



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

Hearing on

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

Tuesday, June 19, 2012

at 10:00 am

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

The American Civil Liberties Union is a nationwide, nonprofit, non-partisan organization with more than a half million members, countless additional activists and supporters, and 53 affiliates nationwide dedicated to the principles of liberty and equality embodied in our Constitution and our civil rights laws. Consistent with that mission, the ACLU established the National Prison Project in 1972 to protect and promote the civil and constitutional rights of prisoners. Since its founding, the Project has challenged unconstitutional conditions of confinement and over-incarceration at the local, state and federal level through public education, advocacy and successful litigation. The ACLU’s national ***Stop Solitary*** campaign, which works to end the pervasive use of long-term solitary confinement and to divert children and persons suffering from mental disabilities and mental illness out of solitary altogether. Due to unprecedented state budget problems that are forcing a second look at the explosive growth in corrections costs, the current focus of ***Stop Solitary*** is to ensure that the public and our leaders know that the monetary cost of solitary confinement, coupled with the human cost of increased psychological suffering and sometimes irreparable harm, far outweighs any purported benefits, and that there are more effective and humane and less costly alternatives.

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

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

This massive increase in the use of solitary confinement has led many to question whether it is an effective and humane use of scarce public resources. Many in the legal and medical fields criticize solitary confinement and supermax prisons as both unconstitutional and inhumane, pointing to the well-known harms associated with placing human beings in isolation and the rejection of its use in American prisons decades earlier. Indeed, over a century ago, the Supreme Court noted that:

[Prisoners subject to solitary confinement] fell, after even a short confinement, into a semi-fatuous condition, from which it was next to impossible to arouse them, and others became violently insane; others still, committed suicide; while those who stood the ordeal better were not generally reformed, and in most cases did not recover sufficient mental activity to be of any subsequent service to the community.

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

Other critics point to the enormous costs associated with solitary confinement. For example, supermax institutions typically cost two or three times more to build and operate than even traditional maximum-security prisons.³ Despite the significant costs, almost no research has been done on the outcomes produced by the increased use of solitary confinement or supermax prisons. In the research that has been conducted there is little empirical evidence to suggest that solitary confinement makes prisons safer. Indeed, emerging research suggests that supermax prisons actually have a negative effect on public safety.⁴ Despite these concerns, states and the federal government have continued to invest scarce taxpayer dollars in constructing supermax prisons and enforcing solitary confinement conditions. Yet there are stark new fiscal realities facing our communities today and for the foreseeable future. Both state and federal governments confront reduced revenue and mounting debt that are leading to severe cuts in essential public services like health and education. Given these harsh new realities, it is time to ask whether we should continue to rely on solitary confinement and supermax prisons despite their high fiscal and human costs.

A. What is solitary confinement?

Solitary confinement is the practice of placing a person alone in a cell for 22-24 hours a day with little human contact or interaction; reduced or no natural light; restriction or denial of reading material, television, radios or other property; severe constraints on visitation; and the inability to participate in group activities, including eating with others. While some of the specific conditions of solitary confinement may differ between institutions, generally the prisoner spends 23 hours a day alone in a small cell with a solid steel door, a bunk, a toilet and a sink.⁵ Human contact is generally restricted to brief interactions with corrections officers and, for some prisoners, occasional encounters with healthcare providers or attorneys.⁶ Family visits are limited and almost all human contact occurs while the prisoner is in restraints and behind some sort of barrier.⁷ Frequently prisoners subjected to solitary confinement are only allowed one visit per month.⁸ ***The amount of time a person spends in solitary confinement varies, but it can last for months, years or even decades.***

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

The term “segregated housing” means housing of a prisoner in conditions characterized by substantial isolation from other prisoners, whether pursuant to disciplinary, administrative, or classification action. “Segregated housing” includes restriction of a prisoner to the prisoner’s assigned living quarters.⁹

The term “long-term segregated housing” means segregated housing that is expected to extend or does extend for a period of time exceeding 30 days.¹⁰

The stated purpose of solitary confinement is to confine prisoners who have violated prison rules or prisoners who are considered too dangerous to house with others. It is also sometimes used to confine prisoners who are perceived as vulnerable, such as youths, the elderly, the medically frail, or

individuals identified as lesbian, gay, bisexual, transgender or intersex (LGBTI), or otherwise gender non-conforming.

