CAGED IN

SOLITARY CONFINEMENT’S DEVASTATING HARM ON PRISONERS WITH PHYSICAL DISABILITIES

January 2017
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EXECUTIVE SUMMARY

Every day, in prisons and jails across America, prisoners with physical disabilities are held in conditions of near-total isolation—also known as solitary confinement. Locked in cages roughly the size of a regular parking space, prisoners held in solitary confinement are kept alone in their cells for approximately 22 hours a day or more. While in solitary, they have little or no human interaction, access to light, rehabilitative programming, or constructive activity. In 2015, the ACLU sought to expose the harms of solitary confinement by investigating the challenges facing prisoners with physical disabilities subjected to this devastating practice. The current and formerly incarcerated people with disabilities who we spoke with described their experiences of enduring extreme isolation for days, months, and even years. They shared the pain and humiliation of being left to fend for themselves in solitary confinement without wheelchairs, prosthetic limbs, or other necessary accommodations to carry out life’s basic daily tasks. Without these vital accommodations, many of them were left without the means to walk, shower, clothe themselves, or even use the toilet. Deaf and blind prisoners reported that prison officials failed to provide them with access to hearing aids, Braille materials, certified sign language interpreters, or other auxiliary aids and services that are necessary to facilitate meaningful communication. As a result, many prisoners reported being left completely isolated without any ability to communicate with other prisoners, staff, family members, and other visitors.

The devastating psychological and physical harms of solitary confinement are well known. Mental health experts studying the issue agree that solitary confinement is psychologically harmful. People subjected to solitary confinement may experience hallucinations, depression, paranoia, anxiety, and thoughts of suicide, among other negative reactions. In fact, prisoners held in solitary confinement account for nearly 30 percent of all completed suicides by incarcerated people. Beyond this, solitary confinement can also be physically debilitating. Stress, enforced idleness, and limited access to health care, including medically necessary prescriptions and physical therapies, among other factors, can lead to severely diminished health outcomes for prisoners.

Locked in cages roughly the size of a regular parking space, prisoners held in solitary confinement are kept alone in their cells for approximately 22 hours a day.

Our own research and interviews with incarcerated and formerly incarcerated people with physical disabilities, as well as medical experts and disability rights advocates, confirmed these harms and more. Alarmingly, we’ve found that for prisoners with physical disabilities, solitary confinement imposes additional harms. Prisoners with mobility disabilities, such as those resulting from spinal cord injuries, often rely on regular physical therapy, exercise, and access to proper prescription medications to maintain a healthy existence. Yet the highly restrictive environment of solitary confinement runs completely counter to these health goals. Held in tiny cells for upwards of 22 hours per day, prisoners with physical disabilities in solitary confinement are either completely denied or seldom provided the regular exercise necessary to prevent muscle deterioration. They are also denied or seldom provided the physical therapy necessary to support muscle strength and conditioning.

Similarly, blind and/or deaf prisoners experience unique harms when held in solitary confinement, and many experience this isolated condition more acutely than seeing or hearing prisoners. These prisoners often experience a heightened form of sensory deprivation while trapped in the mind-numbing emptiness of solitary confinement. Not only are these prisoners locked in their cells for most or all of the day, they are also frequently denied access to in-cell constructive or recreational activities, such as reading, writing, or watching television, which can be used to help stimulate the mind while in isolation. Instead, many are left to languish in a state of total idleness for weeks, months, and even years at a time.

Prisoners with physical disabilities are not only acutely and uniquely harmed by solitary confinement, but they have also been effectively shut out from participating in critical aspects of daily prison life. Drawing from research, NEARLY 50% OF ALL SUICIDES BY INCARCERATED PEOPLE ARE COMPLETED IN SOLITARY CONFINEMENT

NEARLY 50% OF ALL SUICIDES BY INCARCERATED PEOPLE ARE COMPLETED IN SOLITARY CONFINEMENT

Photo: Andrew Burton/Getty
we know that prisoners with physical disabilities in solitary confinement are frequently denied necessary accommodations to ensure they have equal access to prison medical and mental health care, as well as prison programs and services—including educational and vocational classes, visitation, telephone calls, and exercise yards. For example, prison authorities have failed to provide accommodations—such as sign language interpreters for deaf prisoners or text-to-audio devices for blind prisoners—in all prison programs, thus actively thwarting effective communications with these prisoners. The exclusion of prisoners with physical disabilities from the routine aspects of prison life is compounded by the fact that the highly restrictive environment of solitary confinement already limits opportunities for social interaction and environmental stimulation. Prisoners with physical disabilities are in some cases shut out from even the barest of opportunities for engagement and constructive activity afforded to other prisoners, and as a result are left in near-total isolation.

Given the damage to the human psyche and physical health, the United Nation’s Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment strongly urges corrections systems to ban solitary confinement beyond 15 days. Beyond that point, the Special Rapporteur has concluded that solitary confinement can amount to torture. Yet, despite these clearly identified harms and calls to end the practice, prison officials continue to rely on solitary confinement for a host of reasons beyond the most serious crimes of violence or attempted escape, such as for a minor infraction like disobeying a routine order or failing to keep a tidy cell. As with all incarcerated persons, those with physical disabilities can be placed into solitary confinement for many reasons, including where the prisoner:

- Poses a general threat to the safety or security of the facility (i.e., administrative segregation, or “ad seg”);
- Is at risk of serious physical harm or death due to the threat posed by other prisoners (i.e., protective custody);
- Violates a prison rule (i.e., disciplinary segregation);
- Has a communicable disease (i.e., medical isolation); or
- Has a disability and prison officials determine it is more convenient to place them in solitary confinement until permanent housing is identified.

What is most troubling is the fact that prisoners with disabilities are placed into solitary confinement even when it serves no penological purpose. Corrections officials have put prisoners with physical disabilities into solitary confinement because there were no available cells that could accommodate them in a less restrictive environment. The lack of available cells that can accommodate prisoners with physical disabilities can also contribute to prolonged placements in solitary confinement. One blind prisoner was held in solitary confinement for six weeks without any explanation until corrections officials determined where to place him. During that time he was denied access to showers, clean clothing, telephone calls, commissary, visitation, job assignments, and writing materials. Corrections officials have also placed deaf prisoners into solitary confinement for failing to respond to spoken commands they could not hear. Deaf prisoners also reported being disciplined for communicating in American Sign Language—actions which were interpreted by corrections staff as threatening.

Prisoners with disabilities are placed in solitary confinement even when it serves no penological purpose.

Contributing to the overuse of solitary confinement in the United States is the fact that this harsh condition is inflicted on prisoners for a host of reasons beyond the most serious crimes of violence or attempted escape, such as for a minor infraction like disobeying a routine order or failing to keep a tidy cell. As with all incarcerated persons, those with physical disabilities can be placed into solitary confinement for many reasons, including where the prisoner:

- Poses a general threat to the safety or security of the facility (i.e., administrative segregation, or “ad seg”);
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- Violates a prison rule (i.e., disciplinary segregation);
- Has a communicable disease (i.e., medical isolation); or
- Has a disability and prison officials determine it is more convenient to place them in solitary confinement until permanent housing is identified.

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This report draws from interviews with currently and formerly incarcerated people with disabilities, disability rights advocates, prisoner rights’ advocates, medical experts, legal scholars, and correctional officials and examines the conditions of confinement, harms, and challenges facing prisoners with physical disabilities in solitary confinement. In addition, this report fills some of the gaps in data and, where possible, builds on existing data to provide a snapshot of (1) the number of people with physical disabilities; (2) the number of prisoners with physical disabilities in solitary confinement; and (3) the volume of grievances filed by prisoners with disabilities in 10 state prison systems: California, Florida, Georgia, Illinois, Louisiana, Nevada, Ohio, Pennsylvania, Rhode Island, and Virginia. Finally, the report closes by discussing the available legal protections and by offering a set of recommendations to federal, state, and local officials and policymakers to guide reforms for prisoners with physical disabilities in solitary confinement.

### KEY FINDINGS

The large population of prisoners with physical disabilities makes it imperative that we address the challenges they face in prisons and jails nationwide. The needs of this sizable group go unmet. The large proportion of people with disabilities in prisons and jails nationwide likely means that this group makes up a significant share of those held in solitary confinement. However, there is no publicly available data on the number of prisoners with disabilities in solitary confinement or any other form of restrictive housing. Few exceptions, corrections departments have no data, incomplete data, or inaccurate data on people with disabilities in their systems. Without accurate data, there is no way to tell exactly how many are subjected to the harms of solitary confinement and no way to properly ensure that their basic human needs—food, water, shelter, and medical and mental health care—are met.

![Table](attachment:table.png)

**Table 1: Prisoners as a Percentage of Total Custody Population by State and Disability**

<table>
<thead>
<tr>
<th>State</th>
<th>Blind* and/or Deaf</th>
<th>Total Disability</th>
<th>Mobility, Assistive Devices, and Special Passes**</th>
</tr>
</thead>
<tbody>
<tr>
<td>California</td>
<td>2.03%</td>
<td>8.07%</td>
<td>5.38%</td>
</tr>
<tr>
<td>Florida</td>
<td>≤1.0%</td>
<td>2.29%</td>
<td>20.93%</td>
</tr>
<tr>
<td>Georgia</td>
<td>≤1.0%</td>
<td>3.28%</td>
<td>3.10%</td>
</tr>
<tr>
<td>Illinois</td>
<td>Does not track data</td>
<td>Does not track data</td>
<td>Does not track data</td>
</tr>
<tr>
<td>Louisiana</td>
<td>1.08%</td>
<td>1.21%</td>
<td>2.55%</td>
</tr>
<tr>
<td>Nevada</td>
<td>≤1.0%</td>
<td>Did not provide data</td>
<td>Did not provide data</td>
</tr>
<tr>
<td>Ohio</td>
<td>1.45%</td>
<td>3.98%</td>
<td>N/A</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>4.46%</td>
<td>7.06%</td>
<td>7.07%</td>
</tr>
<tr>
<td>Rhode Island</td>
<td>≤1.0%</td>
<td>1.47%</td>
<td>1.31%</td>
</tr>
<tr>
<td>Virginia</td>
<td>≤1.0%</td>
<td>N/A</td>
<td>N/A</td>
</tr>
</tbody>
</table>

* Does not include persons whose vision can be corrected with prescription glasses.

** We cannot be certain how reflective this category may be of total population numbers, as prisoners with disabilities might have multiple devices or none.

1 Refers to where public records responses resulted in incomplete data, or data that was inconsistent across categories of disability.

† Refers to assistive devices and special passes, such as access to lower bunks or assistance from an attendant.
Population Data

A few findings with respect to population numbers are important to highlight:

- Almost 1 out of 10 prisoners in the state of California report or have been identified as having a hearing, visual, and/or mobility-related disability.
- Approximately 21 percent of prisoners in the Florida Department of Corrections (DOC) have been assigned some kind of assistive device or special pass (e.g., access to lower bunks, assistance from an attendant, etc.).
- Almost 1 in 20 prisoners in state-run prisons in Pennsylvania have been identified as blind or low vision and/or deaf or hard of hearing.
- The Illinois DOC does not track data on the number of prisoners who have disabilities or the nature of their disabilities.

Grievances

Corrections departments have not developed systems to monitor grievances or formal complaints filed by prisoners with disabilities. Grievances are one of the only means by which prisoners can seek help and shut off from systems of redress, prisoners with physical disabilities are left even more vulnerable in these correctional institutions. The responses as relate to the grievances filed by prisoners with physical disabilities produced some notable findings:

- The Florida DOC reported 792 grievances filed by prisoners with disabilities from January 2013 through January 2015. However, the department reported that only 44 of those grievances were resolved during that same time period.
- The Ohio Department of Rehabilitation and Correction reported that approximately 1,839 prisoners in its state-run facilities have a disability, but reported only three grievances filed by prisoners with disabilities from January 2013 through January 2015. It reported that all three grievances were resolved.
- The Pennsylvania DOC reported that 132 grievances were filed by prisoners with disabilities from January 2013 through January 2015. It did not have records to track whether those grievances were resolved or pending as of January 2016.
- The Louisiana DOC reports that 186 grievances were filed by prisoners with disabilities from January 2013 through December 2015. According to the department’s reported data, only 10 grievances were resolved during the same time period.
- The Illinois and Virginia DOCs do not maintain records that track information on grievances filed by prisoners with disabilities.

Key Recommendations

To address the challenges faced by prisoners with physical disabilities and to end the overreliance on solitary confinement by correctional systems, this report offers the following key recommendations:

**TO CORRECTIONAL OFFICIALS:**

- End all placements of prisoners with physical disabilities into solitary confinement where their disabilities will be worsened by such placements.
- Prohibit all placements of prisoners with physical disabilities into solitary confinement due to a lack of accessible cells.
- Provide all accommodations, including assistive devices and auxiliary aids, to prisoners with physical disabilities who are held in solitary confinement, unless a substantial and immediate security threat is documented. In such cases, alternative arrangements must be made and documented.
- Establish data procedures to improve tracking and monitoring of prisoners with physical disabilities in prisons and jails, including the number of people with disabilities and those in solitary confinement, or other forms of restrictive housing, and the reasons for their placement.

**TO THE DEPARTMENT OF JUSTICE:**

- Audit prisons on an annual or biannual basis to evaluate whether corrections facilities have completed building and programming evaluation plans or are otherwise in compliance with the regulations governing public entities under Title II of the Americans with Disabilities Act.
- Augment existing guidelines on the treatment of prisoners in solitary confinement, or restrictive housing, found in the DOJ Report and Recommendations Concerning the Use of Restrictive Housing, to include prisoners with physical disabilities consistent with the recommendations in this report.

**TO CONGRESS:**

- Enact appropriate legislation requiring state and local jurisdictions to track the number of people with disabilities and those in solitary confinement, or other forms of restrictive housing, and the reasons for their placement, in their state and local corrections institutions.
- Enact appropriate legislation to provide increased federal funding for Protection & Advocacy organizations to engage in monitoring and oversight of correctional institutions to increase their capacity to advocate on behalf of prisoners with physical disabilities more broadly.
- Pass the Solitary Confinement Reform Act (S. 3432) introduced by Senator Dick Durbin (D-IL) to reduce the use of solitary confinement, improve conditions of confinement, and provide protections that limit time spent in solitary confinement for prisoners held in the custody of the Federal Bureau of Prisons (BOP). This bill also prohibits BOP officials from placing prisoners with physical disabilities into solitary confinement, unless certain conditions are met, in cases where a licensed medical professional has determined that solitary confinement would exacerbate existing disabilities.

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**1 OUT OF 10 PRISONERS IN CALIFORNIA REPORT A HEARING, VISUAL, AND/OR MOBILITY DISABILITY**

**THE ILLINOIS DOC DOES NOT POSSESS ANY DATA ON THE NUMBER OF PRISONERS WITH DISABILITIES**

**ABOUT 1 IN 5 PRISONERS IN THE FLORIDA DOC RELY ON SOME KIND OF ASSISTIVE DEVICE**

Denied the opportunity to seek help and shut off from systems of redress, prisoners with physical disabilities are left even more vulnerable in these correctional institutions. The responses as relate to the grievances filed by prisoners with physical disabilities produced some notable findings:

- The Florida DOC reported 792 grievances filed by prisoners with disabilities from January 2013 through January 2015. However, the department reported that only 44 of those grievances were resolved during that same time period.
- The Ohio Department of Rehabilitation and Correction reported that approximately 1,839 prisoners in its state-run facilities have a disability, but reported only three grievances filed by prisoners with disabilities from January 2013 through January 2015. It reported that all three grievances were resolved.
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- The Illinois and Virginia DOCs do not maintain records that track information on grievances filed by prisoners with disabilities.

**THE PENNSYLVANIA DOC REPORTED THAT 132 GRIEVANCES WERE FILED BY PRISONERS WITH DISABILITIES FROM JANUARY 2013 THROUGH JANUARY 2015. IT DID NOT HAVE RECORDS TO TRACK WHETHER THOSE GRIEVANCES WERE RESOLVED OR PENDING AS OF JANUARY 2016.**

**THE LOUISIANA DOC REPORTS THAT 186 GRIEVANCES WERE FILED BY PRISONERS WITH DISABILITIES FROM JANUARY 2013 THROUGH DECEMBER 2015. ACCORDING TO THE DEPARTMENT’S REPORTED DATA, ONLY 10 GRIEVANCES WERE RESOLVED DURING THE SAME TIME PERIOD.**

**THE ILLINOIS AND VIRGINIA DOCs DO NOT MAINTAIN RECORDS THAT TRACK INFORMATION ON GRIEVANCES FILED BY PRISONERS WITH DISABILITIES.**

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**TO THE DEPARTMENT OF JUSTICE:**

- Audit prisons on an annual or biannual basis to evaluate whether corrections facilities have completed building and programming evaluation plans or are otherwise in compliance with the regulations governing public entities under Title II of the Americans with Disabilities Act.

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**TO CONGRESS:**

- Enact appropriate legislation requiring state and local jurisdictions to track the number of people with disabilities and those in solitary confinement, or other forms of restrictive housing, and the reasons for their placement, in their state and local corrections institutions.

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**END ALL PLACEMENTS OF PRISONERS WITH PHYSICAL DISABILITIES INTO SOLITARY CONFINEMENT WHERE THEIR DISABILITIES WILL BE WORSENED BY SUCH PLACEMENTS.**

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**PROHIBIT ALL PLACEMENTS OF PRISONERS WITH PHYSICAL DISABILITIES INTO SOLITARY CONFINEMENT DUE TO A LACK OF ACCESSIBLE CELLS.**

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**PROVIDE ALL ACCOMMODATIONS, INCLUDING ASSISTIVE DEVICES AND AUXILIARY AIDS, TO PRISONERS WITH PHYSICAL DISABILITIES WHO ARE HELD IN SOLITARY CONFINEMENT, UNLESS A SUBSTANTIAL AND IMMEDIATE SECURITY THREAT IS DOCUMENTED. IN SUCH CASES, ALTERNATIVE ARRANGEMENTS MUST BE MADE AND DOCUMENTED.**

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**EVALUATE WHETHER CORRECTIONS FACILITIES HAVE DEVELOPED SYSTEMS TO MONITOR GRIEVANCES OR FORMAL COMPLAINTS FILED BY PRISONERS WITH DISABILITIES.**

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**AUDIT PRISONS ON AN ANNUAL OR BIANNUAL BASIS TO EVALUATE WHETHER CORRECTIONS FACILITIES HAVE COMPLETED BUILDING AND PROGRAMMING EVALUATION PLANS OR ARE OTHERWISE IN COMPLIANCE WITH THE REGULATIONS GOVERNING PUBLIC ENTITIES UNDER TITLE II OF THE AMERICANS WITH DISABILITIES ACT.**

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**ENACT APPROPRIATE LEGISLATION TO PROVIDE INCREASED FEDERAL FUNDING FOR PROTECTION & ADVOCACY ORGANIZATIONS TO ENGAGE IN MONITORING AND OVERSIGHT OF CORRECTIONAL INSTITUTIONS TO INCREASE THEIR CAPACITY TO ADVOCATE ON BEHALF OF PRISONERS WITH PHYSICAL DISABILITIES MORE BROADLY.**

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**PASS THE SOLITARY CONFINEMENT REFORM ACT (S. 3432) INTRODUCED BY SENATOR DICK DURBIN (D-IL) TO REDUCE THE USE OF SOLITARY CONFINEMENT, IMPROVE CONDITIONS OF CONFINEMENT, AND PROVIDE PROTECTIONS THAT LIMIT TIME SPENT IN SOLITARY CONFINEMENT FOR PRISONERS HELD IN THE CUSTODY OF THE FEDERAL BUREAU OF PRISONS (BOP). THIS BILL ALSO PROHIBITS BOP OFFICIALS FROM PLACING PRISONERS WITH PHYSICAL DISABILITIES INTO SOLITARY CONFINEMENT, UNLESS CERTAIN CONDITIONS ARE MET, IN CASES WHERE A LICENSED MEDICAL PROFESSIONAL HAS DETERMINED THAT SOLITARY CONFINEMENT WOULD EXACERBATE EXISTING DISABILITIES.**
I. INTRODUCTION

Robert Dinkins is paralyzed from the waist down and uses a wheelchair. Prison officials confiscated his wheelchair when he was placed in solitary confinement, “forcing him to crawl” around on the ground and “eat [his] meals on the floor.”

Damon Wheeler is hard of hearing. He alleged that he was unable to access his hearing aids for 86 days after prison officials confiscated them prior to transferring him into the Special Housing Unit, a form of solitary confinement.

Abdul Malik Muhammad is blind. He alleges that he was kept in solitary confinement for six weeks in part because prison officials did not know where to place him. During those six weeks, he was denied access to showers, fresh clothes, recreation, telephone calls, and visitation.

J.M. is a deaf prisoner. He reports that he was held in solitary confinement for two weeks for failing to respond to an oral command that he could not hear and that was spoken behind his back by a corrections staff member.

Solitary confinement past 15 days can amount to torture. Locked in cells roughly the size of a parking space, prisoners are confined alone in their cells for approximately 22 hours a day or more, in a maximum-security environment, with little to no human interaction or access to natural light. Most of life’s daily activities—from dressing to grooming to mealtimes—are prohibited. Prisoners and detainees with physical disabilities typically require accommodations that include providing them with assistive devices (e.g., canes, wheelchairs, tactile watches) to participate in work opportunities or rehabilitative programming, such as educational courses or vocational training programs. Given these highly restrictive and isolating conditions, it is not surprising that solitary confinement is known to inflict acute and devastating mental and physical harms upon prisoners. Yet, despite these harms, corrections officials continue to use solitary confinement in prisons and jails across the nation.

On any given day, approximately 80,000 to 100,000 persons are held in conditions amounting to solitary confinement in the United States. Some languish in isolation for months, years, and even decades. This continued use of solitary confinement is an affront to one of the foundational and professed goals of incarceration: rehabilitation. Solitary confinement prevents prisoners from participating in rehabilitative programming. Instead, solitary confinement ruins lives. It often leaves those subjected to its harms worse off or irrevocably damaged.

