



Written Statement of the  
American Civil Liberties Union of Maine

Shenna Bellows  
Executive Director

Zachary L. Heiden  
Legal Director

Alysia Melnick  
Public Policy Counsel

Senate Judiciary Subcommittee on the  
Constitution, Civil Rights, and Human Rights

June 19, 2012

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

Chairman Durbin, Ranking Member Graham, and Distinguished Members of the Subcommittee:

The American Civil Liberties Union of Maine (“ACLU of Maine”) appreciates the opportunity to provide testimony to you on this critical issue. We are one of the ACLU’s 53 state affiliates, and reform of the use of solitary confinement is one of our top priorities. We advocate in the legislature, in the courts, and in the court of public opinion for the civil and human rights of the people of Maine.

### **Maine Represents An Example of What Is Possible**

As a result of over five years of advocacy by the ACLU of Maine and our colleagues, and leadership from our current Department of Corrections Commissioner, Maine has reduced the population of its solitary confinement “Special Management Unit” by over 70%. Prisoners who do end up in solitary confinement spend less time there, are treated like human beings while there, and are shown a clear path to reentry back into the general prison population. All of this has been accomplished without compromising the safety of prison staff or other prisoners, and with significant cost and resource savings to the prison. Maine represents a model for what is possible in solitary confinement reform—a rebuttal to everyone who tells you that this reform cannot or should not be done. We heard these objections as well, and we write today to tell you that they are not credible.

### **An Intolerable Situation**

In Maine, prior to 2010, solitary confinement meant isolation alone in a 86 square foot cell, with limited natural lighting, for 23 hours per day during the week, and 24 hours per day on the weekends. The only break in this monotony of isolation was one hour of outdoor exercise (only on weekdays) alone in a small yard, though for much of the year in Maine outdoor exercise is not an attractive proposition. Other than fleeting interactions with correction staff, prisoners had no human contact during their stays in the Special Management Unit. They did not even have access to radios or television, which could have provided some proxy for human contact. The cell doors in Maine’s Special Management Unit are too thick to allow conversations among prisoners. Medical and mental health screenings were sporadic and brief—often conducted through the cell door—and record keeping was inconsistent.

The impact of this lack of human contact was clear. Prisoners frequently exhibited symptoms of serious mental illness, even in cases when no such symptoms had previously manifested.

The purported justifications for subjecting prisoners to isolation varied widely, and the nexus between such treatment and any legitimate penological goals was often impossible to discern. For example, prisoners at the Maine State Prison could be sent to the Special Management Unit for “disciplinary segregation”—as punishment for an assortment of rule violations from the serious (fighting) to the trivial (moving too slowly in the lunch line). And, despite the seriousness of solitary confinement, prisoners in disciplinary hearings were rarely provided assistance understanding the process or a meaningful opportunity to present a defense.

Other prisoners were sent to the Special Management Unit for “administrative segregation”. In the event of a fight, for example, the prison might send both the aggressor and the victim to the Special Management Unit while the matter was investigated. The timeline for investigation was vague, and the depth and quality were suspect. A prisoner might spend days, weeks, or months in the Special Management Unit as a result of being attacked by another prisoner. Even after a prisoner had completed a term of disciplinary isolation or been adjudged the victim rather than the aggressor in a fight, a prisoner might remain in solitary confinement for additional days, weeks, or months because of a shortage of beds in the general population units.

In some cases, prisoners were released straight out of the Special Management Unit onto the streets of Maine communities. Because of the destabilizing effects of isolation, releasing someone back into life on the “outside” abruptly and with no support leads to difficulty for both the former prisoner and the community. The cost of this practice was spread among family members, community members, and taxpayers who pay for court and corrections costs in the event of recidivism.

In short, there were problems with Maine’s Special Management Unit at all stages: the way that prisoners were sent there, the way they were treated while there, and when and how they were released.

