

**STATEMENT
OF THE
HUMAN RIGHTS DEFENSE CENTER**

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

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

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“It’s an awful thing, solitary. It crushes your spirit and weakens your resistance more effectively than any other form of mistreatment.”

U.S. Senator John McCain, on his treatment as a P.O.W.¹

Introduction

The Human Rights Defense Center (HRDC) is a 501(c)(3) non-profit organization dedicated to protecting the rights of persons incarcerated in prisons, jails and other detention facilities. HRDC publishes *Prison Legal News* (PLN), a monthly print magazine that reports on issues related to criminal justice and civil rights. PLN has published continuously since 1990 and has extensively covered topics related to solitary confinement and isolation units in the U.S. prison system.

This Statement is not intended as a comprehensive examination of the serious issue of solitary confinement (also referred to herein as segregation); rather, it is intended to provide the Subcommittee with salient points that may be of interest when considering this topic. Other organizations that focus on solitary confinement, including Solitary Watch,² the Segregation Reduction Project of the Vera Institute of Justice,³ the American Friends Service Committee’s STOPMAX campaign⁴ and the Stop Solitary project of the American Civil Liberties Union,⁵ can provide more detailed information.

Solitary Confinement: The Past

Solitary confinement in the U.S. prison system has a lengthy history, dating back to the nation’s first prison, the Walnut Street Jail, established in Philadelphia. In 1790, legislation authorized the construction of 16 small, individual cells at the Walnut Street Jail where prisoners were kept in isolation.⁶ Under what became known as the Pennsylvania System, prisoners were held in solitary confinement and segregated from each other almost all of the time, including during meals. The Pennsylvania System was intended to induce penitence and reformation by providing prisoners with time alone to contemplate their sins.⁷

¹ Richard Kozar, *John McCain (Overcoming Adversity)*, Chelsea House Pub. (2001)

² <http://solitarywatch.com>

³ <http://www.vera.org/project/segregation-reduction-project>

⁴ <http://afsc.org/campaign/stopmax>

⁵ <https://www.aclu.org/stop-solitary-resources-advocates>

⁶ <http://www.prisonersociety.org/about/history.shtml>

⁷ As stated by Alexis de Tocqueville after visiting the Eastern State Penitentiary in Philadelphia in 1831, “Thrown into solitude he reflects. Placed alone in view of his crime, [the prisoner] learns to hate it; and if his soul be not yet surfeited with crime, and thus have lost all taste for anything better, it is in solitude, where remorse will come to assail him.” Gustave Beaumont and Alexis de Tocqueville, *On the Penitentiary System in the United States and its Applicability to France* (Edwardsville: Southern Illinois University, 1964) (originally published 1833)

However, problems were noted even during the early years when solitary confinement was used as a form of correctional management, and the Pennsylvania System eventually fell out of favor. When Charles Dickens toured the United States in 1842, he visited the Eastern State Penitentiary in Pennsylvania and commented on conditions at that facility, including the use of segregation. He wrote:

The system here, is rigid, strict, and hopeless solitary confinement. I believe it, in its effects, to be cruel and wrong. In its intention, I am well convinced that it is kind, humane, and meant for reformation; but I am persuaded that those who devised this system of Prison Discipline, and those benevolent gentlemen who carry it into execution, do not know what it is that they are doing. I believe that very few men are capable of estimating the immense amount of torture and agony which this dreadful punishment, prolonged for years, inflicts upon the sufferers.... I hold this slow and daily tampering with the mysteries of the brain, to be immeasurably worse than any torture of the body: and because its ghastly signs and tokens are not so palpable to the eye and sense of touch as scars upon the flesh; because its wounds are not upon the surface, and it extorts few cries that human ears can hear; therefore I the more denounce it, as a secret punishment which slumbering humanity is not roused up to stay.⁸

