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

Hearing on

Reassessing Solitary Confinement II:
The Human Rights, Fiscal, and Public Safety Consequences
Tuesday, February 25, 2014
at 2:30 pm

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

The ACLU is a nationwide, nonprofit, non-partisan organization with more than a half million members, countless additional activists and supporters, and 53 affiliates nationwide dedicated to the principles of liberty and equality embodied in our Constitution and our civil rights laws. Consistent with that mission, the ACLU established the National Prison Project in 1972 to protect and promote the civil and constitutional rights of prisoners. Since its founding, the Project has challenged unconstitutional conditions of confinement and over-incarceration at the local, state and federal level through public education, advocacy and successful litigation. The ACLU’s national Stop Solitary campaign works to end the pervasive use of solitary confinement and to divert children and persons with mental disabilities and mental illness out of solitary altogether. The monetary cost of solitary confinement, coupled with the human cost of increased psychological suffering and sometimes irreparable harm, far outweighs any purported benefits. More effective and humane and less costly alternatives exist.

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

Over the last two decades, corrections systems have increasingly relied on solitary confinement, even building entire “supermax” prisons, where prisoners are held in extreme isolation, often for years or even decades. Although supermax prisons were rare in the United States before the 1990s, today forty-four states and the federal government have supermax units or facilities, housing at least 25,000 people nationwide.¹ But this figure does not reflect the total number of prisoners held in solitary confinement in the United States on any given day. Using data from the Bureau of Justice Statistics, researchers estimated in 2011 that over 80,000 prisoners are held in “restricted housing,” including administrative segregation, disciplinary segregation and protective custody—all forms of housing involving substantial social isolation.²

This massive increase in the use of solitary confinement has led many to question whether it is an effective or humane use of public resources. Legal and medical professionals criticize solitary confinement and supermax prisons as unconstitutional and inhumane, pointing to the well-known harms associated with placing people in isolation and the rejection of its use in American prisons decades earlier.³

Other critics point to the expense of solitary confinement. Supermax prisons typically cost two or three times more to build and operate than even traditional maximum-security prisons.⁴ Yet there is little evidence to suggest that solitary confinement makes prisons safer. Indeed, research suggests that supermax prisons actually have a negative effect on public safety.⁵ Despite these concerns, states and the federal government continue to invest taxpayer dollars in constructing supermax prisons and enforcing solitary confinement conditions. As new fiscal realities force state and federal cuts to essential public services like health and education, it is time to ask whether we should continue to use solitary confinement despite its high fiscal and human costs.
A. What is solitary confinement?
Solitary confinement is the practice of placing a person alone in a cell for 22 to 24 hours a day with little human contact or interaction; reduced or no natural light; restriction or denial of reading material, television, radios or other property; severe constraints on visitation; and the inability to participate in group activities, including eating with others. While some specific conditions of solitary confinement may differ among institutions, generally the prisoner spends 23 hours a day alone in a small cell with a solid steel door, a bunk, a toilet, and a sink. Human contact is restricted to brief interactions with corrections officers and, for some prisoners, occasional encounters with healthcare providers or attorneys. Family visits are limited; almost all human contact occurs while the prisoner is in restraints and behind a partition. Many prisoners are only allowed one visit per month, if any. The amount of time a person spends in solitary confinement varies, but can last for months, years, or even decades.

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

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

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

Solitary confinement is used to punish individuals who have violated rules, or to isolate those considered too dangerous for general population. It is also sometimes used to “protect” prisoners who are perceived as vulnerable—such as youths, the elderly, or individuals who identify as or are perceived to be lesbian, gay, bisexual, transgender or intersex (LGBTI).

B. The detrimental effects of solitary confinement
Solitary confinement is widely recognized as extremely harmful. Indeed, people held in solitary confinement experience a variety of negative physiological and psychological reactions: hypersensitivity to stimuli, perceptual distortions and hallucinations, increased anxiety and nervousness, revenge fantasies, rage, and irrational anger, fears of persecution, lack of impulse control, severe and chronic depression, appetite loss and weight loss, heart palpitations, withdrawal, blunting of affect and apathy, talking to oneself, headaches, problems sleeping, confusing thought processes, nightmares, dizziness, self-mutilation, and lower levels of brain function, including a decline in EEG activity after only seven days in solitary confinement. Additionally, suicide rates and incidents of self-harm are much higher for prisoners in solitary confinement. A February 2014 study by the American Journal of Public Health found that detainees in solitary confinement in New York City jails were nearly seven times more likely to harm themselves than those in general population, and that the effect was particularly pronounced for juveniles and people with severe mental illness; in California prisons in 2004, 73% of all suicides occurred in isolation units—though these units accounted for less
than 10% of the state’s total prison population. Recognizing these dangers, professional organizations including the American Psychiatric Association, Mental Health America, the National Alliance on Mental Illness, and the Society of Correctional Physicians have issued formal policy statements opposing long-term solitary confinement, especially for prisoners with mental illness.

