BRIEFING PAPER:

The Dangerous Overuse of Solitary Confinement in the United States

ACLU
AMERICAN CIVIL LIBERTIES UNION

August 2014

ACLU Briefing Paper

The Dangerous Overuse of Solitary Confinement in the United States

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Introduction

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] The Federal Bureau of Prisons (BOP), the largest prison system in the United States, reported in 2011 that it held about 7% of its population in solitary confinement.[3]

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.[4] Indeed, over a century ago, the Supreme Court noted that:

> [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.

In re Medley, 134 U.S. 160, 168 (1890).

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.[5] 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.[6]

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.

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.[7] Human contact is restricted to brief interactions with corrections officers and, for some prisoners, occasional encounters with healthcare providers or attorneys.[8] Family visits are limited; almost all human contact occurs while the prisoner is in restraints and behind a partition.[9] Many prisoners are only allowed one visit per month, if any.[10] **The amount of time a person spends in solitary confinement varies, but can last for months, years, or even decades.**

"My mind began to slip. I suffered from insomnia, nightmares, hallucinations, and emotional detachment, and often had violent panic attacks.

More than once, I completely lost control and began screaming and beating at the walls of my cell until my knuckles bled.

I started to realize that there was a slow disintegration, really, of my personality, my sense of who I was."

-Sarah Shourd, survivor

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.[11]

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.[12]

In 2013, the Department of Justice employed a similar definition, noting that "the terms 'isolation' or 'solitary confinement' mean the state of being confined to one's cell for approximately 22 hours per day or more, alone or with other prisoners, … [with] limit[ed] contact with others. . . . An isolation unit means a unit where all or most of those housed in the unit are subjected to isolation."[13]

Solitary confinement is used to punish prisoners who have violated rules, or to isolate those considered too dangerous for general population. It is also sometimes used to "protect" prisoners who are perceived as vulnerable—such as youths, the elderly, or individuals who identify as or are perceived to be lesbian, gay, bisexual, transgender or intersex (LGBTI).

How does solitary confinement affect people?

Solitary confinement is widely recognized as painful and difficult to endure. "It's an awful thing, solitary," U.S. Senator John McCain wrote of his time in isolation as a prisoner of war in Vietnam. "It crushes your spirit and weakens your resistance more effectively than any other form of mistreatment."[14] Senator McCain's experience is reflected in the consensus among researchers that the psychological harms of solitary confinement are great.[15] Indeed, in a 2007 publication, a Red Cross psychiatrist compared the practice to physical torture, noting that "[b]eing confined for prolonged periods of time alone in a cell has been said to be the most difficult torment of all to withstand— a comment made, moreover, by hardened prisoners used to rigorous conditions and abuse."[16] As a California prison psychiatrist put it: "It's a standard psychiatric concept, if you put people in isolation, they will go insane. . . . Most people in isolation will fall apart."[17]

International human-rights bodies have condemned the prolonged use of solitary confinement. The Inter-American Commission on Human Rights has urged member states to "adopt strong, concrete measures to eliminate the use of prolonged or indefinite isolation under all circumstances;"[18] the United Nations Special Rapporteur on Torture called for a global ban on solitary confinement in excess of 15 days as well as on the segregation of juveniles and of those with mental disabilities;[19] and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment found that solitary confinement conditions can amount to "inhuman and degrading treatment."[20]

Indeed, research shows that some of the clinical impacts of isolation can be similar to those of physical torture.[21] People subjected to solitary confinement exhibit a variety of negative physiological and psychological reactions, including hypersensitivity to stimuli;[22] perceptual distortions and hallucinations;[23] increased anxiety and nervousness;[24] revenge fantasies, rage, and irrational anger;[25] fears of persecution;[26] lack of impulse control;[27] severe and chronic depression;[28] appetite loss and weight loss;[29] heart palpitations;[30] withdrawal;[31] blunting of affect and apathy;[32] talking to oneself;[33] headaches;[34] problems sleeping;[35] confusing thought processes;[36] nightmares;[37] dizziness;[38] self-mutilation;[39] and lower levels of brain function, including a decline in EEG activity after only seven days in solitary confinement.[40] The effects of isolation on the brain are further discussed in this Paper's "Science of Solitary" text box.

Case studies bear out the devastating human toll these conditions can take. Testifying in court, Dr. Stuart Grassian, a board-certified psychiatrist who taught at Harvard Medical School for over 25 years and is one of the nation's leading experts on solitary confinement, described one prisoner who became psychotic in solitary confinement. Although this prisoner had no documented history of psychotic disorders before being subjected to conditions of solitary confinement at California's Pelican Bay State Prison, he became highly symptomatic after several months in solitary. Later, he became "overtly

psychotic and suicidal," at one point writing a suicide note in his own blood. Dr. Grassian testified, "Inmate E reported that he was 'hearing voices' and the examining doctor described him as 'obviously very psychotic.'" He also believed that he was receiving messages from a computer implanted at the base of his neck. "I'm tired of people talking in my head," Inmate E told Dr. Grassian. "I was mentally clear before . . . sometimes I get so confused, I don't even know what's going on."[41]

In addition to increased psychiatric symptoms generally, suicide rates and incidents of self-harm are much higher for prisoners in solitary confinement. A February 2014 study in 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 youth 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.[42] In the Indiana Department of Corrections, the rate of suicides in segregation was almost three times that of other housing units.[43]

Recognizing these dangers, organizations including the American Psychiatric Association, Mental Health America, the American Public Health Association, 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.[44]

People in solitary confinement are also more likely to be subjected to excessive force and abuses of power.[45] Correctional officers often misuse physical restraints, chemical agents, and stun guns, particularly when extracting prisoners from their cells.[46] The fact that the solitary confinement cells are isolated from the general population prisoners makes it more difficult to detect abuse.[47] Additionally, the idea that "the worst of the worst" are placed in solitary confinement makes it more likely that administrators will be apathetic or turn a blind eye to abuses.[48]

The Science of Solitary Confinement

Scientists are increasingly learning how solitary confinement can fundamentally alter the human brain. "There are definitely physical consequences of these experiences," University of Michigan neuroscientist Huda Akil told colleagues at the American Association for the Advancement of Science 2014 annual conference.

Although the insularity of prisons makes direct study of prisoners in solitary confinement difficult, key elements of the conditions of solitary confinement are each, according to Dr. Akil, "sufficient to dramatically change the brain," and have been shown in experiments to have permanent physiological effects. These elements include lack of interaction with the natural world, lack of touch and visual stimulation, and lack of social interaction. Dr. Akil noted that factors like stress and depression can literally shrivel areas of the brain, including the hippocampus, the region of the brain involved in memory, spatial orientation, and control of emotions.

This emerging neuroscience perspective follows decades of experiments on humans and other mammals that demonstrate the harms of isolation and sensory deprivation. In the 1960s, researchers at U.C. Berkeley found that rats held in supermax-style cells had fewer neurological connections, and thinner cerebral cortexes—the "grey matter" of the brain, which controls perception, language, planning, movement, and social cues. In a 2002 study of human adults, epidemiologists at University College London found that lonely people had higher levels of stress, indicated by increased levels of blood proteins and white blood cells, which can in turn lead to other health problems, including stroke. Recognizing the cruelty of isolation, Columbia University recently amended its ethical guidelines for scientific experiments, strictly limiting the circumstances under which laboratory animals may be held alone in cages.

See Nadia Ramlagan, Solitary Confinement Fundamentally Alters the Brain, Scientists Say, AAAS.org (Feb. 15, 2014), http://www.aaas.org/print/4706; Joseph Stromberg, The Science of Solitary Confinement, Smithsonian (Feb. 19, 2014), http://www.smithsonianmag.com/science-nature/science-solitary-confinement-180949793/?no-ist; see also Shruti Ravindran, Twilight in the Box, Aeon, http://aeon.co/magazine/living-together/what-solitary-confinement-does-to-the-brain/ (summarizing research on animals in isolation and conditions of sensory deprivation); David Brooks, The Archipelago of Pain, N.Y. Times, Mar. 7, 2014, http://www.nytimes.com/2014/03/07/opinion/brooks-the-archipelago-of-pain.html?hpw&rref=opinion (describing and condemning the psychological torment of long-term solitary confinement and referencing studies of animals in comparable conditions).