A more detailed account of the history of solitary confinement in the U.S. prison system, from its inception to its modern usage, is presented in “The Resistable Rise and Predictable Fall of the U.S. Supermax,” by Stephen F. Eisenman.⁹

Solitary Confinement: The Present

According to a 2005 study, an estimated 25,000 prisoners are held in solitary confinement in U.S. prisons, jails and detention facilities.¹⁰ Solitary confinement takes several forms, including placement in isolation units, often called Security Housing Units (SHUs) or Special Management Units (SMUs) but more commonly known in prison vernacular as “the hole.” Prisoners may be placed in solitary for a myriad of reasons, including their security custody level, administrative segregation (ad-seg), disciplinary segregation and even protective custody.¹¹ Thus, the actual number of prisoners held in solitary confinement is likely much higher, and was estimated at more than 81,600 according to a 2005 Bureau of Justice Statistics report.¹²

Supermax facilities are literally built around the concept of solitary confinement. The federal Bureau of Prisons operates the supermax ADX prison in Florence, Colorado, and at least 44 states operate supermax facilities, including Pelican Bay State Prison in California and Red Onion State Prison in Virginia.¹³ Some jails (including Rikers Island in New York City), as well as women’s prisons and juvenile facilities, also maintain solitary confinement units.¹⁴

⁸ Charles Dickens, *American Notes for General Circulation*, Chapman & Hall (1842)

⁹ https://www.prisonlegalnews.org/23880_displayArticle.aspx

¹⁰ Daniel P. Mears, Urban Institute, “Evaluating the Effectiveness of Supermax Prisons” (2006)

¹¹ <http://solitarywatch.com/faq>

¹² <http://www.jstor.org/stable/pdfplus/10.1525/fsr.2011.24.1.46.pdf?acceptTC=true>

¹³ <http://solitarywatch.com/faq>

¹⁴ *Id.*

Conditions in Solitary Confinement

Solitary confinement is generally defined as isolating prisoners in individual cells for a majority of the time, usually 22-24 hours a day, with minimal contact with other people.¹⁵ Prisoners eat, sleep, use the toilet and live in such conditions for extended periods that last up to decades.¹⁶ When they leave their cells they are usually handcuffed and shackled, even to go shower.

Access to work and education programs, phones, visitation and even reading material is often curtailed (in the latter case, with the approval of the U.S. Supreme Court¹⁷). According to a 2008 American Friends Service Committee report, “Buried Alive: Long-Term Isolation in California’s Youth and Adult Prisons,” the lights in segregation cells may be left on 24 hours a day, some solitary confinement cells have no windows, and out-of-cell exercise (30-60 minutes per day) is usually provided in an enclosed “dog-run” or outdoor cage.¹⁸

While it is far removed from the reality, one way to experience solitary confinement firsthand is to lock oneself in a bathroom – which is the approximate size of an 8x10’ cell and contains the same amenities of a toilet and sink – and remain there for a period of several years, with meals being delivered through a slot in the door.

Solitary confinement was described by one U.S. District Court as follows:

Inmates on Level One at the State of Wisconsin’s Supermax Correctional Institution in Boscobel, Wisconsin spend all but four hours a week confined to a cell. The “boxcar” style door on the cell is solid except for a shutter and a trap door that opens into the dead space of a vestibule through which a guard may transfer items to the inmate without interacting with him. The cells are illuminated 24 hours a day. Inmates receive no outdoor exercise. Their personal possessions are severely restricted: one religious text, one box of legal materials and 25 personal letters. They are permitted no clocks, radios, watches, cassette players or televisions. The temperature fluctuates wildly, reaching extremely high and low temperatures depending on the season. A video camera rather than a human eye monitors the inmate’s movements. Visits other than with lawyers are conducted through video screens.¹⁹

Who is Placed in Solitary?