## **The Effects of Long-Term Isolation**

These were serious problems—constitutional problems—because of the effects that long-term isolation has on a person’s mind. The Eighth Amendment to the United States Constitution prohibits the infliction of “cruel and unusual punishments,” and isolating people until they start hearing voices, losing touch with reality, sinking into depression, and losing the ability to cope is most certainly cruel. You will receive testimony submitted by those who have suffered solitary confinement, and we trust that you will give it considerable weight though you will, no doubt, find some of the stories difficult to believe. It is difficult to accept that we subject our fellow human beings to such brutal treatment: difficult, but necessary. Solitary confinement inflicts punishment that can cause even previously healthy people to become desperate to die.

Psychiatrists and psychologists who study prisoners and prison systems have documented these effects. A number of these studies were summarized in an article by Dr. Atul Gawande, entitled *Hellhole*, which appeared in in *The New Yorker* magazine in March 2009.<sup>1</sup> The piece fueled the desire in Maine to initiate change to reduce the use of solitary confinement for healthy prisoners, ban its use for prisoners with serious mental illness, and impose increased regulation, oversight and due process. Dr. Gawande documented some of the more horrific examples of solitary confinement and its effects from across the country, and he also noted that America embraces this form of punishment far in excess of any other country. He specifically noted that there were more prisoners in solitary confinement in Maine (population 1.2 million) than in England (population 50 million). Mainers did not appreciate this notoriety and set out to do something about it.

In 2010, Mainers mobilized around legislation to reduce and reform the use of solitary confinement, and experts from around the country joined in the effort. One well-know expert, Dr. Stuart Grassian, testified before the Maine Legislature that “restrictions on environmental and social stimulation has a profoundly deleterious effect on mental functioning.”<sup>2</sup> Dr. Grassian also noted the following:

---

<sup>1</sup> Atul Gawande, *Hellhole*, THE NEW YORKER, March 30, 2009.

<sup>2</sup> *An Act to Ensure Humane Treatment for Special Management Prisoners Testimony: Hearing on LD 1611 before the Joint Committee on Criminal Justice and Public Safety*, 124th Maine Legislature (February 17, 2010) (statement of Stuart Grassian, M.D.).

[D]eprived of a sufficient level of environmental and social stimulation, individuals will soon become incapable of maintaining an adequate state of alertness and attention to the environment. Indeed, even a few days of solitary confinement will predictably shift the electroencephalogram (EEG) pattern towards an abnormal pattern characteristic of stupor and delirium.<sup>3</sup>

Dr. Grassian concluded:

Institutions like the SMU [Maine's Special Management Unit] 'look' good; they make it seem like we are 'getting tough on crime'. But in reality, we are getting tough on ourselves. 95% of all incarcerated individuals are eventually released, some directly out of SMU settings. We have succeeded in making those individuals as sick, as internally chaotic, as we possibly can.<sup>4</sup>

Another highly-regarded expert, Dr. Terry Kupers, also testified before the Maine legislature that segregation systems like Maine's are inhumane: "Human beings require some degree of social interaction and productive activity to establish and sustain a sense of identity and to maintain a grasp on reality."<sup>5</sup>

In their testimony, both Dr. Grassian and Dr. Kupers emphasized that isolation does not need to be complete in order to be dangerously debilitating; it is the absence of "meaningful" social interaction that destroys a person's ability to cope. The occasional site of a guard or sound of a distant human voice does not qualify, and the increased use of modern technology (surveillance cameras, timed lights, and remote locks) in Maine and elsewhere have only added to prisoners' isolation.

At the legislative hearing, representatives from the Maine Psychological Association and the Maine Association of Psychiatric Physicians echoed Dr. Grassian's and Dr. Kupers's conclusion that long-term isolation is incompatible with basic human needs. The Maine Psychological Association observed that most prisoners held in long-term isolation for longer than 3 months

---

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *An Act to Ensure Humane Treatment for Special Management Prisoners Testimony: Hearing on LD 1611 before the Joint Committee on Criminal Justice and Public Safety, 124th Maine Legislature (February 17, 2010) (statement of Terry Kupers, M.D., M.S.P.).*

“experience lasting emotional damage if not full-blown psychosis and functional disability.”<sup>6</sup> In all, twenty-nine witnesses testified in support of legislation to limit the use of solitary confinement in Maine—doctors, ministers, lawyers, professors, former prisoners, family members, and many others. Twenty-nine witnesses may not sound like that many from the perspective of the United States Senate, but for a small state like Maine it indicates high level of support.