Recent advocacy focused on ending solitary confinement has sought to roll back more than four decades of “tough on crime” rhetoric and policies, which have led to mass incarceration, hyper-incarceration, and the overuse of solitary confinement. The movement to end solitary confinement has had tremendous success in recent years—and calls for reform have come from the highest offices in the land, including from both President Barack Obama and Supreme Court Justice Anthony Kennedy. Legislative campaigns and litigation at the state and local levels have been successful in ending indefinite placements in solitary confinement; enacting state laws and policies that limit the use of solitary confinement for vulnerable groups, such as youth, pregnant women, and persons with mental disabilities; and garnering national attention on the practice through human rights reports and congressional hearings. Perhaps the most poignant message has come from prisoners themselves after thousands participated in a 60-day hunger strike beginning in July 2013 to protest the long-term isolation of prisoners at California’s Pelican Bay State Prison.

Despite these successes, considerably less attention has been paid to one of the most vulnerable groups harmed by the pervasive use of solitary confinement: people with physical disabilities. People with physical disabilities are often placed into solitary confinement for the same reasons as those who do not have disabilities: they were deemed a risk to the safety and security of the corrections institution; they violated a rule; they were identified as a member of a vulnerable group and separated from the general population; or they have a communicable disease. But some people with physical disabilities are placed in solitary confinement for reasons that have nothing to do with the safety and security of the corrections institution. Prisoners and detainees with physical disabilities may be placed in solitary confinement because there are no accessible housing units in which to hold them, as is the case for prisoners who use wheelchairs. Some have even been punished with solitary confinement for rule violations that were caused by their disabilities.

When I asked why I was being isolated and held in seclusion, I was told that they [would] put me wherever they want whenever they want. All because I had a physical disability, not because I had broken any rules and certainly not because of my financial crime that was the reason I was incarcerated. Simply because I had a physical disability I was made to endure isolation and abuse at an indescribable level.”

—Dean Westwood, Formerly Incarcerated at Coffee Creek Correctional Facility in Oregon

The placement of people with disabilities into solitary confinement is deeply troubling. People with physical disabilities constitute one of the most vulnerable groups living in isolation in prisons and jails across America. Although all prisoners and detainees rely on staff to provide for their basic human needs—nutritious food, clean water, medical care, and mental health treatment—for people with physical disabilities, their needs and reliance on corrections staff are even greater. People with physical disabilities not only rely on corrections staff to meet their basic human needs, but they also may require additional support to perform everyday tasks, be it support in eating meals, taking showers, getting dressed, or attending medical appointments. In addition, prisoners and detainees with physical disabilities typically require accommodations that will provide them with equal access to programs, services, and activities offered in the corrections facility. This may include providing them with assistive devices (e.g., canes, wheelchairs, tactile watches).
Despite the passage of the Americans with Disabilities Act over 25 years ago, the needs of people with disabilities are not being met in prisons and jails.

In solitary confinement, all are vulnerable to the devasting psychological and physical effects of near-total isolation, and social and sensory deprivation. But, for those with physical disabilities, the harmful effects of solitary confinement may be even worse. As explained in greater detail below, people with physical disabilities have unique medical and mental health needs, but many are denied regular access to such care while in solitary confinement. Limited access to health care can exacerbate some existing physical disabilities, and limited to no access to regular physical activity—whether indoor exercise or outdoor recreation—can also be detrimental.

Federal law, most notably the Americans with Disabilities Act (ADA), which was enacted in 1990, establishes comprehensive protections for people with disabilities, including protections from discrimination on the basis of disability and guarantees of equal access. Yet, despite these robust protections, the needs of people with disabilities are not being met in prisons and jails nationwide. Although it has been over 25 years since the passage of the ADA, recent litigation and media reports show that by failing to remove architectural barriers, prison officials continue to deny people with disabilities equal access to critical areas in correctional facilities, including housing units, medical centers, recreation yards, law libraries, and visitation rooms. Even where states have facilities that provide equal access to prisoners with physical disabilities, these facilities have become woefully overcrowded and understaffed. In addition, recent court complaints allege that corrections systems continue to deny people with disabilities equal access to prison programs, services, and activities, including educational and vocational courses and telephone privileges.

Beyond this, the barriers preventing equal access to prison programs, services, and activities are heightened for those persons with physical disabilities held in solitary confinement. When held in solitary confinement, all prisoners may be prohibited from participating in programming, including educational and vocational programs, and may be outright denied visitation or telephone privileges. However, even in those corrections systems where prisoners in solitary confinement are offered access to programming, people with physical disabilities are effectively barred from participating due to architectural barriers that can prevent them from accessing the physical location where the programming takes place. Moreover, people with sensory disabilities such as deafness or blindness are often effectively excluded from programming in cases where the materials are not accessible to them. Locked away and locked out of opportunities to engage in any constructive activity offered by programming, the sensory and social deprivation experienced by these prisoners is magnified. As a result, they languish behind bars in a state of idleness, unable to engage in mental stimulation and constructive activity, leaving them in an environment of near-total isolation.

This report draws from interviews with current and formerly incarcerated people with disabilities, disability rights advocates, prisoner rights’ advocates, medical experts, legal scholars, and correctional officials and examines the conditions of confinement, harms, and challenges facing prisoners with physical disabilities in solitary confinement. In addition, this report fills some of the gaps in data and, where possible, builds on existing data to provide a snapshot of (1) the number of people with physical disabilities; (2) the number of prisoners with physical disabilities in solitary confinement; and (3) the volume of grievances filed by prisoners with disabilities in 10 state prison systems: California, Florida, Georgia, Illinois, Louisiana, Nevada, Ohio, Pennsylvania, Rhode Island, and Virginia. Finally, the report closes by discussing the available legal protections and by offering a set of recommendations to federal, state, and local officials and policymakers to guide reforms for prisoners with physical disabilities in solitary confinement.

A. WHY WE MUST ACT NOW

People with disabilities comprise a large proportion of the prison and jail populations. What’s more, crowded, decrepit, unsanitary, and violent prisons heighten the vulnerabilities, unmet needs, and serious pain and suffering inflicted on those persons with disabilities. The challenges they face will only increase as the prison population ages, as will the magnitude of the harms experienced if these issues go unaddressed. This calls for a complete reexamination—and in some cases, overhaul—of prison and jail policies governing the treatment of people with disabilities.

1. Disabilities Are Common in Prisons and Jails

A recent study by the U.S. Department of Justice estimates that 32 percent of prisoners and 40 percent of jail detainees report having at least one physical or cognitive disability. The data shows that the proportion of people with disabilities far outnumbers the incidence rates in populations outside prisons and jails, where about 10.9 percent of persons report having a disability. Given the large proportion of prisoners with physical disabilities, it is even more imperative to address the challenges they face in prisons and jails to ensure that the needs of this group do not go unmet.

2. Heightened Vulnerabilities

America’s prisons and jails are dangerous and dehumanizing places. Recent media exposés and court cases tell stories of deplorable living conditions, woefully inadequate medical and mental health care, sexual abuse and rape, and allegations of purposeful starvation. Gripping accounts of neglect, abuse, riots, suicides, and violence among prisoners and by corrections staff reveal—with few exceptions—nationwide failures of epic proportions and systems ill-suited to manage the task of true rehabilitation. These accounts fly in the face of our constitutional protections against cruel and unusual punishment and contribute to human suffering on a massive scale.

Hidden among these systemic failures are people with disabilities—mental and physical—left to languish in deplorable conditions, isolated, shut off, and prohibited from gaining equal access to programs and services. The brutality of prison and jail life in America means that prisoners face a serious risk of physical and psychological harm, especially in those facilities that are overcrowded and understaffed. In these environments, those with physical disabilities may be just as susceptible to sexual assault as are those prisoners with mental illnesses or psychiatric disabilities, as well as physical and mental abuse due to their perceived vulnerabilities.
Though there is limited research on the prevalence of sexual abuse among incarcerated people with disabilities, if rates mirror those found in the free world, there is reason to believe that people with disabilities experience victimization at disproportionately higher rates. According to one report, people with disabilities were three times more likely to be victims of violent crime. This is particularly true for people with physical disabilities, who are even more vulnerable in corrections environments. The high level of violence in corrections facilities exposes all prisoners to a heightened risk of physical harm. In turn, corrections officials may turn to solitary confinement as a means to protect prisoners from harm.

According to court complaints, human rights reporting, and media accounts, people with physical disabilities have been the subject of harassment, taunting, and ridicule both by media accounts, people with physical disabilities have been exposed to solitary confinement. One deaf-blind prisoner at [Tomoka Correctional Institution] has the intellectual capacity of a young child. He is constantly subjected to sexual assault. Multiple elderly (70+ years old) wheelchair users are housed there and are beaten by their impaired assistants.

Deaf-Blind Prisoner Faces Abuse

One report sheds light into the abuse experienced by a deaf-blind prisoner in Florida—abuse that can later serve as the justification for placements into solitary confinement:

One deaf-blind prisoner at [Tomoka Correctional Institution] has the intellectual capacity of a young child. He is constantly subjected to sexual assault. Multiple elderly (70+ years old) wheelchair users are housed there and are beaten by their impaired assistants.

Prison overcrowding compromises the quality of care for and safety of incarcerated people with disabilities. These impaired assistants regularly withhold food and refuse to take blind or wheelchair bound prisoners to the bathroom or shower if these individuals do not perform sexual acts for or with these and other persons. They have been known to spend days in their own feces and urine, afraid or unable to leave their cells. Two of our deaf prisoners attempted to help the blind guys when they could by helping them get showers in time to time. These prisoners (blind and wheelchair users) are beaten (bones have been shattered and heads split open) when they complained to guards.

Overcrowding is a serious problem in corrections institutions across the country. According to the most recent data from the Bureau of Justice Statistics, prison overcrowding—above 100 percent capacity—remains a serious issue in many states, including Alabama (192.7%), California (136.6%), Colorado (115.1%), Delaware (161.7%), Hawaii (159.2%), Idaho (109.3%), Illinois (171.1%), Iowa (112.8%), Kansas (104.1%), Kentucky (104.5%), Louisiana (119.3%), Maine (103.1%), Massachusetts (130%), Minnesota (101.3%), Missouri (100.7%), Nebraska (159.6%), New Hampshire (124.3%), New York (102.8%), Ohio (131.9%), Oklahoma (115.7%), Pennsylvania (101.2%), Vermont (117%), Virginia (117.6%), Washington (102.6%), West Virginia (126.3%), and Wisconsin (131.4%), as well as the Federal Bureau of Prisons (128%).

Prison overcrowding poses the threat of violence, abuse, and the rights of prison populations to humane treatment are jeopardized. People with disabilities are more likely to be subjected to violence and abuse in overcrowded prisons than non-disabled people. People with disabilities are three times more likely to be victims of violent crime.

B. WHY IT CAN GET WORSE

1. Crowded Prisons

Overcrowding is a serious problem in corrections institutions across the country. According to the most recent data from the Bureau of Justice Statistics, prison overcrowding—above 100 percent capacity—remains a serious issue in many states, including Alabama (192.7%), California (136.6%), Colorado (115.1%), Delaware (161.7%), Hawaii (159.2%), Idaho (109.3%), Illinois (171.1%), Iowa (112.8%), Kansas (104.1%), Kentucky (104.5%), Louisiana (119.3%), Maine (103.1%), Massachusetts (130%), Minnesota (101.3%), Missouri (100.7%), Nebraska (159.6%), New Hampshire (124.3%), New York (102.8%), Ohio (131.9%), Oklahoma (115.7%), Pennsylvania (101.2%), Vermont (117%), Virginia (117.6%), Washington (102.6%), West Virginia (126.3%), and Wisconsin (131.4%), as well as the Federal Bureau of Prisons (128%).

Prison overcrowding compromises the quality of care for and safety of people with disabilities. First, prisoners held in overcrowded prisons are often exposed to decrepit and insanitary living conditions and have limited access to medical care—even in cases involving serious health emergencies. Second, overcrowded prisons can contribute to an increase in incidents of violence, particularly for prisoners with psychiatric disabilities who cannot cope with the stress of incarceration and/or are unable to control their behavior. Increased violence may lead to rule violations by prisoners, which in turn leads to greater reliance on punitive forms of punishment for those violations using sanctions like solitary confinement. Third, overcrowded prisons place an additional financial strain on corrections systems already struggling with limited funding and/or staffing shortages. As a result, though people with disabilities are entitled to equal access under the ADA, in practice overcrowding limits the ability of corrections systems to provide such access. Criminal justice and disability rights advocates alike should be concerned that overcrowded prisons will result in people with disabilities continuing to be denied equal access to programs, services, and activities in prisons and jails nationwide.

2. Aging Prisoners

Research indicates that as the prison population ages, the number of prisoners living with physical disabilities in American prisons will also increase significantly. From 2007 to 2010, the number of sentenced prisoners aged 65 or older increased by 63 percent, while the overall population of sentenced prisoners grew only 0.7 percent in the same period. Lengthy prison sentences and an increase in the age of prisoners entering the system, as well as parole policies that offer limited chances for release, have all contributed to the growth of the elderly prison population. As the elderly prison population grows, so too will the cost of providing adequate medical care to meet the needs of these prisoners. With each passing year, it will become even more imperative that prison and jails nationwide work to address the needs of prisoners with disabilities—without excluding them from prison programs, services, and activities.
and activities, and without resorting to harmful practices like solitary confinement.

C. SCOPE OF THE REPORT AND DEFINITIONS

This report discusses the challenges facing prisoners with physical disabilities in solitary confinement—why prisoners with physical disabilities are placed into solitary confinement and the harmful effects of the conditions of their confinement. In addition, this report captures some of the general challenges and hardships faced by people with disabilities in correctional settings, such as lack of access to proper medical and mental health care, as well as rehabilitative therapy, programming, visitation, and other necessities.

An initial challenge of studying prisoners with disabilities is that the definition of what constitutes a disability is broad.91 There are a variety of physical disabilities, and each one manifests itself uniquely in each individual. Another limitation is that there is no precise definition of disability across state and federal corrections institutions.92 The broad diversity and scope of physical disabilities cannot be covered adequately in one report. Given that, the report focuses on physical disabilities commonly found in correctional settings: hearing, vision, and mobility-related disabilities.

This report uses the following definitions:

Accommodation: Any (1) alterations to the physical plant, structure, or environment of a building; (2) modification to a program curriculum, format, or schedule; or (3) equipment, aide, assistance, or support that is provided to allow a person with a disability to gain access to a program, service, or activity.

Mobility-related disabilities: Disabilities that affect one’s ability to ambulate, or move around. This includes disabilities that result from “congenital conditions, accidents, or progressive neuro muscular diseases [and] may include conditions such as spinal cord injury (paraplegia or quadriplegia), cerebral palsy, spina bifida, amputation, muscular dystrophy, cardiac conditions, cystic fibrosis, paralysis, polio/post polio, and stroke.”93 For example, prisoners with mobility-related disabilities would include those who use wheelchairs (including manual or electric wheelchairs), walkers, prosthetic devices, or special shoes.

Defendant or hard of hearing: Persons who are deaf have “hearing loss so severe that there is very little or no functional hearing.”94 The lowercase “def” will be used to refer to “the audiological condition of not hearing,” and the uppercase “Def” will be used to refer to “a particular group of Def people who share a language—American Sign Language (ASL) [or other signed languages] and a culture.”95 People who are hard of hearing have hearing loss, but “there may be enough residual hearing that an auditory device, such as a hearing aid or FM system . . . provides adequate assistance to process speech.”96

Blind or low vision: Legally blind is “a level of visual [disability] that has been defined by law to determine eligibility for benefits. It refers to central visual acuity of 20/200 or less in the better eye with the best possible correction, or a visual field of 20 degrees or less.”97 Low vision refers to “vision loss that may be severe enough to impede a person’s ability to carry on everyday activities, but still allows some functionally useful sight. Low vision may be caused by macular degeneration, cataracts, glaucoma, or other eye conditions or diseases. Low vision may range from moderate impairment to near-total blindness.”98

Deaf-blind: People with combined visual and hearing loss that “cause difficulties with communication, access to information[,] and mobility.”99

Assistive devices: Devices that help facilitate access to programs, services, and activities by helping to “maintain or improve an individual’s functioning and independence . . . [and] prevent impairments and secondary health conditions.”100 Assistive devices for persons with spinal cord injuries include manual wheelchairs, motorized wheelchairs, ramps, and lower banks.101 Additional assistive devices include crutches, walkers, artificial limbs, canes, orthotics, special footwear, bottom bunk, shower chairs, grab bars in the shower, and special bedding.102

Auxiliary aids and services: Auxiliary aids and services are devices that facilitate effective communications with people with sensory or communication disabilities (e.g., hearing, seeing, speaking, etc.). Auxiliary aids and services for people who are blind or low vision include Braille material, books on tape, glasses, canes, readers, access to magnifiers, large-print material, closed-circuit TV, talking computers, zoom text software, scanners, talking watches, electronic vending, and TDD Telephones.103 Auxiliary aids and services for people who are deaf or hard of hearing include video phones, visual notification systems, TTDs, TTY phones, hearing aids and batteries, cochlear implants and chargers, sign language interpreters, closed captioning, strobe lights, flashing alarms, shake awake alarms, and pocket talkers.104

D. METHODOLOGY

This report draws from evidence obtained from a variety of sources, including firsthand interviews with prisoners, formerly incarcerated individuals, lawyers, disability rights advocates, service providers who work in prisons and jails, and current and former correction personnel; policies and data obtained through public records requests submitted to state Departments of Corrections; court proceedings and judicial opinions; articles from news outlets; and academic journals.

The report includes data gathered from 10 state Departments of Corrections. Public records requests were submitted to 10 jurisdictions for information on the numbers of prisoners with mobility, hearing, and visual disabilities. Responses were obtained from 10 jurisdictions; the responses ranged in scope and comprehensiveness. These 10 jurisdictions are discussed in order to provide a glimpse into the practices of state Departments of Corrections and were chosen to provide variation in prison population size, geography, and capacity.

There are a few limitations with the methodology for this report. First, because there is no single definition of disability across state Departments of Corrections, the definitions of disability provided in the public records requests may not have captured all the prisoners with disabilities in a particular state prison system. For instance, if the public records request sought records for all persons with “mobility impairments” and the state Departments of Corrections instead tracks persons with “spinal cord injuries,” the responsive documents may not have included the full range of mobility-related disabilities. As a result, the records produced in response to the request may have been under-inclusive. To address this problem, where possible, the public records requests were drafted to include the state’s own definition of disability, or multiple definitions of disability, to ensure the broadest coverage possible.

Second, the data on incidence rates in this report reflects estimates based on self-reported data from 10 state Departments of Corrections. In some cases, the data responses received from the state Departments of Corrections were inconsistent across states. For instance, where states did provide data on mobility-related disabilities, there were some that collected data on all mobility-related disabilities represented in the state prison system, others that tracked only the number of assistive devices distributed as a way to capture the number of prisoners with mobility-related disabilities, and still others that tracked some mobility-related disabilities and not others. These variations in data collection make it somewhat difficult to standardize results across states. Where possible, the data charts and analyses note where distinctions exist in the self-reported data.
E. A NOTE ON LANGUAGE

This report adopts both “people-first” language and “identity-first” language when discussing people with disabilities. As prominent disability rights scholars and activists have noted, “[p]eople-first language [aims] to avoid perceived and subconscious dehumanization when discussing people with disabilities.”105 “The basic idea is to improve a sentence structure that names the person first and the condition second, i.e. ‘people with disabilities’ rather than ‘disabled people,’ in order to emphasize that they are people first.”106 Alternatively, the identity-first language rejects people-first language as an attempt to separate a person’s disability from that person’s identity.107 Advocates for identity-first language contend that a person’s disability cannot be separated from that person’s identity and that “disability plays a role in who the person is, and reinforces disability as a positive cultural identifier.”108 According to experts in disability rights and culture, “[i]dentity-first language is generally preferred by self-advocates in the autistic, deaf, and blind communities.”109 Accordingly, identity-first language will be used when referring to deaf or blind people. Finally, the report is grounded in the perspectives of disability scholars who argue that “disabled people have redefined the problem of disability as the product of a disabling society rather than individual limitations or loss.”110

It is also important to note that effective reforms aimed at removing barriers and ensuring equal access for prisoners with disabilities must adopt an intersectional lens. An intersectional lens recognizes that people with disabilities have a diversity of lived experiences111 and possess multiple identity traits112 that may intersect and overlap to compound the forms of marginalization and oppression they experience while incarcerated. Due to the well-known racial disparities113 of mass incarceration, it is not surprising that many disabled persons identify as members of historically marginalized racial minority groups.114 They may also identify as gay, lesbian, bisexual, transgender, or gender non-conforming.115 Furthermore, according to the most recent report by the Bureau of Justice Statistics, it is estimated that 56 percent of state prisoners, 45 percent of federal prisoners, and 64 percent of jail detainees have a mental health issue.116 Given that, it is likely that incarcerated persons with physical disabilities will also have a history of psychiatric disability. Taken together, it is not surprising that those with physical and mental disabilities struggle to adapt to the frequently harsh conditions of prison life—in some cases, leading to tragic outcomes.117 Reforms that address the challenges facing people with disabilities must provide intersectional solutions that acknowledge the many ways that they may be marginalized in prisons and jails nationwide.

II. SPOTLIGHT ON TARGET JURISDICTIONS

There is no publicly available data on the numbers of people with disabilities in solitary confinement.118 Information is also limited as to the types of physical disabilities that exist within state and federal prison populations. Although data on the exact number of prisoners with disabilities in jails, prisons, and detention centers across the nation is difficult to locate, by some estimates at least 26 percent of state prisoners nationwide report possessing a hearing, visual, or physical disability.119 Including cognitive disabilities and disabilities that limit the ability to independently care for oneself increases the proportion of people with physical disabilities in prisons and jails to 32 percent and 40 percent percent, respectively.120 Moreover, as noted, over half of state prisoners, 45 percent of federal prisoners, and 64 percent of jail detainees have a mental health issue.121 By contrast, among non-institutionalized persons, approximately 12.6 percent of the U.S. population...
The lack of publicly available data on the number of prisoners with disabilities is concerning. Reforms to end solitary have emphasized that it is overused and unjustified, especially for vulnerable populations including prisoners with disabilities. Yet, without data to track the number of prisoners with disabilities, their location within the local, state, or federal correctional system, or the nature of their disabilities, it will be nearly impossible to provide accommodations for these prisoners, determine the extent to which this group is subjected to the overuse of solitary confinement, or whether reform efforts, in the states that have pursued them, have been effective in removing prisoners with disabilities from solitary confinement. For the corrections systems, such information is essential to measure the effectiveness of efforts to reform solitary confinement. For outside advocates, such data will be necessary in order to provide transparency and hold correctional systems accountable. Finally, without data on the volume of prisoners with disabilities, or the nature of their disabilities, it will be difficult to ensure that their needs—whether access to critical areas in a correctional facility, assistive devices, or other accommodations—are met while in prison. As a minimum, correctional systems must be accountable for keeping careful, comprehensive, and accurate records that identify the number of persons in solitary confinement, or any other type of restrictive housing, and their specific disabilities and corresponding needs.