C. People with mental illness are dramatically overrepresented in solitary confinement

There is a common misconception that prisoners in solitary confinement are dangerous, the “worst of the worst,” but few actually meet this description. If the use of solitary confinement were restricted solely to the violent and predatory, most supermax prisons and isolation units would stand virtually empty. One major reason for the overuse of solitary confinement in U.S. prisons today is that elected officials pushed to build supermax facilities and segregation units based on a desire to appear “tough on crime,” rather than on actual need. Many states built large facilities they didn’t need, and now fill the cells with relatively low-risk prisoners. Sadly, the thousands of people in solitary confinement include many with severe mental illness or cognitive disabilities, who find it difficult to function in prison settings or to understand and follow prison rules. For example, Indiana prison officials admitted in 2005 that “well over half” of the state’s supermax prisoners suffer from mental illness. On average, researchers estimate that at least 30% of prisoners held in solitary confinement suffer from mental illness. Solitary confinement is psychologically difficult for everyone, but it is devastating for those with mental illness, and can cause them to deteriorate dramatically. Many engage in extreme acts of self-injury and sometimes suicide. It is not unusual for prisoners in solitary confinement to compulsively cut their flesh, bang their heads against walls, swallow razors and other harmful objects, or attempt to hang themselves. In Indiana’s supermax, a prisoner with mental illness killed himself by self-immolation; another man choked himself to death with a washcloth. These shattering impacts of solitary confinement are all too common in similar facilities across the country, and have been well documented. Federal courts have repeatedly held that placing individuals with serious mental illness in such conditions is cruel and unusual punishment under the Eighth Amendment to the Constitution.

D. Thousands of children are subjected to the damaging effects of solitary confinement

Children in both the adult and juvenile systems are routinely subjected to solitary confinement. In adult prisons and jails, youth are often placed in “protective custody” for safety reasons. Despite the prevalence of youth under the age of 18 in adult facilities in the United States—estimated at more than 95,000 in 2011—most adult correctional systems offer few alternatives to solitary confinement as a means of protecting youth. Young people may spend weeks, months, even years in solitary. In addition to “protective custody,” youth in adult facilities may also be isolated as punishment for violating rules designed to manage adult prisoners. In many juvenile facilities, isolation is also used to punish disciplinary infractions. These sanctions can last for hours, days, weeks, or longer and often permit abusive isolation practices. Children are even more vulnerable to the harms of prolonged isolation than adults. Young people’s brains are still developing, placing them at higher risk of psychological harm when healthy development is impeded. Children experience time differently than adults; they need social stimulation. Many youth enter the criminal justice system with histories of substance abuse, mental illness, and trauma, problems which often go untreated in isolation, exacerbating
A tragic consequence of the solitary confinement of youth is the increased risk of suicide and self-harm, including self-mutilation. In juvenile facilities, more than 50% of all suicides occur in isolation. For youth in adult jails, suicide rates in isolation are nineteen times those for the general population. At the same time, youth in isolation are routinely denied minimum education, mental health treatment, and nutrition, which directly affects their ability to successfully re-enter society and become productive adults.

Efforts are underway to end this practice. In June 2012, the Department of Justice issued national standards under the Prison Rape Elimination Act (PREA), stating that “the Department supports strong limitations on the confinement of adults with juveniles,” and mandating that facilities make “best efforts” to avoid isolating children. The U.S. Attorney General’s National Task Force on Children Exposed to Violence concluded in 2011, “nowhere is the damaging impact of incarceration on vulnerable children more obvious than when it involves solitary confinement.” Internationally, the U.N. Special Rapporteur on Torture has called for a global ban on the solitary confinement of children under 18. Human Rights Watch and the ACLU have also called on the United States to ban this practice.

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

Unfortunately, solitary confinement has become the default correctional management tool to protect LGBTI individuals from violence in general population. Particularly for transgender women, who are routinely housed in men’s facilities, entire prison sentences are often spent in solitary confinement. In a typical case, Andrea, a transgender woman in a New York State men’s prison, was involuntarily placed in “protective custody,” rather than receiving a meaningful classification assessment. Prison officials’ recommendation for Andrea stated, “Based on the Inmate being transgendered, and his likeness to a female, the likelihood of him being victimized is great. The inmate both looks and sounds like a female, therefore I recommend his protective custody to prevent any harm based on his looks and transgendered status.” Andrea, like many transgender women, remained in isolation for her entire three-year sentence and reported ongoing sexual harassment from officers and severe anxiety and depression.