What is the impact of solitary confinement on people with mental illness?

Solitary confinement is psychologically difficult for even relatively healthy individuals, but it is devastating for those with mental illness. When people with severe mental illness are subjected to solitary confinement, they deteriorate dramatically. Many engage in bizarre and extreme acts of self-injury and suicide. It is not unusual for prisoners in solitary confinement to compulsively cut their flesh, repeatedly smash their heads against walls, swallow razors and other harmful objects, or attempt to hang themselves. In Indiana's supermax, the Wabash Valley Correctional Facility Secured Housing Unit (SHU), a prisoner with mental illness killed himself by self-immolation; another man choked himself to death with a washcloth.[49]

One of the leading experts on the mental health effects of solitary confinement explained the reasons for the shattering impact of solitary confinement on prisoners, especially those with mental illness:

> It is predictable that prisoners' mental state deteriorates in isolation. Human beings require at least some social interaction and productive activities to establish and sustain a sense of identify and to maintain a grasp on reality. In the absence of social interactions, unrealistic ruminations and beliefs cannot be tested in conversation with others, so they build up inside and are transformed into unfocused and irrational thoughts. Disorganized behaviors emerge. Internal impulses linked with anger, fear and other strong emotions grow to overwhelming proportions . . . It is under these extreme conditions that psychiatric symptoms begin to emerge in previously healthy prisoners. Of course, in less healthy ones there is psychosis, mania or compulsive acts of self-abuse or suicide. We know that the social isolation and idleness, as well as the near absolute lack of control over most aspects of daily life, very often lead to serious psychiatric symptoms and breakdown.[50]

The damaging effects of solitary confinement on people with mental illness are exacerbated because these prisoners often do not receive meaningful treatment for their illnesses. While mental health treatment in many prisons and jails is inadequate, the problems in supermax prisons and segregation units are even greater because the extreme security measures in these facilities render appropriate mental health treatment nearly impossible. For example, because prisoners in solitary confinement are usually not allowed to sit alone in a room with a mental health clinician, any "therapy" will generally take place at cell-front, often through an opening in a solid steel door, and necessarily at a high volume where other prisoners and staff can overhear the conversation. Most prisoners are reluctant to say anything in such a setting, not wanting to appear weak or vulnerable, so this type of "treatment" is largely ineffective.

The shattering impacts of solitary confinement are so well-documented that nearly every federal court to consider the question has ruled that placing people with severe mental illness in such conditions is cruel and unusual punishment in violation of the U.S. Constitution; at least one state court judge has also recently found the practice unlawful under state constitutional law, and the United States Department of Justice has found that the practice violates both the federal Constitution and federal statutory law.[51] Additionally, in 2012, the American Psychiatric Association, the world's largest psychiatric organization and a leader in humane care and effective treatment, issued a formal position statement that prisoners with serious mental illness should almost never be subjected to such treatment and in the rare event that isolation is necessary, they must be given extra clinical supports.[52]

"I haven't had a good night's sleep since I've been out. . . .

I'm living amongst millions of people out here, but I still feel alone. I cry at night because of these feelings."

- Anthony Graves, survivor

Who are the people placed in solitary confinement?

There is a popular misconception that all those in solitary confinement are violent, dangerous, and disruptive prisoners, commonly referred to as the "worst of the worst."[53] But any prison system only has a handful of prisoners that actually meet this description. If the use of solitary confinement was solely restricted to the dangerous and predatory, most supermax prisons and isolation units would stand virtually empty. The reality is that solitary confinement is misused and overused. One reason for this is that elected officials pushed to build facilities for solitary confinement based on a desire to appear "tough on crime," rather than actual need as expressed by corrections professionals.[54] As a result, many states built large supermax facilities they didn't need, and now fill the cells with relatively low-risk prisoners.[55]

The vast majority of the tens of thousands of people who end up in solitary confinement are not incorrigibly violent criminals; instead, many are severely mentally ill or cognitively disabled prisoners, who find it difficult to function in prison settings or understand and follow prison rules.[56] For example, Indiana prison officials admitted in 2005 that "well over half" of the state's supermax prisoners suffer from mental illness.[57] On average, researchers estimate that at least 30% of prisoners held in solitary confinement suffer from mental illness.[58]

Many others in solitary are the so-called "nuisance prisoners"—those who have broken minor rules,[59] those who file grievances or lawsuits against the prison or otherwise attempt to stand up for their rights, or those who simply annoy staff. These prisoners may present management challenges, but they do not require the extreme security and isolation of supermax institutions or segregation units.

Vulnerable prisoners are also disproportionately housed in solitary confinement units. 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.[60] While correctional officials often justify the use of solitary confinement as necessary protection for these prisoners, the effects of such placements are devastating. 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, may be denied access to programs and medically necessary healthcare, and are at increased risk of assault and harassment from officers.[61] Though new regulations under the Prison Rape Elimination Act (PREA) impose limits on the use of "protective custody," correctional agencies continue to house LGBTI individuals in isolation almost as a matter of course.[62]

Are children ever held in solitary confinement?

Sadly, yes. Thousands of children in both the adult and juvenile justice systems are routinely subjected to solitary confinement.[63] 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 who cannot be housed with adult prisoners in general population.[64] 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.[65]

Children are even more vulnerable to the harms of prolonged isolation than adults.[66] Young people's brains are still developing, placing them at higher risk of psychological harm when healthy development and social stimulation are impeded.[67] One of the tragic consequences 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.[68] For youth in adult jails, suicide rates in isolation are 19 times those for the general population.[69] At the same time, youth in isolation are often denied educational opportunities, mental health treatment, and proper nutrition[70]—denials which directly affect their ability to successfully re-enter society and become productive adults.[71]

These devastating consequences have led the U.S. Attorney General's National Task Force on Children Exposed to Violence to conclude that "nowhere is the damaging impact of incarceration on vulnerable children more obvious than when it involves solitary confinement."[72] Internationally, the U.N. Special Rapporteur on Torture has called for a global ban on the solitary confinement of children under 18.[73] And in June 2012, the Department of Justice issued national standards under PREA, stating that "the Department supports strong limitations on the confinement of adults with juveniles,"[74] and mandating that facilities make "best efforts" to avoid isolating children.[75]

"Being in a room over 21 hours a day is like a waking nightmare, like you want to scream but you can't."

- Lino Silva, on her experience in solitary confinement as a child

Does solitary confinement make prisons safer?

No. There is little evidence or research about the goals, impacts or cost-effectiveness of solitary confinement as a corrections tool. In fact, there is no evidence that using solitary confinement or supermax institutions have significantly reduced the levels of violence in prison or that such confinement acts as a deterrent. A 2006 study found that opening a supermax prison had no effect on prisoner-on-prisoner violence in Arizona, Illinois and Minnesota.[76] The same study found that creating a supermax had only limited impact on prisoner-on-staff violence in Illinois, none in Minnesota and actually increased violence in Arizona.[77] A similar study in California found that supermax prisons have not only failed to isolate or reduce violence in the state prison system, but in fact all measures of violence suggest it has increased.[78] Moreover, limiting the use of solitary confinement has been shown to decrease violence in prison. A reduction in the number of prisoners in segregation in Michigan has resulted in a decline in violence and other misconduct.[79] Similarly, Mississippi saw a 70% reduction in violence levels when it closed an entire solitary confinement unit.[80]

The justifications usually cited for building supermax prisons and solitary confinement units rely on a general misconception that putting "the worst of the worst" in solitary confinement creates a safer general population environment where prisoners will have greater freedom and access to educational and vocational programs.[81] Others defend solitary confinement as a general deterrent that reduces disruptive behavior throughout the prison.[82] However, there is only anecdotal support for these beliefs.[83] Indeed, contrary to the assumption that a few "worst of the worst" prisoners cause violence in prisons, researchers have shown that the levels of violence in American prisons may have more to do with the way prisoners are treated and how prisons are managed and staffed than the presence of a few "super violent" prisoners.[84]

> **"Our job in corrections is to protect the community, not to release people who are worse than they were when they came in."**
>
> ***- Rick Raemisch, Director, Colorado Department of Corrections***

Does solitary confinement make the public safer?