This report aims to fill some of the gaps in data and builds on existing data by providing a snapshot of both the number of prisoners with physical disabilities and the volume of grievances filed by prisoners with disabilities in 10 state Departments of Corrections: California, Florida, Georgia, Illinois, Louisiana, Nevada, Ohio, Pennsylvania, Rhode Island, and Virginia.

A. POPULATION DATA

The information below provides a snapshot of the number of persons with physical disabilities in 10 state prison systems, along with other indicators, such as the number of assistive devices and special passes (e.g., for lower bunks or for an attendant) distributed.

A few state-specific findings are important to highlight:

- Approximately 1 out of 10 prisoners in the state of California reports, or has been identified as, having a hearing, visual, and/or mobility-related disability.
- Approximately 21 percent of prisoners in the Florida DOC have been assigned some kind of assistive device or special pass (e.g., passes providing access to lower bunks or permitting the prisoner to have support from an attendant or assistant, etc.).
- Almost 1 in 20 prisoners in state-run prisons in Pennsylvania have been identified as blind or low vision and/or deaf or hard of hearing.
- The Illinois DOC does not track or keep data on the number of prisoners who have disabilities or the nature of their disabilities.
- Although we asked all 10 states to provide data on the numbers of prisoners with physical disabilities in solitary confinement, only two states (Nevada and Georgia) provided records with this information.

B. LIMITED DATA ON COMPLAINTS FILED BY PRISONERS WITH PHYSICAL DISABILITIES

Requests for data on complaints, also known as grievances, were submitted to 10 state Departments of Corrections. The responses produced by these state Departments of Corrections raised real concerns. State responses varied. Some responded that they did not collect data on complaints filed by prisoners with physical disabilities, or provided incomplete, and in some cases arguably inaccurate, data. As described in further detail below, the lack of quality data on the complaints or grievances filed by prisoners with physical disabilities means that corrections officials are limited in their ability to adequately respond to the needs of this group. Given the well-known harms of solitary confinement, failure to track and monitor data on grievances filed by prisoners with physical disabilities suggests that prisoners have no effective way of knowing about the harms caused by solitary confinement, or addressing those harms. Ultimately, prisoners with physical disabilities are left with little recourse in corrections institutions, leaving them even more marginalized and isolated.

Grievance procedures are administrative processes that allow prisoners to present their requests, complaints, individual needs, or other issues to correctional staff and officials and to seek administrative resolution of those concerns. To initiate the grievance process, a prisoner will fill out a grievance form and submit the form to the corrections staff member responsible for collecting grievances.

Corrections staff and officials will then review the grievance and submit a response to the prisoner, usually granting or denying the prisoner’s specific request. For instance, if the prisoner requests a shower chair or vibrating alarm, corrections staff and officials may respond by granting the request, or rejecting the request, or denying the prisoner’s specific request. The corrections procedures may set forth strict time limits for filing an appeal.
Failure to meet the needs of prisoners with physical disabilities exposes them to an increased risk of harm in correctional institutions.

Ten target jurisdictions were each sent open records requests for information on all grievances filed by persons with disabilities, and the number of those grievances that remain pending or were resolved, in a two-year period. Although the responses varied, overall, the data provided by the jurisdictions was nonexistent, incomplete, or inaccurate. The responses from the 10 jurisdictions as relates to the grievances filed by prisoners with physical disabilities included some notable findings:

- The Florida DOC reported 792 grievances filed by prisoners with disabilities from January 2013 through January 2015. However, the department reported that only 44 of those grievances were resolved during that same period.

- The Ohio Department of Rehabilitation and Correction reported that approximately 1,839 prisoners in its state-run facilities have a disability, but reported only three grievances filed by prisoners with disabilities from January 2013 through January 2015 and reported that all three grievances were resolved.

- The Pennsylvania DOC reported that 132 grievances related to the ADA were filed by prisoners with disabilities from January 2013 through January 2015. It did not have records to track whether those grievances were resolved or pending as of January 2016.

- The Louisiana DOC reported that 186 grievances were filed by prisoners with disabilities from January 2013 through December 2015. According to the department’s reported data, only 10 grievances were resolved during the same time period.

- The Illinois and Virginia DOCs do not maintain records that track information on grievances filed by prisoners with disabilities and do not monitor whether those records were pending or resolved.

Failure to track and monitor the volume and nature of grievances—including those filed, resolved, or pending—impedes the ability of the correctional institutions to meet the needs of prisoners with disabilities. By not responding to grievances, or failing to monitor the status of filed grievances to ensure that they are resolved in a timely manner, Departments of Correction effectively cut off prisoners with disabilities from one of the only available mechanisms for seeking assistance or raising even serious concerns regarding necessary accommodations, safety risks, and mental health care, to name a few.

This failure to meet the needs of prisoners with physical disabilities exposes them to an increased risk of harm in correctional institutions. Cut off from responsive grievance systems, prisoners with physical disabilities are made even more vulnerable to physical injury in cases where the grievance involves threats posed by other prisoners or dangerous conditions due to architectural barriers in facilities. Similarly, unresponsive grievance systems may even result in worsening disabilities where grievances challenging inadequate medical care and the failure to provide proper accommodations, physical therapies, or proper prescription medications go unaddressed by correctional authorities. In light of these harms, it is imperative for corrections systems to develop robust databases with comprehensive information on prisoners with disabilities that can equip systems to address the acute and diverse concerns of this group.

### TABLE 3: GRIEVANCES FILED, RESOLVED, AND PENDING FROM JANUARY 2013 TO JANUARY 2015

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>No. of grievances filed by prisoners with disabilities, Jan. ‘13–Dec. ‘15</th>
<th>No. of grievances filed by prisoners with disabilities that were resolved, Jan. ‘13–Dec. ‘15</th>
<th>No. of grievances filed by people with disabilities that are currently pending</th>
</tr>
</thead>
<tbody>
<tr>
<td>California</td>
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<td>No data provided</td>
<td>No data provided</td>
</tr>
<tr>
<td>Florida</td>
<td>792</td>
<td>44</td>
<td>41</td>
</tr>
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<td>Georgia</td>
<td>29</td>
<td>25</td>
<td>8</td>
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<td>Illinois</td>
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<td>Does not maintain or possess records</td>
<td>Does not maintain or possess records</td>
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<tr>
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<td>10</td>
<td>0</td>
</tr>
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<td>No data provided</td>
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<td>Does not maintain or possess records1</td>
</tr>
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<td>Rhode Island</td>
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<td>0</td>
</tr>
<tr>
<td>Virginia</td>
<td>Does not maintain or possess records</td>
<td>Does not maintain or possess records</td>
<td>Does not maintain or possess records</td>
</tr>
</tbody>
</table>

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[1] Ten target jurisdictions were each sent open records requests for information on all grievances filed by persons with disabilities, and the number of those grievances that remain pending or were resolved, in a two-year period.

[2] In this way, grievances help corrections officials evaluate the effectiveness of specific facilities, or the entirety of their correctional systems, on an aggregate level. Additionally, public access to data on grievances can allow for greater public monitoring and oversight of correctional systems.

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American Civil Liberties Union

22

Caged in. Solitary confinement’s devastating harm on prisoners with physical disabilities

23
III. SOLITARY CONFINEMENT HARMS PRISONERS WITH PHYSICAL DISABILITIES

Decades of research establishes that solitary confinement inflicts devastating mental and physical harms on human beings. Current research suggests that solitary confinement can not only destroy the human psyche, but it can also result in physical deterioration due to the limited access to exercise, physical therapies, as well as quality medical and mental health care. The physical harms of solitary confinement cannot be easily undone and may lead to long-term disabilities and increased health care costs once the prisoner is released from prison—and over 95 percent of prisoners will be. The result is that prisoners are made worse off by incarceration, and then are released back into the community with greater needs for medical and mental health services due in part to the lack of care or low-quality treatment they received in prison. Prisoners with disabilities are uniquely harmed by the negative health effects of solitary confinement. What’s more, they receive even less access to programs available to prisoners held in solitary confinement because they are not provided with accommodations to allow them to participate in these programs. Due to their disabilities, they are neglected and even more isolated while in solitary confinement.

Back in 2009, I was placed in solitary confinement, a young, healthy man. The disability . . . created, [m]entally and [p]hysically from long term isolation IS inhumane, they are creating animals. . . . The lack of mobility and human contact over a long period of time has destroy[ed] my mind and health[.]. I have an unhealthy weight gain and severe lower back pain from only having a 2 foot by 4 foot of space in the cell to move around[.]. For 23 hours a day I’m confin[ed] to this place. I have develop[ed] extreme paranoia of others around me and violent thoughts. In the past few years I started having really bad anxiety attacks when I have human to human contact[.] I’ve lost the ability to interact with others.”

—D.R., LOUISIANA STATE PENITENTIARY-ANGOLA

A. PSYCHOLOGICAL HARM

Prolonged isolation has a devastating effect on human beings. Locked in a cell that is roughly the size of a regular parking space for upwards of 22 hours per day, prisoners in solitary confinement engage in most of life’s basic activities—whether eating, washing, using the toilet, or dressing—all within a few square feet of space. It is no wonder that some, suffering from the psychological harms of solitary, have “become so desperate for relief that they [have] set their mattresses afire,” “torn” their sinks and toilets from the walls, rippet[ed] their clothing and bedding, and destroy[ed] their few personal possessions,” all in order “to escape the torture of their own thoughts and despair.” In light of these devastating harms, many major U.S. health organizations, including the National Commission on Correctional Health Care, 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 all issued formal policy statements that oppose prolonged solitary confinement, particularly for prisoners with mental illnesses.

Mental health experts studying the issue by and large agree that long-term solitary confinement is psychologically harmful. A series of scientific studies dating back to the mid-1960s concluded that solitary confinement is psychologically damaging. Persons subjected to solitary confinement have displayed the following: negative attitudes and affect; insomnia; anxiety; panic; withdrawal; hypersensitivity to stimuli; cognitive dysfunction; hallucinations; loss of control; irritability; aggression and rage; paranoia; chronic apathy; lethargy; depression; self-mutilation; suicidal ideation and behavior; and lower levels of brain function, including a decline in electroencephalogram (EEG) activity, which were observed after only seven days in isolation.

Solitary confinement inflicts psychological and physical damage on human beings. The astonishingly high rate of completed suicides alone reveals the dangers of solitary confinement. Shockingly, approximately 50 percent of all suicides in prisons happen among the 5 percent to 6 percent of all prisoners held in solitary confinement. According to a 2014 study, detainees held in solitary confinement in New York City jails were nearly seven times more likely to harm themselves than were those in the general population—youth and people...
with serious mental illness were particularly susceptible to self-harm.\textsuperscript{176}

The devastating effects of solitary confinement do not end after release. In June 2015, the tragic consequences of solitary confinement came to a head. Kalief Browder, a 22-year-old who was imprisoned on Rikers Island in New York for three years, two of which he spent in solitary, and who was never convicted of a crime, took his own life approximately two years after his release.\textsuperscript{177} Like so many prisoners exposed to the horrors of solitary, the harms inflicted upon Kalief extended well beyond release from prison.

Prisoners with physical disabilities are not spared from the devastating toll solitary confinement inflicts upon the human psyche. For those prisoners with existing psychiatric disabilities, the harms of solitary confinement can be compounded.\textsuperscript{178} In solitary confinement, access to mental health professionals is usually limited, if offered at all. Even where offered by the correctional institution, prisoners with physical disabilities may be unable to participate in individual and group mental health-focused classes where they require accommodations to facilitate meaningful communications in the classes, or access class locations, and such accommodations are not provided by corrections staff. People with physical disabilities will suffer even greater psychological harms in correctional systems where they do not receive these accommodations that allow them to communicate effectively with mental health professionals.

For example, to communicate may make it difficult for prisoners with sensory disabilities to communicate their symptoms or other pertinent information effectively. Prisoners with sensory disabilities may have “increased mental health care needs.”\textsuperscript{179} Deaf prisoners or prisoners with severe speech impediments, groups that both experience harassment and abuse in the corrections environment, may lack the accommodations to communicate their needs to mental health professionals, thereby increasing their vulnerabilities to harm in correctional institutions. Without effective communication between mental health professionals and regular access to mental health treatment and therapies, prisoners who are deaf or hard of hearing, and/or blind or low vision, may experience mental and psychological deterioration, diminishing their ability to function in prison.

**B. PHYSICAL HARDS**

Beyond the damaging psychological effects of solitary confinement, there is also evidence to suggest that the practice can be physically debilitating. Movement in solitary confinement is highly controlled. There is almost no out-of-cell time, and movement outside of one’s cell is usually impeded by required restraints and strip-searches. Beyond this, architectural barriers prevent prisoners with physical disabilities from not only accessing critical areas of the prison, but also from even moving around within their cells. Blanket security policies banning the use of assistive devices within their cells can leave prisoners with physical disabilities with limited ability to care for themselves, perform exercises to avoid total inactivity, or even access food or necessary medications.

Stress and limited access to regular, appropriate health care, including medically necessary prescription and physical therapies, among other factors, can lead to diminished health outcomes for all prisoners.\textsuperscript{180} This is especially true for prisoners with physical disabilities. Prisoners with physical disabilities are particularly susceptible to worsening physical health while in prison,\textsuperscript{181} as they are likely to “have particular health care needs related to their disability, such as physiotherapy, regular eyesight and hearing examinations and occupational therapy.”\textsuperscript{182}

Doctors and health care professionals agree that solitary confinement is harmful to one’s physical health. The National Commission on Correctional Health Care (NCCHC) has explicitly acknowledged the adverse physical health effects of prolonged solitary confinement. The NCCHC observed that:

> **Prisoners with physical disabilities are particularly susceptible to worsening physical health while in prison.**

Prisoners with physical disabilities held in solitary confinement are often denied access to the very physical and pharmacological therapies that will help them maintain their health or prevent physical deconditioning. This type of care is difficult to obtain while incarcerated—but the difficulties multiply when prisoners are placed into solitary confinement. For example, a stroke survivor will typically require regular physical, occupational, and speech therapies in order to fully recover from a stroke.\textsuperscript{183} Similarly, people with quadriplegia will need specific prescription regimens and routine physical therapies in order to maintain healthy living. Yet, strict schedules in solitary confinement result in disrupted treatment plans where corrections officials refuse to modify schedules to allow these prisoners with mobility-related disabilities to take medications at specific times.

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**What I see time and time again is that our clients with disabilities deteriorate rapidly during incarceration. They leave prison in worse condition and with a reduced ability to function independently as compared to how they were when they arrived. Solitary confinement is a big part of this problem. Confining persons with physical disabilities to a cramped cell with no access to assistance from other prisoners and no access to real recreation or programming only serves to impede their progress.**

—MAGGIE FILLER, STAFF ATTORNEY, PRISONERS’ LEGAL SERVICES OF MASSACHUSETTS

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**Prisoners in Solitary Confinement Can Be Harmful**

Even short stints in solitary confinement can lead to serious physical consequences for people with disabilities. Dean Westwood has quadriplegia. He relies on a motorized wheelchair to ambulate and a host of assistive devices to maintain healthy living and prevent physical decline. He reported that while being booked into an Oregon jail, he was rough-handled by jail staff, pulled from out of his wheelchair, and dressed in clothes that were approximately three times smaller than his normal clothing size. Following the booking process, he was placed alone in a cell and denied access to his anti-spasm prescription medications, as well as medications to prevent him from urinating on himself, for approximately 48 hours.

The combination of the rough handling by staff, tight clothes, and lack of medications resulted in Dean experiencing autonomic dysreflexia. Autonomic dysreflexia occurs when the nervous system goes into overdrive due to the presence of an irritating stimulus in areas of the body that are paralyzed and, if untreated, may result in a stroke or heart attack. Dean began to experience violent seizures and urinated on himself. For nearly 48 hours, he endured painful muscle spasms alone in an isolation cell in the jail infirmary, where he was placed flat on his back on a bed that neither contained a slide board nor a hoist lift, an assistive device that would have allowed him to get onto and off of the bed. Only after repeated complaints to corrections and medical staff was he finally able to receive his prescription medications to end the painful seizures.

In total, Dean reports that he remained in virtual isolation for a total range of 6-7 days, where he was confined to his cell for 24 hours per day, while Oregon state prison officials worked to find a facility to place him. He was not provided with any materials to occupy the time and states that the only human interaction he had was with corrections staff, and even then those interactions were rare. For Dean, the experience in isolation resulted in an “incalculable mental toll” that continues to trouble him to this day.\textsuperscript{184}
The inherent restriction in meaningful social interaction and environmental stimulation and the lack of control adversely impact the health and welfare of all who are held in solitary confinement. The World Health Organization (WHO), United Nations, and other international bodies have recognized that solitary confinement is harmful to health. The WHO notes that effects can include gastrointestinal and genitourinary problems, diaphoresis, insomnia, deterioration of eyesight, profound fatigue, heart palpitations, migraines, back and joint pains, weight loss, diarrhea, and aggravation of preexisting medical problems.

Failure to meet the important health care needs of people with disabilities can result in deconditioning, such as the loss of physical fitness or muscle due to limited exercise. In some cases, failure to respond to the health care needs of people with disabilities, even in the short term, can lead to death.

1. Architectural Barriers in Facilities

Architectural barriers to access are magnified in solitary confinement. Wheelchairs are often too large to fit inside isolation cells, which are typically no larger than the size of an average bathroom. Even in cases where a wheelchair could pass through the front door of an isolation cell, once inside the cell, a wheelchair user will likely be unable to maneuver within it. Moreover, even where wheelchairs could fit within isolation cells, prison officials have banned wheelchairs where they have decided that having a wheelchair or another assistive device, such as a walker or cane, poses a security risk. Such security policies can result in prisoners with physical disabilities who rely on assistive devices having absolutely no accommodations that will enable them to move around their cell while held in solitary. Finally, because prisoners in solitary have such limited time outside, architectural barriers can keep them inside of their cells even where they are permitted to leave for brief shorts or excursions to the “recreation” yard or cell.

Court cases have captured horrific allegations by prisoners with mobility-related disabilities in solitary confinement. In one case, Tony Goodman “claimed that he was confined for 23–to–24 hours per day in a 12–by–3–foot cell in which he could not turn his wheelchair around.” Goodman also alleged that he “was unable to use the toilet and shower without assistance,” “injured himself in attempting to transfer from his wheelchair to the shower or toilet on his own,” and as a result, was “forced to sit in his own feces and urine while prison officials refused to assist him in cleaning up the waste.” In another case, Jerome Crowder, a federal prisoner, alleged that while in administrative detention, he was unable to use his wheelchair to ambulate in his cell, which led to bedsores and muscular discomfort. Phillip Jaros, who used a walking cane to move around, alleged that he was able to take only four showers per month because the showers at the facility where he resided did not have grab bars and he feared injury.

Even more troubling is that, though contrary to federal disability law, prisons and jails have placed people with disabilities into solitary confinement because accessible cells were not available. As explained in further detail below, the law requires that accessible cells be provided at every security classification or custody level. In practice, this means that prison officials may not hold prisoners with low security classifications in cells that are located in higher security units simply because those are the only units with cells that can fit wheelchairs. Despite this mandate, not all prison facilities have accessible cells to accommodate prisoners who use wheelchairs at every security level. And some corrections officials have placed prisoners with disabilities into solitary confinement because cells in less restrictive housing that could safely hold these prisoners were not readily available.

2. Self-Care

Certain physical disabilities may limit one’s ability to engage in self-care and tend to personal hygiene needs. For example, prisoners with ambulatory disabilities may require assistance and support from health care professionals, or trained corrections staff, to engage in daily tasks, such as showering, dressing, or relieving oneself. The need for assistance with self-care may be temporary or long term depending on the nature of the disability. For instance, prisoners with quadriplegia or paraplegia may have specific medical needs that require regular access to clean medical equipment, such as colostomy and/or urostomy bags that remove urine and other waste in cases where the colon or bladder is no longer functional. Without accessible facilities and assistance from health care professionals or corrections staff, people with disabilities often struggle to meet these basic needs in prisons and jails.

In solitary confinement, there are limitations on the number and kinds of property that prisoners may keep in their cells. In addition, prisoners have limited access to medical personnel and assistance from correctional staff. These restrictions are purportedly in place for safety and security reasons, but they can create considerable challenges for persons who require regular access to sterile and durable medical equipment and supplies—catheters, pressure socks, colostomy bags, soap to cleanse after handling colostomy...
3. Disrupted Medical Therapies

In solitary confinement, prisoners often have limited access to necessary medical care. To begin with, staffing shortages and limited budgets across correctional systems have in some cases resulted in egregious denials of appropriate medical care.211 Beyond this, medical therapies are often disrupted in solitary confinement.212 Prisoners with disabilities may also come to prison with specific medications and schedules for taking those medications, which are necessary to ensure the efficacy of a particular treatment program. However, prisoners are usually not permitted to keep prescription drugs with them at all times and may only access these prescription drugs at certain times. When it is time to access prescription drugs, medical staff will often come by and observe the prisoner digest the prescription drug.