While correctional officials often justify the use of solitary confinement as necessary protection for vulnerable LGBTI prisoners, the effects of such placements are devastating. These placements also fail to keep vulnerable individuals safe. In addition to the stigma of being isolated solely based on one’s actual or perceived LGBTI status, LGBTI individuals in “protective” isolation experience the same mental health deterioration that typically characterizes solitary confinement, are denied access to medically necessary healthcare and programs, and are at increased risk of assault and harassment from officers. Though the final PREA standards impose strict limits on the use of “protective custody,” correctional agencies continue to house LGBTI individuals in isolation almost as a matter of course. And while the PREA regulations recognized that solitary confinement for LGBTI prisoners can be psychologically damaging and physically dangerous, we continue to hear reports of this practice and its devastating effects from LGBTI prisoners and detainees.

F. Solitary confinement on death row is overused and thwarts vital appellate processes

Nationally, more than 3,000 prisoners are confined on death rows in 35 states. According to the ABA Standards for the Treatment of Prisoners, death row prisoners may be separated from other prisoners, but should be housed in conditions comparable to those in general population. Solitary
confinement should be used only for brief periods for reasons related to discipline, security, or crime. Despite this clear standard, the overwhelming majority of death-penalty states house death row prisoners in what amounts to solitary confinement. The vast majority of these states confine death row prisoners in segregation or solitary-type conditions based solely on their death sentences. Simply put, they are condemned to solitary for life, a kind of death before dying. This is of singular concern. While solitary confinement is overused in virtually every type of penal or detention facility in the United States, in no other circumstance is solitary confinement automatically and irrevocably imposed.

Death row is not supposed to be a locus of punishment itself, but rather the place where a state houses a condemned prisoner until all of his appeals are concluded, all process due has been observed, and all doubts concerning his execution resolved. This appellate process is invaluable in preventing the execution of the innocent, and those unconstitutionally or otherwise unlawfully sentenced to death. Death row conditions endured during these appeals are the same for the guilty and innocent, for those properly and improperly sent to death row. Change, however, is afoot. United States District Judge Leonie Brinkema recently ruled that Virginia’s automatic placement of death-row prisoners in solitary confinement—without any process in which the prisoner could challenge the placement, and certainly without respect to their dangerousness, misconduct, or any other individualized reason—violates the right to due process guaranteed by the Constitution. In Texas, the Department of Criminal Justice, prison guard unions, and advocates are currently discussing revisions to the Texas Death Row Plan, including limiting solitary confinement to those prisoners who break the rules.

G. Solitary confinement is inconsistent with international human rights principles
The U.N. Committee Against Torture, established to monitor compliance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment—a treaty ratified by the United States in 1994—has recommended that the practice of long-term solitary confinement be abolished altogether and has criticized solitary confinement practices in the United States. Moreover, in a groundbreaking global study on solitary confinement, the U.N. Special Rapporteur on Torture called for a ban on the practice, except in exceptional circumstances, as a last resort, and for as short a time as possible. He also called for increased safeguards against abusive and prolonged solitary confinement, the universal prohibition of solitary confinement exceeding 15 days, and the discontinuance of solitary confinement for juveniles and mentally disabled persons. The Special Rapporteur has repeatedly requested that the U.S. government grant him access to conduct an investigation of solitary confinement practices in the United States; his request has yet to be granted.

II. The Federal Bureau of Prisons overuses solitary confinement
Recent years have seen increased attention to solitary confinement in the federal Bureau of Prisons (BOP), which as the nation’s largest prison system that holds about 15,000 prisoners in solitary confinement. Following the first-ever Congressional hearing on solitary confinement, in June 2012, Senator Dick Durbin (D-IL), announced in February 2013 that the BOP had agreed to an independent and comprehensive review of its use of solitary. Reports of the audit’s findings, however, have yet to be made public.

In May 2013 the Government Accountability Office (GAO), an independent investigative agency of Congress, issued a damning report on BOP’s use of solitary confinement. The report found
that, despite BOP’s extensive use of segregated housing (7% of BOP’s 217,000 prisoners), BOP has never assessed whether the practice contributes to prison safety. Nor has BOP assessed the psychological effects of long-term segregation, although its Psychology Services Manual notes that extended periods in segregation “may have an adverse effect on the overall mental status of some individuals.” The report concluded that BOP does not adequately monitor segregated housing to ensure that prisoners receive food, out-of-cell exercise, and other necessities. Moreover, these assessments confirm other criticisms of BOP’s segregation practices. In June 2012, eleven prisoners at ADX Florence, BOP’s supermax prison in Colorado, filed a class-action lawsuit on behalf of all individuals with mental illness held at the facility; the lawsuit alleges that, contrary to BOP’s written policies, prisoners with mental illness are routinely assigned to ADX, and are unconstitutionally denied necessary treatments. The complaint describes frequent incidents of self-harm and highly symptomatic behavior among the prisoners with mental illness who are held at ADX.

