



# Still Worse Than Second-Class

Solitary Confinement of Women  
in the United States

**ACLU**

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# Introduction

This report was first published in 2014. Since then, some things have changed for women in solitary confinement—but many things have not. More attention has been placed on women in prison and on solitary confinement in general, but still, little attention has been paid to the specific plight of women in solitary confinement. Although laws, court decisions, and settlement agreements have all limited the use of solitary confinement for certain populations in some jurisdictions, the use of solitary confinement is still rampant in the United States. Vulnerable populations, including pregnant people and women with mental illness, are still being placed into solitary confinement, and not enough is being done to enforce limitations on such placements.

This 2019 version of the report includes updated facts and data and new sections on girls under the age of 18 in solitary confinement, older women in solitary confinement, and immigration detention. These new sections highlight specific populations that are detained at an increasing rate and that may or do suffer special harms due to solitary confinement. For this 2019 version of the report, we also conducted interviews with survivors of solitary confinement and a practitioner. Specifically, we interviewed three women who had experienced solitary confinement themselves and one social worker who provided mental health care to women in solitary confinement.<sup>1</sup> These interviews provided on-the-ground, personal stories about what it is like to live in solitary confinement and a deeper understanding of the mental health impacts of this type of experience.

Solitary confinement—locking a prisoner in isolation away from most, if not all, human contact for upwards of 20 hours per day for weeks, months, or even years at a time—is inhumane. When used for longer than 15 days,

or on vulnerable populations such as pregnant people, children, and people with mental illness, the practice is recognized by human rights experts as a form of torture.<sup>2</sup> Prisons and jails across the United States lock prisoners in solitary confinement for a range of reasons—punitive, administrative, protective, medical—but whatever the reason, the conditions are similarly harsh and damaging. Experts in mental health, medicine, and corrections agree that solitary confinement can have uniquely harmful effects;<sup>3</sup> this consensus has led experts to call for the practice to be banned in all but the most extreme cases, when other alternatives have failed or are not available, where safety is an imminent concern, and for the shortest amount of time possible.<sup>4</sup> The U.S. Department of Justice (DOJ) recommends limiting the use of solitary confinement to the extent possible, placing prisoners in the least restrictive setting in which they can safely be housed.<sup>5</sup> Supreme Court Justice Anthony Kennedy openly questioned whether, given its predictable toll on even formerly healthy individuals, long-term solitary confinement is ever constitutional.<sup>6</sup>

Women prisoners are routinely subjected to solitary confinement in jails and prisons across the United States. Yet the use of solitary on women is often overlooked.<sup>7</sup> Although the negative psychological impacts of solitary confinement are well known, the unique harms and dangers of subjecting women prisoners to this practice have rarely been examined or considered in evaluating the need for reforms in law or policy. As the number of incarcerated women has climbed at an alarming pace, women and their families and communities are increasingly affected by what happens behind bars.<sup>8</sup> It is critical to address the treatment of women in prison—especially those women subjected to the social and sensory deprivation of solitary confinement.

# Women Behind Bars

All prisoners are entitled to humane treatment and a safe and secure environment. But there are some key areas where the experiences of women prisoners are different from those of men,<sup>9</sup> and effective criminal justice policies and practices must take those differences into account. Women face many physical, medical, and psychological challenges in prison due to their high levels of mental illness and trauma history, higher likelihood of having and parenting minor children, and unique pregnancy and reproductive health care needs. A higher percentage of women than men find themselves in prison for minor drug and property offenses.<sup>10</sup> Indeed, even as the rate of imprisonment for women has risen dramatically in recent years, the percentage sentenced for more serious crimes has fallen.<sup>11</sup>

Children are also among the victims of the United States' high incarceration rates. Since women are more likely than men to be the primary or sole caretaker of

their children prior to incarceration,<sup>12</sup> children and families are profoundly affected by the rising numbers of women sent to prison.<sup>13</sup> Between 1991 and 2007, the number of children with a mother in prison more than doubled.<sup>14</sup> About 62 percent of women in state prisons, and 56 percent of women in federal prison, have minor children.<sup>15</sup> Upon imprisonment, this means that many children must be moved to the home of another family member, or even to foster care.<sup>16</sup>

The very existence of the parental relationship can be endangered when a parent is incarcerated.<sup>17</sup> In addition to the devastating consequences of parental incarceration on families, children's future prospects are also dimmed; children with mothers in custody are more likely to develop depression and anxiety, are at heightened risk of future substance abuse problems, and are more likely to become involved in the criminal justice system.<sup>18</sup>

# What Is Solitary Confinement?

Solitary confinement consists of isolating a person in a cell for upwards of 20 hours per day and severely limiting human contact and environmental stimulation of any kind. Brief interactions with correctional staff, and perhaps an occasional cell-front visit from a medical provider, may be a prisoner's only human contact for days, weeks, months, or even years.<sup>19</sup> Prisoners in solitary confinement must often be shackled and accompanied by multiple correctional officers while transported to, from, and during medical appointments, limiting their access to timely out-of-cell treatment.<sup>20</sup> Prisoners in solitary confinement are often denied access to reading materials and to meaningful educational and life skills programming. Solitary confinement frequently means reduced or no natural sunlight<sup>21</sup> and forced idleness, including little, if any, opportunity to exercise. In spite of the diminished human contact, solitary confinement can also bring a near-total lack of privacy, with correctional officers in some prisons able to view prisoners at all times via video.<sup>22</sup>

Solitary confinement goes by many names, whether it occurs in a so-called "supermax prison" built to house people solely in solitary confinement or in a separate unit within a regular prison. These separate units are often called "restrictive housing" but may also be known as disciplinary segregation, administrative segregation, protective custody, control units, security housing units (SHU), special management units (SMU), or simply "the hole." Recognizing the definitional morass, the American Bar Association (ABA) 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

## THE NELSON MANDELA RULES

The Nelson Mandela Rules, which the United Nations General Assembly adopted in 2015, prohibit the following:

- Solitary confinement for longer than 15 days
- Solitary confinement of prisoners with mental or physical disabilities when those disabilities could be exacerbated by solitary confinement
- Solitary confinement of juveniles, pregnant people, postpartum people, and people who are breastfeeding
- Indefinite solitary confinement<sup>143</sup>

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.<sup>23</sup>

Solitary confinement is psychologically damaging; prisoners subjected to it exhibit increased psychiatric symptoms as well as higher rates of suicide, suicide attempts, and other forms of self-harm.<sup>24</sup> Prisoners in solitary confinement are often denied access to rehabilitative programming and transitional services because programming in segregated housing units is typically deprioritized and often simply unavailable.<sup>25</sup> Because such programming is often required for parole, this deprioritization means that people in solitary

confinement may end up serving longer sentences than they otherwise would have.<sup>26</sup>

The use of solitary confinement is pervasive in U.S. correctional facilities.<sup>27</sup> Although the percentage of prisoners in solitary confinement at any given time may be relatively low, over 20 percent of incarcerated women and nearly 18 percent of incarcerated men spend some time in solitary confinement over the course of a given year.<sup>28</sup> Fewer jurisdictions provide data on women in solitary confinement than they do on men, but those that do show that a lower percentage of women than men are in solitary at a given time.<sup>29</sup>

Despite the popular misconception that solitary confinement is used to house only “the worst of the worst,” this is not true.<sup>30</sup> In fact, solitary is often used on the most vulnerable: prisoners who are pregnant,<sup>31</sup> individuals with mental illness,<sup>32</sup> transgender women and other LGBTQ people,<sup>33</sup> and—in a particularly disturbing trend—victims of sexual assault by correctional officers.<sup>34</sup> Women of color, especially Black women, are held in solitary confinement at rates far exceeding those of white women; experts contend that this disparity is due to racist presumptions

about women of color’s criminality and perceived lack of compliance with social norms about women.<sup>35</sup> The reality is that, depending on discretionary prison policies, prisoners can be placed in solitary confinement for any number of infractions, such as “talking back” or horseplay.<sup>36</sup> Women are more likely than men to receive disciplinary tickets for minor nonviolent infractions like “disobedience” and also more likely to be placed into solitary confinement as punishment for such minor infractions.<sup>37</sup>

Even when prisons stop using solitary confinement as a disciplinary measure—ostensibly isolating prisoners only if necessary to protect the security of the institution—vague standards for placement in solitary confinement can be used to maintain the same outcomes for prisoners.<sup>38</sup> Mental illness can contribute to behavioral infractions;<sup>39</sup> untreated drug addiction can also lead to placement in solitary when prisoners with addictions gain access to narcotics in prison.<sup>40</sup> And because many cases come down to the word of a prisoner against the word of a corrections officer, an officer’s bad day can easily turn into solitary confinement for a prisoner for retaliatory reasons, such as a prisoner filing a grievance.<sup>41</sup>

Because prisons often use transitional or “step-down” programs in which privileges and out-of-cell time are slowly reintroduced before an individual is let back into the general population, prisoners can spend months or years at a time in solitary confinement.<sup>42</sup> Often, prison regulations and policies controlling solitary practices are not transparent and available to the public, or even to prisoners themselves, and sometimes prisoners spend indeterminate periods in solitary confinement with no opportunity for meaningful review of their placement. Ultimately, some prisoners are released from solitary confinement directly into their communities without any preparation for living with others—a practice shown to increase recidivism.<sup>43</sup>

## THE CYCLE OF SOLITARY

Tia Ryans entered prison as a teenager. She managed to avoid solitary confinement initially, but once she got sent there a couple times for minor infractions, such as disobeying an order, she “became angrier, disassociated with everything” and started acting out more in the general population, leading to even more time in solitary confinement. In order to avoid being “emotionally or mentally affected” by her own and others’ suffering in solitary, she’d “block a lot of stuff out. . . which is not. . . mentally healthy; [I wasn’t] working through anything.” In solitary, “you just sit there. . . You just survive, that’s it.” After so much stillness, she would get motion sickness from even a short car trip, and when she was released from prison, “it blew my mind to see everyone walking fast.”<sup>144</sup>

# Problems for Women in Solitary Confinement

Solitary confinement is used to punish and known to exacerbate mental illness.