B. The detrimental effects of solitary confinement

Solitary confinement is well recognized as painful and difficult to endure. “It’s an awful thing, solitary,” U.S. Senator John McCain wrote of his time in isolation as a prisoner of war in Vietnam. “It crushes your spirit and weakens your resistance more effectively than any other form of mistreatment.”¹¹ Senator McCain’s experience is consistent with the consensus among researchers that solitary confinement is psychologically harmful.¹² For example, in their amicus brief in the Supreme Court case *Wilkinson v. Austin*, a group of nationally recognized mental health experts summarized the clinical and research literature and concluded: “No study of the effects of solitary or supermax-like confinement that lasted longer than 60 days failed to find evidence of negative psychological effects”.¹³ After their review of the clinical and research materials, the experts noted that “[t]he overall consistency of these findings – the same or similar conclusions reached by different researchers examining different facilities, in different parts of the world, in different decades, using different research methods – is striking.”¹⁴ A California prison psychiatrist summed it up more succinctly: “It’s a standard psychiatric concept, if you put people in isolation, they will go insane. . . . Most people in isolation will fall apart.”¹⁵

People subject to solitary confinement exhibit a variety of negative physiological and psychological reactions, including: hypersensitivity to external stimuli;¹⁶ perceptual distortions and hallucinations;¹⁷ increased anxiety and nervousness;¹⁸ revenge fantasies, rage, and irrational anger;¹⁹ fears of persecution;²⁰ lack of impulse control;²¹ severe and chronic depression;²² appetite loss and weight loss;²³ heart palpitations;²⁴ withdrawal;²⁵ blunting of affect and apathy;²⁶ talking to oneself;²⁷ headaches;²⁸ problems sleeping;²⁹ confusing thought processes;³⁰ nightmares;³¹ dizziness;³² self-mutilation;³³ and lower levels of brain function, including a decline in EEG activity after only seven days in solitary confinement.³⁴ In addition to increased psychiatric symptoms generally, suicide rates and incidents of self-harm are much higher for prisoners in solitary confinement. In California, for example, although less than 10% of the state’s prison population was held in isolation units in 2004, those units accounted for 73% of all suicides.³⁵ One study examined the impact of solitary confinement on the amount of time that passes between incidents in which prisoners harm themselves.³⁶

C. Mentally ill people are dramatically overrepresented in solitary confinement

There is a popular misconception that all prisoners in solitary confinement are violent, dangerous, and disruptive, or the “worst of the worst.”³⁷ But any prison system only has a handful of prisoners that actually meet this description. If the use of solitary confinement were restricted solely to the dangerous and predatory, most supermax prisons and isolation units would stand virtually empty. The reality is that solitary confinement is overused and misused. One reason is that elected officials pushed to build solitary confinement facilities based on a desire to appear “tough on crime,” rather than actual need as expressed by corrections professionals.³⁸ As a result, many states built large supermax facilities they didn’t need, and now fill the cells with relatively low-risk prisoners.³⁹

Who are the thousands of people who end up in solitary confinement? The vast majority are not incorrigibly violent criminals; instead, many are severely mentally ill or cognitively disabled prisoners, who find it difficult to function in prison settings or to understand and follow prison rules.⁴⁰

For example, in Indiana’s supermax, prison officials admitted that “well over half” of the prisoners are mentally ill.⁴¹ On average, researchers estimate that at least 30% of the prisoners held in solitary confinement are mentally ill.⁴²

Solitary confinement is psychologically difficult for even relatively healthy individuals, but it is devastating for those with mental illness. When people with severe mental illness are subjected to solitary confinement they deteriorate dramatically. Many engage in bizarre and extreme acts of self-injury and suicide. It is not unusual for prisoners in solitary confinement to compulsively cut their flesh, repeatedly smash their heads against walls, swallow razors and other harmful objects, or attempt to hang themselves. In Indiana’s supermax, a mentally ill prisoner killed himself by self-immolation; another man choked himself to death with a washcloth.⁴³ Such incidents are all too common in similar facilities across the country. These shattering impacts of solitary confinement are so well-documented that federal courts have repeatedly held that placing the severely mentally ill in such conditions is cruel and unusual punishment under the Eighth Amendment to the Constitution.⁴⁴