In spite of these criticisms, and although the independent study of BOP’s use of solitary confinement is not yet complete, the system will soon significantly expand its capacity to house prisoners in conditions of extreme solitary confinement. In October 2012, BOP acquired an existing, non-operational maximum security state prison in Illinois, Thomson Correctional Center, which has a reported 1,600 cells. During a November 2013 Senate Judiciary Hearing, BOP Director Charles Samuels indicated that the agency was planning to bring Thomson online as an operational ADX facility. While BOP is preparing to add more ADX beds, the existing ADX facility in Florence, Colorado, which houses prisoners in the most extreme forms of isolation in the federal system, has a reported capacity of 490 supermax beds, of which 413 are now in use. Opening Thomson as an ADX would therefore represent a significant and unnecessary expansion of BOP’s capacity to subject prisoners to extreme, long-term solitary confinement.

Meanwhile, BOP appears to be mandating a solitary confinement quota in its privately contracted facilities. BOP contracts with fifteen low- and minimum-custody private prisons in its system, which together house nearly 30,000 prisoners. Two of these contracts in particular, and BOP’s 2012 CAR XIV solicitation for an additional 1,000 private prison beds, appear to give private prison companies a financial incentive to place excessive numbers of prisoners in isolation by requiring that at least 10% of “contract beds” be located in Special Housing Unit (SHU) cells while compensating the facilities based on the number of beds filled. These cells are specifically meant to house prisoners in isolation. And because BOP does not generally house prisoners under age 18 in its custody, children in federal custody are also held in contract facilities, under terms that do not necessarily ban the use of solitary confinement. 

III. Solitary Confinement is Costly and Jeopardizes Public Safety
Solitary confinement serves no demonstrable correctional purpose, yet costs more than any other form of imprisonment. There is little evidence on the utility of solitary confinement. A 2006 study found that opening a supermax prison or SHU had no effect on prisoner-on-prisoner violence in Arizona, Illinois, and Minnesota, and that creating isolation units had only limited impact on prisoner-on-staff violence in Illinois, none in Minnesota, and actually increased violence in Arizona. A similar study in California found that supermax or administrative segregation prisons had increased violence levels. Some researchers have concluded that the severe restrictions in solitary confinement increase violence and engender other behavioral
problems. Although there is little evidence that solitary confinement is an effective prison management tool, there is ample evidence that it is the most expensive. Supermax prisons and segregation units can cost two or three times as much as conventional facilities to build and operate. Staffing costs are much higher—prisoners are generally escorted by two or more officers any time they leave their cells, and work that in other prisons would be performed by prisoners (such as cooking and cleaning) is done by staff. A 2007 estimate from Arizona put the annual cost of holding a prisoner in solitary confinement at approximately $50,000, compared to about $20,000 for the average prisoner. In Maryland, the average cost of housing a prisoner in segregation is three times greater than in a general population facility; in Ohio and Connecticut it is twice as high; and in Texas the costs are 45% greater.

Not only is there little evidence that the enormous outlay of resources for these units makes prisons safer, there is growing concern that such facilities are actually detrimental to public safety. The pervasive use of solitary confinement means that thousands of prisoners return to their communities after months or years in isolation, emerging without social skills or life skills that would make them better citizens. A 2006 commission raised concerns regarding the practice of releasing prisoners directly from segregation settings to the community, and a 2006 study of prisoners in solitary confinement noted that such conditions may “severely impair . . . the prisoner’s capacity to reintegrate into the broader community upon release from imprisonment.”

Indeed, release directly from isolation strongly correlates with an increased risk of recidivism. Preliminary research from California suggests that rates of return to prison are 20% higher for solitary confinement prisoners. In Colorado, two-thirds of prisoners released directly from solitary confinement returned to prison within three years; prisoners who first transitioned from solitary confinement to the general prison population were 6% less likely to recidivate in the same period. A 2001 study in Connecticut found that 92% of prisoners who had been held at the state’s supermax prison were rearrested within three years of release, compared with 66% of prisoners who had not been held in administrative segregation. Another study, in Washington State, tracked 8,000 former prisoners upon release and found that, not only were those who came from segregation more likely to reoffend, but they were also more likely to commit violent crimes. Findings like these, suggesting a link between recidivism and the debilitating conditions in segregation, have led mental health experts to call for prerelease programs to help prisoners held in solitary confinement transition to the community more safely.

**IV. There are Better Alternatives to Solitary Confinement**

**A. State-level reforms reduce the use of solitary confinement**

Numerous states have taken steps to investigate, monitor, reduce, and reform their use of solitary. These reforms have resulted from agency initiative as well as legislative action. A growing number of state corrections officials have taken direct steps to regulate the use of solitary confinement, especially as it relates to mental health issues and potential litigation. Responding to litigation that was settled in 2012, the Massachusetts Department of Correction rewrote its mental health care policies to exclude prisoners with severe mental illness from long-term segregation and designed two maximum security mental health treatment units to divert the mentally ill out of segregated housing. In Colorado, as of December 2013, all state wardens have been directed that any prisoners with “major mental illness” are no longer to be placed in
administrative segregation. By the end of 2013, facing mounting public scrutiny of its overuse of solitary confinement, the New York City Department of Correction had reassigned all detainees with mental illness in “punitive segregation” at Rikers Island jail to units with more therapeutic resources. In 2007, a New York State solitary confinement law went into effect; the law excludes prisoners with serious mental illness from solitary confinement, requires mental health monitoring of all prisoners in disciplinary segregation, and creates a non-disciplinary unit for prisoners with psychiatric disabilities where a therapeutic milieu is maintained and prisoners are subject to the least restrictive environment consistent with their needs and mental status.