- Mental illness is common among women in prison: The rate of serious mental illness—such as schizophrenia and bipolar disorder—is much higher among incarcerated women than incarcerated men.<sup>44</sup> Nearly 70 percent of women in prison or jail have a history of mental health conditions—a much higher rate than for men in prison or jail.<sup>45</sup> Solitary confinement has been shown to exacerbate underlying mental health conditions. The broad consensus among mental health experts is that longer-term solitary confinement is particularly psychologically harmful, especially to those with pre-existing mental illness. In studies of prisoners held in solitary confinement for 10 days or longer, prisoners have deteriorated rapidly, with elevated levels of depression and anxiety, a higher propensity to suffer from hallucinations and paranoia, and a higher risk of self-harm and suicide.<sup>46</sup>
- Women prisoners with mental illness are held in solitary confinement at alarming rates. In 2018, a report by the Vera Institute of Justice determined that women in solitary confinement had much higher levels of mental health problems than women in the general population or men in solitary confinement. For example, in Oregon, 11 percent of women in the general population had serious mental health diagnoses; in contrast, 27 percent of women in solitary confinement had such diagnoses, and 84 percent of women in solitary confinement had

## MENTAL ILLNESS IN SOLITARY

“Absolutely, 100 percent, there was not a single woman I saw in prolonged solitary who didn’t change. There’s a whole cluster of symptoms associated with solitary confinement that appear in 2-4 weeks, creating an unsafe situation for people who are confined under those conditions. They’d have a terrible time adjusting to general population after solitary as well. Going that long without human touch, different sights and sounds, can impair their ability to tolerate a normal environment.”<sup>145</sup>

mental health problems requiring treatment.<sup>47</sup> In June 2012, over half of the women in solitary confinement in one California institution were identified as mentally ill.<sup>48</sup>

- Because correctional officers are not trained mental health professionals and therefore cannot necessarily detect or appropriately respond to mental illness,<sup>49</sup> many women prisoners can end up in solitary confinement as a result of having a mental illness. They are essentially punished for their illness.<sup>50</sup> In 2011, following a visit to the United States, the United Nations Special Rapporteur on Violence Against Women concluded that “[w]omen should not be punished, through administrative segregation or otherwise, for behavior associated with their mental illness.”<sup>51</sup>
- One woman who worked as a cleaner while incarcerated described the experience of a



young woman in isolation in a suicide prevention cell: The woman had a “complete psychological breakdown” and was placed into the cell for 21 days despite regulations limiting such placement to a maximum of three days. Her psychosis was so serious that she did not know her own name or gender and would remove her suicide prevention smock, leaving her completely naked, and “would dance for the [correctional] officers who would bring other officers to watch for entertainment. . . . They would encourage her” to dance and did not provide her with mental health care.<sup>52</sup> The woman explained that it “[d]id and still does hurt my soul that not only one person thought it was okay [to] use her as entertainment, but multiple people on multiple shifts over multiple days thought that this was okay. . . . It’s a culture problem.”<sup>53</sup>

## Solitary confinement of pregnant people is harmful and internationally condemned.

- The DOJ recommends against putting pregnant or postpartum prisoners into solitary confinement in all but the most extreme circumstances.<sup>54</sup> International standards set by the United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders—known as the Bangkok Rules—prohibit the placement of pregnant or nursing women in solitary confinement.<sup>55</sup> Nevertheless, pregnant prisoners in the United States still find themselves in solitary confinement.
- In addition to the extreme psychological harms that solitary confinement can wreak on pregnant people, locking them in isolation can jeopardize their access to prenatal care. Solitary confinement impedes access to important health care services. Many policies and practices, such as requirements that prisoners taken to medical appointments from solitary be shackled, are designed with cisgender men in mind and do not take into account the unique medical needs

of pregnant people. Additionally, pregnant people in solitary confinement are often unable to request emergency medical care, or they may hesitate to request medical care when such requests require them to provide intimate medical information to correctional officers.<sup>56</sup>

## Solitary confinement is used to retaliate against or retraumatize victims of past abuse—and can render incarcerated women more vulnerable to abuse by correctional officers.

- Women in prison report extraordinarily high rates of past physical or sexual abuse, as well as other traumas.<sup>57</sup> Because a majority of women in state prisons across the United States report past physical or sexual abuse, the potential is high for retraumatizing women who are already vulnerable.<sup>58</sup> The isolation, enforced idleness, and absence of normal stimulation can all contribute to further psychological deterioration in vulnerable women. Those in solitary confinement, especially victims of sexual abuse,

## SOLITARY CONFINEMENT AS RETALIATION

Candice Crowder, a woman who is transgender, alleges in a lawsuit in California that she was placed into solitary confinement for a total of nine months shortly after reporting a violent sexual assault. According to the complaint, when she expressed concern about having to exercise in the same yard as her rapist, the corrections officer to whom she had reported the assault placed her into solitary confinement; she was later put back into solitary confinement because she had been repeatedly “targeted for assault.” Despite her bravery in speaking up against her assailant, corrections officers treated Ms. Crowder as the real problem by improperly subjecting her to solitary confinement.<sup>146</sup>

## LASTING EFFECTS

“Solitary confinement does not teach discipline or corrective behavior. It torments you and it makes you worse. It’s inhumane and they should do away with it.” So says Mary,\* who had problems with anxiety and mental illness even before entering solitary confinement. Despite being repeatedly told by corrections officers that they would release her back into the general population, she was forced to spend over 19 months locked in solitary confinement. Her mental health problems worsened while she was in solitary, and she still has severe anxiety and panic attacks even now, years after being released from prison.<sup>147</sup>

\* This is a pseudonym to protect the privacy of a formerly incarcerated woman.

can experience acute psychological suffering when they are closely watched, with virtually no privacy, by correctional officers who have complete authority over them.<sup>59</sup>

- Human rights organizations have repeatedly condemned the use of correctional officers who are men to supervise women prisoners,<sup>60</sup> yet women in U.S. prisons are regularly supervised by officers who are men at all times.<sup>61</sup> Women in solitary confinement can be under close supervision during showers, when undressing, and when using the toilet.<sup>62</sup> The loss of privacy experienced by people in prison is especially damaging to the many incarcerated women who are also victims of past sexual abuse, since close supervision and discipline by correctional officers can reinforce feelings of vulnerability and can retraumatize women who have experienced past violence.<sup>63</sup>
- The complete authority that correctional officers have over the prisoners in women’s facilities also increases the danger of staff sexual misconduct,<sup>64</sup> which remains an especially serious problem in women’s facilities in spite of increased awareness of the issue.<sup>65</sup> According

to one survey, LGBTQ prisoners are over six times as likely to be sexually assaulted as the general prison population, with transgender women, nonbinary people, and other gender nonconforming prisoners at particular risk.<sup>66</sup> The risk of retraumatization and sexual misconduct by correctional officers is therefore high to all women, but it is particularly heightened for women who are transgender, who are also subject to extremely high rates of solitary confinement, as explained more fully below.

- Women held in solitary confinement are also particularly vulnerable to physical and other types of abuse by correctional officers. The use of excessive force, misuse of restraints and chemical agents, abuses of power, and sexual abuse by officers are all very real dangers to prisoners held in solitary confinement.<sup>67</sup> Particularly because isolation cells are separate from the general population, such abuses can be difficult to detect.<sup>68</sup>
- Correctional officials sometimes lock prisoners in solitary confinement in retaliation for speaking out against neglect or abusive treatment. Again and again, stories arise in which women who report rape and other abuse by correctional officers are sent to solitary confinement.<sup>69</sup> Women who have been sexually abused by officers are thus faced with another painful dilemma, forced to decide between reporting the attack and risking retaliation, or not reporting it and risking further assault.
- This pattern of women reporting abuse and then being sent to solitary confinement is not only unjust on an individual basis, but it has also been shown to chill reports of abuse by other prisoners who fear the same outcome, thwarting the efforts of prison officials who seek to remedy prisoner abuse.<sup>70</sup>

## Solitary confinement jeopardizes the parent-child relationship, harming children.

When parents are incarcerated, maintenance of their relationships with their children largely depends on regular visitation.<sup>71</sup> While prisoners may also write letters and make limited phone calls, a child's need to have physical contact with a parent can be satisfied only by in-person visits that reinforce the physical and psychological parental bond. Contact visits—visits during which the prisoner can actually touch or hug her loved one—are often entirely out of the question in solitary confinement, since a physical barrier, such as a plexiglass partition or steel mesh window, typically separates a prisoner from the visitor.<sup>72</sup>

As correctional facilities increasingly use video calls in place of actual visits, especially in solitary confinement units,<sup>73</sup> real human contact is becoming even more out of reach.<sup>74</sup> And in some cases, prison and jail officials may deny a prisoner in solitary all visits with friends and family.

Because solitary confinement can lead to difficulty with social interaction, some prisoners feel uncomfortable around people and therefore reject visits even with family members.<sup>75</sup> Because of the importance of regular visitation, as explained above, placement in solitary confinement can have long-lasting repercussions on the parent-child relationship.

## HUMAN CONTACT IN SOLITARY

Lydia Thornton described the mental health care she received in solitary: a doctor “comes to your door, knocks, and asks, and I quote, ‘Do you need any mental health help today?’ . . . he then says, ‘Here’s a couple of Sudoku pages and crossword puzzles . . . have a nice day.’” Ms. Thornton “never saw [mental health care providers] take anyone out for a conversation in a separate room”—not even a woman with multiple suicide attempts who nonetheless remained in solitary confinement. The only people she regularly interacted with were officers—and “the few that are human and humane fight a losing battle.” For the others, “absolute power corrupts absolutely.”<sup>148</sup>

# Special Harms of Solitary Confinement for Specific Populations of Women

## Girls in Solitary Confinement

Girls under the age of 18 are also often subjected to solitary confinement. Experts agree that solitary confinement is particularly damaging for children and young adults due to their lower resilience and heightened vulnerability.<sup>76</sup> The federal government agrees—the First Step Act prohibits solitary confinement for juveniles in federal detention for more than three hours,<sup>77</sup> and the DOJ stated flatly that “[j]uveniles should not be placed in restrictive housing.”<sup>78</sup> Even more alarming, solitary confinement is correlated with suicidality in youth; 50 percent of youth who died by suicide while detained did so while in solitary confinement and 62 percent had been in solitary confinement at some point during their incarceration.<sup>79</sup> In recognition of the grave danger that solitary confinement poses to youth, United Nations standards have prohibited its use since 1990.<sup>80</sup>

Girls represent an increasing percentage of juveniles in detention.<sup>81</sup> They represent a disproportionate share of juveniles entering the system due to minor misdemeanors, status offenses, and family conflicts.<sup>82</sup> The intersection of gender and other identities brings even more girls into juvenile detention: LGBTQ youth are more likely than other youth both to be homeless and to enter the juvenile justice system for nonviolent offenses,<sup>83</sup> and LGBTQ youth of color are further overrepresented.<sup>84</sup>

These girls enter detention with significant prior physical and sexual trauma and mental health problems,<sup>85</sup> making solitary confinement especially harrowing for them.<sup>86</sup> The experience of solitary can be especially retraumatizing for sex trafficking victims, who must relive their trauma while sitting alone in a solitary confinement cell.<sup>87</sup>

## Older Women in Solitary Confinement

Increases in long sentences and punishing mandatory minimums have led to an aging prison population.<sup>88</sup> In 1993, only 1.9 percent of sentenced women prisoners were age 55 or older; by 2013, that number was 6.3 percent.<sup>89</sup> In 2018, data from 32 jurisdictions showed that 13.4 percent of women in custody were over the age of 50 and that 9.4 percent of women in solitary confinement were over 50.<sup>90</sup>

Older women prisoners may be at increased risk of being placed into solitary confinement due to health complications related to aging. For example, in one study of 120 women prisoners over the age of 55, 69 percent found that at least one “prison activity of daily living” was “very difficult to perform” due to physical disability or memory loss.<sup>91</sup> Physical difficulties might make it impossible for them to obey orders quickly, leading correctional officers to perceive them as disobedient and thereby place them in solitary confinement.<sup>92</sup>

Solitary confinement can wreak special havoc on older adults. Because many prisoners in solitary confinement lack consistent access to sunlight, they are at risk of vitamin D deficiency and, therefore, of falls and dangerous fractures.<sup>93</sup> Experts recommend that prisoners with dementia be placed in environments with significant sensory stimuli, accessible toilets and showers, and dedicated caregivers and case managers.<sup>94</sup> Lack of sensory stimulation can worsen confusion and memory loss among the elderly; hearing and visual problems can exacerbate feelings of isolation, which can also worsen heart disease.<sup>95</sup> The lack of access to medical care and environmental stimuli in solitary confinement<sup>96</sup> is therefore directly at odds with

appropriate elder care, especially for those individuals with dementia.