D. Children are also subjected to the damaging effects of solitary confinement

Youth in both the juvenile justice system and the adult correctional system are routinely subjected to solitary confinement. In adult prisons and jails, youth are often placed in “protective custody” by corrections officials for safety reasons. Unfortunately, “protective custody” is almost always synonymous with solitary confinement. Despite the prevalence of youth in adult facilities in the United States, most adult correctional systems offer few if any alternatives to solitary confinement as a means of protecting youth.⁴⁵ As a result, they may spend weeks, months or years in solitary confinement. In juvenile facilities, solitary confinement is frequently used as a sanction for disciplinary infractions. These sanctions can last for hours, days, weeks or longer, and often open the door to abusive isolation practices.⁴⁶ While the use of solitary confinement in youth facilities is generally of much shorter duration than in adult facilities, the greater impact of isolation on the psyche of children and its negative effect on youth development—and ultimately, rehabilitation—raise serious legal and moral questions about current practices.

Children have special developmental needs and are even more vulnerable to the harms of prolonged isolation than adults.⁴⁷ Young people’s brains are still developing, placing youth at higher risk of psychological harm when healthy development is impeded.⁴⁸ Children experience time differently than adults, and have a special need for social stimulation.⁴⁹ And youth frequently enter the criminal justice system with histories of substance abuse, mental illness and childhood trauma, which often go untreated in isolation, exacerbating the harmful effects of solitary confinement.⁵⁰ A serious and tragic consequence of the solitary confinement of youth is the increased risk of suicide and self-harm, including cutting and other acts of self-mutilation. In juvenile facilities more than 50% of all youth suicides occur in isolation.⁵¹ For youth in adult jails the suicide rates are even higher. Suicides of youth in isolation occur nineteen times more often than in the general population; youth suicide rates are thirty-six times higher in adult jails than in juvenile detention facilities.⁵² At the same time, youth in isolation are routinely denied minimum education, mental health, treatment, and nutrition,⁵³ which directly affects their ability to successfully re-enter society and become productive adults.⁵⁴

For these reasons, efforts are underway to end this practice. Legislators in some states, like California, have introduced legislation to limit solitary confinement of youth,⁵⁵ while other states have raised the age at which children may be charged as adults.⁵⁶ This month the Department of

Justice issued national standards under the Prison Rape Elimination Act (PREA) stating that “[a]s a matter of policy, the Department supports strong limitations on the confinement of adults with juveniles.”⁵⁷ As part of these standards the Department has recognized the dangers of placing children in solitary and mandated that facilities make “best efforts” to avoid isolating them.⁵⁸ Internationally, the United Nations Special Rapporteur on Torture has called for a global ban on the solitary confinement of children under 18.⁵⁹

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

For prisoners and detainees who are lesbian, gay, bisexual, transgender, have intersex conditions (LGBTI), or are gender nonconforming, solitary confinement is too often the correctional management tool used to separate them from the general population. This problem has now been recognized in the Department of Justice’s recently finalized PREA regulations.⁶⁰ Among other provisions, the new regulations include measures to prevent the use of segregation and solitary confinement in correctional facilities. While correctional officials often justify the use of solitary confinement as necessary protection for vulnerable LGBTI prisoners, the stigmatizing effect of this practice can cause significant harm. For example, untreated gender identity disorder (GID) and denial of medically necessary care for those who are transgender often results in depression and suicidal ideation, among other symptoms, which are made significantly worse by forced segregation and isolation. The new PREA regulations recognize that solitary confinement for LGBTI prisoners can be psychologically damaging and physically dangerous.⁶¹ At this time, however, such isolation remains broadly practiced by corrections facilities and places of detention nationwide.

