



STATE REFORMS TO LIMIT THE USE OF SOLITARY CONFINEMENT



Over the past few decades, the United States has seen a massive increase in the use of solitary confinement, most noticeably in the building of entire “supermax” prisons designed to hold prisoners in isolation. This practice, in which prisoners are placed alone in cells for 22-24 hours per day with little or no human interaction or outside stimulus, can cause negative psychological reactions in all prisoners subjected to it, and is known to be especially devastating for mentally ill prisoners who are disproportionately represented in solitary confinement.¹ Many prisoners are confined in solitary for months, years, and even decades. Solitary confinement is also extremely costly, and studies have shown that it neither deters violent behavior in prisons nor prevents recidivism.²

The devastating human impacts of solitary confinement, scarcity of public dollars, and concerns for public safety demand that we take a second look at the practice of solitary confinement and explore more effective, humane, and less expensive alternatives. In fact, since the June 2012 Congressional hearing on solitary confinement, the Federal Bureau of Prisons (BOP) announced that it has reduced its segregated population by 25 percent and has agreed to a comprehensive and independent assessment of its use of solitary confinement.³ BOP is the nation’s largest prison system with a population of over 215,000 prisoners.⁴ On any given day, more than 15,000 federal prisoners, seven percent of its population, are in solitary confinement.⁵

SUCCESSFUL STATE MEASURES:

Spurred by growing budget deficits, costly litigation arising from unconstitutional treatment, and the public’s objection to inhumane conditions, several states have begun to reform their prison systems to limit the use of long-term solitary confinement:

- In January 2013, the **Illinois** Department of Corrections (IDOC) closed its supermax prison, Tamms Correctional Center, which was designed to house prisoners in complete isolation. According to the IDOC, Tamms was selected to close in part because it was the most expensive facility to operate; it cost over \$60,000 a year – more than three times the state average – to house an inmate at Tamms.⁶
- As a result of a government study, the **Maine** Department of Corrections recommended tighter controls on the use of special management units (SMUs). Due to subsequent reforms, the SMU population was cut by over 50 percent; expanded access to programming and social stimulation for prisoners was implemented; and personal approval of the Commissioner of Corrections is now required to place a prisoner in the SMU for longer than 72 hours.⁷
- Over the last few years, **Mississippi** has also revolutionized its use of solitary confinement. In the process, the state reduced the segregation population of one institution from 1000 to 150 and eventually closed the entire unit.⁸ Prison officials estimate that diverting prisoners from solitary confinement under Mississippi’s new model saves about \$8 million annually.⁹ At the same time, changes in the management of the solitary confinement population reduced violence levels by 70 percent.¹⁰
- The **Colorado** Legislature required a review of administrative segregation and reclassification efforts for prisoners with mental illness or developmental disabilities.¹¹ At the same time, the

Colorado Department of Corrections (CDOC) had an external review conducted of its administrative segregation policies and practices. As a result of the reforms implemented through this process in the last few months, CDOC has reduced its administrative segregation population by 36.9 percent.¹² The CDOC recently closed a 316-bed administrative segregation facility,¹³ which is projected to save the state \$4.5 million in Fiscal Year 2012-13 and \$13.6 million in Fiscal Year 2013-14.¹⁴

- Correctional leaders in **Michigan** reformed administrative segregation practices through incentive programs that reduced the length of stays in isolation, the number of prisoners subject to such segregation, and the number of incidents of violence and other misconduct. Reduction in segregation has produced better prisoner outcomes at less cost; segregation in Michigan costs nearly double what the state typically pays to incarcerate each prisoner.¹⁵
- In **New Mexico** the state legislature mandated a study on solitary confinement's impact on prisoners, its effectiveness as a prison management tool, and its costs.¹⁶ The Lieutenant Governor of **Texas** similarly commissioned a study on the use of administrative segregation in the Texas Department of Criminal Justice, including the reasons for its use, its impact on public safety and prisoner mental health, possible alternative prison management strategies, and the need for greater reentry programming for the population.¹⁷

NATIONAL STANDARDS FOR SUCCESSFUL REFORM:

In 2010, after a five-year period of drafting and development with input from judges, prosecutors, defense attorneys, corrections officials, civil liberties groups, and law professors, the American Bar Association approved the *Standards for Criminal Justice on the Treatment of Prisoners*.¹⁸ These standards provide comprehensive guidelines for reforming the use of solitary confinement, including:

- Providing a meaningful evaluation process prior to placing prisoners in segregation;
- Limiting duration of disciplinary segregation;
- Allowing in-cell programming and supervised out-of-cell exercise time;
- Decreasing sensory deprivation by allowing radio, television, phone calls, etc.;
- Limiting deprivation of light and providing adequately nutritious meals;
- Allowing prisoners to gradually gain privileges and lessen restrictions;
- Refraining from placing prisoners with serious mental illness in what is an anti-therapeutic environment. Instead, maintaining appropriate, secure mental-health housing for such prisoners is stressed; and
- Carefully monitoring prisoners in solitary confinement for symptoms of mental health deterioration.