## Transgender Women in Solitary Confinement

Solitary confinement presents additional problems for women who are transgender. “Transgender” is “[a]n umbrella term for people whose gender identity and/or gender expression differs from what is typically associated with the sex they were assigned at birth.”<sup>97</sup> Individuals who are transgender are incarcerated at rates much higher than those of the general population; Black transgender women in particular are incarcerated at 10 times the rate of the general population.<sup>98</sup> In most states, transgender women are placed in men’s institutions or may be placed in women’s institutions only if they have had gender-confirming genital surgery. Women who are transgender face especially high rates of physical and sexual violence from both correctional officers and fellow prisoners in men’s facilities.<sup>99</sup>

Instead of putting measures in place to protect transgender women, prison staff frequently put them in “protective custody”—solitary confinement—for extensive periods of time. But solitary confinement should not be a tool used to protect vulnerable prisoners. When a transgender woman is placed in solitary, she can be greatly harmed by the isolation of constant lockdown; by the strip searches that are often required any time a prisoner leaves her cell, even just to shower; and by the lack of appropriate medical care that often results from placement in solitary confinement. The psychological consequences of solitary confinement can also be particularly devastating for transgender individuals, whom studies have shown to be at a generally elevated risk of suicide.<sup>100</sup> One study showed that 14 percent of adolescents had attempted suicide, but 30 percent to 50 percent of transgender and nonbinary adolescents had attempted suicide.<sup>101</sup> Further, the denial of education, exercise, and contact visits for prisoners in protective custody exacerbates these problems, as the conditions of “protective custody” often mirror disciplinary segregation.

## TRANSGENDER WOMEN IN SOLITARY CONFINEMENT

As reported by journalist Aviva Stahl, Daisy Meadows, a transgender woman incarcerated in a men’s facility in Nevada, has spent a total of two years in solitary confinement. Her time in solitary is due to her gender, not any threat she poses to the institution or other prisoners: at one point, she spent 60 days in solitary for placing socks in a homemade bra. Other times, she was put into involuntary protective custody—solitary confinement—for complaining about sexual and other forms of harassment. She decided not to file a sexual harassment complaint when a corrections officer told her she would be placed back into solitary confinement if she continued to complain. Officers continued to place her into solitary despite the fact that she attempted suicide numerous times while there. Ms. Meadows’ experiences were so horrific that she wrote, “I would rather be raped every day than be in the hole.”<sup>149</sup>

In fact, the devastating impact of solitary confinement on transgender people is so well recognized that the Prison Rape Elimination Act (PREA) regulations promulgated by the DOJ to safeguard prisoners from the risk of sexual assault contain specific safeguards against solitary confinement for transgender prisoners. The regulations include other protections for transgender individuals, such as requiring individualized housing assessments that may be based on a prisoner’s gender identity rather than assigned sex at birth or physiological characteristics<sup>102</sup> and protecting against abusive searches of transgender individuals.<sup>103</sup> The regulations also specifically impose strict limits on the use of protective custody and require that transgender prisoners held in solitary confinement for their own protection be moved to alternative housing as soon as possible.<sup>104</sup>

Solitary confinement can also be used to punish transgender women for their gender and gender expression, such as wearing a bra.<sup>105</sup> The threat of the pain and torture of prolonged solitary confinement



undermines transgender women’s dignity and their ability to live openly and safely as women.

This kind of trauma is all too common for transgender women in prisons and jails across the country. Because of the damage that solitary confinement—even when utilized in the context of “protective custody”—can and does cause to transgender women, the DOJ has recommended that prisons limit the use of solitary-like conditions imposed as protective measures on this population.<sup>106</sup> Furthermore, as the DOJ notes, housing assignments based on gender identity rather than sex assigned at birth can ameliorate the need for protective custody and therefore should be seriously considered.<sup>107</sup>

## Solitary Confinement in Immigration Detention

Immigrants may be held in immigration detention centers or even local jails pending hearings to determine whether they have the right to remain in this country legally. Their detention is civil, rather than criminal. An increasing number of people are civilly detained pending immigration hearings rather than released on bond or conditions of supervision.<sup>108</sup> An increasing number of those detained are women and girls. In 2016, women and girls made up 14.5 percent of the population detained by Immigration and Customs Enforcement (ICE), a 60 percent increase since 2009.<sup>109</sup> These detainees—many of whom are fleeing violence and persecution—are at the mercy of ICE and the private prison companies that often hold them.<sup>110</sup>

Despite a 2013 ICE policy purporting to limit solitary confinement,<sup>111</sup> its use is still rampant.<sup>112</sup> Additionally, in many cases ICE has failed to record and report the use of solitary confinement, making its use difficult to track and assess.<sup>113</sup> The Department of Homeland Security’s Office of Inspector General (OIG) found that detainees were placed in solitary confinement without adequate documentation or process.<sup>114</sup> The OIG expressed particular concern about delayed reporting of detainees with mental health issues being placed into solitary confinement.<sup>115</sup> Women are at special risk of being held in solitary confinement. Officers punish some women who report sexual harassment or assault by placing them into solitary confinement, which has

the effect of chilling detainees from making other similar reports.<sup>116</sup> Sexual assault rates in immigration detention are high, but rates of reporting and punishment for transgressing officers are already low. The practice of using solitary confinement on people who report sexual assault makes it even less likely that women will come forward and seek to hold their abusers accountable.<sup>117</sup>

Women who are transgender in ICE custody are also generally detained with men, despite the fact that PREA, which applies to immigration detention, requires individualized determinations of where transgender individuals should be housed.<sup>118</sup> In 2017, 13 percent of transgender people in ICE custody were held in solitary confinement for their own protection.<sup>119</sup> One transgender woman, who came to the United States because she feared being killed after being gang-raped and subsequently diagnosed with HIV in her home country, died in solitary confinement after being beaten and given inadequate medical care.<sup>120</sup>

# Reasons to Hope: Recent Reforms Limiting the Use of Solitary Confinement

Despite the prevalence of solitary confinement and its detrimental effect on women, there are reasons to hope. Some facilities now limit the use of solitary confinement based on statutes, departmental policies, or settlement agreements. For example:

- The Colorado Department of Corrections passed regulations bringing its solitary confinement practice more in line with the Nelson Mandela Rules. Specifically, prisoners may be placed in solitary confinement only if they would otherwise “pose an imminent and substantial threat to the security of the institution” or to other individuals and only for up to 15 days.<sup>121</sup> The regulations also mandate more humane living conditions, including access to clean clothes, running water, medical and mental health care, and sufficient programming.<sup>122</sup>
- Seven states have passed legislation prohibiting or seriously limiting the use of solitary confinement on pregnant prisoners as well as other vulnerable groups: Georgia,<sup>123</sup> Maryland,<sup>124</sup> Massachusetts,<sup>125</sup> Montana,<sup>126</sup> Nebraska,<sup>127</sup> New Mexico,<sup>128</sup> and Texas.<sup>129</sup>
- Pursuant to a settlement agreement with the ACLU, Pennsylvania now significantly limits the use of solitary confinement for pregnant prisoners and requires medical clearance for any placement of such people in solitary confinement.<sup>130</sup>
- California regulations allow a pregnant prisoner to be placed into segregated housing only if a doctor or nurse documents that her medical condition allows her to be so placed; she must still receive prenatal and other medical care.<sup>131</sup>
- The state of Alabama entered into an agreement with the DOJ that included limitations on the placement of women into solitary confinement or protective custody due to their risk of sexual victimization<sup>132</sup> or during the pendency of an investigation into sexual harassment or assault.<sup>133</sup>
- New York undertook a massive overhaul of its solitary confinement system pursuant to a settlement agreement with the ACLU; that agreement required the Department of Corrections and Community Supervision to write into its regulations a presumption that pregnant people would not be placed into disciplinary solitary confinement except in extraordinary circumstances.<sup>134</sup>
- Many other facilities now limit the use of solitary confinement, in general or as to specific subpopulations such as juveniles or people with serious mental illnesses, due to laws or litigation.<sup>135</sup>
- There has been little judicial scrutiny of solitary confinement practices in women’s facilities, but rulings that limit solitary confinement in general or for particular populations such as those with mental illnesses or juveniles are beneficial to women who may be subjected to solitary confinement. The particularly harsh toll that solitary confinement takes on those with mental illness is receiving increased attention from lawyers and judges across the country. As the DOJ noted, solitary confinement of prisoners with serious mental illness can constitute a violation of Title II of the

Americans with Disabilities Act and the Eighth Amendment of the U.S. Constitution, which prohibits cruel and unusual punishments.<sup>136</sup> Many federal courts agree with the DOJ's conclusions; increasingly, judges are ruling that housing people with serious mental illness in solitary is unconstitutional.<sup>137</sup> As legal action is taken, prisons have been forced to react, and administrators across the country are beginning to reform their practices. North Carolina now restricts the use of disciplinary confinement to a maximum of 30 days for serious offenses,<sup>138</sup> and a number of Midwestern states now ban the use of punitive segregation for some or all prisoners due to new legislation, litigation, or regulations.<sup>139</sup>

These developments show that an end to solitary confinement is possible—but there is still so much more to do. We must do whatever it takes to decrease the harm that women and girls face in solitary confinement.



# Recommendations

- 1. Solitary confinement is so harsh and damaging that it should only be used commensurate with the Nelson Mandela Rules.** Under these rules, solitary confinement must be used only “in exceptional cases as a last resort,” and in any case for no longer than 15 days.
- 2. Solitary confinement should never be used on particularly vulnerable populations.** Pregnant and postpartum prisoners, prisoners with mental health or other medical problems that may be exacerbated by placement in isolation, youth under the age of 21, and prisoners over the age of 55 all may be particularly harmed by solitary confinement. Prisons must find alternative placements for such individuals to avoid subjecting them to those special harms.
- 3. Transgender women must be protected both from violence in the general population and from the dangers of solitary confinement.** The PREA standards should be enforced to house transgender individuals on a case-by-case basis, including serious consideration of placing transgender women in women’s facilities. Corrections officials must protect vulnerable prisoners without the use of damaging isolation. Individuals requiring extra protection in a correctional environment should have access to the same programs, privileges, and services available to prisoners in the general population.
- 4. Solitary confinement should never be imposed as a retaliatory measure.** Prisons and jails must ensure that policy and practice abide by this principle and that staff training and disciplinary measures include clear regulations that retaliatory use of solitary confinement will not be tolerated. Qualified PREA auditors should also be specifically tasked with ensuring that prisoners’ reports of abuse are seriously investigated and that such reports are not met with retaliatory placement in solitary confinement.<sup>140</sup>
- 5. Prisoners should undergo mental and medical health evaluations by competent and qualified mental and medical health practitioners to assess their condition before and during solitary confinement.** Although practitioners should never “clear” prisoners to be placed into solitary confinement, they should be empowered to override decisions to place particularly vulnerable individuals into solitary confinement. Practitioners should likewise be permitted to order an individual’s removal from solitary confinement if her physical or mental health so requires. Women who have experienced sexual assault should be provided appropriate mental health programming, including counseling. Women who are vulnerable to retraumatization should be supervised by correctional officers who are women. While all of these recommendations apply to transgender people, this recommendation in particular is especially important for transgender women housed in men’s facilities.
- 6. Contact visits with children aged 18 and under should be allowed for all prisoners, and family visitation should be encouraged.** Robust visitation privileges have been shown to have a positive impact on prisoners’ rehabilitation and on the well-being of their children.<sup>141</sup> Visitation with children helps create a more stable

environment for children whose lives have been seriously upended by having a parent in prison.

7. **All prisons and jails should be required to have uniform written policies controlling solitary confinement practices and procedures.** Such policies must be public and include a written notification process to inform prisoners of their assignment to solitary confinement, the reason, duration, and review opportunities; processes by which the prisoner can earn privileges while in solitary, including access to commissary and visitation; and the process by which a prisoner may earn release from solitary itself.
8. **All prisons and jails should be required to regularly and publicly report details on individuals in solitary confinement, including the number, gender, reason, available alternatives, reason alternatives are not utilized, duration, periodic review details, and other information.** Correctional systems should be held to strict reporting and accountability measures that limit, monitor, and standardize the reasons prisoners are sent to solitary confinement.
9. **Prisoners should never be released to the community directly from solitary confinement.** To promote successful reentry, correctional institutions should ensure that step-down programs to less restrictive environments are available to all prisoners in solitary prior to release without extending the length of an individual's sentence.
10. **Immigration detention facilities must ban the use of prolonged or indefinite isolation in immigration detention (whether for administrative or disciplinary reasons).** Such facilities should use solitary confinement only when absolutely necessary and for the shortest time possible. Furthermore, immigration detention facilities should be prohibited without exception from using isolation on vulnerable populations, including those with serious mental illnesses.<sup>142</sup>

# Conclusion and Resources

Solitary confinement is damaging to all prisoners and detainees. Women can be particularly vulnerable to the harms of solitary confinement. These harms cannot be justified. Not only is solitary confinement devastating to women, it hurts their children and can undermine rehabilitation and women's ability to return to the community as productive citizens. Prisons, jails, immigration detention facilities, and juvenile detention facilities in the United States must cease the unnecessary and harmful solitary confinement of women.