Increasingly, concerns have also been raised about the placement of vulnerable prisoners in segregation in immigration detention facilities around the country. In May 2012, the American Civil Liberties Union Foundation of Georgia (ACLU of Georgia) released a report on the four immigration detention facilities in Georgia titled *Prisoners of Profit: Immigrants and Detention in Georgia*.⁶² The report covers the largest immigration detention facility in the United States, the Stewart Detention Center, as well as the North Georgia Detention Center (NGDC), Irwin County Detention Center, and Atlanta City Detention Center (ACDC). The report’s findings raise serious concerns regarding violations of detainees’ rights, including the placement of individuals with mental disabilities in segregation units and the failure to provide adequate mental health care.⁶³

F. Solitary confinement is inconsistent with international human rights principles

The U.N. Committee Against Torture, the official body established pursuant to the Convention Against Torture – a treaty ratified by the United States – has recommended that the practice of long-term solitary confinement be abolished altogether and has particularly criticized solitary confinement practices in the United States.⁶⁴ Moreover, in a groundbreaking global study on solitary confinement, presented last year to the United Nations General Assembly, the U.N. Special Rapporteur on Torture called on all countries to ban the practice, except in very exceptional circumstances, as a last resort, and for as short a time as possible. The Special Rapporteur concluded that solitary confinement is a harsh measure that may cause serious psychological and physiological adverse effects. He found that solitary confinement can amount to cruel, inhuman or degrading treatment or punishment and even torture. He recommended both the prohibition of solitary confinement as punishment and the implementation of alternative disciplinary sanctions. He also called for increased safeguards from abusive and prolonged

solitary confinement, the universal prohibition of solitary confinement exceeding 15 days, and the discontinuance of solitary confinement for juveniles and mentally disabled persons.⁶⁵

II. Solitary Confinement is Costly and Jeopardizes Public Safety

Despite its pervasive use in U.S. prisons, jails, youth facilities and detention centers, there is little evidence on the utility or cost-effectiveness of solitary confinement as a corrections tool.⁶⁶ In particular, there is little evidence that solitary confinement, supermax institutions or administrative segregation units significantly reduce prison violence or deter future crimes.⁶⁷ A 2006 study found that opening a supermax prison or special housing unit (SHU) had no effect on prisoner-on-prisoner violence in Arizona, Illinois and Minnesota.⁶⁸ The same study found that creating such isolation units had only limited impact on prisoner-on-staff violence in Illinois, none in Minnesota, and actually increased violence in Arizona.⁶⁹ A similar study in California found that supermax or administrative segregation prisons had increased rather than decreased violence levels.⁷⁰

Some proponents of solitary confinement assert that isolating “the worst of the worst” creates a safer general population environment where prisoners will have greater freedom and access to educational and vocational programs.⁷¹ Others defend solitary confinement as a general deterrent of disruptive behavior throughout the prison system.⁷² However, there is only anecdotal support for these beliefs.⁷³ Indeed, some researchers have concluded that more severe restrictions imposed on prisoners in solitary confinement increase levels of violence and other behavioral and management problems.⁷⁴

Although there is little empirical evidence that solitary confinement is an effective prison management tool, there is ample evidence that it is the most costly form of incarceration. Supermax prisons and segregation units are considerably more costly to build and operate, sometimes costing two or three times as much as conventional facilities.⁷⁵ Staffing costs are much higher – prisoners are usually required to be escorted by two or more officers any time they leave their cells, and work that in other prisons would be performed by prisoners (such as cooking and cleaning) must be done by paid staff. Solitary confinement therefore represents an enormous investment of public resources. For example, a 2007 estimate from Arizona put the annual cost of holding a prisoner in solitary confinement at approximately \$50,000 compared to only about \$20,000 for the average prisoner.⁷⁶ In Maryland, the average cost of housing a prisoner in the state’s segregation units is three times greater than in a general population facility; in Ohio it is twice as high; and in Texas the costs are 45% greater.⁷⁷ In Connecticut the cost of solitary is nearly twice as much as the average daily expenditure per prisoner;⁷⁸ and in Illinois it is three times the statewide average.⁷⁹

Not only is there little evidence that the enormous outlay of resources for these units makes prisons safer, there is growing concern that such facilities are actually detrimental to public safety. A blue ribbon commission chaired by the Hon. John J. Gibbons and Nicholas de B. Katzenbach raised concerns regarding the overuse of solitary confinement, particularly the practice of releasing prisoners directly from segregation settings to the community.⁸⁰ One study of prisoners held in solitary confinement noted that such conditions may “severely impair . . . the prisoner’s capacity to reintegrate into the broader community upon release from imprisonment.”⁸¹ The pervasive use of solitary confinement means that thousands of prisoners are now returning to the community after spending months or years in isolation. This means that society must face the huge problem of re-socializing individuals who are poorly prepared to return safely to the community.

