

EXHIBIT 9
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HB 536



Growing Up Locked Down

Youth in Solitary Confinement in Jails and Prisons Across the United States

HUMAN
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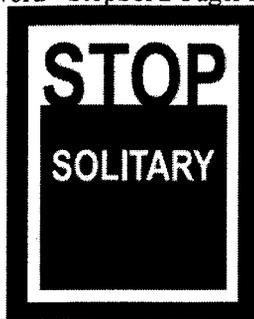
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END THE OVERUSE OF SOLITARY CONFINEMENT



What is solitary confinement? Solitary or "supermax" confinement is the practice of placing a prisoner alone in a cell for 22-24 hours a day with little human contact or interaction; reduced or no natural light; restriction or denial of reading material, television, radios and other property; severe limits on visitation; and the inability to participate in group activities. Almost all human contact occurs while the prisoner is in restraints and behind some sort of barrier.ⁱ

Who is in solitary confinement? There is a popular misconception that solitary is used only for the most violent and dangerous prisoners.ⁱⁱ Forty-four states and the federal government have supermax prisons, housing at least 25,000 people nationwide.ⁱⁱⁱ But this figure does not reflect the total number of prisoners held in solitary confinement in the United States on any given day. Using data from a census of state and federal prisoners conducted by the federal Bureau of Justice Statistics, researchers estimate that over 80,000 prisoners are held in "restricted housing," including prisoners held in administrative segregation, disciplinary segregation and protective custody – all forms of housing involving substantial social isolation.^{iv} The majority of individuals housed in isolated confinement are severely mentally ill or cognitively disabled.^v Low-risk "nuisance prisoners" are also housed in solitary because they have broken minor rules or filed grievances or lawsuits.^{vi} Children held in adult prisons are also held in solitary "for their own safety."^{vii} If the use of solitary confinement were restricted solely to the dangerous and the predatory, most supermax prisons would stand virtually empty.

What happens to people in solitary confinement? People placed in solitary exhibit a variety of negative psychological reactions, including severe and chronic depression;^{viii} self-mutilation;^{ix} decreased brain function;^x hallucinations;^{xi} and revenge fantasies.^{xii}

THE TRUTH ABOUT SOLITARY CONFINEMENT:

JEOPARDIZES PUBLIC SAFETY

Prisoners deprived of normal human contact cannot properly reintegrate into society, resulting in higher recidivism rates.^{xiii}

In California and Colorado, data show that nearly 40% of the supermax population is released directly from isolation into the community.^{xiv} Most states follow similar practices.

WASTES TAXPAYER DOLLARS

Building solitary confinement units costs two to three times more than conventional prisons.^{xv}

A 2007 estimate in Arizona put the annual cost of placing someone in supermax at \$50,000 compared to only \$20,000 for the average prisoner. In Texas it costs 45% more to house prisoners in solitary than in conventional prison.^{xvi}

INHUMANE AND HARMFUL

Solitary confinement causes and exacerbates mental illness, leading prisoners in solitary to attempt suicide at significantly higher rates than those in the general prison population.^{xvii}

The mentally ill often deteriorate catastrophically in solitary, leading courts to consistently find that subjecting the mentally ill to solitary is cruel and unusual punishment.^{xviii}

BETTER, MORE COST-EFFECTIVE ALTERNATIVES:

Since the vast majority of prisoners in solitary confinement are eventually released back into the community, it is imperative that we invest our limited public dollars in proven alternatives that lead to greater rehabilitation and pave the way for successful reentry and reintegration.

STATES SHOULD LIMIT THE USE OF SOLITARY CONFINEMENT IN PRISONS

Minimum Standards: The *American Bar Association Standards for Criminal Justice, Treatment of Prisoners* call for appropriate procedures prior to placing a prisoner in solitary; limiting the duration of solitary; decreasing extreme isolation; close mental health monitoring for people in solitary; and ending the solitary confinement of the mentally ill.^{xix}

Better Alternatives: The State of Mississippi diverted the mentally ill out of solitary confinement and reduced its supermax prison population by almost 90%, from 1,000 to 150 men, and eventually closed the unit entirely. As a result, violence rates dropped 70% and the state saves \$8 million annually.^{xx}

As the nation's largest public interest law organization, with affiliate offices in every state and a legislative office in Washington D.C., the ACLU works daily in courts, legislatures, and communities to promote smarter criminal justice policies.

Join our efforts today: www.aclu.org/stopsolitary

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

ⁱⁱ Leena Kurki & Norval Morris, *The Purposes, Practices, and Problems of Supermax Prisons*, 28 CRIME & JUST. 385, 391 (2001).