Corrections officials frequently claim that the “worst of the worst” prisoners are held in solitary confinement – those who pose a threat to prison staff, security or other prisoners. While that is true in some cases, other prisoners are placed in segregation because they are perceived as being “troublemakers” due to their religious or political beliefs, or because they exercise their Constitutional right to file grievances and lawsuits,²⁰ or violate prison rules.

¹⁵ *Id.*

¹⁶ Federal prisoner Tom Silverstein, for example, has been held in solitary confinement since 1983. Louisiana prisoners Herman Wallace and Albert Woodfox, two of the Angola Three, served 36 years in solitary confinement before being moved to another prison in 2008; the third Angola Three prisoner, Robert King, was released in 2001 after spending 29 years in solitary

¹⁷ <http://www.law.cornell.edu/supct/html/04-1739.ZS.html>

¹⁸ <http://afsc.org/sites/afsc.civicaactions.net/files/documents/Buried%20Alive%20%20PMRO%20May08%20.pdf>

¹⁹ *Jones’El v. Berge*, 164 F.Supp.2d 1096, 1098 (W.D. Wis. 2001)

²⁰ Previously, the website for the Tamms supermax prison in Illinois said the facility housed “some of the most litigious inmates in the department’s custody.” See: https://www.prisonlegalnews.org/20688_displayArticle.aspx

Few if any prison systems have clear, objective standards for placing prisoners in solitary confinement based on the severity of their actual conduct, particularly when they do not pose a threat to prison staff or other prisoners. Corrections officials have almost unfettered discretion in deciding whether a prisoner should be held in segregation, which can lead to arbitrary results.

Also, after spending hundreds of millions of dollars to build and staff supermax prisons, corrections officials may feel the need to keep them full to justify their existence. If there is an insufficient number of violent or dangerous prisoners to fill the supermax beds, then the criteria for placement in segregation are relaxed so that other prisoners can occupy solitary confinement units. Thus, it is not surprising that prisoners are sometimes placed in segregation “for petty annoyances like refusing to get out of the shower quickly enough.”²¹

Consider that the California Code of Regulations, Title 15, Section 3315, outlines dozens of “Serious Rule Violations” that may result in “segregation from the general population.” Such serious infractions include “possession of five dollars or more without authorization,” “tattooing or possession of tattoo paraphernalia,” “refusal to perform work or participate in a program as ordered or assigned,” “participation in gambling,” and “self mutilation or attempted suicide for the purpose of manipulation.”²²

In Virginia, a number of prisoners who practice the Rastafarian religion have been held in segregation for over a decade. Those prisoners were not placed in solitary because they were violent, incited a riot or similar reasons. Rather, they refused – based on their religious beliefs – to cut their hair. Rastafarians let their hair grow in dreadlocks and do not trim their beards, which conflicts with the grooming policy of the Virginia Department of Corrections.²³

Consequently, Rastafarian prisoners who refused to cut their hair were kept in solitary. According to a June 2010 *Associated Press* article, 48 Virginia prisoners were placed in segregation because they would not follow the prison system’s grooming policy.²⁴ In November 2010, 31 Rastafarian prisoners were released from segregation and transferred to another facility; however, some were returned to solitary confinement several months later after they refused to participate in a program that required them to cut their hair and shave their beards.²⁵ The use of prolonged segregation to punish Rastafarian prisoners who will not comply with the prison system’s grooming policy has been upheld by the federal courts.²⁶

Also, in Louisiana, a trio of prisoners known as the Angola Three²⁷ was held in solitary for up to 36 years, not because they continued to be violent but because in the 1970s they were involved with forming a Black Panther chapter while incarcerated. Angola prison warden Burl Cain said of one of the Angola Three prisoners in a deposition, “He wants to organize. He wants to be defiant.... He is still trying to practice Black Pantherism, and I still would not want him walking around my prison because he would organize the young new prisoners.”²⁸ When asked

²¹ http://www.newyorker.com/reporting/2009/03/30/090330fa_fact_gawande#ixzz1xjz6mWzA