Such stiff schedules and regulations can impose barriers to optimal therapeutic outcomes for prisoners with physical disabilities. For example, certain prisoners may require prescription medications to assist with chronic muscle pain. The optimal time to take those prescription drugs may be immediately prior to bed time. However, that particular prison facility may have policies and/or practices that allow for medication distribution only during normal business hours—9 a.m. to 5 p.m.—and may not allow the prisoner a modification to the policy to accommodate that circumstance.213 Thus, that prisoner would not be allowed to take their prescription medications at the optimal time. Without modifying the prisoner’s specific medical regimen to accommodate the schedule change, prison authorities can seriously disrupt the prisoner’s treatment program, which may lead to deleterious health effects.214

4. Limited to No Physical Activity

Exercise is vital for the physical health of all people.215 Limited to no physical activity contributes to a whole host of adverse health outcomes, including decreased muscle mass and strength (deconditioning),216 osteoarthritis in older adults,217 and increased risk of developing or worsening hypertension, as well as other diseases, such as cardiovascular disease, heart failure, kidney disease, and even death.218 Prisoners with disabilities require regular exercise to maintain overall health or prevent a decline in their physical health. For instance, prisoners with mobility-related disabilities require regular access to physical exercise to maintain proper physical functioning and prevent muscular atrophy, decubitus ulcers, or other problems.219

Prisoner With Disabilities Denied Proper Prosthetics and Wheelchair in New York State Prison

According to a lawsuit filed in 2014, Mark Gizewski was born with severe disabilities due to side effects of the drug Thalidomide, offered as an antidote to treat morning sickness among pregnant women.220 The drug left Gizewski with hands that were missing fingers, deformities in his limbs, and abnormalities that caused difficulties with bowel movement, and a left leg that was seven inches shorter than the right.221 New York State correctional officials placed Gizewski into solitary confinement, where he was denied access to necessary cleaning tools and denied the right to shower for approximately six days.222 Gizewski complained that prison staff denied him access to proper pain medications to handle his chronic pain,223 denied him an accessible shower and shower brush to allow him to properly clean himself,224 and refused to replace his prosthetic leg that was too big.225 Prison authorities also refused to provide Gizewski with a lightweight wheelchair, and instead placed him in a heavy wheelchair, which proved difficult to maneuver due to his missing limbs.226

However, even though the benefits of regular access to physical exercise are well known, prisoners held in solitary confinement have been denied regular access to physical activity. Prisoners typically have limited time out of their cells and little access to outdoor recreation, if any. If outdoor recreation is available, it usually takes place in a small cage located on a yard that offers minimal protection from baking hot or freezing cold weather and limited access to seating and water. This may mean that prisoners must spend one to two hours outside in the freezing cold or unbearably hot weather—sometimes without access to water, shaded areas, or benches to sit on.227 These “recreation” cages are often inaccessible to people with disabilities. Recreational areas may be riddled with structural deficiencies—potholes in the asphalt, cracks in the concrete—all of which create barriers to persons who rely on mobility devices to ambulate. Wheelchairs may not fit into the small cages, and persons who rely on assistive devices like walking canes may not be able to navigate the pathway to and from the recreation cages, particularly where the ground surface surrounding the recreation spaces is uneven, cracked, or otherwise creates unnavigable barriers for people with disabilities. Furthermore, when assistive devices are confiscated for security reasons, prisoners with mobility-related disabilities are prevented from engaging in even therapeutic exercise.228

Recent court victories have resulted in prisoners in solitary confinement winning access to exercise and recreational facilities previously denied to them.229 Prisoners with physical disabilities have also filed lawsuits challenging exclusion from exercise and recreational facilities. In one such case, Marc Norfleet, a wheelchair user housed in Menard Correctional Center, filed a lawsuit against the Illinois Department of Corrections for allegedly denying him regular access to exercise and recreational facilities, while at the same time “non-disabled inmates receive[ ] five to seven hours of exercise and recreation time a week.”230 The appeals court reviewing Norfleet’s case found that he stated a claim for relief and vacated a district court judge’s decision dismissing the case.231

5. Physical Therapy

Prisoners with mobility-related disabilities may depend on regular access to physical therapy to maintain proper health and prevent muscular deconditioning. Routine physical therapy, ranging from once per week to multiple times per week, may be needed to prevent deformation of the legs or back.232 In such cases, proper health care access is needed in order to prevent debilitation, or “further functional decline.”233

For example, one advocate reported that her client required routine physical therapy to rehabilitate muscles damaged by a gunshot wound and to regain his ability to walk short distances. Despite requests to prison officials, her client struggled to obtain proper physical therapy. After he ended up in segregation, the physical therapy abruptly stopped for months.234

Prisoners in solitary confinement are often denied access to regular physical activity.
C. REHABILITATIVE HARMs

When held in solitary confinement, prisoners with physical disabilities are often prohibited from participating in any rehabilitative programming, including educational and vocational programs and activities. However, even in those corrections systems where limited access to rehabilitative programming is offered to prisoners in solitary confinement, architectural barriers prevent prisoners who rely on assistive devices from even accessing the physical location where programs and services are held. Prisons may also be effectively excluded from these programs if they are not provided with assistive devices to allow them to amble in the certain areas of the facility where such programs are held, with or without the assistance of custodial staff. Moreover, materials and communications provided in rehabilitative programs are seldom provided in a format that all persons with sensory disabilities can understand.

By failing to provide people with disabilities with reasonable accommodations, or by failing to remove the architectural barriers that may keep them out of designated program areas, prison authorities have effectively barred them from participating in rehabilitative programs. As a result, those prisoners languish behind bars in a state of idleness, unable to engage in rehabilitative programming designed to offer mental stimulation and constructive activity. Locked away and locked out of opportunities to engage in constructive activity or maintain contact with the outside world, the sensory and social deprivation experienced by these prisoners is magnified, leaving them in an environment of near-total sensory and social deprivation experienced by these prisoners and locked out of opportunities to engage in constructive programming. As a result, these prisoners are held, with or without the assistance of custodial staff. Moreover, materials and communications provided in rehabilitative programs are seldom provided in a format that all persons with sensory disabilities can understand.

D. SOLITARY CONFINEMENT INFlicts ACUTE HARMs ON PRISONERS WITH SENSory DISABILITIES

In solitary confinement there is often little to no access to natural light. Some solitary confinement cells have no windows. Artificial lights can be kept on for 24 hours a day. Most cells have a solid steel door with a narrow viewing window and small slot. Communication is highly curtailed, mainly occurring through these small slots designed for food trays, passing mail or medications, or cuffing prisoners prior to their exiting their cells. These harsh and isolating conditions are especially harmful for prisoners with sensory disabilities who experience profound and heightened isolation due not only to the sensory and social deprivation experienced by all prisoners subjected to solitary, but also because they face huge barriers to meaningful communication in correctional environments.

1. Deaf and Hard of Hearing Prisoners

Solitary confinement inflicts acute harms on prisoners who are deaf or hard of hearing. Deaf and hard of hearing people make up a significant portion of state prisoners. Research estimates that “between 35 and 40 percent of all inmates experience some degree of hearing loss, including 13 to 20 percent with significant hearing loss.”

Deaf prisoners frequently find themselves isolated and marginalized in correctional institutions due in part to misconceptions about Deaf culture and communication barriers caused by the failure on the part of corrections systems to ensure effective and meaningful communications between deaf prisoners and corrections staff, health care providers, and where permitted, visitors, including family and friends.

Language barriers pose considerable communication challenges. There is a low literacy rate among deaf individuals. Only “[a]bout 10 percent of the deaf school age population grows up to be literate adults reading at the tenth grade or above.” Studies indicate that approximately 30 percent of deaf persons who finish school at age 18 or above read at a 2.8 grade level or below—or are otherwise functionally illiterate. Moreover, approximately 60 percent of deaf adults have a third- to fourth-grade reading comprehension level.

In correctional institutions, these low literacy rates are compounded by other language deficiencies, such as “difficulty with all or part of language including grammar, syntax, vocabulary, the social use of language, and using communication effectively.” This results in a disproportionately high rate of people with language deficits in prisons, jails, and juvenile centers.

That said, for many Deaf people, American Sign Language (ASL) is their primary language. ASL is a “visual language” through which the “brain processes linguistic information through the eyes,” and where the “shape, placement, and movement of the hands, as well as facial expressions and body movements, all play important parts in conveying that information.” Deaf people use their eyes to collect and process information in the same way hearing people use their ears. Some studies have even found that deaf people have enhanced vision. In this way, sighted Deaf people rely on vision to communicate with the outside world. Vision is therefore a vital communication tool for sighted Deaf people.

The bleak and highly restrictive environment of solitary confinement strips sighted Deaf prisoners of the opportunity to communicate with other human beings in any meaningful way. Prisoners who experience hearing loss while incarcerated may face particularly harsh conditions in solitary confinement, as they “may feel even more isolated than other inmates experiencing the same conditions of confinement, since those in isolated confinement with typical hearing may be able to have informal conversations by yelling, whereas this opportunity may not be available to those who are deaf or hard of hearing.” Beyond this, Deaf prisoners most likely arrive at prisons already having experienced social isolation. Researchers have discovered that “[d]eafness is . . . a significant contributor to social isolation,” and “[e]ven mild hearing loss can impair language processing, negatively affecting health care access and use and leading to changes in cognitive and emotional status.” Furthermore, in a typical isolation cell, there is
Blind or low vision prisoners are denied the chance to engage in prison programming when they are not provided with auxiliary aids and services.

2. Blind and Low Vision Prisoners

Prisoners who are blind or low vision rely mainly on their sense of hearing to engage with the world around them. However, in solitary confinement, opportunities to interact and communicate with the outside world are severely limited. These harsh restrictions are particularly severe for blind or low vision prisoners who communicate primarily using hearing and speech. While in solitary confinement, blind or low vision prisoners are unable to regularly engage in verbal communications with other prisoners and have limited meaningful verbal communications with staff—save for the limited and superficial interactions at cell front. Beyond this, in solitary confinement the disorienting and jarring sounds—ranging from prisoners shouting, to industrial fans, to the loud banging sounds that cell doors make when opening and closing—are constant. Such exposure can result in auditory overload, clogging their only means for obtaining information from their surroundings with senseless cacophony.

Moreover, in correctional systems where prisoners in solitary confinement are allowed to occupy the day by reading books, writing, watching television, or participating in hobby craft, blind or low vision prisoners are denied the chance to engage in these constructive activities when they are not provided with auxiliary aids and services, such as audio books or captioned television, to facilitate meaningful participation. With few opportunities for mental stimulation, these blind and low vision prisoners face even harsher conditions in solitary confinement, which can lead to extreme idleness.

Finally, even for sighted prisoners, the austere conditions in solitary confinement may have adverse effects. Due to reduced reliance on eyesight inside the tiny spaces where prisoners in solitary confinement are held, seeing prisoners have even reported diminished eyesight after extended stays in solitary. Uzair Paracha described the experience as follows:

I had Lasik surgery a few years before my arrest and it went well. Yet my eyesight deteriorated threefold in the nine years I was in isolation. We couldn’t see anything beyond a few feet in front of our doors and nothing at all from our window. . . .

3. Communication Barriers

The public needs to know about [the] limitations Deaf [prisoners] face in [gaining] access to inmate programs & psychological services, needs for staff training for visual communication[,] our need for equal access to outside communication [TDD & Deaf Videophone], or difficulty in daily communication with correctional officers.254

—DEAF PRISONER, FORMERLY INCARCERATED AT MARYLAND CORRECTIONAL INSTITUTION-JESSUP

In solitary confinement, prisoners are dependent on staff to meet a myriad of basic human needs. When issues or challenges arise, prisoners held in solitary confinement must have the ability to communicate their needs and concerns to corrections staff, particularly during critical encounters such as medical or mental health appointments and emergencies. Communication barriers can be particularly harmful—and magnified—in solitary confinement if corrections staff do not follow measures to ensure effective communications with all prisoners, especially prisoners with sensory disabilities.

For example, in one case, a deaf prisoner alleged that he was sprayed with chemical agents despite being alerted by his sign language interpreter that he could hear the agents being released in his cell. The interpreter testified that he heard the agent being released but was unable to express himself to corrections officers during these incidents due to the lack of sign language interpreters.256 Robin Valder claimed that "he was unable to express himself to corrections officers during these incidents due to the lack of sign language interpreters," but required a sign language interpreter to communicate effectively.257 He alleged that he was sprayed with chemical
IV. FAILURES TO PROVIDE ACCOMMODATIONS AND ASSISTIVE DEVICES

When a person is incarcerated, every activity—every minute of daily life—is monitored and controlled by prison authorities. Daily schedules control when a prisoner may eat, sleep, shower, visit with family, use the telephone, or attend educational programs. For prisoners with disabilities, proper accommodations and staff assistance and support are critical to ensure that they have the opportunity to participate in all aspects of prison life. For example, depending on the nature and type of disability, prisoners with mobility-related disabilities will be unable to engage in the full range of movements required for daily or routine tasks, such as dressing or showering. Similarly, blind prisoners will be unable to write and submit grievances, or participate in educational programs, where materials are not provided in Braille or text-to-audio formats. Without proper accommodations and assistance from corrections staff, prisoners with disabilities have been forced to rely on assistance from other prisoners. In the best-case scenario, these prisoners may assist prisoners with disabilities out of kindness or compassion, or at worst, another prisoner might use assistance as a mechanism to extort from the prisoner with a disability.

Prisoners are even more reliant on corrections staff to meet their basic human needs in solitary confinement. Each day, prisoners in solitary rely on corrections staff to escort them to showers, notify them of meals or medical appointments, and distribute legal and personal mail. In solitary, most interactions take place at the front of each prisoner’s cell, where prisoners receive important items such as meal trays and dosages for medications. Prisoners are typically required to get cuffed at the cell front—behind the back while standing with their hands through the narrow, cell-front slot—before they may be permitted to exit the cell for programming, outdoor recreation, or showers.

For prisoners with disabilities, accommodations and support are critical to ensure access to all aspects of prison life.

Yet, for many persons with ambulatory disabilities, walking to the cell front door for these routine interactions is no simple task. Spinal cord injuries may render tasks such as walking or kneeling for handcuffing at the cell front impossible, or nearly impossible, without serious pain or serious injury. Without assistive devices or assistance, prisoners with disabilities may be hindered in their ability to move around, care for themselves, or engage in critical encounters at their cell front.

The rigid schedules governing life in solitary confinement will exclude some prisoners with physical disabilities if facilities do not recognize and respond to their unique needs. In some cases, an appropriate response will require modifications to routine procedures and policies governing the daily activities of the prisoner to ensure that prisoners with disabilities are kept safe and have equal access to prison programs, activities, and services. In addition, prisoners with physical disabilities must have access to assistive devices in order to engage in routine activities such as showering, dressing, using the toilet, or simply moving around inside their cells. To ensure that prisoners with physical disabilities...
Prisoners with mobility-related disabilities have brought lawsuits alleging that they have been forced to crawl around on the floor, hop on one leg, or endure serious pain just to engage in routine, daily activities.

are able to participate in these tasks, prison authorities must provide proper wheelchairs, assistive devices—in good working condition—or other assistance. However, not all prisons have provided the assistive devices and assistance required under law. Consequently, prisoners with mobility-related disabilities have brought lawsuits alleging that they have been forced to crawl around on the floor, hop on one leg, or endure serious pain just to engage in routine, daily activities.273 Even where assistive devices have been provided, prison officials have confiscated them on the grounds that those devices pose a security risk and could be used as weapons.274

Robert Dinkins sued the Missouri Department of Corrections, challenging the adequacy of the medical services provided to him. After he was diagnosed with pernicious anemia, he alleged that prison officials failed to prescribe him appropriate treatment for the disease, resulting in paralysis below the waist.275 He alleged that he began to experience “blackouts, weakness, and difficulty walking,” and that he did not receive a proper examination for approximately six months.276 Due to his worsening condition, prison officials transferred Dinkins to the Transitional Care Unit and placed him in administrative segregation.277 While in the Transitional Care Unit, he alleged being denied access to a wheelchair and being forced to crawl across the floor, where he ate his meals.278 He claimed that his requests for assistance with his wheelchair and related accessories, placement into a wheelchair-accessible cell, physical therapies, and preventive treatment, along with other accommodations, were all ignored by prison officials.279

A prisoner in Washington state prison reported being denied access to a wheelchair for almost two years while held in segregation.280 The prisoner had been provided with a wheelchair while at his previous housing unit, but prison authorities confiscated the device when he was transferred to solitary confinement. As a result, the prisoner was left without the means to ambulate, which meant that he had to “drag[] himself across the floor in order to conduct his daily activities.”

Randall Jackson alleged that he did not have access to a wheelchair for over a year while he was in solitary confinement.281 He also alleged that he was held in almost continuous lockdown for 24 hours per day, 7 days per week, and permitted to leave his cell for only one hour, three times per week.282 According to his federal complaint, for the year that he was in solitary confinement, “[h]e was forced to drag himself across the dirty and abrasive cell floor, where it was very difficult to transfer to the bed, toilet, and wash basin.”283 Lloyd Brown claimed that he was denied access to recreation and showers for over two months after prison officials confiscated his crutches. Prison officials conceded to taking Brown’s crutches, but they argued in court that medical records concluded that his “crutches were not medically required” once he was transferred to the Special Housing Unit where he was held for 65 days.284 The appellate court determined that “the medical records [were] insufficient to show that Brown was ambulatory without assistance.”285 The court further reasoned that if it were true that Brown’s need for crutches was obvious and that he was unable to walk without crutches, prison officials could not simply confiscate his crutches, but had an obligation to further investigate Brown’s condition to determine whether the medical records were correct.286

Despite these detailed arrangements, neither Simmons nor Marshall received their requested accommodations while in segregation. Both were denied their egg crate mattresses and missed four consecutive meals because their wheelchairs could not access the area where staff placed food trays. Simmons and Marshall were also denied “necessary medical supplies, appropriate access to a handicapped-accessive toilet, and all other necessary assistance in using the toilet.”287 Simmons and Marshall filed a lawsuit challenging these actions and were awarded compensatory damages in the trial court.

Failure to provide accommodations and assistance to prisoners with physical disabilities in solitary confinement may lead to devastating consequences. Following amputation surgery at the end of 2005, Martinique Stoudemire contracted MRSA, a serious bacterial infection.290 Prison policy required that Stoudemire be quarantined in a segregation unit due to her infection, and she was transferred to the segregation unit at Huron Valley Women’s Facility.291 Stoudemire claimed that prison officials managing the Huron Valley Women’s Facility had held her in solitary confinement for two weeks with limited medical assistance and absolutely no contact with a prison doctor.292 She alleged that she received “extremely poor medical care while in segregation,” and that the “cells were not equipped to accommodate” her disability.293 Specifically, she alleged that she “was never provided with any assistive devices that might have allowed her to safely move between her bed, wheelchair, toilet, and shower,” and that “[t]here was no call button, so Stoudemire had to shout when she needed assistance.”294 Stoudemire was “forced to crawl from her bed to the toilet.”295 On one occasion, she defecated on herself when staff failed to respond to her requests for assistance.296 During her two weeks in segregation, Stoudemire “received only one shower . . . and was required to dress her wounds herself, which put her at risk of infection.”297 The Michigan Department of Corrections settled the suit with Stoudemire in May 2016, awarding her over $200,000 for the harm caused.298
V. HOW PRISONERS WITH PHYSICAL DISABILITIES END UP IN SOLITARY CONFINEMENT

A. WHAT WE KNOW ABOUT PRISONERS WITH PHYSICAL DISABILITIES IN SOLITARY CONFINEMENT

There is limited research and data on the number of persons with physical disabilities in prisons and jails and no concrete data on the numbers of persons with physical disabilities in isolation. In fact, until recently, there was little by way of data on the numbers of incarcerated people with disabilities period. In December 2015, the Bureau of Justice Statistics (BJS) produced a groundbreaking report that discussed the prevalence rates for six categories of disabilities in prison and jail prisoners from 2011 to 2012. BJS researchers report that from 2011 to 2012, independent living—in prison and jail prisoners from 2011 to 2012—has been a topic of concern for modern correctional systems. “Nearly three times more likely…” than the general population to report having at least one disability.”303

Cognitive disabilities were the most commonly reported disability.304 Ambulatory disability—defined as difficulty walking or climbing stairs—was the second most common disability.305 Older prisoners were most likely to report a disability in U.S. prisons and jails. Researchers report that 44 percent of prisoners aged 50 or older reported a disability as compared to 27 percent of prisoners aged 18 to 24.306 As the numbers indicate, by sheer volume alone, the substantial numbers of prisoners with disabilities currently held in prisons and jails warrant greater attention not only to the challenges they face while incarcerated, but also potential solutions to address these “complicated . . . health concerns for modern correctional systems.”309

Given the high incidence rates of people with disabilities in prison and jail, it is very likely that a significant proportion of those persons in solitary confinement are disabled. The number of prisoners held in isolation on a yearly basis is staggering. In 2011-2012, almost one in five prisoners and 18 percent of detainees in jail were held in some type of restrictive housing in the previous 12 months or less for those persons who were admitted to prison less than a year earlier.310 For prisoners under the age of 30, the rates of persons held in restrictive housing increase. According to another BJS report, “[a] mong inmates ages 18 to 19, 31 percent of those in prison and 25 percent of those in jail had spent some time in restrictive housing,” and “[a] mong inmates ages 20 to 24, 28 percent of those in prison and 23 percent of those in jail had been in restrictive housing at some time during the past year.”311

B. HOW DO PRISONERS WITH PHYSICAL DISABILITIES END UP IN SOLITARY CONFINEMENT?

Although there is no precise data on the number of people with physical disabilities in isolation, there is information on how they end up in solitary confinement. Corrections authorities have justified the use of solitary confinement for all prisoners based on the following:

1. Administrative Segregation

Prisoners can be placed into administrative segregation for a variety of reasons, but the most common justification is that the individual poses some type of threat to the safety of persons and security of the institution.312 Prisoners can be held in administrative segregation for a short period of time (e.g., during an investigation for an alleged offense, or while they wait for the corrections facility to find a cell that is wheelchair accessible), or in some cases, an indefinite period of time (e.g., due to an alleged gang affiliation).313

2. Protective Custody

Segregating prisoners to protect them from harm is generally referred to as protective custody.314 Some adult corrections systems automatically place persons from vulnerable populations—youth, elderly, and LGBT prisoners—into protective custody. Prisoners with physical disabilities are placed into protective custody due to vulnerabilities, often as a default solution after being harmed or threatened. In many state systems, conditions in protective custody are tantamount to placement into solitary confinement—that is, prisoners are held in small, concrete cells for approximately 22 hours or more per day with little to no access to natural light and almost total sensory and social deprivation.315

PRISONERS ARE 3X MORE LIKELY THAN THE GENERAL POPULATION TO REPORT HAVING A DISABILITY

40% of females and 31% of males in prison report having a disability.
some cases, prisoners in protective custody are held in the same units as prisoners held in solitary confinement for serious disciplinary infractions. For example, a victim of assault may be placed in the same unit as the person who assaulted them.