State correctional leaders have also undertaken more comprehensive reforms to their use of solitary confinement. Last week, the New York State Department of Corrections and Community Supervision announced an agreement with the New York Civil Liberties Union to reform the way solitary confinement is used in New York State’s prisons, with the state taking immediate steps to remove youth, pregnant women, and the developmentally disabled and intellectually challenged prisoners from extreme isolation. With the agreement, New York State becomes the largest prison system in the country to prohibit the use of punitive solitary confinement against prisoners under 18. In January 2013, Illinois shuttered its notorious supermax prison, Tamms Correctional Center, a move that will reportedly save the state over $20 million per year. In November 2013, New Mexico’s corrections secretary outlined a plan to relocate nonviolent prisoners out of segregation, and to relocate “protective custody” prisoners to a separate general-population cluster, cutting the state’s segregation population by half over the next year. Almost 10 percent of New Mexico’s 7,000 prisoners are currently held in segregated housing, and a recent ACLU report condemned the state’s overuse of segregation.

Reforms to the use of solitary confinement in juvenile justice facilities are also underway. In June 2013, the governor of Nevada signed into law new restrictions on the isolation of youth in juvenile facilities; the law places reporting requirements on the use of isolation, and forbids holding a child in room confinement for longer than 72 hours. In 2012, West Virginia’s governor signed into law an outright ban on the use of punitive isolation in juvenile facilities.

State legislatures are calling for studies to address the impact of solitary confinement. In May 2013, the Texas legislature passed a bill requiring an independent commission to take a comprehensive look at the use of solitary confinement in adult and juvenile facilities across the state. In 2011, the Colorado legislature required a review of administrative segregation and reclassification efforts for prisoners with mental illness or developmental disabilities. In 2011, the New Mexico legislature mandated a study on solitary confinement’s impact on prisoners, its effectiveness as a prison management tool, and its costs. Similarly, in 2012 the Lieutenant Governor of Texas commissioned a study on the use of administrative segregation in the Texas Department of Criminal Justice, including the reasons for its use, its impact on public safety and prisoner mental health, possible alternative prison management strategies, and the need for greater reentry programming for the population. In 2012, the Virginia Senate passed a joint resolution mandating a legislative study on alternative practices to limit the use of solitary
confinement, cost savings associated with limiting its use, and the impact of solitary confinement on prisoners with mental illness, as well as alternatives to segregation for such prisoners.\textsuperscript{119}

\textbf{B. ICE implements greater oversight of solitary confinement in all facilities}

U.S. Immigration and Customs Enforcement (ICE) has since September 2013 imposed monitoring requirements and substantive limits on the use of solitary confinement, providing an example for reform which BOP should strive to emulate. The directive, which applies to over 250 immigration detention facilities, requires that any placement in solitary confinement for longer than 14 days receive field office director approval; it also places substantive safeguards on “protective” segregation of vulnerable individuals.\textsuperscript{120} Because ICE is comparable to BOP in many ways, including its extensive national network of facilities and private contract facilities, the ICE directive sets a strong example of rigorous monitoring and substantive requirements which BOP can and should follow.

\textbf{C. ABA Standards provide a model for broad reforms}

Recognizing the inherent problems of solitary confinement, the American Bar Association recently approved Standards for Criminal Justice, Treatment of Prisoners to address all aspects of solitary confinement (the Standards use the term “segregated housing”).\textsuperscript{121} The solutions presented in the Standards represent a consensus view of representatives of all segments of the criminal justice system who collaborated exhaustively in formulating the final ABA Standards.\textsuperscript{122} These solutions include the provision of adequate and meaningful process prior to placing or retaining a prisoner in segregation (ABA Treatment of Prisoners Standard 23-2.9 [hereinafter cited by number only]); limitations on the duration of disciplinary segregation and the least restrictive protective segregation possible (23-2.6, 23-5.5); allowing social activities such as in-cell programming, access to television, phone calls, and reading material, even for those in isolation (23-3.7, 23-3.8); decreasing sensory deprivation by limiting the use of auditory isolation, deprivation of light and reasonable darkness, and punitive diets (23-3.7, 23-3.8); allowing prisoners to gradually gain more privileges and be subject to fewer restrictions, even if they continue to require physical separation (23-2.9); refraining from placing prisoners with serious mental illness in segregation (23-2.8, 23-6.11); careful monitoring of prisoners in segregation for mental health deterioration and provision of appropriate services for those who experience such deterioration (23-6.11).