In most systems, many prisoners in solitary confinement are released directly to the community. In California, for example, nearly 40% of segregated prisoners are released directly to the community without first transitioning to lower security units.⁸² Colorado also releases about 40% of its supermax population directly to the community.⁸³ Mental health experts have noted the problems with direct release from isolation and called for prerelease programs to help prisoners held in solitary confinement transition to the community more safely.⁸⁴

Although there is not yet comprehensive national research comparing recidivism rates for prisoners released directly from solitary with those released from general population, preliminary research in California suggests that the rates of return to prison are at least 20% higher for solitary confinement prisoners.⁸⁵ Similarly in Colorado, two-thirds of prisoners in solitary confinement who were released directly to the community returned to prison within three years, but prisoners who transitioned from solitary confinement into the general prison population before community re-entry experienced a six percent reduction in their comparative recidivism rate for the same period.⁸⁶

A 2001 study found that 92% of Connecticut prisoners who had been held at the state's supermax prison were rearrested within three years of release, while only 66% of prisoners who had not been held in administrative segregation were rearrested in the same time period.⁸⁷ These findings are consistent with a recent study in Washington State that tracked 8,000 former prisoners upon release. The study found that not only were those who came from segregation housing more likely to commit new offenses upon release, they were also more likely to commit violent crimes. Significantly, it was prisoners released directly from segregation who had much higher recidivism rates compared to individuals who spent time in a conventional prison setting before return to the community (64% compared with 41%).⁸⁸ This finding suggests a direct link between recidivism and the extreme and debilitating conditions in segregation.⁸⁹

III. There are Better Alternatives to Solitary Confinement

A growing number of states have taken steps, either independently or because of litigation, to regulate the use of solitary confinement for both disciplinary and non-disciplinary reasons. These steps have been taken for several reasons, including the human and fiscal costs of solitary confinement, concern for public safety, and the lack of empirical evidence to support the practice. As a recent *New York Times* article explains, these measures represent an “about face” from the routine use of solitary confinement.⁹⁰ Below we briefly discuss some of the states beginning to address the overuse of solitary confinement in the last few years.

In March 2011, 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 fifty 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.⁹¹

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.⁹² Prison officials estimate that diverting prisoners from solitary confinement under Mississippi's new model saves about \$8 million annually.⁹³ At the same time, changes in the management of the solitary confinement population reduced violence levels by 70%.⁹⁴

State legislatures have also addressed the problems created by the overuse of solitary confinement and its damaging effects on the mentally ill. For example, **New York** passed a law that excludes the seriously mentally ill from solitary confinement; requires periodic assessment and monitoring of the mental status of all prisoners subject to solitary confinement for disciplinary reasons; creates a non-disciplinary unit for prisoners with psychiatric disabilities where a therapeutic milieu is maintained and prisoners are subject to the least restrictive environment consistent with their needs and mental status; and requires that all staff be trained to deal with prisoners with mental health issues.⁹⁵

Several states, including Colorado, Michigan, Illinois, New Mexico, Virginia and Texas, have recently initiated other reforms.

- In 2011, the **Colorado** Legislature required a review of administrative segregation and reclassification efforts for prisoners with mental illness or developmental disabilities.⁹⁶ At the same time, the Colorado Department of Corrections (CDOC) identified administrative segregation reform as a management priority and made a formal request to the National Institute of Corrections, U.S. Department of Justice, for an external review and analysis of its administrative segregation operations. 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%.⁹⁷ After taking these steps to reduce the use of administrative segregation, the CDOC recently announced the closure of a 316-bed supermax facility, which is projected to save the state \$4.5 million in Fiscal Year 2012-13 and \$13.6 million in Fiscal Year 2013-14.⁹⁸
- Correctional leaders in **Michigan** have recently reformed administrative segregation practices through incentive programs that have reduced the length of stays in isolation, the number of prisoners subject to administrative 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.⁹⁹
- 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.¹⁰⁰ 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.¹⁰¹ The **Virginia** Senate passed a joint resolution mandating a legislative study on alternative practices to limit the use of solitary confinement, cost savings associated with limiting its use, and the impact of solitary confinement on prisoners with mental illness, as well as alternatives to segregation for such prisoners.¹⁰² Recently, the Governor of **Illinois** announced a proposal to close the state's notorious supermax prison, Tamms Correctional Center. The closure of Tamms will reportedly save \$21.6 million in the upcoming fiscal year and \$26.6 million annually thereafter.¹⁰³