### **A Human Rights Problem of a Constitutional Dimension**

The ACLU of Maine helped organize the support for the reform bill because we believed that the policies and practices at the Maine State Prison Special Management Unit violated the Constitution. Punitive isolation can violate the Eighth Amendment’s prohibition of cruel and unusual punishment,<sup>7</sup> as can psychological harm from lack of meaningful social contact.<sup>8</sup>

There is increasing judicial consensus that placement of seriously mentally ill prisoners in segregated confinement violates the Constitution because it predictably leads to severe pain and suffering.<sup>9</sup> In fact, every federal court that has considered the issue has found that holding individuals with serious mental illness in isolated confinement with limited social interaction amounts to cruel and unusual punishment.<sup>10</sup> The basis of these rulings is the understanding that,

---

<sup>6</sup> *An Act to Ensure Humane Treatment for Special Management Prisoners Testimony: Hearing on LD 1611 before the Joint Committee on Criminal Justice and Public Safety*, 124th Maine Legislature (February 17, 2010) (statement of Sheila Comerford, Executive Director, Maine Psychological Association).

<sup>7</sup> *Hutto v. Finney*, 437 U.S. 678, 685 (1978) (finding that evidence sustained finding that conditions in isolation cells violated prohibition against cruel and unusual punishment, and district court had authority to place maximum limit of 30 days on confinement in isolation cells).

<sup>8</sup> *Ruiz v. Johnson*, 37 F. Supp. 2d 855 (S.D. Tex. 1999).

<sup>9</sup> *See id.* at 915 (S.D. Tex. 1999) (“[c]onditions in TDCJ-ID’s administrative segregation units clearly violate constitutional standards when imposed on the subgroup of the plaintiff’s class made up of mentally-ill prisoners”); *Coleman v. Wilson*, 912 F.Supp. 1282, 1320-21 (E.D. Cal. 1995); *Langley v. Coughlin*, 715 F. Supp. 522, 540 (S.D.N.Y. 1988) (holding that evidence that prison officials fail to screen out from SMU “those individuals who, by virtue of their mental condition, are likely to be severely and adversely affected by placement there” states an Eighth Amendment claim).

<sup>10</sup> For example, in *Jones ‘El v. Berge*, 164 F. Supp. 2d 1096 (W.D. Wis. 2001), a court ordered a Wisconsin prison to remove all individuals with serious mental illness from the Supermax and, further, to monitor the mental health status of inmates sent to the Supermax to prevent future violations; in *Austin v. Wilkinson*, 189 F. Supp. 2d 719 (N.D. Ohio 2002), a court enjoined the State of Ohio from returning any individual with serious mental illness to the Ohio State Penitentiary; in *Ayers v. Perry*, which was settled, New Mexico agreed to keep inmates with serious mental illness out of the Special Controls Facility at the

for prisoners who already suffer from serious mental illness, segregation inflicts serious psychological pain and exacerbates mental illness with catastrophic effects (such as self-mutilation, disassociation, suicide, playing with urine and feces, and extreme combativeness towards guards and staff).<sup>11</sup> Solitary confinement makes healthy people sick, and sick people worse.

Extreme social isolation and reduced environmental stimulation is cruel and unusual punishment.<sup>12</sup> While the court in *Madrid v. Gomez*, a challenge to the conditions at Pelican Bay State Prison in California, did not find *per se* constitutional violations for *all* prisoners in solitary confinement, it did find Eighth Amendment violations for certain categories of mentally ill prisoners.<sup>13</sup> For these inmates, placement in the Secure Housing Unit was unconstitutional and “the mental equivalent of putting an asthmatic in a place with little air to breathe.”<sup>14</sup> *Jones ‘El v. Berge*, settled through a comprehensive consent decree, required that seriously mentally ill prisoners be identified and removed from Wisconsin’s Supermax Correctional Institution. The settlements in *Jones ‘El*, *Austin v. Wilkinson* and other cases provide for the *permanent* exclusion of seriously mentally ill prisoners from long-term isolation.

