, by researchers from several different continents who had diverse backgrounds and a wide range of professional expertise...[D]irect studies of prison isolation have documented an extremely broad range of harmful psychological reactions . . . (pp. 130-131, references removed).

The United Nations Special Rapporteur on torture, Juan E. Méndez, called for banning solitary confinement when used as a punishment or extortion technique in October of 2011. In his report to the UN, he stated, "Solitary confinement is a harsh measure which is contrary to rehabilitation, the aim of the penitentiary system."

The most recent report of the UN Committee against Torture included in its Conclusions and Recommendations for the United States the following article 36:

> The Committee remains concerned about the extremely harsh regime imposed on detainees in "supermaximum prisons". The Committee is concerned about the prolonged isolation periods detainees are subjected to, the effect such treatment has on their mental health, and that its purpose may be retribution, in which case it would constitute cruel, inhuman or degrading treatment or punishment (art. 16).
>
> **The State party should review the regime imposed on detainees in "supermaximum prisons", in particular the practice of prolonged isolation.** (Emphasis in original.)

Decades of psychological research have established the severe psychological effects of solitary confinement. Thus, Psychologists for Social Responsibility believes that solitary confinement should only be used as a rare last resort for periods short enough to not cause psychological harm. We join the UN Committee against Torture and the United Nations Special Rapporteur in calling for a total ban on prolonged solitary confinement.

Respectfully,

The Steering Committee of Psychologists for Social Responsibility

c/o Dr. Nancy Arvold (narvold@sunset.net 206 Collins Street, Richmond, CA 94801)

UNIVERSITY OF CALIFORNIA, SANTA BARBARA

BERKELEY DAVIS IRVINE LOS ANGELES MERCED RIVERSIDE SAN DIEGO SAN FRANCISCO SANTA BARBARA SANTA CRUZ

ART STUDIO
PHONE (805) 893-3113 FAX (805) 893-7206 SANTA BARBARA, CA 93106-7120

Senator Durbin: Feb 20, 2014

I am a researcher at the University of California Santa. I am also the director of the juvenile-in-justice.com web site. For the past seven years I have visited 31 states, 300 sites and interviewed over 1,000 kids held in detention, commitment and treatment. A significant part of my research has put me in close contact with children as young as ten year olds held in isolation. These are not brutal children. In one case I had to explain to a child being held inn a concrete cell with no shoes, no belt that "your mommy will be here soon." Although I knew that he would not see his parent for at least another eight hours. Although the administrators would describe their usage as "occasional" or "rare" In fact, the children told a different story. They would report being held in solitary for hours, days and in some cases weeks.

I would suggest in your efforts that the language you use be very clear. Where you initiate law to prevent children from being put in isolation for punishment, it is possible for an administrator to place a child into these same 8x10 cold, brutal rooms for an extended periods. The justification I have heard is "therapeutic removal of external visual stimulation to de-escalate improper behavior." These spaces are also given code names: isolation, solitary, disciplinary segregation, administrative segregation, sag time, intensive management units, restricted housing units, involuntary protective custody.

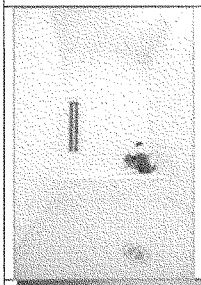
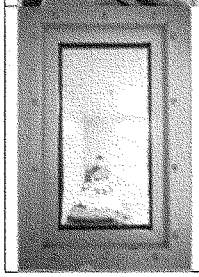
The extensive images I am including are the institutions that allowed me inside, more than an equal number will not allow me in and I fear for the children kept in this opaque, hidden world. They come from a world of deprivation, brutality and trauma and are further significantly and immeasurably damaged by holding them in isolation.

How does the state, acting as the parent have the right to put a child into a closet and lock the door for an extended period of time? As opposed to helping and treating them, we are perpetuating the damage of past trauma in a space of physical loneliness and isolation—a real-life manifestation of how they've felt internally most of their lives.

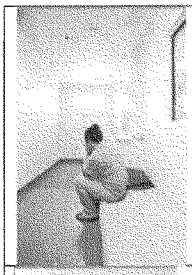
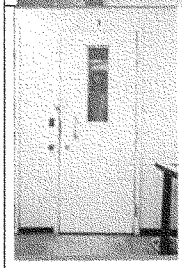
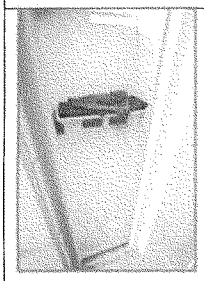
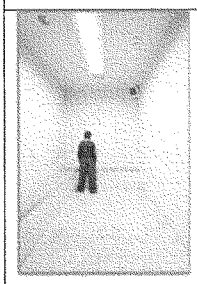
To understand this better, I went through intake at a juvenile facility and is their normal procedure, was held in isolation for 24 hours. I am an adult. I had the ability to leave if I could no longer take the punishment. Many of these kids are taken from their homes or school and their first experience with this system is the brutal world of an isolation cell. It is crippling. I encourage to look at these images and understand that through a seven-year longitudinal study I have accurately documented a world that must force you to response and action. I welcome your attention to this issue and offer any assistance or resource I have to gain better and more humane outcomes for these kids.

Yours truly,
Richard Ross,
Distinguished Professor of Art

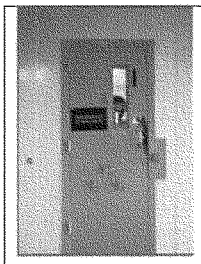
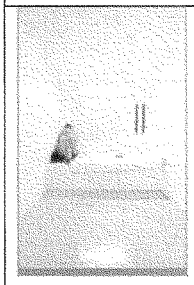
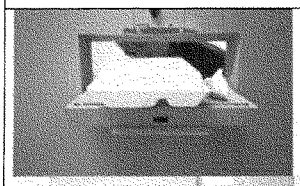
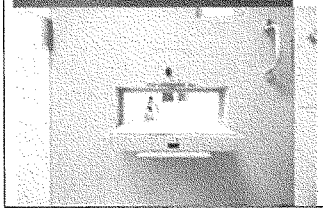
Richard Ross Images for Senate Subcommittee Hearing

Image	I.D.
	S.M., age 15, Miami-Dade Regional Juvenile Detention Center, Miami, Florida.
	G.P., age 14, Caldwell Southwest Idaho Juvenile Detention Center, Caldwell, Idaho.
	C.T., age 15, Southwest Idaho Juvenile Detention Center, Caldwell, Idaho.
	B.N., age 14, Caldwell Southwest Idaho Juvenile Detention Center, Caldwell, Idaho.

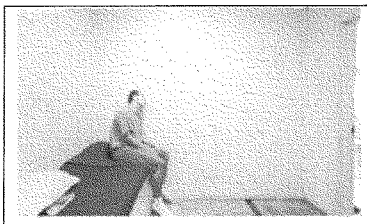
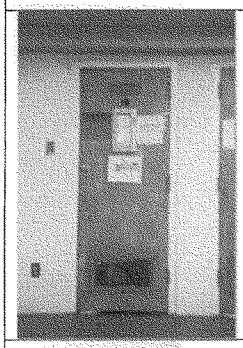
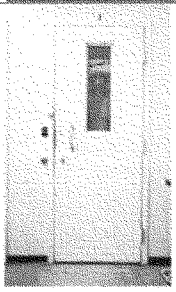
Richard Ross Images for Senate Subcommittee Hearing

	A.S., age 17, Hawaii Youth Correctional Facility (HYCF), Kailua, Hawaii. I am a transgender female. They have me living in an isolation area for the past seven months I think to protect me against suicide, but also keep me sort of away from the other girls.
	C., age 18, MacLaren Youth Correctional Facility, Woodburn, Oregon.
	T., age 17, Washoe County Detention Facility, Reno, Nevada.
	R., age 10, Washoe County Detention Facility, Reno, Nevada.

Richard Ross Images for Senate Subcommittee Hearing

	Metro Regional Youth Detention Center, Atlanta, GA.
	K.W., age 19, Oak Creek Youth Correctional Facility, Albany, Oregon. I've been in ICU for four days. During the day you're not allowed to lay down. If they see you laying down, they take away your mattress. But my back hurts. I got in a fight at Aspen. I hit the staff while they were trying to break it up. They think I'm intimidating. I can't go out into the day room; I have to stay in the cell. They release me for a shower.
 	J., age 16, South Bend Juvenile Correctional Facility, South Bend, Indiana. I'm doing my "seg time." Been here for 1.5 months, out of a 6-month sentence.I spend all day and all night in here. No mattress, no sheets, and I get all my meals through this slot. They told you I get an hour outside? No, it's only to go to the bathroom. (same boy in 2 images)

Richard Ross Images for Senate Subcommittee Hearing

	K.S., age 17, Santa Barbara Juvenile Detention Facility, Santa Maria, California. I've been in ISO now going on eight weeks. I have to remain behind the black line. I read anything, everything. Books about murders and mysteries. I am reading a love story that started with a stalker. Sometime I just scream and they don't like that behavior. When I have nothing to do I sometimes sing. I can sing as loud as I want and I sing the same song over and over again. I can sing a song 10 times. No matter. I'm not allowed out. But I get out once a day to shower and then go to the yard for large muscle movement for one hour. When you are in ISO you do a lot of exercise. You work out, sing, read. They bring my meals to my room.
	Nevada Youth Training Center, Elko, Nevada. C.L., age 17, has made a career out of being a juvenile system resident. He is 17 and has been in the system since he was 12. He sees no future for himself and claims the judge hates him and will never let him go home. He was in a psychiatric institution in Las Vegas. He thinks he will go from here to a group home rather than his own home.
	MacLaren Youth Correctional Facility, Woodburn, Oregon. B.P., age 18, is self-abusive, not taking his meds, combative, and won't think twice about hurting staff. He is being held in the crisis intervention unit, on 24-hour supervision. He is wearing only his underwear. Half the staff is female, and thus they will supervise a male, although they don't watch him shower or use the bathroom. His clothes are removed when he goes in the unit to prevent him from

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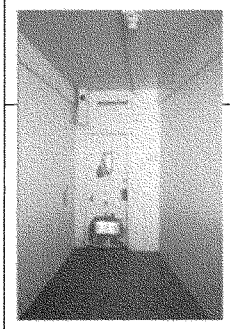
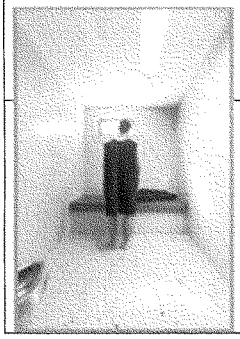
	MacLaren Youth Correctional Facility, Woodburn, Oregon. B.P., age 18, is self-abusive, not taking his meds, combative, and won't think twice about hurting staff. He is being held in the crisis intervention unit, on 24-hour supervision. He is wearing only his underwear. Half the staff is female, and thus they will supervise a male, although they don't watch him shower or use the bathroom. His clothes are removed when he goes in the unit to prevent him from hanging himself.
	One of the kids "beavered" the window of the door. He chewed away the window frame, loosened the screws reached out and open the door, then released three other kids and they attempted an escape. –Not sure where the staff was during this event. They hid in the area of the vocational shop vehicles, then two of the four turned on the other two and pounded the kids with hand made weapons such as ice scrapers. No real damage done to the kids. They were all apprehended within 30 minutes. The ones assaulted upon were treated, observed and remanded to their cells. Nevada Youth Training Center, Elko, Nevada.
	O., age 15, is in a suicide tunic. He is waiting for transportation to YCAT. Juveniles entering this facility are held in isolation wearing a suicide tunic for the first 24 hours. Some have stay for 72 hours—depending on the juvenile's risk assessment. Douglas County Juvenile Detention Facility, Lawrence, Kansas.

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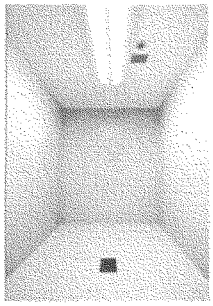
	E.M., age unknown, Miami-Dade Regional Juvenile Justice Center, Miamia, Florida. I came in on charges of trespassing, loitering, and fighting by a school. I've been here two days. I'm in confinement for being disorderly to a guard.
	Alameda County Juvenile Detention Center, San Leandro, California.

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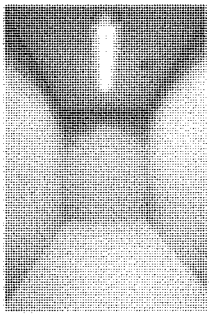
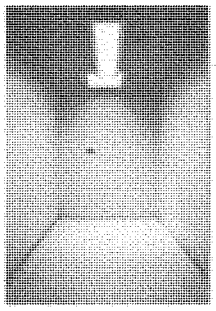
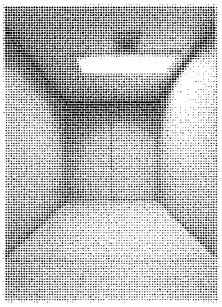
	Ventura County Juvenile Justice Facility, Ventura, California
	Southwest Idaho Juvenile Detention Center, Caldwell, Idaho
	Ventura County Juvenile Justice Facility, Ventura, California

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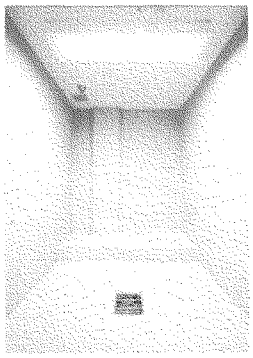
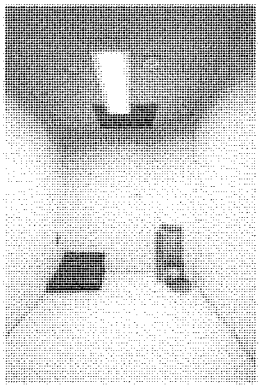
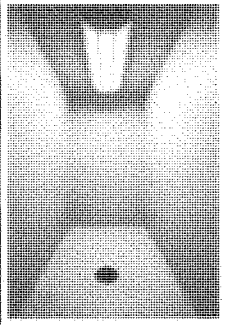
	Sheriff's Isolation Room, El Paso, Texas.
	Caldwell Southwest Idaho Juvenile Detention Center, Caldwell, Idaho.
	South Bend Juvenile Correctional Facility, South Bend, Indiana.

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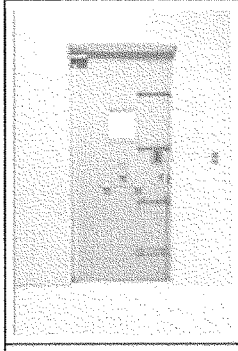
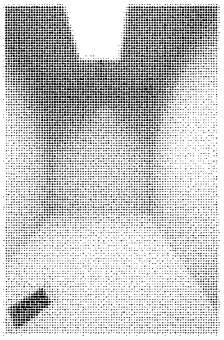
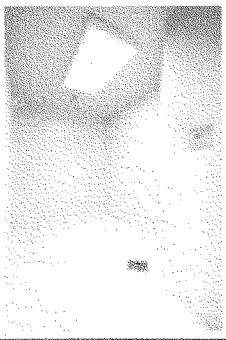
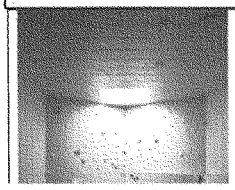
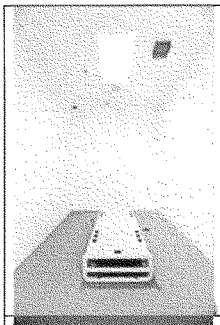
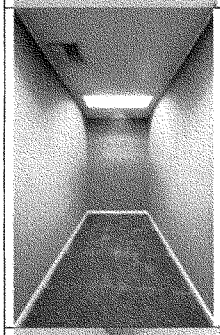
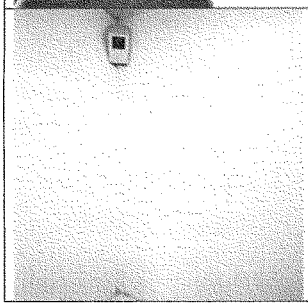
	Green Hill School, Chehalis, Washington
	Wyandotte County Juvenile Detention, Kansas City, Kansas
	Wyandotte County Juvenile Detention, Kansas City, Kansas
	Spitballs on roof of isolation cell in King County Youth Services Center in Seattle, Washington.

Richard Ross Images for Senate Subcommittee Hearing

	Observation and suicide prevention room at Sol Vista Youth Services Center, Pueblo, Colorado.
	Maryvale, an all girls, level 12 institution in Rosemead, California.
	Isolation room, interior, Immigration and Customs Enforcement, Los Angeles, California

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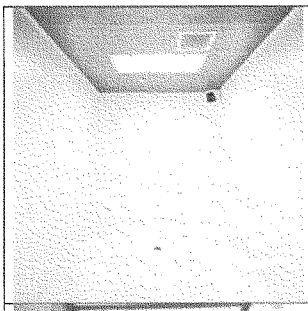
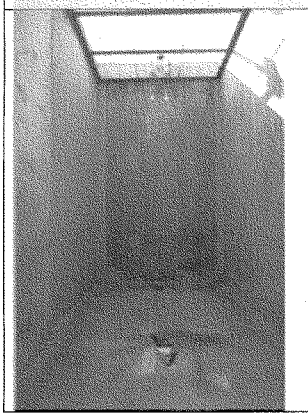
	Isolation room ("rubber room"), U.S. Customs and Border Protection, San Ysidro, California
	Isolation exercise yard, Pelican Bay,

Angola 3—42 Years of Solitary, 42 Years of Cruel and Unusual Punishment

Dear Chairman Durbin and Ranking Member Cruz:

My name is Robert Hillary King. I spent **29** years in solitary before I was freed in 2001 after proving my innocence. Since then I have worked tirelessly speaking and traveling around the world[1] to raise awareness about prison conditions in the US, and to bring attention to the remaining member of the Angola 3—Albert Woodfox—who is still behind solitary bars in Louisiana after nearly **42** years[2] actively fighting to prove his innocence in federal court.[3]

Albert Woodfox's murder conviction was overturned for a 3rd time[4] in February of last year, and for a third time, the State of Louisiana appealed. As Woodfox, now 67, prepares to enter his 42nd year in solitary confinement, he continues to maintain his innocence.

The third member of the Angola 3, Herman Wallace, was released[5] last October from 41 years of solitary confinement after his conviction was overturned,[6] but died 3 days later of advanced liver cancer at the age of 72. A group of U.S. Congressmen saw fit to mark his passing by entering a tribute to Wallace into the Congressional record, describing him as a "champion for justice and human rights."[7]

Many people ask me to describe my nearly 3 decades in solitary. Here is an excerpt from my autobiography where I attempted to put these experiences into words:

> "*Solitary confinement is terrifying, especially if you are innocent of the charges that put you there. It evokes a lot of emotion. It was a nightmare. My soul still cries from all I witnessed and endured. It mourns continuously. Through the course of my confinement I saw men so desperate that they ripped prison doors apart and both starved and mutilated themselves. It takes every scrap of humanity to stay focused and sane in that environment. The pain and suffering are everywhere, constantly with you. There's no describing the day to day assault on your body and your mind and the feelings of hopelessness and despair.* [8]

Over a decade ago Herman, Albert and I filed a landmark civil lawsuit challenging the inhumane and increasingly pervasive practice of long-term solitary confinement.[9] Magistrate Judge Dalby describes our almost four decades of solitary as "*durations so far beyond the pale*" she could not find "*anything even remotely comparable in the annals of American jurisprudence.*"[10] The case, scheduled for trial in June 2014, will detail decades of unconstitutionally cruel and unusual treatment (in violation of 1st, 4th, 8th, 13th and 14th Amendment rights) and systematic due process violations at the hands of Louisiana officials.

In July 2013 a group of US Congressmen issued a statement from the House Judiciary Committee calling on DOJ to investigate "the egregious and extensive use of solitary confinement and other troubling detention practices in various Louisiana prison facilities,"[11] alleging that the Louisiana Department of Corrections "has engaged in a pattern or practice of violations of the US Constitution and federal law in its use of such confinement and detention practices."

---

[1] I hold an honorary Doctorate of Laws from Cambridge University and have spoken before hundreds of universities all over the world, the European Parliament, the ANC in South Africa, and even TEDx in California.
[2] It will be 42 years April 17, 2014.
[3] In April 2011, Congressmen Bobby Scott, John Conyers, and Cedric Richmond all hosted a Congressional Briefing on "*The Abuses of Solitary Confinement in the U.S. Criminal Justice System*" that included a screening of the full length feature documentary film about the A3 civil and criminal cases narrated by Samuel L. Jackson: http://www.youtube.com/watch?v=8U5JMs0LvBo.
[4] http://www.indybay.org/uploads/2013/02/26/brady-woodfox-ruling-02-26-13.pdf
[5] http://www.theatlantic.com/national/archive/2013/10/judge-orders-angola-3s-herman-wallace-released-from-prison/280167/
[6] https://www.indybay.org/uploads/2013/10/01/jackson-herman-10-1-2013.pdf
[7] https://www.indybay.org/uploads/2013/10/12/congressional_tribute-2.jpg
[8] King, Robert Hillary. *From the Bottom of the Heap.* Oakland: PM Press, 2008. Robert's moving autobiography has received critical acclaim and won The National Council on Crime and Delinquencies 2008 PASS (Prevention for a Safer Society) Award.
[9] http://www.angola3.org/uploads/Angola_8th_A_Summary_Judgment_Decision.pdf
[10] *Wilkerson et all v Stalder*, No. 00-304-C-M3, Magistrate Judge's Report, Civil Action (February 1, 2005).
[11] http://richmond.house.gov/sites/richmond.house.gov/files/documents/7%2012%2013%20Letter%20to%20DOJ%20re%20Angola%203.pdf

Angola 3—42 Years of Solitary, 42 Years of Cruel and Unusual Punishment

Then in October, the United Nations Special Rapporteur on torture, Juan E. Méndez, called on the United States to immediately end the indefinite solitary confinement imposed on Albert Woodfox since 1972 saying "keeping Albert Woodfox in solitary confinement for more than four decades clearly amounts to torture and it should be lifted immediately."[12]

Although Albert has not had any disciplinary infractions in decades, and prison mental health records confirm that he is neither a danger to himself or others, he continues to be held in a 6x9 foot cell for 23, sometimes 24 hours a day. He is only allowed to leave the cell if chained at the ankles, wrists and waist, under escort, for up to one hour a day if weather allows in a small outdoor cage by himself.

For decades he's been denied meaningful review of his isolation status:

> *"The only reason given for maintaining the men under these conditions has been due to the "nature of the original reason for lockdown."*
>
> *Amnesty International is firm in its belief that conditions for the men in CCR – 23 hour cellular confinement in stark, tiny cells; limited access to books, newspapers and TV; no opportunities for mental stimulation, work and education; occasional [non-contact] visits from friends and family and limited telephone calls - amounts to cruel, inhuman and degrading treatment."* [13]

Amnesty goes on to detail the human rights violations involved in such extreme confinement:

> *"The USA has ratified the International Covenant on Civil and Political Rights, and the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, both of which prohibit torture or other ill-treatment. The relevant treaty monitoring bodies (the Human Rights Committee and the Committee Against Torture) have found that prolonged solitary confinement an amount to torture or other cruel, inhuman or degrading treatment. Both bodies have expressed concern that the harsh conditions of long-term isolation in some US segregation facilities are incompatible with the USA's treaty obligations.*
>
> *Amnesty International believes their findings are particularly significant in the case of Albert Woodfox and Herman Wallace given that few, if any, other prisoners have spent so long in solitary confinement in recent times.*
>
> *Their treatment also contravenes the UN Standard Minimum Rules for the Treatment of Prisoners. These and other relevant standards emphasize the importance of providing work and educational, recreational, religious and cultural activities for prisoners' mental and physical wellbeing, as well as to prepare individuals for reintegration into society."*[14]

We respectfully submit this statement with the hopes that you can use your legislative powers to put an end to long term solitary confinement. Without uniform standards of the infractions serious enough to merit placement; a meaningful review process with outside oversight; and a grievance process, opportunities for socialization and education, and a clear written timeline and detailed action plan for the inmate's release; this form of punishment serves no punitive or reformative purpose. In our view it is the very definition of cruel and unusual punishment as defined by the Constitution.

We believe that only by openly examining the failures and inequities of the criminal justice system in America can we restore integrity to that system. We are grateful for your efforts to do just that today.

Sincerely,
The 2 Surviving Members of "The Angola 3" - Robert King and Albert Woodfox

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[12] http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13832
[13] http://www.amnestyusa.org/news/press-releases/marking-40-years-of-inhuman-solitary-confinement-for-angola-2-prisoners-amnesty-international-set-to and http://www.amnestyusa.org/news/press-releases/marking-40-years-of-inhuman-solitary-confinement-for-angola-2-prisoners-amnesty-international-set-to
[14] http://www.amnesty.org/en/library/info/AMR51/041/2011/en

ROSEN BIEN
GALVAN & GRUNFELD LLP

Written Statement of Rosen Bien Galvan & Grunfeld LLP
Before the United States Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights

Hearing on

Reassessing Solitary Confinement II:
The Human Rights, Fiscal, and Public Safety Consequences
Tuesday, February 25, 2014
at 2:30 pm

Michael W. Bien
Jane E. Kahn
Ernest Galvan
Thomas Nolan
Lisa Ells
Aaron J. Fischer
Margot Mendelson
Krista Stone-Manista

Rosen Bien Galvan & Grunfeld LLP (RBGG) appreciates this opportunity to submit testimony to this Subcommittee for its hearing on *Reassessing Solitary Confinement II: The Human Rights, Fiscal, and Public Safety Consequences.* Having worked on behalf of thousands of prisoners who have spent time in solitary confinement, we urge the Subcommittee to take affirmative steps to address the overuse and misuse of solitary confinement in America's correctional facilities, particularly with respect to prisoners with mental illness and disabilities.

Throughout the history of our firm, we have sought to end systemic abuses of prisoners and parolees that harm both our clients and public safety. We have brought about systemic change to reform unconstitutional conditions of confinement, denial of mental health care, unlawful discrimination against persons with physical and mental disabilities, protection of prisoners from sexual assault, and violations of due process. We have represented individuals and large classes of prisoners who have been subjected to a range of abuses and dangerous practices in prisons and jails in California and in other states. For example, RBGG is lead plaintiffs' class counsel in *Coleman v. Brown*, a case in which we represent more than 30,000 mentally ill men and women incarcerated in California's prisons. Over the case's 24-year history, we have advocated for systemic reforms to ensure that mentally ill prisoners receive minimally adequate treatment and are not subjected to substantial and avoidable risks of harm, including psychiatric deterioration and suicide. RBGG was co-lead plaintiffs' counsel in the landmark United States Supreme Court case, *Brown v. Plata/Brown v. Coleman* (2011), in which the Supreme Court found that prison overcrowding was the primary cause of serious and longstanding constitutional violations in California's prisons, and ordered that the State reduce prison crowding to levels at which minimally adequate mental health and medical care can be provided to prisoners.[1]

In late 2013, we sought critical reforms to California's use of solitary confinement for prisoners with mental illness during a twelve-day trial before the *Coleman* federal court.[2] In connection with that proceeding, we gathered a substantial body of evidence on the State's use of segregation – that is, solitary confinement – for the mentally ill prisoner population; the effects of these practices on the mentally ill; and alternatives that are safe, feasible, more humane, and more effective in achieving penological objectives, enhancing public safety and serving the public fisc. The conditions and practices we have seen in California's solitary confinement units provide an important window into the dangers of solitary confinement and the need to chart a new path forward.

We encourage this Subcommittee and all stakeholders to commit to a fundamental transformation in how our correctional institutions respond to prisoners' treatment needs as well as to perceived threats to individual and institutional security. It is time to move away from inhumane and counterproductive practices of isolation and deprivation, in favor of a new paradigm that emphasizes therapeutic and rehabilitative programs, clinically-based intervention, and incentive-driven strategies.

I. THE LESSONS OF *COLEMAN*: THERE IS AN URGENT NEED TO FUNDAMENTALLY RE-THINK THE USE OF SOLITARY CONFINEMENT, PARTICULARLY FOR THE MENTALLY ILL

The long history of the *Coleman* case yields a critical lesson: the use of harsh solitary confinement conditions for prisoners with mental illness is harmful, counterproductive, and wasteful, and tinkering around the edges of such a system cannot fix the suffering and related problems that it causes. A key part of the remedial process in *Coleman* was the State's decision to try to bring mental health care into solitary confinement rather than to exclude the mentally ill from these dangerous locations. After more than a decade of federal court-supervised efforts, it is time to declare this experiment a failure.

Since the early days of the *Coleman* case, which began in 1990, the use of segregation for prisoners with mental illness has been recognized as "one of the stiffest challenges to [the State's] creation of a constitutional health care delivery system."[3] Nearly 20 years ago, the *Coleman* court found that the State's "policies and practices with respect to housing of [mentally ill prisoners] in administrative segregation and in segregated housing units violate the Eighth Amendment[.]"[4] At that time, the *Coleman* court found that "placing mentally ill inmates in administrative segregation or segregated housing exacerbates the underlying mental illness, induces psychosis, and increases the risk of suicide."[5]

In 2009, three federal judges presiding over the California prison overcrowding case directed the State to reduce its prison population in order to remedy longstanding constitutional violations regarding mental health and medical care, and specifically noted the "rising number of inmate suicides, particularly in administrative segregation units."[6] In 2011, the United States Supreme Court affirmed the three-judge court's decision, finding that mentally ill "inmates awaiting care may be held for months in administrative segregation, where they endure harsh and isolated conditions and receive only limited mental health services."[7]

In 2013, the *Coleman* court found that many of the serious solitary confinement-related problems identified in 1995 remain, and indicated several issues that had not been adequately addressed, including the "reduction of risks of decompensation and/or suicide, alternatives to use of administrative segregation placements for non-disciplinary reasons, access to treatment/mitigation of harshness of conditions in the administrative segregation units, suicide prevention, and reduction of lengths of stay in administrative segregation."[8] The *Coleman* court also found that these ongoing and unresolved issues meant that prisoners with mental illness continued to face a substantial and unconstitutional risk of harm when placed in California's segregation units.

Efforts to implement incremental reforms to address the horrible suffering that stems from the State's solitary confinement system have, sadly, proven to be largely fruitless. For prisoners with serious mental illness, it is simply not possible to provide meaningful or effective treatment in the harsh and utterly anti-therapeutic conditions that define solitary confinement. We have reached a point where stakeholders must fundamentally re-think the

use of solitary confinement in correctional systems in California and elsewhere, particularly with respect to prisoners with mental illness.

II. THE EXTRAORDINARILY HARSH CONDITIONS IN CALIFORNIA'S SOLITARY CONFINEMENT UNITS

All of California's solitary confinement units share a number of features that constitute severe isolation and sensory deprivation, and deny prisoners normal social interaction.[9] Prisoners are locked in their cells 22½ to 24 hours per day. The State's rules permit them to get as little as five hours of out-of-cell exercise per week,[10] and our office regularly receives reports that segregated prisoners in fact receive even less than what the State's policy requires.[11] Prisoners have extremely limited access to phone calls – some get none at all – and have severe limitations placed on their personal property.[12] They eat all meals inside of their cells – the same small space in which they sleep and defecate.[13] To the limited extent that prisoners are allowed visits by family, they are separated by glass and must communicate over phones.[14] The lack of physical contact means that many prisoners go for years without touching another person with affection. There are no vocational or educational programs or jobs available to prisoners in California's segregation units. These same punitive rules and conditions apply even in segregation units designed for the most seriously mentally ill as part of the *Coleman* court's remedial process.

Every time a prisoner is taken out of his solitary confinement cell, he or she is cuffed and escorted by two corrections officers. Every time he or she leaves the housing unit – whether for a medical appointment, a mental health appointment, or exercise – he or she is subject to a full-body strip search. That strip search is repeated when he or she returns to the unit. Whenever mentally ill prisoners are taken out of their unit for treatment, they receive that treatment while standing or sitting inside a small upright metal cage. Not surprisingly, the State Director of Mental Health for the California prison system has testified that, if given the authority, mental health clinicians working in California's prisons would be very reluctant to allow their patients to be placed in solitary confinement given the risks to their mental health and well-being.[15]

California's system of "segregation" is, by any valid measure, a system of "solitary confinement." The United States Department of Justice has defined solitary confinement as "the state of being confined to one's cell for approximately 22 hours per day or more, alone or with other prisoners, that limits contact with others."[16] This definition is consistent with those offered by scholars on prison conditions, including Dr. Craig Haney, who testified before this Senate Subcommittee on this matter in June 2012.[17]

The Indiscriminate Use of Strip Searches. As noted above, all mentally ill prisoners housed in solitary confinement in California are regularly subjected to unclothed strip searches each time they leave their housing unit. This includes each time they go to, and each time they return from, a treatment session or the exercise yard.[18] These blanket strip search policies, applied without regard to individual risk factors or clinical needs, are dehumanizing and counterproductive. The *Coleman* court's Special Master team of experts

(that regularly monitors conditions and practices inside California prisons) has found that these strip search policies "thwart[] inmate participation" in mental health treatment.[19] A prominent correctional expert testified that the State's universal strip searches in segregation units are not justified from a custodial perspective, and "may create a deterrent to care for some inmates" who truly need treatment.[20] At the recent *Coleman* trial on the State's solitary confinement practices, the State's own clinicians along with the State Director of Mental Health admitted that the blanket use of strip searches in segregation settings may be psychologically damaging,[21] may prevent the delivery of essential mental health treatment,[22] and is a policy that should be revisited.[23]

Repeated and unnecessary strip searches in solitary confinement units are degrading and damaging to any person, and particularly for prisoners, who studies show have disproportionately suffered from past sexual assault and abuse.[24]

The Ubiquitous Use of Cages. California relies extensively on upright metal cages to confine segregated prisoners and employs them often and under a wide set of circumstances. We are unaware of any correctional system that uses these cages to the extent seen in California's prison system, particularly in solitary confinement units.[25] But as other jurisdictions experiment with the use of cages, California should serve as a cautionary tale as to the effects of this inhumane practice.

In its *Plata* decision, the United States Supreme Court noted that mentally ill California prisoners may be held "for prolonged periods in telephone-booth sized cages without toilets" and took the rare step of attaching a photograph of one of these cages to the Court's opinion.[26] Yet California's use of these cages (referred to euphemistically by some as "therapeutic treatment modules") continues on a massive scale. Mentally ill prisoners in solitary confinement are forced to sit or stand in these cages to receive treatment, or when they report thoughts of self-harm or suicide.[27] Psychiatric expert Edward Kaufman, M.D. has noted that these cages "pose a challenge to meaningful therapeutic interactions. To use them for individuals in acute distress, who may be feeling deeply isolated . . . is counter-therapeutic and inhumane."[28] One of California's own prison experts testified that she had not seen any prisons outside of California that used cages for the delivery of individual mental health treatment.[29] The first time she saw them in a California prison, she wrote "cages—terrible hard metal stools. Hard to be in cage for two hours."[30]

Our mentally ill clients have expressed how these cages are dehumanizing and anti-therapeutic:

- "I don't like the cages. I feel like a dog, like an animal—so I don't usually go out."[31]
- "Who wants to come out for 'therapy' in a cage? You feel non-human."[32]
- "When I am in a cage I feel like an animal."[33]

The sight of isolated prisoners locked in these small cages is truly chilling, and we encourage this Subcommittee to take a stand against their use. Prison systems across the country, such as in Mississippi, Illinois, and Kentucky, have found practical methods to

deliver treatment and other services without the use of cages.[34] It is notable that the pervasive use of cages to deliver treatment and programs to prisoners with mental illness or disability also likely violates one of the great Congressional achievements in recent decades, the Americans with Disabilities Act, which requires that public services, programs, and activities (including in correctional settings) be delivered in the *most integrated setting appropriate* to the needs of individuals with disabilities.[35] Putting mentally disabled human beings in cages is a clear step in the wrong direction.

Unregulated "Management Cells." Within California's solitary confinement units is a second tier of even deeper isolation and deprivation, called the "management cell."[36] These management cells are largely unregulated. They are dark, barren, and sometimes without even a bed for someone to sleep on. They are used to impose additional control and punishment on already isolated prisoners who act out. During recent tours by experts in the *Coleman* case, we found that these cells were occupied by prisoners with mental illness at disproportionately high rates. Dr. Craig Haney described the management cell this way: "[I]t's hard to imagine anything more distressing and despairing than that cell, even for a healthy person."[37] Prisoners with mental illness were placed in these cells for reasons that include displaying suicidal behavior[38] and kicking the cell door out of frustration at the length of time spent in isolation.[39]

The conditions in management cells are deplorable. But in a system where the solitary confinement mindset is pervasive, their use has become commonplace. In a system where misbehavior can only be met with punishment and isolation, some place must always be created where even more punishment and even more isolation can be imposed. Only a fundamental transformation in how we approach these issues – one that limits the use of solitary confinement and replaces it with more humane alternatives – will free us from this mindset and end these dangerous practices.

III. CALIFORNIA'S USE OF SEGREGATION TO HOUSE PRISONERS WITH MENTAL ILLNESS HAS EXPLODED IN THE LAST DECADE, EVEN AS THE OVERALL PRISON POPULATION HAS DECREASED

Acutely mentally ill prisoners in California are routinely subjected to long terms in solitary confinement. Since 2000, there has been a massive expansion in the use of solitary confinement for prisoners with mental illness, far outpacing any increase in the overall number of mentally ill prisoners during that time period.[40] In fact, even as California's prison population has decreased by approximately 40,000 prisoners in the last few years (due in large part to the Supreme Court's decision in *Brown v. Plata*), the number of mentally ill prisoners in the State's solitary confinement units has remained steady and, if anything, *increased*.[41] This accounts for the *Coleman* court's recent finding that there is an "elevated proportion of inmates in administrative segregation who are mentally ill" in California prisons.[42]

We presented evidence to the *Coleman* court in December 2013 that the most acutely mentally ill prisoners in outpatient programs are more than twice as likely to be housed in

solitary confinement as compared to other state prisoners.[43] Based on the State's own data, at any given moment, ***one out of every five prisoners in this category of seriously mentally ill prisoners is held in solitary confinement.***[44] Such data is enormously alarming and requires urgent action.