No. Not only is there little evidence that the enormous outlay of resources for supermax prisons and solitary confinement 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, many of them with severe mental illness, return to their communities after months or years in isolation, emerging with diminished social and life skills.[85] In 2006, the Commission on Safety and Abuse in America's Prisons raised concerns regarding the practice of releasing prisoners directly from segregation settings to the community.[86] The same year, a major psychiatric study of prisoners in solitary confinement noted that such conditions may "severely impair . . . the inmate's capacity to reintegrate into the broader community upon release from imprisonment."[87] Since the vast majority of prisoners—at least 95%—will eventually serve their sentences and be released, community reentry is an important element of a corrections department's mission.[88]

Unsurprisingly, 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.[89] In Colorado, two-thirds of prisoners released directly from solitary confinement returned to prison within three years; by contrast, prisoners who first transitioned from solitary confinement to the general prison population were 6% less likely to recidivate in the same period.[90] 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.[91] Another study, in Washington State, tracked 8,000 former prisoners upon release and found that, not only were those who were released directly from segregation more likely to reoffend, but they were also more likely to commit violent crimes.[92] Significantly, prisoners released directly from segregation had much higher recidivism rates compared to individuals who first transitioned from segregation to general population before their release (64%

compared with 41%).[93] 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.[94]

Is solitary confinement cost-effective?

No. Although there is little empirical evidence to support the efficacy of solitary confinement as a prison management tool, there is ample evidence that it is the most costly form of incarceration. There are several reasons for this. Supermax prisons are considerably more costly to build and operate, sometimes costing two or three times as much as conventional facilities.[95] Staffing costs are also much higher. Prisoners are usually required to be 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) must be done by paid staff. For these reasons, solitary confinement or supermax housing represents an enormous investment of limited criminal justice resources. In 2013, the U.S. Government Accountability Office (GAO), an independent investigative agency of Congress, reported that the federal BOP does not "regularly track or calculate the cost of housing inmates in segregated housing units," but that these units are significantly more expensive to operate than traditional maximum-security units where prisoners are housed in general population. This disparity is largely due to the high staffing needs of segregated housing units; at one federal prison, the GAO found, the prisoner-to-correctional officer ratio in a secure housing unit is about a third of the ratio for high-security general population. 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.[96] 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.[97]

Are there better alternatives?

Yes. Respected national standards as well as proven successful reforms, offer guidelines for different approaches to limiting the use of solitary confinement. The good news is that many state departments of corrections and other detention systems around the country are beginning to reform the ways they use solitary confinement.

The ABA's *Standards for Criminal Justice, Treatment of Prisoners* provide helpful guidelines for systemic reform of solitary confinement. The recommendations presented in the Standards address many aspects of solitary confinement (the Standards use the term "segregated housing"), and represent a consensus view of professionals from all segments of the criminal justice system.[98] The Standards include requirements for 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); and careful monitoring of prisoners in segregation for mental health deterioration and provision of appropriate services for those who experience such deterioration (23-6.11).

"Humans cannot survive without food, water, and sleep, but they also cannot survive without hope.

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

- Damon Thibodeaux, survivor

Federal Reforms

In June 2012, Senator Dick Durbin of Illinois held the first ever congressional hearing on solitary confinement, and in February 2014 Senator Durbin held a follow-up hearing on the subject. In his closing remarks at the second hearing, Senator Durbin declared that solitary confinement is overused across the country, and that children, pregnant women, and people with serious mental illness should never be subjected to the practice.[99]

As a result of these hearings, the federal BOP has faced greater scrutiny of its solitary confinement and isolation policies and practices. In May 2013, GAO issued a damning report on BOP's use of solitary confinement, finding that BOP has never assessed whether the practice contributes to prison safety.[100] The GAO report also criticized BOP for its failure to assess the psychological effects of long-term segregation, although its own Psychology Services Manual notes that extended periods in segregation "may have an adverse effect on the overall mental status of some individuals."[101] Facing mounting scrutiny from Congress and the public, BOP has announced that it has reduced its segregated population, and has agreed to a comprehensive and independent assessment of its use of solitary confinement.[102]

More sweeping systemic reforms are also underway in another large federal system. In September 2013, U.S. **Immigration and Customs Enforcement (ICE)** imposed monitoring requirements and substantive limits on the use of solitary confinement. 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.[103] Because ICE is comparable to BOP in many ways, including its extensive national network of government-run and private contract facilities, the ICE directive sets a strong example of rigorous monitoring and substantive requirements which BOP can and should follow.

State Reforms

Numerous states have taken steps to investigate, monitor, reduce, and reform their use of solitary. These reforms have resulted from litigation, agency initiative, and legislative action. A growing number of state corrections officials have taken direct steps to regulate the use of solitary confinement for **prisoners with mental illness**. 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.[104] In the Colorado prison system, as of December 2013, wardens have been directed that prisoners with "major mental illness" are no longer to be placed in administrative segregation; in 2014 both houses of the Colorado state legislature approved a law reflecting this change and providing the necessary funding to make it permanent.[105] 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.[106] In 2007, a New York State solitary confinement law was passed; the law excludes prisoners with serious mental illness from solitary confinement in state prison, 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.[107]

State correctional leaders have also undertaken more comprehensive reforms, focused on **limiting overall use of solitary confinement**. In February 2014, 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.[108] With the agreement, New York State becomes the largest prison system in the country to prohibit the use of punitive solitary confinement on prisoners under 18.[109] 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.[110] In November 2013, New Mexico's corrections secretary outlined a plan to move 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.[111] Almost 10% 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.[112] 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.[113] And in Maine, tighter controls and approval requirements on the use of SMUs, as well as expanded programming options, led to SMU population reductions of over 50%.[114] Other states have also significantly reduced their solitary confinement populations in recent years, including Mississippi[115] and Michigan.[116]

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.[117] In 2012, West Virginia's governor signed into law an outright ban on the use of punitive isolation in juvenile facilities.[118]

Lawmakers are also calling for **studies to address the impact of solitary confinement**. In May 2013, the Texas legislature passed a bill requiring a comprehensive review of the use of solitary confinement in adult and juvenile facilities across the state.[119] In 2011, the Colorado legislature required a review of administrative segregation and reclassification efforts for prisoners with mental illness or developmental

disabilities.[120] 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.[121] 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.[122] Similar efforts are ongoing in other states; in 2012, the Virginia Senate passed and sent to the House 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.[123]

Conclusion

The United States uses solitary confinement to an extent unequalled in any other democratic country. But this has not always been so. The current overuse of solitary confinement is a relatively recent development that all too frequently reflects political concerns rather than legitimate public safety needs. Based on decades of empirical research, we know that the human cost of increased physiological and psychological suffering caused by solitary confinement, coupled with the enormous monetary cost, far outweighs any purported benefits. Now, to build a fair, effective and humane criminal justice system, we must work to limit its use overall and to ensure that mentally ill persons and youth are not subject to its deprivations. [124]

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[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] *See* Reassessing Solitary Confinement: The Human Rights, Fiscal and Public Safety Consequences: Hearing Before the Sen. Judiciary Subcomm. on the Constitution, Civil Rights and Human Rights, 112th Cong. (2012) (statement of Charles E. Samuels Jr., Director, Federal Bureau of Prisons); Suzanne Kirchhoff, *Economic Impacts of Prison Growth,* CONGRESSIONAL RESEARCH SERVICE REPORT FOR CONGRESS (2010) *available at* www.fas.org/sgp/crs/misc/R41177.pdf *(p.11 of 39)*. BOP has recently claimed that it has decreased the number of prisoners held in its Secure Housing Units (SHU) by 25%. *See* Statement of Charles E. Samuels, Jr., Director, Federal Bureau of Prisons, Subcommittee on Crime, Terrorism, Homeland Security and Investigations, Committee on the Judiciary, U.S. House of Representatives, Hearing on the Oversight of the Federal Bureau of Prisons, at 7 (Sept. 19, 2013), *available at* http://www.fedcure.org/documents/SamuelsWitnessTestimonyHouseJudiciaryHearings19092013(c)FedCURE.pdf. However, BOP has not publicly elaborated on these changes and on the conditions under which prisoners moved out of SHU housing are now held.