The Fourteenth Amendment’s guarantee of due process is also at stake when prisoners are sent to solitary units or supermax prison. Long-term isolation is so qualitatively different from the normal prison setting that it can only be constitutionally imposed through clear policies that are accessible and comprehensible to the prisoner. Additionally, prisoners need to be given a meaningful opportunity to dispute the accusation of wrongdoing against them, and if they are not able to do so because they lack the intellectual capacity, they need to have assistance. In *Wilkinson v. Austin*, for example, the U.S. Supreme Court ruled that prisoners have a due process-protected liberty interest in avoiding placement at Ohio’s Supermax prison, due to the

---

Penitentiary of New Mexico in Santa Fe and the Southern New Mexico Correctional Facility in Las Cruces.

<sup>11</sup> See Jules Lobel, Prolonged Solitary Confinement and the Constitution, 11 U. Pa. J. Const. Law 115 (2009).

<sup>12</sup> See David Fathi, *The Common Law of Supermax Litigation*, 24 Pace L. Rev. 675, 681 (2004).

<sup>13</sup> *Madrid v. Gomez*, 889 F. Supp. 1146 (N.D. Cal. 1995).

<sup>14</sup> *Id.* at 1265.

extreme isolation and limited environmental stimulation they face at that facility.<sup>15</sup> Accordingly, the Court said, prisoners are entitled to meaningful due process protections prior to their transfer to that facility.<sup>16</sup> Even before the Supreme Court’s ruling in *Wilkinson*, courts had ruled that placement in solitary confinement, by virtue of lack of contact, loss of privileges and dearth of work or educational opportunities imposes an “atypical and significant hardship” which gives rise to a liberty interest and to due process rights.<sup>17</sup>

The guarantee of due process also requires that any prisoner placed in long-term isolation is required to have meaningful, regular, periodic reviews to determine whether the confinement continues to be necessary. In weighing the government’s interest in long-term isolation, courts have said that while the government has an interest in avoiding the imposition of additional, costly, or complex procedures, especially in the context of a correctional facility, prisoners are still required to be afforded meaningful process.

“Meaningful review” means that hearings must not be perfunctory; inmates must actually have the potential to impact the outcome. And, the process must include an opportunity to be heard, consideration of the inmate’s behavior, and an evaluation and determination of whether the reason(s) for confinement remain valid. Further, in *Wilkinson* the Supreme Court held that due process includes a prisoner’s right to a statement of reasons for placement or retention in segregation, as well as a statement explaining what they must do to earn their way out.<sup>18</sup>

### **Maine’s Path to Reform**

Maine’s solitary reform legislation did not become law, for reasons that are likely familiar to you. Opponents said that solitary confinement did not really exist in Maine; they said that even if solitary confinement did exist, it did not have the effects that critics claimed; they said that even if solitary confinement did have substantial negative effects on prisoners’ mental health, the

---

<sup>15</sup> *Wilkinson v. Austin*, 545 U.S. 209 (2005).

<sup>16</sup> *Id.* at 224.

<sup>17</sup> See, e.g., *Colon v. Howard*, 215 F.3d 227, 231-32 (2nd Cir. 2000) (finding 305 days in segregated housing unit to be an atypical and significant hardship); *Hatch v. District of Columbia*, 184 F.3d 846, 858 (D.C. Cir. 1999) (ruling that on remand, court should determine whether twenty-nine weeks of segregation is atypical); *Williams v. Fountain*, 77 F. 3d 372 n.3 (11th Cir. 1996) (finding one year in solitary confinement atypical and significant).

<sup>18</sup> *Wilkinson*, 545 U.S. at 225-26.



prisoners deserved that treatment because of the awful things they had done; and if that treatment was not deserved, then the prison still had no choice but to use long-term isolation because there was no other meaningful way to deter rule-breaking in the prison environment. Opponents of reform also claimed that change would be too costly, and that it would lead to an increase in violence.