Solitary Confinement for Months, Years, and Even Decades. California retains prisoners with mental illness in solitary confinement units for shockingly long periods of time. There are no time limits for how long a California prisoner with mental illness, or any other prisoner, can be kept in solitary confinement. Using the State's data, we found that (as of November 2013) almost 1,500 of the approximately 3,500 mentally ill prisoners in the State's solitary confinement units have spent more than 90 days in solitary confinement. Hundreds of people have spent more than a year in such isolation.[45] And the reality is likely much worse than what the State's data shows. We discovered that the State systematically underreports lengths of stay in solitary confinement. At the recent *Coleman* trial, the State's witness confirmed that their tracking system "resets the clock" each time mentally ill prisoners transfer institutions or psychologically deteriorate to the point that they need a higher level of mental health care; the system also fails to capture data prior to 2008.[46] For example, we identified one prisoner with mental illness who had been housed in the Security Housing Unit (SHU) for 23 years, but the State's data reported his length of stay at less than nine (9) months.[47] We found other prisoners with diagnosed mental illness who had been housed in the SHU for more than a decade. We discovered one mentally ill prisoner who has been sentenced to confinement in the SHU until 2036; he has been in the SHU since August 1999.[48] Almost half of female prisoners in the SHU have been in isolation for more than a year, with some lengths of stay exceeding 2,000 days.[49]

Federal courts are increasingly recognizing that prolonged segregation harms mentally ill prisoners.[50] The American Psychiatric Association has found that "[p]rolonged segregation [defined as 3-4 weeks] of adult inmates with serious mental illness, with rare exceptions, should be avoided due to the potential for harm to such inmates."[51] The United Nations Special Rapporteur on Torture has called for an end to isolation in solitary confinement units beyond 15 days, and in August 2013 specifically stated that he is "extremely worried about … the approximately 4,000 prisoners in California who are held in Security Housing Units for indefinite periods or periods of many years, often decades."[52] Even California's own prison experts have recommended that placement of prisoners with serious mental illness in segregation occur "only when absolutely necessary," and even then, such placements should be "as brief as possible and "as rare as possible."[53]

But progress in reducing lengths of stay in solitary confinement has largely stalled in jurisdictions like California. As a first step, it is critically important that correctional systems accurately and diligently track the amount of time that prisoners, including the mentally ill, are made to stay in solitary confinement conditions. Systems must also move away from solitary confinement, or at a minimum reduce lengths of stay to a matter of days – *not* weeks, months, years, or decades, as is now too often the practice.

Dangerous Solitary Confinement Placements for "Non-Disciplinary Reasons." Another troubling trend is the placement of prisoners, including those with mental illness, in solitary confinement for "non-disciplinary reasons" – in other words, "for no fault of their own." Hundreds of California prisoners are forced to suffer the extraordinary deprivations of solitary confinement, along with the indignity of repeated strip searching and caging, for reasons that include concerns about their safety on a general population yard or the unavailability of an appropriate non-segregation placement (resulting in what at least one California prison has called "lack of bed" segregation).[54] A December 2013 report by the State's Office of the Inspector General found that almost one-third of the 150 female prisoners in the SHU were there for "Refusal to Accept Assigned Housing" or because they had "Enemy/Safety Concerns."[55] Eighteen of these women had "served SHU terms in excess of one year."[56]

To be sure, this misuse and overuse of solitary confinement housing is the product of overcrowding in systems like California's.[57] But it also demonstrates a dangerous acceptance of solitary confinement as a legitimate penological practice, used as a means of convenience and expedience in the administration of prisons and jails.

The resulting state of affairs inflicts needless pain and suffering, and puts people at grave risk of harm. California's data shows that, between 2007 and 2012, approximately half of its prisoners who committed suicide in administrative segregation units (ASU) were in solitary confinement units for "safety" reasons. The State's suicide prevention coordinator wrote that "placement in ASU of already fearful inmates may only serve to make them even more fearful and anxious, which may precipitate a state of panicked desperation, and the urge to die."[58] Other experts have reached the same conclusion.[59]

It is nothing short of tragic that men and women who are placed in solitary confinement for "their own safety" face such harsh isolation conditions that they resort to self-harm and suicide. No person should be forced to choose between his physical health and safety and his mental health and stability.

"Cycling" Between Solitary Confinement and Crisis Care. California's experience shows that when a prison or jail system becomes committed to the widespread use of solitary confinement and mired in the mindset that supports it, even the most egregious examples of misuse cannot break their dependency on it. These harmful practices persist, even when their use jeopardizes other worthy and agreed-upon goals.

In California, the *Coleman* court and the parties have worked for years to build capacity to provide crisis and inpatient psychiatric care to prisoners who are suffering from acute mental disorders that have led to serious functional disabilities or a risk of self-harm.[60] Yet California is undermining its own efforts through its continuing widespread use and misuse of solitary confinement. It adheres to a policy that permits suicidal and seriously mentally ill prisoners who have been treated at a crisis or inpatient level of care to be discharged directly to segregation, even if that is where they fell into crisis in the first place. The Statewide Director of Mental Health testified in December 2013 that in the case of a

prisoner who has "been in administrative segregation three times and each time it has resulted in a lengthy stay in a crisis bed or referral to the state hospital," a prison clinician still has no authority or ability to prevent that prisoner's return to solitary confinement.[61] Psychiatric experts have documented the avoidable suffering and deaths that have followed from this unconscionable policy.[62]

IV. THE TRAGIC CONSEQUENCES OF CALIFORNIA'S SOLITARY CONFINEMENT SYSTEM TO HUMAN LIFE AND HEALTH

The tragic effects of solitary confinement are starkly illustrated by the suicide rates in California's segregation units, particularly among mentally ill prisoners. The *Coleman* court's suicide expert has reported that the suicide rate in California prisons exceeds national averages, and continues to rise.[63] And the suicide rate in California segregation units is even more stunning. The court's expert has found that the "difference between segregated housing and non-segregated housing with regard to their respective rates of suicides per 100,000 is staggering."[64] A recent report by the State acknowledges this fact, noting that segregation units are "high-risk environments for vulnerable inmates."[65]

California's suicide data highlight the heightened risks of isolation for mentally ill prisoners. In the past five years, well over half of the suicides in segregation units have taken place among prisoners identified prior to their deaths as mentally ill, a disproportionately high rate.[66] Addressing the high rates of suicide in segregation units requires effective and pragmatic measures, most urgent among them the removal of the mentally ill from these dangerous settings. Notably, high suicide rates also occur in the segregation units that California has attempted to design to provide mental health treatment.

Segregation unit suicide rates have grave implications for all prisoners in California's solitary confinement. Even individuals who otherwise suffer no mental illness may deteriorate in the face of extended segregation.[67] The level of isolation provides scant opportunities for detection of the onset of mental illness. Each year, many of the individuals who take their own lives in California segregation units did not come to the attention of mental health clinicians until after their deaths.

Given what is known about the damaging effects of isolation on human beings, whether or not they have a pre-existing diagnosed mental illness, it is critical that all prisoners housed in solitary confinement be formally evaluated by mental health care providers on a regular basis.[68] To their credit, states like Washington and Vermont have implemented such policies, while also taking meaningful steps to reduce the number of prisoners in solitary confinement and the amount of time they spend there.[69] By contrast, California lacks any procedure to formally evaluate the thousands of prisoners in segregation who do not have a mental health diagnosis. As a result, prisoners develop mental illness in segregation units without coming to the attention of custody or on-site nursing staff.[70] The *Coleman* court recently ordered the State to conduct an assessment of need for inpatient psychiatric care on California's death row at San Quentin State Prison, which operates like a solitary confinement unit.[71] We have asked the *Coleman* court to order the State to assess all

prisoners who have been housed in isolation for extended periods.[72] The court's decision on our request is pending.

V. THE NEGATIVE FISCAL AND OPERATIONAL IMPACTS OF CALIFORNIA'S SOLITARY CONFINEMENT SYSTEM

Solitary confinement units are extraordinarily expensive. Onerous custodial practices drain systemwide staffing resources by requiring large numbers of escort staff for even minor out-of-cell movements. Experts have described segregation units as "costly," "very expensive . . . to operate," and "difficult to staff."[73] The State Director of Mental Health admitted that the segregation system's demands on mental health staff are extremely high, and that reducing the number of mentally ill in isolation would "free up" scarce state resources.[74]

In 2009, California's Office of the Inspector General concluded that "the annual correctional staff cost of a standard ASU [Administrative Segregation Unit] bed [was] approximately $14,600 more than the equivalent general population bed."[75] At the time, the additional cost (based on the 8,878 ASU beds statewide in 2009) was "nearly $130 million a year."[76] The OIG attributed these additional costs both to the additional staffing required for segregation units and the higher prevalence of single celling in such units.

The costs of segregation units are driven up still further by the psychological harm they inflict. Placing the mentally ill into settings in which they receive *less* and *inferior* mental health treatment has the effect of worsening mental illness. This increases the demands for expensive inpatient psychiatric care resources. Such placements also enhance mentally ill prisoners' propensity to break institutional rules. The State's correctional expert has described this phenomenon as a "perfect storm," in which prisoners with mental illness are unable to comply with disciplinary rules because of their mental illness, get placed in isolation, and then deteriorate in that anti-therapeutic setting, which in turn causes more rule violations and more punitive isolation.[77]

These costs are simply too high, and do not provide a return on investment. California's experience demonstrates that adequate mental health treatment simply cannot be delivered in segregation units. Scholars, researchers, and knowledgeable mental health professionals—including the State's own experts—recognize that the harsh conditions created and maintained inside these units are "non-therapeutic."[78] Treatment spaces in segregation units are chronically inadequate,[79] and extremely expensive to build.[80] Meanwhile, the punitive custodial measures in isolation units discourage prisoners with mental illness from accessing what treatment can be made available.

VI. IMPLICATIONS ON PUBLIC SAFETY

The enormous human and financial costs of California's solitary confinement system raises the obvious question: Is this system necessary to ensure public safety? The answer by experts who have studied the issue is a resounding "No." James Austin, a nationally prominent correctional expert who has worked with numerous states (including Colorado,

Georgia, Indiana, Kentucky, Mississippi, New Mexico, New York, and Ohio) and the federal Bureau of Prisons to examine and reform their use of solitary confinement, has stated that the long-term isolation of prisoners simply does not result in reduced levels of violence or fewer violations of prison rules.[81] He has successfully transformed prison systems' solitary confinement systems, imposing time limits in the range of 30-40 days for any term of isolation. He has helped to shift the paradigm towards an incentive-based system to address prisoners' negative behaviors, including clinically driven treatment programs for prisoners with mental illness.[82] The reforms that he has helped states implement have proven to reduce violence, improve safety, and save money.[83]

The same applies outside the prison walls. The vast majority of prisoners will serve their time and return to civil society. Those who have been subjected to isolation in prison have been found to have a significantly higher recidivism rate, including a much higher likelihood to commit new violent crimes once released.[84] In short, solitary confinement is dangerous both inside prisons and in our communities.

VII. RECOMMENDATIONS FOR MOVING FORWARD

Some jurisdictions are finally taking important steps to curb the overuse and misuse of solitary confinement. Just this month, the state of New York announced a set of reforms that will move its prison policies in precisely this direction.[85] But the sort of paradigm shift that is required to stop the human suffering and fiscal waste that result from continued adherence to segregation systems will require further leadership, including by this Subcommittee. The American Bar Association has developed its *Standards for Criminal Justice, Treatment of Prisoners*, which, among other important provisions, would put strict limits on the amount of time mentally ill prisoners spend in solitary confinement.[86] The Civil Rights Division of the United States Department of Justice has shown an impressive commitment to using its resources and expertise to investigating some of the worst solitary confinement abuses, particularly as they affect the mentally ill, and to advocating reform.[87]

We urge the Subcommittee to take steps designed to end the long-term isolation of prisoners, and, in the meantime, to help set clear and narrow criteria for the placement of prisoners in isolation. Bright line rules for exclusion and strict time limits are necessary to protect vulnerable populations. Most urgently, it is time to end the use of isolation for the most vulnerable and fragile prisoners, a group that includes juveniles, the mentally ill and the disabled. After decades of litigation aimed at bringing psychiatric care into segregation units, we have reluctantly but firmly reached the conclusion that such efforts are doomed to fail. The mental health and physical safety of prisoners will continue to be jeopardized and undermined, scarce resources that could be spent more wisely will continue to be sacrificed, and public safety will, if anything, be placed at greater risk. Prisoners should not be punished for having a mental illness, and problematic behaviors of prisoners with mental illness are best addressed in a clinically-oriented and operated therapeutic setting. A better path lies ahead of us; we must only choose to take it.

[1] 563 U.S. __, 131 S. Ct. 1910 (2011).
[2] Notice of Motion and Motion for Enforcement of Court Orders and Affirmative Relief re: Improper Housing and Treatment of Seriously Mentally Ill Prisoners in Segregation, *Coleman v. Brown* Docket 4580, Case No. Civ. 90-0520 LKK-DAD ("*Coleman*"), May 6, 2014.
[3] Special Master's Recommendations on Administrative Segregation, Involuntary Medications and Identifier Coding, *Coleman* Docket 1008, Jan. 4, 1999 at 1.
[4] *Coleman v. Wilson*, 912 F. Supp. 1282, 1321 (E.D. Cal. 1995).
[5] *Coleman v. Wilson*, Case No. CIV S-90-0520 LKK JFM P, 1994 U.S. Dist. LEXIS 20786, at *71-*72, *74 (June 6, 1994) (*Coleman* Docket No. 547) (Findings and Recommendations).
[6] *Coleman v. Schwarzenegger*, 922 F. Supp. 2d 882, 902 & 930 (E.D. Cal. 2009).
[7] *Brown v. Plata*, 131 S. Ct. at 1924; *see also id.* at 1933 ("Mentally ill prisoners are housed in administrative segregation while awaiting transfer to scarce mental health treatment beds for appropriate care. One correctional officer indicated that he had kept mentally ill prisoners in segregation for '6 months or more.' . . . Other prisoners awaiting care are held in tiny, phone-booth sized cages. The record documents instances of prisoners committing suicide while awaiting treatment.").
[8] *Coleman v. Brown*, 938 F. Supp. 2d 955, 980 (E.D. Cal. 2013).
[9] Calif. Code Regs. Tit. 15, §§ 3332(f), 3343; CDCR Department Operations Manual § 53130.6; *Coleman* Segregation Trial, Docket 5009, 11/19/13 Hr'g Tr. at 2119:13-2120:24 (C. Haney).
[10] Calif. Code Regs. Tit. 15, § 3343(h).
[11] *See also Coleman* Segregation Trial, Docket 5013, 12/4/13 Hr'g Tr. at 2695:4-2696:18 (R. Fischer) & Ex. 2520 (Suicide Report for Prisoner 4, filed under seal), (CSP-Corcoran Security Housing Unit (SHU) prisoner suicide report finding systemic problems with providing adequate hours of exercise yard each week to SHU prisoners).
[12] CDCR Department Operations Manual §§ 54030.7.1, 54030.8, 54030.20.
[13] *Coleman* Segregation Trial, Docket 5009, 11/19/13 Hr'g Tr. at 2119:13-2120:24 (C. Haney).
[14] Calif. Code Regs. Tit. 15, § 3343(f); CDCR Department Operations Manual §§ 52080.33.5, 54020.22, 53130.6.
[15] *Coleman* Segregation Trial, Docket 5020, 12/19/13 Hr'g Tr. at 3685:2-3686:19 (T. Belavich).
[16] Statement of Interest of the United States of America re Plaintiffs' Motion for Enforcement of Court Orders and Affirmative Relief re Improper Housing and Treatment of Seriously Mentally Ill Prisoners in Segregation (Letter re "Investigation of the State Correctional Institution at Cresson and Notice of Expanded Investigation"), *Coleman* Docket 4736-1, Aug. 9, 2013 at 5.
[17] *See* Expert Declaration of Craig Haney re CDCR Segregated Housing Units "Declaration re: Segregation of Craig Haney"), *Coleman* Docket 4581, May, 6, 2013 at 3 n.4 ("For perhaps obvious reasons, total and absolute solitary confinement ... does not exist in prison and never has. Instead, the term is generally used to refer to conditions of extreme (but not total) isolation from others."); Craig Haney, *The Social Psychology of Isolation: Why Solitary Confinement Is Psychologically Harmful*, Prison Service Journal, 12 (January, 2009), at n.1 ("[S]egregation from the mainstream prisoner population in attached housing units or free-standing facilities where prisoners are involuntarily confined in their cells for upwards of 23 hours a day or more, given only extremely limited or no opportunities for direct and normal social contact with other persons (i.e., contact that is not mediated by bars, restraints, security glass or screens, and the like), and afforded extremely limited if any access to meaningful programming of any kind."); Hope Metcalf et al., *Administrative Segregation, Degrees of Isolation, and Incarceration: A National Overview of State and Federal Correctional Policies*, Yale Law School, Public Law Working Paper No. 301 (June 2013) (noting that state policies use terms such as "segregation," "restricted housing," or "special management," for programs that commentators refer to us "solitary confinement" or "isolation," and that these terms generally refer to practices that "entail[] separating inmates from the general population and restricting their participation in everyday activities such as recreation, shared meals, and religious, educational, and other programs," with housing may be provided in either single or double cells); *Boxed In: The True Cost of Extreme Isolation in New York's Prisons*, New York Civil Liberties Union (2012) at 34 ("Double-celled prisoners experience the same isolation and idleness, withdrawal and anxiety, anger and depression as do prisoners living alone in the SHU. But double-celled, they must also endure the constant, unabating presence of another man in their personal physical and mental space.").
[18] Expert Declaration of Edward Kaufman, M.D. ("Declaration of Edward Kaufman"), *Coleman* Docket 4379, Mar. 14, 2013 ¶¶ 98, 101, 121, 163-167; Reply Decl. of Kim Holland in Supp. of Defs.' Mot. to Terminate, *Coleman* Docket 4438, Mar. 22, 2013 ¶ 10 (CCI); Am. Reply Decl. of Deborah K. Johnson in Supp. of Defs.' Mot. to Terminate, *Coleman* Docket 4508, Mar. 25, 2013 ¶ 6 (CCWF); Reply Decl. of Connie Gipson in Supp. of Defs.' Mot. to Terminate, *Coleman* Docket 4430, Mar. 22, 2013 ¶ 19.
[19] Special Master's 21st Round Monitoring Report, *Coleman* Docket No. 3638, July 31, 2009, at 163.

[20] *See* Expert Declaration of Jeanne Woodford ¶ 56, *Coleman* Docket 4380, Mar. 14, 2013.
[21] *Coleman* Segregation Trial, Docket 5016, 12/11/13 Hr'g Tr. at 3137:5-8 (V. Jordan).
[22] *Coleman* Segregation Trial, Docket 5013, 12/4/13 Hr'g Tr. at 2671:2-7 (R. Fischer); Docket 5018, 12/13/13 Hr'g Tr. at 3503:13-25 (T. Belavich).
[23] *Coleman* Segregation Trial, Docket 5018, 12/13/13 Hr'g Tr. at 3504:15-3505:3 (T. Belavich).
[24] Janet Warren et al., *Psychiatric Symptoms, History of Victimization, and Violent Behavior Among Incarcerated Female Felons: An American Perspective*, 25 Int'l J. of L. & Psychiatry 129, 129-30, 132 (2002) (discussing prior victimization of incarcerated women and observing that "there is general agreement that female prisoners have endured physical and sexual abuse well beyond that of the general population").
[25] *See* Reply Expert Declaration of James Austin in Support of Plaintiffs' Motion Regarding Mentally Ill Prisoners in Segregation ("Declaration of James Austin"), *Coleman* Docket 4762, Aug. 23, 2013 ¶¶ 55-57.
[26] *See Plata*, 131 S. Ct. at 1924 & App'x C
[27] *See, e.g.*, Expert Declaration of Pablo Stewart, M.D., *Coleman* Docket 4381, Mar. 14, 2013, Photo Appx. A-O, HH-PP; Expert Declaration of Craig Haney ("Declaration of Craig Haney"), *Coleman* Docket 4378, Mar. 14, 2013, Photo Exs. B, E, Q, CC; Declaration of Edward Kaufman, Photo Exs. C, E.
[28] Declaration of Edward Kaufman ¶ 86.
[29] *Coleman* Docket 4424, Am. Ex. 88 to the Decl. of Michael W. Bien in Supp. of Pls.' Opp. to Defs.' Mot. to Terminate, Mar. 19, 2013 (Deposition of Dr. Jacqueline Moore at 154:10-155:14).
[30] *Id.* (Deposition of Dr. Jacqueline Moore at 156:10-156:21).
[31] Declaration of Craig Haney ¶ 83.
[32] *Id.* ¶ 149.
[33] *Id.* ¶ 179.
[34] *See* Declaration of James Austin ¶ 56.
[35] *See* 42 U.S.C. § 12132; 28 C.F.R. § 35.130(d); *see also Olmstead v. L.C. ex rel Zimring*, 527 U.S. 581, 597 (1999).
[36] Calif. Code Regs. Tit. 15, §§ 3332(f); CDCR Department Operations Manual § 52080.22.4.
[37] *Coleman* Segregation Trial, Docket 5009, 11/19/13 Hr'g Tr. at 2194:3-9 (C. Haney) & Trial Exs. 2013 & 2018.
[38] *Id.* at 2190:16-2194:9 (C. Haney).
[39] *Id.* at 2195:17-2201:2 (C. Haney).
[40] *Id.* at 2147:4-2149:14 (C. Haney).
[41] *Coleman* Segregation Trial Exs. 2035, 2036, 2037, Docket 5009 (11/19/13 Hr'g Tr.).
[42] *Coleman v. Brown*, 938 F. Supp. 2d 955, 980 (E.D. Cal. 2013).
[43] *See* Declaration of James Austin at 6 (Table 1) (21% of Enhanced Outpatient Program (EOP) prisoners in segregated housing units vs. 9% of all State prisoners in segregated housing units).
[44] *Id.*
[45] *Coleman* Segregation Trial Ex. 2039, Docket 5009 (11/19/13 Hr'g Tr.).
[46] *Coleman* Segregation Trial, Docket 5013, 12/4/13 Hr'g Tr. at 2600:3-5, 2608:8-19, 2641:14-2642:19 (D. Leidner).
[47] *Coleman* Segregation Trial, Docket 5009, 11/19/13 Hr'g Tr. at 2210:23:2211:22 (C. Haney) & Ex. 2040.
[48] *Coleman* Segregation Trial Exs. 2042, 2043, Docket 5009 (11/19/13 Hr'g Tr.).
[49] *Female Inmates Serving Security Housing Unit Terms in the California Department of Corrections and Rehabilitation*, Office of the Inspector General, State of California, Dec. 2013 at 11, *available at* http://www.oig.ca.gov/media/reports/Reports/Reviews/Special%20Review%20-%20Female%20Inmates%20Serving%20Security%20Housing%20Unit%20Terms%20in%20CDCR.pdf
[50] *See, e.g., Indiana Protection and Advocacy Services Commission, v. Commissioner, Indiana Department Of Correction*, Case No. 1:08-cv- 01317-TWP-MJD, 2012 WL 6738517, *15 (S.D. Ind. Dec. 31, 2012) (finding that "[t]he consensus of opinion in a professional body of literature … is that segregation is detrimental for people with serious mental illness because it makes their symptoms worse or because, at best, they do not get any better" and that isolation, sensory deprivation, and enforced idleness in segregation can cause decompensation "as soon as 10 days to two weeks after such placement"); *Ashker v. Brown*, Case No. C 09-5796 CW, 2013 WL 1435148, at *5 (N.D. Cal. Apr. 9, 2013) ("[T]he length of confinement cannot be ignored in deciding whether the confinement meets constitutional standards.") (quoting *Hutto v. Finney*, 437 U.S. 678, 686-87 (1978)); *Madrid v. Gomez*, 889 F. Supp. 1146, 1261–65 (1995) ("[T]he conditions of extreme social isolation and reduced environmental stimulation found in the Pelican Bay SHU will likely inflict some degree of psychological trauma upon most inmates confined there for more than brief periods.").

[51] American Psychiatric Association, Position Statement on Segregation of Prisoners with Mental Illness, Approved December 2012.
[52] California Jails: "Solitary confinement can amount to cruel punishment, even torture" - UN rights expert, United Nations Office of the High Commissioner for Human Rights, Aug. 23, 2013, *available at* http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13655&LangID=E.
[53] Clinical Evaluation of California's Prison Mental Health Services Delivery System, Joel A. Dvoskin, Ph.D., A.B.P.P., Jacqueline M. Moore, R.N. Ph.D. CCHP-A, Charles L. Scott, M.D; *Coleman* Docket 4275-5, at 23 & 25 of 41.
[54] Declaration of Craig Haney ¶¶ 143-153; Declaration of Edward Kaufman ¶ ¶ 96-98, 105, 115-118; Holland Reply Decl. ¶ 6, *Coleman* Docket 4438, Mar. 22, 2013 ("[t]he issue of inmates waiting for transfer to an appropriate bed … is a statewide one and not just specific to California Correctional Institution"); Gipson Reply Decl. ¶ 19, *Coleman* Docket 4430, Mar. 22, 2013 ("inmates are housed in ASU for non-disciplinary reasons or are housed while waiting for an opening in another unit," where they are subjected to "unclothed body searches when leaving their cells to go to yard or medical appointments"); Cash Reply Decl. ¶ 11, *Coleman* Docket 4459, Mar. 22, 2013 (explaining that "new intake inmates are sometimes placed in ASU due to lack of bed space" while asserting that "[t]here is no official 'LOB' classification at CIM"); Telander Reply Decl. ¶ 6, *Coleman* Docket 4480, Mar. 22, 2013 (explaining that of 90 mentally ill prisoners in segregation unit at one prison, seven had been awaiting transfer for more than 90 days").
[55] *Female Inmates Serving Security Housing Unit Terms in the California Department of Corrections and Rehabilitation*, Office of the Inspector General, State of California, Dec. 2013 at 2, *available at* http://www.oig.ca.gov/media/reports/Reports/Reviews/Special%20Review%20-%20Female%20Inmates%20Serving%20Security%20Housing%20Unit%20Terms%20in%20CDCR.pdf
[56] *Id.*
[57] *Brown v. Plata*, 131 S. Ct. at 1919.
[58] *Coleman* Segregation Trial Ex. 2049, Docket No. 5010 (11/20/13 Hr'g Tr.).
[59] *Coleman* Segregation Trial, Docket 5010, 11/20/13 Hr'g Tr. at 2244:17-2252:7 (C. Haney); H. Sánchez, *Suicide Prevention in Administrative Segregation Units: What is Missing*, Journal of Correctional Health Care, 00(0) 1-8 (2013) ("Prisoners placed in the administrative segregation unit for their safety face similar stressors related to being isolated. They also may experience anxiety, fear, and paranoia associated with the initial safety concerns that led to their placement on this unit.").
[60] *See, e.g.*, Order, *Coleman* Docket 1536, July 25, 2003 (order on staffing and beds for inpatient psychiatric programs); Order, *Coleman* Docket 1800, May 2, 2006 (order on State's long-term plan for provision of inpatient care and mental health crisis beds); Order, *Coleman* Docket 2301, June 28, 2007 (order on Department of Mental Hospital's staffing to provide care to mentally ill prisoners and state's plan to provide inpatient care beds for prisoners); Order, *Coleman* Docket 3686, Sept. 24, 2009 (order on State's plan to build sufficient mental health bed); Order, *Coleman* Docket 3929, Oct. 5, 2010 (order to activate inpatient psychiatric beds for prisoners on an urgent basis); Order, *Coleman* Docket 4214, July 13, 2012 (order on progress in addressing problems with access to inpatient mental health care).
[61] *Coleman* Segregation Trial, Docket 5019, 12/18/13 Hr'g Tr. at 3571:10-3572:4 (T. Belavich).
[62] *Coleman* Segregation Trial, Docket 5012, 11/22/13 Hr'g Tr. at 2499:22-2504:17 (E. Kaufman) (prisoner repeatedly cycling between the SHU and crisis care); Docket 5014, 12/5/13 Hr'g Tr. at 2822:18-2824:14 & Ex. 2121 (P. Stewart) (mentally ill prisoner committed suicide just days after being transferred directly from the state hospital back to the solitary confinement).
[63] Report on Suicides Completed in the CDCR, Jan. 1, 2012-June 30, 2012, *Coleman* Docket 4376, Mar. 13, 2013 at 2, 3.
[64] *Id.* at 2, 16.
[65] Decl. of Margot Mendelson in Supp. of Pls.' Response to Defs.' Post-Evidentiary Hr'g Br., *Coleman* Docket 5051-1, Ex. 2 (Annual Report of Suicides in the CDCR During 2012).
[66] Declaration of Michael W. Bien ISO Pls.' Response to Defs.' Amended Application and Proposed Order, *Coleman* Docket 5027, Ex. 32; Segregation Trial Exhibits 2800, 2801, 2802, Docket No. 5020 (12/19/13 Hr'g Tr.).
[67] *Coleman* Segregation Trial, Docket 5010, 11/20/13 Hr'g Tr. at 2306:11-2308:7 (C. Haney).
[68] American Correctional Association, Standards for Adult Correctional Institutions, 4th ed. (2003), 4-4256.
[69] *See* Declaration of James Austin ¶¶ 52-53; 28 V.S.A. § 701a (2012) (Vermont statute setting time limits of 15 and 30 days for segregation of inmates with "serious functional impairment," including mental illness); Wash. DOC

Policy No. 320.200 (policy that detention in administrative segregation last more than 47 in "extraordinary situations" only).

[70] Declaration of Craig Haney ¶ 289; H. Sánchez, *Suicide Prevention in Administrative Segregation Units: What is Missing,* Journal of Correctional Health Care at 3, 00(0) 1-8 (2013).

[71] Order, *Coleman* Docket 4951, Dec. 10, 2013 at 25.

[72] Pls.' Post-Trial Brief re: Enforcement of Court Orders and Affirmative Relief Regarding Improper Housing and Treatment of Seriously Mentally Ill Prisoners in Segregation, *Coleman* Docket 4985, Jan. 21, 2014 at 8.

[73] *Coleman* Segregation Trial, Docket 5016, 12/11/13 Hr'g Tr. at 3035:6-21 (J. Austin).

[74] *Coleman* Segregation Trial, Docket 5019, 12/18/13 Hr'g Tr. at 3563:1-3564:6 (T. Belavich).

[75] Special Review: Management of the California Department of Corrections and Rehabilitation's Administrative Segregation Unit Population, Office of the Inspector General ("OIG Report on CDCR's ASU Population"), State of California, Jan. 2009, at 22, *available at* http://www.oig.ca.gov/media/reports/ARCHIVE/BOA/Reviews/Management%20of%20the%20California%20Department%20of%20Corrections%20and%20Rehabilitation's%20Administrative%20Segregation%20Unit%20Population.pdf.

[76] *Id.*

[77] *Coleman* Use-of-Force Trial, Docket 5006, 11/5/13 Hr'g Tr. at 1854:10-24 (S. Martin).

[78] Clinical Evaluation of California's Prison Mental Health Services Delivery System, Joel A. Dvoskin, Ph.D., A.B.P.P., Jacqueline M. Moore, R.N. Ph.D. CCHP-A, Charles L. Scott, M.D; *Coleman* Docket 4275-5, at 20 of 41.

[79] *See, e.g.*, Pls.' Post-Trial Brief re: Enforcement of Court Orders and Affirmative Relief Regarding Improper Housing and Treatment of Seriously Mentally Ill Prisoners in Segregation, *Coleman* Docket 4985, Jan. 21, 2014 at 5-6 (describing treatment spaces in California segregation units).

[80] *See generally* OIG Report on CDCR's ASU Population at 21-22 (describing the costs of administrative segregation units and how CDCR "incurs additional costs as a result of the unnecessary retention of inmates in administrative segregation."); *Coleman* Segregation Trial, Docket 5017, 12/12/13 Hr'g Tr. at 3237:2-10 (K. Allison) (describing additional steps required to convert a general population unit into an administrative segregation unit, including adding cages).

[81] *See* Declaration of James Austin ¶¶ 27-29.

[82] *Id.* ¶¶ 26, 32, 33, 36, 43.

[83] *Id.*

[84] *See* D. Lovell & C. Johnson, *Felony and violent recidivism among supermax prison inmates in Washington State: A pilot study* (pp. 1–26), Department of Psychosocial & Community Health, University of Washington, Seattle (2003); H. Miller & G. Young, *Prison segregation: administrative detention remedy or mental health problem?* 7 Crim. Behav. and Mental Health 85-94 (1997). *See also* S. Greene, Clements Murder Suspect Ebel Was Anxious about Walking Free, Documents Show, *The Colorado Independent*, Apr. 26, 2013.

[85] B. Weiser, New York State in Deal to Limit Solitary Confinement, *N.Y. Times*, Feb. 20, 2014 at A1.

[86] American Bar Association Criminal Justice Standards on the Treatment of Prisoners (Approved by ABA House of Delegates, Feb. 2010).

[87] U.S. Department of Justice: Letter: Investigation of the State Correctional Institution at Cresson and Notice of Expanded Investigation, May 31, 2013 (published findings that the Pennsylvania State Correctional Institution at Cresson's use of isolation on prisoners with serious mental illness violates the Eighth Amendment and Title II of the Americans with Disabilities Act, with notification of expansion of DOJ's investigation to cover other prisons in the Pennsylvania's system).

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Senate Judiciary Committee on the Constitution, Civil Rights, and Human Rights
Reassessing Solitary Confinement II:
The Human Rights, Fiscal, and Public Safety Consequences

I am a third year law student at the University of Michigan Law School. I recently published a student note about solitary confinement and recidivism in the University of Michigan Law School Journal of Law Reform.[1] In my research, I found that solitary confinement may increase recidivism and violence within prisons. I therefore urge Congress to implement policy reforms that would limit time spent in solitary confinement and eliminate sensory deprivation in order to remedy solitary confinement's negative effects on public safety and recidivism.

As of 2005, about 80,000 prisoners were housed in solitary confinement in jails and in state and federal prisons in the United States.[2] The number of prisoners held in solitary confinement increased 40 percent between 1995 and 2000; in comparison, the total prison population grew by 28 percent over the same period.[3]

In addition to being confined more frequently, the duration of time that prisoners spend in solitary confinement has also increased. In the Pelican Bay Security Housing Unit in California, for instance, prisoners are held for an average of seven and a half years.[4] Of the 1,126 prisoners in solitary confinement at Pelican Bay, more than half have been there for at least five years; eighty-nine have been there for over twenty years and one has been in solitary confinement for forty-two years.[5] Demonstrating the trend toward solitary confinement's increased role is the development of the "supermax" prison. Supermaxes are prisons in which all prisoners are held in extreme isolation in long-term solitary confinement. Prisoners in supermaxes are completely isolated from other prisoners and guards.[6]

Solitary confinement's effects on prisoners have been a source of growing concern,[7] but the question of whether solitary confinement affects public safety and recidivism has received less attention. This question is of growing importance, because of the prevalence and severity of solitary confinement practices in U.S. prisons. Solitary confinement may cause prisoners to become more dangerous because of the mental health consequences, the lack of permitted activities, and the dehumanizing treatment by some prison guards.[8] Two studies—which matched prisoners held in solitary confinement with those held in the general population—found that solitary confinement increased recidivism.[9]

Because of the increasing prevalence and severity of solitary confinement and its potential effects on public safety and recidivism, reform is needed.

I. THE MODERN USE OF SOLITARY CONFINEMENT

The increased use of solitary confinement has been predicated on its supposed benefits to prisons, but

1. Shira E. Gordon, *Solitary Confinement, Public Safety, and Recidivism*, 47 U. MICH. J. L. REFORM 495 (2014) (Note), *available at* http://prospectusmjlr.files.wordpress.com/2014/02/47_2_gordon.pdf.

2. Shane Bauer, *Solitary in Iran Nearly Broke Me. Then I Went Inside America's Prisons*, MOTHER JONES (Nov./Dec. 2012), http://www.motherjones.com/politics/2012/10/solitary-confinement-shane-bauer.

3. JOHN J. GIBBONS & NICHOLAS DE B. KATZENBACH, CONFRONTING CONFINEMENT: A REPORT OF THE COMMISSION ON SAFETY AND ABUSE IN AMERICA'S PRISONS 14–15 (2006), *available at* http://www.vera.org/sites/default/files/resources/downloads/Confronting_Confinement.pdf.

4. Bauer, *supra* note 2.

5. *Id.*

6. *See* Craig Haney, *A Culture of Harm: Taming the Dynamics of Cruelty in Supermax Prisons*, 35 CRIM. JUST. & BEHAV. 956, 968 (2008) (quoting Jones 'El v. Berge, 164 F. Supp. 1096, 1098–99 (W.D. Wis. 2001)).

7. *See, e.g.*, Bauer, *supra* note 2; Atul Gawande, *Hellhole: The United States Holds Tens of Thousands of Inmates in Long-Term Solitary Confinement. Is This Torture?*, NEW YORKER, Mar. 30, 2009.

8. *See* Hans Toch, *The Future of Supermax Confinement*, 81 PRISON J. 376, 378, 382 (2001).

9. *See* Daniel P. Mears & William D. Bales, *Supermax Incarceration and Recidivism*, 47 CRIMINOLOGY 1131, 1149-51 (2009); David Lovell et al., *Recidivism of Supermax Prisoners in Washington State*, 53 CRIME & DELINQUENCY 634, 649-50 (2007).