[4] *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.").

[5] MEARS, *supra* note 1, at ii.

[6]*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).

[7] 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).

[8]*Id.*

[9]*Id.*

[10]Leena Kurki & Norval Morris, *The Purposes, Practices, and Problems of Supermax Prisons*, 28 CRIME AND JUST. 385, 389 (2001).

[11]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].

[12] *Id.* at Standard 23-1.0(o).

[13] United States Department of Justice, Letter to the Honorable Tom Corbett, Re: Investigation of the State Correctional Institution at Cresson and Notice of Expanded Investigation, May 31, 2013, at p. 5 (emphasis in original), *available at* http://www.justice.gov/crt/about/spl/documents/cresson_findings_5-31-13.pdf, citing also to Wilkinson v. Austin, 545 U.S. 209, 214, 224 (2005), where the United States Supreme Court described solitary confinement as limiting human contact for 23 hours per day, and Tillery v. Owens, 907 F.2d 418, 422 (3d Cir. 1990), where the Third Circuit described it as limiting contact for 21 to 22 hours per day.

[14] Atul Gawande, *Hellhole*, THE NEW YORKER, Mar. 30, 2009, *available at* http://www.newyorker.com/reporting/2009/03/30/090330fa_fact_gawande.

[15] *See, e.g.*, Stuart Grassian, *Psychopathological Effects of Solitary Confinement*, 140 AM. J. OF PSYCHIATRY 1450 (1983); R. Korn, *The Effects of Confinement in the High Security Unit at Lexington*, 15 SOC. JUST. 8 (1988); S.L. Brodsky & F.R. Scogin, *Inmates in Protective Custody: First Data on Emotional Effects*, 1 FORENSIC REP. 267 (1988); Craig Haney, *Mental Health Issues in Long-Term Solitary and ''Supermax'' Confinement*, 49 CRIME & DELINQUENCY 124 (2003); Holly A. Miller & G. Young, *Prison Segregation: Administrative Detention Remedy or Mental Health Problem?*, 7 CRIMINAL BEHAV. AND MENTAL HEALTH 85 (1997); HANS TOCH, MOSAIC OF DESPAIR: HUMAN BREAKDOWN IN PRISON (1992).

[16] Dr. Hernàn Reyes, The Worst Scars Are in the Mind: Psychological Torture, 89 Int'l Rev. Red Cross 591, 607 (2007).

[17] HUMAN RIGHTS WATCH, ILL-EQUIPPED: U.S. PRISONS AND OFFENDERS WITH MENTAL ILLNESS 149 n. 513 (2003).

[18] Organization of American States [OAS], *Annex to the Press Release Issued at the Close of the 147th Session: Situation of Children and Adolescents and Situation of Persons Deprived of Liberty* (Apr. 5, 2013), *available at* http://www.oas.org/en/iachr/media_center/PReleases/2013/023A.asp

[19] 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.

[20] EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT, 21ST GENERAL REPORT OF THE CPT 76 (2011), *available at* http://www.cpt.coe.int/en/annual/rep-21.pdf.

[21] Reyes, *supra* note 16; Metin Basoglu, et al., *Torture vs. Other Cruel, Inhuman and Degrading Treatment: Is the Distinction Real or Apparent?* 64 Arch. of Gen. Psychiatry 277 (2007).

[22] Stuart Grassian, *Psychopathological Effects of Solitary Confinement*, 140 AM. J. OF PSYCHIATRY 1450, 1452 (1983).

[23]*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).

[24] Grassian, *supra* note 22, at 1452-53; Haney, *supra* note 23, 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).

[25] Grassian, *supra* note 22, 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 23, at 130, 134; *see generally* HANS TOCH, MOSAIC OF DESPAIR: HUMAN BREAKDOWN IN PRISON (1992).

[26] Grassian, *supra* note 22, at 1453.

[27] *Id.*; Miller & Young, *supra* note 25, at 92.

[28] Grassian, *supra* note 22, at 1453; Miller & Young, *supra* note 25, at 92; Haney, *supra* note 23, at 131.

[29] Haney, *supra* note 23, at 130; s*ee generally* Korn, *supra* note 23.

[30] Haney, *supra* note 23, at 131.

[31] Miller & Young, *supra* note 25, at 91; *see generally* Korn, *supra* note 23.

[32] Miller & Young, *supra* note 25, at 91; *see generally* Korn, *supra* note 23.

[33] Haney, *supra* note 23, at 134; *see generally* Brodsky & Scogin, *supra* note 24.
[34] Haney, *supra* note 23, at 133.
[35] *Id.*
[36] Haney, *supra* note 23, at 137; *see generally* Brodsky & Scogin, *supra* note 24.
[37] Haney, *supra* note 23, at 133.
[38] *Id.*
[39] Grassian, *supra* note 22, at 1453; Lanes, *supra* note 7, at 539-40.
[40] 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).
[41] Testimony of Stuart Grassian, M.D., Madrid v. Gomez, 889 F. Supp. 1146, 1225 (N.D. Cal. 1995).
[42] *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 (E.D. 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 7, at 539-40.
[43] *Indiana Protection and Advocacy Services Com'n v. Commissioner, Indiana Dept. of Correction,* No. 1:08-CV-01317 TWP-MJD, 2012 WL 6738517 at *16 (S.D. Ind. Dec. 31, 2012).
[44] *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).
[45] Kurki & Morris, *supra* note 10, at 409.
[46] *See, e.g.*, Thomas v. Bryant, 614 F.3d 1288 (11th Cir. 2010) (affirming a judgment for plaintiffs in an action alleging, among other violations, that the overuse of chemical agents on prisoners with mental illness constituted a violation of the Eighth Amendment of the U.S. Constitution); Coleman v. Brown, No. 2:90-cv-00520-LKK-DAD, Doc. 5131 (E.D. Cal. Apr. 10, 2014) (in a case involving extensive video evidence of corrections officers using pepper spray on prisoners with mental illness who had committed minor rule violations such as refusing to come to their cell doors, ordering state officials to continue reforming the ways force is used on California prisoners); *see also* CAROLINE ISAACS & MATTHEW LOWEN, AM. FRIENDS SERV. COMM., BURIED ALIVE: SOLITARY CONFINEMENT IN ARIZONA'S PRISONS AND JAILS 14 (2007).
[47] *Id.* at 16.
[48] *Id.*; *see also* Maureen L. O'Keefe, *Administrative Segregation From Within: A Corrections Perspective*, 88 THE PRISON J. 123, 126 (2008).
[49] Karin Grunden, Man found hanging in cell at Wabash Valley Correctional Facility, TERRE HAUTE TRIBUNE-STAR, Oct. 1, 2003.
[50] Terry Kupers, *Isolated Confinement: Effective Method for Behavior Change or Punishment for Punishment's Sake?*, *in* THE ROUTLEDGE HANDBOOK OF INTERNATIONAL CRIME AND JUSTICE STUDIES 213, 215-16 (Bruce A. Arrigo & Heather Y. Bersot Eds., 2013). See also Testimony of Terry A. Kupers, M.D., *Jones El. v. Berge*, No. 00-C-421-C (W.D. Wis. Sept. 20, 2001) (describing his observations of psychosis and mental breakdown among prisoners with mental illness who are held in isolation).
[51] Federal and state 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. *See*, *e.g.*, Indiana Protection & Advocacy Services