For more information and advocacy tools, visit the following sites:

**Unlock the Box**

<https://www.unlocktheboxcampaign.org/>

**Stop Solitary**

<https://www.aclu.org/other/stop-solitary-advocacy-campaign-tools?redirect=stop-solitary-advocacy-campaign-tools>

**Solitary Watch**

<https://solitarywatch.org/facts/>

**National Religious Campaign Against Torture**

<http://www.nrnat.org/torture-in-us-prisons>

# Endnotes

- 1 Interview subjects were identified through outreach to prisoners' rights advocates, both those at the ACLU and others. A total of four interviews were conducted: three with solitary confinement survivors and one with a licensed clinical social worker who provided mental health care to women in solitary confinement. Survivors were asked about their personal experiences, how solitary confinement affected their mental health, any effects from solitary confinement that remained even after being released from incarceration, and anything else about solitary confinement that they knew and wanted to share. The social worker was asked, based on her professional experience and her research, to discuss her perspective on the effects of solitary confinement on women, what kinds of mental health care treatment women needed access to, and what treatment was actually provided.
- 2 See Interim Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, para. 60, Solitary Confinement, 7 Oct. 2013, United Nations General Assembly A/68/295, available at [https://www.unodc.org/documents/justice-and-prison-reform/SPECIAL\\_RAPPORTEUR\\_EN.pdf](https://www.unodc.org/documents/justice-and-prison-reform/SPECIAL_RAPPORTEUR_EN.pdf); c.f. G.A. Res. 70/175, The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) [hereinafter The Mandela Rules] at Rule 43-44 (Dec. 17, 2015), available at [https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E\\_ebook.pdf](https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf).
- 3 See AMNESTY INTERNATIONAL, USA: THE EDGE OF ENDURANCE 40 (2012), available at <http://www.amnestyusa.org/sites/default/files/edgeofendurancecaliforniareport.pdf> (discussing research on the harmful effects of solitary confinement) [hereinafter AMNESTY INTERNATIONAL, USA: THE EDGE OF ENDURANCE].
- 4 See, e.g., *Standards on Treatment of Prisoners*, 2018 A.B.A. SEC. PUB. CRIM. JUST. SEC. 23-2.6, available at [https://www.americanbar.org/groups/criminal\\_justice/publications/criminal\\_justice\\_section\\_archive/crimjust\\_standards\\_treatmentprisoners/#23-2.6](https://www.americanbar.org/groups/criminal_justice/publications/criminal_justice_section_archive/crimjust_standards_treatmentprisoners/#23-2.6) [hereinafter *ABA Standards*]; The Mandela Rules, *supra* note 2 at Rule 45 (asserting that solitary confinement should only be used, if at all, as a practice of last resort, used for brief periods).
- 5 See U.S. DEP'T OF JUSTICE, REPORT AND RECOMMENDATIONS CONCERNING THE USE OF RESTRICTIVE HOUSING 99-100 (2016), available at <https://www.justice.gov/archives/dag/file/815551/download> [hereinafter DOJ REPORT].
- 6 See *Davis v. Ayala*, 135 S.Ct. 2187, 2210 (2015) (Kennedy, J., concurring).
- 7 See Joane Martel, *Telling the Story: A Study in the Segregation of Women Prisoners*, 28 Soc. JUST. 196, 196-197 (2001) (giving an overview of the literature on solitary confinement and finding almost no literature on women in solitary confinement); Cherami Wichmann & Kelly Taylor, *Federally Sentenced Women in Administrative Segregation: A Descriptive Analysis* (2004) (first quantitative study on segregation of federally sentenced women in Canada). While until now few have focused on the plight of women in solitary confinement, the subject has lately begun to receive more attention. In February 2014, *Orange Is the New Black* author Piper Kerman gave oral testimony before the Senate Judiciary Committee Subcommittee on the Constitution, Civil Rights, and Human Rights. See Official Hearing Notice/Witness List, Reassessing Solitary Confinement II: The Human Rights, Fiscal, and Public Safety Consequences, Senate Judiciary Committee Subcommittee on the Constitution, Civil Rights and Human Rights, Feb. 25, 2014, available at <https://www.judiciary.senate.gov/imo/media/doc/02-25-14KermanTestimony.pdf> [hereinafter Kerman Testimony]. Kerman's testimony drew attention to the unique issues faced by women in solitary confinement by telling the stories of individual women, including those who spent long periods in solitary confinement as punishment for minor infractions, and by noting the chilling effect that the threat of isolation can have on women prisoners' willingness to report assaults and other abuses.
- 8 See *Incarcerated Women and Girls*, THE SENTENCING PROJECT (May 10, 2018), available at <https://www.sentencingproject.org/publications/incarcerated-women-and-girls/> (providing information about growth in incarcerated women's population from 1980 to 2016).
- 9 As discussed later, prisoners are nearly always housed according to their sex as assigned at birth. "Women in prison" refers to individuals housed in women's facilities, which may include men who are transgender, nonbinary people assigned female at birth, and other gender nonconforming people. Transgender women housed in men's institutions are a particularly vulnerable group of women and will be discussed separately in this report.
- 10 E. ANN CARSON, BUREAU OF JUST. STAT., PRISONERS IN 2014 16 Tbl. 11 (2015), available at <https://www.bjs.gov/content/pub/pdf/p14.pdf> [hereinafter PRISONERS IN 2014].
- 11 In the late 1970s, the rate of imprisonment for women was 10 per 100,000 in the state prison system, with 49 percent being sentenced for violent crimes. NATASHA A. FROST ET AL., INST. ON WOMEN & CRIM. JUST., HARD HIT: THE GROWTH IN THE IMPRISONMENT OF WOMEN 7, 10 (2006) (noting imprisonment rate in 1977 and percent convicted of violent crimes in 1979). The imprisonment rate of women in 2014 was 65 per 100,000 and has increased in recent years even as the rate of men imprisoned has gone down. See PRISONERS IN 2014, *supra* note 10, at 7 n.8. However, only 37 percent of women—compared to 54 percent of men—were sentenced for violent offenses. *Id.* at 16. For an analysis of the ways in which the war on drugs has resulted in higher incarceration rates of women for drug crimes, see generally LENORA LAPIDUS ET AL., CAUGHT IN THE NET: THE IMPACT OF DRUG POLICIES ON WOMEN AND FAMILIES (2005), available at [https://www.aclu.org/sites/default/files/images/asset\\_upload\\_file431\\_23513.pdf](https://www.aclu.org/sites/default/files/images/asset_upload_file431_23513.pdf).
- 12 In 2004, 64.2 percent of mothers in prison reported living with their minor children in the month prior to arrest or just prior to incarceration, compared to 46.5 percent of fathers. Further, 41.7 percent of mothers reported they were single parents in the month prior to arrest or just prior to incarceration. Nearly 11 percent of mothers in custody reported that their children were currently in foster care, compared to 2.2 percent of fathers. While 88.4 percent of fathers in prison reported their children were being cared for by another parent, only 37 percent of mothers in prison reported the same. LAUREN E. GLAZE & LAURA M. MARUSCHAK, BUREAU OF JUST. STAT., PARENTS IN PRISON AND THEIR MINOR CHILDREN 2, 4, & 5 TBLs. 7 & 8 (2008), available at <http://www.bjs.gov/content/pub/pdf/pptmc.pdf>.
- 13 Report of the Special Rapporteur on Violence Against Women: Addendum, ¶ 49, Mission to the United States of America, 6 June 2011, United Nations General Assembly A/HRC/17/26/Add.5, available at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.26.Add.5\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.26.Add.5_en.pdf) [hereinafter *Violence Against Women*]; Dorothy E. Roberts, *Prison, Foster Care, and the Systemic Punishment of Black Mothers*, 59 UCLA L. REV. 1474, 1479-83 (2012), available at [https://www.law.upenn.edu/cf/faculty/roberts1/workingpapers/59UCLALRev1474\(2012\).pdf](https://www.law.upenn.edu/cf/faculty/roberts1/workingpapers/59UCLALRev1474(2012).pdf) (describing how the increasing number of incarcerated Black mothers is destroying "critical family and community ties").
- 14 GLAZE & MARUSCHAK, *supra* note 12, at 2.
- 15 See *id.*
- 16 *Id.* at 5.
- 17 For an overview of how incarceration can lead to the termination of parental rights—especially of mothers (the piece does not specifically address transgender or gender nonconforming parents)—see Eli Hager & Anna Flagg, *How Incarcerated Parents Are Losing Their Children Forever*, THE MARSHALL PROJECT (Dec. 2, 2018), available at <https://www.themarshallproject.org/2018/12/03/how-incarcerated-parents-are-losing-their-children-forever> (noting that incarcerated parents who have never been accused of child neglect or abuse are more likely to have their rights terminated than non-incarcerated parents who have physically or sexually assaulted their children). See also Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115 (codified in scattered sections of 42 U.S.C.) (legislation incentivizing adoption of children in foster care in the name of finding a permanent home); Deseriee A. Kennedy, *Children, Parents & the State: The Construction of A New Family Ideology*, 26 BERKELEY J. GENDER L. & JUST. 78, 104-7 (2011), available at [http://genderlawjustice.berkeley.edu/wp-content/uploads/2011/04/Kennedy\\_macro4.pdf](http://genderlawjustice.berkeley.edu/wp-content/uploads/2011/04/Kennedy_macro4.pdf) (describing and criticizing how ASFA, in conjunction with state laws, has increased terminations of parental rights due to incarceration for more than 15 months); *Violence Against Women*, *supra* note 13, at para. 49 (noting the danger of ASFA leading to termination of parental rights of mothers who leave their children in foster care due to incarceration).