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there has been little discussion of the effects of solitary confinement on prisoners' interactions with society after they have been released. Most prisoners—including prisoners in solitary confinement—will eventually be released from prison: more than 93 percent of prisoners will eventually rejoin society.[10]

Large numbers of prisoners are released directly from solitary confinement into communities.[11] Prisoners may be released directly from solitary confinement if they are given "indeterminate terms" in solitary confinement when prison officials find the prisoner to be dangerous or a gang member.[12] Prisoners who are released from solitary confinement directly into communities often have difficulty adjusting to "natural light, the noise of traffic and conversation, and physical, human contact."[13] Similarly, prisoners released from solitary confinement into the general prison population often experience "great difficulty controlling their tempers" because of the "anger that has been mounting" during their time in solitary confinement.[14]

Because of these problems of transition, some prison experts have argued that prison officials should shift their focus from simple isolation in prison to preparing prisoners "to succeed at 'going straight' once they are released."[15]

II. THE EFFECTS OF SOLITARY CONFINEMENT ON PRISONERS' MENTAL HEALTH

Prisoners housed in solitary confinement often do not receive adequate mental health treatment, which is troubling because a disproportionate number of prisoners with mental illness are housed in solitary confinement, and such confinement both exacerbates and causes mental illness.[16] A large number of mentally ill prisoners are placed in solitary confinement because—due to mental illness, brain damage, or other factors—such prisoners often have difficulty conforming to prison rules.[17] In a Washington State study, researchers found that mentally ill prisoners were more than four times more likely than other prisoners to have been held in solitary confinement.[18] The American Friends Service Committee (AFSC) found that 26 percent of prisoners held in Arizona's supermax prisons were mentally ill, compared to 16.8 percent of the state's general prison population.[19]

Despite the large numbers of prisoners with mental illness held there, prisoners in solitary confinement receive psychiatric treatment very infrequently; depending on the prison, prisoners may only be evaluated every ninety days.[20] To the extent that prisoners do receive treatment, they are not evaluated confidentially or out of earshot of other prisoners and staff.[21]

Solitary confinement can exacerbate mental illness for prisoners who are already mentally ill. In *Madrid v. Gomez*, the Northern District of California analogized that housing mentally ill prisoners in

10. Haney, *supra* note 6, at 979–80

11. David Fathi, *The Dangerous Overuse of Solitary Confinement in the United States*, *in* PRISON LAW 2012, at 175, 188 (PLI Litig. & Practice, Course Handbook Ser. No. 234, 2012). In California and Colorado, 40 percent of prisoners in solitary confinement are released directly into communities. *Id.* California releases an average of 909 prisoners each year directly from solitary confinement in the Security Housing Units at Pelican Bay and Corcoran prisons. Keramet A. Reiter, *Parole, Snitch, or Die: California's Supermax Prisons and Prisoners, 1997–2007*, 14 PUNISHMENT & SOC'Y 530, 552-53 (2012).

12. Craig Haney, *Mental Health Issues in Long-Term Solitary and "Supermax" Confinement*, 49 CRIME & DELINQUENCY 124, 127 (2003). In order for gang members to be released from solitary confinement into the general prison population, they must renounce their gang membership and "debrief" or "snitch." Reiter, *supra* note 11, at 536.

13. Reiter, *supra* note 11, at 553.

14. Terry A. Kupers, *What to Do With the Survivors?*, 35 CRIM. JUST. & BEHAV. 1005, 1010 (2008).

15. *Id.* at 1014.

16. Haney, *supra* note 12, at 132.

17. Lovell et al., *supra* note 9, at 634.

18. *Id.* at 642.

19. MATTHEW LOWEN & CAROLINE ISAACS, AM. FRIENDS SERV. COMM., LIFETIME LOCKDOWN: HOW ISOLATION CONDITIONS IMPACT PRISONER REENTRY 8 (2012).

20. Kupers, *supra* note 14, at 1010.

21. *Id.*

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solitary confinement "is the mental equivalent of putting an asthmatic in a place with little air."[22] Moreover, solitary confinement causes harmful psychological effects for prisoners who did not previously suffer from mental illness. Professor Craig Haney reviewed studies of solitary confinement and found that, in every published study of solitary confinement where participants were held in "nonvoluntary confinement" for more than ten days and were "unable to terminate their isolation at will," the participants suffered "clinically significant symptoms," including "hypertension, uncontrollable anger, hallucinations, emotional breakdowns, chronic depression, and suicidal thoughts and behavior."[23]

Solitary confinement causes mental illness and anger, which can result in a "vicious cycle—the prisoner becoming more angry and incapable of controlling his temper and the resulting disciplinary tickets leading to more time in the isolation setting that induces the angry behaviors."[24] Prisoners in solitary confinement who exhibit signs of mental illness such as refusing an order, self-mutilation or cutting, or expressing anger at officers likewise receive disciplinary sanctions rather than treatment.[25] Even suicidal behavior is sometimes treated as a behavioral rather than a psychological problem.[26] When prisoners in solitary confinement "become so acutely ill" that they are brought to a psychiatric hospital, the prisoners are returned to solitary confinement when they recover, causing a "revolving door phenomenon."[27]

Due to the psychological effects of solitary confinement, prisoners held in such conditions may be unable to "exercise increased self-control and self-initiative" if they are released into the general population of a prison or into communities.[28] Additionally, prisoners may not be able to recover after their release because these harmful adaptations may "become too ingrained to relinquish."[29] The severe mental health deterioration and the lack of mental health treatment associated with solitary confinement suggest that prisoners may suffer prolonged mental illness after they are released. In turn, these prisoners might pose an increased risk to public safety after their release. The "paranoia and social anxiety" that result from solitary confinement mean that prisoners may have more difficulty "getting their bearings during the first few months" after they are released from prison, when they are at the greatest risk of reoffending.[30]

III. THE IMPACT OF SOLITARY CONFINEMENT ON VIOLENCE IN PRISONS

Ironically, most prisoners housed in solitary confinement are not the "worst of the worst," or the most dangerous or violent. Indeed, many prisoners are housed in solitary confinement because they are mentally ill or are "nuisance prisoners" who break minor rules.[31] For example, 35 percent of prisoners in Arizona's maximum-security units were convicted of non-violent offenses.[32]

Solitary confinement has not come close to solving the very problem it was meant to reduce: prison violence. For example, a 2012 study showed that the "rate of violent incidents" in California prisons is almost 20 percent higher than when the Pelican Bay supermax prison—California's first supermax—opened in 1989.[33] Studies have shown that supermax prisons have little effect on prisoner-on-prisoner violence,[34] and there is only mixed support for the view that supermax prisons increase safety for prison

22. 889 F. Supp. 1146, 1265 (N.D. Cal. 1995).
23. Haney, *supra* note 12, at 132.
24. Kupers, *supra* note 14, at 1012.
25. *Id.*
26. CAROLINE ISAACS & MATTHEW LOWEN, AM. FRIENDS SERV. COMM., BURIED ALIVE: SOLITARY CONFINEMENT IN ARIZONA'S PRISONS AND JAILS 44 (2007).
27. GIBBONS & KATZENBACH, *supra* note 3, at 60.
28. Haney, *supra* note 12, at 140.
29. *Id.* at 141.
30. Lovell et al., *supra* note 9, at 635.
31. Fathi, *supra* note 11, at 186.
32. LOWEN & ISAACS *supra* note 19, at 14.
33. Bauer, *supra* note 2.
34. Chad S. Briggs et al., *The Effect of Supermaximum Security Prisons on Aggregate Levels of Institutional Violence*, 41 CRIMINOLOGY

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guards.[35]

In fact, solitary confinement may even result in *increased* violence in prisons. The Vera Commission[36] explained that "[t]here is troubling evidence that the distress of living and working in this environment actually causes violence between staff and prisoners."[37] In *Toussaint v. McCarthy*, the Northern District of California found that segregation, with its idleness and lack of programmed activity, "spawn[ed] tension and violence; [and] it increase[d] rather than decrease[d] antisocial tendencies among inmates" in California's San Quentin and Folsom prisons.[38] Similarly, Don Cabana, the warden of Parchman Prison in Mississippi explained: "we're taking some bad folks, and we're making them even worse. We're making them meaner."[39]

Long-term solitary confinement is unnecessary. In the past, institutions achieved control over prisoners through less restrictive means. Recently, several states have successfully reduced the number of prisoners in solitary confinement without compromising security. "There is no evidence" that today's violent prisoners "are any worse than those who had been adequately managed by less drastic measures in the past."[40]

In fact, Colorado, Maine, and Mississippi have reduced the numbers of prisoners in solitary confinement without an increase in prison violence.[41] Mississippi State Penitentiary at Parchman, for example, experienced a 50 percent decrease in violence after it transferred 75 percent of its solitary confinement prisoners in the mid-2000s.[42] The State transferred most of these prisoners into the general prison population and transferred prisoners with serious mental illness to a psychiatric hospital or to a step-down mental health treatment program.[43] After these changes, there was a "marked decrease of violence" throughout Mississippi's Department of Corrections and a "stunning decrease in the number of disciplinary infractions . . . given to prisoners suffering from serious mental illness."[44]

One explanation for why non-violent prisoners are held in solitary confinement is that states built supermax prisons because of a "desire to appear 'tough on crime'" and then needed to find prisoners to house in them.[45] Despite its purpose—to make the state appear as if it is keeping its citizens safe—solitary confinement actually deals a blow to societal safety concerns.

IV. SOLITARY CONFINEMENT AND RECIDIVISM

Prisoner recidivism is a serious public safety concern: almost 700,000 prisoners are released from

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1341, 1365–67 (2003) (finding that opening the Tamms Supermax prison in Illinois, the SMU I and II in Arizona, and the OPH in Minnesota did not decrease inmate-on-inmate violence in these states).

35. *Id.* Prisoner assaults on staff decreased in Illinois after the Tamms supermax was built. *Id.* However, staff injuries increased following the opening of the SMU II in Arizona. *Id.* Finally, opening the OPH in Minnesota and the SMU I in Arizona did not impact violence toward staff. *Id.*

36. The Vera Institute of Justice created the Commission on Safety and Abuse in America's Prisons, chaired by the Honorable John J. Gibbons and former Attorney General Nicholas de B. Katzenbach, which issued recommendations on prison reform, including solitary confinement.

37. GIBBONS & KATZENBACH, *supra* note 3, at 14.

38. 597 F. Supp. 1388, 1403 (N.D. Cal. 1984), *aff'd*, 801 F.2d 1080 (9th Cir. 1986).

39. ISAACS & LOWEN, *supra* note 26, at 35.

40. Haney, *supra* note 12, at 129.

41. Bauer, *supra* note 2.

42. *Id.* (citing *Reassessing Solitary Confinement: The Human Rights, Fiscal, and Public Safety Consequences Before the Subcomm. On the Constitution, Civil Rights & Human Rights of the S. Judiciary Comm.*, 112th Cong. (2012) (statement of Christopher B. Epps, Comm'r of Corrections for the State of Mississippi), *available at* http://www.motherjones.com/documents/452652-epps-testimony#document/p3/a76665). Dr. James Austin, a classification expert, had concluded that almost 80 percent of the prisoners held in Unit 32 at Parchman should be transferred from solitary confinement in administrative segregation into the general prison population. Terry A. Kupers et al., *Beyond Supermax Administrative Segregation*, 36 CRIM. JUST. & BEHAV. 1037, 1040 (2009).

43. *See* Kupers, et al., *supra* note 42, at 1042–43 (discussing the process by which these prisoners were released from solitary confinement into the step-down mental health program and then into general population after three to six months).

44. Terry A. Kupers, *Treating Those Excluded from the SHU*, 12 CORRECTIONAL MENTAL HEALTH REP. 49, 50 (2010).

45. Fathi, *supra* note 11, at 185.

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prison every year,[46] and approximately two-thirds of those released are rearrested within three years.[47] While there are multiple theories for why solitary confinement would increase or decrease recidivism, there are few quantitative studies on solitary confinement and recidivism, in part because some states do not release data on recidivism rates of prisoners held in solitary confinement.[48] Based on factors discussed below, however, spending time in solitary confinement may actually increase an individual's risk of recidivism.

A. Recidivism for General Population Prisoners and Access to Rehabilitation

Education and work programming, maintenance of family ties during incarceration, and assistance transitioning into society post-release are all factors known to decrease recidivism.

States that have reduced their recidivism rates have often done so by implementing programs that help prisoners transition from incarceration to release. For example, Oregon dropped its recidivism rate by implementing "detailed transition planning" for prisoners in the six months prior to their release.[49] Between 1999 and 2004, the recidivism rate dropped almost 32 percent. Oregon's recidivism rate—22.8 percent—was the lowest of the forty-one states that the Pew Center studied.[50]

In addition to transition planning, educational and vocational programs also reduce recidivism. Studies have shown that "adult academic and vocational correctional education programs lead to fewer disciplinary violations during incarceration, reductions in recidivism, increases in employment opportunities, and to increases in participation in education upon release."[51] Additionally, family visitation decreases the risk that prisoners will reoffend.[52] In sum, minimizing restrictions during incarceration increases prisoners' chances at successful reentry.[53]

In contrast, prisoners in solitary confinement have no access to the programming that reduces recidivism. They have "little to no access" to work, substance abuse classes, vocational training, and education.[54] Solitary confinement prisoners in Arizona's Special Management Units, for example, can only view education or rehabilitative programming if they purchase a television, which many prisoners cannot afford to do.[55] They also have few opportunities "to learn how to manage interpersonal conflict or to develop reentry plans, which can be critical to successful transition back into society."[56]

Research on recidivism has shown that rehabilitative and transition programming, as well as less punitive and restrictive conditions, can help reduce recidivism. Solitary confinement is clearly incompatible with the factors shown above that reduce recidivism.

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46. E. ANN CARSON & WILLIAM J. SABOL, U.S. BUREAU OF JUSTICE STATISTICS, PRISONERS IN 2011 1 (2012). 688,384 state and federal prisoners were released in 2011. *Id.*

47. PATRICK A. LANGAN & DAVID J. LEVIN, U.S. BUREAU OF JUSTICE STATISTICS, RECIDIVISM OF PRISONERS RELEASED IN 1994 1 (2002), *available at* http://bjs.gov/content/pub/pdf/rpr94.pdf. Of almost 300,000 prisoners released in fifteen states in 1994, 67.5% were rearrested within three years. *Id.*

48. *See, e.g.*, ISAACS & LOWEN, *supra* note 26, at 6 ("[N]one of the three [Arizona] institutions studied in this report could provide recidivism data for prisoners released from supermax units.").

49. PEW CENTER ON THE STATES, STATE OF RECIDIVISM: THE REVOLVING DOOR OF AMERICA'S PRISONS 20 (2006), *available at* http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/sentencing_and_corrections/State_Recidivism_Revolving_Door_America_Prisons%20.pdf.

50. *Id.*

51. Gerald Gaes et al., *Adult Correctional Treatment*, 26 CRIME & JUST. 361, 402–03 (1999) (quoting J. Gerber & E.J. Fritsch, *The Effects of Academic and Vocational Program Participation on Inmate Misconduct and Reincarceration*, *in* SAM HOUSTON STATE UNIVERSITY, PRISON EDUCATION RESEARCH PROJECT: FINAL REPORT 11 (1994)).

52. Mears & Bales, *supra* note 9, at 1138.

53. *See* ISAACS & LOWEN, *supra* note 26, at 60.

54. *Id.* at 13.

55. *Id.* at 33.

56. Mears & Bales, *supra* note 9, at 1138 (citations omitted).

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B. Explanations for Why Solitary Confinement May Affect Recidivism

In addition to the negative effects of solitary confinement on mental health and the lack of rehabilitative programming described above, solitary confinement may increase recidivism by weakening prisoners' social bonds and causing prisoners to become enraged.

One explanation for why solitary confinement may increase recidivism is the "rage hypothesis," which posits that prisoners become so angry and frustrated by their incarceration in solitary confinement that they gain an "active desire, or a heightened readiness, to exact revenge on society."[57] Similarly, many prisoners believe that they were placed in solitary confinement unfairly and that they were treated in solitary confinement in an "extreme, unfair, and demeaning way."[58] "This sense of mistreatment and procedural injustice" could result in higher rates of recidivism.[59]

Being confined without human contact can "reduce social bonds to others and induce strain and possibly embitterment and rage. It also may undermine inmates' beliefs in conventional moral codes and impede efforts to prepare inmates for reentry."[60] Prisoners held in solitary confinement, particularly if they are released directly into communities, "might be too disoriented, jumpy, or hostile to cope with the challenges of society."[61]

C. Quantitative Studies of Solitary Confinement and Recidivism

The notion that solitary confinement increases recidivism is not merely theoretical. Two studies that matched prisoners held in solitary confinement with prisoners held in the general population found that solitary confinement increased recidivism.[62] Daniel Mears and William Bales studied prisoners released from Florida prisons between July 1996 and June 2001 who had been imprisoned for at least one year.[63] The authors compared recidivism rates by matching the 1,247 prisoners who were incarcerated in solitary confinement[64] with prisoners who had been in the general prison population based on "past offending record, current offense, and behavior while incarcerated."[65]

The study found that 24.2 percent of the prisoners held in solitary confinement were reconvicted of a violent crime compared to 20.5 percent of prisoners held in general population[66] and concluded that solitary confinement "is associated with an increased risk of violent recidivism."[67] Mears and Bales posited that defiance theory may explain this outcome, because the increase in recidivism did not depend on how long or how recently the offender had been in solitary confinement.[68] According to defiance theory, placing prisoners in solitary confinement undermines their belief in the legitimacy of the prison system, because they feel mistreated and that their placement is unfair.[69] Mears and Bales noted that, although solitary confinement is "arguably the most severe sanction" in prisons, it does not in fact deter,

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57. *Id.*
58. *Id.*
59. *Id.*
60. *Id.* at 1153.
61. Lovell et al., *supra* note 9, at 639.
62. *See* Mears & Bales, *supra* note 9, at 1149–51; Lovell et al., *supra* note 9, at 649–50. A third study found that solitary confinement correlated with an increased rate of recidivism; however, this study did not pair the prisoners held in solitary confinement with prisoners held in the general population based on likelihood of recidivism. MAUREEN L. O'KEEFE, ANALYSIS OF COLORADO'S ADMINISTRATIVE SEGREGATION iii, 25 (2005), *available at* http://cospl.coalliance.org/fedora/repository/co:3048.
63. Mears & Bales, *supra* note 9, at 1141.
64. Mears and Bales defined these prisoners as prisoners who had been in solitary for at least ninety-one days. *Id.* at 1144.
65. *Id.* The study defined recidivism as a new felony conviction resulting in a sentence in a local jail, state prison, or community supervision during the thirty-six months after the prisoners were released. *Id.* at 1142.
66. *Id.* at 1150–51. However, the study found that the amount of time prisoners spent in solitary confinement and how recently the prisoners were held in solitary confinement did not impact recidivism. *Id.* at 1151–52.
67. *Id.* at 1151.
68. *Id.* at 1156.
69. *Id.*

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and may instead increase, violent recidivism.[70] They inferred that solitary confinement "prevents inmates from sustaining or creating a social bond" and causes the "removal of positive stimuli, imposition of negative stimuli, and introduction of barriers to achieving goals;" its use therefore may increase violent offending.[71]

Similarly, a study from Washington State found that prisoners released directly from solitary confinement had a higher rate of recidivism than prisoners who had been released from the general population. Professor Lovell studied 7,248 men released from prison in Washington State and compared prisoners released from solitary confinement with those who were not held in solitary confinement.[72] The study examined new felonies committed within three years of release and found that prisoners who were held in solitary confinement up until the point they were released from prison had an increased rate of recidivism compared to those who were not.[73] These prisoners "committed new felonies sooner and at higher rates" than similar prisoners who had not been held in solitary confinement and prisoners who were not released directly from solitary confinement.[74] Similarly to Mears and Bales, Lovell paired the prisoners based on their criminal histories.[75] Therefore, the different rates of recidivism were caused by conditions in solitary confinement and not by characteristics of the prisoners.[76]

These studies demonstrate that solitary confinement does not help prisoners "develop[] effective, nonviolent strategies to achieve goals or to manage interpersonal conflicts."[77] Rather, solitary confinement may cause prisoners to become more dangerous because of the mental health consequences, the lack of permitted activities, and the dehumanizing treatment by prison guards.[78] Solitary confinement may also increase *violent* recidivism, particularly for prisoners released directly from solitary confinement. Solitary confinement certainly does not decrease recidivism and may in fact increase the risk of reoffending. The harmful mental health effects of solitary confinement and its negative impact on perceived institutional legitimacy provide convincing explanations for these findings.

D. Models for Reform

States house prisoners in solitary confinement at different rates and for different reasons and amounts of time. States that have successfully reduced their use of solitary confinement serve as models for how states with large numbers of prisoners in solitary confinement can similarly reduce their reliance on the tactic. The percentage of prisoners in solitary confinement ranges by state from less than 1 percent to 12 percent.[79] California houses at least 11,730 prisoners in "some form of isolation," and at least 3,808 California prisoners are in isolation for an indeterminate amount of time.[80] In Texas, 4,748 prisoners are held in indefinite solitary confinement because they have been validated as gang affiliates. Some of these prisoners have been held in solitary confinement for over twenty years.[81] In contrast, Minnesota holds prisoners in solitary confinement for an average of only twenty-nine days.[82]

Furthermore, multiple states have removed prisoners with mental illness from solitary confinement

70. *Id.* at 1154.
71. *Id.* at 1155.
72. Lovell et al., *supra* note 9, at 638, 649. Solitary confinement prisoners had been in solitary confinement within four years of their release and had spent either a minimum of twelve weeks in solitary confinement continuously or at least 40 percent of their sentence in solitary confinement. *Id.* at 638. Non-solitary confinement prisoners had spent no more than thirty days in solitary confinement. *Id.*
73. *Id.* at 638, 649–50.
74. *Id.*
75. *Id.* at 642.
76. Mears & Bales, *supra* note 9, at 1144.
77. *Id.* at 1155.
78. *See* Toch, *supra* note 8, at 378, 382.
79. Mears & Bales, *supra* note 9, at 1140.
80. Bauer, *supra* note 2.
81. *Id.*
82. *Id.*

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following class action litigation and settlements.[83] As a result, some states have created intensive mental health treatment programs for these prisoners.[84] New York and Mississippi, for example, have created "step-down mental health units," which are intensive treatment programs for those mentally ill prisoners who have been excluded from solitary confinement units.[85] These examples show that states can successfully limit the use of solitary confinement, particularly for the mentally ill.

Some prisons have had great success implementing more open and social programs for housing prisoners. At Minnesota's Oak Park Heights maximum-security prison, prisoners have human contact, natural light and sensory stimulation, and they are allowed to exercise; few people are locked in their cells during the day.[86] James Bruton, a former warden of the prison, explained: "[H]alf of the people that you work with every day have killed somebody and 95 percent have hurt somebody, you better find a way every day for them to get up in the morning and look forward to something positive or you've got big trouble."[87] This prison has succeeded in treating prisoners humanely while maintaining prison safety. As a result, there has not been a homicide in the prison in its twenty-three years of operation.[88]

V. REFORM

As shown above, some states have implemented reforms that have decreased the amount of time prisoners spend in solitary confinement and removed mentally ill prisoners from solitary confinement. The reforms implemented in individual states provide a blueprint for reforms that can be implemented across the United States through a federal statute to decrease the number of prisoners placed in solitary confinement, reduce the amount of time prisoners spend in solitary confinement, and end the use of sensory deprivation. These reforms will greatly limit the number of prisoners subjected to solitary confinement and counteract its harmful effects, including mental health deterioration. Prisoners will have greater access to rehabilitative programming and will have less likelihood of recidivism upon reentry into communities.

A. The Feasibility of a Federal Statute

Congress should pass a federal statute incorporating the findings of this testimony, informed by the Vera Commission's study[89] and ABA Standards,[90] as well as by practices in Mississippi, Minnesota, and Maine.[91] This reform should be enacted through legislation because it can result in the greatest number of specific changes to the way solitary confinement is currently used throughout the United States. The statute should use the Prison Rape Elimination Act (PREA) as a model for enforcement. PREA requires states to conform with its guidelines for reducing rape or lose 5 percent of any Department of Justice grant funds that they receive.[92]

Prison litigation is difficult and, as a result, is an unlikely avenue for securing meaningful reform. While litigation contributed to closing the Tamms supermax and helped catalyze reforms in Mississippi, federal courts have generally deferred to prison officials' judgments about the use of solitary

83. Presley v. Epps, 4:05-cv-148-JAD (N.D. Miss. 2005 & 2007); Madrid v. Gomez, 889 F. Supp. 1146 (N.D. Cal. 1995); Jones 'El v. Berge, 164 F. Supp. 2d 1096 (W.D. Wis. 2001).

84. *See* Kupers, *supra* note 44, at 149–50; *see, e.g.*, Disability Advocates, Inc. v. N.Y. State Office of Mental Health, 02 civ.4002-GEL (S.D.N.Y. 2006) (settlement).

85. Kupers, *supra* note 44, at 50.

86. GIBBONS & KATZENBACH, *supra* note 3, at 60.

87. *Id.* (internal quotation omitted).

88. *Id.* at 61.

89. *Id.* at 52–61.

90. AM. BAR ASS'N, ABA STANDARDS FOR CRIMINAL JUSTICE: TREATMENT OF PRISONERS (2011).

91. *See* AM. CIVIL LIBERTIES UNION, CHANGE IS POSSIBLE: A CASE STUDY OF SOLITARY CONFINEMENT REFORM IN MAINE (2013).

92. *See* 42 U.S.C. § 15607(c) (2006).

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confinement, and the Prison Litigation Reform Act (PLRA) restricts the impact of judicial decisions on prison conditions more generally. Under the PLRA, a prisoner must exhaust all administrative remedies prior to suing prison officials, and the prisoner cannot recover for mental or emotional harm unless the prisoner has also been physically harmed.[93] The financial and public safety costs of solitary confinement provide strong policy grounds for a legislative remedy.

B. Recommendations

Reform efforts should reduce the duration of time a prisoner may be held in solitary confinement and limit the types of prisoners that can be placed in such conditions. Furthermore, solitary confinement should only be used to protect prisoners and not to punish prisoners for breaking rules. Even if prisoners need to be physically separated from others, sensory deprivation is always unnecessary. Prisoners may only need to be separated from specific people, rather than from the entire population. Indeed, prisoners in protective custody often do not need to be housed in solitary confinement. Instead, these prisoners should be placed in housing at "safe distances" from specific prisoners or groups of prisoners.[94]

Prisoners should not be placed in long-term solitary confinement as punishment. The Vera Commission cites "maintaining safety" as the only permissible goal of solitary confinement.[95] A prisoner should not be put in disciplinary segregation if the violation did not pose a safety threat; instead, prisons can address those infractions by restricting certain privileges.[96] Kupers recommends that prisons should "emphasize rewards over punishments," because the "long-term static conditions" of solitary confinement are ineffective at addressing violent behavior.[97] Instead, prisoners should be incentivized to reach "attainable goals" with increased freedom and privileges, because "[h]aving no way to attain more freedom . . . lead[s] to despair and desperate acts."[98]

Even when prisoners must be physically separated from other prisoners in order to ensure prison safety, this separation does not require the "social and sensory isolation" that is far too common in solitary confinement.[99] Sensory deprivation is solely punitive; it does not have any health or safety justification.[100] Prisoners should be provided stimulation including books, television, radio, and communication and visits with family and friends.[101] The Vera Commission recommended that prisoners in solitary confinement be provided "opportunities to fully engage in treatment, work, study, and other productive activities, and to feel part of a community."[102] These recommendations counteract the sensory deprivation that researchers such as Haney have found to be harmful.

Solitary confinement should only be used as a last resort to prevent prisoners from acting violently.[103] In these situations, solitary confinement should be used for less than twenty-four hours and only in "extreme circumstances as a therapeutic intervention to stabilize someone who is completely out of control and to prevent harm to self or others."[104] Additionally, trained mental health professionals should be involved throughout the process,[105] and prisoners should never be released directly from solitary confinement into communities. Instead, they should undergo a "transitional process" where the prisoners can "gradually increas[e]" their interactions with prisoners and guards in order to "become accustomed to

93. 42 U.S.C. § 1997e(e) (2006).
94. GIBBONS & KATZENBACH, *supra* note 3, at 14.
95. *Id.* at 53.
96. *See id.*
97. Kupers, *supra* note 44, at 59.
98. *Id.* at 59–60.
99. Margo Schlanger et al., *ABA Criminal Justice Standards on the Treatment of Prisoners*, 25 CRIM. JUST. 14, 24 (2010).
100. *Id.*
101. Jules Lobel, *Prolonged Solitary Confinement and the Constitution*, 11 U. PA. J. CONST. L. 115, 132 (2008).
102. GIBBONS & KATZENBACH, *supra* note 3, at 53.
103. *See id.*
104. *Id.* at 58.
105. *Id.* at 59.

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living with others in a less controlled environment."[106]

C. Provisions of a Federal Statute

I propose that the following text be included in a federal statute to limit the use of solitary confinement.

- Solitary confinement is defined as housing a prisoner in a single cell for twenty-three hours per day, without the ability to eat, exercise, or otherwise interact with other prisoners.
- Solitary confinement may only be used in prisons under the following conditions:
  - Violent prisoners may be placed in solitary confinement for up to twenty-four hours under medical supervision as a therapeutic intervention.
  - Prisoners who have seriously injured other prisoners or prison guards may be placed in solitary confinement but must receive periodic reviews every thirty days, as well as weekly mental health assessments.
- Prisoners may not be housed in solitary confinement as a punishment for non-violent infractions.
- Prisoners may not be housed in solitary confinement for protective custody.
- Prisoners in solitary confinement must receive access to mental health care, mental stimulation, rehabilitative programming, and family visitation and phone calls.
- Prisoners who are mentally ill or under the age of eighteen may not be housed in solitary confinement.
- Prisoners must receive transition programming when they are released from solitary confinement into the general prison population and when they are released from prison.
- Prison staff must be trained to recognize symptoms of mental illness and to use alternative methods of addressing prisoner behavior other than solitary confinement.

CONCLUSION

Solitary confinement, like all prison policies, should be designed to maximize public safety and not solely to punish prisoners. Studies have shown that solitary confinement results in mental illness and appears to increase recidivism. Therefore, prisons need to drastically reduce their populations in solitary confinement and the amount of time they hold prisoners in solitary confinement. Indeed, the most oppressive feature of solitary confinement—sensory deprivation—is unnecessary. Studies of prisons that have used solitary confinement less frequently show that this action actually increased public safety.

The statutory reforms that I propose will decrease the harmful effects that solitary confinement has on recidivism and public safety by greatly decreasing the number of prisoners housed in these conditions. Furthermore, the reforms will mitigate the harms such confinement causes to prisoners by providing those in solitary confinement with mental health treatment and sensory stimulation. Solitary confinement is inhumane and unnecessary, and for the common sense reason that doing so would increase public safety, Congress should pass legislation that limits the use of solitary confinement.

106. *Id.* at 57; AM. BAR ASS'N, *supra* note 90, at 43 ("[Prisoners] should be placed in a less restrictive setting for the final months of confinement.").

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Solitary Confinement in Texas Prisons

Submission by: The Texas Civil Rights Project

Before the United States Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights

Hearing On:
Reassessing Solitary Confinement II:
The Human Rights, Fiscal, and Public Safety Consequences

For more information, contact burke@texascivilrightsproject.org

February 25, 2014

The Texas Civil Rights Project urges federal intervention to ensure that state correctional departments implement modern practices and policies on solitary confinement.

With over 7,500 people in solitary confinement, Texas has the second-largest population of prisoners in extreme isolation in the country. In Texas, various state and national groups have come out as strong advocates for reform of solitary confinement (known as "administrative segregation"), including the ACLU of Texas, Texas Impact, the Texas Criminal Justice Coalition, the Texas Civil Rights Project, Mental Health America of Texas, and the National Alliance on Mental Illness of Texas. In part because of those reform efforts, **the Texas Senate passed Senate Bill 1003 in the 2013 legislative session, requiring third-party review of adult and juvenile administrative segregation practices and policies. Seven months after its effective date, however, the legislation has yet to be implemented.** At this stage, advocates fear that this important study of solitary confinement will never happen, thwarting efforts at meaningful reform in Texas. As is clear from Texas' example, legislative intent alone does not necessarily result in implementation.

To make matters worse—and despite the outcry of state and national groups against Texas' practice of housing the mentally ill in administrative segregation—**the number of mentally ill people in solitary confinement is *increasing.*** In 2011, TDCJ reported that 2,060 individuals in Texas' administrative segregation units had a serious mental illness or mental retardation diagnosis. This comprised 23% of the total administrative segregation population (8,784). According to an information request by the Texas Civil Rights Project, while the overall

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population in administrative segregation has decreased by 14% since 2011, the number of individuals with mental illness in administrative segregation has increased by 17%—2,410 individuals in 2013 compared to 2,060 in 2011. People with mental illness now make up 32% of the administrative segregation population.

This data is particularly disturbing given that courts across the country (including in Texas) have held that housing mentally ill people in solitary confinement violates the Eighth Amendment's prohibition against cruel and unusual punishment.[1] And solitary confinement is extremely damaging to Texas inmates. During their time in solitary confinement, Texas prisoners are completely isolated from other human beings. They remain in tiny cells almost all day, with only an hour of solitary recreation in a small cage. In response to a survey by the Texas Civil Rights Project, prisoners reported that they received no mental-health assessment before their confinement to administrative segregation. And they received virtually no mental-health treatment while there, with check-ups consisting of one-minute cell-front visits from mental health staff that could be overheard by other inmates, while guards stand nearby. Prisoners also reported that they received almost no rehabilitative, religious, or educational programming. On average, Texas prisoners remain in solitary confinement for over three years. The majority are housed there not because they committed a violent crime or an offense within prison, but because TDCJ determined that they were members of a gang.

Troublingly, prisoners said that the isolation caused them to deteriorate psychologically. In the words of one inmate, "Isolation is torture. There can be no other word for it." Another inmate wrote: "[T]his is a dark sad cut off place, no people interaction, no one to talk to & rec with. You go crazy just wanting someone to talk to or play dominos with sometimes, or to talk about things with, everything keeps you isolated from others. . . . How can you isolate a man that long & expect him to have good/acceptable social/people skills when he's released to gen. pop." And a veteran wrote:

> Mostly, it's the continued screaming. The crying, pleading, and gibberish people yell 24 hours a day. It's very unnerving. To a combat vet, it's torture. Panic & anxiety skyrocket. Exhaustion sets in for lack of sleep. I had to draw, in pencil, a large mural on one wall of my cell, talking to myself, just to focus on something other than the cries.

[1] *See Indiana Protection and Advocacy Services Commission v. Commissioner,* No. 1:08-cv-01317-TWP-MJD, 2012 WL 6738517 (S.D. Ind. Dec. 31, 2013); *Jones'El v. Berge*, 164 F. Supp. 2d 1096 (W.D. Wis. 2001); *Ruiz v. Johnson*, 37 F. Supp. 2d 855, 912 (S.D. Tex. 1999), *rev'd on other grounds*, 243 F.3d 941 (5th Cir. 2001); *Madrid v. Gomez*, 889 F. Supp. 1146 (N.D. Cal. 1995).

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Moreover, over 1300 prisoners are released directly from solitary confinement to Texas communities each year. Mental Health America of Texas and the National Alliance on Mental Illness of Texas have pointed out that the social difficulties and mental health conditions caused by extreme isolation can also cause severe problems with reentry and reintegration, contributing to the costly problem of recidivism in Texas. One inmate expressed his fear that he was unprepared to go home after his isolation in solitary confinement: "I feel as I am getting more nervous now that I'm fixing to go home. The impact seg has had on me is I do not feel as if I could get out and have instant contact with them [his mother and children]. It is going to take time to adjust to them w/out tripping out."

Solitary confinement harms Texas prisoners and does damage to the families and communities they eventually return to. It is time that Texas initiates third-party review of solitary confinement, and joins many other states in initiating reforms to ensure that its correctional practices are humane, safe, and cost-effective.

TEXAS JAIL PROJECT
www.texasjailproject.org
We listen, inform, and advocate... to improve county jails.

February 24, 2014
Contact: Diana Claitor, executive director
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Texas County Jails Over Use Seclusion of Mentally Ill Inmates

An Iraq war veteran with serious mental illnesses sat in seclusion in the Comal County Jail for eight months during 2011. Despite the condition of this former Marine, the county made no effort to treat him or even coax him out of his cell as he became increasingly paranoid and despondent.

A mentally ill woman in her 50s was held in solitary confinement in the small East Texas jail in Hardin County, for much of 2012, despite her family's pleas for treatment or release to a local facility. Her sister, Wendolyn Lacy, described the effect in her emails: "Ms. Claitor, my sister has been locked in that jail cell alone for 7 months. She communicates with no one. Is it legal to take someone mentally ill and lock them away in a 6 x 9 cell for 23 hours a day, like a mad dog, and expect them to rehabilitate or improve? Her eyes bulge and she is terrified. I challenge any judge or jailer to be forced to live this way for one month. They couldn't handle it."

Updates, February, 2014: both those inmates have been returned to those solitary jail cells after being restored to competency in the state mental hospitals at Wichita Falls and Rusk, Texas.

Texas Jail Project regularly hears from families reporting similar cases of loved ones with mental disorders who are held in isolation inside Texas's 247 local jails for months on end. Decompensation and suicide is a frequent result. From 2009 through 2012, 255 people died in Texas county jails. Of the 88 inmates who killed themselves, some 53%–47 individuals–were known to be housed in single cells.

The jail environment is obviously unsuitable for a person with a mental disorder–an unhealthy situation exacerbated by the lack of

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funding, adequate facilities, and trained officers in many of the hundreds of small to medium-sized jails in our state. However, until real and permanent solutions are found for these vulnerable inmates, jail administrators need to develop practices and policies to protect them, in part by reducing the use of indefinite isolation.