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

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

^v 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. 2, 2010 available at http://mostlywater.org/locking_down_mentally_ill_solitary_confinement_cells_have_become_america%E2%80%99s_new_asylums; MARY BETH PFEIFFER, CRAZY IN AMERICA: THE HIDDEN TRAGEDY OF OUR CRIMINALIZED MENTALLY ILL (2007).

^{vi} Kurki & Morris, *supra* note ii, at 411-12.

^{vii} WASH. COAL. FOR THE JUST TREATMENT OF YOUTH, A REEXAMINATION OF YOUTH INVOLVEMENT IN THE ADULT CRIMINAL JUSTICE SYSTEM IN WASHINGTON: IMPLICATIONS OF NEW FINDINGS ABOUT JUVENILE RECIDIVISM AND ADOLESCENT BRAIN DEVELOPMENT 8 (2009), available at http://www.columbialegal.org/files/JLWOP_cls.pdf.

^{viii} Stuart Grassian, *Psychopathological Effects of Solitary Confinement*, 140 AM J. OF PSYCHIATRY 1450 (1983); Craig Haney, *Mental Health Issues in Long-Term Solitary and "Supermax" Confinement*, 49 CRIME & DELINQUENCY 124, 131 (2003).

^{ix} Grassian, *supra* note vii; Haney, *supra* note vii; Lanes, *supra* note i.

^x Paul Gendreau et al., *Changes in EEG Alpha Frequency and Evoked Response Latency During Solitary Confinement*, 79 J. ABNORMAL PSYCH. 54, 57-58 (1972).

^{xi} Grassian, *supra* note vii; Lanes, *supra* note i.

^{xii} Grassian, *supra* note vii.

^{xiii} See, e.g., KERAMET REITER, PAROLE, SNITCH, OR DIE: CALIFORNIA'S SUPERMAX PRISONS & PRISONERS 50 (2006).

^{xiv} *Id.*; MAUREEN O'KEEFE, CO. DEPT. OF CORRECTIONS, ANALYSIS OF COLORADO'S ADMINISTRATIVE SEGREGATION 25 (2005).

^{xv} Mears, *supra* note iii, at 2.

^{xvi} CAROLINE ISAACS & MATTHEW LOWEN, AM. FRIENDS SERV. COMM., BURIED ALIVE: SOLITARY CONFINEMENT IN ARIZONA'S PRISONS & JAILS 4 (2007); Mears, *supra* note iii at 20, 26, 33.

^{xvii} See, e.g., Expert Report of Professor Craig Haney at 45-46, n.119, *Coleman v. Schwarzenegger/Plata v. Schwarzenegger*, No.: Civ. S 90-0520 LKK-JFM P, CO1-1351 TEH (E.D. Cal./N.D. Cal. Aug. 15, 2008).

^{xviii} See, e.g. HUMAN RIGHTS WATCH, ILL-EQUIPPED: U.S. PRISONS & OFFENDERS WITH MENTAL ILLNESS 149-53(2003); MADRID V. GOMEZ, 889 F. SUPP. 1146, 1265-66 (N.D. CAL. 1995).

^{xix} The full text of the Standards is available at

http://www.americanbar.org/publications/criminal_justice_section_archive/crimjust_standards_treatmentprisoners.html.

^{xx} Terry Kupers et al., *Beyond Supermax Administrative Segregation: Mississippi's Experience Rethinking Prison Classification and Creating Alternative Mental Health Programs*, 36 CRIM. JUST. & BEHAV. 1037, 1041, 1043 (2009); John Buntin, *Exodus: How America's Reddest State -- And its Most Notorious Prison -- Became a Model of Corrections Reform*, 23 GOVERNING 20, 27 (2010); Transcript of Proceedings at 8, *Presley v. Epps*, No. 4:05-CV-00148-JAD (N.D. Miss. Aug. 2, 2010).



FAQs - Prolonged Solitary Confinement in U.S. Prisons

Why should people of faith care about the use of prolonged solitary confinement?

All major religions recognize the inherent dignity of each human being and their capacity for redemption. Prolonged solitary confinement desecrates a person's inherent dignity, denies the essential human need for community, and impedes genuine rehabilitation.

What is the history of solitary confinement in the United States?

Dr. Benjamin Rush, Benjamin Franklin and several Quaker leaders first instituted solitary confinement at Walnut Street Jail in Philadelphia in the late 18th century, believing that total isolation and silence would lead to penitence (hence, the term 'penitentiary' was coined). That led to the building of the Southeastern Pennsylvania Penitentiary in 1829, which only had solitary confinement cells. However, instead of becoming penitent, the prisoners developed serious mental health problems. The Quakers recognized that solitary confinement caused severe psychological harm and apologized for their use of solitary confinement. Unfortunately, the U.S. has let history repeat. In 1983, Marion prison in Illinois instituted a permanent 'lock down' of their entire facility, in which inmates were confined alone in their cells for 23 hours per day. The use of solitary confinement has increased dramatically since then. In 1989, California built Pelican Bay State Prison to house prisoners exclusively in isolation (the first "supermax" prison). Today, there are 44 state-run supermax prisons and one federal supermax prison.