Instead of legislating reform of the use of solitary confinement, the Maine legislature did what legislative bodies often do when faced with politically-fraught issues: it authorized a study. A group of government officials from the Maine Department of Health and Human Services and the Maine Department of Corrections was charged with reviewing the use of solitary confinement in Maine’s corrections system, with special emphasis on due process rights and the needs of prisoners with mental illness. The conclusions of that study were nothing short of extraordinary, especially in light of the fact that it was conducted entirely by government insiders. They echoed much of what the advocacy community—ACLU, the Maine Prisoner Advocacy Coalition, the NAACP, the Maine Council of Churches, and others—had been saying for a number of years:

- Prisoners were subjected to solitary confinement for “extraordinary” periods of time while officials investigated whether the prisoner was the victim or the perpetrator of a particular offense;<sup>19</sup>
- Prisoners were sometimes kept in solitary confinement simply because the prison could not find a bed for them in a general population unit;<sup>20</sup>
- The prison underutilized alternative sanctions and incentives for controlling behavior, which led to overuse of solitary confinement;<sup>21</sup>
- Prisoners were not provided with assistance in responding to accusations of rule-breaking, which was especially difficult for prisoners with mental illness or cognitive impairment;<sup>22</sup>
- Even a brief visit to the women’s solitary unit by investigators resulted in feelings of claustrophobia;<sup>23</sup>
- A number of individuals with apparent symptoms of serious mental illness were housed in the Special Management Unit, despite policies prohibiting such housing;<sup>24</sup>

---

<sup>19</sup> FINAL REPORT OF REVIEW OF DUE PROCESS PROCEDURES IN SPECIAL MANAGEMENT UNITS AT THE MAINE STATE PRISON AND THE MAINE CORRECTIONAL CENTER 4 (March 2011).

<sup>20</sup> *Id.* at 6.

<sup>21</sup> *Id.* at 7.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 8-9.

<sup>24</sup> *Id.* at 9.

- The prison had too few mental health staff, and mental health screenings and evaluations were inadequately documented;<sup>25</sup>

The report noted that reforms might have costs, but that those costs needed to be viewed in light of the countervailing costs of recidivism, harm to communities, public safety, and “the simple humanity of what we do.”<sup>26</sup>

This report forced even the most dismissive defenders of the status quo to acknowledge that Maine’s use of solitary confinement needed to be reformed. At the ACLU of Maine, we prepared to take the Department of Corrections to court if it would not implement substantial reforms consistent with the recommendations of the study commission and the demands of the Constitution, but that litigation was ultimately not necessary. Instead, a new Corrections Commissioner was appointed, and he immediately convened a working group of advocates, health care workers, and corrections professionals to implement the study’s recommendations and reform Maine’s Special Management Unit.

Within one year, Commissioner Joseph Ponte substantially reduced the use of solitary confinement, the amount of time prisoners would spend in solitary confinement, and the likelihood that prisoners would remain in solitary any longer than necessary:

- Solitary confinement in Maine is now reserved for the most serious offenses, and most prisoners are punished in their own units (by losing privileges or being confined to their own cell within the general population);
- A prisoner cannot be sent to the Special Management Unit for more than three days without the approval of the Commissioner himself;
- When a prisoner is sent to the Special Management Unit, his bed remains open until he returns;
- Prisoners in the Special Management Unit have the opportunity to have their punishment time cut in half through good behavior;
- Prisoners in the Special Management Unit have an opportunity to interact with other prisoners and with mental health staff in a group setting, and they have an opportunity to attend group religious services. Attendance in group treatment sessions earns the prisoner additional recreation time, which can be used indoors or outdoors;
- Prisoners are more closely monitored for changes in mental health status;
- Prisoners in the Special Management Unit have access to televisions, radios and reading material, which alleviate some of the oppressive qualities of isolation.

---

<sup>25</sup> *Id.* at 10.

<sup>26</sup> *Id.* at 13.

These changes have led to a 70% reduction in the use of solitary confinement at the Maine State Prison, and that reduction has not been accompanied by an increase in violence towards guards or other prisoners. Maine's prison is now a safer and more humane place because of these reforms. There was resistance to their implementation, but through determination and leadership by both the advocacy community and Commissioner Ponte, Maine is now a model for what is possible across the country.

We hope that, someday, we will be able to look back on this hearing as an important turning point, away from the use of long-term isolation in our prisons, and towards what Maine has shown is possible.

Respectfully Submitted,

Shenna Bellows,  
Executive Director

Zachary L. Heiden,  
Legal Director

Alysia Melnick,  
Public Policy Counsel