Finally, in recognition of the inherent problems of solitary confinement, the **American Bar Association** recently approved standards to reform its use. The ABA's *Standards for Criminal Justice, Treatment of Prisoners* address all aspects of solitary confinement (the Standards use the term "segregated housing").¹⁰⁴ The solutions presented in the Standards represent a consensus view of

representatives of all segments of the criminal justice system who collaborated exhaustively in formulating the final ABA Standards.¹⁰⁵ The following illustrate some of those solutions:

- a. Provide adequate and meaningful process prior to placing or retaining a prisoner in segregation to be sure that segregation is warranted. (ABA Treatment of Prisoners Standard 23-2.9 [hereinafter cited by number only])
- b. Limit the duration of disciplinary segregation — in general, stays should be brief and should rarely exceed one year. Longer-term segregation should be imposed only if the prisoner poses a continuing and serious threat. Segregation for protective reasons should take place in the least restrictive setting possible. (23-2.6, 23-5.5)
- c. Decrease extreme isolation by allowing for in-cell programming, supervised out-of-cell exercise time, face-to-face interaction with staff, access to television or radio, phone calls, correspondence, and reading material. (23-3.7, 23-3.8)
- d. Decrease sensory deprivation by limiting the use of auditory isolation, deprivation of light and reasonable darkness, punitive diets, etc. (23-3.7, 23-3.8)
- e. Allow prisoners to gradually gain more privileges and be subject to fewer restrictions, even if they continue to require physical separation. (23-2.9)
- f. Refrain from placing prisoners with serious mental illness in segregation. Instead, maintain appropriate, secure mental-health housing for such prisoners. (23-2.8, 23-6.11)
- g. Carefully monitor prisoners in segregation for mental health deterioration and deal with deterioration appropriately if it occurs. (23-6.11)

IV. Recommendations

The ACLU urges the Subcommittee to take steps to end the overuse of solitary confinement in the United States. A necessary first step toward reforming this practice and promoting a safer, more humane, and more cost-effective criminal justice system is to promote transparency in segregation practices at the local, state, and federal level. There is currently no requirement that correctional systems explain to the public who is placed in isolation; why they are placed in isolation; the conditions they are subject to while in isolation; how long they remain there; and what they can do to work their way out. Simply subjecting solitary confinement practices to public scrutiny would empower citizens, taxpayers, lawmakers, and correctional officials to make informed choices about the use of segregation, and would promote greater accountability for practices that too often have been shrouded in secrecy and therefore subject to abuse.

The ACLU also urges the Subcommittee to take steps to ensure that children under the age of 18 and persons with mental illness are not subject to solitary confinement in local, state or federal places of detention. These steps would bring segregation practices closer to compliance with both U.S. Constitutional law and international human rights standards, as well as established psychiatric and child development research.

Finally, the ACLU urges the Subcommittee to promote adoption of the ABA's *Standards for Criminal Justice, Treatment of Prisoners* related to the use of "segregated housing" as guidelines for all policies and practices related to the use of solitary confinement in places of detention under the jurisdiction of the federal government.

ENDNOTES

¹ DANIEL P. MEARS, URBAN INST., EVALUATING THE EFFECTIVENESS OF SUPERMAX PRISONS 4 (2006).

² Angela Browne, Alissa Cambier, Suzanne Agha, *Prisons Within Prisons: The Use of Segregation in the United States*, 24 FED'L SENTENCING REPORTER 46 (2011).

³ MEARS, *supra* note 1, at ii.

⁴ See, e.g., Keramet Reiter, Parole, Snitch, or Die: California's Supermax Prisons & Prisoners, 1987-2007 47-51 (2010); MAUREEN L. O'KEEFE, COLO. DEP'T OF CORRECTIONS, ANALYSIS OF COLORADO'S ADMINISTRATIVE SEGREGATION 25 (2005).