Commission v. Commissioner, 2012 WL 6738517 (S.D. Ind., Dec. 31, 2012) (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) (granting a preliminary injunction requiring the removal of prisoners with serious mental illness from "supermax" prison); 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) ("defendants' present policies and practices with respect to housing of [prisoners with serious mental disorders] in administrative segregation and in segregated housing units violate the Eighth Amendment rights of class members "); Madrid v. Gomez, 889 F. Supp. 1146, 1265-66 (N.D. Cal. 1995) (holding prisoners with mental illness or those at a high risk for suffering injury to mental health in "Security Housing Unit" is unconstitutional); Casey v. Lewis, 834 F. Supp. 1477, 1549-50 (D. Ariz. 1993) (finding Eighth Amendment violation when "Despite their knowledge of the harm to seriously mentally ill inmates, ADOC routinely assigns or transfers seriously mentally ill inmates to [segregation units]"); 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); T.R. et al. v. S.C. Dept. of Corrections, C/A No. 2005-CP-40-2925 (S.C. Ct. Comm. Pleas 5th J. Cir. Jan. 8, 2014) (finding major deficiencies in the Department of Corrections' treatment of prisoners with mental illness, including solitary confinement, and ordering defendants to submit a remedial plan). *See also* Letter from Jocelyn Samuels, Acting Assistant Att'y Gen., U.S. Dep't of Justice, Civil Rights Div. & David J. Hickton, U.S. Att'y, U.S. Att'y's Office, W.D. Penn. to Tom Corbett, Gov. of Pennsylvania, Re: Investigation of the Pennsylvania Department of Corrections' Use of Solitary Confinement on Prisoners with Serious Mental Illness and/or Intellectual Disabilities (Feb. 24, 2014), *available at* http://www.justice.gov/crt/about/spl/documents/pdoc_finding_2-24-14.pdf (finding, after a system-wide investigation, that state prisons across Pennsylvania "use[] solitary confinement in ways that violate the rights of prisoners with SMI/ID [serious mental illness and intellectual disabilities]," citing "conditions that are often unjustifiably harsh," and detailing a number of other Eighth Amendment violations stemming from the practice of holding prisoners with serious mental illness in solitary confinement); Letter from Thomas E. Perez, Assistant Att'y Gen., U.S. Dep't of Justice, Civil Rights Div. to Tom Corbett, Gov. of Pennsylvania, Regarding the Investigation of the State Correctional Institution at Cresson (May 31, 2013), *available at* http://www.justice.gov/crt/about/spl/documents/cresson_findings_5-31-13.pdf; Response of the United States of America to Defendants' Motion in Limine No.4: To Exclude the Statement of Interest 2-5, Coleman v. Brown, Case No. 2:90-cv-0520 LKK DAD PC, Doc. No. 4919 (E.D. Cal. Nov. 12, 2013) (summarizing the United States government's position on the applicability of the Eighth Amendment to the placement of prisoners with serious mental illness in solitary confinement for prolonged periods of time).

[52] AM. PSYCH. ASSOC., POSITION STATEMENTS: SEGREGATION OF PRISONERS WITH MENTAL ILLNESS (2012), *available at* http://www.psychiatry.org/advocacy--newsroom/position-statements.

[53] Kurki & Morris, *supra* note 10, at 391.

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

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

[56] Haney, *supra* note 15, at 127.

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

[58]*See, e.g.*, James Ridgeway & Jean Casella, *Locking Down The Mentally Ill: Solitary Confinement Cells Have Become America's New Asylums,* 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.

[59] Kurki & Morris, *supra* note 10, at 411-12.

[60] *See, e.g.*, DiMarco v. Wyoming Dept. of Corrections, 473 F.3d 1334 (10th Cir. 2007) (overturning a judgment for the plaintiff in an action alleging a due process violation for an intersex woman who had been housed in solitary confinement in a men's prison).

[61] 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

[62] 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.

[63] *See* ALONE AND AFRAID, AMERICAN CIVIL LIBERTIES UNION (2013), *available at* https://www.aclu.org/files/assets/Alone%20and%20Afraid%20COMPLETE%20FINAL.pdf (summarizing the issues related to the use of solitary confinement in juvenile justice facilities); NO CHILD LEFT ALONE, AMERICAN CIVIL LIBERTIES UNION (2013), *available at* https://www.aclu.org/files/assets/toolkit_juvenile_solitary_briefing_paper_final.pdf (summarizing the issues related to the use of solitary confinement of children in adult facilities).

[64] 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.

[65] 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).

[66]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; Simkins et al., *supra* note 65.

[67] 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.

[68]HAYES, *supra* note 65, 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.

[69]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.

[70]*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).

[71]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.

[72] 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.

[73] 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]. *See also* 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.

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

[75] *Id.*

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

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

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

[79] 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.

[80] 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).

[81] Kurki & Morris, *supra* note 10, at 391.

[82] *Id.*

[83] *Id.*

[84] *Id.* at 416-17.

[85]*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).

[86] 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).

[87] Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 J. L. & POL'Y 325, 333 (prepared from a statement given to the Commission on Safety and Abuse in America's Prisons) (2006).

[88] *See, e.g.*, Timothy Hughes & Doris James Wilson, *Reentry Trends in the United States*, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics (2004), *available at* http://www.bjs.gov/content/pub/pdf/reentry.pdf (reporting that 95% of all state prisoners will eventually be released).

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

[90]O'KEEFE, *supra* note 5, at 25.

[91]LEGISLATIVE PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE, RECIDIVISM IN CONNECTICUT 41 (2001).

[92]COMMISSION ON SAFETY AND ABUSE IN AMERICA'S PRISONS, *supra* note 90, at 55.

[93] *Id.*

[94] Terry Kupers, *What To Do with the Survivors? Coping with the Long-term Effects of Isolated Confinement*, 35 CRIM. JUST. & BEHAV. 1005 (2008).

[95] ISAACS & LOWEN, *supra* note 47; Daniel P. Mears & Jamie Watson, *Towards a Fair and Balanced Assessment of Supermax Prisons*, 23 JUST. Q. 233, 260 (2006).

[96]ISAACS & LOWEN, *supra* note 47, at 4.

[97]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.

[98] The ABA Criminal Justice Standards on the Treatment of Prisoners (2010) represent the product of a five-year drafting process, approved by the American Bar Association House of Delegates in February 2010. They are based on constitutional and statutory law, relevant correctional policies and professional standards, the deep expertise of the drafters who represented all segments of the criminal justice system, as well as the comments of dozens of additional experts and groups (among them heads and former heads of correctional agencies, prisoners' advocacy organizations, and many professional associations). The full text of the Standards is available at: http://www.americanbar.org/publications/criminal_justice_section_archive/crimjust_standards_treatmentprisoners.html

[99] *See Reassessing Solitary Confinement*, DICK DURBIN: US SENATOR FOR ILLINOIS, ASSISTANT MAJORITY LEADER (Feb. 25, 2014), http://www.durbin.senate.gov/public/index.cfm/videos?ContentRecord_id=4aa1119b-582d-4b48-93c6-d8367d05b5e2.

[100] *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, 33 (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.

[101] *Id*. at 40.

[102] Press Release, Office of Senator Durbin, *Durbin Statement on Federal Bureau of Prisons Assessment of its Solitary Confinement Practices* (Feb. 4, 2013), *available at* http://durbin.senate.gov/public/index.cfm/pressreleases?ID=07260483-4972-4720-8d43-8fc82a9909ac.

[103] 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.

[104] *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).

[105] *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. *See also Restrictions on Solitary Confinement Pass Colorado House*, Fox21 Continuous News Desk (Apr. 28, 2014), http://www.fox21news.com/news/story.aspx?id=1036929#.U17XBle5LJY (reporting that Colorado SB 64, which will limit solitary confinement for prisoners with serious mental illness, passed the house on April 28, 2014; the bill is expected to be signed into law by the governor).

[106] *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.

[107] *See* N.Y. MENTAL HYGIENE LAW § 45.07(z) (2011); N.Y. CORRECTION LAW §§ 137, 401, 401(a) (2008).

[108] *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.

[109] *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.

[110] *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.

[111] 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.

[112] NEW MEXICO CENTER ON LAW AND POVERTY & ACLU OF NEW MEXICO, INSIDE THE BOX: THE REAL COSTS OF SOLITARY CONFINEMENT IN NEW MEXICO'S PRISONS AND JAILS (2013), available at http://nmpovertylaw.org/WP-nmclp/wordpress/WP-nmclp/wordpress/wp-content/uploads/2013/10/Solitary_Confinement_Report_FINALsmallpdf.com_.pdf

[113] 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.