- 18 See Julie Smyth, *Dual Punishment: Incarcerated Mothers and Their Children*, 3 COLUM. SOC. WORK REV. 33 (2012), available at <https://cswr.columbia.edu/article/dual-punishment-incarcerated-mothers-and-their-children/>; *Consequences for Families and Children in The Growth of Incarceration in the United States: Exploring Causes and Consequences* 274 (2014), available at <https://www.nap.edu/read/18613/chapter/11>; Roberts, *supra* note 13, at 1481-82 (noting that “[s]eparation from imprisoned parents has serious psychological consequences for children, including depression, anxiety, feelings of rejection, shame, anger, guilt, and problems in school.”).
- 19 See, e.g., Cyrus Ahalt et al., *Reducing the Use and Impact of Solitary Confinement in Corrections*, 13 INT’L J. OF PRISON HEALTH 41, 41 (2017), available at <https://www.emeraldinsight.com/doi/full/10.1108/IJPH-08-2016-0040>; The Mandela Rules, *supra* note 2, at Rule 44; AMERICAN FRIENDS SERVICE COMMITTEE, LIFETIME LOCKDOWN: HOW ISOLATION CONDITIONS IMPACT PRISONER REENTRY, 18-19 (2012), available at [https://www.afsc.org/sites/default/files/documents/AFSC-Lifetime-Lockdown-Report\\_0.pdf](https://www.afsc.org/sites/default/files/documents/AFSC-Lifetime-Lockdown-Report_0.pdf) [hereinafter LIFETIME LOCKDOWN].
- 20 NAT’L COMM’N ON CORRECTIONAL HEALTH CARE, SOLITARY CONFINEMENT (ISOLATION) (last visited Mar. 27, 2019), <https://www.ncchc.org/solitary-confinement> [hereinafter NCCHC, SOLITARY CONFINEMENT].
- 21 See David H. Cloud et al., *Public Health and Solitary Confinement in the United States*, 105 AM. J. PUB. HEALTH 18, 20 (2015), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4265928> (describing the lack of exposure to natural sunlight and the harsh fluorescent lights to which prisoners are often subject in solitary confinement).
- 22 See Jenny Hall, *The Problem with Solitary Confinement*, PHYS.ORG (Apr. 1, 2015), available at <https://phys.org/news/2015-04-problem-solitary-confinement.html>.
- 23 ABA Standards, *supra* note 4, at Sec. 23-1.0.
- 24 See Fatos Kaba et al., *Solitary Confinement and Risk of Self-Harm Among Jail Inmates*, 104 AM. J. PUB. HEALTH 442, 444-45 (2014), available at <https://ajph.aphapublications.org/doi/full/10.2105/AJPH.2013.301742> (finding that solitary confinement is significantly correlated with self-harm) [hereinafter Kaba 2014]; Terry Kupers, *What to Do with the Survivors? Coping with the long-term effects of isolated confinement*, 35 CRIM. JUST. & BEHAVIOR 1005, 1005-10 (2008), available at [http://www.nrcat.org/storage/documents/usp\\_kupers\\_what\\_do\\_with\\_survivors.pdf](http://www.nrcat.org/storage/documents/usp_kupers_what_do_with_survivors.pdf) (reviewing the research on the effects of long-term isolation and noting that about half of completed prison suicides are committed by the small portion of the population held in solitary at some point during their prison stay); see also Atul Gawande, *Hellhole*, NEW YORKER (Mar. 30, 2009), [http://www.newyorker.com/reporting/2009/03/30/090330fa\\_fact\\_gawande](http://www.newyorker.com/reporting/2009/03/30/090330fa_fact_gawande) (describing the harms of loneliness and severely limited social interaction, including the story of one prisoner who, “[a]fter a few months without regular social contact . . . started to lose his mind”).
- 25 See, e.g., KATIE ROSE QUANDT ET AL., UNLOCKING SOLITARY CONFINEMENT: ENDING EXTREME ISOLATION IN NEVADA STATE PRISONS 31 (2017), available at [https://www.aclunv.org/sites/default/files/aclunv\\_unlocking\\_solitary\\_confinement\\_report.pdf](https://www.aclunv.org/sites/default/files/aclunv_unlocking_solitary_confinement_report.pdf) (Nevada); *Solitary Confinement in New York State: The Facts*, HALT SOLITARY, <http://nycaic.org/facts/> (last visited Feb. 25, 2019) (New York).
- 26 See, e.g., Dana Chicklas, *Backlog of Rehabilitation Programs Keeps Some Prisoners in Past Early Release Dates*, FOX (May 16, 2018), available at <https://fox17online.com/2018/05/16/trashed-18/> (explaining that in Michigan, hundreds of people were unable to access parole because there was not sufficient space in required programming prior to their release dates).
- 27 In 2014, an estimated 80,000-100,000 individuals were held in solitary, not including those in local jails or juvenile facilities. See THE LIMAN PROGRAM, YALE LAW SCHOOL & ASS’N OF STATE CORR. ADM’RS, TIME-IN-CELL: THE LIMAN-ASCA 2014 NATIONAL SURVEY OF ADMINISTRATIVE SEGREGATION IN PRISON 4 (2015), available at <https://www.cor.pa.gov/About%20Us/Initiatives/Documents/Admin%20Segregation/ASCA%20Liman%20Administrative%20Segregation%20Report%20August%202015.pdf>.
- 28 See ALLEN J. BECK, BUREAU OF JUST. STAT., USE OF RESTRICTIVE HOUSING IN U.S. PRISONS AND JAILS, 2011-12 4 Tbl. 3 (2015), available at <https://www.bjs.gov/content/pub/pdf/urhuspj1112.pdf>.
- 29 The percentage of women in solitary confinement is lower than that of men—approximately 1.1 percent of prisoners in women’s facilities are held in solitary compared with 4.2 percent of men—see THE ASS’N OF STATE CORR. ADM’RS & THE LIMAN CENTER FOR PUB. INTEREST LAW, YALE LAW SCHOOL, REFORMING RESTRICTIVE HOUSING: THE 2018 ASCA-LIMAN NATIONWIDE SURVEY OF TIME-IN-CELL 19 Tbl. 4, 21 Tbl. 5 (2018), available at [https://law.yale.edu/system/files/documents/pdf/Liman/asca\\_liman\\_2018\\_restrictive\\_housing\\_revised\\_sept\\_25\\_2018\\_-\\_embargoed\\_unt.pdf](https://law.yale.edu/system/files/documents/pdf/Liman/asca_liman_2018_restrictive_housing_revised_sept_25_2018_-_embargoed_unt.pdf) [hereinafter 2018 TIME-IN-CELL], but some states have a much higher percentage of women in solitary confinement. For example, Nevada holds 4.6 percent of its women prisoners in restrictive housing. *Id.* at 21 Tbl. 5. Additionally, the 1.1 percent number may be misleading because not all jurisdictions that provide information about men in solitary confinement provide similar information about women. Louisiana and Alaska, which have the highest percentage of men in solitary confinement, do not provide any information about how many women they keep in solitary confinement. *Id.* at 18, 20.
- 30 See, e.g., Avik Roy, *Who Lives in Solitary Confinement?*, FORBES (Feb. 1, 2017), <https://www.forbes.com/sites/realspin/2017/02/01/who-lives-in-solitary-confinement/#704419407cc8>.
- 31 See, e.g., Complaint at 9, *Seitz v. Allegheny Cty.*, No. 2:16-cv-1879-CRE (W.D. Pa. Dec. 19, 2016), available at [https://www.aclupa.org/download\\_file/view\\_inline/2943/1055](https://www.aclupa.org/download_file/view_inline/2943/1055) [hereinafter *Seitz* Complaint] (pregnant women placed into solitary confinement for, *inter alia*, possession of an extra pair of shoes and during investigation into unfounded reports of misconduct); Testimony by the Correctional Association of New York Before the Senate Judiciary Committee’s Subcommittee on the Constitution, Civil Rights and Human Rights, *Reassessing Solitary Confinement*, at 367 (June 19, 2012), available at <https://www.judiciary.senate.gov/imo/media/doc/CHRG-112shrg87630.pdf> (describing challenges pregnant women in isolation can face in trying to access medical care).
- 32 See, e.g., James Ridgeway & Jean Casella, *Locking Down The Mentally Ill: Solitary Confinement Cells Have Become America’s New Asylums*, THE CRIME REP., Feb. 18, 2010, <http://www.thecrimereport.org/news/inside-criminal-justice/locking-down-the-mentally-ill/>; MARY BETH PFEIFFER, *CRAZY IN AMERICA: THE HIDDEN TRAGEDY OF OUR CRIMINALIZED MENTALLY ILL* 42-49 (2007); JENNIFER R. WYNN, ET AL., CORRECTIONAL ASS’N OF NEW YORK, *MENTAL HEALTH IN THE HOUSE OF CORRECTIONS: A STUDY OF MENTAL HEALTH CARE IN NEW YORK STATE PRISONS* 48 (2004). In some places, women with mental health issues awaiting trial in jail may be transferred to solitary confinement at a state prison indefinitely because the cost of treating them at the jail is too high. See Allen Arthur, *Too Sick for Jail – But Not for Solitary*, THE MARSHALL PROJECT (Feb. 15, 2018), <https://www.themarshallproject.org/2018/02/15/too-sick-for-jail-but-not-for-solitary>.
- 33 Gay and bisexual prisoners, regardless of gender, are far more likely to have experienced solitary confinement than cisgender straight prisoners. See Ilan H. Meyer et al., *Incarceration Rates and Traits of Sexual Minorities in the United States: National Inmate Survey, 2011-2012*, 107 AM. J. PUB. HEALTH 234, 237 Tbl. 2 (2017), available at [https://williamsinstitute.law.ucla.edu/wp-content/uploads/Meyer\\_Final\\_Proofs.LGB\\_In.pdf](https://williamsinstitute.law.ucla.edu/wp-content/uploads/Meyer_Final_Proofs.LGB_In.pdf).
- 34 See, e.g., Victoria Law, *For People Behind Bars, Reporting Sexual Assault Leads to More Punishment*, JUST DETENTION INT’L (Sept. 30, 2018), <https://justdetention.org/for-people-behind-bars-reporting-sexual-assault-leads-to-more-punishment/> (describing the cases of a number of individuals placed in solitary confinement for reporting sexual assault, including that of a transgender woman assaulted by corrections officers); Kim Shayo Buchanan, *Impunity: Sexual Abuse in Women’s Prisons*, 42 HARV. CIV. RIGHTS- CIV. LIBERTIES L. REV. 45, 66 (2007), available at <https://www.prearesourcecenter.org/sites/default/files/library/108-impunity-sexualabuseinwomensprisons2007.pdf>.
- 35 See Alexandria M. Foster, *Unfinished Uniformity in Systematic Sentencing: Oppressive Treatment and Disproportionate Punishment Outcomes for Black Women in Federal Prison*, 6 IND. J. LAW AND SOC. EQUITY 267, 276 (2018), available at <https://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=1085&context=ijlse>. The racial disparity of who gets placed into solitary confinement is far more pronounced in women’s institutions than in men’s. For example, Black women account for under 24 percent of the women’s prison population but nearly 40 percent of women in solitary confinement; Black men represent a much higher percentage of the men’s population at 42.5 percent and represent 46.1 percent of the men’s population in solitary confinement. 2018 TIME-IN-CELL, *supra* note 29 at 23 Fig. 9-10.