²² http://www.cdcr.ca.gov/Regulations/Adult_Operations/docs/Title152006Final.pdf

²³ https://www.prisonlegalnews.org/24080_displayArticle.aspx

²⁴ <http://www.firstamendmentcenter.org/va-officials-rastafarian-inmates-no-longer-isolated-because-of-hair>

²⁵ https://www.prisonlegalnews.org/24080_displayArticle.aspx

²⁶ *McRae v. Johnson*, 261 Fed.Appx. 554 (4th Cir. 2008); *Smith v. Ozmint*, 396 Fed.Appx. 944 (4th Cir. 2010).

²⁷ Albert Woodfox, Herman Wallace and Robert King; Woodfox and Wallace were convicted of killing a prison guard, while King was convicted of murdering another prisoner (that conviction was later overturned; he pleaded guilty to conspiracy to commit murder and was released in 2001)

²⁸ <https://www.documentcloud.org/documents/207537-burl-cain-deposition-2008.html>

whether the Angola Three were political prisoners, Warden Cain responded, “Well, yes. Well, no, I don’t like the word political.”²⁹

It is clear that in some cases, prisoners are held in solitary confinement in U.S. prisons due to their religious and political beliefs, not because they are violent or dangerous. In other cases – particularly in California – prisoners are placed in segregation because they are deemed to be “validated” gang members or are suspected of having ties to prison gangs. “There is no other state in the country that keeps so many inmates in solitary confinement for so long,” stated Alexis Agathocleous, a staff attorney with the Center for Constitutional Rights.³⁰ Around 15,000 prisoners are held in segregation in California alone.³¹

However, the determination by prison officials that a prisoner is a gang member may be incorrect, as was the case with California state prisoner Ernesto Lira, who was “validated” as a gang member and placed in an isolation unit for 8 years. On September 20, 2009, following a four-week trial, a U.S. District Court held that Lira’s gang validation was not supported by accurate or reliable evidence and his due process rights had been violated. The court found that as a result of his lengthy stint in solitary, Lira suffered clinical depression and PTSD. His record was expunged and he was awarded over \$1 million in attorney fees.³²

But far exceeding the above examples, one type of offender is “vastly overrepresented” in segregation units: prisoners with mental illnesses.³³

Solitary Confinement and Mental Health

Because the negative impact of solitary confinement on prisoners’ mental health is so well established, it will not be discussed at great length in this Statement. A large body of research has found that solitary confinement results in a plethora of mental health problems;³⁴ that prisoners placed in segregation are more likely to commit suicide than those not held in such conditions;³⁵ and that solitary confinement is particularly damaging for people who have pre-existing mental health issues or are otherwise vulnerable, such as juveniles.

As Judge Richard Posner with the U.S. Court of Appeals for the Seventh Circuit put it, “there is plenty of medical and psychological literature concerning the ill effects of solitary confinement (of which segregation is a variant).”³⁶

²⁹ *Wilkerson v. Stalder*, U.S.D.C. (M.D. La.), Case No. 00-cv-00304-RET-DLD (Docket No. 233), online at: http://www.angola3.org/uploads/Angola_8th_A_Summary_Judgment_Decision.pdf

³⁰ http://www.huffingtonpost.com/2012/05/31/pelican-bay-state-prison-inmates-lawsuit-solitary-confinement-torture_n_1560175.html

³¹ https://www.prisonlegalnews.org/21966_displayArticle.aspx

³² https://www.prisonlegalnews.org/22316_displayArticle.aspx; www.nytimes.com/2012/03/31/us/battles-to-change-prison-policy-of-solitary-confinement.html?pagewanted=all