\textbf{V. Recommendations}

1. The ACLU urges Congress to enact legislation that would establish a commission to create national standards to address to overuse of solitary confinement in federal, state and local prisons, jails and other detention facilities. This commission would conduct a comprehensive study of the use of solitary confinement in corrections and detention facilities across the country, the impact of the practice on cost, facility safety, incidents of self-harm, and recidivism. In addition, the commission would develop national standards to address the overuse of solitary confinement. The Department of Justice would take the commission’s recommendations and create regulations that ensure the development of smart, humane and evidence-based best practices that will limit the use of all forms of isolation and solitary confinement, and ban the practice for children under the age of 18, persons with mental illness, and other vulnerable individuals.
2. The ACLU urges Congress to pass legislation to require reforms to the use of solitary confinement in federal facilities operated by or contracted with BOP. This legislation should include a BOP ban on the solitary confinement of juveniles held in federal custody and prisoners with mental illness. BOP should be required to reduce its use of solitary confinement and other forms of isolation in federal prisons by implementing reforms based on the standards for long-term segregated housing established by the American Bar Association’s Standards for Criminal Justice, Treatment of Prisoners, as well as the findings of the Government Accountability Office (GAO), and the ongoing study of BOP’s use of segregation being conducted by outside contractors. Consistent with this type of legislation that would require reforms to the use of solitary confinement, BOP’s newly acquired facility at Thomson, Illinois, should not be designated for use as an ADX (supermax) facility. Instead, it should be converted for use as a lower custody, general population prison.

3. The ACLU urges Congress to engage in increased federal oversight and monitoring of BOP’s use of solitary confinement and provide more funding to the agency for alternatives to solitary confinement in order to further the goals of transparency and substantive reform. A necessary first step toward reform is the promotion of transparency in segregation practices. Greater accountability would empower citizens, taxpayers, lawmakers, and corrections officials to make informed choices about the use of segregation, a practice which has been shrouded in secrecy and therefore subject to abuse.

4. The ACLU urges Congress to enact legislation that would require federal, state, and local prisons, jails, detention centers, and juvenile facilities to report to the Bureau of Justice Statistics (BJS) who is held in solitary confinement and for what reason and the length of their segregation. BJS should annually publish the statistical analysis and present a comprehensive review of the use of solitary confinement in the United States.

5. The ACLU urges Congress to provide federal funding through the Bureau of Justice Assistance (BJA) or other entity to support federal, state, and local efforts to reduce the use of solitary confinement, with a focus on programming and other alternatives.

6. The ACLU urges Congress to conduct oversight into why the Department of State has not yet granted the United Nations Special Rapporteur on Torture an official invitation to visit the United States to examine the use of solitary confinement in U.S. prisons and detention facilities. Also, the Congress should inquire about the State Department’s role in the overdue process of updating the United Nations Standard Minimum Rules for the Treatment of Prisoners (SMRs). New provisions of the SMRs should include a ban on solitary confinement of juveniles and individuals with serious mental illness and protect against prolonged solitary confinement for all persons.

ENDNOTES
3 In re Medley, 134 U.S. 160, 168 (1890) (“Prisoners subject to solitary confinement fell, after even a short confinement, into a semi-fatuous condition, from which it was next to impossible to arouse them, and others became violently insane; others still, committed suicide; while those who stood the ordeal better were not generally reformed, and in most cases did not recover sufficient mental activity to be of any subsequent service to the community.”).
4 Mears, supra note 1, at ii.
7 Id.
8 Id.
11 Id. at Standard 23-1.0(o).
15 Grassian, supra note 12, at 1453; Holly A. Miller & Glenn R. Young, Prison Segregation: Administrative Detention Remedy or Mental Health Problem?, 7 CRIM. BEHAV. & MENTAL HEALTH 85, 91 (1997); Haney, supra note 13, at 130, 134; see generally HANS TOCH, MOSAIC OF DESPAIR: HUMAN BREAKDOWN IN PRISON (1992).
16 Grassian, supra note 12, at 1453.
17 Id.; Miller & Young, supra note 15, at 92.
18 Grassian, supra note 12, at 1453; Miller & Young, supra note 15, at 92; Haney, supra note 13, at 131.
19 Haney, supra note 13, at 130; see generally Korn, supra note 13.
20 Haney, supra note 13, at 131.
21 Miller & Young, supra note 15, at 91; see generally Korn, supra note 13.
22 Miller & Young, supra note 15, at 91; see generally Korn, supra note 13.
23 Haney, supra note 13, at 134; see generally Brodsky & Scogin, supra note 14.
24 Haney, supra note 13, at 133.
25 Id.
26 Haney, supra note 13, at 137; see generally Brodsky & Scogin, supra note 14.
27 Haney, supra note 13, at 133.
28 Id.
29 Grassian, supra note 12, at 1453; Lanes, supra note 6, at 539-40.
using


Kurki & Morris, supra note 9, at 391.

Id. at 390-91.


Haney, supra note 13, at 127.