- 36 See ALISON SHAMES ET AL., VERA INST. OF JUST., SOLITARY CONFINEMENT: COMMON MISCONCEPTIONS AND EMERGING SAFE ALTERNATIVES 14 (May 2015), available at [https://storage.googleapis.com/vera-web-assets/downloads/Publications/solitary-confinement-common-misconceptions-and-emerging-safe-alternatives/legacy\\_downloads/solitary-confinement-misconceptions-safe-alternatives-report\\_1.pdf](https://storage.googleapis.com/vera-web-assets/downloads/Publications/solitary-confinement-common-misconceptions-and-emerging-safe-alternatives/legacy_downloads/solitary-confinement-misconceptions-safe-alternatives-report_1.pdf) (“In some jurisdictions, these ‘nuisance prisoners’ constitute the majority of the people in disciplinary segregation.”); SCARLET KIM, TAYLOR PENDERGRASS, & HELEN ZELON, BOXED IN: THE TRUE COST OF EXTREME ISOLATION IN NEW YORK’S PRISONS 17, 30-31, New York Civil Liberties Union (2012), available at [https://www.nyclu.org/sites/default/files/publications/nyclu\\_boxedin\\_FINAL.pdf](https://www.nyclu.org/sites/default/files/publications/nyclu_boxedin_FINAL.pdf).
- 37 Joseph Shapiro et al., *In Prison, Discipline Comes Down Hardest on Women*, NPR (Oct. 15, 2018), available at <https://www.npr.org/2018/10/15/647874342/in-prison-discipline-comes-down-hardest-on-women>.
- 38 For example, the number of individuals in restrictive housing in Nebraska rose steadily from 2014 to 2018, despite the fact that the Legislature outlawed the use of disciplinary segregation in 2015. DOUG KOEBERNICK, OFFICE OF THE INSPECTOR GENERAL OF THE NEBRASKA CORRECTIONAL SYSTEM 2017/2018 ANNUAL REPORT 56 (2018) [hereinafter 2018 ANNUAL REPORT]; NEB. REV. ST. § 83-173.03(1). In 2018, fewer than half the people in restrictive housing were there due to a serious act of violence; many were there solely due to alleged membership in a gang or because prison officials believed that their presence would create “significant risk of harm.” 2018 ANNUAL REPORT at 59.
- 39 See Margo Schlanger, *How the ADA Regulates and Restricts Solitary Confinement for People with Mental Disabilities*, AM. CONST. SOC’Y FOR LAW AND POL’Y 12, available at <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1123&context=other> (alleging that prisoners with mental disabilities are often placed into solitary confinement because of behavior arising from those disabilities); Craig Haney, *Mental Health Issues in Long-Term Solitary and “Supermax” Confinement*, 49 CRIME & DELINQUENCY 124, 149 (2003); Leena Kurki & Norval Morris, *The Purposes, Practices, and Problems of Supermax Prisons*, 28 CRIME AND JUST. 385, 411-12 (2001).
- 40 See Keri Blakinger & Katelyn Morton, *How Solitary Confinement Destroys Any Hope of Sobriety*, THE FIX (June 13, 2016), <https://www.thefix.com/how-solitary-confinement-destroys-any-hope-sobriety> (describing how a woman sent to solitary confinement for using drugs while in prison worsened in isolation).
- 41 See *infra* notes 69-70 and accompanying text, discussing retaliatory solitary confinement. Other factors, in addition to retaliation, mental illness, pregnancy, and sexual assault, can also contribute to the overuse of solitary confinement. For example, prisoners might be identified as being potentially disruptive or a threat to safety, due to designation as a member of a “security threat group” (a gang) or for other reasons, and therefore placed into “administrative segregation” as a preventive measure. NATASHA A. FROST & CARLOS E. MONTEIRO, NAT’L INST. OF JUSTICE, ADMINISTRATIVE SEGREGATION IN U.S. PRISONS 5, 8 (2016), available at <https://www.ncjrs.gov/pdffiles1/nij/249749.pdf>. Prisons continue to use preventive segregation despite evidence that it decreases safety and leads to greater security disruptions rather than order. See Jody Sundt, *The Effect of Administrative Segregation on Prison Order and Organizational Culture*, in RESTRICTIVE HOUSING IN THE U.S.: ISSUES, CHALLENGES AND FUTURE DIRECTIONS 297, 307-08 (Nat’l Inst. of Justice 2016), available at <https://www.ncjrs.gov/pdffiles1/nij/250323.pdf>.
- 42 See 2018 TIME-IN-CELL, *supra* note 29 at 63.
- 43 See Christie Thompson, *From Solitary to the Street*, THE MARSHALL PROJECT (June 11, 2015), <https://www.themarshallproject.org/2015/06/11/from-solitary-to-the-street> (summarizing recent data from multiple states); KERAMET REITER, INST. FOR THE STUDY OF SOC. CHANGE, PAROLE, SNITCH, OR DIE: CALIFORNIA’S SUPERMAX PRISONS & PRISONERS, 1987-2007, 49-50 (2010), available at <https://www.ncjrs.gov/App/Publications/Abstract.aspx?id=262396> (supplying data suggesting that the rates of return to prison in California are nearly 20 percent higher for prisoners released directly from solitary confinement compared to the average rate of all prisoners); MAUREEN L. O’KEEFE, CO. DEPT. OF CORRECTIONS, ANALYSIS OF COLORADO’S ADMINISTRATIVE SEGREGATION 25, Tbl. 17 (2005), available at <http://hermes.cde.state.co.us/drupal/islandora/object/co%3A3A3048/datastream/OBJ/view> (noting that, 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 6 percent reduction in their comparative recidivism rate for the same period); LEGISLATIVE PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE, RECIDIVISM IN CONNECTICUT 41, Tbl. IV-6 (2001), available at <http://www.ct.gov/opm/lib/opm/cjppd/cjresearch/recidivismstudy/2001recidivismconnecticut.pdf> (finding that 92 percent of Connecticut prisoners who had been held in administrative segregation were rearrested within three years of release, while only 66 percent of prisoners who had not been held in administrative segregation were rearrested in the same time period); OMBUDSMAN’S REPORT: PERFORMANCE OF THE MENTAL HEALTH COMPONENT OF THE NEBRASKA DEP’T OF CORRECTIONAL SERVS. AS REPRESENTED BY THE CASE OF NIKKO JENKINS 33-35 (Dec. 9, 2013), available at [https://nebraskalegislature.gov/pdf/reports/committee/select\\_special/lr424\\_2014/lr424\\_exhibitA.pdf](https://nebraskalegislature.gov/pdf/reports/committee/select_special/lr424_2014/lr424_exhibitA.pdf) (discussing Nikko Jenkins, a Nebraska prisoner who was released directly from solitary confinement into the community, despite his years-long efforts to be reassigned to a unit that provided mental health care, and then murdered four people).
- 44 JENNIFER BRONSON & MARCUS BERZOFSKY, BUREAU OF JUST. STAT., INDICATORS OF MENTAL HEALTH PROBLEMS REPORTED BY PRISONERS AND JAIL INMATES, 2011-12 4 Tbl. 2 (2017), available at <https://www.bjs.gov/content/pub/pdf/imhprpji1112.pdf> (34.8 percent of prisoners who are men and 40.8 percent of men detained in jail had a “history of a mental health problem” in 2011-12; the proportions were 65.8 percent and 67.9 percent, respectively, for women).
- 45 *Id.*
- 46 See Kaba 2014, *supra* note 24 at 444; Haney, *supra* note 39, at 149; Stuart Grassian, *Psychopathological Effects of Solitary Confinement*, 140 AM. J. PSYCHOL. 1450-51 (1983). See generally HANS TOCH, MOSAIC OF DESPAIR: HUMAN BREAKDOWN IN PRISON (1992).
- 47 VERA INSTITUTE, RETHINKING RESTRICTIVE HOUSING: LESSONS FROM FIVE U.S. JAIL AND PRISON SYSTEMS (May 2018), <https://www.vera.org/rethinking-restrictive-housing>.
- 48 AMNESTY INTERNATIONAL, USA: THE EDGE OF ENDURANCE, *supra* note 3, at 39 (explaining that a total of 68 women were held in the SHU at one state prison, and that a few more solitary confinement cells were available throughout the institution that were not included; of fewer than 100 women held in the SHU and ASU, combined, at the California Institute for Women, 50 women suffered from documented mental illness); see also Fatos Kaba et al., *Disparities in Mental Health Referral and Diagnosis in the New York City Jail Mental Health Service*, 105 AM. J. PUB. HEALTH 1911, 1914 (2015), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4539829/> (women in New York City jails were more than twice as likely to be mental health patients, and people with mental health issues are dramatically overrepresented in solitary; the solitary confinement data was not disaggregated by gender).
- 49 See Jennifer M. Reingle Gonzalez & Nadine M. Connell, *Mental Health of Prisoners: Identifying Barriers to Mental Health Treatment and Medication Continuity*, 104 RESEARCH & PRACTICE 2328, 2331 (2014), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4232131/pdf/AJPH.2014.302043.pdf>.
- 50 AMNESTY INTERNATIONAL, USA: THE EDGE OF ENDURANCE, *supra* note 3 (describing how some of the women in the California SHU were placed in solitary for behavior that can be a sign of mental health problems); Arthur, *supra* note 32 (describing how women with mental health issues in county jails in Tennessee are sent as “safekeepers” to prison and then placed in solitary confinement).
- 51 *Violence Against Women*, *supra* note 13 at ¶ IV.C.g.
- 52 Telephone Interview with Lydia Thornton, activist and formerly incarcerated woman (Jan. 10, 2019).
- 53 Email from Lydia Thornton (Mar. 19, 2019).
- 54 DOJ REPORT, *supra* note 5, at 102-03.
- 55 G.A. Res. 65/229, ¶ 7(b), U.N. Doc. A/RES/65/229 (March 16, 2011) (commonly known as the “Bangkok Rules”).
- 56 See Testimony by the Correctional Association of New York Before the Senate Judiciary Committee’s Subcommittee on the Constitution,