3. Medical Isolation

Prisoners may be placed into isolation for medical reasons. For example, prisoners experiencing suicidal thoughts may be placed into medical isolation, where they can be observed, also known as “suicide watch,” until they are healthy enough to return to less restrictive housing. In addition, prison officials often place persons who have been diagnosed with contagious diseases, or who may be at risk of contracting these diseases, into medical isolation to prevent the spread of the disease.

As a general matter, corrections authorities may not segregate people with disabilities into medical facilities unless the prisoner is actually receiving medical care. Furthermore, placement into medical facilities is not permitted simply because accessible housing is not available, or because prison authorities believe that it is more convenient to place prisoners into those facilities. These policies are not always followed and prisoners with physical disabilities have been placed into designated medical areas even when they were not receiving medical treatment.

4. Disciplinary or Punitive Segregation

The primary objective of corrections institutions is to maintain security and control of their facilities and the persons they house. As part of the effort to maintain order, institutions have rules and regulations that govern the behaviors of persons held within their walls. When prisoners break the rules of the prison, they are given disciplinary infractions, or tickets. Disciplinary infractions can range from failing to maintain proper hygiene or sanitary living conditions to more serious offenses like assault or escape. Failure to adhere to prison rules and regulations can result in placement into solitary confinement. Prisoners with physical disabilities, like non-disabled prisoners, can end up in solitary after being found guilty of disciplinary infractions that violate the institution’s disciplinary policies.

De Facto Isolation

Sometimes, failure to provide proper medical care and accommodations for prisoners with disabilities may result in de facto solitary confinement. Timothy Reaves has quadriplegia and brought suit against the Massachusetts Department of Corrections, alleging that the department did not provide him with an adequate physical or occupational therapy program, and a comprehensive treatment plan to manage his bowel movements, and for allegedly failing to prevent a dangerous condition known as autonomic dysreflexia. Reaves claimed that the department also cut him off from accessing outdoor recreation spaces and programming. He was left in his cell in a state of virtual isolation and idleness, without proper treatment therapies to manage his disabilities, and as a result, his condition worsened.

1. PATHWAYS INTO SOLITARY: UNIQUE CHALLENGES FOR PERSONS WITH PHYSICAL DISABILITIES

Prisoners with physical disabilities have been punished because of actions—or inactions—caused by their disabilities. For example, prisoners with physical disabilities that “cause problems such as vomiting or incontinence too often get disciplined for soiling their clothing instead of being evaluated by medical care staff.” Such treatment is fundamentally unfair. Maintaining the safety and security of a prison does not require punishing someone for actions beyond their control. Rather, punishing someone on this basis reflects a disregard for the needs of people with disabilities and a lack of sensitivity to their lived experiences.

In addition, prisoners with sensory disabilities have been charged with failing to obey staff orders they could not hear or see and subsequently disciplined with segregation. For example, one deaf prisoner reported being held in solitary confinement for two weeks for “failing to respond to an oral command spoken behind his back.” He reported that he did not receive a statement of reasons and that no hearing was held prior to his placement into solitary confinement. Only when he was provided with an ASL interpreter did it become clear to prison officials that the charges were unfounded: “I received a hearing aid two weeks into my solitary. They had an interpreter. They understood that the officer made a mistake and I was exonerated and released.”

Finally, prisoners with sensory disabilities face another hurdle in that they may not be able to understand the orientation manual or prisoner handbook that governs behaviors in the correctional institution. Violations of relatively minor prison rules can lead to placement in solitary. For example, prisoners may be punished for seemingly innocuous behaviors like posting on Facebook, failing to make the bed, or having expired toothpaste. Providing information in a format that is inaccessible to blind or deaf individuals — WAllis Nader, Attorney, Texas Civil Rights Project
Prison officials have sentenced prisoners to time in solitary confinement for alleged disciplinary violations, even where the prisoner could not understand or participate in the disciplinary hearing to raise a defense.

**Prisoners with Physical Disabilities**

Prisoners with physical disabilities may also be placed into isolation for reasons separate and distinct from the safety of persons or the security of institutions. Abdul Malik Muhammad, who is blind, was placed in solitary confinement at the Wicomico County Detention Center in Maryland for a little over six weeks. For the majority of his time in solitary, Muhammad was without “access to showers, phone calls, recreation, or a change of clothes, [and was] denied access to religious services, the commissary, visitation, or the library.” When Muhammad asked a corrections official to explain why he was placed into solitary confinement, the official responded that prison authorities experienced the social and environmental isolation of solitary confinement several times while on transfer to the hospital for treatment or diagnosis. A (disabled) inmate can be put into solitary if there is no room in the transfer part of the prison. While there you will be treated as if you were there for disciplinary action.”

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**ii. DISCIPLINARY PROCEEDINGS**

In some cases, prisoners charged with a disciplinary infraction may have the right to a disciplinary hearing along with other due process protections. These rights ensure that prisoners are not further deprived of their liberties—for example, by placement into punitive segregation and the accompanying loss of privileges—without appropriate due process. The precise nature and scope of the procedural rights given to prisoners during these disciplinary hearings will depend on the nature of the disciplinary action or punishment. Generally, in cases involving a loss of good time credits or property, prisoners will have the right to (1) receive written notification of the charges against them at least 24 hours prior to the hearing; (2) obtain information on the evidence brought against them and the basis for the punishment; and (3) call witnesses and present documentary evidence at a disciplinary hearing, subject to limitations. There is no recognized right to legal counsel during disciplinary proceedings; however, prisoners who are illiterate, or who require language or other assistance because of their disability, may be entitled to assistance.

Even where prisoners are provided with certain procedural protections during disciplinary proceedings, prisoners with physical disabilities will be denied their rights if hearings are not accessible—either because of structural barriers for prisoners with ambulatory disabilities or communication barriers for prisoners with sensory disabilities. For instance, persons who use wheelchairs will face significant obstacles if the location of the disciplinary hearing is not accessible to them. Moreover, if the evidence presented during the hearing is not accessible to prisoners who are blind or low vision, or deaf or hard of hearing, they will be unable to fully understand the charges against them and prepare a proper defense. For example, only providing notice of the disciplinary hearing and summary of the charges against a blind or low vision prisoner in small font, rather than in a format accessible to the prisoner such as large font (or Braille, if the prisoner can understand Braille) will render meaningless any right guaranteeing advance notice of the hearing and a description of charges. Similarly, not providing a sign language interpreter or real-time captioning during a disciplinary hearing will prevent a deaf prisoner from understanding the proceedings or communicating with the officers conducting the hearing and investigators. Because the failure to provide auxiliary aids and services to persons with sensory disabilities compromises their ability to successfully defend themselves in a disciplinary hearing, which could result in placement into solitary confinement, it is imperative that prisoners with physical disabilities be afforded necessary accommodations during the investigatory phase, disciplinary hearing, and any appeals process.

Without these accommodations, prisoners with sensory disabilities may be placed into solitary confinement and lose the benefit from any procedural protections provided during disciplinary hearings. In Dunn v. Thomas, plaintiffs, a class of prisoners held in the custody of the Alabama Department of Corrections (ADOC) filed suit against ADOC, challenging constitutionally inadequate medical care and violations under the ADA due to ADOC’s failure to provide them with accommodations and services. The complaint also details stories of prisoners denied meaningful access to disciplinary hearings due to the ADOC’s failure to provide interpreters and assistive devices to facilitate communication.

For example, Plaintiff Daniel Tooley, a deaf prisoner, alleged that prison officials failed to provide him with a sign language interpreter despite numerous requests. Tooley alleged that “he did not understand certain ADOC policies.” [could not] participate in any programs offered by the prison” because of communication barriers, and that ADOC “often relie[d] on other prisoners with limited sign language ability to ’communicate’” with him. Tooley also alleged that ADOC officials failed to provide him with a sign language interpreter for a disciplinary hearing. Following a hearing that he did not understand, he was sentenced to a 30-day term in segregation.

Plaintiff Donald Turner raised similar claims, alleging that he was unable to adequately defend himself in a disciplinary hearing where he was charged with unauthorized use of a credit card because ADOC failed to provide him with a sign language interpreter. Turner received 15 days in segregation following the hearing.

Finally, Tommie Moore alleged that he was sentenced to 10 days in segregation following a disciplinary hearing. According to the complaint, corrections staff gave Moore, a blind prisoner, a disciplinary ticket after he did not stand up during prison count even though “he did not know that the correctional officer telling people to stand for count was speaking to him and the standard practice in the dormitory was that the prisoners who were blind did not stand for count.” Prison records showed that Moore pled guilty to the charge, but alleged that he did not attend the “disciplinary hearing and did not admit to any misconduct or sign the disciplinary report.”

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disabilities are excluded from the benefits of "step-down" prison programming. As a result, they end up isolated for complying with such conditions due to the inaccessibility of physical disabilities may find themselves unable to behavior. However, once in solitary confinement, prisoners from solitary confinement on the completion of rehabilitation. State and federal corrections systems may condition release with physical disabilities may be unable to reap the benefits of these step-down programs for a variety of reasons. First, where manuals specifying rules and procedures for progressing out of solitary confinement are not accessible to persons with sensory disabilities—for example, deaf persons requiring a sign language interpreter, or blind persons requiring audio text—these prisoners may not be able to understand what constitutes a violation of the step-down procedures or what actions are required to get out of solitary confinement. As a result, they may fail to progress in the step-down program and lose the opportunity to get out of solitary confinement. Similarly, program materials may not be provided in a format that prisoners with sensory disabilities can comprehend. Furthermore, programming locations may not be accessible to prisoners with ambulatory disabilities. Holding group programs, like anger management or hobby craft, in locations that do not accommodate wheelchairs, or in areas of the facility that have uneven, jagged floors that make it difficult for blind or low vision prisoners to navigate, will effectively bar them from accessing programs that can help reduce their time in solitary confinement.

In addition, deaf prisoners who feel vulnerable or unsafe in dangerous prison facilities may voluntarily agree to placement into protective custody. However, without proper communication with corrections staff, they may do so without fully understanding what protective custody entails: lockdown in a highly restrictive isolation cell for more than 22 hours per day.

Special Challenges for Deaf Prisoners

Deaf prisoners are particularly vulnerable to placement into solitary and are susceptible to falling into a never-ending cycle of isolated confinement. Deaf prisoners can wind up in solitary confinement because prison authorities did not provide them with prison rules and procedures—commonly referred to as a prisoner manual, or orientation handbook—in a format that they could understand. As a result, these prisoners end up with seemingly non-serious disciplinary infractions that result in their placement into solitary confinement for being deaf. For prisoners placed in solitary, getting out of isolation, where made possible through step-down programs, will require adhering to strict guidelines and procedures. If those guidelines are not in a format that deaf prisoners can understand, they may be denied access to programs that can shorten their time in solitary confinement.

In addition, deaf prisoners who feel vulnerable or unsafe in dangerous prison facilities may voluntarily agree to placement into protective custody. However, without proper communication with corrections staff, they may do so without fully understanding what protective custody entails: lockdown in a highly restrictive isolation cell for more than 22 hours per day.

6. Trapped in Solitary

State and federal corrections systems may condition release from solitary confinement on the completion of rehabilitative programs and activities, as well as incident-free behavior. However, once in solitary confinement, prisoners with physical disabilities may find themselves unable to comply with such conditions due to the inaccessibility of prison programming. As a result, they end up isolated for extended periods of time. This is because prisoners with disabilities are excluded from the benefits of “step-down” programs that require the successful completion of certain programming and behavioral goals to “progress” out of solitary confinement.

Prisoners with physical disabilities may be unable to reap the benefits of these step-down programs for a variety of reasons. First, where manuals specifying rules and procedures for progressing out of solitary confinement are not accessible to persons with sensory disabilities—for example, deaf persons requiring a sign language interpreter, or blind persons requiring audio text—these prisoners may not be able to understand what constitutes a violation of the step-down procedures or what actions are required to get out of solitary confinement. As a result, they may fail to progress in the step-down program and lose the opportunity to get out of solitary confinement. Similarly, program materials may not be provided in a format that prisoners with sensory disabilities can comprehend. Furthermore, programming locations may not be accessible to prisoners with ambulatory disabilities. Holding group programs, like anger management or hobby craft, in locations that do not accommodate wheelchairs, or in areas of the facility that have uneven, jagged floors that make it difficult for blind or low vision prisoners to navigate, will effectively bar them from accessing programs that can help reduce their time in solitary confinement.

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VI. LEGAL PROTECTIONS FOR PRISONERS WITH DISABILITIES IN SOLITARY CONFINEMENT

Robust legal protections exist to protect the rights of prisoners with disabilities. International standards, U.S. constitutional law, federal statutes and regulations, and state laws prohibit discrimination against people with disabilities, prevent their unjustified exclusion from mainstream society, and mandate that they receive equal access to programs and services offered to all. Prisoners with disabilities held in solitary confinement should receive these protections. Although the law as it relates to incarcerated persons with disabilities is largely undeveloped in court cases, it is an area ripe for litigation and policy reform.

The following section outlines the legal protections afforded prisoners with disabilities in solitary confinement under the various legal regimes.

A. INTERNATIONAL LAW

International law and standards affirm the human rights of all people with disabilities and a commitment to protecting people with disabilities from cruel, inhumane, and degrading treatment when they are incarcerated.

1. UN Convention on the Rights of Persons with Disabilities

The United Nations Convention on the Rights of Persons with Disabilities ("Convention") affirms the basic human rights of all people with disabilities. The guidelines provide important protections for all persons with disabilities that must be respected in prisons and jails. In particular, the Convention sets forth basic requirements for the 160 signatories, or Member States, to end systematic discrimination and to enact appropriate legislation that will protect and promote the rights of all people with disabilities. The United States signed the convention in 2009, but disappointingly has yet to ratify it. Specifically, the Convention sets forth specific measures to ensure equal access to justice, liberty, and security of the person, as well as freedom from torture or cruel, inhuman, or degrading treatment or punishment for all people with disabilities. In addition, the Convention mandates that people with disabilities be provided with reasonable accommodations when they are incarcerated.

2. Nelson Mandela Rules

In December 2015, the United Nations General Assembly adopted an updated version of its Standard Minimum Rules for the Treatment of Prisoners (known as the “Nelson Mandela Rules”). The Nelson Mandela Rules establish basic principles and minimum standards for the treatment of prisoners in order to ensure that the human rights of all incarcerated persons are respected, providing standards for such aspects of prison management as medical care, mental health treatment, solitary confinement, and classification. The Nelson Mandela Rules also recognize the special challenges faced by prisoners with disabilities and set in place standards protecting them from mistreatment and inhumane conditions of confinement. Specifically, as relates to prisoners with physical disabilities in solitary confinement the Nelson Mandela Rules:
The Americans with Disabilities Act provides comprehensive protections for people with disabilities held in state prisons and jails.

B. CONSTITUTIONAL PROTECTIONS: THE EIGHTH AMENDMENT

The Eighth Amendment to the U.S. Constitution “prohibits the infliction of ‘cruel and unusual punishments’ on those convicted of crime.” Stated differently, it provides a limitation on the extent to which the government can punish its prisoners. Punishments that are barbaric or torturous involve the unnecessary and wanton infliction of pain or that are “grossly disproportionate to the severity of the crime” violate the Eighth Amendment. In addition, prison authorities violate the Eighth Amendment when they deny prisoners medical care, deprive them of their basic human needs, or “deprive inmates of the minimal civilized measure of life’s necessities.” In short, the Eighth Amendment mandates that corrections officials provide humane living conditions for prisoners.

Although few courts have determined that solitary confinement as a practice on its own violates the Eighth Amendment, several courts have found that placing people with serious mental illness into solitary confinement is cruel and unusual punishment. As one court reasoned, placing prisoners with mental illness into solitary confinement exposed them to risk of serious psychological harm and deterioration. The court emphasized that continued placement for prisoners with psychiatric disabilities in solitary confinement would expose them to “conditions that are ‘very likely’ . . . to inflict a serious mental illness or seriously exacerbate an existing mental illness[,] and cannot be squared with evolving

C. THE AMERICANS WITH DISABILITIES ACT

The passage of the Americans with Disabilities Act (ADA) was a watershed moment in the movement for equal rights for all people with disabilities. The landmark civil rights legislation was the result of decades-long advocacy by people with disabilities and, in particular, a fervent disability rights movement that sprang up in the 1970s. Following the “culmination of 25 years of methodical congressional study, measured legislative steps, and finely tuned negotiation regarding the problem of disability discrimination,” Congress enacted the ADA to address the historic exclusion, segregation, and discrimination experienced by people with disabilities.

Under the ADA, “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” A plaintiff seeking to establish a claim under the ADA in court must show that (1) they are a person with a disability according to the statutory definition; (2) they are otherwise qualified for the benefit in question; and (3) they were excluded from the benefit of a program, service, or activity due to disability-based discrimination. These sweeping protections aimed at ensuring equal access to public services, programs, or activities for all people with disabilities did not stop at the prison gates. Six years after the passage of the ADA, the Supreme Court ruled in Pennsylvania Department of Corrections v. Yeskey that the “benefits” from “services, programs, or activities” included prisoners, who even though incarcerated, rely on the state to meet their basic needs and provide them with rehabilitation.

1. Reasonable Accommodations

A public entity, including prisons and jails, are required to give “primary consideration” to the individual’s choice for a particular aid or service that serves to accommodate a communication disability. According to guidelines set forth by the U.S. Department of Justice, a public entity must “honor the person’s choice, unless it can demonstrate that another equally effective means of communication is available, or that the use of the means chosen would result in a fundamental alteration or an undue burden.”

For example, if a prisoner with quadriplegia requires a motorized wheelchair (or a personal assistant to help with pushing a manual wheelchair) in order to access the dining hall, showers, recreational areas, and library in the facility, then under the ADA, prison officials would be required to provide a reasonable accommodation so that the prisoner can participate fully and equally in these benefits offered at the facility. By way of another example, say that a facility permits prisoners to use the telephone for only 30 minutes per day. Deaf or hard of hearing prisoners who rely on
telecommunication devices like video phones, TTDs, or relay services may in practice receive less time for phone calls due to the additional time it takes to set up these devices, as well as delays in transmitting and receiving messages. A reasonable accommodation could be one that would allot additional time for telephone calls by deaf prisoners to ensure that they have the same time for telephone calls as hearing prisoners.

2. Effective Communications

Under the ADA, corrections officials are required to provide communications to people with disabilities that are as effective as the communications provided to persons who do not have disabilities. To meet this requirement, corrections officials must provide blind, low vision, deaf, and/or hard of hearing persons with auxiliary aids and services to facilitate effective and meaningful communications during critical encounters—prison orientation, educational classes, job training, work assignments, meetings with counselors, medical appointments, religious services, grievance proceedings, vocational classes, etc.—unless doing so would cause an undue burden or fundamentally alter the nature of a program.

To ensure meaningful and effective communications with blind, low vision, deaf, and/or hard of hearing prisoners, prison officials must provide auxiliary aids and services, such as hearing aids, sign language interpreters, text-to-audio devices, vibrating alerts, and real-time captioning. When provided, the auxiliary aids and services must also be tailored to the specific needs of the individual. Public entities are required to give primary consideration to the most appropriate auxiliary aids and services that would provide meaningful communication.”

Furthermore, the auxiliary aids provided must properly function to be effective. Hearing aids that are broken399 or that do not fit well will not provide effective communications. Similarly, effective communication requires that auxiliary services such as sign language interpreters be qualified to complete the job. A qualified interpreter is one “who is able to interpret effectively, accurately, and impartially both receptively and expressively, using any necessary specialized vocabulary.”400 Permitting other prisoners to serve as sign language interpreters places deaf prisoners at risk by infringing upon their privacy, particularly during confidential medical visits, and creating a reliance on other prisoners, which can lead to exploitation.401 If interpreting services are not available, video remote interpreting services may be used, particularly in emergency situations.402

3. Limits to the ADA

The comprehensive protections and guarantees provided to people with disabilities are not without limitation. Even where an individual can establish that they have a disability as defined by the statute, are otherwise qualified, and were excluded from the benefit of a program, service, or activity provided by a public entity, the public entity is not required to provide an accommodation where doing so constitutes an undue burden.403 Specifically, a prison can defend against a lawsuit alleging a violation under the ADA for failing to provide a reasonable accommodation where providing the requested accommodation “would result in a fundamental alteration in the nature of a service, program or activity, or in undue financial and administrative burdens.” The ADA defines “undue burden” as an “action requiring significant difficulty or expense.”404 Moreover, prison authorities are not required to provide reasonable accommodations where doing so would pose a “direct threat” or a “significant risk to the health or safety of public entities that cannot be eliminated by a modification of policies, practices or procedures, or by the provision of auxiliary aids or services.”405 Additionally, “[a] public entity may impose legitimate safety requirements necessary for the safe operation of its services, programs, or activities.”406 Although this provision may limit the extent to which the public entity must provide reasonable modifications, the provision also calls for assessments based on actual risks rather than speculation, stereotypes, or generalizations, which suggests that public entities must offer written justifications or actual evidence before alleging safety risks.

4. 53

D. Prison Litigation Reform Act

The Prison Litigation Reform Act (PLRA) applies to all lawsuits filed pursuant to federal law by prisoners, including prisoners with disabilities. Under the PLRA, prisoners are prohibited from filing a lawsuit in federal court until they have attempted to resolve their dispute using the administrative procedures for the particular prison in which they are held.407 In other words, prisoners must demonstrate that they have complied with and received no relief from the prison’s own grievance system prior to filing a lawsuit in court. Failure to do so will result in the prisoner’s complaint, even a meritorious one, being dismissed from court.

For example, if a blind prisoner brings a lawsuit under the ADA alleging that prison officials failed to provide them with any accommodations so that they could participate in vocational classes, religious services, and recreation, and there is no evidence that they submitted a request to prison authorities for these accommodations, their complaint will be dismissed. Thus, where administrative remedial procedures are not strictly followed, prisoners with physical disabilities in solitary confinement may not be able to obtain relief in court even where constitutional, ADA, or other violations of federal law have occurred.