⁵ Eric Lanes, *The Association of Administrative Segregation Placement and Other Risk Factors with the Self-Injury-Free Time of Male Prisoners*, 48 J. OF OFFENDER REHABILITATION 529, 532 (2009).

⁶ *Id.*

⁷ *Id.*

⁸ Leena Kurki & Norval Morris, *The Purposes, Practices, and Problems of Supermax Prisons*, 28 CRIME AND JUST. 385, 389 (2001).

⁹ ABA CRIM. JUST. STANDARDS ON THE TREATMENT OF PRISONERS, Standard 23-1.0(r) (2010), available at <http://www.abanet.org/crimjust/policy/midyear2010/102i.pdf> [hereinafter ABA STANDARDS].

¹⁰ *Id.* Standard 23-1.0(o).

¹¹ Atul Gawande, *Hellhole*, THE NEW YORKER, Mar. 30, 2009, available at http://www.newyorker.com/reporting/2009/03/30/090330fa_fact_gawande.

¹² See, e.g., Stuart Grassian, *Psychopathological Effects of Solitary Confinement*, 140 AM. J. OF PSYCHIATRY 1450 (1983); Richard Korn, *The Effects of Confinement in the High Security Unit at Lexington*, 15 SOC. JUST. 8 (1988); Stanley L. Brodsky & Forest R. Scogin, *Inmates in Protective Custody: First Data on Emotional Effects*, 1 FORENSIC REP. 267 (1988); Craig Haney, *Mental Health Issues in Long-Term Solitary and "Supermax" Confinement*, 49 CRIME & DELINQ. 124 (2003); Holly A. Miller & Glenn R. Young, *Prison Segregation: Administrative Detention Remedy or Mental Health Problem?*, 7 CRIM. BEHAV. AND MENTAL HEALTH 85 (1997); HANS TOCH, MOSAIC OF DESPAIR: HUMAN BREAKDOWN IN PRISON (1992).

¹³ Brief of Professors and Practitioners of Psychology and Psychiatry as Amicus Curiae in Support of Respondent at 4, *Wilkinson v. Austin*, 545 U.S. 209 (2005) (No. 04-4995) [hereinafter Brief of Amicus Curiae]. In *Wilkinson*, 545 U.S. at 223, a unanimous court concluded that the conditions in Ohio's supermax facility, the Ohio State Penitentiary (OSP) gave rise to a liberty interest in avoiding them: "we are satisfied that that assignment to OSP imposes an atypical and significant hardship under any plausible baseline."

¹⁴ Brief of Amicus Curiae, *supra* note 13 at 23.

¹⁵ HUMAN RIGHTS WATCH, ILL-EQUIPPED: U.S. PRISONS AND OFFENDERS WITH MENTAL ILLNESS 149 n. 513 (2003).

¹⁶ Grassian, *supra* note 12, at 1452.

¹⁷ *Id.*; Haney, *supra* note 12, at 130, 134; see generally Korn, *supra* note 12.

¹⁸ Grassian, *supra* note 12, at 1452-53; Haney, *supra* note 12, at 130, 133; Holly A. Miller, *Reexamining Psychological Distress in the Current Conditions of Segregation*, 1 J. OF CORRECTIONAL HEALTHCARE 39, 48 (1994); see generally Brodsky & Scogin, *supra* note 12.

¹⁹ Grassian, *supra* note 12, at 1453; Miller & Young, *supra* note 12, at 91; Haney, *supra* note 12, at 130, 134; see generally TOCH, *supra* note 12.

²⁰ Grassian, *supra* note 12, at 1453.

²¹ *Id.*; Miller & Young, *supra* note 12, at 92.

²² Grassian, *supra* note 12, at 1453; Miller & Young, *supra* note 12, at 92; Haney, *supra* note 12, at 131.

²³ Haney, *supra* note 12, at 130; see generally Korn, *supra* note 12.

²⁴ Haney, *supra* note 12, at 131.

²⁵ Miller & Young, *supra* note 12, at 91; see generally Korn, *supra* note 12.

²⁶ Miller & Young, *supra* note 12, at 91; see generally Korn, *supra* note 12.

²⁷ Haney, *supra* note 12, at 134; see generally Brodsky & Scogin, *supra* note 12.