The main obstacle to reducing the use of seclusion and encouraging alternative solutions is the opposition of local officials including the Texas Sheriffs Association and the Texas Association of Counties (TAC). In the 2013 legislative session, representatives of these organizations opposed a modest bill (SB 1003) and two House bills that simply called for a study of the use of seclusion in prisons, juvenile facilities, and county jails. The sponsor of the bill was informed that if county jails were included in that bill, the Sheriffs Association and TAC would kill the entire bill. Supporters offered a compromise: the study would be voluntary, and the study would be conducted by the sheriff-friendly Texas Commission on Jail Standards (TCJS). However, county officials rejected this compromise and reiterated to bill sponsors that the bill would die in committee if county jails were included, and so county jails were removed from the bill. The bill that passed and became law actually provided no funding for a study, and so no study has resulted in any case.

In an excellent Texas Tribune article of May 21, 2013, writer Brandi Grissom summarized the situation: "Efforts to gather data and develop recommendations to reduce the use of solitary confinement in Texas jails and prisons seem to have withered this session in the face of opposition from officials who oversee those facilities."

In that same article, Texas Jail Project's director Diana Claitor was quoted as saying that she finds the sheriffs' resistance to the research ironic, given that they have complained bitterly in recent years about the lack of funding for mental health services in Texas, which has resulted in a dramatic rise in the number of mentally ill inmates in their facilities. Claitor went on to point out that with more information, lawmakers could grasp the scope of the problem and might then be inclined to provide resources for counties to cope with issues related to mentally ill prisoners. However, that would require a study of jail operations–the very thing that the counties blocked.

"It's a pitiful state of affairs when we're all so concerned about the ever-increasing number of mentally ill in jails and we are not willing to at least try to look at some alternative solutions," Claitor said.

The Texas Commission on Jail Standards is the only entity charged with inspecting our local jails, which hold some 67,000 people on any given day. The standards addressing the use of seclusion are limited, and inspection reports seldom mention seclusion or administrative segregation. Reports from attorneys, families, and inmates indicate that in actuality, jails often choose to place the inmate in seclusion for arbitrary reasons. State District Judge Carter Tarrance recently reported that county jail prisoners with mental disorders who requested their psychotropic medications in the Henderson County Jail were given the choice of being placed in isolation cells in order to receive them, or they could sign a waiver, agreeing to not receive their meds, in which case they would be allowed in general population.

While the standards state that inmates should be reviewed after 15 or 30 days of isolation, a mentally ill inmate who is placed in what TCJS calls disciplinary separation often remains there indefinitely while their case is resolved. Unfortunately, due to the lack of beds in the state's mental health facilities, even those who have been deemed incompetent to stand trial may have to wait a long time to be hospitalized. So indefinite seclusion in the county facility can last a very long time, for prisoners not yet convicted of any crime.

Brandon Wood, TCJS executive director, defines the two types of segregation this way:

> Administrative separation is the assignment of an inmate to a special housing unit, usually a separation or single cell, and they still retain all of their rights and privileges as if they were in general population... Disciplinary separation is another matter. An inmate will be placed in disciplinary separation only after they have been found guilty of violating the institutions rules and regulations. They will not lose any of their guaranteed rights, but their privileges will more than likely be suspended during that time, to include loss of commissary access, visitation

or access to a TV, etc.

What this policy fails to address is the fact that a person with mental disorders often violates institutional rules and regulations, sometimes over and over, because their disability prevents them from being able to follow rules or to understand the consequences. Thus, they may be housed in "disciplinary separation" for weeks or months, and on some occasions, years. Prisoners who are considered at risk of hurting themselves will either be placed in housing stripped naked or in a paper uniform.

In too many county facilities, disciplinary seclusion appears to be used to control and even punish mentally ill persons, and more information about these practices is urgently needed. State and federal agencies need to step up their investigations into the treatment of mentally ill prisoners in local jails. That intervention might not be necessary if county sheriffs were willing to work with advocates or state oversight agencies like the Texas Correctional Office for Offenders with Medical or Mental Disorders (TCOOMMI), but many of the sheriffs view questions or information gathering as threats to their totalitarian power over the operations of their jails.

Texas Jail Project calls for more scrutiny, reporting, and oversight, to prevent the over use of solitary confinement for prisoners with mental disorders.

Diana Claitor, executive director

the CAMPAIGN for the FAIR SENTENCING of YOUTH

Public Testimony of the Campaign for the Fair Sentencing of Youth
IN SUPPORT OF AN END TO THE USE OF SOLITARY CONFINEMENT OF YOUTH
Before the United States Senate Judiciary Subcommittee
On the Constitution, Civil Rights, and Human Rights
February 25, 2014

I am pleased to submit testimony on the subject of solitary confinement in federal jails and prisons on the behalf of the Campaign for the Fair Sentencing of Youth (CFSY). The CFSY is a national coalition and clearinghouse that coordinates, develops, and supports efforts to implement fair and age appropriate sentences for youth, with a focus on abolishing life without parole sentences for all youth.

The CFSY believes that young people convicted of serious crimes should be held accountable for the harm they have caused in a way that reflects their capacity to grow and change. We believe in fair sentencing that reflects our human rights, values, and moral beliefs, and as such, the fundamental difference between youth and adults. Research has proven that youth are still developing both physically and emotionally and their brains, not just their bodies, are not yet fully mature. Because of these differences, youth have greater potential for rehabilitation. Our belief in fair sentencing extends to ensuring that the safety and human rights of youth are upheld during their incarceration. While solitary confinement can be harmful for anyone, it is particularly problematic when used on youth.

Prison Conditions of Youth | Solitary Confinement as Protection and Punishment

"I've been locked up since 1994 and have spent a third of my life in administrative segregation (23 hour lockdown) and I'm only 33 years old. It's been rough and for the majority of that time I've felt like the world has forgotten about me."
-G. serving life without parole since he was 15

Conditions in adult jails and prisons exacerbate the already-traumatic experience for youth incarcerated there. According to Human Rights Watch, research proves that youth who enter adult prison while they are still below the age of 18 are **"twice as likely to be beaten by staff and fifty percent more likely to be attacked with a weapon than minors in juvenile facilities."**[1] Of prisoners in California serving life without parole for a crime committed as a youth, almost everyone surveyed by Human Rights Watch in 2007 reported "witnessing violent acts or being victim to them."[2] Human Rights Watch reports that these abuses included stabbings, rapes, strangulations, beatings, and murder.[3] One inmate that wrote to our organization, having served life without parole since he was 17, confirmed these findings: "I am writing to ask if any focus has been put on the sexual abuse us young lifers tend to get. Since coming into the system, I've constantly been engaged in sexual contact with correctional staff. Because of our position and situation, staff tends to treat us as if we'll 'go along' with it because so many of us have had so little sexual experience."

In an attempt to deal with this problem, prison officials place youth into solitary confinement. **The long periods of segregation from the general prison population though have proven damaging to individuals during a pivotal time of their development** (see "Effects of Solitary Confinement on Development" below).[4] Additionally, the suicide rate among adolescents and young adults is higher than the

[1] Human Rights Watch. (2012). *Against All Odds: Prison Conditions for Youth Offenders Serving Life without Parole Sentences in the United States.* United States. Page 14. http://www.hrw.org/sites/default/files/reports/us0112ForUpload_1.pdf.
[2] *Ibid.*, p. 18.
[3] *Ibid.*, p. 18.
[4] *Ibid.*, p. 45.

general population and those that carry out the act of suicide frequently do so when they are isolated.[5] With this reality in mind, the Joint Commission, CARP (Commission on Accreditation of Rehabilitation Facilities), "specifically prohibits the use of seclusion 'as a means of coercion, discipline, convenience or staff retaliation.' A lack of resources should never be a rationale for solitary confinement."[6] Rather, logic and experience indicates that a more effective response to the reality of violence against youth in adult prisons is to remove youth from adult prisons entirely.

The use of solitary confinement as a disciplinary sanction proves just as harmful and equally problematic. Prison officials report from experience that the young age of people serving juvenile life without parole combined with the lack of hope of release causes many newly admitted youth to feel a sense of fear, anxiety, and paranoia.[7] Because of this fear, youth act out, and are punished with solitary confinement.[8] As one inmate serving life without parole since he was 16 said in a letter to our organization, "Always having to be on point and on the lookout for coming danger, never able to get too comfortable... it can turn you into somebody you're really not, but have to be to survive." Solitary confinement does not solve this problem; it only exacerbates it.

Effects of Solitary Confinement on Development

"Of my first 5 years of being locked up, I spent almost 4 years of it in a cell by myself with nothing in it—no sight or sound from any sign of life. I swear it almost broke my soul into pieces."
–M. serving life without parole since he was 16

Incarcerated youth who have experienced prolonged periods of solitary isolation have described their experiences in segregation as profoundly difficult, causing **long-term emotional and psychosocial distress**.[9] As identified by American Academy of Child and Adolescent Psychiatry, "the potential psychiatric consequences of prolonged solitary confinement are well recognized and include depression, anxiety and psychosis. **Due to their developmental vulnerability, juvenile offenders are at particular risk of such adverse reactions.**"[10] According to Joseph Stromberg, writing for *Smithsonian Magazine*, "the hippocampus, in particular, has been found to dramatically shrink in the brains of people who are depressed or stressed for extended periods, a concern because it's crucially involved in **memory, geographic orientation, cognition and decision-making**. No one has performed an autopsy on a person who lived in isolation for decades, suffering from depression the whole time, but Akil [a neuroscientist at the University of Michigan] believes that in keeping inmates in full isolation, authorities are 'ruining a very critical component of the brain that's sensitive to stress.'"[11] The stress of solitary confinement often coupled with poorly nutritious food, also **stunts physical growth** and can cause reactions such as hair and weight loss and a halt in menstruation.[12]

Due to the prolonged periods of time in solitary confinement, juveniles also often **lose their ability to interact with and relate to others in social situations**.[13] While they are in solitary confinement, youth are unable to engage in normal interactions that contribute to their development as a human being, including peer interaction, education, family contact, and adult mentorship.[14] Additionally, isolation makes it impossible to participate in programs meant to promote an incarcerated youth's reintegration into society—

[5] Hayes, L. M. (2009). Characteristics of Juvenile Suicide in Confinement. *OJJDP Juvenile Justice Bulletin*, p. 6. https://www.ncjrs.gov/pdffiles1/ojjdp/214434.pdf.
[6] American Academy of Child and Adolescent Psychiatry. (2012). *Solitary Confinement of Juvenile Offenders*. Washington DC: Juvenile Justice Reform Committee. http://www.aacap.org/AACAP/Policy_Statements/2012/Solitary_Confinement_of_Juvenile_Offenders.aspx.
[7] *Ibid. 1*, p. 23.
[8] *Ibid. 1*, p. 23.
[9] *Ibid. 1*, p. 24.
[10] American Academy of Child and Adolescent Psychiatry.
[11] Stromberg, J. (2014). The Science of Solitary Confinement. *Smithsonian Magazine*. Retrieved from http://www.smithsonianmag.com/science-nature/science-solitary-confinement-180949793/
[12] Human Rights Watch and the American Civil Liberties Union. (2012). *Growing Up Locked Down: Youth in Solitary Confinement in Jails and Prisons Across the United States*. United States. Pages 39-41.
[13] *Ibid. 1*, p. 23.
[14] Human Rights Watch and the American Civil Liberties Union. Pp. 41-47.

an opportunity often refused to people serving juvenile life without parole sentences. The chance to participate in GED programs, vocational programs, or counseling is greatly inhibited by the lack of access during prolonged solitary confinement, especially for juveniles serving a life sentence without the chance of parole.[15] By limiting their access to these services, youth are not given the chance to learn or grow.

Evolving Standards of Decency

This last week on Wednesday, February 19, 2014, as reported by *The New York Times*, New York State became the "largest prison system in the United States to prohibit the use of disciplinary confinement for minors... Under the agreement, 16- and 17-year-old prisoners who are subjected to even the most restrictive form of disciplinary confinement must be given **at least five hours of outdoor exercise and programming outside of their cells five days a week**. The state must also set aside space at designated facilities to accommodate the minors who would normally be placed in solitary confinement."[16] New York State is at the forefront of a growing movement to address the human rights violations inherent in solitary confinement of children, and the CFSY applauds its recent decision.

On a broader scale, global standards of decency and human rights also expressly prohibit the use of solitary confinement with youth. Over two decades ago, the UN General Assembly adopted *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*, a comprehensive document on the incarceration of youth, stating: "All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, **including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned**."[17] It is time that the United States' catches up to the international norm.

Conclusion

Youth should be held accountable for their crimes in an age-appropriate way with a focus on rehabilitation and reintegration into society. As such, they should never be held in solitary confinement where they are susceptible to emotional and psychosocial distress and stripped of opportunities to become rehabilitated. The Campaign for the Fair Sentencing of Youth calls for a renewed effort to introduce federal legislation prohibiting the use of solitary confinement with minors.

Furthermore, in order to reduce the risk of youths' exposure to solitary confinement and victimization by older prisoners, youth should never be held in adult jails and prisons. We urge the introduction and passage of the Juvenile Justice Delinquency Prevention Reauthorization Act which lays out specific protections against victimization of children in prisons.

Thank you for the opportunity to submit this testimony. If you have any questions or want further information, please contact Jody Kent Lavy, Executive Director and National Coordinator for the Campaign for the Fair Sentencing of Youth, at jkent@fairsentencingofyouth.org or 202-289-4677. More information about the CFSY can also be found at www.fairsentencingofyouth.org.

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[15] *Ibid. 1*, p. 27.
[16] Weiser, B. (2014, February 19). New York State in Deal to Limit Solitary Confinement. *The New York Times*. http://www.nytimes.com/2014/02/20/nyregion/new-york-state-agrees-to-big-changes-in-how-prisons-discipline-inmates.html?ref=solitaryconfinement.
[17] General Assembly resolution 45/113, *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*, A/RES/45/113 (14 December 1990), available from http://www.un.org/documents/ga/res/45/a45r113.htm.

THE EQUITY PROJECT

ensuring fairness & respect for LGBT youth in the justice system

Written Statement of
The Equity Project

Submitted to
Reassessing Solitary Confinement II: The Human Rights, Fiscal, and Public Safety Consequences

Hearing Before the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights
February 25, 2014,
2:30 p.m.

For further information, contact Christina Gilbert, Equity Project Director, at
cgilbert@njdc.info

Dear Chairman Durbin and Members of the Subcommittee,

The Equity Project is grateful for the opportunity to submit testimony regarding lesbian, gay, bisexual, and transgender (LGBT) youth in solitary confinement (also defined in this testimony as "isolation") in the juvenile justice system. The Equity Project is a collaborative initiative (of the National Juvenile Defender Center, National Center for Lesbian Rights, and Legal Services for Children) dedicated to ensuring that LGBT youth in juvenile delinquency courts are treated with dignity, respect, and fairness. The Equity Project examines issues of sexual orientation, gender identity, and gender expression at all stages of a delinquency case, from arrest through post-disposition.

Solitary Confinement has Long-term, Permanent, Harmful Impacts, and is Inconsistent with Policies of Professional Medical and Mental Health Organizations in the United States, as well as International Human Rights Principles.

Solitary confinement has resulted in an array of negative physical and psychological effects for individuals, including anxiety, depression, lethargy, aggression, self-harm and increased risk of suicide.[i] International human rights experts, such as the United Nations Special Rapporteur, have found that isolation may amount to torture, and have called for sweeping reform of solitary confinement, including a complete ban of solitary confinement for juveniles.[ii] Given the research on adolescent development and the brain, isolation is likely to cause even greater harm to youth than it does to adults,[iii] causing leading organizations such as the American Academy of Child and Adolescent Psychiatry to issue policy statements against such practices.[iv]

Solitary Confinement of Children is Particularly Harmful and Interferes with the Rehabilitative Goals of the Juvenile Justice System

There is an inherent difference between children and adults. The juvenile justice system was founded on the principles of rehabilitation rather than punishment. The inappropriate and excessive use of solitary confinement of young people results in detrimental mental health effects and is traumatizing for youth. Yet, children are often put in isolation for "protection" or for disciplinary infractions. Solitary confinement of children also often interferes with their education and other programming.[v]

Research has shown that children are different than adults, in that children's brains are still developing, making them even more vulnerable to the damaging effects of long periods of isolation.[vi] Additionally, disproportionate numbers of youth in the juvenile justice system have substance abuse disorders, mental health problems, and have experienced trauma. Isolation often exacerbates these problems.[vii]

A report from the Office of Juvenile Justice and Delinquency Prevention (OJJDP) found a strong correlation between youth who had committed suicide in juvenile facilities and those youth who were in isolation at the time.[viii] The American Psychiatric Association has stated that "[c]hildren should not be subjected to isolation, which is a form of punishment that is likely to produce lasting psychiatric symptoms."[ix] Rather than protecting youth, isolation puts children at greater risk of self-harm and suicide. Given these increased risks, including for depression, anxiety, and suicide attempts, many organizations oppose the use of solitary confinement for children.[x] The Special Litigation Section of the United States Department

of Justice Civil Rights Division has also made numerous findings of inappropriate and excessive use of solitary confinement for juveniles over the last ten years.[xi] Additionally, courts have found that the isolation of youth amounts to cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments of the United States Constitution.[xii] While no youth should be held in solitary confinement, the Equity Project has found that LGBT youth are particularly susceptible to the overuse of isolation in the juvenile justice system.

LGBT Youth are Inappropriately and Excessively Placed in Solitary Confinement

LGBT youth are particularly vulnerable to harassment and abuse when incarcerated.[xiii] Some facilities automatically isolate LGBT youth for their "protection" or due to a completely erroneous belief that LGBT youth are sexual predators based on their sexual orientation or gender identity alone. Isolating LGBT youth solely based on sexual orientation or gender identity not only violates their constitutional rights, but also harms their emotional wellbeing.[xiv] For example, Antoine, a 17-year old in the California Youth Authority (CYA), with no accusations or charges of a sexual offense, was automatically placed in a sex offender unit for identifying as bisexual. Other youth and staff consistently abused Antoine, verbally, physically, and sexually. Antoine was placed in solitary confinement for his "protection" from such ongoing abuse. Antoine was confined to his cell and excluded from education for up to 23 hours a day for several months, resulting in a denial of his right to an adequate education.[xv]

Juvenile detention staff, who witness the abuse of LGBT youth, like Antoine, may feel that their only option to protect these children is to put them in isolation, viewing such use as non-punitive. However, the conditions of such "non-punitive" isolation are generally indistinguishable from punitive isolation. Placing an LGBT youth in these conditions is in effect punishing the youth for his or her identity (*i.e.* not being heterosexual and/or cisgender). This continual isolation can lead to lowered self-esteem and mental distress.[xvi]

In *R.G. v. Koller,*[xvii] a groundbreaking case against the Hawai'i Youth Correctional Facility (HYCF), the court granted the plaintiff (a group of LGBT and LGBT-perceived youth)'s motion for a preliminary injunction, finding that the youth would likely prevail at trial in showing that HYCF violated their due process rights by putting them in isolation. Specifically, the court found that HYCF (1) failed to protect the plaintiffs from physical and psychological abuse, (2) used isolation as a means to protect LGBT youth from abuse, (3) failed to provide policies and training necessary to protect LGBT youth, (4) did not have adequate staffing and supervision or a functioning grievance system, and (5) failed to use a classification system that protects vulnerable youth.[xviii]

In a declaration by the medical expert in *R.G. v. Koller*, Dr. Robert Bidwell made a statement about the well-known negative psychological impact of long periods of isolation: "With respect to LGBT[Q] youth, isolation may be perceived as punishment for being LGBT[Q], which evokes feelings of rejection and depression and may manifest itself through a variety of physical symptoms ranging from headaches to self-mutilation."[xix]

In addition to isolating youth for protection, facility staff also punish LGBT youth for benign behaviors that they mistakenly assume are sexually predatory. According to Devon, a young lesbian, "If I was talking to another girl, they'd think something sexual was happening. Once I was put on isolation for two weeks, they thought I was getting too close to a female…that made me feel real depressed."[xx]

Equity Project findings indicate that these experiences are not unique. Professionals interviewed overwhelmingly agreed that LGBT youth face particularly acute abuse, harassment, isolation, and disrespect while incarcerated, because of their sexual orientation or gender identity.[xxi]

Positive Steps to Reform the Use of Solitary Confinement for Juveniles

The Equity Project commends the work being done in states around the country to reform the use of solitary confinement of children. For example, the juvenile standards issued by the Department of Justice under the Prison Rape Elimination Act (PREA), require, "Residents may be isolated from others only as a last resort when less restrictive measures are inadequate to keep them and other residents safe, and then only until an alternative means of keeping all residents safe can be arranged. During any period of isolation, agencies shall not deny residents daily large-muscle exercise and any legally required educational programming or special education services. Residents in isolation shall receive daily visits from a medical or mental health care clinician. Residents shall also have access to other programs and work opportunities to the extent possible."[xxii]

Earlier this month, the New York State Department of Corrections and Community and Supervision reached an agreement with sweeping reform on the use of solitary confinement in New York State, including taking immediate action to remove youth from isolation.[xxiii] Nevada has also created new limits on isolation of youth in juvenile facilities, specifically banning the use of isolation for a juvenile for longer than 72 hours.[xxiv] West Virginia also has a ban on punitive isolation in juvenile facilities.[xxv] Additionally, Texas has passed legislation for a comprehensive review of solitary confinement, including in juvenile facilities.[xxvi] However, much more needs to be done. Congress should support and encourage sweeping reform of the use of solitary confinement for juveniles.

Recommendations

- **Support increased federal oversight, monitoring, transparency, and funding for alternatives to solitary confinement.**
    - Ban solitary confinement for all children under the age of 18.
    - Support the development of responses to abuse or harassment (or threat of abuse or harassment) of LGBT youth that do not rely on the isolation or segregation of LGBT youth.
    - Create regulations that require all vulnerable youth are placed in the least restrictive environment necessary to ensure safety and provide youth with equal access to facility services.
    - Support technical assistance efforts to assist juvenile facilities in revising their policies and practices to ensure that youth are not subjected to solitary confinement.

- Support the reauthorization of the Juvenile Justice and Delinquency Prevention Act (JJDPA) and condition funding to the States on elimination of solitary confinement for juveniles as an additional core mandate.
- Provide funding for DOJ to investigate solitary confinement in juvenile facilities, including explicit provisions regarding LGBT youth.
- Provide federal funding through the Bureau of Justice Assistance (BJA) or another entity to support federal, state, and local efforts to reduce the use of solitary confinement of juveniles, with a focus on programming and other alternatives.
- Require juvenile facilities to report to the Bureau of Justice Statistics (BJS) which juveniles are held in solitary confinement, for what reason and how long, as well as the impact of the practice on cost, facility safety, incidents of self-harm, and recidivism.
- On an annual basis the raw data and statistical analysis should be published by BJS, presenting a comprehensive review of the use of solitary confinement in the United States. In conjunction with the annual release of these statistics, a review panel of appointed experts would conduct public hearings to review the findings, hear from stakeholders, and issue recommendations.

- **Require reforms to the use of solitary confinement in federal facilities operated by the Bureau of Prisons (BOP).**
  - BOP should immediately implement a ban on the solitary confinement of juveniles held in federal custody
- **Ensure that the United States fully engages in the international effort to reform the use of solitary confinement.**
  - The Subcommittee should formally request that the U.S. Department of State play an active role in the overdue process of updating the United Nations Standard Minimum Rules for the Treatment of Prisoners. New provisions should be included to ban the solitary confinement of juveniles and to prohibit the use of "gender identity" and "sexual orientation" as grounds for discrimination in juvenile facilities.
  - The Subcommittee should formally request that the U.S. Department of State stop impeding the longstanding formal request by the United Nations Special Rapporteur on Torture to investigate of the use of solitary confinement in the United States.
- **Support rulemaking to reduce the use of solitary confinement in juvenile facilities**
  - The Subcommittee should call for rulemaking by the U.S. Department of Justice that ensures the development of smart, humane and evidence-based national best practices and regulations that will limit the use of all forms of isolation and solitary confinement.

Endnotes

[i] Sandra Simkins et al., *The Harmful Use of Isolation in Juvenile Facilities: The Need for Post-Disposition Representation*, 38 WASH. U.J.L. &POL'Y 241, 254 (2012).
[ii] The Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman, or degrading treatment or punishment, *Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, delivered to the General Assembly*, U.N. Doc. A/66/268 (Aug. 5, 2011).
[iii] Simkins et al., *supra* note i at 257.
[iv]Academy of Child and Adolescent Psychiatry, Juvenile Justice Reform Committee, Solitary Confinement of Juvenile Offenders (Apr. 2012), available at http://www.aacap.org/cs/root/policy_statements/solitary_confinement_of_juvenile_offenders
[v] Simkins et. Al., *supra,* note iii.
[vi] Academy of Child and Adolescent Psychiatry, *supra,* note iv; Simkins et al., *supra*, note i at 257-61.
[vii] Simkins et al., *supra,* note i at 259.
[viii] Lindsay M. Hayes, Juvenile Suicide in Confinement: A National Survey, Office of Juvenile Justice and Delinquency Prevention (February 2009).
[ix] Press Release, American Psychiatric Association, Incarcerated Juveniles Belong in Juvenile Facilities (Feb. 27, 2009), available at http://www.njjn.org/uploads/digital-library/resource_1050.pdf
[x] American Academy of Child and Adolescent Psychiatry, *supra* note iv.
[xi] *See, e.g.,* Findings Letter from Ralph F. Boyd, Jr., Assistant Attorney General, U.S. Department of Justice, Civil Rights Division, to Ronnie Musgrove, Governor, State of Mississippi (June 19, 2003), available at http://www.justice.gov/crt/about/spl/documents/oak_colu_miss_findinglet.pdf); Findings Letter from Thomas E. Perez, Assistant Attorney General, U.S. Department of Justice, Civil Rights Division, to Mitch Daniels, Governor, State of Indiana (Jan. 29, 2010), available at http://www.justice.gov/crt/about/spl/documents/Indianapolis_findlet_01-29-10.pdf; Findings Letter from R. Alexander Acosta, Assistant Attorney General, U.S. Department of Justice, Civil Rights Division, to Jennifer M. Granholm, Governor, State of Michigan (Apr. 19, 2004), available at http://www.justice.gov/crt/about/spl/documents/granholm_findinglet.pdf.
[xii] Simkins et al., *supra,* note i at 263.
[xiii]Majd, Marksamer, and Reyes, "Hidden Injustice: Lesbian, Gay, Bisexual, and Transgender Youth in Juvenile Courts," (hereinafter "Hidden Injustice") (2009) at 102.
[xiv] *Id.* at 5.
[xv] *Id.* at 127.
[xvi] Valentino, Amanda, "Part 1: LGBTQ Youth in the Juvenile Justice System," LGBT Litigator, American Bar Association (2011), available at: https://apps.americanbar.org/litigation/committees/lgbt/articles/winter2011-valentino-juvenile-justice-system.html
[xvii] *R.G. v. Koller*, 415 F. Supp.2d 1129, 1133 (D. Haw. 2006)
[xviii] Hidden Injustice *supra*, note xiii, at 101.
[xix] Declaration of Robert J. Bidwell, M.D., *R.G. v. Koller*, 415 F. Supp. 2d 1129 (2006) (Civ. No. 05-566 JMS/LEK) (Sept. 2005).
[xx] Hidden Injustice, *supra,* note xiii at 104.
[xxi] *Id. at 107.*
[xxii] Prison Rape Elimination Act (PREA) Juvenile Standards, 28 C.F. R. § 115.342 (b)
[xxiii] *See* Stipulation for a Stay with Conditions, Docket No. 11-CV-2694 (SAS), Peoples v. Fischer, (S.D.N.Y. Jan. 24, 2014), *available at* http://www.nyclu.org/files/releases/Solitary_Stipulation.pdf.
[xxiv] *See* Nev. SB 107, *available at* http://www.leg.state.nv.us/Session/77th2013/Reports/history.cfm?billname=SB107.
[xxv] *See* Associated Press, *W.Va. Ends Solitary Confinement for Juveniles*, TIMES W.V., Apr. 26, 2012, *available at* http://www.timeswv.com/westvirginia/x130096856/W-Va-ends-solitary-confinement-for-juveniles.
[xxvi] http://www.capitol.state.tx.us/billlookup/Text.aspx?LegSess=83R&Bill=SB1003#.

Statement of Six People Who Were Wrongly Convicted on Their Experiences in Solitary Confinement

Hearing Before the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights

"Reassessing Solitary Confinement II: The Human Rights, Fiscal and Public Safety Consequences"

February 25, 2014

The Innocence Project, a founding member of the Innocence Network, submits the following six statements of exonerated men and women who have served time in American prisons and jails for crimes they did not commit. These innocent men and women experienced solitary confinement the way that thousands of other Americans have experienced such conditions. Six to thirty years after their original confinement, these individuals were proven innocent. Their experiences are typical of the experience of millions of people who have been confined in institutions that routinely and excessively use solitary confinement as a way to manage incarceration. These six innocent individuals add their voices to the many others that ask the Congress to stop this practice.

We wish to thank Chairman Durbin, Ranking Member Cruz, and members of the Subcommittee for understanding the importance of exploring, and hopefully dramatically modifying the use of solitary confinement in this country. While these are the statements of the six exonerees to whom we reached out upon learning of this hearing, we know that there are many others who could attest to the inhumane practice of maintaining people in isolation for extended periods of time. As the Subcommittee, Senate Judiciary Committee, and hopefully the Congress, continues to explore and address this issue, we would be happy to reach out to other exonerated men and women to share their experiences with you.

Statement of Julie Rea, wrongfully imprisoned for three years by the state of Illinois before her exoneration in 2006

No blanket, underwear or pillow. The lights were on 24/7. And no bed mat either. The metal slab that was my bed was hard. Especially since my weight was down and there was nothing between my hips and it, except for the thin cotton outfit in orange.

I was in solitary so that I wouldn't do anything rash, having been brought in on a charge of murdering my own son. I was considered at-risk of depression because I had been charged, not because anybody realized that I was locked up for something I didn't do. Actually upon entering the jail I felt hopeful that the police would discover before long they had the wrong person and let me go. I was wrong. Dreadfully wrong.

The jail was a dark place where truth wasn't respected highly, and humane behavior was sparse. Guards slammed the door when passing every fifteen minutes. No peace existed while I waited for the error to be righted. But then one doesn't focus on a need for peace when it is so cold. One is chattering and curled up as tightly as one can get for warmth. Still, it added to the discomfort of the experience as a whole.

Finally, trying to lie down and assume a sleep-like position seemed the best effort I could make. Shortly, I found out it wasn't. From the audio speaker the guards had access to communicate with me in the cell. There was also a video camera. So they were able to access my person and activities for 'my safety'. Not minutes from lying down, a tape was started, one of a woman

being tortured. It took me a bit to realize it was a tape and not someone in the next cell in agony at the moment.

I froze. My God what could I do? What was happening? What was this place?

Then some laughs and a remark from one guard to another, "Look at her, she's playing possum."

"She's gonna be a tough one."

"Do you think she's asleep?"

"No, she's awake alright. She's just stubborn."

In reality I was neither tough, playing possum or stubborn at that point. I was just frozen with fear. I realized that the tape wasn't faked. No one screams like that and is faking it. These were the kind of blood curdling screams that come wrenched from a body that is too exhausted to give them up, but finds them escaping anyway as it jerks and responds to whatever is being done to her. They were real. Very, very real. And if these guards were willing to play this tape and take pleasure in seeing what it did to me to hear it, well, what else were they capable of?

Did they make the tape too?

This was day one and two of my experience in solitary while in a county jail. This was before I was tried and wrongfully convicted. This was the mildest form of abuse these particular guards inflicted on me during the nights I spent in that jail.

After a few months in this county jail, I received bond until my first trial. I couldn't lay still without jerking every few seconds even when sleeping, and sleeping didn't occur without someone holding me. This is not something anyone should go through. I was innocent, but it is wrong no matter what a person may actually be guilty of.

This is a commentary on our sick criminal justice and correctional system. I survived and have healed and am continuing to heal.

I've studied and read about Philip Zimbardo's work, the growing field of wrongful conviction work, and the history our country and world has that is a dark and sad account of how human nature can fail, even the best of us.

It has left me feeling less alone. But not less violated.

I sometimes wonder who the woman on the tape was. Where she is – as well as a large number of other things that involved other people I came to know during that time period.

My earnest prayer is that the men and women who assaulted my mind, body and spirit during this time will come to know love, joy and forgiveness in goodness, rather than the pleasure of the sick and twisted activities they chose at that time.

And it is my deeper prayer that somehow writing this will place a growing desire in the hearts and minds of those who read it, that they can bring health and change to our jails and prisons and courtrooms and will do so. Ideally, that we neither bring the wrongly charged and torture them trying to get a false confession, nor mistreat any of those in our system any longer. Even if we can save only one person at a time, that is often the key to changing a whole system.

Statement of Cornelius Dupree who was wrongfully imprisoned for 30 years by the state of Texas before DNA proved his innocence in 2011

When I first went into prison, I was really upset and stubborn because I was imprisoned for a crime I didn't do. I was getting written up a lot for not going to work and for not doing this and that. Around 1980 or 1981, I was working in the fields picking cotton at Cofield Prison. I got into a fight with one of the other inmates. I was charged with fighting with a weapon, even though I didn't have a weapon and was sentenced to 15 days of solitary.

If you were in solitary, you were only given a full meal every third day. The first day, you would get a spoonful of rice, a spoonful of beans and a roll. It was very dehumanizing. On the third day, you get a full meal but you'd be so hungry and weak that it wasn't enough. Without food for three days , you have to be careful about how fast you eat it because you'll get sick. In the 15 days I was in there, I lost 15 pounds.

I was also very cold from lying on steel. They give you one blanket. It wasn't very long, and you had to ball up in a knot for it to cover you. It was very dirty. It was dark. You don't know if it's day or night. You don't get recreation. They called it "the hole." There were no phone calls, there was no visitation. It was the worst thing that they had, and I'll never forget it.

Statement of Robert Dewey who was wrongfully imprisoned for 17 years by the state of Colorado before DNA testing proved his innocence in 2012

In 2002 or 2003, I got put in the hole because of my own medication. I was on Tylenol 3 because I had undergone back surgery, and they gave me a drug test. I told them I'm on medication, and they said that's okay we can distinguish the difference. But apparently they couldn't, because even though I gave them all my medical records, they said I tested positive for opiates and morphine.

When you're in solitary, you sit in the cell 23 hours a day for seven days a week with one hour out for yard. In that hour, you walk around in a concrete area. You really don't even get 60 minutes, because you need at least 15 minutes so you can take your shower.

Everybody likes human contact, so when you first get thrown in there and you're not used to it, you freak out a little bit. Your nerves kick in and you have to go down deep inside yourself and try to fight back against it.

For meals, they give you what they have to give you, no more and usually a lot less. You have to eat with a plastic spork. You lose weight because you don't eat as much, and then you also try to exercise to pass the time.

When you're down in the hole and you need help, you're really out of luck. The guards come by about once an hour, and they act like it's an inconvenience. Medication only comes at a certain time. For me, it was 6 a.m. and then not again until 7 p.m., regardless of what the doctor had prescribed.

Statement of Nicholas James Yarris, former death row prisoner from the state of Pennsylvania who spent 23 years in solitary confinement before his exoneration through DNA testing in 2003

Although I may not appear before you this day, I hope that the following efforts I make in writing can lend to all a clear understanding of what solitary confinement is to a human enduring it long term.

I am, unfortunately, a walking encyclopedic source of information about solitary confinement. Having spent an astounding 8000-plus days locked within a cell 23 hours a day, I have witnessed or understood every form of deprivation or sensory starved confinement one can know.

There are two features to solitary confinement that I wish to address here in this statement.

First, the most degrading mental breakdown to men comes from the physical confinement. In the three decades I spent watching new prisoners come to death row in Pennsylvania, I saw with little variation, the breakdown of the personality of men initially entering death row. This occurs when all structure from your previous life hits full stop and you are left with ordered times for every facet of your care. Combined with intentional cruelty inflicted upon men in maximum-security settings, makes most men break down in their first two years. I entered death row at age 21, being the second youngest man on death row in my home state at the time in 1982.

In subsequent years, I saw death row swell in numbers from 24 in 1982, to 250 in 2004 by the time I was set free. I saw endless processions of men enter death row only to see that within two years each one either committed violence on others, self harmed or had serious mental breakdowns and required long term medications to keep them stable. Of the three men executed by Pennsylvania, two were heavily medicated psychiatric patients with long term mental health issues.

I have witnessed numerous suicide attempts and 11 successful suicides. I myself have not only attempted my own suicide at age 21, but later in my incarceration, in 2002, I asked to be executed rather than to continue being held in endless degradation.

It was only because of my asking to be executed that the DNA tests I sought for 15 years had been forced upon the state. I was not let out of solitary confinement until the day I was set free. I was exonerated by DNA in July of 2003 and was not released until January 2004. In the last months I was stripped of all death row privileges and was placed in an administrative/disciplinary housing unit where I was allowed nothing at all in my cell.

I was brought before the prison administration of Green County Prison in Pennsylvania once DNA had been used in court to remove all of my death row convictions. I was told that I posed a threat to the staff because in the years confined within solitary confinement, having my hand crushed by a guard or other things done to me made them fear me. I was told that they feared I would lash out at them because they could not accept that anyone who had been subjected to the things done to me could not want vengeance.

I guess the loudest words of damnation come from the very mouths of those who inflict the hurts they know make them the ones to be feared.

The second aspect of solitary confinement is the detriment of not having any new input. When a man is incarcerated long term his demons are not all around him, it's in every stupid mistake and every memory of pain his yesterday held.