52 Id.


Id. Correspondence on file with authors.


National Standards to Prevent, Detect and Respond to Prison Rape, supra note 51.

Unfortunately, LGBTI detainees in immigration detention facilities are not covered by the PREA regulations.


Transgender and gay detainees are already at higher risk of sexual violence and inadequate medical care while in immigration detention. Id. at 23. On top of those concerns, LGBTI detainees are often subjected to long-term “protective custody” – extended periods of isolation, sometimes for 23 hours per day, and harsh treatment by detention officials. See Immigration Equality, Conditions of Detention, http://www.immigrationequality.org/issues/detention/conditions-of-detention/ (last visited June 15, 2012).


During the June 2012 Senate hearing on solitary confinement, Charles E. Samuels, Jr., Director of the Federal Bureau of Prisons, stated that seven percent of the total federal prison population is held in solitary confinement. With a current federal prison population of approximately 217,000, this means that 15,190 prisoners are being held in isolation in federal facilities. See Reassessing Solitary Confinement: The Human Rights, Fiscal, And Public Safety Consequences: Hearing before the Subcomm. on the Constitution, Civil Rights, and Human Rights of the S. Comm. on the Judiciary, 112th Cong. 12 (2012) (verbal exchange between Charles E. Samuels, Jr. and Sen. Al Franken (D-MN)).


See Video recording of Charles Samuels, Jr., testifying at Senate Judiciary Committee Hearing SD-226, Nov. 11, 2013, at 52:00-54:00, available at http://www.senate.gov/isvp/?comm=judiciary&type=live&filename=judiciary110613 (discussing BOP’s need for more ADX beds in the context of Thomson). See also Press Release, Durbin, Bustos: Robust Funding for Prison Activation in Omnibus Appropriations Bill is Good News for Thomson, Jan. 13, 2014, http://www.durbin.senate.gov/public/index.cfm/pressreleases?ID=e0120b76-bfc9-4f5c-9655-1d76fe3202ee (“In July 2013, the Senate Appropriations Committee, of which Durbin is a member, approved funding for the activation of the Thomson correctional facility at the level that was requested by President Obama in his Fiscal Year 2014 budget proposal which was delivered to Congress last April.”); Budget for Fiscal Year 2014 at 730, Department of Justice, available at http://www.whitehouse.gov/sites/default/files/omb/budget/fy2014/assets/jus.pdf (requesting “$166.3 million in program enhancements to begin the activation process for three institutions (Federal Correctional Institution at Hazelton, West Virginia, United States Penitentiary at Yazoo City, Mississippi, and ADX United States Penitentiary at Thomson, Illinois”).


Mears, supra note 1, at 1-2.

See kurki & morris, supra note 9, at 391; Miller & Young, supra note 15.


Id.

See Reiter, supra note 5, at 44-46.

See Reiter, supra note 5, at 2 (noting that in California nearly 40% of segregated prisoners are released directly to the community without first transitioning to lower security units); O’Keeffe, supra note 5, at 23 (noting that Colorado also releases about 40% of its supermax population directly to the community).


Id.

See Reiter, supra note 5, at 25.

See Press Release, U.S. District Court Approves Settlement Reached in Five-Year Litigation Over Solitary Confinement of Mentally Ill Prisoners, Bingham McCutchen (Apr. 12, 2012), available at http://www.dlc-ma.org/prisonsettlement/index.htm (“As a result of the litigation, DOC already has implemented significant systemic reforms, including a mental health classification system, a policy to exclude inmates with severe mental illness from long-term segregation, and the design and operation of two maximum security mental health treatment units as alternatives to segregation.”); Settlement Agreement, Disability Law Center, Inc. v. Massachusetts Department of Correction, et al., Civil Action No. 07-10463 (MLW).

See Memorandum from Lou Archuleta, Interim Director of Prisons, Colorado Department of Corrections, to Wardens, Offender Services (Dec. 10, 2013) (directing wardens to no longer refer prisoners with “major mental illness” or “MMI Qualifiers” to administrative segregation, reproducing the wording of a new administrative code section describing the policy, and noting that the Department is “working to move” MMI prisoners out of administrative segregation), available at http://nyclu.org/sites/default/files/Memo%20Mental%20Health%20Qualifiers%20Ad%20Seg%20MEMO%20%2082%29.pdf.


See N.Y. MENTAL HYGIENE LAW § 45.07(z) (2011); N.Y. CORRECTION LAW §§ 137, 401, 401(a) (2008).


In Main, tighter controls and approval requirements on the use of SMUs, as well as expanded programming options, led to SMU population reductions of over 50%. See Lance Tapley, Reform Comes to the Supermax, PORTLAND PHOENIX, May 25, 2011, available at http://portland.thephoenix.com/news/121171-reform-comes-to-the-supermax/.