³³ https://www.prisonlegalnews.org/18789_displayArticle.aspx

³⁴ E.g., see: Bruce A. Arrigo and Jennifer Leslie Bullock, “The Psychological Effects of Solitary Confinement on Prisoners in Supermax Units,” *International Journal of Offender Therapy and Comparative Criminology* (2008); Craig Haney, “Mental Health Issues in Long-Term Solitary and ‘Supermax’ Confinement,” *Crime & Delinquency* 49, no. 1 (2003); Stuart Grassian, M.D., “Psychopathological Effects of Solitary Confinement,” *American Journal of Psychiatry* (1983)

³⁵ https://www.prisonlegalnews.org/20581_displayArticle.aspx; http://www.usatoday.com/news/nation/2006-12-27-inmate-suicides_x.htm

³⁶ *Davenport v. DeRobertis*, 844 F.2d 1310, 1316 (7th Cir. 1988); also see: *Madrid v. Gomez*, 889 F.Supp. 1146, 1230 (N.D. Cal. 1995) (“Social science and clinical literature have consistently reported that when human beings are subjected to social isolation and reduced environmental stimulation, they may deteriorate mentally and in some cases develop psychiatric disturbances”)

Nor is this a new development. In 1890, the U.S. Supreme Court noted problems with solitary confinement in relation to prisoners' mental health:

The peculiarities of this system were the complete isolation of the prisoner from all human society, and his confinement in a cell of considerable size, so arranged that he had no direct intercourse with or sight of any human being, and no employment or instruction.... But experience demonstrated that there were serious objections to it. A considerable number of the prisoners fell, after even a short confinement, into a semi-fatuous condition, from which it was next to impossible to arouse them, and others became violently insane; others still, committed suicide; while those who stood the ordeal better were not generally reformed, and in most cases did not recover sufficient mental activity to be of any subsequent service to the community.³⁷

Solitary confinement can be accurately described as an effective means of driving the sane insane, while making the insane even more mentally ill. This is in no small part because people are social by nature and need social interaction to maintain a healthy mental state.³⁸

As one U.S. District Court stated, “[Solitary confinement] units are virtual incubators of psychoses – seeding illness in otherwise healthy inmates and exacerbating illness in those already suffering from mental infirmities.”³⁹

It is hard to appreciate the scope and seriousness of mental health problems that result from solitary confinement without reading accounts of prisoners who cut their “arms and legs with chips of paint and concrete,” smear themselves and their cells with feces, strangle themselves with their clothes, swallow glass, and cut out their own testicles.⁴⁰ Or the Texas prisoner, held in segregation on death row, who gouged out and ate his one remaining eye.⁴¹

Release from Solitary Confinement

Significantly, many prisoners are in segregation because they have pre-existing mental health problems that make it difficult for them to follow prison rules.⁴² Once in segregation they decompensate, which makes it almost impossible for them to “earn” their way out of solitary through good behavior, because that involves following additional rules and regulations. This creates a Catch-22 that keeps mentally ill prisoners in solitary for extended periods of time, although such prisoners could be better managed with mental health treatment.⁴³

In other cases, prisoners are not released from segregation unless they become informants for prison officials or complete their sentences and are released – typically known as “snitch, parole or die” policies,⁴⁴ as those are the only ways out of solitary confinement. With respect to “validated” gang members, however, prisoners who are erroneously validated and are not in fact

³⁷ *In re Medley*, 134 U.S. 160, 168 (1890)

³⁸ http://www.newyorker.com/reporting/2009/03/30/090330fa_fact_gawande

³⁹ *Ruiz v Johnson*, 154 F.Supp.2d 975 (S.D. Tex. 2001)

⁴⁰ https://www.prisonlegalnews.org/22870_displayArticle.aspx

⁴¹ <http://www.reuters.com/article/2009/01/09/us-usa-deathrow-eyeball-idUSTRE50867T20090109>

⁴² <http://www.hrw.org/sites/default/files/reports/usa1003.pdf>

⁴³ https://www.prisonlegalnews.org/18789_displayArticle.aspx

⁴⁴ <http://solitarywatch.com/2011/09/22/the-truth-about-solitary-confinement-in-california/>

gang members cannot snitch (“debrief”), since they are not members of a gang; thus, they too cannot “earn” their way out of segregation. Such was the case with Ernesto Lira.