5. Protection & Advocacy

Protection & Advocacy (P&A) organizations “provide legal representation and other advocacy services to all people with disabilities (based on a system of priorities for services).” Federal statutes allow P&A organizations a right of access to records and related information during their investigations. P&A organizations have the authority under federal and state laws to provide legal representation and other advocacy services to individuals with physical, mental, developmental, and intellectual disabilities living in correctional institutions, among other facilities. These P&A agencies maintain a presence in both public and private facilities that house individuals with disabilities, and these agencies are responsible for investigating and monitoring institutions for violations of disability laws and pursuing remedial action to address violations when found. In recent years, several P&A organizations have filed lawsuits on behalf of prisoners with physical disabilities challenging their mistreatment while held in solitary confinement.

F. State Law

In addition to federal law and regulations, state laws and regulations provide protections to people with disabilities, including incarcerated persons. Though state laws prohibit discrimination on the basis of disability and offer protections similar to the ADA, each state court’s interpretation of that state’s disability laws controls. A review of the specific state laws and cases is necessary to determine the nature and scope of protections offered under these state statutes.
VII. RECOMMENDATIONS FOR ENDING SOLITARY CONFINEMENT OF PRISONERS WITH DISABILITIES

Solitary confinement is an overused, ineffective, and harmful practice. Despite the claims that solitary confinement is used only when necessary, the research detailed in this report shows how some prisoners with physical disabilities are held in conditions amounting to extreme and, in some cases, prolonged isolation for reasons that are unrelated to maintaining the safety and security of the facility. Prisoners with disabilities may be placed into solitary due to lack of accessible cells, miscommunication leading to disciplinary charges, or for their own protection. These prisoners with disabilities languish in highly restrictive conditions where they are deprived of meaningful social interaction and almost all constructive activity with little to no actual justification for their continued placement. As noted, there is no evidence that long-term isolation makes prisons and jails safer. Indeed, most of the evidence suggests the opposite effect—that solitary confinement can increase the incidence of violence and contributes to increased recidivism amongst persons subjected to its use.415 Prolonged isolation for persons with physical disabilities, such as persons with quadriplegia, other spinal cord injuries, or stroke survivors coping with paralysis, may result in physical deterioration, especially where regular physical therapy is not provided. Moreover, failing to accommodate prisoners who use wheelchairs, or other assistive devices like walking canes or walkers, may mean the denial of access to even the limited programming that is sometimes available to prisoners in solitary confinement. Without accommodations to permit effective communication for deaf and hard of hearing prisoners, and access to accessible reading materials for blind and low vision prisoners, the extreme conditions of social isolation in solitary are compounded.

This report highlights a set of guiding principles and specific reforms that generally address the challenges faced by incarcerated persons with physical disabilities, and that specifically address the challenges of those in solitary confinement.416 These principles and recommendations build on the guiding principles set forth in the Department of Justice’s Report and Recommendation Concerning the Use of Restrictive Housing released in January 2016.417 The report was produced in response to a directive by President Obama calling on the Department of Justice to review the overuse of solitary confinement in federal prisons nationwide and identify potential alternatives to its use. The DOJ report and its recommendations set forth over 50 guiding principles for solitary reform writ large and a host of specific policy changes for the Federal Bureau of Prisons (BOP) and other detention agencies within the DOJ, including banning youth in solitary, diverting those with serious mental illness out of solitary, reforming protective custody, prohibiting the use of solitary confinement for low-level disciplinary infractions, and shortening mandatory lengths of stay in solitary confinement units. While the department’s guiding principles are a move in the right direction, they did not address the unique issues prisoners with physical disabilities face in solitary confinement. Accordingly, more rigorous requirements are still necessary to make correctional systems safer and more humane.

A. RECOMMENDED ACTION

The recommendations below are offered to serve as guidance to corrections and state officials legally obligated to follow the ADA and to federal officials tasked with enforcing the ADA’s mandates in prisons and jails nationwide. The recommendations provide potential reforms for common challenges encountered by incarcerated persons with physical disabilities. In practice, implementing the ADA for individual prisoners with physical disabilities may require case-by-case assessments into their needs, as well as the needs and resources of each correctional entity. The proposed reforms are aimed at reducing the overuse of solitary confinement and ensuring that in those systems where solitary confinement continues to be used, the rights of persons with physical disabilities are respected.

1. Correctional Systems

Recommended actions for federal, state, and local correctional systems:

- Amend existing, or adopt new, administrative policies to reflect the recommendations made in the model policies section discussed below.
- Establish data procedures to improve tracking and monitoring of incarcerated persons with physical disabilities. This will include adopting formal definitions of types of disabilities, as well as collecting data on people with disabilities within the corrections system on an annual basis. The data systems should be designed to ensure ease in searching for key terms and filtering data.
- Create policies, procedures, and systems to permit both medical and security/custody to be apprised of all relevant information related to a prisoner’s disability or reasonable accommodation.
- Complete a systemwide self-evaluation of each facility to determine whether facilities are compliant with the ADA.418 Buildings should be assessed to see whether they comply with the 2010 ADA Standards for Accessible Design.419 Assign a competent and knowledgeable ADA Coordinator to each facility in the jurisdiction.
The ADA Coordinator should be responsible for serving as the facility expert on the ADA, leading training programs for corrections staff on ADA compliance, coordinating with medical and mental health professionals to understand the needs of people with disabilities, managing all requests for accommodations from people with disabilities, and working with the appropriate officials to establish the budget for ADA-related compliance, accommodations, and other measures. The ADA Coordinator should be a full-time staff member and be provided with the autonomy, time, and authority to complete their required duties. To the extent feasible, corrections institutions should seek to hire people with disabilities to fill these roles to provide an opportunity for those who have personal knowledge and a deep understanding of the issues facing this group.

- Establish an ADA Committee to be comprised of corrections officials and staff from all aspects of prison services and management (e.g., custody, programming, visiting, classification, medical and mental health, etc.), as well as prisoners. The ADA Committee is responsible for addressing existing disability-related challenges, identifying policies to prevent ongoing and future ADA violations, and handling all other issues related to managing and accommodating prisoners with disabilities, particularly those held in solitary confinement systemwide.

- Provide training and support for medical personnel and custody staff on working with people with disabilities (e.g., Deaf culture and sensitivity training, etc.). Where feasible, training sessions should be led by, or in partnership with, people with disabilities, or individuals and organizations with expertise in working with people with disabilities.

- Develop robust systems to gather information on incarcerated persons with disabilities to ensure that medications and accommodations remain with the person even following a transfer within the corrections system and despite security classification.

- Develop a clear and comprehensive process by which prisoners may request accommodations or seek review of any decision denying a request for an accommodation. The procedure for requesting accommodations should be available in formats accessible to prisoners who are blind, low vision, and/or deaf or hard of hearing.

2. Federal

“...At some point or another, the federal government is going to have to abide by [its] own law. When will the Deaf community receive... justice? The Deaf community is continuously overlooked.”

—SCOTT HOFFMAN, DEAF ACCESS TO JUSTICE ACTIVIST

DEPARTMENT OF JUSTICE

- The Office of the Inspector General of the Department of Justice should investigate the conditions of confinement for incarcerated persons with disabilities held in BOP facilities.

- The Department of Justice should audit state and federal prisons on an annual or biannual basis to evaluate whether corrections facilities have completed self-evaluation plans or are otherwise in compliance with the regulations governing public entities under Title II of the ADA.

The Department of Justice should augment its existing guidelines on the treatment of prisoners in solitary confinement or restrictive housing in the DOJ Report and Recommendations Concerning the Use of Restrictive Housing to include prisoners with physical disabilities consistent with the recommendations in this report.

3. State and Local

State legislatures and municipal bodies should:

- Ban the placement of incarcerated persons with physical disabilities in solitary confinement, except in rare and exceptional cases, for a short duration, and only where the prisoner “poses a credible continuing and serious threat to the security of others or to the prisoner’s own safety.”

- Require state corrections entities to report on the numbers of incarcerated persons with physical disabilities held in solitary confinement, including but not limited to the rates of removal/refusal of accommodations, use of uncertified interpreters or other prisoners, and the rates of denial for accommodations due to cost, etc.

B. MODEL POLICIES AND PROCEDURES

1. General Principles

- Placements into solitary confinement must not last longer than 15 days at a time.

- Solitary confinement must only be used in rare and exceptional cases, for a short duration, and only where the prisoner “poses a credible continuing and serious threat to the security of others or to the prisoner’s own safety.”

All placement decisions must be reviewed by an independent authority within 48 hours of placement.

- Vulnerable populations must be expressly excluded from solitary confinement, including youth, pregnant women, persons with psychiatric disabilities, and persons whose mental or physical...
disabilities will be exacerbated by placement into solitary. If placed in solitary confinement, these vulnerable populations should be consistently monitored for deterioration in physical and mental health, and diverted from solitary confinement and provided with appropriate medical or mental health treatment where deterioration occurs.

- All placement decisions must be supported with specific and concrete justifications that are supported by objective evidence.

### 2. General Principles Regarding Incarcerated Persons With Physical Disabilities

- Solitary confinement must be "prohibited in the case of prisoners with mental or physical disabilities when their conditions would be exacerbated by such placement." Incarcerated persons with physical disabilities should never be placed into solitary confinement because the facility lacks accessible cells for people with physical disabilities, or for protective custody purposes, such as after reporting sexual assault.

- Reasonable accommodations must be provided to all incarcerated persons with physical disabilities who are held in solitary confinement. These accommodations are necessary to ensure equal access to all programs, services, and activities that are available to non-disabled prisoners.

### 3. Process Prior to Placement

- All prisoners must receive adequate and meaningful process prior to placement into solitary confinement. All placement decisions should be evaluated by a multidisciplinary team that includes custody staff, medical personnel, mental health professionals, and the warden or deputy warden. Officials in charge of reviewing placement decisions must have objective, written evidence of reasons justifying placements into solitary. Adequate and meaningful process includes:

  - Notice of the reasons for placement into solitary confinement, including the evidence used in making the placement decision. Notice should be written and provided in a format that is accessible to all persons, including those with sensory disabilities. Ensuring that decisions are accessible includes providing qualified sign language interpreters to deaf persons who sign and who are placed into solitary, or require providing materials in Braille, large text, or audio formats.

  - A hearing before a neutral arbiter whereby the prisoner can offer evidence, as well as present and confront witnesses, where doing so would not pose a substantial threat to the safety and security of the prisoner, other prisoners, or the facility. The hearing must include accommodations (i.e., auxiliary aids and services) to ensure effective communications with prisoners with sensory disabilities and must be housed in a location that can be accessed by prisoners with mobility-related disabilities.

  - An opportunity to appeal all placement decisions to a neutral arbiter. The appeals process must be provided in a format that is accessible to prisoners with sensory disabilities.

  - Periodic review of all placement decisions by the warden, or a designated official, with recommendations from the multidisciplinary team, for all placements that exceed the 15-day limit. Review should occur every 14 days. The purpose of periodic review is to ensure that the reasons justifying placement remain, and that housing the prisoner in a less restrictive setting would not avoid the risks to the prisoner’s personal safety, and the safety and security of other prisoners, staff, and the facility.

  - Prisoners must be afforded a process to progress out of solitary confinement and acquire access to programming and increased privileges. This process should include clear and specific criteria for progressing to less restrictive housing. Prisoners should be afforded increased privileges as they progress from solitary and into less restrictive housing. The policies governing progression out of solitary must be provided in accessible formats to all persons with sensory disabilities.

### 4. Disciplinary Segregation

- Prisoners should be placed into solitary confinement only where the prisoner "poses a credible continuing and serious threat" to safety and security, and only where other sanctions (including the removal of certain privileges for a limited period of time) are not appropriate.

- Prisoners must be afforded the opportunity to appeal all convictions to a neutral arbiter. The appeals process must be provided in a format that is accessible to prisoners with sensory disabilities.

- Disciplinary segregation should not extend beyond a brief period—i.e., not more than 15 days. Segregation beyond a brief period should be imposed only in cases where the prisoner "poses a credible continuing and serious threat." 

- Placement into disciplinary segregation should occur only after a disciplinary hearing whereby the prisoner is presented with the nature of and evidence supporting the charges, is permitted to offer evidence, and is permitted to present and confront witnesses, where doing so would not pose a substantial threat to the safety and security of the prisoner, other prisoners, or the facility. All information provided at the disciplinary hearing must be in an accessible format.

- Under no circumstances should a prisoner with a physical disability be denied access to reasonable accommodations as a form of punishment.

- No prisoner should be denied access to durable medical equipment or assistive devices while in isolation for an indefinite period of time. If the removal of durable medical equipment or an assistive device would exacerbate the prisoner’s disability, then the assistive device is necessary and removal should be avoided unless in exceptional circumstances and then only for a limited period of time. Corrections staff should presume that a

### 5. Protective Custody

- Prisoners who are separated from general population for protective reasons must not be placed into solitary confinement. At a minimum, these prisoners should be held in the least restrictive conditions possible to ensure their safety while also maximizing their out-of-cell time, and access to meaningful social interaction and constructive activity.

- Privileges such as telephone use, visitation, and commissary access must not be removed for prisoners placed in protective custody.

### 6. Conditions

- Accessible cells must be provided in housing units for all security levels. At a minimum, the law requests that 3 percent—but no fewer than one cell—must be designed to accommodate wheelchair users.

- Under no circumstances should a prisoner with a physical disability be denied access to reasonable accommodations as a form of punishment.

- No prisoner should be denied access to durable medical equipment or assistive devices while in isolation for an indefinite period of time. If the removal of durable medical equipment or an assistive device would exacerbate the prisoner’s disability, then the assistive device is necessary and removal should be avoided unless in exceptional circumstances and then only for a limited period of time. Corrections staff should presume that a

"We are not asking for additional services, we are asking for equal access.”

—TALILA A. LEWIS, FOUNDER AND EXECUTIVE DIRECTOR, HEARD
prisoner can safely possess their assistive device unless the prisoner has misused the assistive device in the past. If there is a reason to believe that the prisoner will pose a threat to themself or others with the assistive device, then the prisoner should be placed under continuous watch when the device is in their possession.429 Absent specific, concrete, and objective evidence that providing such a device would pose a credible and serious risk to the prisoner’s own safety, other prisoners, staff, or the safety and security of the institution, assistive devices should be provided to prisoners in solitary confinement where requested. The denial of accommodations for security reasons should last no longer than necessary to prevent the threats to safety and security that justify the placement into solitary confinement, and must be supported by specific and concrete evidence. Any denials must be approved in writing by the warden or another high-level official of the facility.

Decisions denying requests for accommodations, or removing accommodations previously provided, must be in writing, in accessible formats, and must be made with input from medical professionals and ADA Coordinators, where necessary, and submitted to the warden or another ranking official for final approval.

Factors to consider when determining whether the requested assistive device or medical equipment poses a threat to the safety of persons and the security of the facility:

- The need for the accommodation;
- Whether the accommodation is necessary;
- Whether the prisoner’s disability would be exacerbated by the removal of the assistive device;
- Whether the prison accommodation was previously provided to the prisoner in general population or less restrictive housing;
- Whether the prisoner’s accommodation was previously determined to be appropriate by staff at another correctional facility within the state’s jurisdiction;
- The prisoner’s custody level;
- The specific circumstances justifying placement into solitary confinement;
- The likelihood that the prisoner may use the assistive device to cause physical harm; and
- Whether a temporary removal of the device would address the safety and security concerns.

Prisoners must be afforded out-of-cell time and access to individual programming; group programming; recreation time; outdoor exercise time; face-to-face interaction with corrections, medical, and mental health staff; visitation; telephone calls; radio; correspondence; reading materials; and commissary. Where these privileges are provided, accommodations must be made for persons with physical disabilities to ensure that access is at least commensurate with that of non-disabled persons.

Accessible programming means removing structural barriers that obstruct physical access to locations where programs and services are housed (e.g., uneven floors, narrow doorways, uneven pavement, etc.) or moving programming to an accessible location. It also includes providing accommodations to facilitate effective communications (e.g., videophones, video relay services, sign language interpreters, audio text for blind or low vision prisoners, visual alerts for deaf and hard of hearing prisoners, etc.) so that persons with physical disabilities can participate in programs and services offered at the facility.

Prisoners should not be subjected to extreme isolation and total sensory deprivation. Prisoners should not be placed in housing that subjects them to complete auditory isolation (e.g., soundproof cells) and a total lack of visual stimuli (e.g., complete darkness, limited access to natural light, and/or 24-hour access to white light, etc.).

VIII. ACKNOWLEDGEMENTS

The author would first like to thank the Arthur Liman Public Interest Program at the Yale Law School for its generous support of this fellowship and research project. The author would also like to thank the courageous currently and formerly incarcerated individuals who agreed to share their stories for this report, and the following individuals for contributing valuable information, helpful guidance, and useful feedback for the report:

Hope Amezquita, Dara Baldwin, Sharon Boye, Lydia X. Z. Brown, Claudia Center, Rebecca Cokley, David Fathi, Amy Fettig, Megan French-Marcelin, Erica Gammill, Marina Golan-Vilella, Keir Harris, Scott Huffman, Lauren Kuhlik, Talila A. Lewis, Ada Lin, Susan Mizner, Tamandra Morgan, Wallis Nader, Jeffrey Robinson, Diane Smith Howard, Miranda Tait, Vilissa Thompson, Dean Westwood, and Kiah J. Williams.
IX. APPENDICES

I. List of Resources for Advocates
   A. List of Organizations (National Disability Rights Organizations and P&As)
   B. A Quick Guide to the ADA Regulations

II. Know Your Rights: Legal Rights of Prisoners With Disabilities

III. The Time for Change Is Now: Reflections From Advocates

ENDNOTES


2. The Rhode Island DOC’s response includes only mobility devices.

3. The Florida DOC reported that as of March 23, 2016, 41 grievances remained pending. The Florida DOC records did not provide an explanation for what happened to the remaining 751 grievances that were neither resolved nor remained pending as of March 23, 2016.

4. The Ohio DOC reported that from January 2015 to January 2016, 43 accommodations were approved by Ohio DOC officials, 10 were partially approved, and 30 were denied. This response from the Ohio DOC does not specify if the requests for these accommodations were filed separately from the grievances process.

5. Dinkins v. Corr. Med. Servs., 743 F.3d 633, 634 (8th Cir. 2014); see also Compl. for Declaratory & Injunctive Relief ¶ 370, Disability Rights Florida v. Jones, Civil Action No. 4:16-cv-00047-WS-CAS (Jan. 26, 2016), available at http://www.floridajusticeinstitute.org/wp-content/uploads/2016/01/drf-complaint.pdf [hereinafter Disability Rights Florida Complaint] (“From October 2012 through December 2013, Mr. Jackson was not permitted to have his wheelchair in his CM cell. He was forced to drag himself across the dirty and abrasive cell floor, where it was very difficult to transfer to the bed, toilet, and wash basin.”).


8. Id. ¶ 2.

9. J.M. did not provide his full name.

10. Survey Responses from Five Deaf Prisoners, Maryland Correctional Institution-Jessup, to author 7 (Apr. 22, 2016) [hereinafter Survey Responses from Five Deaf Prisoners] (on file with author).


12. See discussion infra Part III.A-B.


15. See generally MELISSA ALEXANDER, THE NEW JIM CROW 4 (2010) (observing that “mass incarceration in the United States had, in fact, emerged as a stunningly comprehensive and well-disguised system of racialized social control that functions in a manner strikingly similar to Jim Crow.”).

16. Loïc Wacquant, Class, Race & Hyper-incarceration in Revanchist America, DAEDALUS 78 (2010), available at http://loicwacquant.net/assets/Papers/CLASSRACELYPERINCARCERATION-pub.pdf (arguing that incarceration is concentrated in, and targeted against, certain classes, races, and geographic locales, with its primary target being low-income Black men in urban settings).

17. In his historic op-ed for the Washington Post on this
York’s Prisons was an extensive report along with a set of recommendations.

19. Whether a correctional system should be required to adopt jurisdiction and authority, to determine whether workable settlement agreement filed.pdf

20. The judiciary may be required, within its proper isolation exact a terrible price. . . . In a case that presented the issue, the judiciary remarked, “[h]ow can we subject.


22. The Research still confirms what this Court suggested over a century ago: Years on end of near-total isolation exact a terrible price. . . . In a case that presented the issue, the judiciary may be required, within its proper jurisdiction and authority, to determine whether workable alternative systems for long-term confinement exist and, if so, whether a correctional system should be required to adopt them.”


25. The new Yorker

26. The new Yorker


33. According to the BJS Disability Report, prisoners were about two times more likely than persons in the general population to report independent living, ambulatory, and hearing handicaps; about three times more likely to report a visual handicap, forty percent of jail inmates, compared to nine percent of those in the general population, reported having a disability (table 2). When compared to the general population, jail inmates were about 2.5 times more likely to report cell ambulatory and independent living disability, more than three times more likely to report a visual and hearing handicap, and 6.5 times more likely to report a cognitive disability.[]


38. See, e.g., Johnson v. Johnson, 601 F. Supp. 2d 1186 (D. Idaho 2009) (holding that the new identifying and de-identification process is not an acceptable means of implementing a reasonable accommodation), aff’d, 582 F.3d 647 (9th Cir. 2009); Thomas v. Johnson, 510 F.3d 995, 998 (9th Cir. 2007) (holding that a prisoner’s right to privacy is not violated by a reasonable accommodation).


Despite More Assaults on Guards


43. See, e.g., Disability Rights Florida Complaint, supra note 5, ¶ 368-372 (alleging an assault causing a corrections officer on a prisoner, a wheelchair user, in retaliation for that prisoner’s pro lawsuit naming other corrections officers as defendants).