That is what destroys anyone with decent feelings: The many stupid mistakes we made before that door shut. Every lie we told, every fight we had, every time we were embarrassed or hurt. It all bears down on you like some sick film reel of your life endlessly playing out what WAS your life. Prisoners die a thousand memories a day I was once told. I believe it is true.

Without structure we as humans break down or have our weaknesses magnified to the point of being overwhelmed. We need to have art, literacy and any form of in-cell programming we can if we care about not just erasing humans in cells. We need to understand that there are those who need to be separate from others. We have to look at the form of separation that provides security for staff and handles the burden on the state to care for the prisoner.

I think that the United States Government should seek programming and penal ideals from around the world and attempt to use as many of these as we can to better prisons for both inmates and staff. Although it was not part of this statement in focus, we must really be aware that brutal regimens in prison break down the staff in their mental outlook. Prison guards have higher than average rates of suicide and divorce and alcohol abuse because of what they are being made to do to other humans.
Solitary confinement is not a cure to violence nor a control to behavior. It is a short term part of what has to be long term strategy.

I now live in the United Kingdom. I hold a steady job and have a loving partner and we plan to marry next year. I have not wasted my time in anger for the many years I spent in solitary confinement. I also thank God for the hard work I spent studying and growing while inside.

I have been in the company of dignitaries, government officials, celebrities and powerful figures in society. I walk around society today no different than anyone else... and yet, I was on the FBI's most wanted list and came as close as 90 days away from being executed.

For all of Pennsylvania's efforts to hold me in solitary confinement because I was so dangerous was, in the end, a facade.

I make this last point not to be facetious, but to point out the reality that every prisoner at some point is going to get out, either on his feet or not. I am able to look at what was done to me and see beyond the draw of anger or pain. Not everyone is going to feel as I do, and they are going to be worse in society than they were before we subjected them to solitary confinement.

Lastly, I would like to add that in no way do I wish to take away from any respect shown to the families of those harmed by men who are placed in solitary confinement, and I also wish to acknowledge the few kind and compassionate human beings I met while in prison who rose above the setting and treated me with dignity or respect. Those are the moments I choose to hold onto from my time held within a cell.

Statement of Clarence Elkins, Wrongly Imprisoned in Ohio for 6 ½ Years

My name is Clarence Elkins, and I served six and a half years in prison for crimes I did not commit.

When I was in prison in Lucasville, Ohio, I had to take drug tests. It was difficult for me to use the restroom in front of so many people. Even though I gave them a sample and passed the test, the sergeant said that I had refused testing and put me in the "hole."

The next time, I was put in solitary because I had been having psychological problems. I was hearing people plotting to kill me. I pretty much lost my mind. I didn't get to talk to anyone—they just put me in solitary until they thought I was OK, and then they let me out and put me right back where I had been. A couple of weeks later, they put me back in solitary.

The last time, I was in solitary for three months. It turned out that the actual perpetrator of the crimes I was convicted of was serving time in the same prison, so they put me in "protective custody" because they thought I might be in danger. I did absolutely nothing wrong, but I was treated the same as everyone else in solitary. I didn't get any assistance from the staff—they would walk right by me like they didn't see or hear me. I felt neglected and completely invisible. I felt like I didn't mean anything.

The noise in solitary is unbearable. Twenty-four hours a day there are inmates hollering and screaming about nothing. I thought I was going to lose my mind one night—I just started screaming too. It's just such a lonely place. It's the worst of the worst. Prison is bad, but solitary

is really bad. No visits, no family, limited reading materials, screaming 24-7, terrible food, disgusting showers. Being locked up in a tiny cell that long is cruel and unusual.

When I finally walked out of the prison, some news reporters were out there waiting and someone raised my hand up in the air. I was actually numb. I thought, "OK. This is another day." I didn't think it was real. Coming out of solitary and into society, I just didn't have any feelings when I walked out the door. You don't know what to expect, or what to do. Six years later, I'm still learning how to cope.

Statement of Herman Atkins, Wrongly Imprisoned by California for 11 ½ Years Before Being Exonerated by DNA Evidence

My name is Herman Atkins, and I spent more than 11 years in prison in California for a rape and robbery that DNA testing ultimately proved I didn't commit. Being wrongly convicted and ordered to prison was a nightmare that I will never completely recover from, but the 16 months that I was forced to spend in solitary confinement was in a league all its own.

Nothing will ever compare to the way I was completely stripped of my humanity while in the "hole." I was confined for 23 hours a day in a small windowless room. A light remained on at all times, allowing the correction officers to watch my every move. I was given one hour for time in the yard and for a shower. But there were many times when, if I picked the yard first, I didn't get a shower. If I showered first, I wouldn't make it out to the yard.

In the brief time I was actually allowed out of confinement, I had to contend with constant tormenting from officers who tried to set me off so that they could prolong my sentence.

All of this happened to me, and I was proven innocent. That shouldn't matter though. When you're confined with no ability to read, to exercise, to receive basic medical attention or to develop your mind, it's just inhumane. I saw some people snap. They just lost their sanity.

As a nation, we must do better. When a government has the authority to treat people so poorly, it's impossible to hold citizens to a higher standard.

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Testimony of

The Legal Aid Society, Prisoners' Rights Project

February 25, 2014

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Reassessing Solitary Confinement II:

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Before the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights: Reassessing Solitary Confinement II: The Human Rights, Fiscal, and Public Safety Consequences

To the Senate Committee:

The Legal Aid Society thanks Chairman Durbin and Members of the Subcommittee for the opportunity to submit this written testimony on the issue of solitary confinement.

My name is Sarah Kerr. I am a staff attorney at the Prisoners' Rights Project ("PRP") of the Legal Aid Society. PRP has been a leading advocate for constitutional and humane conditions of confinement for individuals incarcerated in the New York City and New York State correctional systems since it was established by the Legal Aid Society in 1971. The Prisoners' Rights Project participated in several federal lawsuits that address the inappropriate use of solitary confinement of individuals with mental illness including the state-wide lawsuit, *Disability Advocates, Inc. v. New York State Office of Mental Health*, 02 CIV 4002 (S.D.N.Y.) *("DAI v. OMH").*[1]

I offer this testimony based on ongoing contact with and advocacy on behalf of individuals incarcerated in New York City jails and New York State prisons, knowledge of the New York State Department of Corrections and Community Supervision (DOCCS), the New York State Office of Mental Health (OMH), the New York City Department of Correction (NYC DOC) and the New York City Department of Health and Mental Hygiene (NYC DOHMH).

In June 2012, we submitted testimony to this Subcommittee that focused on the significant progress made in providing for mental health treatment in the New York State prisons pursuant to the *DAI v. OMH* settlement agreement, including limiting the placement of individuals with serious mental illness in solitary confinement settings, taking mental illness into account during disciplinary hearings, and creating and expanding residential mental health treatment settings in the prisons. We also addressed the importance of the Special Housing Unit (SHU) Exclusion Law passed by the New York State Legislature.[2] In that testimony we described the history of advances made due to litigation and legislation in New York. We also reported that despite those improvements, we continue to witness ongoing problems with treatment and discipline of individuals with mental illness including under-diagnosis, failure to identify and designate individuals with serious mental illness, and overly punitive disciplinary

[1] *Disability Advocates, Inc. v. New York State Office of Mental Health*, No. 1:02-cv-04002 (S.D.N.Y. 2007) was brought by Disability Advocates, Inc., the Prisoners' Rights Project of the Legal Aid Society, Prisoners' Legal Services of New York, and the law firm of Davis Polk & Wardwell.

[2] The SHU Exclusion Law provisions are codified as amendments to N.Y. Mental Hyg. Law § 45 (McKinney 2011) and N.Y. Correct. Law §§ 2, 137.6, 401, 401-a (McKinney 2011).

sanctions imposed against many individuals with mental illness. Our 2012 testimony provided information on improvements and recommendations for making further advances that could build on our own efforts.[3]

This testimony will focus on new developments and reports out of New York which reflect the urgency of continued action to implement meaningful reform. Since 2012, progress remains slow despite the fact that evidence regarding the harmful effects of solitary confinement in New York continues to mount.[4] We urge the Subcommittee to support reform efforts in New York and across the country. Federal support for the collection and dissemination of data on the use of solitary confinement (in all its forms – punitive/disciplinary segregation, administrative segregation, protective custody, etc.) will provide essential information on the harmful lengths of stays in solitary and their human and fiscal costs; data collection on alternatives to solitary confinement will ensure that valid evidence-based rehabilitation programs are identified and may then be replicated; and outcome data from correction policies that limit the use of solitary confinement will assist in encouraging rule changes that will create humane, safe and cost-effective corrections policies.

New York State Prisons

Prisoners who suffer from serious mental illness should not be housed in solitary confinement in prisons or jails and we must begin to reconsider the use of solitary confinement for *all* prisoners whether diagnosed with a serious mental illness or not. When Judge Lynch[5] approved the *DAI v. OMH* settlement agreement, he stated:

> [G]reater attention should probably be paid to the problem of extremely lengthy SHU confinement even to those who are not mentally ill. As we learned during the trial, New York does not have a formal Supermax prison, but when numerous lengthy disciplinary sanctions of SHU confinement are made to run consecutively, prisoners in effect are kept in conditions at least as rigorous and perhaps even more so than in any official Supermax facility perhaps without as carefully thought about consequences as would exist in more official decision to relegate a prisoner to a formal Supermax institution.

Tr. p. 9, 4/27/07. Despite this admonition from the Federal bench in 2007, DOCCS did not implement changes to its utilization of solitary confinement beyond what was embodied in the

[3] *See* Testimony to this Subcommittee of The Legal Aid Society, Prisoners' Rights Project, June 19, 2012.

[4] *See* Kaba, Lewis, Glowa-Kollisch, Hadler, Lee, Alper, Selling, MacDonald, Solimo, Parsons and Venters, *Solitary Confinement and Risk of Self-Harm Among Jail Inmates*, 104 AM.J. PUBLIC HEALTH 442, 445 (2014) available at: http://ajph.aphapublications.org/doi/pdf/10.2105/AJPH.2013.301742; Yaroshefsky, *Rethinking Rikers – Moving from a Correctional to a Therapeutic Model for Youth - Proposal for Rule-Making Report for the NYC Board of Correction* (January 2014); Gilligan, Lee, *Report to the New York Board of Correction* (Sept. 2013); New York Civil Liberties Union, *"Boxed In – The True Cost of Extreme Isolation in New York's Prisons"* available at: http://nyclu.org/publications/report-boxed-true -cost-of-extreme-isolation-new-yorks-prisons-2012.

[5] Judge Gerard E. Lynch, then of the United States District Court for the Southern District of New York, now serving on the United States Court of Appeals for the Second Circuit.

settlement of the *DAI v. OMH* litigation and then in the SHU Exclusion law until additional litigation was pursued by the New York Civil Liberties Union (NYCLU) and others.

In the NYCLU case, *Peoples v. Fischer*, No. 11 Civ. 2694 (S.D.N.Y. 2013), an interim agreement ("Stipulation for a Stay With Conditions") was entered on February 19, 2014.[6] The agreement suspends the litigation for a period of two years during which the use of solitary confinement in the prisons will be studied and reviewed collaboratively with two nationally recognized experts (Dr. James Austin and Eldon Vail).[7] During the two year period, DOCCS will no longer place pregnant women or individuals who are 18 years or younger into solitary confinement and will limit to 30 days SHU sentences of individuals with developmental and cognitive disabilities. The reforms for young individuals and individuals with developmental disabilities are similar to the protections provided to individuals with serious mental illness pursuant to the SHU Exclusion Law which include diversion to less restrictive housing with daily out-of-cell programming. In addition, new guidelines will be implemented controlling the length of isolation sentences for each specific rule violation. The "sentencing" guidelines are not yet public. Whether these interim measures will lead to further more substantial reforms must await the conclusion of this litigation.

We are pleased that New York State is taking additional steps toward reform of solitary confinement in the state prisons and hope that prior reticence toward valid reform will be abated with the guidance from the experts as they review the security bases for the extremely long sentences to solitary that are common in New York's prisons. However, it is substantial and comprehensive reform that must be the goal. Models for valid, safe and humane policies that provide alternatives to solitary confinement are increasing, proving effective and should be replicated in New York and other jurisdictions.[8]

The Humane Alternatives to Long-Term (HALT) Solitary Confinement Act

Newly proposed legislation in New York, the HALT Solitary Confinement Act, A08588 (Aubry) / S06466 (Perkins), provides such a model for comprehensive reform of prison and jail policies and elimination of harmful long-term isolation. The HALT Solitary Confinement Act (HALT) limits isolated confinement to no more than 15 consecutive days nor 20 days total in any 60 day period.[9] Pursuant to HALT, any person who needs to be separated from general

[6] *Peoples, et. al. v. Fischer*, 11-CV-2964 (SAS), Stipulation for a Stay with Conditions is available at: http://www.nyclu.org/files/releases/Solitary_Stipulation.pdf.

[7] Dr. James Austin is President of the JFA Institute and an expert in classification of prisoners. His work as an expert for the ACLU in an action against the Mississippi Department of Correction significantly reduced the use of solitary confinement in Mississippi. Eldon Vail is the former chief of the Washington State Department of Corrections.

[8] Maine voluntarily reduced confinement in its supermax unit by more than 60 percent and Mississippi reduced its use of solitary confinement by 75 percent and closed a supermax unit. Both states, however, continue to house prisoners in extreme isolation. See Cassella and Ridgweay, *In States That "Reduce" Their Use of Solitary Confinement, Suffering Continues for Those Left Behind*, available at: http://solitarywatch.com/2013/11/13/states-reduced-use-solitary-confinement-suffering-continues-left-behind/. Connecticut and Maine prohibit the solitary confinement of juveniles. CONN. GEN. STAT. ANN. § 46B-133(e), ME. REV. STAT. ANN. TIT. 34 § 3032(5).

[9] The U.N. Special Rapporteur on Torture has defined any use of solitary beyond 15 days to amount to torture or cruel, inhuman or degrading treatment. See Interim report prepared by the Special Rapporteur of the Human Rights

population for a longer period is diverted to a residential rehabilitation unit (RRU) that provides programs, therapy and support. HALT provides *inter alia* criteria for limiting placement into isolation or an RRU, bans vulnerable populations from isolation (those under 21 years old, 55 years or older, with physical, mental or medical disability, pregnant women, and individuals perceived to be LGBTI), creates enhanced due process protections during the disciplinary hearing process, requires training of staff, oversight by the New York State Justice Center for the Protection of People with Special Needs,[10] and public reporting on the number, categories and lengths of stay of prisoners in isolation and in the RRUs.[11]

New York City Jails

In total disregard of reforms implemented in the New York State prisons for individuals with serious mental illness, as well as reforms around the country reducing reliance on solitary confinement, under the Bloomberg Administration, the NYC DOC increased its use of solitary confinement (punitive segregation).[12] The percentage of the New York City jail population in solitary confinement increased from 2.7% in 2004 to 7.5% in 2013. The number of solitary confinement beds increased in number from 614 in 2007 to 998 in 2013. At the same time, approximately 40% of the individuals incarcerated in the City jails were reported to have a psychiatric diagnosis with many of that number suffering from major mental illness.[13]

Because of failure of the prior City Administration to solve, or even make progress towards solving, the long-standing problem of inhumanely housing individuals with mental illness in punitive solitary confinement settings in the City jails, and its increased reliance on solitary confinement of *all* types of prisoners, advocates in New York including the Prisoners' Rights Project of The Legal Aid Society formed a community organization/umbrella group called the NYC Jails Action Coalition (JAC). On April 9, 2013, JAC petitioned[14] the City Board of Correction to implement new rules regarding solitary confinement to be made part of the jail

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Council on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Juan E.Méndez, available at: http://solitaryconfinement.org/uploads/SpecRapTortureAug2011.pdf.

[10] The New York State Justice Center for the Protection of People with Special Needs is a state agency authorized to monitor, investigate and respond to abuse of vulnerable persons and to make recommendations to positively impact the safety of service recipients and the employees who are entrusted with their care.

[11] The Humane Alternatives to Long-Term Solitary Confinement Act is available at: http://open.nysenate.gov/legislation/bill/A8588-2013.

[12] The prior City Administration was aware that even as crime in NYC had declined, individuals with mental illnesses were an increasing percentage of the City's jail population. In March 2011, NYC sought assistance for a study concerning individuals with mental illness in the NYC jails from The Justice Center of The Council of State Governments. *Improving Outcomes for People with Mental Illnesses Involved with New York City's Criminal Court and Correction Systems* was completed in December 2012. The CSG Report findings included that individuals with mental illness had longer (double) lengths of stay and were less likely to make bail than individuals with no mental illness. It identified failures in linking individuals with mental illness to alternatives to incarceration, and a lack of sufficient community alternatives willing to serve people involved in the criminal justice system. The report is available at: http://www.nyc.gov/html/doc/html/events/FINAL_NYC_Report_12_22_2012.pdf.

[13] Gilligan and Lee, *supra* note 3 at p. 3.

[14] The JAC Petition for Rule-Making is available at: http://www.nycjac.org/storage/JAC%20Petition%20to%20BOC.pdf.

Minimum Standards.[15] After the JAC petition was filed, the NYC DOC took some minimal steps towards reform; the Board of Correction, its experts and its staff have investigated and agreed to initiate rule-making to solve harmful, dangerous, and abusive use of solitary confinement in the jails; and a study of solitary confinement and the risk of self-harm was conducted and published by employees of NYC DOHMH.[16] All of the investigations, reports and studies identify alarming failures by the prior Bloomberg Administration to end abusive and dangerous conditions in the City jails.

In September 2013, a report to the New York City Board of Correction by their mental health experts, Drs. James Gilligan and Bandy Lee, reported on the large numbers of individuals with mental illness in solitary confinement in the City jails and the failure to provide treatment in accordance with the current Minimum Standards.[17] Based on what they observed in the jails, Drs. Gilligan and Lee recommended that no individuals with mental illness should be placed in solitary confinement, that no individuals *at all* should be subjected to the prolonged solitary confinement in use in the City jails because *"it is inherently pathogenic – it is a form of causing mental illness."*[18] They reported on the reforms implemented by NYC DOC: the creation of a Clinical Alternative to Punitive Segregation (CAPS) unit for individuals with serious mental illness and the Restricted Housing Units (RHU) for individuals with "non-serious" mental illness. The doctors reported that CAPS was far too small for the population that would need a therapeutic alternative placement and should be expanded, and that the RHU was a complete failure and non-therapeutic. The report recommended elimination of the RHU model because it remains punitive in nature and does not grant any relief from the use of solitary confinement. The report detailed the lack of access to treatment (even in the purportedly therapeutic RHU), the lack of an appropriate range of available treatment modalities, and the utter lack of a physical environment conducive to providing confidential treatment in a clean and private space.

Drs. Gilligan and Lee chillingly detail the violent culture in the NYC Jails: "[a]ll too many of the officers that we observed appeared to us to make it clear that they were quite willing to accept an invitation to a fight, or to regard it as a normal response within the cultural norms of the jail."[19] During their investigation they witnessed an adolescent in the RHU becoming increasingly agitated in his cell – first banging his arms and legs on his cell door then his whole body, ripping up a sheet, wrapping his arms, legs and then neck as if preparing to hang himself. No NYC DOC staff responded until Drs. Gilligan and Lee intervened. Shockingly (since the RHU is supposed to be a therapeutic alternative to solitary confinement for individuals with mental illness), the officer staff's first response was to pull out a can of mace. The doctors had to intervene and insist that this was not necessary and that mental health staff should be notified. The violent response of staff to the individuals in their care, followed by severe punishment with solitary confinement, was identified as "the mutually self-defeating vicious cycle that develops between inmates and correction officers, in which the more violently an inmate behaves, the

[15] The Board of Correction establishes and ensures compliance with minimum standards regulating conditions of confinement and correctional health and mental health care in all City correctional facilities.

[16] See Kaba, Lewis, et al., *Solitary Confinement and Risk of Self-Harm Among Jail Inmates*, *supra* note 3.

[17] Gilligan, Lee, *supra* note 3.

[18] *Id.* at p. 6.

[19] *Id.* at p. 16.

more seriously he is punished, and the more seriously he is punished, the more violent he becomes." It is a perpetual vicious cycle that fuels continued violent conduct. In the face of overwhelming lack of appropriate care and treatment, the doctors' report calls for significant changes in policy, culture and training of staff.

Two additional reports prepared by and for the Board of Correction concern the adolescent population of the New York City jails.[20] *Three Adolescents with Mental Illness in Punitive Segregation at Rikers Island* was written by members of the Board of Correction staff and details the poor quality of mental health treatment and delivery of treatment services for three children with mental illness while held in solitary confinement settings in the NYC jails.[21] *Rethinking Rikers: Moving from a Correctional to a Therapeutic Model for Youth* was prepared by Professor Ellen Yaroshefsky with assistance from students at Cardozo Law School and provides examples from New York State and other states to use as a basis for eliminating the use of solitary confinement for youth and to shift to a therapeutic approach with practices that are specialized for and dedicated to youth rehabilitation.[22] Similarly to the findings in the report of Drs. Gilligan and Lee, *Rethinking Rikers* reports on the failed policy and over-utilization of solitary confinement and calls for a "much-needed cultural transformation on Rikers Island."[23]

Solitary Confinement and Risk of Self-Harm Among Jail Inmates reports on a study conducted by employees of NYC DOHMH.[24] The report makes numerous findings that illustrate that solitary confinement is a dangerous and self-defeating practice:

- The risk of self-harm and potentially fatal self-harm associated with solitary confinement was higher than outside solitary, independent of prisoners' mental illness status and age group.
- Self-harm is used as a means to avoid the rigors of solitary confinement – inmates reported a willingness to continue to do anything to escape solitary confinement.
- Patients with mental illness become trapped in solitary confinement, earning new infractions resulting in more time in solitary.[25]

The report indicates a need to reconsider the use of solitary confinement as punishment in jails "especially for those with SMI and for adolescents," and cites to the American Psychiatric Association and American Academy of Child Adolescent Psychiatry as professional societies that recommend against the use of solitary confinement for adolescents and individuals with

[20] New York is one of only two states in the country to treat 16 and 17-year olds as adults in its courts.

[21] *Staff Report: Three Adolescents with Mental Illness in Punitive Segregation at Rikers Island,* CITY OF NEW YORK BD. OF CORRECTION (Oct. 2013), available at http://www.nyc.gov/html/boc/downloads/pdf/reports/Three_Adolescents_BOC_staff_report.pdf.

[22] *See* Yaroshefsky, *Rethinking Rikers, supra* note 3.

[23] *Id.* at p. 48.

[24] See Kaba, Lewis, et al., *Solitary Confinement and Risk of Self-Harm Among Jail Inmates, supra* note 3.

[25] The study includes the "extreme" example of a patient breaking a sprinkler head to use to self-harm and receiving an institutional infraction as well as a new criminal charge for the destruction of government property. *Id.* at p. 446.

serious mental illness.[26] It then goes on to describe the creation of CAPS and RHU as reforms that will "provide an opportunity to evaluate the effect of increased clinical management and decreased reliance on solitary confinement as a means to reduce self-harm and other behaviors among inmates with mental illness."

As with steps towards reform in the New York State prisons, we are pleased that the NYC DOC is taking some steps toward reform of solitary confinement. The first reports about the CAPS unit indicate that it appears to provide a therapeutic setting far different than solitary confinement. However, admissions to the CAPS unit remain extremely low despite the large population of individuals with mental illness in need of release from solitary confinement and of its therapeutic programming. The RHUs continue to be extremely punitive in nature and are not providing a respite to long terms of isolation for the individuals with mental illness housed in them. In conjunction with implementation of the RHUs, changes were made to the sentence structure for disciplinary sentences. Although there was a brief period of reduced sentences, those changes were short-lived; sentences are increasing and very harsh sentences continue to be meted out.

The implementation of CAPS and RHU and the changes to disciplinary sentencing simply do not comprise the needed comprehensive reforms that address the root problems of far too many individuals with mental illness ending up in the criminal justice system or the failure to respond to their needs in the jails in a non-punitive manner. Necessary reforms include training DOC staff to work with individuals with mental illness in an appropriate and humane manner rather than in a punitive (and all too commonly violent) manner; changing police and bail policies to reduce the number of individuals with mental illness committed to the City jails; and sufficient alternatives to incarceration to move individuals with mental health needs out of the criminal justice system, since the need is for medical and social service interventions.

The existing reforms also do not reflect the substantial and comprehensive reform to the use of solitary confinement needed in the NYC jails and now repeatedly identified in the described reports and studies.

JAC Petition for Rule-Making in New York City

The HALT Solitary Act (described above) and the JAC Petition for Rule-Making provide models for comprehensive reform of prison and jail policies and elimination of harmful long-term isolation. The JAC Petition proposes significant limits on the use of solitary confinement, places a 15 day limit on each sentence with no more than 60 consecutive days permitted, provides for 4 hours out-of-cell in solitary confinement, excludes vulnerable populations (under 25 years old, and individuals with mental, physical or medical disabilities), provides for alternative safety restrictions for vulnerable populations which require 8 hours out-of-cell daily and a program of positive incentives, enhanced due process requirements at disciplinary and

[26] *Id.* at p. 447.

other hearings, and public reporting on the use of solitary confinement and alternative safety restrictions.[27]

We are hopeful that when the new City Commissioner is appointed substantial and comprehensive reforms of the failed policies of the prior Bloomberg Administration can proceed. We are hopeful that the rule-making initiative of the Board of Correction will serve to implement reforms recommended in the JAC Petition and put an end to the overly punitive response to *all* individuals in the NYC Jails, and will end the use of isolated confinement for individuals with disabilities and for individuals under the age of 25. The need for comprehensive reform is clearly identified in each of the recent studies and reports on the NYC jails. The City should also change police and bail policies to reduce the number of individuals with mental illness who are relegated to the City jails, and provide sufficient alternatives to incarceration to move individuals with mental health needs out of the criminal justice system and provide the medical and social service interventions that they need and that will better serve society than locking them up in institutions that do not adequately address their problems.

The advocates in NYC will continue to push for genuine comprehensive reform, increased transparency and more community involvement in designing and implementing jail reforms.

Conclusion

We urge the Subcommittee to support solitary confinement reform efforts in New York and across the country. Federal support for the collection and dissemination of data on the use of solitary confinement (in all its forms – punitive/disciplinary segregation, administrative segregation, protective custody etc.) will provide essential information on the harmful lengths of stays in solitary and their human and fiscal costs; data collection on alternatives to solitary confinement will ensure that valid evidence-based rehabilitation programs are identified and may then be replicated; and outcome data from correction policies that limit the use of solitary confinement will assist in encouraging rule changes that will create humane, safe and cost-effective corrections policies. In order to achieve comprehensive reform we make the following recommendations to the Subcommittee:

Increase transparency and publicly available information about solitary confinement:

- Provide Federal funding for the study of the costs and effects of solitary confinement including barriers to reentry and recidivism.
- Provide for public reporting by the Bureau of Justice Statistics on the use and cost of solitary confinement nation-wide.
- Support legislative and other initiatives to publicly report on use of solitary confinement in jails and prisons.

[27] The JAC Petition for Rule-Making is available at: http://www.nycjac.org/storage/JAC%20Petition%20to%20BOC.pdf.

- Provide funding and other support for implementation of independent oversight agencies for jails and prisons.

Support efforts to end long-term solitary confinement:

- Federally fund comprehensive evidence-based initiatives to reform the use of solitary confinement (with public reporting on outcomes) and provide enhanced programming.

- Support efforts to implement legislation, correction policy, regulations and other rules to limit the use of all forms of isolation in prisons, jails and other detention facilities and to ban solitary confinement of vulnerable populations.

- Federally fund correction staff training that includes non-violent de-escalation interventions and skills for working with trauma victims and individuals with mental illness and other disabilities.

I thank the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights for attention to the important issue of solitary confinement in our prisons and jails. I appreciate the opportunity to provide this written testimony.

Dated: February 25, 2014

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Testimony submitted on behalf of T'ruah: The Rabbinic Call for Human Rights

by Rabbi Jill Jacobs, Executive Director
Rabbi Rachel Kahn-Troster, Director of North American Programs
Rabbi Lev Meirowitz Nelson, Director of Education

Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights
Hearing on "Reassessing Solitary Confinement II: The Human Rights, Fiscal, and Public Safety Consequences"
February 24, 2014

Mr. Chairman, Members of the Subcommittee, thank you for this opportunity to submit testimony on behalf of T'ruah: The Rabbinic Call for Human Rights concerning the use of solitary confinement in our nation's prisons, jails, and detention centers. T'ruah's stance against solitary confinement is informed by our moral and religious values, as well as centuries of Jewish legal tradition. Since the Subcommittee's last hearing on the subject on June 19, 2012, T'ruah has organized over 125 rabbis to support prisoners on hunger strike in California's Pelican Bay Prison. More than 15 congregations have screened the film *Herman's House* as part of discussions on empathy, repentance, and solitary confinement, and we have created new educational resources to help Jewish communities further delve into the topic. Additionally, New York's recent decision to enact sweeping reforms in its use of solitary confinement makes this a ripe moment for action on the national stage. We appreciate the Subcommittee, under the leadership of Chairman Durbin, spending time today examining America's use of isolation.

T'ruah is a rabbinic organization that acts on the Jewish imperative to respect and protect the human rights of all people. Prior to January 2013, we were known as Rabbis for Human Rights—North America. T'ruah represents approximately 1,800 rabbis from all streams of Judaism. Grounded in Torah and our Jewish historical experience and guided by the Universal Declaration of Human Rights, we advocate for human rights in Israel and North America. We were founding members of the National Religious Campaign Against Torture, and our mission to end the use of prolonged solitary confinement in the United States is an outgrowth of our anti-torture campaign.

On the broadest and highest level, we stand against prolonged solitary confinement because of our basic, fundamental beliefs about humanity. Genesis chapter 1 teaches us that human beings are created in the divine image, which imposes obligations on us to treat each person as a unique and precious individual—even when that individual has committed a crime. This is expressed in concrete terms later in the Torah, where we read that when a court administers corporal punishment, the convicted person may not be given more than forty lashes, "Lest beating him more than these many lashes would degrade your kin in your eyes" (Deuteronomy 25:3). Rashi, the renowned rabbinic commentator from the 11th century, notes that the verse specifically calls him "your kin," to remind us that once punishment has been administered, we must treat the person as one of us, not as a sinner.

In Genesis chapter 2, which expands on the creation story found in chapter 1, God says that it is not good for man to be alone (verse 18). This is the second essential thread that runs through our religious

and moral understanding of humanity: we are social creatures. Isolating a human being from all social contact for an extended period of time denies that person's humanity.

Moving beyond the level of grand claims about human nature, we come to the body of Jewish law and lore that deals with punishment, and particularly with incarceration. Rabbi Jonathan K. Crane, PhD, a professor of ethics at Emory University, discusses the centuries-long legal debate in his article "Judaism and Solitary Confinement," from which the following highlights are drawn. Rabbi Crane points out that the bible offers a single portrait of a person held in solitary confinement—the prophet Jeremiah, who is twice confined by King Zedekiah and twice released into more comfortable imprisonment (chapters 37 and 38). Conditions in solitary—where he is held without food or water—threaten the prophet's life in a matter of days. Rabbi Crane writes, "Perhaps taking their cue from these biblical stories, the rabbis stipulate that solitary confinement is to be used for only certain reasons... only recidivist criminals of the most egregious of crimes warrant this kind of treatment. Still, such confinement does not mean total segregation: conjugal visits were considered appropriate even for the imprisoned." In contrast, prisoners today may be sent to solitary for the slightest infractions, or even simply due to lack of space in general population, and can only receive visits from loved ones through thick glass and telephones (Kerness and Lewey, 2014).

In addition to the question of the harm or appropriateness of solitary confinement, there is the equally important question of how long a prisoner is held. Various Jewish forms of punishment or imprisonment are always time-limited, with return often triggered by the prisoner's sincere repentance. Rabbi Crane writes, "The only remaining aspect of solitary confinement that perhaps could receive some Judaic imprimatur is its desire to induce attitudinal and behavioral reform... indefinite confinement that ends only by the whim of some authority is not tenable." Human rights advocates define solitary confinement of more than 15-30 days as a form of torture (Kerness and Lewey 2014); Rabbi Crane writes that according to Jewish law, more than two days is considered "excessive and degrading." Especially given the body of evidence documenting the deleterious, rather than restorative, effects of solitary confinement, no Jewish principle allows for isolating individuals for periods longer than these.

There is also the question of prisoners' treatment in solitary confinement, which goes to the root of why they are in solitary in the first place. Conditions such as lights that are never turned off, temperature extremes, limited and low-quality food, no access to educational materials or treatment programs, and loud patrols by guards as often as every 45 minutes—as described by Kerness and Lewey—add insult to injury. They make the experience of solitary even more psychologically and physically debilitating, further decreasing the likelihood that prisoners will succeed when returned to the general prison population or to the outside world. Even if we stipulated that some prisoners may be held in solitary confinement for limited periods of time—which we emphatically do not—there is no reason for conditions in solitary to be made worse than they inherently are. Prisons cannot be redesigned or rebuilt overnight, but prison procedures can be modified. If the ostensible goal of solitary is to control or segregate dangerous prisoners, control and segregate them—don't subject them to torture and doom them to self-fulfilling prophecies of failure.

We must also turn our attention outside the prison walls to the impact solitary has on society at large; our era of tight budgets and fiscal conservatism forces us to consider the financial cost of solitary as well as the human cost. While estimates vary as to the specifics and there are no clear nationwide statistics, there is no question that housing prisoners in solitary is more expensive than housing general population prisoners (Solitary Watch). When cuts are being made to food stamps, unemployment benefits, and pensions for veterans, every dollar counts. Limiting the use of solitary confinement is not only better for those held in solitary, it is a responsible use of taxpayer dollars that could be better spent elsewhere.

Finally, we should note the Jewish principle that overrides all other legal principles: the preservation of a life. All but three Jewish laws (the prohibitions on murder, gross sexual impropriety, and idolatry) may be set aside to save a life, and the rabbis of the Mishnah (2nd century) teach that one who saves a life is credited as if she or he had saved an entire world. According to Kerness and Lewey, half of all successful prison suicides occur in solitary, and prisoners who spend time in solitary are almost twice as likely to commit another crime upon a person upon their release. Taken together, these statistics suggest that solitary endangers the lives of both prisoners and the population at large. The Jewish imperative to save life drives us to call for an end to prolonged solitary confinement.

In particular, we join with other faith-based organizations and colleagues of conscience in asking the Subcommittee to act on the following four items:

1. **Congress should support increased federal oversight, monitoring, transparency, and funding for alternatives for solitary confinement.**
   - Federal, state, and local prisons, jails, detention centers, and juvenile facilities must be required to report to the Bureau of Justice Statistics who is held in solitary confinement and for what reason and how long, as well as the impact of the practice on cost, facility safety, incidents of self-harm, and recidivism.
   - On an annual basis the raw data and statistical analysis should be published by BJS,, presenting a comprehensive review of the use of solitary confinement in the United States. In conjunction with the annual release of these statistics, a review panel of appointed experts would conduct public hearings to review the findings, hear from stakeholders, and issue recommendations.
   - Provide federal funding through the Bureau of Justice Assistance (BJA) or other entity to support federal, state, and local efforts to reduce the use of solitary confinement, with a focus on programming and other alternatives.

2. **Congress should require reforms to the use of solitary confinement in federal facilities operated by the Bureau of Prisons (BOP).**
   - BOP should be required to reduce its use of solitary confinement and other forms of isolation in federal prisons by implementing reforms based on the standards for long-term segregated housing established by the American Bar Association, as well as the findings of the Government Accountability Office (GAO), and the ongoing study of BOP's use of segregation being conducted by outside contractors.

- BOP should immediately implement a ban on the solitary confinement of juveniles held in federal custody and ensure that prisoners with mental illness are excluded from solitary confinement units.
- BOP's newly acquired facility at Thomson, Illinois, should not be designated for use as an ADX (supermax) facility. Instead, it should be converted for use as a lower custody, general population prison.

3. **Congress must ensure that the United States fully engages in the international effort to reform the use of solitary confinement.**
   - The Subcommittee should formally request that the U.S. Department of State play an active role in the overdue process of updating the United Nations Standard Minimum Rules for the Treatment of Prisoners. New provisions should be included to ban the solitary confinement of juveniles and individuals with serious mental illness, protect against prolonged solitary confinement for all persons, and to prohibit the use of "gender identity" and "sexual orientation" as grounds for discrimination in prisons.
   - The Subcommittee should formally request that the U.S. Department of State stop impeding the longstanding formal request by the United Nations Special Rapporteur on Torture to investigate of the use of solitary confinement in U.S. prisons. This investigation should include site visits as requested by the Special Rapporteur.

4. **Congress should support rulemaking to reduce the use of solitary confinement in U.S. prisons, jails, detention centers and juvenile facilities**
   - The Subcommittee should call for rulemaking by the U.S. Department of Justice to ensure the development of smart, humane and evidence-based national best practices and regulations that will limit the use of all forms of isolation and solitary confinement.

Mr. Chairman, Members of the Subcommittee, T'ruah believes strongly that solitary confinement is a form of torture incompatible with our Jewish and American values. The United States should do everything in its power to reverse our harmful and expensive reliance on solitary confinement. This is a moral imperative that should not be put off. Moreover, it is a political issue that can garner bipartisan support. We implore you to take action, through legislative and/or executive channels, that limits the use of prolonged solitary confinement. Your taking the time to hold this hearing is an important part of that process; we thank you deeply for doing so and for allowing us to contribute this testimony.