How does the United States use of solitary confinement compare to other nations?

The United States has become a world leader in holding prisoners in prolonged solitary confinement. The United States reportedly has five percent of the world's population, 25 percent of its prisoners, and the vast majority of prisoners in long-term solitary confinement.

How many prisoners are held in solitary confinement today?

Experts estimate that at least 80,000 people in the U.S. criminal justice system are held in solitary confinement. The 2006 Commission on Safety and Abuse in America's Prisons (the Commission), issued a report, *Confronting Confinement*, stating that from 1995 to 2000, the growth rate of segregation units significantly surpassed the prison growth rate overall: 40 percent compared to 28 percent.

How much does housing prisoners in solitary confinement cost compared to housing prisoners in the general prison population?

Experts have found housing a prisoner in solitary confinement can cost as much as \$50,000 more annually compared to general prison population housing, largely because solitary confinement units require significantly more staffing. The Commission reported that housing prisoners in solitary confinement units can double the cost of housing prisoners.

What does 'prolonged' solitary confinement mean?

It depends who says it. For the National Religious Campaign Against Torture (NRCAT), the term 'prolonged solitary confinement' is equated to torture — the point when the use of solitary confinement results in severe mental or physical pain or suffering.

In a 2011 report, the United Nations Special Rapporteur on Torture, Juan Mendez, cited 15 days as 'prolonged solitary confinement,' noting that some of the psychological effects caused by isolation become irreversible at that point.

The American Bar Association Standards for Criminal Justice defines 'long-term isolation' as 30 days or more, for the purpose of setting a deadline by which prisoners in solitary confinement are given increased due process protections.

Who is held in solitary confinement and why are they placed in isolation?

One would expect it to be only the 'worst of the worst.' While there are prisoners placed in solitary confinement due to extreme violent behavior, that is not the case for the majority. In some prisons, solitary confinement has become a default tool to manage prisoners who fail to follow prison rules. As a result, many mentally ill prisoners end up in solitary confinement, since this population has great difficulty understanding or following such rules, especially when their illnesses go untreated.

Is it possible to limit the use of solitary confinement and still keep prisons safe?

Yes, a growing number of states that have safely reformed their solitary confinement policies. For example, in Mississippi, the number of incidents involving prisoner-on-prisoner violence and prisoner-on-staff altercations fell drastically when corrections officials implemented significant reforms in 2007, limiting the use of solitary confinement. "The [segregated housing] environment . . . actually increases the levels of hostility and anger among inmates and staff alike," Donald Cabana, former Mississippi Warden, told the Commission in 2006. Maine Department of Corrections Commissioner, Joseph Ponte, ushered in reforms leading to a 70 percent reduction in Maine's solitary confinement population in 2011. "Over time, the more data we're pulling is showing that what we're doing now [through greatly reduced use of solitary confinement] is safer than what we were doing before," Ponte stated in a video interview with the National Religious Campaign Against Torture.

How does the use of solitary confinement impact reentry of prisoners into society?

Inmates who have been held in solitary confinement are significantly more likely to recommit crimes after they complete their sentences than prisoners who have been held in the general prison population. For example, a Washington state study of over 8,000 former prisoners found that people who were released directly from segregation had a much higher rate of recidivism than individuals who spent some time in the general prison population before returning to the community: 64 percent compared with 41 percent.

Go to www.nrcat.org/prisons to get involved with NRCAT's work on solitary confinement

The Washington Post

When Solitude is Torture

By George F. Will, Published: February 20, 2013

“Zero Dark Thirty,” a nominee for Sunday’s Oscar for Best Picture, reignited debate about whether the waterboarding of terrorism suspects was torture. This practice, which ended in 2003, was used on only three suspects. Meanwhile, tens of thousands of American prison inmates are kept in protracted solitary confinement that arguably constitutes torture and probably violates the Eighth Amendment prohibition of “cruel and unusual punishments.”

Noting that half of all prison suicides are committed by prisoners held in isolation, Sen. Richard Durbin (D-Ill.) has prompted an independent assessment of solitary confinement in federal prisons. State prisons are equally vulnerable to Eighth Amendment challenges concerning whether inmates are subjected to “substantial risk of serious harm.”