44. See infra note 82 and accompanying text.

45. See, e.g., Nancy Wolf & Jing Shi, Contextualization of Physical and Sexual Assault in Male Prisons: Incidents and Their Aftermath, J. ORR. HEALTH CARE, Jan. 2009, at 1, 9 (“Sexual orientation and mental illness/disability of the victim were identified as motivating the sexual assault of one-quarter of victims who were assaulted by other inmates.”). Indeed, the Prison Rape Elimination Act (PREA) includes affirmative obligations on the part of prison officials to make sure that prisoners with disabilities are protected from sexual abuse and harassment. Specifically, PREA regulations require that information relating to sexual abuse resources and services be made accessible to people with disabilities. 28 C.F.R. § 151.16 (2016); see also SANDRA HARRELL ET AL., MAKING PREA AND VICTIM SERVICES ACCESSIBLE FOR INCARCERATED PEOPLE WITH DISABILITIES: AN IMPLEMENTATION GUIDE FOR PRACTITIONERS ON THE ADULT & JUVENILE STANDARDS, NAT’L PREA RESOURCE CENTER 6-9 (2015), http://www.verya.org/sites/default/files/resources/downloads/prea-victim-services-incarcerated-people-with-disabilities-guide.pdf [hereinafter GUIDE ON MAKING PREA ACCESSIBLE].


50. Relying on data gleaned from a survey to prisoners at the facility, the Prison Justice League concluded that 46 percent of prisoners who identified as deaf, blind, or as possessing a physical disability have been victims of assault at the hands of other prisoners and corrections staff. ERICA GAMBLE & KATE SPEAR, CRUEL & UNEQUAL PUNISHMENT: EXCESSIVE USE OF FORCE AT THE ESTELLE UNIT, PRISON JUSTICE LEAGUE 6 (2015), available at https://www.texastribune.org/media/documents/Cruel_Uual_Punishment_ PJL_Final.pdf.

51. Id. at 9-10.

52. See, e.g., Casey v. Lewis, 834 F. Supp. 1569, 1581 (D. Ariz. 1993) (describing legally blind prisoner who reported incidents where urine and feces were thrown into his cell).

53. By the end of 2014, Alabama prisons were at 192.7 percent of design capacity for which those prisoners were designed. Prisoners in 2014, supra note 1, at 12. Design capacity refers to the “number of beds that the facility was originally designed to hold.” Id. at 11.

54. By the end of 2014, California operated it prisons at 136.6 percent of the capacity for which those prisoners were designed. Id. at 12.

55. Colorado operated it prisons at 115.1 percent of the design and operational capacity by year-end 2014. Id. Operational capacity is “based on the ability of the staff, programs, and services to accommodate a certain size population[,]” Id. at 11.

56. Delaware prisons were at 161.7 percent of design capacity for the state’s facilities prisons by the end of 2014. Id. at 12.

57. By the end of 2014, prisons in Hawaii were at 159.2 percent of design capacity. Id.

58. Idaho prisons were at 109.3 percent of operational and design capacity at the end of 2014. Id.

59. In 2014, Illinois prisons operated at 171.1 percent of their design capacity. Id.

60. Iowa prisons in 2014 operated at 112.8 percent of design and operational capacity. Id.

61. Kansas prisons were at 104.1 percent of that state’s design capacity in 2014. Id.

62. Kentucky prisons in 2014 operated at 104.5 percent of operational capacity. Id.

63. Louisiana prisons in 2014 operated at 119.3 percent of operational capacity. Id.

64. Maine prisons in 2014 operated at 103.1 percent of operational capacity. Id.

65. Massachusetts prisons in 2014 operated at 130.1 percent of design capacity. Id.

66. Minnesota prisons ran at 101.3 percent of operational capacity in 2014. Id.

67. Missouri prisons ran at 100.7 percent of operational capacity. Id.

68. Nebraska prisons in 2014 operated at 159.6 percent of design capacity. Id.

69. New Hampshire prisons in 2014 operated at 124.3 percent of design capacity. Id.

70. In 2014, New York prisons operated at 102.8 percent of design capacity. Id.

71. In 2014, Ohio prisons operated at 131.9 percent of rated capacity. Id. Rated capacity “measures the number of beds assigned by a rating official to each facility[].” Id. at 11.

72. Oklahoma prisons operated at 115.7 percent of design capacity in 2014. Id. at 12.

73. Pennsylvania operated its prisons at 101.2 percent of the design and operational capacity by year-end 2014. Id.

74. Vermont prisons operated at 117 percent of design capacity. Id.

75. Virginia prisons operated at 117.6 percent of the design capacity in 2014. Id.

76. Washington prisons ran at 102.6 percent of operational capacity in 2014. Id.

77. In 2014, West Virginia prisons operated at 126.3 percent of rated capacity. Id.

78. In 2014, Wisconsin prisons operated at 131.4 percent of design capacity. Id.

79. The Federal Bureau of Prisons operated at 128 percent of rated capacity. Id.

80. See, e.g., Coleman v. Schwarzenegger, 922 F. Supp. 2d 882, 931 (E.D. Cal. 2009) (“Crowding generates unsanitary conditions, overwhelms the infrastructure of existing prisons, and increases the risk that infectious diseases will spread.”); CRUEL CONFINEMENT, supra note 49, at 10 (“The conditions within the state’s prisons, which are grossly overcrowded, make spread of disease nearly inevitable. Prisoners in every facility report the presence of vermin, especially rats and spiders. At the Fountain Correctional Facility in Atmore, there were large amounts of what appeared to be rat droppings on cans of food in the kitchen. At Holman, the SPLC was informed that a bird had been flying around in the kitchen for several weeks. What appeared to be bird droppings were found on a bed in a prison dorm.”).


82. See, e.g., Bureau of Prisoners: Growing Inmate Crowding Negatively Affects Inmates, Staff, and Infrastructure, U.S. GOV’T ACCOUNTABILITY OFFICE (2012), available at http://www.gao.gov/assets/650/648172.pdf (noting that overcrowding contributes to “increased inmate misconduct, which negatively affects the safety and security of inmates and staff[.]”); see also HANDBOOK ON PRISONERS WITH SPECIAL NEEDS, UNITED NATIONS OFFICE ON DRUGS AND CRIME 45 (2009) [hereinafter HANDBOOK ON PRISONERS WITH SPECIAL NEEDS] (“[P]risoners with disabilities are easy targets for abuse and violence from other prisoners and prison staff.”).

83. See, e.g., Jeffrey L. Metzner & Jamie Feller, Solitary Confinement and Mental Illness in U.S. Prisons: A Challenge for Medical Ethics, 38 J. A.M. A. PSYCHIATRY L. 105 (2010), available at http://www.jama-psych.com/content/38/1/104.full.pdf+html (“Persons with mental illness are often impaired in their ability to handle the stresses of incarceration and to adapt to a highly regimented routine. They may exhibit bizarre, annoying, or dangerous behavior and have higher rates of disciplinary infractions than other prisoners. Prison officials generally respond to them as they do to other prisoners who break the rules. When lesser
sanctions do not curb the behavior, they isolate the prisoners in the segregation units, despite the likely negative mental health impact. Once in segregation, continued misconduct, often connected to mental illness, can keep the inmates there indefinitely.”


88. Old Brown Bars, supra note 87, at 75-77.

89. According to Human Rights Watch, “[e]leven percent of federal prisoners age 51 or older are serving sentences ranging from 30 years to life.” Old Brown Bars, supra note 87, at 6.

90. Old Brown Bars, supra note 87, at 72-79.

91. For example, under the ADA, “[t]he term ‘disability’ means, with respect to an individual—(A) a physical or mental impairment that substantially limits one or more major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment (as described in paragraph (3)).” 42 U.S.C. § 12102(1). The term “major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.” 42 U.S.C. § 12102(2)(A).


96. Deaf Terminology, supra note 94.


98. Id. Low vision “cannot be fully corrected by eyeglasses, contact lenses, or surgery. However, a person with low vision may benefit from any of a variety of available optical devices, such as electronic magnifying glasses or eyeglass-mounted telescopes. In addition, special software developed for computer users with low vision can display type in large size or read text aloud.” Id.


102. Id.

103. Id. at 19.

104. Id. at 20.


106. Id.


108. Deaf Terminology, supra note 94. For example, under the ADA, “‘disability’ means, with respect to an individual...” See 42 U.S.C. § 12102(2)(A).

109. Deaf Terminology, supra note 94. For example, under the ADA, “‘disability’ means, with respect to an individual...” See 42 U.S.C. § 12102(2)(A).


111. See supra note 94. at 72.


118. Out of the 10 public records requests sent to the targeted jurisdictions, only three produced the requested data...
mobility-related disabilities were held in some form of restrictive housing. The Nevada Department on the number of persons with physical disabilities in solitary confinement or restrictive housing. The Nevada Department of Corrections reported that 3 blind or low vision prisoners, confinement or restrictive housing. The Nevada Department on the number of persons with physical disabilities in solitary confinement, as of the date of the response.

119. Inmates with Physical Disabilities, supra note 1, at 3.


124. Jurisdictions were asked to report on data from January 2013 through the present (or the date of the public records requests).

125. Custody population data was obtained from the Bureau of Justice Statistics. See PRISONERS IN 2014, supra note 1, at 3.

126. 130. Custody population data was obtained from the Bureau of Justice Statistics. See PRISONERS IN 2014, supra note 1, at 3.


132. For example, a study of five prison handbooks determined that each handbook included text at or above an eleventh grade English reading level, which is well above the reading level for the average deaf person. Jean F. Andrews, Deaf Inmates: Cultural and Linguistic Challenges and Comprehending the Inmate Handbook, 36 CORR. CORR. CONV. 14 (2011), available at https://deafprison.org/2012/03/09/136/.


134. The Florida Department of Corrections reported that as of March 23, 2016, 41 grievances remained pending. The records did not specify what happened to the remaining 751 grievances that were either resolved or remained pending from January 2013 through March 23, 2016. See Email from Donna Beard, Office of General Counsel, Florida Dep’t of Corr. to author (Mar. 24, 2016) (on file with author).

135. Ohio reported that from January 2015 to January 2016, 43 accommodations requests were approved by DOC officials, 10 were partially approved, and 30 were denied. See Email from Roger Wilson, Chief Inspector, Ohio Dep’t of Rehabilitation & Corr. to author (June 21, 2016) (on file with author).

136. As of May 4, 2016.

137. 140. Are the records obtained from Ohio for January 2015 to 2016 only. The Ohio DOC reported that it was unable to query the data using the precise terms of the public records request (e.g., “disabilities”), but after using the search term “handicapped facilities,” the search returned a total of three grievances filed. Email from Roger Wilson, Chief Inspector, Ohio Dep’t of Rehabilitation & Corr. to author (June 10, 2016) (on file with author).

138. The Ohio Department of Corrections did not have data on the number of grievances filed by prisoners with disabilities. A public records official from Ohio stated that “[a]ll grievances are resolved within 14 days of receipt by the inspector unless there is an extension of an additional 14 days. There are no pending grievances from 2015.” Email from Roger Wilson, Chief Inspector, Ohio Dep’t of Rehabilitation & Corr., to author (June 10, 2016) (on file with author). However, the Ohio Department of Corrections did report that from January 2015 to January 2016, there were 43 accommodations that were approved, 10 that were partially approved, and 30 that were denied. Email from Roger Wilson, Chief Inspector, Ohio Dep’t of Rehabilitation & Corr., to author (June 21, 2016) (on file with author).


141. Timothy Hughes & Doris J. Wilson, Recent Trends in the United States: Inmates Returning to the Community after Serving Time in Prison, BUREAU OF JUSTICE STATISTICS
Confinement on Prison Inmates: A Brief History of
https://www.ssc.wisc.edu/~wright/Published%20writing/pop. 150. Frank Rundle, medical training for doctors and nurses and are standard
151. Mental Health Issues
154. Position Statement on Segregation of Prisoners with Mental
156. The Roots of Violence at Soledad
157. American Psychiatric Association, Solitary Confinement as a Public Health
158. See, e.g. Haney, supra note 145; Haney, supra note 134; Miller &
159. See, e.g. Andersen et al., supra note 156, at 22; Haney, supra note 134; Korn, supra note 134.
160. The Difficulties people with disabilities face in society are
161. Jennifer Gonnerman, The Colorado Study vs. the Reality of Supermax Confinement; supra
162. Stuart Grassian, supra note 145, at 27 (noting that plaintiff was in an “extremely emotionally
163. The California Study vs the Reality of Supermax Confinement; supra; also see
165. See, e.g., Michael Bauer et al., Long-Term Mental Sequelae of Political Imprisonment in East Germany, 181 J. NERVOUS & MENTAL DISEASE 257-261 (1993); Korn, supra note 153, at 8-19; Miller & Young, supra note 153; 85-94; Peter Suedfeld et al., Reactions and Attritions of Prisoners in Solitary Confinement, 9 CRIMINAL JUSTICE & BEHAVIOR 303, 315-318 (1982).
166. See, e.g., Bauer et al., supra note 154, at 259.
168. See, e.g., Grassian, supra note 145, at 335.
169. See, e.g., Haney, supra note 153, at 134; Miller & Young, supra note 153, at 93.
170. See, e.g., Grassian, supra note 153, at 1452; Haney, supra note 153, at 134.
171. See. e.g., Haney, supra note 153, at 134; Miller & Young, supra note 153, at 93. 79 J. OF ABNORMAL PSYCHOLOGY 54, 57-58 (1972).
172. Id. 173. This figure is based on the findings from the ASCA- Liman Time in Cell Report, which estimates approximately 80,000-100,000 prisoners are held in solitary confinement. See Time In Cell, supra note 13, at 3. Data on the total numbers of persons held in state and federal prisons in the United States (1,561,500) was taken from the 2014 Bureau of Justice Statistics Report. See DANIELLE KABREE, ET AL., CORRECTIONS IN THE UNITED STATES, 2014 at 5 (Jan. 21, 2016), available at http://www.bjs.gov/content/pub/pdf/cpus14.pdf.
175. See, e.g., Maurice Chammah, Do You Age Faster in Prison?, THE Marshall Project (Aug. 24, 2015, 7:15 am), https://www.themarshallproject.org/2015/06/20/do-you-age-faster-in-prison-0#.Wbh2C; also see Handbook on PRISONERS WITH SPECIAL NEEDS, supra note 82, at 44 (“The difficulties people with disabilities face in society are magnified in prisons, given the nature of the closed and restrictive environment and violence resulting from overcrowding, lack of proper prisoner differentiation and supervision, problems with drugs and more so in prisons, where the special needs of such persons are rarely taken into account and where they can be victims of psychological abuse and bullying.”).
176. Jennifer Gonnerman, The Colorado Study vs. the Reality of Supermax Confinement, supra note 133; Korn, supra note 153, at 134; Miller & Young, supra note 153, at 90. 259-61 (1993); Korn, supra note 153, at 8-19; Miller & Young, supra note 153; 85-94; Peter Suedfeld et al., Reactions and Attritions of Prisoners in Solitary Confinement, 9 CRIMINAL JUSTICE & BEHAVIOR 303, 315-318 (1982).
178. See, e.g., Compt. 71-4.8, Fox v. Peters, Civil Action No. 6:16-cv-01602-MC, ECF No. 8 (Aug. 10, 2016) (“Plaintiff entered the Oregon Department of Corrections in late 2010. On July 11, 2015, Plaintiff collapsed in his segregation cell at Two Rivers Correctional Unit. As a result he went into spinal shock, and suffers from a central cervical cord injury. Plaintiff is now physically paralyzed and uses a wheelchair for mobility. He has very limited use of his upper extremities, and no use of his lower extremities.”); also see Order 2, Fox v. Peters, Civil Action No. 6:16-cv-
Upon beginning his prison term in 2010, Fox was an able-bodied individual. While the cause of Fox’s injuries is likely a spinal cord injury, Fox was an able-bodied individual. The lack of physical access to prison facilities poses a real danger and raises the risk of potentially serious injuries to prisoners with disabilities. See, e.g., Johnson v. Hardin Cnty., 908 F.2d 1280, 1282-84 (6th Cir. 1990) (alleging that plaintiff fell multiple times while in his cell in Florence’s Central Unit in Arizona); see also Compl. ¶¶ 33, 47, 58-60, 66, Wilson v. Livingston, Civil Action No. 4:14-CV-14188 (N.D. Cal. 2016). Inaccessible features, such as overhead lockers, made it such that blind or low vision prisoners were forced to climb up to reach important legal documents or medications, predictably leading to injury. Id. ¶¶ 27-34. Such injuries likely could have been avoided if blind or low vision prisoners had been placed in units with proper accommodations, such as units with lockers located on the ground, and provided with other assistance.


189. Id.; see also Bradley v. Buckett, 157 F.3d 1022, 1024 (5th Cir. 1998) (alleging that prison officials denied prisoner access to a shower for months, forcing him to wash up with toilet water, which led to a fungal infection). See also Bradley v. True, No. 91 C 7427, 1993 WL 532455, *1 (N.D. Ill. Dec. 21, 1993).

Estelle, 679 F.2d 1115, 1152 (5th Cir. 1982) ("[C]onfinement regular exercise to maintain reasonably good physical and health."); 717 F.2d 284, 289 (6th Cir. 2010) ("Inmates require physical activity.\)"

218. Dr. Brie Williams Expert Report, supra note 146, at 9-10. 220. See, e.g., Lawson, 286 F.3d at 280 ("Lawson is a paraplegic who is paralyzed from the chest down. \... Lawson was in good health when he entered the jail. However, without proper medical care paraplegics such as Lawson are at risk of developing decubitus ulcers, caused by unrelieved pressure on the body, which can be life-threatening. Various medical equipment and personal assistance used to prevent decubitus ulcers are part of basic medical training for doctors and nurses and are standard medical procedure in caring for paraplegics.").


222. See, e.g., Bane v. Virginia Dep’t of Corr., No. 7:12-CV-159, 2012 WL 6382874, at *1 (W.D. Va. Dec. 28, 2012) ("Because these items were confiscated, Bane allegedly had great difficulty maneuvering around the cell and could not perform the therapeutic walking exercises that eased the pain in his legs and prevented deterioration of his condition.").

223. See, e.g., Susan Greene, Legal Settlement Ends Colorado’s Practice of Denying Inmates Fresh Air, Colo. BIZ (July 5, 2016), http://www.cleargraphic.com/160084/colorado-settlement-inmates-fresh-air (describing settlement with Colorado DOC that requires the state to provide prisoners at Colorado State Penitentiary and Sterling Correctional Facility with access to outdoor exercise facilities); Peoples Settlement Agreement, supra note 20, at 21 ("DOCCS will ensure that even under the most restrictive form of disciplinary housing, 16 and 17 year-old inmates shall, 5 days per week (excluding holidays), be offered out-of-cell programming and outdoor exercise, limiting time in their cells to 19 hours a day, except in exceptional circumstances referred to Central Office.").


226. See, e.g., Hilde Haualand, Punished and Isolated: Disabled Prisoners in Norway, 17 Scandinavian J. of Disability Research 74, 78 (2015), available at https://www. researchgate.net/publication/269014027_Punished_and_isolated_disabled_prisoners_in_Norway (describing story of prisoner who required regular physical therapy to prevent deformation but did not receive physical therapy for the first five months of incarceration and received treatment only once several weeks after that).

227. Id.

228. Telephone Interview with Maggie Filler, Staff Attorney, Prisoners’ Legal Services of Massachusetts (October 15, 2015).

229. Disability Rights Florida Complaint, supra note 5, ¶ 340.

230. Id.

231. Id. ¶ 341.

232. Id. ¶ 342.

233. Id. ¶ 344.


237. Id. ¶ 342.


239. Id.

240. Id.


245. Bell is a VERY SMALL PLACE, supra note 215, at 48-49; see also Joseph Stromberg, The Science of Solitary Confinement, SOUTHWESTER (Feb. 19, 2014), http://www.smithsonianmag.com/science-nature/science-solitary-confinement.180949793/?nc=ist ("His eyesight also deteriorated to the point where he was nearly blind, though it’s gradually improved since he was released.").

246. Survey Responses from Five Deaf Prisoners, supra note 10, at 13.


248. Id. at 99.

249. Id.

250. Id.

251. Id.

252. Id.

253. Id.

254. Id.

255. Id.

256. Survey Responses from Five Deaf Prisoners, supra note 10, at 13.

Pierce can make sounds that are audible, but he cannot speak words, and American Sign Language (“ASL”) is his native language. Pierce relies on ASL to communicate with others—either by interacting directly with other persons who are using ASL themselves, or through the use of a video conferencing device that involves a remote interpreter. Pierce cannot, and does not, use a traditional telephone; instead, he ordinarily uses ASL via videophone to communicate with hearing individuals. Moreover, because Pierce’s proficiency in reading and writing English is far below that of a hearing person, he rarely writes notes and only uses cell phone text messaging to convey simple short messages. Also, as with many deaf individuals, Pierce has limited lip-reading ability.


258. The Correctional Treatment Facility (CTF) is a subset of the D.C. Jail and is managed by a private entity, the Corrections Corporation of America. Only low to medium security detainees can be held at CTF.


260. Id. ¶ 184-185.

261. Id. ¶ 368.

262. Id. ¶ 579, 582 (7th Cir. 2006), overruled on other grounds by Hill v. Tangerlinski, 724 F.3d 965 (7th Cir. 2013) (permitting prisoner to use a crutch but only if he agreed to be housed in administrative segregation); Kiman v. New Hampshire Dep’t of Corr., 451 F.3d 274, 285-86 (1st Cir. 2006) (confiscating cane during stay in maximum security facility); Serrano v. Francisco, 343 F.3d 1071, 1078 (9th Cir. 2003) (denying use of wheelchair in administrative segregation); Evans v. Dugger, 908 F.2d 801, 802 (11th Cir. 1990) (confiscating prisoner’s braces, crutches, orthopedic shoes, and other personal items, but permitting only one of a wheelchair; Bane, 2012 WL 6738724, at *1 (W.D. Va. Dec. 28, 2012) (“It light of the increased security in Administrative Segregation (‘Ad Seg’), staff confiscated [Bane’s] Canadian crutch and the leg sleeves he wore underneath the rigid leg braces. The leg sleeves, nothing more than socks with the toes cut off, protected his skin from the intense rubbing caused by the leg braces. Staff also denied Bane use of a wheelchair while his sleeves and crutch were confiscated.”).

263. Disablity Rights Florida Compl., supra note 3, ¶ 368.

264. Id. ¶ 370.

265. 283. Brown v. Lamanna, 808 WL 536907, at *2 (4th Cir. Dec. 29, 2008); see also Weeks v. Chabotney, 984 F.2d 185, 187 (6th Cir. 1993) (finding that prison officials were deliberately indifferent to prisoner’s serious medical needs stemming from paraplegia by placing him in “administrative control” or “security control,” or “local control” areas in the facility that did not permit wheelchairs).