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

² DANIEL P. MEARS, URBAN INST., EVALUATING THE EFFECTIVENESS OF SUPERMAX PRISONS 4 (2006).

³ Press Release, Office of Senator Durbin, *Durbin Statement on Federal Bureau of Prisons Assessment of its Solitary Confinement Practices* (Feb. 4, 2013), available at <http://durbin.senate.gov/public/index.cfm/pressreleases?ID=07260483-4972-4720-8d43-8fc82a9909ac>.

⁴ Suzanne Kirchhoff, *Economic Impacts of Prison Growth*, CONGRESSIONAL RESEARCH SERVICE REPORT FOR CONGRESS (2010) available at (p.11 of 39).

⁵ Reassessing Solitary Confinement: The Human Rights, Fiscal and Public Safety Consequences: Hearing Before the Sen. Judiciary Subcomm. on the Constitution, Civil Rights and Human Rights, 112th Cong. (2012) (statement of Charles Samuels, Director of the Federal Bureau of Prisons).

⁶ "Tamms Correctional Center Closing-Fact Sheet." *Illinois Department of Corrections*. The State of Illinois. available at: <http://www.ilga.gov/commission/cgfa2006/upload/TammsMeetingTestimonyDocuments.pdf> (p. 142 of 698)

⁷ Lance Tapley, *Reform Comes to the Supermax*, PORTLAND PHOENIX, May 25, 2011, available at <http://portland.the phoenix.com/news/121171-reform-comes-to-the-supermax/>.

⁸ Terry A. Kupers, et al., *Beyond Supermax Administrative Segregation: Mississippi's Experience Rethinking Prison Classification and Creating Alternative Mental Health Programs*, 36 CRIM. JUST. & BEHAV. 1037, 1041 (2009); John Buntin, *Exodus: How America's Reddest State – And Its Most Notorious Prison – Became a Model of Corrections Reform*, 23 GOVERNING 20, 27 (2010).

⁹ Transcript of Proceedings at 8, *Presley v. Epps*, No. 4:05-CV-00148-JAD (N.D. Miss. Aug. 2, 2010).

¹⁰ Kupers et al., *supra* note 8, at 1043.

¹¹ S. B. 176, 68th Gen. Assem., Reg. Sess. (Colo., 2011).

¹² COLORADO DEPARTMENT OF CORRECTIONS, REPORT ON IMPLEMENTATION OF ADMINISTRATIVE SEGREGATION PLAN 1-2 (2012), available at <https://www.aclu.org/prisoners-rights/report-co-docs-implementation-administrative-segregation-plan>; see also Denise Maes, *Guest Column: Solitary Confinement Reform is Welcome Sign of Progress*, COLORADO SPRINGS GAZETTE, Jan. 27, 2012, available at www.gazette.com/common/printer/view.php?db=colgazette&id=132524

¹³ Ann Imse, *Colorado could close two to 10 more prisons*, COLORADO PUBLIC NEWS, January 27, 2013, available at <http://www.cpt12.org/news/index.php/colorado-could-close-two-to-10-more-prisons/>.

¹⁴ News Release, Department of Corrections, *The Department of Corrections Announces the Closure of Colorado State Penitentiary II* (March 19, 2012), available at <http://www.doc.state.co.us/sites/default/files/Press%20release%20CSP%20II%20close%20%20Feb%201%202013.pdf>.

¹⁵ Jeff Gerritt, *Pilot Program in UP Tests Alternatives to Traditional Prison Segregation*, DETROIT FREE PRESS, January 1, 2012, available at www.freep.com/fdcp/?unique=1326226266727.

¹⁶ H. Mem. 62, 50th Leg., 1st Sess. (N.M. 2011).

¹⁷ Press Release, Office of the Lieutenant Governor, *Lt. Governor Dewhurst Issues Select Interim Charges Relating to Transportation, Homeland Security and Criminal Justice* (Jan. 13, 2012), available at <http://www.ltgov.state.tx.us/prview.php?id=337>.

¹⁸ ABA Standards for Criminal Justice, Treatment of Prisoners 23-1, et seq (2010), available at http://www.americanbar.org/publications/criminal_justice_section_archive/crimjust_standards_treatmentprisoners.html.