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U.S. Immigration and Customs Enforcement

STATEMENT

OF

KEVIN LANDY
ASSISTANT DIRECTOR
OFFICE OF DETENTION POLICY AND PLANNING
U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
U.S. DEPARTMENT OF HOMELAND SECURITY

REGARDING A HEARING ON

Reassessing Solitary Confinement II: The Human Rights, Fiscal, and Public Safety Consequences

BEFORE THE

U.S. SENATE
COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS

February 25, 2014
Hart Senate Office Building, Room 216
2:30 pm

INTRODUCTION

Chairman Durbin, Ranking Member Cruz, and Members of the Subcommittee, on behalf of the men and women of U.S. Immigration and Customs Enforcement (ICE), thank you for the opportunity to provide this statement addressing the housing of ICE detainees, and the specific circumstances under which segregated housing is used to ensure safety and security.

ICE primarily consists of two operational programs: Enforcement and Removal Operations (ERO) and Homeland Security Investigations (HSI). Guided by ICE's prioritized enforcement principles, ERO identifies and apprehends criminal and other removable aliens, detains these individuals, and removes individuals determined to be illegally present (or otherwise subject to removal) from the United States. HSI is responsible for a wide range of domestic and international criminal investigations arising from the illegal movement of people and goods into, within, and out of the United States, often in coordination with other federal agencies.

Detention Reform

The ICE Office of Detention Policy and Planning (ODPP), located within ERO, works to coordinate ICE's efforts to overhaul the current immigration detention system. Recent efforts have been underway since 2009 and require extensive collaboration and consultation with both internal and external stakeholders. ODPP is charged with designing a detention system that meets the unique needs of ICE's detained population. Detention reforms have included the deployment of a new risk classification assessment to improve transparency and uniformity in detention custody and classification decisions, the promulgation of revised national detention standards, enhanced oversight at detention facilities, and the issuance of an agency-wide

Directive on Sexual Abuse and Assault Prevention and Intervention. Most recently, in addition to the Segregation Directive, ICE has also launched a nationwide toll-free hotline that detained individuals can call if they believe they may be U.S. citizens or victims of a crime. ICE also issued a directive on ensuring the preservation of parental rights of aliens encountered in the course of immigration enforcement activities. Additionally, ICE expects the final rule implementing the Prison Rape Elimination Action in DHS confinement facilities, which will include many detention facilities used by ICE, in the very near future.

Development of the Segregation Directive

At all of ICE's detention centers, we take very seriously the health, safety, and welfare of our employees, detention facility staff and the individuals in our care. In September 2013, as part of our continuous review of detention policies and procedures, ICE issued a new directive, *Review of the Use of Segregation for ICE Detainees*. This directive enhances existing procedures for ICE review and oversight of facility decisions to place detainees in segregation for any extended period of time, and in the case of detainees for whom heightened concerns exist based on health issues or other special vulnerabilities, for any length of time.

The Directive complements the requirements in ICE detention standards. Detention standards require facilities to review the status of a detainee's segregation at regular intervals in order to assess the continued need for segregation. The Directive enhances these existing procedures by requiring facilities to notify ERO leadership, specifically Field Office Directors (FODs), at frequent intervals of segregation placements and to conduct reviews regarding whether placement continues to be appropriate in each case. This additional layer of review enhances agency oversight of individual facility segregation determinations. The Directive also

expounds upon the specific factors to be taken into consideration during such reviews, and establishes a further level of review of FODs' evaluations by ICE headquarters.

Prior to the development of the *Review of the Use of Segregation for ICE Detainees* directive, ICE conducted a thorough review of the use of segregation at detention facilities, including collecting quantitative and qualitative data on the reasons detainees were placed in segregation and how long individuals remained there. ICE also conducted additional inspections of all detention facilities using segregation, and reviewed the facilities' segregation policies and practices. In conducting this review and developing the new segregation directive, ICE Headquarters offices collaborated with the DHS Office for Civil Rights and Civil Liberties and ERO field office management. The Directive implements the oversight and process improvements developed as a result of this thorough review.

Fundamentals of the Segregation Directive

ICE national detention standards carefully circumscribe the use of segregation to ensure that it is used only as necessary and appropriate, and is subject to review and oversight. The use of segregation is, in some cases, necessary to ensure the safety and security of detainees, staff, or the facility; however, the detention standards impose stringent requirements relating to the reasons for which a detainee may be placed in administrative or disciplinary segregation, reviews of the status of a detainee in segregation, and programs and services to which segregated detainees are entitled. Detainees may be segregated for disciplinary reasons only pursuant to a disciplinary hearing in which they are found to have committed a serious facility infraction. They may be segregated for administrative reasons only when their continued presence in the

general population poses a safety threat to themselves or others. All segregation placements must be regularly reviewed in order to ensure their continued necessity.

ICE policy and detention standards establish that placement of detainees in segregated housing is a serious step that requires careful consideration of alternatives. Placement in administrative segregation should be consistent with the rationale for placement and in compliance with applicable detention standards, occurring only when necessary, and under the least restrictive conditions practicable. For detainees placed in administrative segregation due to special vulnerabilities, segregation is only used as a last resort and when no other viable housing options exist.

The Directive adopts a case management approach where ERO Field Offices conduct individualized assessments of all segregation placements covered by the Directive, and the agency tracks and reviews those placements on an ongoing basis. It also ensures that agency leaders will review extended placements in segregation for all detainees and continue them only if necessary and in line with applicable detention standards. As always, the safety and security of ICE employees, detention facility staff, and detainees in ICE custody remain paramount.

Detention facility administrators are required to notify FODs within 72 hours of the initial placement in segregation of detainees with particular specified vulnerabilities or other factors. Detainees requiring notification are defined as any detainee who is in segregation on the basis of a disability, medical or mental illness, or other special vulnerability, or because the detainee is an identified suicide risk, on a hunger strike, or an alleged victim of a sexual assault; or any detainee, regardless of the reason for the segregation placement, placed in segregation who has a mental illness, a serious medical illness, or a serious physical disability.

After reporting the placement to ERO headquarters, the FOD must initiate an expedited review of the segregation case to determine whether segregation is necessary and whether alternatives to segregation are appropriate and available. During this review, the FOD is required to ensure that any setting used to house detainees who are at risk for suicide allows for close supervision and minimizes opportunities for individuals to harm themselves. For a detainee placed in administrative segregation due to a special vulnerability, the FOD must ensure that the placement is only used as a last resort, and when no other viable housing options exist. If the detainee placed in segregation is an alleged victim of sexual assault, the FOD will ensure the detainee is not held in administrative segregation on that basis for more than five days, except in highly unusual circumstances or at the detainee's request.

As stated in the Directive, the ICE Health Services Corps (IHSC) Headquarters staff must conduct an expedited review of all relevant cases. The IHSC must evaluate the suitability of the placement and ensure appropriate health care is provided for a detainee who is medically or mentally ill, a suicide risk, or is on a hunger strike. A detainee in any of these categories must be removed from segregation if IHSC determines the segregation placement has resulted in the deterioration of the detainee's medical or mental health, and an appropriate alternative is available. In the case of a detainee who is physically disabled, IHSC must evaluate the appropriateness of the placement and, in coordination with the FOD, consult with facility staff about any necessary accommodations. IHSC, in coordination with the FOD and ICE Headquarters, must review the segregation placement in these cases at least every 14 days.

Detention facility administrators are also required to notify FODs whenever a detainee has been held in segregation continuously for 14 days or for 14 days out of any 21 day period; or continuously for 30 days, and at 30 day intervals thereafter. FODs must then immediately

commence a review of the detainee's segregation case to determine whether the placement is necessary, excessive, or in violation of applicable detention standards. The review must also include an assessment of whether the segregation placement is consistent with ICE policies and applicable detention standards. A new review is required at 30 day intervals thereafter to consider whether circumstances have changed, or whether the extended duration of the segregation is excessive.

After conducting an individualized assessment of the segregation placement, FODs must consider whether a less restrictive housing or custodial option is appropriate and, in coordination with ICE Headquarters when necessary, arrange for alternatives to segregation when they are appropriate and available. These alternatives include the return of the detainee to the general population; the transfer to another facility where the detainee can be housed in the general population or in an environment better suited to his or her needs; and release from custody, if consistent with the requirements of mandatory detention, public safety, and other immigration enforcement considerations. FODs are required to submit to ERO Headquarters comprehensive written reports at 30 day intervals for segregated detainees, and after 14 days for detainees who have the specified special vulnerabilities or whom the FOD determines should have their cases reviewed by ICE Headquarters.

The Directive established a subcommittee of the Detention Monitoring Council (DMC) to review individual segregation decisions, as well as to address systemic issues. The subcommittee is co-chaired by ERO Custody Management Division and ODPP, and consists of IHSC, ERO Field Operations, the Office of the Principal Legal Advisor, the Office of Professional Responsibility, the Office of Acquisition Management, and the DHS Office for Civil Rights and Civil Liberties. Subcommittee members collaborate in reviewing segregation

placements. The review process includes communication with ERO Field Offices to request additional information, and discuss and implement alternatives to segregation.

To facilitate the review process established by the Directive, in October 2013, ICE deployed an automated Segregation Review Management System (SRMS). The SRMS is a web-based system that is the central point for documenting, tracking, and reviewing cases on detainees in segregation. SRMS allows ERO Field Offices to submit notifications about segregation placements to ICE Headquarters in real time, and automatically triggers updated reports prompting Field Offices to furnish the information required by the Directive whenever a detainee has reached the requisite notification or re-evaluation intervals (14 days, 30 days, etc.). ICE Headquarters components are able to jointly review new and updated cases in the system and to share comments within each, in order to reach a coordinated recommendation as to the appropriateness of continued segregation and any available alternative housing or custody options. The SRMS also provides a centralized historical record of all segregation cases entered into the database, and subsequent Field Office and Headquarters level reviews.

CONCLUSION

ICE remains committed to a civil detention system where the safety, health, and welfare of both the detention staff and the detainees are of primary concern. Placement of detainees in segregated housing is a serious step that requires careful consideration of alternatives, and should occur only when necessary and in compliance with applicable detention standards. Thank you for the opportunity to provide this statement on behalf of ICE.

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Mandate of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

February 24, 2014

Senator Dick Durbin
Chairman
Subcommittee on the Constitution,
Civil Rights, and Human Rights
Senate Committee on the Judiciary
United States Congress

Dear Senator Durbin,

I am pleased to submit this statement, in my capacity as United Nations Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, for the purpose of the Second Congressional Hearing on Solitary Confinement; "Reassessing Solitary Confinement II: The Human Rights, Fiscal, and Public Safety Consequences" to take place on February 25, 2014. I would like to congratulate the United States Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights and its Chairman, Senator Durbin, for once again, taking the initiative to address this very important issue through a public hearing and to create the opportunity to evaluate and raise awareness on the harmful consequences of solitary confinement. While significant and meaningful strides have been made since the first Congressional Hearing in 2012 regarding the limitation of the use of solitary confinement in the United States, there is certainly still work to be done. I hope this hearing can contribute to further discussion and reform efforts on this pressing issue.

Solitary confinement remains a pervasive practice throughout much of the world, and is, in many cases, subject to widespread abuse in violation of internationally recognized human rights standards, including the absolute prohibition of torture and ill-treatment, the central focus of my mandate. Short-term uses of solitary confinement for specific purposes and closely monitored may be legitimate. However, solitary confinement is often imposed for prolonged periods, with diverse motives and in distinct contexts, including in prisons, administrative detention facilities, juvenile detention centers, mental health institutions and immigration detention facilities. Unfortunately, the United States is one of the countries where solitary confinement is widely used for prolonged periods of time raising significant concerns regarding the compliance of this practice with the United States' obligations under the International Covenant for Civil and Political Rights (ICCPR), and the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which your Government ratified on 8 June 1992 and 21 October 1994 respectively.

In my capacity as Special Rapporteur I have worked closely on the issue. In October 2011, I presented a thematic report to the United Nations General Assembly examining the global practice of solitary confinement under the framework of the international prohibition of torture and ill-treatment, and provided recommendations to

all States regarding the use of solitary confinement.[1] In March 2013, I participated in a thematic hearing before the Inter-American Commission on Human Rights (IACHR) on the issue of solitary confinement in the Americas. The IACHR endorsed my recommendations and issued a public statement urging the Member States of the Organization of American States (OAS) to adopt concrete measures, in accordance with my recommendations, to ban prolonged solitary confinement.[2] Additionally, in my most recent thematic report, presented at the 68th session of the UN General Assembly in October 2013, I recommended that the reviewed UN Standard Minimum Rules for the Treatment of Prisoners (SMRs) should explicitly prohibit the use of solitary confinement as a disciplinary regime or judicial sentence, prohibit the use of solitary confinement for prolonged or indefinite periods, and prohibit the practice in all circumstances against juveniles, persons with mental disabilities, pregnant women, persons serving life sentences and persons awaiting execution on "death row."[3] This recommendation to include a prohibition of solitary confinement in these terms in the revised SMRs has also been recently supported by the Committee against Torture in their submission for the SMR review process.

In my 2011 thematic report I defined solitary confinement, in accordance with the Istanbul Statement on the Use and Effects Solitary Confinement, as the physical and social isolation of individuals who are confined in their cells for 22 to 24 hours a day. While the official title or name of this practice may vary, the general characteristics remain the same, namely the absence of significant contact with the outside world and with other prisoners. Access to significant human contact for instance, through contact with other prisoners, visits by friends and family members, recreational activities and educational opportunities, are essential not only for the rehabilitation of the prisoners and their reintegration into society, but also to care for the prisoners' mental and physical integrity.

Depending on the specific reasons for its application, as well as on the conditions, length, severity of the effects and other circumstances, solitary confinement can amount to cruel, inhuman and degrading treatment or punishment, and even torture.[4] This is the case where the physical conditions and the prison regime of solitary confinement fail to respect the inherent dignity of the human person and cause severe mental and physical pain or suffering.[5] Evidence suggests that serious health effects may begin to appear after only several days of isolation and the risks grow with every day that passes in those conditions. Research on the effects of isolation indicate the existence of certain psychotic disorders, including a syndrome known as "prison psychosis" whose symptoms include anxiety, depression, anger, cognitive disorders, distortions of perception, paranoia, and psychosis and self-inflicted injuries. Furthermore, due to the lack of witnesses and the solitude in which such practices are carried out, solitary confinement may give rise to other acts of torture or ill treatment.

The duration of time spent in solitary confinement varies considerably, with periods ranging from several days to several months, and in some cases, to terms covering multiple years. I am particularly concerned about the practice of prolonged and

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[1] A/66/268 (5 August 2011)
[2] http://www.oas.org/en/iachr/media_center/PReleases/2013/023A.asp
[3] A/68/295 (9 August 2013)
[4] A/66/268 (5August 2011), para. 20
[5] Ibíd. para 81

indefinite solitary confinement, given the serious mental and physical health risks that may arise after only a few days in isolation. As a result, in my 2011 thematic report I defined prolonged solitary confinement as any period of isolation which exceeds 15 days. This should serve as a clear point of departure from which solitary confinement no longer constitutes a legitimate tool for State use. I chose this standard based on research that identifies 15 days as the point at which many of the harmful physical and psychological effects of isolation can become irreversible.[6] Based on these effects, I argue that prolonged solitary confinement should be prohibited under all circumstances since it amounts to cruel, inhuman or degrading treatment or even torture, in violation of Article 7 of the ICCPR, Articles 1 and 16 of the CAT. This conclusion was also supported by the UN Human Rights Committee, the Subcommittee on Prevention of Torture,[7] as well as the Inter-American Court of Human Rights, which has held that "prolonged isolation and lack of communication to which the victim is subjected, represent, in and of themselves, cruel and inhuman treatment, which are harmful to the psychological and moral integrity of the person and the right of all detainees to enjoy respect for their human dignity."[8]

Nevertheless, prolonged and indefinite solitary confinement remain a pervasive problem in many countries, and particularly in the United States where there are more than 80,000 persons held in solitary confinement, the majority held in prolonged or indefinite isolation.[9] In the state of California alone, there are roughly 10,000 persons in solitary confinement.[10] In the summer of 2013, inmates in California declared a hunger strike for 60 days to protest the extensive use of solitary confinement against presumed gang members and other categories of prisoners. I have asked the United States' government to invite me to visit the United States in my capacity as the Special Rapporteur and to grant me permission to visit California's and other states' prisons where solitary confinement is used, in order to investigate these reports of isolation and to be able to recommend possible actions. Although conversations with the United States government are ongoing, I have still not received a positive response to my request.

I want to reiterate that prolonged and indefinite solitary confinement should be prohibited in all circumstances. The longer the duration of isolation or the greater the uncertainty of the duration, the greater the risk that such isolation will cause grave or irreparable harm to the detainee, which may constitute cruel, inhuman or degrading treatment or punishment, or even torture. While the use of short-term solitary confinement can be justified in some circumstances, provided that adequate safeguards are in place, prolonged use of solitary confinement can never constitute a legitimate tool for State use regardless of circumstances. That is not to say, however, that isolation lasting for 15 days or less can never constitute torture or ill-treatment. All instances of solitary confinement should be assessed on a case by case basis, taking into

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[6] Ibid., para 26

[7] Ibid., paras 30-32

[8] Velázquez-Rodríguez c. Honduras, Corte Interamericana de Derechos Humanos, serie C, núm. 4,párr. 156 (1988).

[9] http://durbin.senate.gov/public/index.cfm/pressreleases?ID=07260483-4972-4720-8d43-8fc82a9909ac and http://solitarywatch.com/wp-content/uploads/2011/06/fact-sheet-the-high-cost-of-solitary-confinement.pdf

[10] http://www.nytimes.com/2013/07/11/us/hunger-strike-by-california-inmates-already-large-is-expected-to-be-a-long-one.html?_r=0 and http://www.examiner.com/article/prisoners-health-a-un-investigation-on-solitary-confinement-the-u-s

consideration all relevant circumstances, including the purpose of its application, the conditions, length and effects of the treatment, and the subjective conditions of each individual that make him or her less vulnerable to those effects. I therefore reiterate that even if solitary confinement is applied for short periods of time, it often causes mental and physical suffering or humiliation, amounting to cruel, inhuman or degrading treatment or punishment, and if the resulting pain or sufferings are severe, it can also amount to torture.

With regard to the justification or purpose of solitary confinement, it is common for isolation to be imposed as a judicial sentence, disciplinary regime or as a regime to protect or segregate certain groups from the rest of the prison population, including vulnerable groups. Particularly when used as a form of judicially imposed sentence or disciplinary regime, applied solely on the basis of the gravity of the offense for which the inmate has been convicted, prolonged or indefinite isolation is never justified. Such practices go beyond what is reasonable and proportional as a form of punishment, and preclude the possibility of rehabilitation and reform, which should be the primary objective of incarceration. Additionally, when applied as a "prison management" measure, such as in cases of separation of inmates suspected of gang associations, it deprives the inmates of their due process rights to challenge the decision. In this context, solitary confinement may become a punitive measure which can easily be abused by guards and authorities against certain inmates.

The same conclusion may be extended to the use of solitary confinement in pretrial or preventive detention, where such practices create a de facto situation of psychological pressure, which can influence detainees to make confessions or statements against themselves or others. In my 2011 thematic report, I argued that when solitary confinement is used intentionally during pretrial detention as a technique for the purpose of obtaining information or a confession or a guilty plea, it amounts to cruel, inhuman or degrading treatment or punishment or even torture and violates the obligations contained in Article 7 ICCPR and Articles 1 and 16 CAT. Furthermore, when applied in pre-trial detention because of the seriousness of the offense, it also becomes a violation of the presumption of innocence, and impedes the ability of the detainee to challenge his or her detention. In practice, the use of solitary confinement during investigations or in pre-trial detention also increases the risk that acts of physical or mental torture and other cruel, inhuman or degrading treatment will go undetected and unchallenged.

Furthermore, solitary confinement of any duration may never be imposed on juveniles under the age of 18, or persons with mental disabilities. In this context, the UN General Assembly, the Committee against Torture, the Subcommittee for the Prevention of Torture and the Committee on the Rights of the Child have all declared that solitary confinement of minors should be strictly prohibited;[11] The Inter-American Commission on Human Rights has similarly declared that the imposition of solitary confinement on minors constitutes cruel, inhuman or degrading treatment.[12] Paragraph 67 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty establishes that "all disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including [...] solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile

[11] A/66/268 (5 August 2011) para 29-33
[12] http://www.cidh.org/countryrep/JusticiaJuvenileng/jjiv.eng.htm

concerned."[13] Despite these standards, solitary confinement of juveniles and mentally disabled persons remains a widespread problem, including in the United States.[14] However, New York and other states have made recent strides towards reducing the use of solitary confinement in juvenile cases. New York has agreed to implement a minimum of five hours of outside cell programming at least five days a week for 16 and 17 year old prisoners.[15]

In order to abolish the use of prolonged and indefinite solitary confinement, to guarantee the rights of detainees, and to minimize the potential adverse health effects associated with this practice, I have urged states to apply the following guiding principles and procedural safeguards:

Firstly, the physical conditions and prison regime of solitary confinement must be proportional to the severity of the charges. In particular, solitary confinement should only be applied for the shortest duration possible, and prolonged isolation should be prohibited. Secondly, solitary confinement must be imposed only as a last resort where less restrictive measures cannot achieve the intended disciplinary goals. Thirdly, solitary confinement must never be imposed or allowed to continue except where there is an affirmative determination that it will not result in severe pain or suffering, whether physical or mental. Fourthly, a documented system of regular review of the justifications for the imposition of solitary confinement should be in place. All assessments, justifications and decisions taken with respect to the imposition and duration of solitary confinement must be clearly documented and communicated to the detained persons and their legal counsel. It has been demonstrated in many cases that the feeling of uncertainty, when not informed of the length of solitary confinement, exacerbates the pain and suffering of detainees. Furthermore, persons held in solitary confinement must be provided with a genuine opportunity to challenge both the nature of their confinement and its underlying justification through a process of administrative and judicial review. Additionally, individuals held in solitary confinement must have free access to competent legal counsel, and qualified and independent medical personnel. There should be a documented system of regular monitoring and review of the physical and mental condition of the individual by qualified medical personnel on a daily basis throughout the period in which the individual is held in solitary confinement.

Solitary confinement continues to be widely used in the United States and there is still a great need for reform, both at the Federal and state level. However, encouraging changes have been taking place in recent years. I commend the changes in Maine, New York, Mississippi and other states that have taken steps to safeguard prisoners, particularly juveniles, from the detrimental impacts of solitary confinement.[16] Recognition of the adverse physical, mental, and emotional impacts of solitary confinement and the development of procedures to safeguard against its application, especially for long and excessive periods of time, is the first step in reducing and ideally eliminating this practice. Other states, such as Colorado, are increasingly aware of the

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[13] A/66/268 (5 August 2011) para 29

[14] https://www.aclu.org/files/assets/us1012webwcover.pdf

[15] http://www.nytimes.com/2014/02/20/nyregion/new-york-state-agrees-to-big-changes-in-how-prisons-discipline-inmates.html?hp

[16] http://www.aclumaine.org/sites/default/files/uploads/users/admin/ACLU_Solitary_Report_webversion.pdf

need for reform, but significant change is slow to take hold.[17] Further, I am aware and congratulate the impressive work that this Subcommittee has done, in collaboration with the Federal Bureau of Prisons, to comprehensively evaluate and reform the use of solitary confinement and isolation in federal corrections facilities.[18] Additionally, the work of civil society, grass-root organizations, and victim's families has been fundamental for the advancement of research and the raising of awareness on the pervasive use and detrimental impacts of solitary confinement.

I would again like to thank the United States Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights for inviting me to participate in this important hearing on solitary confinement and allowing me to submit this statement for the record. I am hopeful that this hearing, along with future reforms and advancements, will help bring a timely end to the pervasive use of solitary confinement in United States prisons and insure that prisoners are guaranteed the necessary protections against torture and ill-treatment.

Sincerely,

Juan E. Méndez
United Nations Special Rapporteur on the question of torture
and other cruel, inhuman or degrading treatment or punishment

[17] http://mobile.nytimes.com/2014/02/21/opinion/my-night-in-solitary.html?action=click&contentCollection=Opinion&region=Footer&module=MoreInSection&pgtype=article&_r=0&referrer=

[18] http://www.durbin.senate.gov/public/index.cfm/pressreleases?ID=07260483-4972-4720-8d43-8fc82a9909ac

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"Reassessing Solitary Confinement II:
The Human Rights, Fiscal, and Public Safety Consequences"
Hearing Before the Senate Judiciary Subcommittee on the
Constitution, Civil Rights, and Human Rights

February 25, 2014

Written Testimony of
Jennifer J. Parish, Director of Criminal Justice Advocacy
Urban Justice Center / Mental Health Project

Individuals sentenced to solitary confinement are almost seven times more likely to attempt to hurt or kill themselves than other incarcerated people.[1] This finding is the result of comprehensive research conducted by the city agency charged with providing healthcare to individuals in New York City jails. The harm caused by placing people in solitary confinement could not be more evident. We implore the Senate to take every available action to end its use in the United States.

The Urban Justice Center's Mental Health Project has advocated on behalf of people with mental illness in the criminal justice system since 1998. Our work includes successful class action litigation to require New York City (NYC) to provide discharge planning to individuals receiving mental health treatment in the City jails, legislative advocacy in support of a law limiting the placement of people with serious mental illness in solitary confinement (known as the SHU Exclusion Law), and grassroots organizing in support of alternatives to incarceration for people with mental illness. Through this work, we are deeply familiar with the difficulties people with mental illness experience within correctional facilities and in accessing services upon release.

For the last decade, we have collaborated with other organizations, family members, and formerly incarcerated individuals in opposing the placement of people with mental illness in solitary confinement in the New York State prisons. During the last two and half years, we have also advocated against the use of solitary confinement in the NYC jails. We support and are actively involved in the New York Campaign for Alternatives to Isolated Confinement and the NYC Jails Action Coalition.

We commend Chairman Durban, Ranking Member Cruz, and the members of the Subcommittee for convening this follow-up hearing on solitary confinement and appreciate the opportunity to provide written testimony. In the testimony we submitted for the June 2012 hearing on solitary

[1] *See* Kaba, Lewis, Glowa-Kollisch, Hadler, Lee, Alper, Selling, MacDonald, Solimo, Parsons, and Venters, *Solitary Confinement and Risk of Self-Harm Among Jail Inmates*, 104 AM. J. PUBLIC HEALTH 442 (Mar. 2014) (hereinafter "Venters et al.") available at http://ajph.aphapublications.org/doi/pdf/10.2105/AJPH.2013.301742.

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confinement, we emphasized the particularly harmful effects of punishing people with mental illness by placing them in solitary confinement. Now we call your attention to conclusive evidence of the harm that solitary confinement causes to anyone subjected to it.

The Use of Solitary Confinement in New York City Jails

The NYC Department of Correction (DOC) uses solitary confinement to punish any violation of jail rules. The DOC expanded its solitary confinement capacity from 614 to 998 beds – a 61.5% increase – between 2007 and June 30, 2013.[2] Although the vast majority of people incarcerated in the City jails are awaiting trial (about 75%), anyone in DOC custody can be subjected to solitary confinement. This population includes adolescents as young as 16 years old and people with mental illness. In fact, almost 27% of the 16 to 18 year olds incarcerated in the City jails were in solitary confinement in fall 2013, and 71% of those were diagnosed as having a mental illness.[3] An expert report issued in September 2013 revealed that more than 40% of the individuals held in solitary confinement had a mental illness and that the incidence of mental illness among women and girls in solitary was 84%.[4]

The DOC's use of solitary confinement has come under scrutiny during the last two years and is undergoing some changes. As a result of advocacy by the NYC Jails Action Coalition, the NYC Board of Correction, which regulates conditions of confinement in the City jails, has decided to adopt rules regarding DOC's use of solitary confinement. In the face of mounting public pressure, the DOC has pulled back from its planned expansion of solitary confinement. In collaboration with the NYC Department of Health and Mental Hygiene (DOHMH), the DOC has made some changes to its response to people with mental illness who violate jail rules. The DOC and DOHMH have developed units where clinical staff can provide a therapeutic response to individuals with serious mental illness who engage in problematic behavior. Most people with mental illness sentenced to solitary confinement are still held in 23-hour lockdown, but DOC and DOHMH have created solitary confinement units for this population that provide some opportunity to participate in behavioral programming that may lead to additional out-of-cell time and a reduction in length of solitary confinement sentence.

Harm of Solitary Confinement

The harms of solitary confinement are made plain by a study published in the *American Journal of Public Health* this month.[5] The authors of the study are all staff of the NYC Department of Health and Mental Hygiene, the agency responsible for providing healthcare to people incarcerated in NYC jails. The researchers analyzed data from 244,699 incarcerations in the

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[2] Gilligan and Lee, *Report to the New York City Board of Correction* (Sept. 2013).
[3] *Staff Report: Three Adolescents with Mental Illness in Punitive Segregation at Rikers Island*, CITY OF NEW YORK BD. OF CORRECTION (Oct. 2013), available at http://www.nyc.gov/html/boc/downloads/pdf/reports/Three_Adolescents_BOC_staff_report.pdf.
[4] Gilligan and Lee, *supra* note 2 at p. 3.
[5] *See* Venters et al., *Solitary Confinement and Risk of Self-Harm Among Jail Inmates*, *supra* note 1.

NYC jail system from January 1, 2010, through January 31, 2013. This wide-ranging study was praised as the "largest, most comprehensive" look at the use of solitary confinement.[6]

The researchers found that incarcerated individuals "punished by solitary confinement were approximately 6.9 times as likely to commit acts of self-harm."[7] Only 7.3% of jail admissions included any solitary confinement sentence, yet "53.3% of acts of self-harm and 45% of acts of potentially fatal self-harm occurred within this group."[8] These findings are an indictment of the use of solitary confinement. To continue with this practice knowing full well that it causes people to engage in violence against their own bodies is inexcusable in a civilized society.

These findings reflect the desperation of people condemned to solitary confinement – they are driven to hurt themselves in an effort to escape the painful environment of deprivation and isolation to which they have been sentenced. The most common methods for doing so included laceration, ligature, swallowing a foreign body, and overdose.[9] The researchers observed that some types of self-harm occur exclusively in solitary confinement settings, such as setting fire to one's cell or smearing feces.[10]

Incredibly these acts of self-harm frequently result in additional time in solitary confinement.[11] For instance, one of our clients received an infraction and was sentenced to additional time in solitary confinement for refusing to obey a direct order after she was told to stop cutting her wrist and continued to do so. This young woman has repeatedly attempted to hurt or kill herself by eating soap, drinking bleach, taking pills, cutting her wrists – at times with glass – and attempting to hang herself. She has been taken from solitary confinement to the hospital on multiple occasions only to be returned to solitary confinement. She has spent most of the last two years in solitary confinement as she awaits trial.

Some who act in desperation may not intend to end their own lives, yet that is certainly a risk. During the period of the study, seven acts of self-harm were fatal.[12] One example is a young man who swallowed a toxic soap ball in August 2012 while in the solitary confinement unit for people with mental illness. Correction staff recognized that he was in distress but failed to provide medical attention. He died as a result, and the medical examiner ruled his death a homicide due to the denial of medical care.[13]

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[6] Pearson, *Study of NYC Jails Shows Inmates in Solitary Confinement Are More Likely to Harm Themselves*, Associated Press, February 12, 2014, available at http://www.startribune.com/lifestyle/health/245257751.html.
[7] Venters et al., *Solitary Confinement and Risk of Self-Harm Among Jail Inmates*, *supra* note 1 at p. 445.
[8] *Id.* at p. 442.
[9] *Id.* at p. 444.
[10] *Id.* at p. 446.
[11] *Id.*
[12] *Id.* at p. 442.
[13] Blau, *Bronx DA Will Not Prosecute Jail Guards in Inmate's Death Caused By 'Neglect and Denial of Medical Care' After Eating Soap*," N. Y. Daily News, March 24, 2013, available at http://www.nydailynews.com/new-york/bronx/bronx-da-charged-jailers-inmate-soap-death-article-1.1298034.

The mental torment that drives individuals to commit acts of self-harm is damaging to the individuals who experience it. These acts of self-harm also tax jail resources. The study evaluated the response to self-harm which includes medical and mental health evaluations, correction officer escorts, and possibly local emergency medical services, hospital emergency departments, and inpatient units. Based on these data, the researchers estimated that "every 100 acts of self-harm result in 36 transfers to a higher level of care and 10 hospital admissions. Every 100 acts of self-harm conservatively represent approximately 3760 hours of additional time by correction officers (for hospital transport and suicide watch) and approximately 450 excess clinical encounters in the jail system."[14]

As mentioned above, New York City – like some other jurisdictions – has moved toward creating alternative therapeutic units for people with serious mental illness sentenced to solitary confinement. However, maintaining a regime of solitary confinement as the first line of punishment and exempting those with serious mental illness will not adequately address the problem of self-harm. According to this research, "[s]elf-harm is significantly correlated with patients who were in solitary confinement, irrespective of [serious mental illness] status or age."[15]

Certainly we should not place adolescents or people with serious mental illness in solitary confinement – the effects on their development and disabilities respectively are apparent. But this study reveals that anyone placed in solitary confinement is significantly more likely to take the extreme action of harming him- or herself in response to this punitive environment.

Therefore, solitary confinement cannot remain a legitimate form of correctional management.

Recommendations

The Urban Justice Center endorses the approach advanced by the Campaign for Alternatives to Isolated Confinement and set forth in the Humane Alternatives to Long-Term (HALT) Solitary Confinement Act (A08588 / S06466)[16] recently introduced in the New York State legislature:

1) Fundamentally Transform the Response to People's Needs and Behaviors

Rather than isolation and deprivation that is inhumane and counterproductive, people who commit serious acts which justify separation from the general prison population should be provided with additional support, programs, and therapy to help to address their needs and behaviors.

- The HALT Solitary Confinement Act creates Residential Rehabilitation Units (RRUs) where individuals who present a danger to the safety of others can be separated from the general prison population and provided six hours out-of-cell programming and therapy aimed at addressing the underlying causes of behavioral problems.

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[14] Venters et al., *Solitary Confinement and Risk of Self-Harm Among Jail Inmates*, *supra* note 1 at p. 446.
[15] *Id.* at pp. 444-45.
[16] The Humane Alternatives to Long-Term (HALT) Solitary Confinement Act is available at http://open.nysenate.gov/legislation/bill/A8588-2013.

2) Stop Placing People in Isolation and Restrict Criteria for Separation

The criteria that can result in isolation must be restricted to the most egregious conduct. The individuals who engage in such conduct should be the focus of an effective and humane intervention.

- The HALT Solitary Confinement Act allows up to 15 days in isolation or a longer time in RRUs for serious acts of physical injury, forced sexual acts, extortion, coercion, inciting serious disturbance, procuring deadly weapons or dangerous contraband, or escape.

3) End Long-Term Isolation – No More than 15 Days

The United Nations Special Rapporteur on Torture says that isolated confinement beyond 15 days is cruel, inhuman, or degrading treatment, or torture, so 15 days should be the absolute limit on isolated confinement.

- The HALT Solitary Confinement Act limits the time that a person may be held in isolation to 15 consecutive days and no more than 20 days total in any 60-day period. At these limits, a person must be released from isolation or sent to an RRU where he or she can receive at least six hours of out-of-cell programming and/or treatment.

4) Ban the Isolation of Vulnerable People

Certain people should never be placed in isolation because either isolation itself can have more devastating effects or these individuals are more vulnerable to abuse while in isolation.

- The HALT Solitary Confinement Act bans even one day of isolated confinement of special populations including any person: (a) 21 years or younger; (b) 55 or over; (c) with a physical, mental, or medical disability; (d) who is pregnant; or (e) who is or is perceived to be LGBTI.

5) Better Equip Staff and Make Processes Fairer and More Transparent

Correction officers and other staff need more tools to work with people with serious needs or who engage in problematic behavior. There must be greater transparency and accountability for how isolation is used. People need more due process protections during hearings that lead to isolation.

- The HALT Solitary Confinement Act requires mandatory training for hearing officers and staff in RRUs and isolation units, additional procedural protections (including representation), public reporting, and outside oversight.

The HALT Solitary Confinement Act is a blueprint for transforming the punitive, ineffective environment of punishment into one of rehabilitation. Ultimately we will not eliminate violence from our jails and prisons through the violence that solitary confinement incites. Instead we must look to the causes of behavior and address them.

We urge you to take action to end the practice of solitary confinement in the United States.

Testimony of
The Rev. Jonathan M. Barton, General Minister
Virginia Council of Churches
Before the
Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights and Human Rights
Hearing on Reassessing Solitary Confinement
February 25, 2014

Mr. Chairman, members of the Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights, my name is Jonathan Barton and I serve as the General Minister for the Virginia Council of Churches. Thank you for this opportunity to submit testimony on behalf of the council concerning the harmful use of solitary confinement in our nation's federal prisons, jails, and detention centers. I would like to express my appreciation to Senator Durbin for his leadership in convening this second Congressional hearing on use of solitary confinement within our correctional system. While we are encouraged that a growing number of states across the nation are reassessing this practice and implementing policies to limit its use; the use of solitary confinement has increased dramatically in the last few decades. The Commission on Safety and Abuse in American's Prisons noted in their report, *Confronting Confinement*, that from 1995 to 2000, the growth rate of segregation units significantly surpassed the prison growth rate overall: 40% compared to 28%. In May 2013, a U.S. Government Accountability Office report on the use of segregation[1] concluded that the Federal Bureau of Prisons has failed to evaluate the impact of solitary confinement on institutional safety and the well-being of prisoners, despite a 17 percent increase in its use of solitary confinement between 2008 and 2013. In addition, the use of solitary confinement is economically costly though the effectiveness of its use has not been established. Supermax prisons, which are comprised of all

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1 Improvements Needed in Bureau of Prisons' Monitoring and Evaluation of Impact of Segregated Housing GAO-13-429: Published: May 1, 2013. Publicly Released: May 31, 2013.

isolation cells, cost generally two or three times more to build and operate than traditional maximum security prisons. Rather than a last resort, solitary confinement has become a morally and economically costly default management and discipline tool. This unfortunately represents a growing cruel and usual punishment tempting the integrity of the eight amendment of the constitution. In light of the high cost of solitary confinement and its diminishing returns, we are grateful for your timely review of the federal system's use of isolation today.