Don Specter, director of the Prison Law Office in California, noted that although prisoners “identified as gang members are granted periodic hearings, under the current policy they are not allowed to confront their accusers – or even to know who their accusers are. Nor can they cross-examine witnesses, present their own evidence or argue their case before a neutral decision maker, all basic rights afforded to defendants in the outside judicial system.”⁴⁵

In short, in many cases there are no specific criteria governing release from segregation. While most prison systems have a formal review process, in which a prisoner’s placement in solitary is reviewed on a regular basis to determine whether they should be released (typically every 30-90 days), the review process is usually *pro forma*, with prison staff rubber-stamping decisions to renew terms of solitary confinement *ad infinitum*.

Although the reviews constitute minimal due process for prisoners placed and held in segregation, in practice very little process is due and there is no meaningful, independent review of decisions to keep prisoners in solitary for years or even decades. When such decisions are challenged, the courts typically defer to the “informed discretion of corrections officials.”⁴⁶

Solitary Confinement and Public Safety

The vast majority of prisoners, including those in segregation, will one day be released. When they return to the community, prisoners held in prolonged solitary confinement, with little social interaction or ability to participate in education, treatment or other rehabilitative programs, will have a much more difficult time assimilating into society. This translates to higher recidivism rates, which in turn implicate public safety concerns.

According to recidivism data released by the California Department of Corrections in November 2011, the one-year recidivism rate for prisoners held in SHUs was 52.2%, compared with 47.6% for prisoners not assigned to SHUs. At two years, the recidivism rate was 64.9% for prisoners held in SHUs compared with 60.2% for non-SHU prisoners; at three years the rates were 69.8% and 64.8%, respectively.⁴⁷

Further, in a 2006 report, the Commission on Safety and Abuse in America’s Prisons warned that “the misuse of segregation works against the process of rehabilitating people, thereby threatening public safety.”

This is particularly true for prisoners released directly from segregation units to the community with no post-release supervision (i.e., prisoners who expire their sentences rather than being released on parole). The Commission on Safety and Abuse in America’s Prisons stated, “Prisoners often are released directly from solitary confinement and other high-security units directly to the streets, despite the clear dangers of doing so.”⁴⁸

The Commission cited “a large study of former prisoners in Washington”⁴⁹ that “tracked rearrest rates among people released from prison in 1997 and 1998, a total of 8,000 former

⁴⁵ <http://www.nytimes.com/2012/03/31/us/battles-to-change-prison-policy-of-solitary-confinement.html?pagewanted=all>

⁴⁶ *Turner v. Safley*, 490 U.S. 78, 90 (1987); see also, Sharon Dolovich, “Forms of Deference in Prison Law,” *Federal Sentencing Reporter*, Vol. 24, No. 4, p.245 (April 2012)

⁴⁷ [http://www.cdcr.ca.gov/adult_research_branch/Research_Documents/ARB_FY_0607_Recidivism_Report_\(11-23-11\).pdf](http://www.cdcr.ca.gov/adult_research_branch/Research_Documents/ARB_FY_0607_Recidivism_Report_(11-23-11).pdf)

⁴⁸ http://www.vera.org/download?file=2845/Confronting_Confinement.pdf

⁴⁹ <http://www.son.washington.edu/faculty/fac-page-files/Lovell-SupermaxRecidivism-4-19-04.pdf>

prisoners.” The study found that prisoners who had spent at least three continuous months in segregation, and often much longer, “were somewhat more likely than the others to commit new felonies. And among the repeat offenders, formerly segregated prisoners were much more likely to commit violent crimes.” Further, prisoners “who were released directly from segregation had a much higher rate of recidivism than individuals who spent some time in the normal prison setting before returning to the community: 64 percent compared with 41 percent.”⁵⁰