In Michigan, new segregation parameters have led to fewer violent incidents. See Jeff Gerritt, Pilot Program in UP Tests Alternatives to Traditional Prison Segregation, DETROIT FREE PRESS, January 1, 2012, available at www.freep.com/idfp/unique=1326226266727.


http://www.capitol.state.tx.us/billlookup/Text.aspx?LegSess=83R&Bill=SB1003#


ABA Standards, supra note 10, Standard 23-2.9.

Id. Numerous other professional organizations—medical, correctional, psychological experts, as well as human rights organizations and others—oppose the practice of long-term solitary confinement, particularly as it is used to warehouse prisoners who suffer from mental illness and those who are vulnerable due to their age or other characteristics. See Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Interim Rep. of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, U.N. Doc A/66/268, ¶¶ 76-78 (Aug. 5, 2011) (asserting that solitary confinement for longer than 15 days constitutes torture, and that juveniles and people with mental illness should never be held in solitary confinement); AMERICAN ACADEMY OF CHILD AND ADOLESCENT
torture or extended solitary confinement”).

PolicyPlatform http://www.natcom.org/uploadedFiles/About_NCA/Leadership_and_Governance/Public_Policy_Platform/PDF-
PolicyPlatform-Resolution_Regarding_Extended_Solitary_Confinement_and_Torture.pdf (“condemn[ing] any use of
torture or extended solitary confinement”).

PSYCHIATRY, SOLITARY CONFINEMENT OF JUVENILE OFFENDERS, supra note 32; AMERICAN PSYCHIATRIC ASSOCIATION,
POSITION STATEMENT ON SEGREGATION OF PRISONERS WITH MENTAL ILLNESS, supra note 32; AMERICAN PUBLIC HEALTH
ASSOCIATION, SOLITARY CONFINEMENT AS A PUBLIC HEALTH ISSUE, supra note 32; MENTAL HEALTH AMERICA,
SECLUSION AND RESTRAINTS, POLICY POSITION STATEMENT 24, supra note 32; NATIONAL ALLIANCE ON MENTAL ILLNESS,
PUBLIC POLICY PLATFORM SECTION 9.8, supra note 32, SOCIETY OF CORRECTIONAL PHYSICIANS, POSITION STATEMENT,
RESTRICTED HOUSING OF MENTALLY ILL INMATES , supra note 32; NEW YORK STATE COUNCIL OF CHURCHES,
RESOLUTION OPPOSING THE USE OF PROLONGED SOLITARY CONFINEMENT IN THE CORRECTIONAL FACILITIES OF NEW
YORK STATE AND NEW YORK CITY (2012), available at https://sites.google.com/site/nyscouncilofchurches/priorities/on-
solitary-confinement; PRESBYTERIAN CHURCH (USA), COMMISSIONERS’ RESOLUTION 11-2, ON PROLONGED SOLITARY
CONFINEMENT IN U.S. PRISONS (2012), available at https://pc-
biz.org/MeetingPapers/(S(em2ohnl5h5sdehz2rjteqxtn))/Explorer.aspx?id=4389 (urging all members of the faith to
participate in work to “significantly limit the use of solitary confinement”); RABBINICAL ASSEMBLY, RESOLUTION ON
PRISON CONDITIONS AND PRISONER ISOLATION (2012), available at http://www.rabbinicalassembly.org/story/resolution-
prison-conditions-and-prisoner-isolation?tp=377 (calling on prison authorities to end prolonged solitary confinement, and
the solitary confinement of juveniles and of people with mental illness); AMERICAN BAR ASSOCIATION, ABA CRIMINAL
JUSTICE STANDARDS ON THE TREATMENT OF PRISONERS, STANDARDS 23-2.6-2.9, 23-3.8, 23-5.5 (2010), available at
(limiting acceptable rationales for segregated housing and long-term segregated housing, stating that no prisoners with
serious mental illness should be placed in segregation, requiring monitoring of mental-health issues in segregation, and
requiring certain procedures for placement in long-term segregation, generally characterizing segregated housing as a
practice of last resort, and requiring social interaction and programming for those placed in segregation for their own
protection); NEW YORK STATE BAR ASSOCIATION, COMMITTEE ON CIVIL RIGHTS REPORT TO THE HOUSE OF DELEGATES:
SOLITARY CONFINEMENT IN NEW YORK STATE 1-2, RESOLUTION (2013), available at http://www.nysba.org/WorkArea/DownloadAsset.aspx?id=26699 (calling on state officials to significantly limit the use of
solitary confinement, and recommending that solitary confinement for longer than 15 days be proscribed); NATIONAL
COMMUNICATION ASSOCIATION, RESOLUTION REGARDING EXTENDED SOLITARY CONFINEMENT AND TORTURE (2010),
available at http://www.natcom.org/uploadedFiles/About_NCA/Leadership_and_Governance/Public_Policy_Platform/PDF-
PolicyPlatform-Resolution_Regarding_Extended_Solitary_Confinement_and_Torture.pdf (“condemn[ing] any use of
torture or extended solitary confinement”).