The Virginia Council of Churches brings together thirty-six governing bodies of eighteen different Catholic, Protestant, and Orthodox denominations within the Commonwealth of Virginia. For seven decades, the Virginia Council of Churches has stood for fairness, justice and the dignity of all peoples. We stand here today in faith, grounded in our history and our values. We believe and value the inherent dignity of all human beings, the Divine image in which we have all been created. Scripture tells us that God said, "It is not good for a man to be alone." Human beings are meant to live in community with others, this is the message of this passage from Genesis 2. Jewish, Christian, and Muslim scriptures all affirm that human beings need each other physically, mentally and spiritually. Across our nation prisoners, inmates, and detainees are being confined in tiny cells for 22-24 hours per day for weeks, months, even years. Many studies have documented the detrimental psychological and physiological effects of long-term solitary confinement, including hallucinations, perceptual distortions, panic attacks, and suicidal ideation. Considering this severe harm, we strongly believe prolonged solitary confinement is a violation of the inherent God-given dignity in every human being.

The drastic rise in solitary confinement has cost us financially. Super-max prisons are much more expensive than standard facilities to build. Additionally, the daily cost per inmate in a solitary confinement unit far exceeds the costs of housing an inmate in lower security facility

since solitary confinement units require individual cells and significantly more staff. At a November 2013 Senate Committee on the Judiciary hearing, "Oversight of the Bureau of Prisons & Cost-Effective Strategies for Reducing Recidivism," BOP Director Charles Samuels testified about plans for activating a new federal supermax prison in Thomson, Illinois as an Administrative Maximum (ADX) facility. The only ADX facility currently within the BOP, located in Florence, Colorado, is comprised of 623 beds, 450 of which are filled. The new facility in Thomson, IL is a 2,100-bed facility.

As leaders of religious communities, we opposes the addition of any new supermax beds in the federal system and call on the Bureau of Prisons to focus on reducing the number of people in isolation, not adding new segregation beds. We call on all members of this committee to lend their leadership in working with the BOP to ensure that the Thomson facility receives a lower security classification and not activated as an ADX supermax prison. To add 2,100 new supermax beds to the Federal system would only exacerbate the unconstitutional human rights crisis already faced in federal facilities. For people of faith, to retrofit Thomson prison as an ADX supermax is morally inexcusable.

In my home state of Virginia, in recent years we have seen some traumatic improvements since a visit by members of our General Assembly led by Delegate Patrick Hope of Arlington County, in 2011 to the Red Onion Supermax prison located in Wise County Wise County, VA. In September of had the opportunity to visit Red Onion and see conditions first hand. At that time Del. Hope concluded, "Many of these prisoners have a very serious mental illness or become seriously mentally ill primarily to their segregation. With a trend in other States moving away from this kind of confinement, maybe it's time we took a hard look at what Virginia is doing and see if we can do it better in a safe and more humane way." Shortly after this visit Virginia did

make significant moves the Department of Corrections implemented an innovative Administrative Step-Down program, partnering Red Onion State Prison (ROSP) and with neighboring Wallens Ridge State Prison. This program was nationally recognized on July 30, 2013 when VADOC officials received the State Transformation in Action (STAR) Award from the Council of State Government's Southern Legislative Conference (SLC) at the organization's 67th Annual Meeting.

Prior to the Administrative Step-Down program, which was initiated in 2011, Red Onion State Prison housed only high-risk Administrative Segregation-status offenders. The Step-Down initiative gives Segregation-status offenders a more systematic programmatic opportunity and more pathways to a lower security status and lower security prisons. As a result since implementation in late 2011 there has been a 64% reduction in administrative segregation assignments. Of the 511 offenders who have been involved in the program and 337 successfully stepped down to general population assignments. According to the Department of Corrections the number of serious incidents with administrative segregation offenders have declined by 76% and offender grievances and informal complaints have declined by 79%. With the final result of twenty six (26%) percent of the offenders that work in the prisons' food services are Step Down program graduates. "We have used data and research—evidence-based practices—to inform this program and that, along with incredible teamwork, is what is making this so successful," said VADOC Director Harold Clarke. "Public safety is increased when high-risk offenders receive this type of programming before they are released back to our communities."

While we celebrate these benchmarks and congratulate Director Clark as people of faith we believe each person is made in the image of God, and we remain concerned about the mental health of those imprisoned in the Commonwealth. The severe mental pain caused by prolonged

solitary confinement violates this God-given dignity. Solitary confinement is known to cause severe harm to human beings. Inmates in solitary confinement are often held alone in small cells for up to 23 hours per day. As a result, many experience paranoia, delusions, and other long-term mental harm. As reported by the *Washington Post* in 2011, leading up to the policy changes, prisoners at Red Onion , Virginia's Supermax prison, had been kept in solitary confinement from anywhere between two weeks and seven years, with an average length of stay of 2.7 years. In addition, Virginia prison officials reported that over a third of the individuals placed in solitary confinement at Red Onion State Prison are mentally ill. These individuals' illnesses are often dramatically magnified when held in solitary confinement. Ironically, the mental effects of solitary confinement can prevent the good behavior often required to move back into the general prison population. Our Scriptures admonish us "Remember those in prison, as though you were in prison with them; those who are being tortured, as though you yourselves were being tortured." (Hebrews 13:3.)

While we applaud the implementation of a step down program to begin to decrease the use of isolation in Virginia state prisons, we remain deeply concerned about inmates with severe mental illness who may be not benefit from these reforms. We recognize that prisoners who suffer with mental illness or who developed mental illness because of their confinement in solitary confinement are not helped by 'step down' reform. Therapeutic alternatives are necessary, both at the state and federal level to adequately address the needs of our prison populations with seriously mental illness. As people of faith, we affirm the warehousing of those with mental

illness without proper treatment constitutes "cruel and unusual punishment."[2] These are not just the concerns of the law enforcement community or the friends and family of inmates but as Virginia State Senator Ebbin and Delegates Hope and our new Attorney General Mark Herring have rightly pointed out, all Virginians have a stake in limiting the use of solitary confinement.

The mental harm caused by solitary confinement severely damages prisoners' capacity to think critically and to consciously opt for a new way to live. As reported by the *New Yorker*, Electroencephalogram tests since the 1960s have shown that solitary confinement causes significant slowing of brain waves after even only a week of isolation. In addition, one study found that extended solitary confinement caused the same brain abnormality as traumatic brain injury. The Commission on Safety and Abuse in America's Prisons, a national bipartisan taskforce established in 2006, noted that among the dozens of studies on the use of solitary confinement conducted since the 1970s, there was not a single study of non-voluntary solitary confinement for more than 10 days that did not document negative psychiatric results in its subjects. Default reliance on prolonged solitary confinement is ineffective and destructive.

The success of several states demonstrates that solitary is not the only, or best, option. Initiatives are advancing in a number of states including New York and California to address the use of solitary confinement. Several states including Mississippi, Maine, and Colorado have reduced their use of isolation and have proven there are safe alternatives. In an interview with the National Religious Campaign Against Torture, Maine Department of Corrections Commissioner, Joseph Ponte, explained, "Over time, the more data we're pulling is showing that

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2 "Mentally ill prisoners in solitary confinement left behind" by Hope R. Amezquita, *The Roanoke Times*, September 30, 2013.

what we're doing now [through greatly reducing the use of solitary confinement] is safer than what we were doing before." Further, we must not neglect the larger public safety impact. The negative effects of prolonged solitary confinement harm our communities. Prisoners who are freed directly from solitary confinement cells are significantly more likely to commit crimes again. Successful reentry of these citizens to our local communities requires preparation for release while they are still incarcerated.

Mr. Chairman, Members of the Subcommittee, the Virginia Council of Churches believes strongly that the United States should do everything it can to reverse our nation's harmful and expensive reliance on solitary confinement. We have a moral obligation to uphold the dignity and the mental health of those currently incarcerated. To that end, we would strongly support your leadership in sponsoring legislation that would limit the use and length of solitary confinement and in providing mental health treatment alternatives. We implore you to take steps immediately to end the use of prolonged solitary confinement. Your hearing today is a very important effort in doing that, and we thank you for the opportunity to contribute to it.

WASHINGTON LAWYERS' COMMITTEE
FOR CIVIL RIGHTS AND URBAN AFFAIRS

THE FEDERAL BUREAU OF PRISONS' ABUSES OF SOLITARY CONFINEMENT

Written Testimony of

Deborah M. Golden
Project Director
D.C. Prisoners' Project
Washington Lawyers' Committee for Civil Rights and Urban Affairs

submitted to

REASSESSING SOLITARY CONFINEMENT II:
THE HUMAN RIGHTS, FISCAL, AND PUBLIC SAFETY CONSEQUENCES

Hearing Before the Senate Judiciary Subcommittee on the
Constitution, Civil Rights, and Human Rights

February 25, 2014
2:30 p.m.
Dirksen Senate Office Building
Washington, DC

The Washington Lawyers' Committee for Civil Rights and Urban Affairs was founded in 1968 to address poverty and discrimination by mobilizing the pro bono resources of volunteer lawyers and law firms. The WLC's project areas include: Equal Employment Opportunity, Fair Housing, Disability Rights, Immigrant Rights, DC Prisoners, and Public Education.

As the successor to the DC Prisoners' Legal Services Project, the mission of the DC Prisoners' Project remains to advocate for the humane treatment and dignity of all persons convicted or charged with a criminal offense under DC law, housed in prisons, jails or community corrections programs; to assist their family members with prison-related issues; and to promote progressive criminal justice reform. Because of the unique nature of the District of Columbia, people convicted of local felonies are imprisoned in the Federal Bureau of Prisons. Over 5,000 DC prisoners currently live the BOP facilities, all across the country. Thus, the WLC is the only national legal advocacy organization that takes a systematic interest the BOP facilities.

From the outset, we wish to applaud the BOP for the Special Housing Unit Review and Assessment currently being conducted by CNA Analysis and Solutions. We look forward to the results and resulting discussion. When that study is done, we ask that this Committee hold another hearing looking specifically at the BOP and the findings and recommendations.

We also wish to note that solitary confinement cannot be viewed in a vacuum. Corrections systems, including the BOP, have become the default mental health care providers. It is a nationwide problem, and must be addressed on a national scale. With insufficient training and tools to treat people with mental health disabilities, corrections professionals often turn to solitary confinement as a means of control. Additionally, the BOP, like many other systems, is overcrowded. The inevitable stretched resources contribute to the overreliance on solitary confinement. We applaud the Administration for starting to address the underlying issues that have led to this crisis, and ask for more attention from Congress to the crowding.

That said, there are specific issues in the Bureau of Prisons that require attention immediately. The 215,000 people in the custody of the BOP cannot wait.

While Consensus Has Formed Against Lengthy Segregation, the BOP Has Moved To Harsher Use of Solitary Confinement

The BOP is out of sync with the rest of its correctional system peers. On August 1, 2011, the BOP began using a new regulation for disciplinary sanctions, including

disciplinary segregation. This new policy made significant changes from the one that came before. While many state systems were exploring ways to limit use of solitary confinement, the BOP was moving in the opposite direction.

The first major difference is that the previous policy allowed disciplinary segregation "only when other available dispositions are inadequate to achieve the purpose of punishment and deterrence,"[1] current policy allows disciplinary segregation to be imposed at the whim of the disciplining officer.

The second major difference is the length of time that a person can be sentenced to solitary confinement. The previous regulation only allowed for sixty days of confinement per offense. The current regulation allows for up to eighteen months.[2] Obviously, rule violations must be punished and criminal offenses can be referred for additional prosecution. But lengths of time in solitary confinement should not be measured in months or years.[3]

The allowable punishments also are simply beyond any sense of proportionality or reasonableness. Engaging in sexual acts, including masturbation may be punished with six months in segregation; or up to a year in segregation for the second offense within eighteen months. To be direct, if a nineteen year-old man masturbates twice within a year and half, the BOP regulations say that he can be sent to solitary confinement for an entire year. Other violations, like simple fighting, adulteration of food, or even self-tattooing can be similarly punished.

Refusing to obey any staff order (no matter how small) or "insolence" may be punished with three months of solitary confinement; six months if there are two or more violations within one year. Also included in this severity of punishment are failing to follow a staff member's work instructions exactly; not perfectly following a material safety data sheet (MSDS) describing the handling of a cleaning product; failing to stand for count; or being "untidy." Even "circulating a petition," no matter the topic, can be grounds for three months of solitary confinement.

Using obscene language twice within six months can lead to three month in BOP segregation. While in no way do we condone any sort of rule violation by prisoners,

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[1] Bureau of Prisons Policy Statement 5270.07.

[2] Bureau of Prisons Policy Statement 5270.08.

[3] *See* Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Interim Rep. of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, U.N. Doc. A/66/268 (Aug. 5, 2011) (by Juan Mendez).

again, we must be clear. The BOP rules explicitly state that a prisoner who cusses twice in six months can be put in solitary confinement for three months.

These policies are out of step with the states, come with little protection from arbitrary and capricious application, and by the rest of the world are considered torturous, even at the low end of the BOP's scale.

Men with Serious Mental Illnesses Are Housed at ADX Florence, in Violation of the United States Constitution

Courts have been uniform that the Eighth Amendment to the Constitution forbids housing people with serious mental illness in supermax conditions.[4] The BOP has not taken notice.

In June 2012, the lawsuit styled *Bacote v. Federal Bureau of Prisons*[5] was filed by eleven prisoners at ADX in the United States District Court for the District of Colorado. The lawsuit alleges that the defendants have violated BOP policy and the United States Constitution by failing to properly diagnose and treat prisoners at ADX with serious mental illness. It seeks a court order requiring a reformation of the mental health care system at ADX, among other relief. In December 2012, the original namesake of the case, Mr. Michael Bacote, asked to withdraw from the case. As a result, the first-named plaintiff is now Harold Cunningham, and the shorthand case name is *Cunningham v. Federal Bureau of Prisons*.

Also filed in the summer of 2012, *Vega v. Davis*[6] is a wrongful death case on behalf of the family of a man who suffered from untreated mental illness at the ADX until he took his own life.

Both complaints used BOP's own records to detail the conditions for men living at the ADX. Rather than repeat these well-documented complaints, we note that they are both available at www.supermaxlawsuit.com. The BOP has chosen to fight both cases

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[4] See Ind. Prot. & Advocacy Servs. Comm'n, 2012 WL 6738517, at *19-20; Austin v. Wilkinson, No. 4:01-CV-071, at *27 (N.D. Ohio filed Nov. 21, 2001); Jones 'El v. Berge, 164 F. Supp. 2d 1096, 1125-26 (W.D. Wis. 2001); Ruiz v. Johnson, 37 F. Supp. 2d 855, 915 (S.D. Tex. 1999) rev'd and remanded by Ruiz v. United States, 243 F.3d 941 (5th Cir. 2001); Madrid v. Gomez, 889 F. Supp. 1146, 1265 (N.D. Cal. 1995).

[5] Civil Action 1:12-cv-01570 (D. Colo.).

[6] Civil Action 1:12-cv-0114 (D. Colo.)

tooth and nail. The defendants in both cases filed motions to dismiss them. U.S. District Judge Richard Matsch ruled both cases would go forward, although the BOP has taken an interlocutory appeal of the *Vega* case.[7] These cases have attracted enormous media attention in outlets like the *Atlantic*, the *Wall Street Journal*, *Mother Jones*, and even the *International Business Times*. Media pieces are also collected on the website.

In most situations, litigants are especially cognizant of their behavior during the pendency of lawsuits, not wishing to appear before courts in a bad light. But even with BOP under the spotlight, plaintiffs were forced to file an emergency motion for a preliminary injunction on September 30, 2013 to save the life of Jonathan Francisco.

At the time of filing, Mr. Francisco had spent nearly five years displaying a persistent pattern of bizarre and worrisome signs and symptoms suggesting that he suffered from a severe and worsening mental illness. Sworn declarations tell that he was almost entirely mute, speaking very little, if any, to anyone. BOP's own records show that he was unresponsive to human social stimuli since 2009, well before his September 2011 transfer to ADX. He spent most of his time standing with his face very near a wall, staring blankly. He also obsessively hoarded and handled his own feces, placing it on food trays, rolling it into balls, making sculptures out of it, and smearing it on his walls and sometimes on his body or in his hair. He repeatedly defecated in common-use shower facilities, and on at least one occasion was seen eating his feces. He often had little if any personal property in his cell, frequently sleeping without even a mattress. Despite all of this, BOP own records reflected that he was receiving no meaningful ongoing mental health treatment; instead, he was essentially ignored. Occasionally officers forced him into a shower stall or piled sandbags outside his door in a futile effort to contain the overwhelming smell of feces emanating from his cell.

Within days of the motion being filed, the BOP did agree to transfer Mr. Francisco to a medical facility. He remains there, under intense medical and psychological treatment.

The motion that saved Mr. Francisco's life also detailed the stories of two other men whose mental health needs were ignored by the ADX: Mr. Richie Hill and Mr. Robert Knott.

[7] Oral arguments are scheduled before the Tenth Circuit on March 20, 2014.

The BOP allowed Mr. Hill to remain actively psychotic and develop severe malnutrition and systemic staph infections. He was on the verge of death when the BOP finally evacuated him on an emergency basis to a medical facility in November 2012, where he remains today. While at ADX, he ate rocks, styrofoam, radio parts, and frequently, balls of his own feces. He attempted suicide approximately ten times, including once by placing pencil lead, rocks and pencil particles up his penis. From the depths of his illness, Mr. Hill repeatedly begged the staff for help with his mental issues, and repeatedly asked to be transferred to a mental hospital. The BOP responded to his pleas with bureaucratic gobbledygook about his supposed failure to attempt informal resolution of his issues, his violation of a technicality requiring prisoners to confine their administrative remedy forms to a single issue, and his supposedly untimely submission of his requests. Without care, he deteriorated even further and developed a persistent delusion that diamond rings were embedded inside his legs. From his attempts to retrieve diamonds from inside his legs, his legs became severely infected; at one point, a worm emerged from one the wounds.

After his emergency evacuation to a medical facility, Mr. Hill was diagnosed with severe multiple systemic infections, appeared to be chronically and acutely septic, and had multiple draining deep sores. He was also suffering from "severe malnutrition," according to the BOP's own medical records. His life was in danger, and doctors were worried that even if they could save Mr. Hill, they might have to amputate his legs. Doctors were able to save Mr. Hill and his legs, but he remains under intensive psychological care. He still resides at the medical facility, over one year later.

Mr. Knott was not so fortunate. His acute psychosis was ignored until he hung himself in his cell at ADX on September 7, 2013. Public records make clear that at the time of his 1988 conviction for kidnapping, and subsequent life sentence, Mr. Knott had been diagnosed with schizophrenia.[8] In 2002, the Department of Justice even petitioned to have him civilly committed so he could be involuntarily medicated. Yet, when not receiving medication for short periods of time he spent at a medical facility, Mr. Knott spent years at ADX, with only intermittent mental health care. In the fall of 2013, Mr. Knott again went off his medications, again decompensated, again started yelling and screaming, again became incoherent, wrote "Heaven" on the wall of his cell, and finally, during the evening of Saturday, September 7, hanged himself from a sheet attached to his cell bars.

Mr. Knott was the seventh person known to have taken his own life at the ADX.

[8] United States v. Knott, 894 F.2d 1119, 1121 (9th Cir. 1990).

In response to Judge Match's instructions, plaintiffs in *Cunningham* have filed a motion to certify a class on December 20, 2013. This motion simply asks the court to declare that all men at ADX can have their claim that they are entitled to an accurate assessment of whether or not they have a serious mental illness evaluated together. Rather than address the claim, the BOP is opposing class certification. Briefing is ongoing and Judge Matsch will eventually decide.

While these cases and other litigation will continue through the court system, there are distinct lessons that have emerged. Regardless of the outcome in court, we ask that this Committee consider addressing these issues through persuasion or legislation.

The BOP Has Made Up Its Own Definition of "Mental Illness"

Some illnesses, like colds, generally get better with time. Some illnesses, like infections, may be cured with medications. Mental illness is neither something that resolves itself or can be cured.[9] Medications and therapy may help control mental illness, but a person who has one will always have one.

The BOP continues to insist, both publically and in court filings, that mental illness is like a cold or infection, not a permanent condition. They are the only prison system known to use this concept. No one else in the corrections or psychology field takes this position. In the BOP's view, men living with mental illness can be "sent out for the mental equivalent of Nyquil, cured, and returned to conditions that the Constitution and BOP regulations clearly prohibit."[10] Director Samuels testified at this Committee's first hearing on solitary confinement, "If an individual is exhibiting that type of behavior due to suffering from serious psychiatric illness, those individuals are not, within our policy, individuals that we would keep at the ADX or in a restrictive housing. These individuals are referred to our psychiatric medical centers for care."[11]

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[9] *See* Information about Mental Illness and the Brain, Nat'l Inst. on Health, www.ncbi.nlm.nih.gov/books/NBK20369/; What is Mental Illness?, Nat'l Alliance on Mental Illness, www.nami.org/Template.cfm?Section=BY_Illness.

[10] Deborah Golden, The Federal Bureau of Prisons: Willfully Ignorant or Maliciously Unlawful?, 18 Mich. J. Race & L. 275, 293 (2013).

[11] *See, e.g.,* Reassessing Solitary Confinement, Panel 1: Hearing Before the Subcomm. on Constitution, Civil Rights and Human Rights of the Sen. Comm. on the Judiciary, 112th Cong. (2012) (statement of Charles Samuels, Dir. Fed. Bureau of Prisons), available at http://solitarywatch.com/wp-content/uploads/2012/06/transcript-of-the-hearing.pdf.

Simply, that is not a definition of "mental illness." No other system defines mental illness like Director Samuels and the BOP.

This obduracy can only be the product of willful choice. By insisting men and women with mental illness, but without immediate acute symptoms are "not mentally ill," the BOP continues to claim that no one with a mental illness is in BOP segregation. Unfortunately, that clearly is a lie.

The BOP Contradicts Positions Taken by the Civil Rights Experts in the Department of Justice

The Civil Rights Division of the Department of Justice was created to enforce civil and constitutional rights, including the rights of people in state or local jails, prisons, and juvenile detention facilities. While it has no power over its sister agencies of the Department of Justice, the Division speaks as our government's expert of civil rights enforcement.

On May 13, 2013, DOJ issues a findings letter detailing the results of an investigation into the use of prisoners with serious mental illness at the Pennsylvania State Correctional Institution at Cresson in Cambria County, Pennsylvania. [12]

The Department found that locking prisoners with serious mental illnesses into segregation for months or years at a time put those men at such risk of serious harm that the Eighth Amendment was violated.

The Department's descriptions of the conditions at Cresson could easily have been about ADX Florence:

- The "prolonged isolation prevents prisoners with serious mental illness from obtaining the mental health treatment they need."[13]
- "Too often, instead of providing appropriate mental health care, [the] response to mental illness is to confine vulnerable prisoners in its isolation units without meaningful services or activity."[14]
- "Most of the prisoners housed in the isolation units experience little in the way of human interaction."

[12] Available at http://www.justice.gov/crt/about/spl/documents/cresson_findings_5-31-13.pdf.

[13] Id, at 2.

[14] Id, at 3.

- "The typical prisoner rarely speaks to or sees others, except for when an officer peers through the prisoner's cell window during rounds, or the occasional mental health staff member asks about how he is doing."
- "Facility staff severely limit the opportunities prisoners have to speak to friends or loved ones by telephone or during non-contact visits. The only human touch prisoners usually experience is when they are placed in handcuffs or restraints."[15]

In the letter of findings, DOJ explains that solitary confinement is fundamentally incompatible with proper mental health care for people with serious mental illness. Proper care "requires meaningful out-of-cell activities, such as individual and group therapy, peer and other counseling, or skills building, as well as unstructured activities, such as showers, recreation, or eating out-of-cell."[16]

The Department of Justice filed the same statement in the Coleman v. Brown litigation in California.[17] The express purpose was to inform the court of the Department's positions on the use of "solitary confinement on prisoners with serious mental illness."[18]

There is no apparent explanation for the BOP persisting in a course of conduct that the Civil Rights Division of DOJ had repeatedly found unconstitutional.[19] Respectfully, this Committee may wish to question someone from a Department of Justice office with oversight of the BOP and Director Samuels to find out why this schism is allowed to persist.

Next Steps and Solutions

[15] Id, at 15.

[16] Id, at 11.

[17] Available at http://www.justice.gov/crt/about/spl/documents/coleman_soi_8-9-13.pdf.

[18] Id, at 2.

[19] This failure of the BOP to adhere to civil rights standards is seen in other legal areas. For example, while the Civil Rights Divisions enforces the right to effective communication for state and local prisoners who are deaf and hard of hearing, *see, e.g.*, Settlement Agreement Among the United States of America, the County of Arapahoe, Colorado and Arapahoe County Sheriff J. Grayson Robinson and Plaintiffs in *Lawrence v. City of Englewood*, available at http://www.justice.gov/iso/opa/resources/834201332117453273491.pdf, the BOP has fought at least three recent lawsuits seeking the same level of communication for people in its custody: *Berke v. Bureau of Prisons*, Civil Action 1:12-cv-01347 (D.D.C.); *Bryant v. Bureau of Prisons*, Case No. CV 11-00254 (C.D. Cal.); and *Heyer v. Bureau of Prisons*, Civil Action No. 5:11-CT-3118 (E.D.N.C.).

The state of solitary confinement in the BOP has reached this crisis from a failure of leadership. Past BOP Directors and Director Samuels have been content with the status quo. Unfortunately, there has also been a failure of leadership on the part of Attorney General Holder, and, respectfully, Congress. It is time to change that. The following steps must be taken immediately.

1. Upon release of the CNA Special Housing Unit Review and Assessment, this Committee should hold a follow up hearing focusing on solitary confinement in the BOP.

2. The Executive Branch must take every available measure to reduce the overcrowding in the BOP.

3. Congress must give the Executive Branch more tools to reduce the population, or make mandatory those optional tools that already exist.

4. Excessive disciplinary segregations sentences must be stopped.

5. The BOP must use the commonly accepted definition of "serious mental illness," not attempt to redefine it to mean "currently acutely symptomatic."

6. The BOP must immediately cease placing prisoners with serious mental illnesses in any segregated confinement.

7. The BOP must not bring Thompson on line to be another supermax. It must focus on reducing the number of people in segregation, not adding new segregation beds.

Addressing solitary confinement from a federal level is an important goal. But the first priority must be assuring that the Federal Bureau of Prisons comes into compliance with the Constitution and accepted modern correctional practices. The lives of the men and women in the custody of the United States depend on it.

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Melinda Power
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Sandeep Basran
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February 23, 2014

The Honorable Senator Dick Durbin
U.S. Senate
Washington, D.C.

RE: Solitary Confinement

Dear Senator Durbin:

Sometimes I try to imagine how I would function in solitary confinement. I quickly conclude that I would deteriorate rapidly, both mentally and physically. I imagine you might also. The executive director of the Colorado Department of Corrections, Rick Roemisch's, editorial in the N.Y. Times on 2/21/14 confirmed how devastating his twenty-four hour sojourn in solitary confinement was on his mental well-being. It furtber reaffirmed his opposition to the use of solitary confinement.

His editorial illuminated what I have come to believe is the effect solitary confinement has on the vast majority of people in solitary confinement. The Department of Correction's confinement of people in small 6' by 8' cells for days, months and even years on end often drives people crazy. That is because when an inmate is not able to control or determine when he or she is allowed out of solitary and spends his or her day alone, there is a physical and mental health breakdown. Being forced to eat food shoved through the aptly named chuckhole; not being able to have any contact with ones loved ones, family or contact with other inmates; no being allowed access to the law library or to the commissary and limited access to fresh air only further breakdown the prisoner's mental and physical health.

How can we treat human beings this way and still proclaim we live in a humane society? Every day, states across the U.S. do this to thousands of human beings. This is not a kind of society I want to be part of.

I know this happens on a daily basis because as an attorney who has visited prisoners in Illinois and federal prisons around the U.S. for over thirty years, I have met prisoners who have suffered the effects of solitary confinement. It is sad and disheartening to see these prisoners. Often, they won't even look at me. They

certainly are not able to carry on a conversation without effort. No one should spend even 24 hours in solitary.

I believe solitary confinement is torture. It destroys prisoners and it dehumanizes the guards and prison administrations who enforce it.

I request that you introduce and make your best effort to get passed legislation to end solitary confinement in the U.S.

Sincerely,

Melinda Power

Written Statement of the Youth Justice Clinic at Benjamin N. Cardozo School of Law Before the United States Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights

Hearing on

Reassessing Solitary Confinement II: The Human Rights, Fiscal, and Public Safety Consequences

Tuesday, February 25, 2014
at 2:30pm

The Youth Justice Clinic at Benjamin N. Cardozo School of Law welcomes this opportunity to submit testimony to the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights for its hearing on *"Reassessing Solitary Confinement II: The Human Rights, Fiscal, and Public Safety Consequences,"* and urges the Subcommittee to take action to ban the use of solitary confinement in juvenile detention centers housing youth under 18 years old. The Clinic also urges broader systemic reform whereby juvenile justice systems throughout the nation move from a correctional model to a therapeutic model.

The Youth Justice Clinic was created in 2013 by Professor Ellen Yaroshefsky to address the growing need for skilled lawyers in juvenile justice litigation in New York. New York remains one of only two states in the country to treat 16 and 17-year olds as adults in its courts. As such, the Clinic focuses on initiating research seeking to address solitary confinement for youth on Rikers Island in New York City. The Clinic is committed to raising awareness about not only the monetary cost of mass incarceration and solitary confinement, but also the cost of increased psychological suffering to youth whose under-developed brains limit their ability to fully comprehend the consequences of their actions. With more effective, humane and less costly alternatives available, the Clinic urges that these reforms be adopted and solitary confinement be banned for use with youth under 18 years old.

I. SOLITARY CONFINEMENT ON RIKERS ISLAND

Rikers Island consists of 10 separate jails with an inmate population ranging upwards of 14,000 and a staff of approximately 8,500.[i] Inmates include individuals awaiting trial, those serving sentences of one year or less, and those awaiting transfer to other facilities.

In September 2013, there were 496 males and 30 females, ages 16-17 years old, housed in the facility.[23] Data documenting the bail conditions, prior convictions and current charged offense for youth detainees on Rikers is not readily available but it appears that a significant number of the charges that result in detention do not involve any degree of violence.[ii]

Solitary confinement on Rikers is termed "punitive segregation"[iii] and is used to punish behavioral infractions. It consists of 23 hour a day confinement in a locked single unit cell, each with a bed and toilet. There is one hour for recreation in a fenced in area of the yard. Food is eaten in the cell. The punitive segregation unit has a shower.[iv]

In September 2013, the Clinic toured youth facilities on Rikers Island with Board of Correction staff and representatives of the Department of Correction. Students visited the Robert N. Davoren Complex (RNDC) that houses male youth. Within RNDC, students visited its punitive segregation units, the Restricted Housing Unit (RHU), and the Mental Health Assessment Unit for Infracted Inmates (MHAUII).

II. THE DETRIMENTAL EFFECTS OF SOLIDARY CONFINEMENT

Significant scientific research highlights a marked difference between a fully developed adult brain and the brain of an adolescent and between the brains of traumatized children and those who have not experienced trauma. When used as punishment, solitary confinement does not

adequately address the developmental, neurological, and historical causes of a youth's maladaptive behavior, thus doing little to rehabilitate troubled youth into successful, law-abiding adults.

In the field of behavior modification, punishment is a technical term that refers to any consequence of a behavior that results in a future decrease of that behavior.[v] Thus, if a consequence does not result in the decrease or ultimate elimination of the behavior that it is meant to address, it cannot be considered a punishment. From this perspective, current incarceration practices, with their corresponding high recidivism rates, simply cannot be said to be punishing the majority of offenders.

Even when implemented correctly, punishment is generally considered to be a last resort in the field of behavior modification because the procedure may evoke unintended psychological side effects. Behavior analysts who rely on punishment procedures, generally exhaust less restrictive treatment alternatives first, and only then implement a punishment program with intensive training and ongoing peer review/supervision.

Little research has been conducted on the impact of solitary confinement on adolescent inmates, possibly because such confinement has been condemned as torture by the United Nations and violates international human rights law.[vi] Whatever the reason for the lack of data, it stands to reason that research on the effects of solitary confinement in adults should be applicable to youth who are especially vulnerable to social isolation.

The research on adults in jails and prisons across the country that rely on solitary confinement as a means for punishing adult inmates, demonstrates significant dangers of such practices. Research shows that solitary confinement often results in adverse psychiatric effects including:[vii]

- Perceptual and cognitive impairments
- Emotional disturbances; depression
- Psychosis characterized by intense agitation, fearfulness, disorganization, confusion, paranoia, hallucinations, and random, impulsive, often self-directed violence

Harm caused by solitary confinement may be long lasting or permanent, and generally exacerbates any existing mental health condition. These effects substantially reduce an inmate's ability to be reintegrated into the general jail/prison environment or into society upon release.

In a recent extensive report on solitary confinement, the American Civil Liberties Union (ACLU) interviewed over 125 incarcerated juveniles, and reported on the severe psychological impact of solitary confinement. Specifically, they report that juveniles in solitary confinement struggled with:[viii]

- Suicidal ideation and self-injurious behaviors
- Acute anxiety and sleep disturbances
- Symptoms of PTSD
- Onset of psychosis, including visual and auditory hallucinations
- Uncontrollable rage

The ACLU reports that juvenile inmates subject to solitary confinement were denied interactions with peers and visits with families – the very supports crucial to proper adolescent development.[ix] In addition, they were denied access to education, books, exercise, proper nutrition, and mental health services.

Simply put, solitary confinement is an ineffective behavioral punisher. This may be because the behaviors that result in solitary confinement are caused by deep-seated trauma responses or normal immature adolescent neurodevelopment. Whatever the reason, solitary confinement does not work to reduce aggressive, violent, impulsive, or disobedient behaviors, and has in fact resulted in an *increase* of these behaviors. Moreover, the solitary confinement of adolescents poses extreme risks to their long-term psychological health and well-being.

III. ALTERNATIVES TO SOLIDARY CONFINEMENT

a. The Prevailing Model - The Missouri Model

The Missouri Model[78] emerged 30 years ago in response to the knowledge that the state's continuing reliance on large youth corrections facilities for inmates under the age of 17 was ineffective, frequently abusive, and unnecessarily expensive. These facilities are routinely found to be unsafe, unhealthy, unconstitutional and unproductive. There is a need for dramatic changes in organization, programs and staffing, including the need to prohibit the use of solitary confinement. Moreover, the average cost per bed per year in correctional facilities throughout the country exceeds $200,000.[x]

Missouri's interactive approach has garnered excellent results: it has a far lower recidivism rate than other states, an impressive safety record, and positive youth outcomes, all at a modest budget far smaller than that of many states with less-productive outcomes. It has been adopted in varying forms in many states, most notably Maine, Rhode Island, Connecticut and Mississippi.

It should be noted, however, that the Missouri Model is one of two complementary changes that should be implemented for youth. The first significant change involves narrowing the pipeline of youth entering the detention system by eliminating inappropriate or unnecessary reliance on secure pretrial detention. This can be accomplished through differing policing practices, effective bail programs, the use of diversion programs, probation adjustments and other alternatives to incarceration. Second, adoption of aspects of the Missouri Model should be aimed at the small minority of youthful offenders who must be removed from their homes to protect public safety.

In pursuing its commitment to helping court-involved youth make deep and lasting changes that enable them to avoid negative behaviors and embark on a pathway to success, the Missouri Model employs six core features:[xi]

I. Smaller facilities located near the youths' homes and families, rather than incarcerating delinquent youth in large, far- away, prisonlike training schools.

2. Closely supervised small groups of 10-12 and applies a rigorous group treatment process offering extensive and ongoing individual attention, rather than isolating confined youth in individual cells or leaving them to care for themselves among a crowd of unfamiliar delinquent peers.

3. Emphasis on keeping youth safe from physical aggression, but also from ridicule and emotional abuse through constant supervision and engaged staff as well as supportive peer relationships, rather than through coercive techniques that are commonplace in most youth corrections systems.

4. Developing academic, pre-vocational, and communication skills that improve their ability to succeed following release, along with crucial insights into the roots of their delinquent behavior and new social competence to acknowledge and solve personal problems.

5. Involving family members from day one as both partners in the treatment process and as allies in planning for success in the aftercare transition, rather than keeping families at a distance and treating them as a source of the delinquent youths' problems.

6. Support and supervision for youth transitioning home from a residential facility by conducting intensive aftercare planning prior to release, monitoring and mentoring youth closely in the first crucial weeks following release, and working hard to enroll them in school, place them in jobs, and/or sign them up for extracurricular activities in their home communities.

b. Strides in New York - Close to Home

Close to Home is part of a juvenile justice reform initiative that began in 2011-12, and was included in Governor Cuomo's 2012-2013 Executive Budget Proposal. The collaborative effort between New York City and New York State provides more appropriate placements for youth who come from New York City.[xii] Under the initiative, New York City youth previously placed in the Office of Children and Family Services (OCFS) limited-secure and non-secure facilities, often at a great distance from the youth's home, move to smaller local settings operated by the Administration for Children's Services (ACS). ACS oversees their educational, mental health, substance abuse and other service needs.[xiii] Youth in close-to-home facilities benefit from the ability to remain closer to their families while they receive the services and support they need.