267. 284. 285. Hill v. Tangherlini, 724 F.3d 965 (7th Cir. 2013) (permitting prisoner to use a crutch but only if he agreed to be housed in administrative segregation); Kiman v. New Hampshire Dep’t of Corr., 451 F.3d 274, 285-86 (1st Cir. 2006) (confiscating cane during stay in maximum security facility); Serrano v. Francisco, 343 F.3d 1071, 1078 (9th Cir. 2003) (denying use of wheelchair in administrative segregation); Evans v. Dugger, 908 F.2d 801, 802 (11th Cir. 1990) (confiscating prisoner’s braces, crutches, orthopedic shoes, and other personal items, but permitting only one of a wheelchair; Bane, 2012 WL 6738724, at *1 (W.D. Va. Dec. 28, 2012) (“It light of the increased security in Administrative Segregation (‘Ad Seg’), staff confiscated [Bane’s] Canadian crutch and the leg sleeves he wore underneath the rigid leg braces. The leg sleeves, nothing more than socks with the toes cut off, protected his skin from the intense rubbing caused by the leg braces. Staff also denied Bane use of a wheelchair while his sleeves and crutch were confiscated.”).

268. George Curly used the Arizona DOC for failing to provide handrails that would ensure his safety while showering. See Casey, 834 F. Supp. at 1575. Curly had an amputation below his knee and used a prosthetic device and crutches to move around. Id. The Echo Unit in Tucson where Curly was held did not have any handrails in the shower stalls. Id. As a result, on several occasions, Curly fell while showering and suffered injury. Id. The Echo Unit eventually installed handrails. Id.

269. See, e.g., Bane, 2012 WL 6738724, at *1 (“Another effect of the increased security in Ad Seg is that whenever a prisoner is allowed to leave the cell—for example, for showers or recreation—he must kneel, with hands behind him on his back, facing away from the cell door so that prison staff can place him in restraints. Staff forced Plaintiff’s compliance with this requirement, despite Plaintiff’s protests that he had been exempted from kneeling by the VDOC Health Services Director. The kneeling allegedly caused Plaintiff great pain; in addition to the nerve damage in his legs, he suffers from osteoarthritis in the hips and knees.”)

270. See, e.g., Watson, 286 F.3d at 260 (noting that detainees made hard Time harder, making hard Time harder, supra note 187, at 16-17.

271. Disability Rights Florida Compl., supra note 5, ¶ 368.

272. Id. ¶ 370.

273. Brown v. Lamanna, 808 WL 536907, at *2 (4th Cir. Dec. 29, 2008); see also Weeks v. Chabotney, 984 F.2d 185, 187 (6th Cir. 1993) (finding that prison officials were deliberately indifferent to prisoner’s serious medical needs stemming from paraplegia by placing him in “administrative control” or “local control” areas in the facility that did not permit wheelchairs).

and without further harm. Id. at *5.

285. Serrano v. Francis, 345 F.3d 1071, 1074 (9th Cir. 2003).

286. Id. at 1078. What is notable about this case is the Ninth Circuit’s finding of a protected liberty interest given Serrano’s status as a prisoner with a physical disability. Although the Ninth Circuit found that the defendants were entitled to qualified immunity with respect to Serrano’s due process claim, the court concluded as follows: “Serrano’s disability—coupled with administrative segregation in a SHU that was not designed for disabled persons—gives rise to a protected liberty interest. That is, the conditions imposed on Serrano in the SHU, by virtue of his disability, constituted an atypical and significant hardship on him.” Id. at 1079.

287. Simmons v. Cook, 154 F.3d 805, 806 (8th Cir. 1998).

288. Id.

289. Id. at 807.

290. Id.

291. The Eighth Circuit upheld the jury award on appeal and held that Simmons and Marshall had presented sufficient evidence to show a violation of the Eighth Amendment. Id. at 809.


293. Id.

294. Id. at 800.

295. Id.

296. Id.

297. Id.

298. Id.

299. Id. at 807.

300. The Eighth Circuit upheld the jury award on appeal and held that Simmons and Marshall had presented sufficient evidence to show a violation of the Eighth Amendment. Id. at 809.

301. See e.g., Northern Correctional Institution, Administrative Segregation Program, available at http://www.ct.gov/doc/lib/pdf/northermmascc.pdf (“Placement of an inmate on a Restrictive Housing Status that results in a segregation of the inmates whose behavior while incarcerated poses a threat to the security of the facility or a risk to the safety of staff or other inmates. This inmate has demonstrated through his behavior that he is not appropriate for continued placement in general population and that he can no longer be safely managed in general population.”).

302. See e.g., Bane, 2012 WL 6838274, at *1 (“To protect Bane from the assaulting prisoner while they investigated the attack, PSC staff transferred Bane to Administrative Segregation.”).


304. See e.g., Herron v. Meyer, 2012 F.3d 860, 862 (7th Cir. 2016) (describing case of federal prisoner being placed into solitary confinement for protective reasons due to threats to his personal safety).

305. See generally BJS DISABILITY REPORT, supra note 31. BJS DISABILITY REPORT, supra note 31, at 1.


307. Id. at 3.

308. Id. at 4.


310. Id.

311. Id.

312. Id. at 1078.

313. See, e.g., Herron v. Meyer, 2013 WL 6333233, at *3 (W.D. Pa. Mar. 25, 2015) (“Here, Plaintiff alleges, among other things, that he was repeatedly issued misconducts and received disciplinary confinement for failing to obey orders he could not hear or comprehend, because no reasonable accommodations for his disability were provided by Defendant. In particular, Plaintiff alleges that he was housed on F block at SCI-Albion, where inmates were alerted of the time for meals and cell count by audible means only, such as a bell or loudspeaker, while other housing blocks at SCI-Albion have flashing lights accompanying the bell and/or moving message boards that announce movement times. . . . Because Plaintiff was unable to hear the audible announcements, he often failed to move for meals or stand for count on time, which resulted in disciplinary sanctions. Thus, Plaintiff asserts that he was essentially ‘punished for his deafness.’ . . . This claim falls within the ambit of Title II’s general prohibition against discrimination on account of one’s disability, to which Plaintiff’s allegations regarding the misconducts and discipline he received as a result of his failure to respond to reasonable medical judgments given the state of medical knowledge,” about “the nature of the risk (how the disease is transmitted),” “the duration of the risk (how long is the carrier infectious),” “the severity of the risk (what is the potential harm to third parties),” and “the probabilities the disease will be transmitted and will cause varying degrees of harm.” Sch. Bd. of Nassau Cty., Fla., v. Arline, 480 U.S., 288 (1987).

314. Id.

315. See e.g., Herron v. Meyer, 2013 WL 6333233, at *3 (W.D. Pa. Mar. 25, 2015) (“Here, Plaintiff alleges, among other things, that he was repeatedly issued misconducts and received disciplinary confinement for failing to obey orders he could not hear or comprehend, because no reasonable accommodations for his disability were provided by Defendant. In particular, Plaintiff alleges that he was housed on F block at SCI-Albion, where inmates were alerted of the time for meals and cell count by audible means only, such as a bell or loudspeaker, while other housing blocks at SCI-Albion have flashing lights accompanying the bell and/or moving message boards that announce movement times. . . . Because Plaintiff was unable to hear the audible announcements, he often failed to move for meals or stand for count on time, which resulted in disciplinary sanctions. Thus, Plaintiff asserts that he was essentially ‘punished for his deafness.’ . . . This claim falls within the ambit of Title II’s general prohibition against discrimination on account of one’s disability, to which Plaintiff’s allegations regarding the misconducts and discipline he received as a result of his failure to respond to reasonable medical judgments given the state of medical knowledge,” about “the nature of the risk (how the disease is transmitted),” “the duration of the risk (how long is the carrier infectious),” “the severity of the risk (what is the potential harm to third parties),” and “the probabilities the disease will be transmitted and will cause varying degrees of harm.” Sch. Bd. of Nassau Cty., Fla., v. Arline, 480 U.S., 288 (1987).
verbal orders are particularly relevant. Thus, Defendant’s motion to dismiss such allegations will be denied.” (citations omitted).

VixRaNUKU (noting that prisoners “face an increased risk of injury in difficult and dangerous prison environments”).

329. See, e.g., Clarkson v. Coughlin, 898 F. Supp. 1019, 1030 (S.D.N.Y. 1995) (describing prisoner who was disciplined for disobeying orders from corrections staff that he did not understand); Shoshana Walter, Disabled Prisoners’ Rights Scrutinized in California County Jails, THE HUFFINGTON POST (Oct. 8, 2012, 12:35 p.m.), http://www.huffingtonpost.com/2012/10/08/disabled-prisoners-rights-pnh/1948542.html (“At Santa Rita Jail in Dublin, an inmate with 80 percent hearing loss was denied a hearing aid and then disciplined for failing to listen to deputies’ directions”).

330. Survey Responses from Five Dead Prisoners, supra note 10, at 7.

331. Id.


333. GROWING UP LOCKED DOWN, supra note 316, at 52.


336. Where a prisoner faces possible punishment involving the loss of good time credits, due process protections are only required where the punishment imposed amounts to a deprivation of liberty that is an “atypical and significant hardship... in relation to the ordinary incidents of prison life.” Sandin v. Conner, 515 U.S. 472, 484 (1995)).

337. Wolff, 418 U.S. at 564.

338. Id.

339. Id. at 566. Prisoners may call witnesses and present documentary evidence where doing so “will not be unduly hazardous to institutional safety or correctional goals.” See generally Clarkson, supra note 1019 at 1031 (describing prisoner who received 15 days in restrictive housing after corrections officials at Antica Corrections Facility failed to provide him with a sign language interpreter); Duffy v. Riveland, 98 F.3d 447, 450-52 (9th Cir. 1996) (noting that no qualified sign language interpreter was provided and that “[t]he disciplinary hearing ultimately went forward without him, and he was sentenced to 15 days of disciplinary segregation, with eight days of time served.”).

340. Hernandez Compl., supra note 213, ¶ 174 (alleging that plaintiff lost visitation, canteen, and recreation privileges after he was charged with a disciplinary infraction, denied a sign language interpreter in the disciplinary hearing, and, subsequently, found guilty).


342. Dunn Compl. ¶ 359.

343. Id.

344. Id. ¶¶ 164.

345. Id. ¶es 167.

346. Id.

347. Letter from Bob Fossett, prisoner at Wallace Pack 1 Unit, to author (June 22, 2016) (on file with author).

348. Wiconico Compl. ¶ 4. The complaint also alleges that defendants also “denied Mr. Muhammad a job that would have shortened his time at the Detention Center and excluded him from recreational activities because of his blindness.” Id. ¶ 3. “In addition, the DOC refused to provide Mr. Muhammad with a slate and stylus that would have allowed him to write independently in Braille and it failed to make the modifications necessary to provide Mr. Muhammad with access to its law library.” Id.

349. 28 C.F.R. § 351.52(b).

350. See, e.g., Armstrong v. Brown, 103 F. Supp. 3d 1070, 1072 (N.D. Cal. 2015); Trevino, 2015 WL 300267, *1. In 2015, the judge in Armstrong found that the California Department of Corrections and Rehabilitation had placed persons with mobility disabilities into administrative segregation for extended periods of time due to a lack of accessible housing—in direct violation of the court’s prior orders. Armstrong, 103 F. Supp. 3d 1070 at 1072.

351. The United States has not signed the Convention and so the guidelines contained there are not binding. Treaties negotiated by the Executive Branch must be approved by the Senate by a two-thirds vote. U.S. CONSTIT. art. II, sec. 2, cl. 2; see also MEDILLON v. TEXAS, 552 U.S. 491, 504-05 (2008) (noting that not all international law obligations are binding under federal law).


354. Id. at art. 15. Article 15 sets forth strict standards that no persons shall “be subjected to torture or cruel, inhuman or degrading treatment or punishment,” and that Member States adopt “measures to prevent people with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment.”

355. Id. at art. 14(2).


357. Mandela Rule 43(1).

358. Id. at Rule 44.

359. Id.

360. Id. at Rule 45.

361. Rule 45 states that “[t]he imposition of solitary confinement should be prohibited in the case of prisoners with mental or physical disabilities when their conditions would be exacerbated by such measures.” Rule 45(2).

362. Mandela Rule 46(1) (“Health-care personnel shall have the authority to review and recommend changes to the involuntary separation of a prisoner in order to ensure that such separation does not exacerbate the medical condition or mental or physical disability of the prisoner.”).

363. This Rule states that “[p]risoners with sensory disabilities should be provided with information in a manner appropriate to their needs,” and that “[t]he prison administration shall prominently display summaries of the information in common areas of the prison.” Mandela Rule 55.

364. See supra note 11.

365. Wilson v. Seiter, 501 U.S. 294, 296-97 (1991) (internal quotation marks omitted). Prisoners who seek to show an Eighth Amendment violation must show both an objectively serious harm and demonstrate that prison officials had knowledge of the serious harm and intentionally disregarded the risk of harm. Specifically, prisoners must show deliberate
indifference on the part of corrections officials to "a substantial risk of serious harm.""

Prior to conviction, persons who are held pending trial may seek relief under the Fourteenth Amendment. Before conviction, persons who are held pending trial may seek relief before conviction under the Fourteenth Amendment to the U.S. Constitution. See generally Bell v. Wolfish, 441 U.S. 520 (1979).


376. Estelle, 425 U.S. at 103-04.


378. "The [Eighth] Amendment . . . imposes duties on persons in official capacities to "take reasonable measures to guarantee the safety of the inmates.""

379. "The [Eighth] Amendment . . . imposes duties on those officials who must provide humane conditions of confinement; prison officials must ensure that inmates receive adequate food, clothing, shelter, and medical care, and must "take reasonable measures to guarantee the safety of the inmates.""


382. Id. at 1267.

383. The ADA was not the first federal disability rights law. Congress passed the Rehabilitation Act of 1973 to protect persons with physical disabilities from discrimination in federal programs and any other programs receiving federal funding, including state and local governments. See, e.g., U.S. Mem. of Law in Amicus Curiae on Issue Under the Americans With Disabilities Act & Rehabilitation Act That Are Likely to Arise on Summ. J. or Trial at 3 n.4, Miller v. Smith, Civ. Action No. 6-98-cv-109-JEG (S.D. Ga. June 21, 2010), available at https://www.ada.gov/briefs/miller_amicus.pdf [hereinafter Miller Amicus Brief]. In addition, the law protects people with disabilities from discrimination by federal employers, including those entities that contract with the federal government. Specifically, the Rehabilitation Act provides that “[n]o otherwise qualified individual with a disability” may because of their disability “be excluded from the participation in, be denied the benefits of, or be subjected to discrimination” by “any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service.” 29 U.C.F. § 794(a). The Rehabilitation Act was an important precursor to the Americans with Disabilities Act, providing a “regulatory foundation” and “enabling[ing] the ADA to withstand Congressional scrutiny.”


386. Congress collected extensive evidence of societal discrimination against people with disabilities. See NCD Amicus Brief ¶ 1(b).

387. The “term ‘qualified individual with a disability’ means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.” 42 U.S.C. § 12132(2) (West 2015).


389. Under the ADA, the term “disability” means, with respect to an individual—

(A) a physical or mental impairment that substantially limits one or more major life activities of such individual;

(B) a record of such an impairment; or

(C) being regarded as having such an impairment.

42 U.S.C.A. § 12102 (1) (West 2016). "Major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentration, standing, working." Id. ¶ 2(a). ["A] major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions." Id. ¶ 2(b).

390. 42 U.S.C.A. § 12132 (West 2016); Randolph v. Rodgers, 170 F.3d 850, 858 (8th Cir. 1999) (for claims brought under the Rehabilitative Act, plaintiffs must also show that the “program or activity from which he is excluded receives federal financial assistance.”)

391. 524 U.S. 206, 210 (1998) (“Modern prisons provide inmates with many recreational ‘activities’, medical ‘services’, and educational and vocational ‘programs’, all of which at least theoretically ‘benefit’ the prisoner[.]”).

392. 28 C.F.R. § 35.130(b)(7).


394. A modification or accommodation is reasonable if it does not fundamentally alter a program, service, or activity, or result in an undue burden. See infra Part VII.C.3 (“Limits to the ADA”).


396. 28 C.F.R. § 35.160(a)(1) (“A public entity shall take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others.”).

397. See generally ADA Requirements: Effective Communication, supra note 395.


399. Id. The Department of Justice also advises public entities that

[I]n determining whether a particular aid or service would result in undue financial and
administrative burdens, a title II entity should take into consideration the cost of the particular aid or service in light of all resources available to fund the program, service, or activity and the effect on other expenses or operations. The decision that a particular aid or service would result in an undue burden must be made by a high level official, no lower than a Department head, and must include a written statement of the reasons for reaching that conclusion.

Id.


401. 28 C.F.R. § 35.104.

402. See, e.g., Armstrong v. Brown, 857 F. Supp. 2d 919, 953 (N.D. Cal. 2012) (“Reliance on other prisoners for access to basic services, such as food, mail, showers and toilets by prisoners with disabilities leaves them vulnerable to exploitation and in a dangerous correctional practice.”); Pressure Mounts for Oregon to Use “Qualified” Interpreters for Deaf Inmates, Ore. Public Broadcasting (Sept. 22, 2014), www.oreb.org/radio/programs/thinkoutloud/segment/pressure-mounts-for-oregon-to-use-qualified-interpreters-for-deaf-inmates (Interview with Taylor A. Lewis, Founder and Executive Director, HEARD).

403. Video remote interpreting (VRI) uses “videoconferencing technology, equipment, and a high speed Internet connection with sufficient bandwidth to provide the services of a qualified interpreter, usually located at a call center, to people at a different location.” Video Remote Interpreting, Nat’l Ass’n of the Deaf, https://nad.org/issues/technology/vri (last visited Oct. 18, 2016). A public entity that chooses to provide qualified interpreters via VRI services shall ensure that it provides—

(1) Real-time, full-motion video and audio over a dedicated high-speed, wide-bandwidth video connection or wireless connection that delivers high-quality video images that do not produce lag, choppy, blurry, or grainy images, or irregular pauses in communication;

(2) A sharply delineated image that is large enough to display the interpreter’s face, arms, hands, and fingers, and the participating individual’s face, arms, hands, and fingers, regardless of his or her body position;

(3) A clear, audible transmission of voices; and

(4) Adequate training to users of the technology and other involved individuals so that they may quickly and efficiently set up and operate the VRI.

28 C.F.R. § 35.160(f).

404. Randolph, 170 F.3d at 858.

405. 42 U.S.C.A. § 12111(a)(1) (West) (2016). Prison officials have the burden of proving in court that the requested accommodation would fundamentally alter the nature of the service, program, or activity. 28 C.F.R. § 35.130(b) (7). Courts have adopted a list of factors to consider in determining whether an accommodation is reasonable or unduly burdensome. One court discussed the fact-intensive inquiry as follows:

Whether a requested accommodation is reasonable is highly fact-specific, and determined on a case-by-case basis by balancing the cost to the defendant and the benefit to the plaintiff. Whether the requested accommodation is necessary requires a showing that the desired accommodation will affirmatively enhance a disabled plaintiff’s quality of life by ameliorating the effects of the disability. The overall focus should be on whether waiver of the rule in the particular case at hand would be so at odds with the purposes behind the rule that it would be a fundamental and unreasonable change.

Dadian v. Village of Willmette, 269 F.3d 831, 838–39 (7th Cir. 2001) (citations and internal quotation marks omitted).

In general, determining whether a particular accommodation that is requested by a prisoner is reasonable requires case-by-case analysis into the prisoner’s disability, the specific accommodation requested, and its benefits to the prisoner, as well as the institutional interests (e.g., cost, security, administration, etc.).

406. 28 C.F.R. § 35.104(4).

407. Id. § 35.130(b).


409. 42 U.S.C.A. § 1997e(c) (West 2016) (“No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.”).

410. See, e.g., NO EQUAL JUSTICE: THE PRISON LITIGATION

REFORM ACT IN THE UNITED STATES, HUMAN RIGHTS WATCH 16-17 (2009), available at https://www.hrw.org/sites/default/files/reports/us0609web.pdf (describing attempts by prisoners to establish good cause for failing to exhaust grievance procedures that have been rejected by courts).


415. See, e.g., CAL. CIV. CODE § 51 (2016); LA. ST. CODE ANN. §§ 46.2254 (2016); MASS. GEN. LAWS ANN. ch. 93, § 163 (West 2016).

416. AM. CIV. LIBERTIES UNION, THE DANGEROUS OVERUSE OF SOLITARY CONFINEMENT 9 (2014), available at https://www.aclu.org/sites/default/files/assets/stay solitary briefing paper updated aug 2014.pdf (“A 2006 study found that while food, mail, showers and toilets had no effect on prisoner on prisoner violence in Arizona, Illinois and Minnesota. 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. 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. Similarly, Mississippi saw a 70 percent reduction in violence levels when it closed an entire solitary confinement unit.”); see also LEGISLATIVE PROGRAM REVIEW AND INVESTIGATION COMMISSION, RECOMMENDATIONS FOR CHANGES IN CONNECTICUT 41-42 (2001), available at http://www.ct.gov/open/lib/opm/cps/leg-dig/ct-reports/2001/ct-commission/2001recidivisminconnecticut.pdf (discussing recidivism rates of prisoners who spent time in administrative or disciplinary segregation).

417. These guiding principles are in no way limited to persons with physical disabilities, but should apply generally to all prisoners.

418. DOJ REPORT & RECOMMENDATIONS, supra note 17, at 14, 46, 59-62, 86-87, 102, 106.


422. Id.

423. Placement into solitary confinement should last no longer than 15 days. See, e.g., Nelson Mandela Rule 44 (“Prolonged solitary confinement shall refer to solitary confinement for a time period in excess of 15 consecutive days.”).

424. ABA Standards Rule 23.2.9.

425. Mandela Rule 45(2).

426. ABA Standards Rule 23.2-3.

427. Id.


429. The author is indebted to Miranda Tait for her ideas on this policy formulation.

430. These guidelines are reflected in the staffing and design of Supermax facilities. See, e.g., Rules of Supermax Units, 28 C.F.R. § 561.2 (2016).