Additionally, in Illinois, the average recidivism rate for adult prisoners for the two years prior to the opening of the Tamms supermax facility in 1998 was 42.5 percent. In the two years after the supermax opened, the recidivism rate averaged 46.2 percent. In the following two years (fiscal years 2000-2001), the average recidivism rate was 54.5 percent. Thus, recidivism rates in Illinois increased by more than 28 percent from 1996 to 2001, despite – or potentially due to – the opening of a supermax in which hundreds of prisoners were placed in segregation.⁵¹

Solitary Confinement: The Future

According to the 2006 report by the Commission on Safety and Abuse in America’s Prisons:

There is growing consensus that correctional systems should rely less on segregation, using it only when absolutely necessary to protect prisoners and staff – and that further reforms are needed. Keeping people locked down for hours on end is counter-productive in the long run. To the extent that safety allows, prisoners in segregation should have opportunities to better themselves through treatment, work, and study, and to feel part of a community, even if it is a highly controlled community.⁵²

Several state prison systems have taken steps to reduce their use of solitary confinement, and have not experienced adverse effects as a result. Unfortunately, in many cases such changes have occurred due to lawsuits and not because prison officials have recognized and voluntarily intervened to remediate the many problems associated with segregation.

In June 2010, as a result of protracted and adversarial litigation, Mississippi agreed to close Unit 32, a supermax unit at the Mississippi State Penitentiary in Parchman. Prison officials had described prisoners held in Unit 32 as the “worst of the worst.” Such prisoners “were permanently locked down in solitary confinement with no possibility of earning their way to a less restrictive environment through good behavior.”⁵³

Following a consent decree entered in 2006, programs were developed whereby prisoners could earn their way out of solitary confinement through good behavior. They were allowed out of their cells, were permitted to eat meals together, and recreational activities and rehabilitative programs were provided.⁵⁴ Violence decreased and the population at Unit 32 was reduced from 1,000 to 150 by late 2007.⁵⁵

Mississippi DOC Commissioner Christopher Epps changed his mind about conditions at Unit 32 during the course of the litigation. “If you treat people like animals, that’s exactly the

⁵⁰ http://www.vera.org/download?file=2845/Confronting_Confinement.pdf

⁵¹ https://www.prisonlegalnews.org/23880_displayArticle.aspx

⁵² http://www.vera.org/download?file=2845/Confronting_Confinement.pdf

⁵³ https://www.prisonlegalnews.org/22885_displayArticle.aspx

⁵⁴ <http://www.nytimes.com/2012/03/11/us/rethinking-solitary-confinement.html?pagewanted=all>

⁵⁵ https://www.prisonlegalnews.org/22885_displayArticle.aspx

way they'll behave," he said. Epps, who is also the president-elect of the American Correctional Association, noted that transitioning prisoners in Unit 32 out of solitary confinement "...worked out just fine. We didn't have a single incident."⁵⁶

In April 2007, the State of New York agreed to settle a lawsuit challenging the placement of mentally ill prisoners in segregation.⁵⁷ The settlement requires the state to create "new mental health treatment programs for prisoners with serious mental illness who have SHU and keeplock sentences, and requires the state to provide at least two hours a day of out of cell treatment and programming to all prisoners with serious mental illness remaining in SHU. It requires reviews of disciplinary sentences for inmates with serious mental illness to reduce their sentences and divert them from SHU."⁵⁸

New York subsequently enacted legislation that established safeguards for mentally ill prisoners, including mental health and suicide prevention screening for prisoners placed in segregation; diverting prisoners with serious mental illnesses "from segregated confinement, where such confinement could potentially be for a period in excess of thirty days, to a residential mental health treatment unit"; reviews every 14 days for mentally ill prisoners not diverted from segregation; and staff training on how to deal with mentally ill prisoners.⁵⁹