- Civil Rights and Human Rights, *supra* note 31, at 367 (“[I]solation can compromise women’s ability to fulfill their particular needs related to reproductive health care, for instance by impeding pregnant women’s access to critical obstetrical services, preventing them from getting the regular exercise and movement vital for a healthy pregnancy. Similarly, women in isolation may be dissuaded from requesting care related to sensitive gynecological issues because they are required to inform correction officers about details of their medical problem, may have serious difficulty accessing appropriate medical staff when they do reach out, may be shackled during gynecological appointments that do occur, and will often interact with medical providers in full view of correction officers and/or receive superficial evaluations through closed cell doors.”); Interview with Gail Smith, Exec. Dir. CLAIM IL (May 15, 2013); Seitz Complaint, *supra* note 31 at 6 (describing lack of access to necessary pregnancy care for women in solitary confinement in a Pennsylvania jail).
- 57 See CAROLINE WOLF HARLOW, BUREAU OF JUST. STAT., PRIOR ABUSE REPORTED BY INMATES AND PROBATIONERS 1 (1999), available at <https://www.bjs.gov/content/pub/pdf/parip.pdf> (40 percent to 57.2 percent of women in prison and jail reported past physical or sexual abuse; for men, the proportions ranged from 7.2 percent to 16.1 percent); see also OFFICE OF THE INSPECTOR GENERAL, U.S. DEP’T OF JUSTICE, REVIEW OF THE FEDERAL BUREAU OF PRISONS’ MANAGEMENT OF ITS FEMALE INMATE POPULATION 19 (2018), available at <https://oig.justice.gov/reports/2018/e1805.pdf> (estimating that 90 percent of women in federal Bureau of Prisons custody have experienced past trauma, including sexual abuse and domestic violence) [hereinafter OIG REPORT].
- 58 See LAPIDUS ET AL., *supra* note 11, at 47-48 (describing the vulnerabilities of women in prison and in particular the phenomenon of retraumatization experienced by incarcerated women who have been victims of physical and sexual abuse prior to their incarceration).
- 59 See ELIZABETH SWAVOLA ET AL., VERA INST. OF JUSTICE, OVERLOOKED: WOMEN AND JAILS IN AN ERA OF REFORM 14 (2016), available at <http://www.safetyandjusticechallenge.org/wp-content/uploads/2016/08/overlooked-women-in-jails-report-web.pdf>.
- 60 AMNESTY INTERNATIONAL, USA: THE EDGE OF ENDURANCE, 39-40, *supra* note 3; The Mandela Rules Rule 52, *supra* note 2.
- 61 See, e.g., *ACLU of Michigan Sues Muskegon County Over Unconstitutional Policies, Hazardous Conditions at Jail* (Dec. 4, 2014), <https://www.aclumich.org/en/press-releases/aclu-michigan-sues-muskegon-county-over-unconstitutional-policies-hazardous> (describing multiple allegations that corrections officers who were men would watch women prisoners shower and use the toilet); see also Brendan Fischer, *Violence, Abuse, and Death at For-Profit Prisons: A GEO Group Rap Sheet*, THE CENTER FOR MEDIA AND DEMOCRACY’S PR WATCH (Sept. 26, 2013), <https://www.prwatch.org/news/2013/09/12255/violence-abuse-and-death-profit-prisons-geo-group-rap-sheet> (reporting on rates of sexual abuse in private prison facilities).
- 62 See Kerman Testimony, *supra* note 7, at 7.
- 63 See Swavola, *supra* note 59, at 14 (describing the danger of women’s retraumatization or PTSD due to officers who were men viewing them at intimate moments).
- 64 See ALLEN J. BECK ET AL., BUREAU OF JUST. STAT., SEXUAL VICTIMIZATION REPORTED BY ADULT CORRECTIONAL AUTHORITIES, 2009-11 9 (2014), available at <https://www.bjs.gov/content/pub/pdf/svraca0911.pdf> (despite comprising only 7 percent of the population, women prisoners accounted for 33 percent of substantiated staff-on-inmate sexual victimization; in local jails, corrections officers who were men perpetrated 80 percent of such incidents).
- 65 See, e.g., OIG REPORT, *supra* note 57, at 41 (describing widespread problem of sexual assault at a federal Brooklyn detention center); *Violence Against Women*, *supra* note 13 at Addendum, para. 34, (describing continued sexual abuse of women in custody, both physically forced and otherwise coerced); Buchanan, *supra* note 34, at 55-57 (describing sexual abuse of women including the variety of forms the abuse takes); Elizabeth Chuck, MSNBC, ‘Frequent and severe’ sexual violence alleged at women’s prison in Alabama, <http://usnews.nbcnews.com/news/2012/05/23/11830574-frequent-and-severe-sexual-violence-alleged-at-womens-prison-in-alabama?lite> (May 23, 2012).
- 66 JASON LYDON ET AL., COMING OUT OF CONCRETE CLOSETS: A REPORT ON BLACK & PINK’S NATIONAL LGBTQ PRISONER SURVEY 44 (2015), available at [https://docs.wixstatic.com/ugd/857027\\_fcd066f0c4504418b95a18ab34647bd15.pdf](https://docs.wixstatic.com/ugd/857027_fcd066f0c4504418b95a18ab34647bd15.pdf).
- 67 See Daniel Moattar, *Prisons Are Using Military-Grade Tear Gas to Punish People*, THE NATION (Apr. 28, 2016), <https://www.thenation.com/article/prisons-are-using-military-grade-tear-gas-to-punish-inmates/> (describing use of military chemical weapons on prisoners in solitary confinement); Kurki & Morris, *supra* note 39, at 409; CAROLINE ISAACS & MATTHEW LOWEN, AM. FRIENDS SERV. COMM., BURIED ALIVE: SOLITARY CONFINEMENT IN ARIZONA’S PRISONS AND JAILS 14 (2007).
- 68 Chandra Bozelko, *Solitary Confinement Is Inhumane. I Should Know – I Spent 30 Days There*, THE GUARDIAN (Apr. 28, 2016), <https://www.theguardian.com/world/commentisfree/2016/apr/28/solitary-confinement-inhumane-prison-stories-6-x-9>; ISAACS & LOWEN, *supra* note 67, at 16.
- 69 See Law, *supra* note 34 (telling the stories of women placed into solitary confinement for reporting sexual abuse or for being “victim-prone” due to their status as transgender). Lisa Jaramillo served over 100 days in solitary confinement for allegedly lying about a sexual assault. In fact, the assault was not fabricated, and in a lawsuit for damages for multiple sexual assaults, Ms. Jaramillo was ultimately awarded \$66,000 in damages. See Complaint in *Collins v. Bustamante*, 1:09-CV-00634-JCH-WDS at ¶¶ 87-95 (D. N.M. 2009); Amended Final Judgment in *Collins v. Bustamante*, 1:09-CV-00634-JCH-WDS at 2 (D. N.M. 2014). See also *Ortiz v. Jordan*, 562 U.S. 180, 182 (2011); James Ridgeway & Jean Casella, *Woman Prisoner Sent to Solitary for Reporting Rape by Guard*, MOTHER JONES (May 8, 2010), available at <http://www.motherjones.com/mojo/2010/05/woman-prisoner-sent-solitary-reporting-rape-guard>; Human Rights Watch, *Nowhere to Hide: Retaliation Against Women in Michigan State Prisons* (1998), <http://www.hrw.org/reports98/women/Mich.htm> [hereinafter *Nowhere to Hide*].
- 70 STOP PRISONER RAPE, THE SEXUAL ABUSE OF FEMALE INMATES IN OHIO 10 (2003), available at [http://www.ncdsv.org/images/SPR\\_Sexual-abuse-of-female-inmates-in-ohio\\_12-2003.pdf](http://www.ncdsv.org/images/SPR_Sexual-abuse-of-female-inmates-in-ohio_12-2003.pdf); see also Shane Bauer, *My Four Months as a Private Prison Guard*, MOTHER JONES (2016), <https://www.motherjones.com/politics/2016/06/cca-private-prisons-corrections-corporation-inmates-investigation-bauer/> (telling the story of a transgender woman who regretted reporting sexual assault by a correctional officer after being placed into solitary confinement and expelled from an auto body class).
- 71 See LINDSEY CRAMER ET AL., THE URBAN INSTITUTE, PARENT-CHILD VISITING PRACTICES IN PRISONS AND JAILS: A SYNTHESIS OF RESEARCH AND PRACTICE 3-4 (Apr. 2017), available at <https://www.urban.org/sites/default/files/publication/89601/parent-child-visiting-practices-in-prisons-and-jails.pdf> (summarizing literature showing beneficial effects on the family relationship of regular contact visitation).
- 72 See, e.g., DC-ADM 801, § 6(A)(5), available at <https://www.cor.pa.gov/About%20Us/Documents/DOC%20Policies/801%20Inmate%20Discipline.pdf> (prisoners in disciplinary confinement in Pennsylvania receive only one non-contact visit with family members each month); CALIFORNIA CORRECTIONS, VISITING A FRIEND OR LOVED ONE IN PRISON 3, available at <https://www.cdcr.ca.gov/visitors/docs/inmatevisitingguidelines.pdf> (prisoners in any form of segregated housing in California have non-contact visits with glass partitions separating them from their visitors); VA. DEP’T OF CORR. OPERATING PROC. 841.4(IV)(K)(3)(f), available at <https://vadoc.virginia.gov/about/procedures/documents/800/841-4.pdf> (prisoners in restrictive housing in Virginia are permitted only non-contact visits). See also, 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 REHAB. 529, 532 (2009); LIFETIME LOCKDOWN, *supra* note 19, at 26-27 (describing all visits in Arizona lockdown as non-contact and through plexiglass and a telephone).
- 73 See, e.g., NEB. DEP’T OF CORR. SERVS. TECUMSEH STATE CORR. INST. OPERATIONAL MEMORANDUM 205.02.01 at 2, 8 (2017), available at [https://corrections.nebraska.gov/system/files/rules\\_reg\\_files/om\\_205.02.01\\_visiting\\_procedures.pdf](https://corrections.nebraska.gov/system/files/rules_reg_files/om_205.02.01_visiting_procedures.pdf) (prisoners in the general population at Tecumseh State Correctional Institution in Nebraska may receive in-person contact visits, but those in solitary confinement must use video visitation); IND. DEP’T OF CORR. POLICY 02-01-102(XVII) (2013), available at [https://www.in.gov/idoc/files/02-01-102\\_AP\\_Offender\\_Visitation\\_8-1-2013.pdf](https://www.in.gov/idoc/files/02-01-102_AP_Offender_Visitation_8-1-2013.pdf) (Indiana permits individual facilities to limit visitation of people in segregated housing to video visits).

- 74 See Shannon Simms, *The End of American Prison Visits: Jails End Face-to-Face Contact – And Families Suffer*, THE GUARDIAN (Dec. 9, 2017), available at <https://www.theguardian.com/us-news/2017/dec/09/skype-for-jailed-video-calls-prisons-replace-in-person-visits>.
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- 76 AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY, SOLITARY CONFINEMENT OF JUVENILE OFFENDERS (Apr. 2012), available at [https://www.aacap.org/aacap/policy\\_statements/2012/Solitary\\_Confinement\\_of\\_Juvenile\\_Offenders.aspx](https://www.aacap.org/aacap/policy_statements/2012/Solitary_Confinement_of_Juvenile_Offenders.aspx); Andrew B. Clark, *Juvenile Solitary Confinement as a Form of Child Abuse*, 45 J. AM. ACAD. PSYCHIATRY AND THE LAW ONLINE 350, 350-51 (2017), available at <http://jaapl.org/content/45/3/350>.
- 77 18 U.S.C. § 5043(b) (2018).
- 78 DOJ Report, *supra* note 5, at 101.
- 79 Sandra Simkins et al., *The Harmful Use of Isolation in Juvenile Facilities: The Need for Post-Disposition Representation*, 38 WASH. UNIV. J. L. & POL'Y 241, 259 (2012), available at [https://openscholarship.wustl.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1019&context=law\\_journal\\_law\\_policy](https://openscholarship.wustl.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1019&context=law_journal_law_policy).
- 80 See G.A. Res. 45/113, The United Nations Rules for the Protection of Juveniles Deprived of Their Liberty at Rule 67 (Dec. 14, 1990), available at [https://www.ohchr.org/Documents/ProfessionalInterest/res45\\_113.pdf](https://www.ohchr.org/Documents/ProfessionalInterest/res45_113.pdf).
- 81 FRANCINE T. SHERMAN & ANNIE BLACK, GENDER INJUSTICE: SYSTEM-LEVEL JUVENILE JUSTICE REFORMS FOR GIRLS 5 (2015), available at [http://www.nationalcrittenton.org/wp-content/uploads/2015/09/Gender\\_Injustice\\_Report.pdf](http://www.nationalcrittenton.org/wp-content/uploads/2015/09/Gender_Injustice_Report.pdf); the numbers are even more alarming for girls of color, who are referred to courts and detained at rates far surpassing their white peers. *Id.* at 14.
- 82 Juvenile Detention Alternatives Initiative, *Making Detention Reform Work for Girls*, in A GUIDE TO JUVENILE DETENTION REFORM 7-8 (2013), available at [http://nccdglobal.org/sites/default/files/publication\\_pdf/detention.reform.for\\_girls.pdf](http://nccdglobal.org/sites/default/files/publication_pdf/detention.reform.for_girls.pdf).
- 83 OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, LGBTQ YOUTHS IN THE JUVENILE JUSTICE SYSTEM 5 (last updated 2014), available at <https://www.ojjdp.gov/mpg/litreviews/LGBTQYouthsInTheJuvenileJusticeSystem.pdf>.
- 84 Juvenile Detention Alternatives Initiative, *Lesbian, Gay, Bisexual and Transgender Youth in the Juvenile Justice System in A GUIDE TO JUVENILE DETENTION REFORM* 11 (2015), available at <https://www.aecf.org/m/resource/doc/AECF-lesbiangaybisexualandtransgenderyouthinjj-2015.pdf>.
- 85 *Id.* at 10. Many girls' involvement in the criminal justice system can be explained by their trauma: for example, running away and engaging in substance abuse are both common reactions of children to physical or sexual abuse. MALIKA SAADA SAAR ET AL., HUMAN RIGHTS PROJECT FOR GIRLS ET AL., THE SEXUAL ABUSE TO PRISON PIPELINE: THE GIRLS' STORY 9 (2015), available at [http://rights4girls.org/wp-content/uploads/r4g/2015/02/2015\\_COP\\_sexual-abuse\\_layout\\_web-1.pdf](http://rights4girls.org/wp-content/uploads/r4g/2015/02/2015_COP_sexual-abuse_layout_web-1.pdf).
- 86 See Colleen Murphy, *The Solitary Confinement of Girls in the United States: International Law and the Eighth Amendment*, 92 TULANE L. REV. 697, 704 (2018).
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- 89 E. ANN CARSON & WILLIAM J. SABOL, BUREAU OF JUSTICE STATISTICS, AGING OF THE STATE PRISON POPULATION, 1993-2013 6 (2016), available at <https://www.bjs.gov/content/pub/pdf/asp9313.pdf>.
- 90 2018 TIME-IN-CELL, *supra* note 29, at 37 Fig. 14.
- 91 Anne Fezcko, *Dementia in the Incarcerated Elderly Adult: Innovative Solutions to Promote Quality Care*, 26 J. AM. ASS'N NURSE PRACTITIONERS 640, 642 (2014), available at <https://onlinelibrary.wiley.com/doi/epdf/10.1002/2327-6924.12189>.
- 92 *Id.*
- 93 Brie A. Williams, *Older Prisoners and the Physical Health Effects of Solitary Confinement*, 106 AM. J. PUB. HEALTH 2126, 2126 (2016), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5105008/>.
- 94 Fezcko, *supra* note 91, at 643 Fig. 1.
- 95 Williams, *supra* note 93, at 2126.
- 96 NCCHC, SOLITARY CONFINEMENT, *supra* note 20.
- 97 GLAAD, GLAAD MEDIA REFERENCE GUIDE—TRANSGENDER (last visited Feb. 26, 2019), <https://www.glaad.org/reference/transgender>.
- 98 NAT'L CENTER FOR TRANSGENDER EQUALITY, LGBTQ PEOPLE BEHIND BARS: A GUIDE TO UNDERSTANDING THE ISSUES FACING TRANSGENDER PRISONERS AND THEIR LEGAL RIGHTS 5 (Oct. 2018), available at <https://transequality.org/sites/default/files/docs/resources/TransgenderPeopleBehindBars.pdf>.
- 99 Even when other prisoners are the assailants, correctional officers often purposely put LGBTQ prisoners in situations in which assault would be likely. See Lydon et al., *supra* note 66, at 5.
- 100 ANN P. HAAS ET AL., AMERICAN FOUNDATION FOR SUICIDE PREVENTION & THE WILLIAMS INSTITUTE, SUICIDE ATTEMPTS AMONG TRANSGENDER AND GENDER NON-CONFORMING ADULTS: FINDINGS OF THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY 14 (Jan. 2014), available at <https://williamsinstitute.law.ucla.edu/wp-content/uploads/AFSP-Williams-Suicide-Report-Final.pdf>.
- 101 Russell B. Toomey et al., *Transgender Adolescent Suicide Behavior*, 142 PEDIATRICS (2018), abstract available at [https://pediatrics.aappublications.org/content/142/4/e20174218?sso=1&sso\\_redirect\\_count=1&fnstatus=401&nftoken=00000000-0000-0000-0000-000000000000&nfstatusdescription=ERROR%3a+No+local+token](https://pediatrics.aappublications.org/content/142/4/e20174218?sso=1&sso_redirect_count=1&fnstatus=401&nftoken=00000000-0000-0000-0000-000000000000&nfstatusdescription=ERROR%3a+No+local+token).
- 102 28 C.F.R. § 115.42(c), (e), available at <http://www.law.cornell.edu/cfr/text/28/115.42> (c) ("In deciding whether to assign a transgender or intersex inmate to a facility for male or female inmates, and in making other housing and programming assignments, the agency shall consider on a case-by-case basis whether a placement would ensure the inmate's health and safety, and whether the placement would present management or security problems"), (providing that a prisoner's personal gender identity should be taken into account in making housing assignments). In 2016, DOJ clarified that policies must give "serious consideration" to prisoners' gender identity when determining where they should be housed and may not, by policy or practice, house prisoners based solely on genital anatomy. However, in 2018, the Bureau of Prisons announced that it would use sex assigned at birth rather than gender identity as the "initial determination" for housing assignment. BUREAU OF PRISONS, TRANSGENDER OFFENDER MANUAL, PROGRAM STATEMENT 5200.04 2 (May 11, 2018), available at <https://www.bop.gov/policy/progstat/5200-04-cn-1.pdf>.
- 103 28 C.F.R. § 115.15 (e) (providing that a transgender woman should not be searched or physically examined to identify her genital status).
- 104 28 C.F.R. § 115.43 (c), (e).
- 105 See, e.g., PASCAL EMMER ET AL., HEARTS ON A WIRE COLLECTIVE, THIS IS A PRISON, GLITTER IS NOT ALLOWED: EXPERIENCES OF TRANS AND GENDER VARIANT PEOPLE IN PENNSYLVANIA'S PRISON SYSTEMS 22 (2011), available at <https://www.prisonpolicy.org/scans/thisisaprison.pdf>.
- 106 DOJ REPORT, *supra* note 5, at 102.
- 107 *Id.*
- 108 44,000 immigrants were civilly held in immigration detention in November 2018, almost 5,000 more than the previous year. Spencer Ackerman, *ICE Is Imprisoning a Record 44,000 People*,