²⁸ Haney, *supra* note 12, at 133.

²⁹ *Id.*

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- ³⁰ Haney, *supra* note 12, at 137; *see generally* Brodsky & Scogin, *supra* note 12.
- ³¹ Haney, *supra* note 12, at 133.
- ³² *Id.*
- ³³ Grassian, *supra* note 12, at 1453; Lanes, *supra* note 5, at 539-40.
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⁵⁷National Standards to Prevent, Detect and Respond to Prison Rape, Docket No. OAG-131, (May 16, 2012) (to be codified at 28 C.F.R. pt. 115), available at http://www.ojp.usdoj.gov/programs/pdfs/prea_final_rule.pdf.

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⁵⁹The Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman, or degrading treatment or punishment, *Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, delivered to the General Assembly*, U.N. Doc. A/66/268 (Aug. 5, 2011) [hereinafter Special Rapporteur].

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⁶¹Unfortunately, LGBTI detainees in immigration detention facilities are not covered by the PREA regulations. Leslie Cooper, *New Federal Standards Offer Unprecedented Protections to LGBTI Prisoners*, ACLU BLOG (May 21, 2012, 2:25 PM), <http://www.aclu.org/blog/prisoners-rights-lgbt-rights-womens-rights/new-federal-standards-offer-unprecedented>. Detainees in immigration facilities across the country are often subjected to inhumane conditions, including extended periods of solitary confinement, often in the name of “protecting” LGBTI detainees facing the risk of physical and sexual abuse. The ACLU of Arizona recently produced a report detailing the incredibly degrading treatment faced by LGBTI immigration detainees at facilities in that state. VICTORIA LOPEZ, IN THEIR OWN WORDS: ENDURING ABUSE IN ARIZONA IMMIGRATION DETENTION CENTERS, ACLU OF ARIZONA, (June 2011), available at <http://www.acluaz.org/sites/default/files/documents/detention%20report%202011.pdf>. Transgender and gay detainees are already at higher risk of sexual violence and inadequate medical care while in immigration detention. *Id.* at 23. On top of those concerns, LGBTI detainees are often subjected to long-term “protective custody” – extended periods of isolation, sometimes for 23 hours per day, and harsh treatment by detention officials. See Immigration Equality, *Conditions of Detention*, <http://www.immigrationequality.org/issues/detention/conditions-of-detention/> (last visited June 15, 2012).

⁶²ACLU FOUNDATION OF GEORGIA, PRISONERS OF PROFIT: IMMIGRANTS AND DETENTION IN GEORGIA (Azadeh Shahshahani ed., 2012).

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⁶⁴ See, e.g., U.N. Comm. Against Torture, *Consideration of Reports Submitted by States Parties Under Article 19 of the Convention: Denmark*, ¶ 14, U.N. Doc. CAT/C/DNK/CO/5 (July 16, 2007). When the same Committee reviewed practices in the United States, it expressed grave concerns over the extremely harsh regime imposed on prisoners in "super-maximum" prisons. The Committee specifically noted the prolonged isolation prisoners are subject to and the effect such treatment has on their mental health, and recommended that "[t]he State party should review the regime imposed on [prisoners] in 'supermaximum prisons,' in particular the practice of prolonged isolation." See U.N. Comm. Against Torture, *Consideration of Reports Submitted by States Parties Under Article 19 of the Convention: Conclusions and Recommendations of the Committee Against Torture: United States of America*, U.N. Doc. CAT/C/USA/CO/2, at ¶ 36 (May 18, 2006).

⁶⁵ Special Rapporteur, *supra* note 59; see also Jules Lobel, *Prolonged Solitary Confinement and the Constitution*, 11 U. Pa. J. CONST. L. 115, 122-25 (2008); Elizabeth Vasiliades, *Solitary Confinement and International Human Rights: Why the U.S. Prison System Fails Global Standards*, 21 AM. U. INT'L L. REV. 71, 98 (2005)

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⁶⁷ Kurki & Morris, *supra* note 8, at 391.

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⁷¹ Kurki & Morris, *supra* note 8, at 391.

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⁷⁶ ISAACS & LOWEN, *supra* note 75, at 4.

⁷⁷ MEARS, *supra* note 1, at 20, 26, 33.

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