In Maine, as a result of voluntary action by DOC Commissioner Joseph Ponte, the number of prisoners held in the Maine State Prison's solitary confinement unit has been reduced by more than half. Ponte, who was appointed in 2011, ordered that prisoners not be placed in solitary for more than 72 hours without his approval. He also asked prison staff to impose informal sanctions rather than segregation when prisoners commit rule infractions; removed prisoners from the supermax unit who did not belong there; stopped violent "cell extractions" of uncooperative or unruly prisoners; and instituted other reforms recommended by a panel of corrections officials that had studied solitary confinement-related issues.⁶⁰

In 2007, Indiana agreed to remove seriously mentally ill prisoners from segregation units as part of a settlement agreement in a class-action lawsuit. The court had found that solitary confinement inflicted extreme social isolation and sensory deprivation on mentally ill prisoners; the settlement specified that such prisoners would receive mental health evaluations and treatment, among other provisions.⁶¹

Additionally, two prisoners at the Pelican Bay State Prison in California, Todd Ashker and Danny Troxell, filed suit in 2009 challenging their lengthy periods of solitary confinement. Both had spent over 20 years in segregation in 8x10' windowless cells. In May 2012, the Center for Constitutional Rights took over representation in the lawsuit and amended it to include hundreds of other prisoners held in solitary confinement.⁶² According to statistics released by California prison officials in 2011, 513 prisoners at Pelican Bay have been kept in segregation for 10 years or more; of those, 78 have been held in solitary for 20 years or more.⁶³ The case remains pending.⁶⁴

⁵⁶ <http://www.nytimes.com/2012/03/11/us/rethinking-solitary-confinement.html?pagewanted=all>

⁵⁷ <http://www.nytimes.com/2007/04/25/nyregion/25mental.html>

⁵⁸ http://www.disability-advocates.org/adv_detail.php?CID=3

⁵⁹ N.Y. Correct. Law §§ 137, 401, 401(A)(2008); N.Y. Mental Hyg. Law § 45.07(Z) (2011)

⁶⁰ https://www.prisonlegalnews.org/23731_displayArticle.aspx

⁶¹ https://www.prisonlegalnews.org/19179_displayArticle.aspx

⁶² http://www.huffingtonpost.com/2012/05/31/pelican-bay-state-prison-inmates-lawsuit-solitary-confinement-torture_n_1560175.html

⁶³ <http://solitarywatch.com/2011/09/22/the-truth-about-solitary-confinement-in-california>

⁶⁴ *Ashker v. Brown*, U.S.D.C. (N.D. Cal.), Case No. 4:09-cv-05796-CW

Conclusion

Solitary confinement presents a host of problems, especially for prisoners who are mentally ill – although *all* prisoners placed in segregation, whether mentally ill or not, are at risk of adverse effects. There are few objective standards and little meaningful due process when placing and keeping prisoners in solitary confinement. Conditions in solitary, including the inherent lack of social interaction, result in physical and mental harm to prisoners. In some cases, prisoners are placed in segregation not because they are violent or dangerous but rather due to their religious or political beliefs, or because they file complaints or commit minor rule violations. Studies indicate that prisoners held in solitary confinement have higher rates of recidivism following their release from prison, thereby endangering public safety.

Prolonged placement in solitary confinement is constitutionally questionable, and lawsuits have increasingly challenged such practices. As a result of litigation – and voluntarily in some cases – a number of states have taken steps to reduce the use of solitary confinement in their prison systems without negatively impacting institutional security.

For these reasons, solitary confinement should be curtailed and used only in cases where it is essential to ensure the safety of prison staff or other prisoners, and then only for periods of time necessary to meet such safety-related needs. There must be regular, meaningful reviews of continued placement in segregation and clear standards for release from segregation. Further, whenever possible, mentally ill prisoners should not be held in solitary confinement.

This Statement is submitted on behalf of the
Human Rights Defense Center by:

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