- DAILY BEAST (Nov. 11, 2018), <https://www.thedailybeast.com/ice-is-imprisoning-a-record-44000-people>.
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- 118 See Letter from Kathleen M. Rice, Congresswoman, and Other Members of Congress, to Secretary of Homeland Security Kirstjen Nielsen (May 30, 2018), available at [https://kathleenrice.house.gov/uploadedfiles/2018.05.30\\_lgbt\\_immigrants\\_in\\_ice\\_detention\\_letter\\_to\\_sec\\_nielsen.pdf](https://kathleenrice.house.gov/uploadedfiles/2018.05.30_lgbt_immigrants_in_ice_detention_letter_to_sec_nielsen.pdf); 6 C.F.R. § 115.42.
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- 130 Settlement Agreement at App. A 5-6, *Seitz v. Allegheny Cty*, No. 2:16-cv-1879-CRE (W.D. Pa. Nov. 9, 2017), available at [https://www.aclupa.org/download\\_file/view\\_inline/3230/1055](https://www.aclupa.org/download_file/view_inline/3230/1055).
- 131 5 CDCR § 54045.11, available at [https://www.cdcr.ca.gov/Regulations/Adult\\_Operations/docs/DOM/DOM%202018/2018%20DOM.pdf](https://www.cdcr.ca.gov/Regulations/Adult_Operations/docs/DOM/DOM%202018/2018%20DOM.pdf).
- 132 Settlement Agreement 20, *United States v. Alabama* (M.D. Ala. May 28, 2018), available at <https://www.justice.gov/opa/file/450776/download>.
- 133 *Id.* at 21.
- 134 Settlement Agreement 30, *Peoples v. Fischer*, No. 11-CV-2694 (S.D.N.Y. Dec. 16, 2015), available at [https://www.nyclu.org/sites/default/files/releases/20151216\\_settlementagreement\\_filed.pdf](https://www.nyclu.org/sites/default/files/releases/20151216_settlementagreement_filed.pdf).
- 135 See 2018 TIME-IN-CELL, *supra* note 29, at 60 (providing overview of changes jurisdictions have made in limiting the use of restrictive housing since 2014); see also V.W. ex rel. Williams v. Conway, 236 F.Supp. 3d 554, 583 (N.D.N.Y. 2017) (holding that “juveniles face an objectively sufficiently serious risk of harm from . . . solitary confinement”).
- 136 Letter from Thomas E. Perez, Assistant Attorney General, and David J. Hickton, United States Attorney, U.S. Dep't of Justice, to Pennsylvania Gov. Tom Corbett 1, 4 (May 31, 2013), available at [http://www.justice.gov/crt/about/spl/documents/cresson\\_findings\\_5-31-13.pdf](http://www.justice.gov/crt/about/spl/documents/cresson_findings_5-31-13.pdf) (regarding the DOJ's investigation of the State Correctional Institution at Cresson and notifying the state of DOJ's expanded investigation); see also Schlanger, *supra* note 39 (arguing that solitary confinement of people with mental health issues can constitute a violation of the ADA and the Rehabilitation Act).
- 137 *Palakovic v. Wetzel*, 854 F.3d 209, 226 (3d Cir. 2017); *Braggs v. Dunn*, 257 F. Supp. 3d 1171, 1214 (M.D. Ala. 2017); *Hernandez v. Cty. of Monterey*, 110 F.Supp. 3d 929, 946-48 (N.D. Cal. 2015); *Coleman v. Brown*, 28 F. Supp. 3d 1068, 1099 (E.D. Cal. 2014); *Finley v. Huss*, 723 Fed. Appx. 294, 298 (6th Cir. 2018) (plaintiff with serious mental illness who had been placed in solitary confinement stated 8th Amendment claim); *Cnty Legal Aid Soc'y, Inc. v. Coupe*, No. C.A. 15-688, 2016 WL 1055741, at \*4 (D. Del. Mar. 16, 2016) (holding that plaintiffs stated valid claim that solitary confinement of people with mental health issues violates the Constitution and citing cases so holding); see also *Williams v. Sec'y Pa. Dep't Corr.*, 848 F.3d 549, 566, 570 (holding that prolonged solitary confinement can establish a constitutional violation, citing, *inter alia*, research showing that it can cause or exacerbate mental illness).
- 138 See Ames Alexander, *Amid Outcry, N.C. to Limit Use of Solitary Confinement for Prisoners*, CHARLOTTE OBSERVER (July 19, 2017), <https://www.charlotteobserver.com/news/local/article162331683.html>.
- 139 See Laura Kliever, *Do States in the Midwest Restrict the Use of Solitary Confinement in Prisons?*, COUNCIL OF STATE GOVERNMENTS: MIDWEST (2017), <https://www.csgmidwest.org/policyresearch/qom-0617.aspx>.
- 140 The Prison Rape Elimination Act of 2003 (PREA) and its implementing regulations, which were promulgated by the DOJ in 2012, put in place a system for auditing the sexual abuse of prisoners in U.S. prisons, jails, and juvenile detention facilities. In auditing PREA compliance, the DOJ should be particularly careful to record instances of improper assignments to solitary confinement, including retaliatory placements in solitary. See Prison Rape Elimination Act of 2003, Pub. L. 108-79 § (7)(d)(2)(N) (providing for “an assessment of existing Federal and State systems for reporting incidents of prison rape, including an assessment of whether existing systems provide an adequate assurance of confidentiality, impartiality and the absence of reprisal”), available at <http://www.ojdp.gov/about/PubLNo108-79.txt>.
- 141 See, e.g., Melinda Tasca, *The Gatekeepers of Contact: Child-Caregiver Dyads and Parental Prison Visitation*, 43 CRIM. JUST. & BEHAVIOR 739, 739-40 (2016), available at <https://www.researchgate.net/>

publication/283860970 The Gatekeepers of Contact Child-Caregiver Dyads and Parental Prison Visitation (discussing previous literature showing the importance of contact visits for children of incarcerated parents). For a discussion of the negative impacts that incarceration can have on children of incarcerated people, see Tamar Lerer, *Sentencing the Family: Recognizing the Needs of Dependent Children in the Administration of the Criminal Justice System*, 9 NORTHWESTERN J. L. & SOC. POL'Y 24, 30-35 (2013).

142 See CODE RED, *supra* note 110.

143 See G.A. Res. 70/175, The United Nations Standard Minimum Rules for the Treatment of Prisoners at Rules 43-45 and Rule 45 n.28 (adopting G.A. Res. 45/113, The United Nations Rules for the Protection of Juveniles Deprived of Their Liberty at Rule 67 (Dec. 1990) and G.A. Res. 65/229, ¶ 7(b), U.N. Doc. A/RES/65/229 (March 16, 2011)).

144 Telephone interview with Tia Ryans, activist and formerly incarcerated woman (Jan. 14, 2019).

145 Interview with Ali Winters, DSW, licensed clinical social worker who provided health care services to women in solitary confinement (Mar. 5, 2019).

146 Complaint at 9-10, *Crowder v. Diaz*, No. 2:17-cv-01657 (E.D. Cal. Aug. 7, 2017).

147 Telephone interview with anonymous formerly incarcerated woman (Dec. 19, 2018).

148 Telephone interview with Lydia Thornton, activist and formerly incarcerated woman (Jan. 10, 2019).

149 Aviva Stahl, *The Shocking, Painful Trauma of Being a Trans Prisoner in Solitary Confinement*, BROADLY (Jan. 22, 2016).