[114] 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/.

[115] 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* Kupers et al., *supra* note 81; Buntin, *supra* note 81.

[116] In Michigan, new segregation parameters have led to fewer violent incidents. *See* Gerritt, *supra* note 80.

[117] *See* Nev. SB 107, *available at* http://www.leg.state.nv.us/Session/77th2013/Reports/history.cfm?billname=SB107.

[118] *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.

[119] S.B. 1003, Leg. Session 83(R) (Tex. 2013), *available at* http://www.capitol.state.tx.us/billlookup/Text.aspx?LegSess=83R&Bill=SB1003#.

[120] S. B. 176, 68th Gen. Assem., Reg. Sess. (Colo. 2011).

[121] H. Mem. 62, 50th Leg., 1st Sess. (N.M. 2011).

[122]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.

[123] *See* S. J. Res. 93, 2012 Leg., Reg. Sess. (Va. 2012) (the bill was subsequently tabled in the Virginia House Rules Committee and was not enacted into law); Study on Solitary Confinement, ACLU Virginia, *available at* http://acluva.org/8628/study-on-solitary-confinement/. In 2009, Maine's legislature also considered a bill that would have required a study of the use of solitary confinement in state prisons, as well as placing substantive limits on the practice. See L.D. 1611/H.P. 1139, Resolve 216 (Me. 2009) (signed in alternate form by the governor as a "resolve" requiring a review and report to the legislature).

[124] Quotations in block quotes throughout this paper come from the following sources: Podcast: Sarah Shourd tells of Her 410 Days in Solitary Confinement, AMERICAN CIVIL LIBERTIES UNION, *available at* https://www.aclu.org/prisoners-rights/sarah-shourd-410-days-solitary-confinement (Sarah Shourd was one of three American hikers captured by the Iranian government near the Iraq-Iran border in 2009. Ms. Shourd was held captive in solitary confinement in Iran for 410 days); Oral Testimony of Anthony Graves, Reassessing Solitary Confinement, U.S. Senate Judiciary Committee, Subcommittee on the Constitution, Civil Rights and Human Rights (June 21, 2012) (Graves is a death row exoneree who spent over a decade in solitary confinement on death row as punishment for a crime he did not commit); ALONE & AFRAID: CHILDREN HELD IN SOLITARY CONFINEMENT AND ISOLATION IN JUVENILE DETENTION AND CORRECTIONAL FACILITIES, AMERICAN CIVIL LIBERTIES UNION (2013), *available at* https://www.aclu.org/files/assets/Alone%20and%20Afraid%20COMPLETE%20FINAL.pdf; Rick Raemisch, *My Night in Solitary*, N.Y. TIMES, Feb. 20, 2014, http://www.nytimes.com/2014/02/21/opinion/my-night-in-solitary.html; Oral Testimony of Damon Thibodeaux, Reassessing Solitary Confinement II, U.S. Senate Judiciary Committee, Subcommittee on the Constitution, Civil Rights and Human Rights (Feb. 25, 2014) (Thibodeaux is a death row exoneree who spent 15 years in solitary confinement as punishment for a crime he did not commit).

Appendix A:
Laws Limiting or Requiring Study of Solitary Confinement

State	Citation, Title, and Link	Subject Matter				
		Comprehensive Reforms	Study Law	Youth in Adult Facilities	Youth in Juvenile Facilities	People with Mental Illness
AK	Alaska Delinq. R. 13 (2012). **Judge's Responsibility Concerning Conditions of Detention**. http://courts.alaska.gov/del.htm#13. *But see* Alaska Admin. Code tit. 7 §§ 52.900(16).				Statutory ban on "solitary confinement for punitive reasons" for juveniles. (Note admin. policies define "secure confinement" as including isolation "for the purposes of safety, security, or discipline.")	
CO	SB 64 (2014). **Use of Isolated Confinement: Mental Illness**. http://legiscan.com/CO/bill/SB064/2014.	Requires review of all prisoners in isolation and removal of prisoners with serious mental illness from isolation, and provides funding to facilitate these actions.				Requires removal of all prisoners with Serious Mental Illness from isolation, and provides appropriate funding.
CO	SB 11-176 (2011). **Concerning Appropriate Use of Restricted Confinement**. http://www.leg.state.co.us/clics/clics2011a/csl.nsf/fsbillcont3/A88F4FFC7		Requires annual report to legislature on status of ad seg, including reclassification efforts for prisoners with mental illness or developmental disabilities, duration of stay, reason for placement, and			

State	Citation, Title, and Link	Subject Matter				
		Comprehensive Reforms	Study Law	Youth in Adult Facilities	Youth in Juvenile Facilities	People with Mental Illness
	95C5C79872578080080E624?open&file=176_enr.pdf.		number discharged, plus internal reform efforts.			
CT	Conn. Gen. Stat. Ann. § 46b-133 (2012). **Arrest of child …. Admission of child to juvenile detention center**. http://www.cga.ct.gov/2013/pub/chap_815t.htm#sec_46b-133.				Applies to pre-adjudication juvenile facilities: Ban on juvenile "solitary confinement" of youth held in detention (but no definition of the term, allowing for ambiguity in agency policy).	
CT	Conn. Gen. Stat. Ann. § 17a-16(d)(1) (2014). **Rights of children and youths under the supervision of the Commissioner of Children and Families**. http://www.cga.ct.gov/2013/pub/chap_319.htm#sec_17a-16. *But see*				Applies to post-adjudication juvenile facilities: Places limits on "seclusion" except when youth is out of control and/or dangerous. However, agency regulation seems to allow disciplinary seclusion.	

State	Citation, Title, and Link	Subject Matter				
		Comprehensive Reforms	Study Law	Youth in Adult Facilities	Youth in Juvenile Facilities	People with Mental Illness
	Conn. Agencies Regs. § 17a-16-11 (2014).					
ME	LD 1611 (2010). **State Prison Solitary Confinement Review**. http://votesmart.org/bill/votes/29756#.U7VmlxBdWAg.		Charged corrections officials with reviewing due process procedures and classification policies for "special management" prisoners. Resulted in a detailed study and report to the legislature, which in turn coincided with various major reforms.			
ME	Me. Rev. Stat. tit. 34-A § 3032 (5) (2006). **Disciplinary Action**. http://www.mainelegislature.org/legis/statutes/34-A/title34-Asec3032.html.				Prohibition on disciplinary "confinement to a cell" and "segregation" (defined as separation from general population for administrative or punitive reasons) as punishment at juvenile correctional facilities.	
MI	Public Acts of 2013: Act No. 59 (2013). **Appropriati**					Forbids placement of prisoners with SMI in ad seg *due to* mental illness. Requires 12-hour

State	Citation, Title, and Link	Subject Matter				
		Comprehensive Reforms	Study Law	Youth in Adult Facilities	Youth in Juvenile Facilities	People with Mental Illness
	ons Bill. (Previously SB 4328.) http://www.legislature.mi.gov/(S(bgtjdl45aaluqf55up52sziq))/mileg.aspx?page=getObject&objectName=2013-HB-4328.					medical checks on SMI prisoners in ad seg, and annual DOC report to legislature on number of SMI prisoners in ad seg, and duration of placement. Also requires that reports on prisoner suicides include whether prisoner was in ad seg.
NV	Nev. Rev. Stat. § 62B.215 (2013). **Conditions and limitations on use of corrective room restriction by certain facilities for detention of children; reporting requirement**. http://www.leg.state.nv.us/NRS/NRS-062B.html.				Juvenile solitary confinement requires special approval and extensive monitoring and reporting, is only allowed after alternatives have been exhausted, and may not last longer than 72 hours.	
NM	S. Mem. 40, 50th Leg., 1st Sess. (2011). **A Memorial**		Mandates a study by a working group appointed by legislative committee,			