OCFS, with consultative assistance from the MYSI, developed a therapeutic, rather than punitive, program tailored to New York City adolescents convicted of crimes. The system aims to reinforce and support the ties between a youth and his/her community to foster a positive rehabilitative environment. The program enhances the ability of the adolescent to be connected to a variety of activities and opportunities, to develop vocational skills and to engage in community service close to their homes.[xiv] The adolescent can remain in school and receive credits from NYC public schools. The New York City Department of Education (DOE) schools they attend

upon their release automatically accept those credits; the educational program prepares the student to successfully reenter society post-detainment/incarceration.[xv]

A foundational premise of Close to Home is that these restorative measures are likely to reduce recidivism rates, in great measure because youth and their families are given tools to participate in a youth's rehabilitation. Additionally, the program places importance on oversight by government, advocates, families, and communities.[xvi] First, ACS has developed an Independent Oversight Board, consisting of individuals from diverse backgrounds who are knowledgeable about the issues facing court-involved youth in residential care. The Independent Oversight Board is responsible for reviewing and reporting on conditions throughout the residential placement system. In addition to the Independent Oversight Board, ACS will develop an Office of Residential Care Advocacy, which will oversee all residential placement facilities.[xvii] The Office of Residential Care Advocacy is responsible for responding to complaints and concerns of youth, identifying systemic issues, and tracking data related to conditions of care.[xviii]

The following aspects of Close-to-Home are possible reforms for youth on Rikers Island, and more broadly within the juvenile justice systems throughout the nation:

1. **PLACEMENT ASSESSMENT:** Under the Close to Home initiative, objective pre-dispositional risk assessment instruments (RAIs) and processes are used to help guide the family courts in determining proper placement for youth in juvenile delinquency cases.[xix] If placement is necessary, the RAI helps the court ascertain what level of care is appropriate for a particular youth based on the risk the youth poses to the community.[xx] Family court judges must give the results of the RAI due consideration in determining the appropriate disposition for youth. RAI's help maintain public safety by requiring the courts to use an objective assessment of the risk a youth poses to the community as a guide post for determining the youth's disposition.

2. **GUIDING PRINCIPLES FOR FACILITIES:** Many youth at Rikers have mental health disorders ranging from conduct disorders to psychotic disorders. Many youth also have substance abuse issues and histories of being in the child welfare system. The Close to Home Initiative adequately addresses these issues and other needs of juvenile delinquent youth who require residential care through the following components:[xxi]

    - Residential care should be part of a continuum of care, providing an effective continuum of diversion, supervision, treatment and confinement to ensure that the most appropriate level of care is provided for all youth, consistent with public safety;
    - Facility management should be guided by a coherent approach and/or model of care that has a greater likelihood of achieving positive outcomes. Facilities should provide accountability to ensure that both internal and external oversight is maintained;
    - Any implemented programs must be based on evidence-informed practices to ensure that programs and services have improved outcomes for youth, maintained public safety, and reduced recidivism and unwarranted racial/ethnic disparities;

- Comprehensive case management should support successful adjustment to residential care and reintegration to the community;
- Family should be engaged and included in the treatment process, and aftercare should be planned from the point of admission to start as soon as youth can be safely released;
- Facilities should be located in or close to New York City;
- Youth staff and local communities should be safe and focused on common objectives;
- Facilities and programs should be culturally responsive;
- Outcomes should be measured on a regular basis, and data should be used to inform program changes; and
- Facilities should provide effective reintegration services to ensure youth remain connected to appropriate educational services and positive behavioral supports and/or treatments when they transition out of placement.

3. **ALTERNATIVES TO PLACEMENT:** When fully implemented in state fiscal year 2014-15, the initiative is projected to save the State and local governments a combined total of approximately $12 million.[xxii] Money is saved through the introduction of new alternatives to residential placement.[98] The following programs are aimed at reducing unnecessary placements and recidivism:

   - **Juvenile Justice Initiative Alternative to Placement (JJI ATP):** Provides intensive, home- centered, evidence-based treatment in lieu of OCFS placement. Services include Multisystemic Therapy – Substance Abuse Adaptation (MST-SA), Multisystemic Therapy- Psychiatric Adaptation (MST-PA), FFT, and Multidimensional Treatment Foster Care (MTFC). Youth who receive JJI ATP services have mental health diagnoses similar to those among youth in placement, including conduct disorder, oppositional defiant disorder, attention deficit hyperactivity disorder, post-traumatic stress disorder, mood disorder, bipolar disorder, and various psychotic disorders.[xxiii]
   - **Juvenile Justice Initiative Intensive Preventative and Aftercare Services (JJI IPAS)**: Provides case management, transitional services, and aftercare to youth in private placement with OCFS' provider agencies.[xxiv]

     Esperanza: Operated by the Department of Probation, provides intensive in-home family-focused therapeutic services, case management, and crisis management for placement-bound youth. Like JJI participants, Esperanza youth are similar to OCFS- placed youth in terms of their mental health diagnoses, substance abuse histories, histories of detention, and family strife.[xxv]
   - **Way Home**: Home-based treatment program designed to work with youth who have caregivers who are reluctant to allow the youth to return back home while a delinquency case is pending, or whose caregivers are not able to provide a viable home without social service support. Following a Family Team Conference, Way Home staff members provide Brief Strategic Family Therapy, an evidence-based therapy for youth involved in juvenile justice.[xxvi]
   - **Boys Town**: Provides for an assessment of the youth's risk and needs to be reported

to the court followed by in-home family services to youth and their families using the Boys Town model.[xxvii]

In the first year of Close to Home, the NYC Department of Probation ("Probation") added three other programs, Advocate Intervene Mentor (AIM), Each Child Has An Opportunity to Excel and Succeed (ECHOES) and Pathways to Excellence, Achievement and Knowledge (PEAK)[xxviii] that substantially dropped the population of youth in placement. These programs demonstrate that New York City has been able to create better, decent and rehabilitative programming and still create alternatives that result in fewer young people being deprived of their liberty. Additionally, the Department of Probation created non-mandatory support programs for young adults on probation (ages 16-24). Those are Arches, Young Adult Justice, Young Adult Communities, and Community Education Pathways to Success (CEPS).[xxix]

IV. RECCOMMENDATIONS

As part of its dedication to juvenile justice reform, the Clinic focuses on the "school-to-prison pipeline". The Clinic presumes that by narrowing the school-to-prison pipeline, the population of youth on Rikers Island will be reduced significantly. As such, the Clinic urges that New York, and other jurisdictions utilizing solitary confinement for youth under 18-years old, change from a punitive to a therapeutic model in the following ways:

a. Small Groups:

- Group youth in teams of approximately 10-12; teams should sleep in a dormitory style room and spend a significant amount of the day together, including during meals, classes, exercise and group therapy.
- Assign a youth specialist to regularly supervise and engage with a particular team.
- Implement group discussions where youth are asked to explore their feelings and address their actions.

b. Therapy

- Establish an environment to promote desirable behaviors. This includes creation of calming living quarters, as well as adopting de-escalation and other techniques that allow staff to reliably predict conduct that precedes a problem behavior.
- Develop individualized profiles for behavior management for each youth.
- Use techniques, such as a token economy, to alter the environment so that undesirable maladaptive behaviors are ignored or punished, and desirable prosocial behaviors are met with positive reinforcement.
- Embrace evidence-based therapeutic approaches, such as cognitive-behavior therapy, in ways that maximize effectiveness. Such approaches have been successfully implemented in post-incarceration settings (e.g., by including the family in therapeutic sessions and post-release planning).
- Initiate skill-building programs, such as communication and job readiness, to equip youthful offenders with adaptive skills to succeed upon release.

c. Alternative Discipline

- Ban solitary confinement (absolute social and physical isolation for 22-24 hours per day).
- Individualize the disciplinary policies and procedures by considering factors such as the youth's age and mental health status.
- Employ de-escalation techniques soon after a young person acts out or misbehaves. This includes discussion with the youth to determine the root causes to help identify more appropriate responses.
- Use short-term isolation only as a last resort to interrupt current acting-out behavior or to separate youth in circumstances where the youth poses an immediate threat to others or to him/herself. Isolation should be used only after graduated sanctions and lesser restrictive discipline techniques have proven ineffective. Before separating the youth, explain the reasons why separation is required and that he or she will be released upon regaining self-control. Short-term isolation must end as soon as the youth has regained self-control and **cannot exceed 4 hours.**
- Utilize room confinement only in extreme situations where a major rule violation has occurred and lesser restrictive discipline techniques have been exhausted or proven ineffective. Room confinement of more than 24 hours is reserved for the most serious violations, and **never imposed for more than 72 hours.** Youth in room confinement must receive out-of-cell access to education services and other programming, including physical recreation for at least **4 hours per day.**
- Require supervisory review before isolation or room confinement is used.
- Provide feedback to staff on how to improve incident responses, including supervisory review of incidents with staff to determine if a youth's time in isolation or room confinement could have been shorter or avoided entirely.
- Initiate regular training to facility staff on the appropriate use of, and alternatives to, isolation and room confinement.
- Create access to information about isolation and room confinement to independent oversight boards and staff.

d. Procedural Safeguards

- Develop a system where each occurrence of isolation or room confinement is documented, reviewed by facility administrators, and regularly reported publicly.
- Document ground rules for the use of confinement, clearly describing the type of infractions that result in sanctions.
- Provide entering youth with a copy of a rulebook that lists the circumstances that may result in confinement.
- Provide youth with an opportunity to be heard in an administrative hearing within a reasonable period of time.
- Provide additional procedural safeguards where confinement occurs before a hearing.
- Implement rules that encourage informed and adequate representation, especially when the youth is representing him/herself.
- Youth must be afforded an opportunity to appeal any administrative decision.

e. Training

- Seek the services of the Missouri Youth Services Institute to aid in the administration of a culture transformation at Rikers Island.
- Transform the traditional corrections officers into rehabilitative-focused youth specialists.
- Require youth specialists to have extensive training and undergo a rigorous interview process.
- Screen youth specialists for a personal commitment to helping youth succeed. The staff needs good listening skills, capacity for empathy, and the ability to command respect.
- Require youth specialists to complete over 200 hours of training, including extensive training in conflict management, positive reinforcement and group facilitation.
- Require supervision of youth specialists until over 100 hours of core training has been completed.
- Require additional in-service training for 40 hours per year to update specialists on the newest concepts and treatment techniques.

f. Evaluation and Reporting

- Collect and evaluate the disciplinary measures used in youth correctional facilities.
- Prepare annual reports of findings relating to room confinement and use of solitary confinement to be made available to the public.
- Independent and qualified reviewers should routinely monitor and review the use of discipline in correctional facilities housing youth.
- Participate in the Performance-Based Standard Initiative (PBS) by submitting information about the youth facility twice a year.
- Revise practices to better comply with national best-practice standards.

ENDNOTES

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[i] Alan Singer, *Rikers Island – Last Stop on the New York City School-to-Prison Pipeline*, HUFFINGTON POST (Feb. 3, 2012), *available at* http://www.huffingtonpost.com/alan-singer/rikers-island-prison_b_1252325.html.

[ii] Data report prepared by Board of Correction using Department of Correction data (Dec 2013) (on file with author).

[iii] It is also known as "solitary confinement," "isolated confinement," the "box" or the "bing." CITY OF NEW YORK BOARD OF CORRECTION, STAFF REPORT III (Oct. 2013). It will be referred to herein as solitary confinement. It is to be distinguished from short-term use of "isolation."

[iv] Id.

[v] RAYMOND G. MILTENBERGER, BEHAVIOR MODIFICATION: PRINCIPLES AND PROCEDURES. (3d ed. 2004).

[vi] Official Statement of the American Academy of Child & Adolescent Psychiatry, Solitary Confinement of Juvenile Offenders (Apr. 2012), *available at* http://www.aaeap.org/AACAP/Policy_Statements/2012/Solitary_Confinement_of_Juvenile_Offenders.aspx

[vii] Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 WASH. U. J. L. & POL'Y 325 (2006), *available at* http://digitalcommons.law.wustl.edu/wujlp/vol22/iss1/24.

[viii] *Growing Up Locked Down*, HUMAN RIGHTS WATCH & AMERICAN CIVIL LIBERTIES UNION 58 (Oct. 2012) [hereinafter *Growing Up Locked Down*] (*citing* Letter from Douglas C. [pseudonym], to Human Rights Watch (April 17, 2012)), *available at* https://www.aclu.org/files/assets/us1012webwcover.pdf.

[ix] For a discussion on the importance of familial and social support to healthy adolescent development, *see* Jennifer A Hall-Lande et al., *Social Isolation, Psychological Health, and Protective Factors in Adolescence*, 42 ADOLESCENCE 166, 265-86 (2007), *available at* http://facweb.northseattle.edu/lchaffee/PSY100/Journal%20Articles/Hall-Lande%20et%20al%202007.pdf.

[x] Richard Mendel, *The Missouri Model: Reinventing the Practice of Rehabilitating Youthful Offenders*, THE ANNIE CASEY FOUNDATION (2010) [hereinafter Missouri Model], *available at* http://www.aecf.org/~/media/Pubs/Initiatives/Juvenile%20Detention%20Alternatives%20Initiative/MOModel/MO_Fullreport_webfinal.pdf.

[xi] Id at 13.

[xii] *Close to Home: Plan for Non-Secure Placement*, NEW YORK CITY ADMINISTRATION FOR CHILDREN'S SERVICES (June 8, 2012), *available at* http://ocfs.ny.gov/main/rehab/close_to_home/.

[xiii] Id at 8.

[xiv] Id.

[xv] Id at 9.

[xvi] Id.

[xvii] Id at 51.

[xviii] *Close to Home: Plan for Non-Secure Placement*, *supra* note 10, at 51.

[xix] Id at 8.

[xx] Id at 43.

[xxi] Id at 56.

[xxii] Id at 21.

[xxiii] Id at 20.

[xxiv] *Close to Home: Plan for Non-Secure Placement*, *supra* note 10, at 22.

[xxv] Id.

[xxvi] Id at 31.

[xxvii] Id.

[xxviii] *Young Men's Initiative*, NYC DEP'T OF PROBATION, http://www.nyc.gov/html/prob/html/young_men/young_men.shtml (last visited Jan. 30, 2014).

[xxix] Id.

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My name is Dayvon Williams. I am a member of the Youth Justice Coalition. During my time of incarceration, I was placed into solitary confinement for 2 weeks – 24 hours a day. I have epilepsy and I had a seizure. The guards were called by my cellmates, but the officers thought I was playing and they put me into solitary confinement.

From the moment I was put into "the hole" I felt isolated and depressed. The room was freezing! It was dirty, and there wasn't a bed, only a hard concrete seat built into the wall. The room was very small. Immediately, I felt trapped!

There was a tiny window in the door that I would peek out of just to see outside of the claustrophobic cell. One day, the guard caught me looking outside the window, and he put paper over it, so I could no longer see anything.

I hadn't had a shower for the first four days after coming into solitary confinement. I smelled myself and started to feel disgusting. I received a change of clothes only once during my 2 weeks in solitary confinement. I was ignored like I didn't even exist.

After a few days in solitary confinement I started to feel like I was going crazy. I started to make up stories and started talking to myself. My imagination was blasting. I look back now and see how creative the mind can be, but also how dangerous. If a person did not already have mental health problems before coming into solitary confinement, spending enough time in there, you would lose your sanity.

I had several epileptic seizures while in solitary because sometimes they didn't bring my medicine on the time it was needed, or several times they didn't bring it at all. Stress is one of the main triggers of my seizures. I kept knocking on the door after passing out from having a seizure, but I was ignored.

There were no books or paper to write or anything to address the complete boredom of being in the hole. Only 2 or 3 days would pass by and it felt like a week. I would never know if it was either day or night.

Being locked down was traumatizing. As human beings were treated worse than caged animals. Everybody deserves to keep their sanity but I felt my mind slipping away. This was one of the worst experiences in my life. I would not wish this upon anyone.

The cruel punishment of solitary confinement must be eliminated. It would be much better to spend time in effective programs that focus on helping people to grow and change, than on investing in the torture of isolation. Those people such as myself who have experienced solitary confinement must be given the opportunity to present our observations and solutions. Those most impacted by solitary confinement and our families must be recognized as experts on this issue. Isolation erased our humanity! But we are fighting back so that no one can erase our memories.

My name is Tanisha Denard. I am a recent high school graduate and a Youth Organizer with the Youth Justice Coalition. I urge you to move federal legislation to end the use of solitary confinement within juvenile facilities.

I was arrested at school for getting in a fight and put on Probation. Whenever I was late to school, the police would be surrounding our campus giving out truancy tickets. After a few times getting tickets, my Probation was violated, and I was sent to Los Padrinos Juvenile Hall.

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From the time I entered the gate at juvenile hall, I felt anxious and hopeless. I remember the sound and sight of the big, bulky, metal wire gate opening up and then shutting behind me.

I took showers with a staff watching from the beginning to the end. And there was no curtain on the window, so I could also see male staff come around during showers for the whole time I was locked up.

For the first few days, I was very distant. I wouldn't eat or go to the day room (a large room where you could sit with other people). I felt unsure and uncomfortable. But instead of trying to counsel me, the Probation staff just stopped talking to me – they even stopped asking if I wanted food or dayroom time. Even though I wasn't on lock-down, I felt like I was in solitary confinement already.

I guess the staff thought I was depressed, so then they put me on lockdown for real - no cell mate, no dayroom time, no hope. The rooms are about 5 feet by ten feet with a metal door and a small shatter-proof window that you can see out of into a small part of the hall if you stand on your toes. With the exception of the door, the walls are all cinderblock, painted white. Some sections of the wall are covered in gang-related tagging and brown stains that look like smeared feces or blood.

Almost everyone in lock down was in shorts and a tee shirt. The air conditioning would be on full-blast. It was freezing. Once in that cell, you would not come out again until it was time again to take your 45-second shower – 23 hours later.

I felt completely unwanted and unnoticed. I started to feel tense when any of the guards came close to my cell, paranoid that I had done something wrong, when in reality, I had been by myself for 23 hours of the day.

It is by far the worst feeling I had ever experienced.

There were also girls in the unit who tried to kill themselves or cut themselves, and they were also put in the box. You had little or no human contact, except when you were brought food or the nurse brought some people their meds. I even know people who hid their meds in their mouth so they could save them up to get a stronger high.

I believe that the cruel and unusual punishment of the SHU made it easier for the Probation Department to treat everyone in juvenile hall this way. Once you get used to locking a person in a cage, it becomes normal for you. You don't notice how harmful it is, and these conditions start to spread throughout the facility. Even for people who weren't on lock down, nights for everyone were also under lock-down conditions. From 8pm or 9pm until 6am, you are locked into a single person cell that looks exactly like the box. It's also freezing, and if you're found with an extra blanket or sweatshirt, you are accused of having contraband and punished. We had no books or writing materials, so nights were endless – just you, your thoughts and the screams or crying of the young people in the cells next to you. The sheets and underwear were often stained with urine, blood and feces. Just like in the box, people had to beg to use the restroom, were ignored or told to shut up, and were sometimes forced to pee on the floor or into a towel or sheet.

Your family and the community expect that you are safe and unharmed. In reality you might be safe from other youth – but not from yourself. Being locked down makes you feel that you are worthless to society. You start to think about any way to escape – even if it means suicide. When I got home, I felt I had changed. My family could not believe my experience – and it constantly made me feel like I was a bad person. That feeling of hopelessness had only increased.

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I think all young people deserve something better that a 23-hour cell. If we need to heal or calm down, the best thing would be to create a nature park, or have us work outside to grow food, or take vocational trainings so we are ready to start our lives over after release.

My name is Ted Snyder. I am writing as a father to ask Congress to end the use of solitary confinement.

My son Theodore Snyder, known to everyone as Tedi, was 15 years old when he was arrested, and transferred through direct file by the District Attorney into adult court. For nearly four years while going back and forth to court, Tedi was detained at one of the nation's most secure and notorious juvenile halls – "the compound" at Barry J. Nidorf Juvenile Hall in Sylmar, where as many as 250 youth can be locked up at a time while being tried in adult court.

The Compound was built at the cost of 35 million dollars especially to house youth with adult court charges. It is surrounded by 20-foot-high fencing, security lighting and razor wire. Youth are kept in individual cells and have school separate from other youth in detention. There is also a twenty-foot cinderblock wall, security lights and wire gates surrounding the juvenile hall itself, so the Compound exists as a mini super-max prison within the confines of a secure juvenile hall.

Despite these maximum security measures, not long after Tedi entered the Compound, the Chief of the Los Angeles County Department of Probation at that time, made a decision to put all youth in the Compound in solitary confinement. This was due to their charges – not to their behavior. It was in his mind a prevention measure, not an intervention to address concerns.

Youth were kept alone in their cells, 23½ hours a day, and had no access to school, dayroom, recreation or the outdoors. Within a week, parents recognized the mental stress this caused when seeing their sons during visiting. Youth who had no family that could make the weekly trip to juvenile hall would lie on the floor and try to watch the other families through the crack under their door. During visits, I personally witnessed youth bang on the doors, begging to use the restroom. Our sons told us about how often they peed into their sheets or on to the floor if their cells unable to hold it any longer. Within several weeks, many youth began to abuse themselves. Some banged their heads into the cinder block walls. Some cut or scraped deep wound into their arms. A few were said to have attempted suicide. After a coupe of months, our sons were exhibiting massive losses in weight – some as much as 40 pounds. Several youth fainted. We as parents used to smuggle tacos and hamburgers into our underwear and pockets to make it through the security stop at visiting. All the youth had grown severely pale due to lack of sunlight. The parents organized with the Youth Justice Coalition, advocated with the chaplains from the L.A. Archdiocese and contacted the Youth Law Center to threaten a lawsuit. After seven months, due to these efforts, we finally pushed Probation to end the lock-down of all youth in the Compound. Had Senate Bill 61 been in place, the conditions that Tedi and the other youth endured would have been a violation of state law.

Everyone deserves to be judged by the totality of their lives, not only by their one worst act. I'm sure that the Probation Chief only saw Tedi through his charges and imagined a monster. But, I see Tedi by his actions in juvenile hall and I have much to be proud of. In lock-up, my son received outstanding grades, graduated high school and was seen by the entire Probation and school staff as a leader. He was active in church, and was much beloved by both the Chaplains

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and lay volunteers. He mediated fights and squashed rumors between Black and Brown youth, and between rival neighborhoods.

Youth must be held accountable for their actions. But all youth deserve to live in humane conditions and to be treated with respect. If treated fairly and given opportunities to both heal and build their skills, people can then build healthier futures for themselves and their families, and give back to their communities.

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Statement of the Youth Law Center
Reassessing Solitary Confinement II: The Human Rights, Fiscal and Public Safety Consequences, Hearing Before the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights
February 25, 2014

Chairman Durbin, Ranking Member Cruz, and Members of the Subcommittee:

In the two years since this Subcommittee first explored solitary confinement, the evidence has mounted that locking juveniles alone in their cells[1] is damaging to their mental and physical health, counter-productive to rehabilitation, and unnecessary to the safe, effective operation of juvenile facilities. In this Statement, the Youth Law Center outlines some of the key developments, and offers suggestions for the Subcommittee's action agenda.

The Youth Law Center is a national public interest law firm that works on behalf of children and youth in the juvenile justice and child welfare systems. Our attorneys are widely recognized as experts on juvenile confinement law, and have been involved in conditions work in approximately 40 states. Many of our conditions lawsuits have involved solitary confinement issues. We have inspected or visited dozens of juvenile facilities where solitary confinement is used, and have fielded many complaints from youth and families of youth held in solitary confinement. For many years, we have worked for stronger laws and policies governing solitary confinement, and better professional education about alternatives to its use.

Solitary Confinement Continues to Damage Vulnerable Youth

Sadly, in the period since the initial Hearing, the use of solitary confinement on juveniles continues unabated, resulting in serious harm to youth. In late 2013, the State of New Jersey settled a case involving the rampant use of solitary confinement of juveniles -- ostensibly for behavior management. One of the plaintiffs was a young

[1] In juvenile facilities, solitary confinement is used for multiple purposes and .is called "room time," "room lock," "23 and 1," "isolation," "suicide watch," "administrative segregation," "behavior management program," and "special program." Whatever the designation or justification, it all comes down to one thing: a young person locked, alone, in a tiny room.

man who had been in cared for by the state since he was three years old, and who suffered from post-traumatic stress, bipolar disorder, and psychosis. He was held in solitary confinement for 178 of his 225 days in custody.[2]

Similarly, in 2013, a lawsuit was filed against a juvenile detention center in Contra Costa County, California, alleging the use of solitary confinement on youth with disabilities. Youth, including those suffering from severe mental illness, were routinely locked in their room for up to 23 hours a day. The Department of Justice has just weighed in in the lawsuit, noting the tremendous damage solitary confinement does to vulnerable youth, and urging county officials to stop finger pointing and to fix the problems.[3]

These lawsuits represent only the tip of the iceberg. Litigation is expensive, and non-profit juvenile advocacy organizations have the capacity to pursue only a fraction of the cases deserving of attention. At the Youth Law Center, for example, we can only afford to bring lawsuits if we are virtually certain of success, so we can recover the extensive costs of investigation, hiring experts and litigating the case. Moreover, many states lack a "safety net" to address abuses of solitary confinement. Vague institutional policies or state regulations, often combined with poor oversight, contribute to institutional systems that have no meaningful way to investigate or address abuses of solitary confinement.

Also, many of the worst abuses of solitary confinement do not involve headline grabbing, lengthy periods of confinement, but are still extremely harmful to youth. The routine use of solitary confinement as a response to everything from disciplinary problems to the handling of suicidal youth is extremely damaging, but seldom comes to public attention.

In some facilities, for example, youth are "sentenced" to multiple days of confinement for relatively minor violations of institutional rules. In others, youth perceived to be vulnerable (for example gay or lesbian youth) are placed in solitary confinement "for their own protection." Many facilities still isolate youth at risk of suicide, despite the consistent advice of experts that this is dangerous and harmful to youth. Some facilities feature "special programs" that consist of 20 or more hours of lockdown a day as the "program." Yet other facilities lock youth in their rooms for extended periods because staff called in sick and there are no replacements. Youth in high security units in some facilities are sometimes locked in their rooms, even though they are already in a discrete living unit designed for their level of classification. Staff in some facilities impose institutional lockdowns that extend long after security dangers have subsided.

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[2] Ryan Hutchins, "$400K Awarded to Settle Lawsuit Over Solitary Confinement of 2 N.J. Boys," *NJ.com* (Jan. 3, 2014).

[3] Matthew Gafni, "Feds Chastise Contra Costa Officials Over Juvenile Hall Solitary Confinement Policy," *Contra Costa Times* (Feb. 19, 2014).

These routine practices may never become the subject of litigation, but they reflect a serious lack of awareness of the damage inflicted on youth, and the concept that locked room time should be an exceedingly rare occurrence.

The Evidence of Harm Continues to Grow

Trauma and Solitary Confinement

Since 2012, the Youth Law Center has been a part of national efforts to understand the impact of harsh institutional practices, and to chart a course for change. As part of this work, we wrote a brief on *Trauma and the Environment of Care in Juvenile Institutions*, for the National Child Traumatic Stress Network.[4] Our research confirmed that solitary confinement re-traumatizes youth who have already experienced abuse, neglect, community violence, or previous institutionalization. Locking them away reinforces their perception that they are worthless, and exacerbates their sense of rejection. It may cause their emotions to turn inward toward self-destruction and depression, or outward in anger and frustration. This is a cruel outcome for young people who depend on the system to recognize and help them work through the horrifying events they have already experienced in their young lives.

We reviewed the increasing evidence that the imposition of solitary confinement is damaging for juveniles, even when it is for brief periods.[5] We found, for example, a national study of juvenile institutional suicides confirming that 75% of successful suicides involved youth confined in single occupant rooms, and that 50% of those were youth being subjected to disciplinary confinement.[6]

Our work has also revealed that use of solitary confinement interferes with the ability of the system to provide education, recreation, social interaction and emotional support to the child. For every minute a youth spends locked in a cell, opportunities are missed to provide much needed interventions that could change the course of the young person's life. Certainly the use of solitary confinement interferes with the underlying goals of the system in helping youth to learn and to exercise internal control.

The Attorney General's 2012 report, *Defending Childhood*, specifically calls for youth in juvenile facilities to receive treatment that is free from the use of coercion, restraints, seclusion, and isolation, and that is designed specifically to promote recovery from the adverse impacts of violence exposure and trauma on physical, psychological, and psychosocial development, health, and well-being. The report also recognizes the

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[4] Sue Burrell, *Trauma and the Environment of Care in Juvenile Institutions,* National Child Traumatic Stress Network (2013).

[5] The harms to youth caused by solitary confinement are extensively detailed in a report from the American Civil Liberties Union, *Alone and Afraid: Children Held in Isolation and Solitary Confinement in Juvenile Detention and Correctional Facilities* (Nov. 2013).

[6] Lindsay M. Hayes, *Characteristics of Juvenile Suicide in Confinement Facilities*, OJJDP Juvenile Justice Bulletin (2009).

importance of coercion-free institutional practices in assuring a safe workplace for staff. The report specifically calls for juvenile systems to "[a]bandon juvenile justice correctional practices that traumatize children and further reduce their opportunities to become productive members of society."[7]

Adolescent Development and Solitary Confinement

Since the 2012 Hearing, the National Research Council's landmark study, *Reforming Juvenile Justice: An Adolescent Development Approach* has been released.[8] The study comprehensively reviews what works and what doesn't work in interventions with juveniles. A key finding is that, because of their immaturity, impulsivity and inability to think about future consequences, youth are not actually deterred by punishment. This has important implications for disciplinary systems that rely on solitary confinement as a way to "make youth think" about what they did so they will not do it in the future. Teenage brains simply do not work that way. Also, the *Reforming Juvenile Justice* study focuses on the interventions that best produce successful outcomes. These include putting youth in pro-social situations in which they can learn to exercise judgment and develop skills. Again, control-oriented disciplinary systems that isolate youth and keep them completely dependent on staff are the antithesis of effective interventions.

Thus, youth subjected to solitary confinement may be deprived of access to educational services, or be given worksheets or packets that do not help to advance them academically. They may be unable to participate in group activities that would help them to present themselves in a positive light and move away from delinquency. Many leave custody in worse condition than when they entered.

Legal and Professional Standards of Practice Are Changing

The developments of the past two years are not all bad. In a recent study, the Council of Juvenile Correctional Administrators reported that in 2012, fully 75% of participating detention centers and assessment centers had reduced the length of isolation or room confinement to four hours or less – a dramatically shorter time than when the times were first measured in 2008.[9] This is good evidence that lengthy solitary confinement is unnecessary, and that concerted efforts to change longstanding practices can be quickly developed and implemented.

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[7] *Defending Childhood, Report of the Attorney General's National Task Force on Children Exposed to Violence* (2012), Recommendation 6.2.

[8] Richard A. Bonnie, *et al.*, *Reforming Juvenile Justice: An Adolescent Development Approach*, National Research Council (2013).

[9] Performance-based Standards Institute, Inc., *Reducing Isolation and Room Confinement*, Council of Juvenile Correctional Administrators (2012).

In addition, as this Statement is being submitted, a group of experienced practitioners is working to revise the Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative *Juvenile Detention Facility Standards*. Although the standards are already among the strongest in the profession, one of the issues under consideration is the elimination of locked room confinement for disciplinary purposes, and another is the need for additional limitations on confinement for mental health purposes.

Even state standards are beginning to change. Thus, in California, the most recent revisions to the *Minimum Standards for Juvenile Facilities* (Title 15 Cal. Code of Regs. § 1391, effective 2013), changed its provisions on locked room time for youth who commit major rules violations to call, instead, for sanctions that simply remove youth from regular programming.

The recent litigation, the law changes, and evolving professional standards evidence a growing recognition that solitary confinement of juveniles is damaging and longstanding practices must be changed. This work in the juvenile system mirrors remarkable shifts in the adult correctional system. This Subcommittee will surely hear from officials in Mississippi, Colorado, Washington, and New York about the work going on to reduce solitary confinement in adult corrections. New York, for example, is moving to eliminate 23 hour per day lockdowns of 16 and 17 year-olds being tried as adults.[10]

We Know How to Fix This

Solitary confinement is not needed for the safe, effective operation of juvenile facilities. Many of the policies and practices that result in its use are well-intentioned, but have not been thoughtfully considered in the light of modern research and knowledge. They are simply "the way we have always done it." Also, repressive measures such as solitary confinement are often a function of the following:

- Understaffing
- Deficiencies in mental health staffing
- Inadequate training
- Lack of quality programming
- Poor youth classification systems
- Punitive disciplinary systems relying on locked room time

These are all things that can be easily addressed, and many systems have already done so. Thus, for example, an important way of reducing the use of solitary confinement is to prevent situations from escalating or to intervene before they reach the point at which youth are removed to a locked room, but adequate staffing is needed to accomplish this.

[10] Benjamin Weiser, "New York State in Deal to Limit Solitary Confinement," *New York Times* (Feb. 19, 2014).

Facilities should have 1:8 or better staffing ratios, and in some units, may need to have even more staff, depending on the population or the needs of individual youth. The trend is toward even lower ratios such as 1:6 (Massachusetts) or 2:11 (Missouri).

In addition, many facilities that rely heavily on solitary confinement do not have access to skilled mental health staff who can help to prevent crises, or help staff to design interventions that do not rely on extended isolation. Providing adequate mental health staffing is immensely helpful in reducing the use of solitary confinement.

Similarly, good quality training and supervision can give staff the tools they need to intervene without using solitary confinement. Training on crisis intervention, de-escalation, and other ways to discipline youth or handle youth who are aggressive or out of control can go a long way in helping staff to feel more confident about their skills. Training gives them a bigger repertoire of tools to use in preventing the need for interventions such as solitary confinement. Supervision is also an important component of good practice. When incidents do occur, it is important that there be debriefing with the staff and youth to better understand what happened; whether some other intervention would have been effective; and what might be done to prevent future such incidents.

Programming can go a long way toward reducing the situations that lead to solitary confinement. Youth who are actively engaged in education or recreational activities are much less likely to cause disturbances or engage in self-destructive behavior. Thus, it is critically important to make sure that institutional programming is good quality and that youth are not getting into mental health or behavioral crises simply because they are bored or under-stimulated.

Moreover, while facilities vary in terms of size and living unit configuration, another way to reduce use of extreme control measures such as solitary confinement is to improve the classification system under which youth are assigned to living units and programs. Sometimes moving even one or two youth to a different location can make a huge difference in decreasing the kinds of situations that result in the use of solitary confinement.

And finally, facilities can substantially reduce the number of situations in which solitary confinement is the default response by replacing outmoded punitive disciplinary systems. We have been gratified to come into contact with an increasing number of jurisdictions that are moving toward the use of positive behavior management.[11] The idea is that youth are supported and reinforced for doing things right, rather than punished for doing things wrong. Using positive behavior

[11] Positive behavior supports originated in the education world, but have been increasingly embraced in juvenile justice. Information about the concept is available at National Center for Positive Behavior Interventions and Supports, *U.S. Department of Education, Office of Special Education Programs.*

interventions helps these jurisdictions to avoid the no-win scenario of placing the young person in more and more restrictive settings.

Youth Law Center is not alone in believing that addressing these key issues in institutional operations can reduce the need for solitary confinement. In January 2014, respected juvenile expert Paul DeMuro published *Toward Abolishing the Use of Disciplinary Isolation in Juvenile Justice Institutions: Some Initial Ideas,* which offers a similar plan. And again, the principle of providing pro-social programming that allows youth to develop judgment and skills is a key element in the National Research Council's *Reforming Juvenile Justice: A Developmental Approach.*

An Action Agenda for Change

Eliminating juvenile solitary confinement calls for a multi-faceted approach that includes standards, fiscal incentives, and technical assistance. Here are some of the specific things this Subcommittee should be working for:

- Reauthorize the Juvenile Justice and Delinquency Prevention Act (JJDPA) and condition funding to the States on elimination of solitary confinement; provide incentive grants and technical assistance to jurisdictions to assist in this process. Also, eliminate the loopholes that currently permit juveniles to be held in adult jails and status offenders to be held in secure detention for violation of court orders – both of which frequently result in solitary confinement of youth;

- Require states to report on the use of solitary confinement, including the length of confinement, reason for confinement, costs to the system, incidents of self-harm of youth held in solitary confinement, and outcomes for youth subjected to solitary confinement;

- Call for the Office of Juvenile Justice and Delinquency Prevention or the Bureau of Justice Statistics to annually report the gathered statistical information on the use of solitary confinement in the United States;

- Enact legislation requiring the promulgation of national standards that eliminate solitary confinement for discipline, mental health/behavioral purposes, and administrative convenience. Because eliminating solitary confinement requires attention to many other areas of institutional operation (staffing, training, mental health resources, oversight), consider dusting off and updating the outstanding National Advisory Commission for Juvenile Justice and Delinquency Prevention *Standards for the Administration of Juvenile Justice* (July 1980), and formally adopting them;

- In the interim before national standards are promulgated, require juvenile facilities to adhere to the strict requirements for "seclusion" now imposed by federal law for treatment facilities;[12]

- Support diversion programs and wraparound services for youth who are incompetent to stand trial or have mental health issues that frequently result in solitary confinement in juvenile facilities;

- Provide support to advocates to monitor and respond to complaints about solitary confinement;

- Provide additional support for Department of Justice investigations into solitary confinement; and

- Support training and technical assistance on alternative ways to address disciplinary issues, protect youth from self-harm and address behavioral issues for jurisdictions seeking to eliminate the solitary confinement of juveniles.

Conclusion

The developments of the last two years have underlined the need for this Subcommittee's leadership and advocacy to eliminate the solitary confinement of juveniles. We know too much about the damage caused by solitary confinement to turn away from the need for change. That knowledge is now bolstered by solid information and expertise about how to safely and humanely care for young people without using solitary confinement. But without vision and concerted deliberate action, the pockets of reform will remain just that.

Thank you for the opportunity to share our experiences, observations, and suggestions at this critical juncture. We are grateful for this opportunity, and look forward to working with you and your staff in any way we can as this initiative moves forward.

Respectfully submitted,

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[12] 42 C.F.R. § 482.13 *et seq.*

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