State	Citation, Title, and Link	Subject Matter				
		Comprehensive Reforms	Study Law	Youth in Adult Facilities	Youth in Juvenile Facilities	People with Mental Illness
	requesting … information regarding the use of solitary confinement in New Mexico…. http://www.sos.state.nm.us/uploads/files/Bills2011/Memorials/SM40.pdf.		reported to the legislature, on the impact of solitary confinement on prisoners, its effectiveness as a prison management tool, and its costs.			
NY	N.Y. Cor. Law Sec. 137 (2008). **Program of treatment, control, discipline at correctional facilities**. http://assembly.state.ny.us/leg/?default_fld=&bn=S06422&term=2007&Text=Y.					Requires that prisoners with SMI who face disciplinary segregation that could exceed 30 days be diverted to a residential mental health treatment unit established by statute for the treatment of prisoners who suffer from mental illness but do not require hospitalization. Defines SMI.
OK	Okla. Stat. tit. 10A, § 2-7-603(A) (2013). **Rules, policies and procedures required in facilities**.				Ban on punitive juvenile solitary confinement; defines solitary confinement as "involuntary removal of a juvenile from	

State	Citation, Title, and Link	Subject Matter				
		Comprehensive Reforms	Study Law	Youth in Adult Facilities	Youth in Juvenile Facilities	People with Mental Illness
	http://www.oklegislature.gov/osstatuestitle.html.				contact with other persons by confinement in a locked room, including the juvenile's own room, except during normal sleeping hours."	
TX	Tex. Sess. Law Serv. Ch. 1184 (S.B. 1003/HB 1266) (2013). **A Review of and Report Regarding the Use of Adult and Juvenile Administrative Segregation in Facilities in this State**. http://www.legis.state.tx.us/tlodocs/83R/billtext/pdf/SB01003F.pdf.		Amidst several proposed reforms, Texas passed legislation to review the use of solitary confinement. Requires formation of an independent, third-party task force to "conduct a comprehensive review of administrative segregation and seclusion policies and practices" in state adult and juvenile facilities. Requires a report to the governor and legislature.			
WV	W. Va. Code § 49-5-16a (1998). **Rules Governing Juvenile Facilities**. http://law.justia.com/codes/west-				Statutory ban on punitive solitary confinement of juveniles and on "lock[ing a youth] alone in a room unless that juvenile is not amenable to reasonable direction and	

State	Citation, Title, and Link	Subject Matter				
		Comprehensive Reforms	Study Law	Youth in Adult Facilities	Youth in Juvenile Facilities	People with Mental Illness
	virginia/2013/chapter-49/article-5/section-49-5-16a/. *But see* W.V. Div. Juvenile Serv., Pol'y 330.00, Resident Discipline, Proc. 6 Cat. I (permitting up to 10 days room confinement as a sanction for certain offenses).				control." (Note that administrative policy permits room confinement as a sanction).	

Appendix B:
Pending or Recently Proposed (2013 or 2014) Solitary Confinement Reform Bills

State	Bill Number and Title, Status, and Link	Subject Matter				
		Comprehensive Reforms	Study Bill	Youth in Adult Facilities	Youth in Juvenile Facilities	People with Mental Illness
CA	AB 1652: **Inmates: Prison Gangs**. Refused passage in Assembly vote 5/28/14. http://bit.ly/1lw5wq0.	Proposed reforms to classification of prisoners in segregated housing based on gang affiliation				
CA	SB 892: **State Prisons**. Re-referred to Assembly Committee on Appropriations 6/25/14. http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB892.	Among other proposed reforms, would require due process including Inspector General review prior to SHU placement due to alleged gang affiliation; review of indefinite-term SHU placements; specialized behavior plans to promote reintegration from SHU back to general population; and mental health screening/assessment of SHU prisoners.				
CA	Cal. S.B. 61: **An act to amend . . . the Welfare and Institutions**				Would ban juvenile solitary confinement except in limited cases ("immediate and substantial risk	

State	Bill Number and Title, Status, and Link	Subject Matter				
		Comprehensive Reforms	Study Bill	Youth in Adult Facilities	Youth in Juvenile Facilities	People with Mental Illness
	Code, relating to juveniles. Filed as inactive 4/29/14; Legislature adjourned without further action. http://www.leginfo.ca.gov/cgi-bin/postquery?bill_number=sb_61&sess=CUR&house=B&author=yee_%3Cyee%3E				of harm to others or to the security of the facility, and all other less-restrictive options have been exhausted"), address mental health issues related to behavior problems, and require transfer to mental health treatment facility in some cases.	
FL	SB 812/HB 959: **Youth in Solitary Confinement**. House hearing 3/18/13; Legislature adjourned without further action. http://www.flsenate.gov/Session/Bill/2013/0812/BillText/Filed/PDF.			Would strictly regulate the isolation of youth under 18 in jails and prisons. 24-hour max for "emergency isolation," only permitted after exhaustion of alternatives, MH eval after one hour, 72 hours max for disciplinary reasons after due process, 5 hours out of cell for youth in protective custody, among other protections. Also would require data reporting.		

State	Bill Number and Title, Status, and Link	Subject Matter				
		Comprehensive Reforms	Study Bill	Youth in Adult Facilities	Youth in Juvenile Facilities	People with Mental Illness
MD	SB0861/HB0787: **Corrections – Isolated Confinement Study**. Unfavorable House and Senate Judiciary Committee Reports 2014; Legislature adjourned without further action. http://mgaleg.maryland.gov/webmga/frmMain.aspx?pid=billpage&stab=03&id=hb0787&tab=subject3&ys=2014RS.		Requiring a third-party review of correctional facilities relating to isolated confinement; requiring a correctional facility to provide access to all data necessary for the review to the independent third party; requiring the independent third party to develop specified recommendations.			
MA	Bill H.1486: **An Act relative to the appropriate use of solitary confinement**. Hearing scheduled for 4/28/14 (no update).	Would require segregated housing to be the briefest term and under the least restrictive conditions practicable. Would require prisoners placed in segregated housing to receive notice and a				

State	Bill Number and Title, Status, and Link	Subject Matter				
		Comprehensive Reforms	Study Bill	Youth in Adult Facilities	Youth in Juvenile Facilities	People with Mental Illness
	https://malegislature.gov/Bills/188/House/H1486.	hearing. Would limit segregation to a maximum of six months "except in the most extraordinary circumstances" and set minimum standards for humane treatment.				
MA	SB 1133 (2013): **An Act relative to the appropriate use of solitary confinement**. Accompanied study order 05/05/14; Discharged to Ethics/Rules Committee (see S2117); Legislature adjourned without further action. https://malegislature.gov/Bills/188/Senate/S1133.	Calls for standards prior to placing a prisoner in solitary confinement, decreases extreme isolation conditions, encourages individualized rehabilitation, programming, and close mental health monitoring.				

State	Bill Number and Title, Status, and Link	Subject Matter				
		Comprehensive Reforms	Study Bill	Youth in Adult Facilities	Youth in Juvenile Facilities	People with Mental Illness
MT	LC 2085/ HB 536: **Montana Solitary Confinement Act**. Died in Standing Committee (House Judiciary) 4/24/13. http://openstates.org/mt/bills/2013/HB536/.	The bill would regulate isolation practices in prisons, reforming/ limiting the isolation of youth and adults.		The bill would regulate isolation practices in prisons, reforming/ limiting isolation of youth and adults. Among other reforms, would prohibit the prolonged solitary confinement of youth under 18, or solitary confinement for more than 3 consecutive days in a 30 day period.		
NH	N.H. H.B. 480-FN: **Relative to Solitary Confinement**. Introduced 1/3/13; Died in chamber. http://legiscan.com/NH/bill/HB480/2013.	Would reform several aspects of solitary confinement, including requiring mental health screening and 6-week limit for disciplinary seg.	Would establish commission to study solitary confinement in NH prisons.	Would place an absolute ban on solitary confinement of people younger than 18.		Would place a ban on solitary confinement of people with SMI or "other significant mental impairment."
NJ	S1650: **Restricts placement of inmates in certain housing units of State correctional facilities**. Referred to Senate Law	Would permit placement in a single housing cell in disciplinary detention or administrative segregation only when necessary to protect the prisoner or another prisoner from physical				

State	Bill Number and Title, Status, and Link	Subject Matter				
		Comprehensive Reforms	Study Bill	Youth in Adult Facilities	Youth in Juvenile Facilities	People with Mental Illness
	and Public Safety Committee 3/17/14. http://legiscan.com/NJ/text/S1650/id/990620.	harm. Would forbid such placement for any other purpose, including disciplinary or administrative. (Would not, however, apply to double-celling.)				
NY	A08588/S06466: **An Act to amend the correction law, in relation to restricting the use of segregated confinement and creating alternative therapeutic and rehabilitative confinement options (HALT Solitary Confinement Bill)**. Amend/recommit to Crime Victims, Crime and Correction (Senate) and	Would restrict the use of segregated confinement and create alternative therapeutic and rehabilitative confinement options; would limit the length of time a person may be in segregated confinement and exclude certain persons from being placed in segregated confinement.				

State	Bill Number and Title, Status, and Link	Subject Matter				
		Comprehensive Reforms	Study Bill	Youth in Adult Facilities	Youth in Juvenile Facilities	People with Mental Illness
	Correction (Assembly) 4/23/2014. http://assembly.state.ny.us/leg/?default_fld=&bn=S06466&term=2013&Summary=Y&Actions=Y&Votes=Y&Memo=Y&Text=Y.					
NY	A 9286: **An Act to amend the correction law, in relation to requiring structured out-of-cell programming for adolescents in segregated disciplinary confinement**. Referred to correction committee 4/7/14. http://assembly.state.ny.us/leg/?default_fld=&bn=A09286&t	Would amend existing law to add a category of exclusion to the statute governing disciplinary confinement; would ban punitive isolation and placement in adult segregation units for prisoners under 21 (except for up to 15 days in emergency situations presenting "unacceptable risk"); and would provide that prisoners under 21 in segregated confinement must be given out-of-cell programming				

State	Bill Number and Title, Status, and Link	Subject Matter				
		Comprehensive Reforms	Study Bill	Youth in Adult Facilities	Youth in Juvenile Facilities	People with Mental Illness
	erm=2013&Summary=Y&Actions=Y&Votes=Y&Memo=Y&Text=Y.	and physical exercise.				
TX	SB 1517: **Relating to the collection of data regarding the placement of a child in disciplinary seclusion in a juvenile facility**. Placed on House General State Calendar 5/21/13; Legislature adjourned without further action. http://legiscan.com/TX/drafts/SB1517.				The bill would have regulated disciplinary isolation practices in juvenile facilities. The provisions of this bill would: limit the use of disciplinary isolation to four hours, except in cases of assault, escape, or attempted escape (but places no time limits on its use in such cases); require that a youth places in disciplinary isolation for more than one hour complete a therapeutic self-analysis assignment; and mandate that administrators report data about the use of disciplinary isolation.	
TX	HB 686/SB 1802:		Bill would have required a report			

State	Bill Number and Title, Status, and Link	Subject Matter				
		Comprehensive Reforms	Study Bill	Youth in Adult Facilities	Youth in Juvenile Facilities	People with Mental Illness
	Relating to the reporting of certain information regarding inmates and the use of administrative segregation by the Texas Department of Criminal Justice. Left pending in House Criminal Justice Committee 4/17/13; Legislature adjourned without further action. http://www.legis.state.tx.us/tlodocs/83R/billtext/pdf/SB01802I.pdf#navpanes=0.		on the number of people in solitary and the status of mental health referrals.			
TX	SB 1357: **Relating to the use of administrative segregation or seclusion**	Would have regulated Ad Seg in county jails, established commission to set standards for appropriate use		Would restrict duration of some segregation of youth under 18 in county jails.		

State	Bill Number and Title, Status, and Link	Subject Matter				
		Comprehensive Reforms	Study Bill	Youth in Adult Facilities	Youth in Juvenile Facilities	People with Mental Illness
	in county jails. Read and referred to Senate Criminal Justice Committee 3/18/13; Legislature adjourned without further action. http://www.legis.state.tx.us/tlodocs/83R/billtext/pdf/SB01357I.pdf.	of Ad Seg or seclusion in county jails. Prior to placement in Ad Seg, would require consideration of less-restrictive measures, mental health evaluation, sheriff or designee approval, medical staff review. After 24 hours in segregation, jail would develop a behavioral plan. Would restrict duration of some segregation of youth under 18. Would also require reporting.				
Fed.	H.R. 4618 **Solitary Confinement Study and Reform Act of 2014** (Sponsor: Rep. Richmond). Introduced 5/8/14. https://www.govtrack.us/congress/bills/113/hr4618.	Would establish a commission to study the practice of solitary confinement and recommend best practices for reform; would require DOJ to issue regulations on best practices that would bind federal facilities and incent changes in behavior in state	Would establish a commission to study the practice of solitary confinement and recommend best practices for reform; would require DOJ to issue regulations on best practices that would bind federal facilities and incent changes in behavior in state			

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		Comprehensive Reforms	Study Bill	Youth in Adult Facilities	Youth in Juvenile Facilities	People with Mental Illness
		and local prison systems	and local prison systems			
Fed.	H.R. 4124 – **Protecting Youth from Solitary Confinement Act** (Sponsor: Rep. Cardenas). Referred to House Subcommittee on Crime, Terrorism, Homeland Security, and Investigations 4/16/14. http://beta.congress.gov/bill/113th-congress/house-bill/4124/text.				To ensure that juveniles adjudicated in Federal delinquency proceedings are not subject to solitary confinement while committed to juvenile facilities. Would require reporting of the most recent data regarding the rate at which juveniles are subject to solitary confinement and the trends demonstrated by the data.	
Fed.	S. 2567 – **REDEEM Act** (Sponsors: Sens. Booker and Paul); Introduced and referred to Senate Committee on the Judiciary 7/8/14;			Among other comprehensive federal criminal justice reforms, would limit solitary confinement of federally adjudicated youth convicted to temporary, emergency situations to prevent immediate	Among other comprehensive federal criminal justice reforms, would limit solitary confinement of federally adjudicated youth convicted to temporary, emergency situations to prevent immediate	

State	Bill Number and Title, Status, and Link	Subject Matter				
		Comprehensive Reforms	Study Bill	Youth in Adult Facilities	Youth in Juvenile Facilities	People with Mental Illness
	Introduced in House 7/18/14. https://beta.congress.gov/bill/113th-congress/senate-bill/2567.			harm to the youth or others. Would ban solitary confinement of youth for discipline/punishment or administrative reasons. Also places a 3-hour limit on solitary confinement of youth in most cases. (Youth in the federal system are convicted of adult crimes but generally held in juvenile facilities.)	harm to the youth or others. Would ban solitary confinement of youth for discipline/punishment or administrative reasons. Also places a 3-hour limit on solitary confinement of youth in most cases. (Youth in the federal system are convicted of adult crimes but generally held in juvenile facilities.)	
Fed.	US S 162: **Justice and Mental Health** (Sponsor: Sen. Franken). Placed on Senate Legislative Calendar under General Orders 6/20/13; Legislature adjourned without further action. http://thomas.loc.gov/cg	Would enhance screening and treatment/services for prisoners with mental illness, medical needs, substance abuse, and "social needs", including alternatives to solitary confinement and treatment for those in solitary confinement. Would also train employees in identifying and responding to mental health issues.				Would enhance screening and treatment/services for prisoners with mental illness, medical needs, substance abuse, and "social needs", including alternatives to solitary confinement and treatment for those in solitary confinement. Would also train employees in identifying and responding to mental health issues.

State	Bill Number and Title, Status, and Link	Subject Matter				
		Comprehensive Reforms	Study Bill	Youth in Adult Facilities	Youth in Juvenile Facilities	People with Mental Illness
	i-bin/bdquery/z?d113:S162:@@@L&summ2=m&.					
Fed. (DHS)	US S 744: **Opportunity, and Immigration Modernization Act** (Sponsor: Sen. Schumer). Passed Senate 6/27/13; Legislature adjourned without further action. https://www.govtrack.us/congress/bills/113/s744#summary.	Among other provisions related to DHS custody, would limit the use of solitary confinement, including prohibiting such confinement for persons younger than 18 years old.			Among other provisions related to DHS custody, would limit the use of solitary confinement, including prohibiting such confinement for persons younger than 18 years old.	