America, with 5 percent of the world’s population, has 25 percent of its prisoners. Mass incarceration, which means a perpetual crisis of prisoners re-entering society, has generated understanding of solitary confinement’s consequences when used as a long-term condition for an estimated 25,000 inmates in federal and state “supermax” prisons — and perhaps 80,000 others in isolation sections within regular prisons. Clearly, solitary confinement involves much more than the isolation of incorrigibly violent individuals for the protection of other inmates or prison personnel.

Federal law on torture prohibits conduct “specifically intended to inflict severe physical or mental pain or suffering.” And “severe” physical pain is not limited to “excruciating or agonizing” pain, or pain “equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily functions, or even death.” The severe mental suffering from prolonged solitary confinement puts the confined at risk of brain impairment.

Supermax prisons isolate inmates from social contact. Often prisoners are in their cells, sometimes smaller than 8 by 12 feet, 23 hours a day, released only for a shower or exercise in a small fenced-in outdoor space. Isolation changes the way the brain works, often making individuals *more* impulsive, *less* able to control themselves. The mental pain of solitary confinement is crippling: Brain studies reveal durable impairments and abnormalities in individuals denied social interaction. Plainly put, prisoners often lose their minds.

The first supermax began functioning in Marion, Ill., in 1983. By the beginning of this century there were more than 60 around the nation, and solitary-confinement facilities were in most maximum-security prisons. In an article (“Hellhole”) in the March 30, 2009, issue of the New Yorker, Atul Gawande, a surgeon who writes on public health issues, noted, “One of the paradoxes of solitary confinement is that, as starved as people become for companionship, the experience typically leaves them unfit for social interaction.” And those who are most

incapacitated by solitary confinement are forced to remain in it because they have been rendered unfit for “the highly social world of mainline prison or free society.” Last year, the New York Times reported that of the prisoners sent to solitary confinement in California’s Pelican Bay prison because of gang affiliation, “248 have been there for 5 to 10 years; 218 for 10 to 20 years; and 90 for 20 years or more.”

Two centuries ago, solitary confinement was considered a humane reform, promoting reflection, repentance — penitence; hence penitentiaries — and rehabilitation. Quakerism influenced the design of Philadelphia’s Eastern State Penitentiary, which opened in 1829 with a regime of strict solitude. In 1842, Charles Dickens visited it:

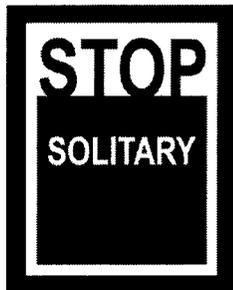
“I hold this slow and daily tampering with the mysteries of the brain, to be immeasurably worse than any torture of the body: and because its ghastly signs and tokens are not so palpable to the eye and sense of touch as scars upon the flesh; because its wounds are not upon the surface, and it extorts few cries that human ears can hear; therefore I the more denounce it, as a secret punishment which slumbering humanity is not roused up to stay.”

In 1890, the U.S. Supreme Court said of solitary confinement essentially what Dickens had said: “A considerable number of the prisoners 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.” Americans should be roused against this by decency — and prudence.

Mass incarceration is expensive (California spends almost twice as much on prisons as on universities) and solitary confinement costs, on average, three times as much per inmate as in normal prisons. And remember: Most persons now in solitary confinement will someday be back on America’s streets, some of them rendered psychotic by what are called correctional institutions.

Read more from George F. Will’s archive.

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STATE REFORMS TO LIMIT THE USE OF SOLITARY CONFINEMENT



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

The devastating human impacts of solitary confinement, scarcity of public dollars, and concerns for public safety demand that we take a second look at the practice of solitary confinement and explore more effective, humane, and less expensive alternatives.

SUCCESSFUL STATE MEASURES:

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

- In January 2013, the Illinois Department of Corrections (IDOC) closed its supermax prison, Tamms Correctional Center, which was designed to house prisoners in complete isolation. According to the IDOC, Tamms was selected to close in part because it was the most expensive facility to operate; it cost an average of over \$64,800 a year – more than three times the state average – to house an inmate at Tamms.³
- As a result of a government study, the **Maine** Department of Corrections recommended tighter controls on the use of special management units (SMUs). Due to subsequent reforms, the SMU population was cut by over 50 percent; expanded access to programming and social stimulation for prisoners was implemented; and personal approval of the Commissioner of Corrections is now required to place a prisoner in the SMU for longer than 72 hours.⁴
- Over the last few years, **Mississippi** has also revolutionized its use of solitary confinement. In the process, the state reduced the segregation population of one institution from 1000 to 150 and eventually closed the entire unit.⁵ Prison officials estimate that diverting prisoners from solitary confinement under Mississippi’s new model saves about \$8 million annually.⁶ At the same time, changes in the management of the solitary confinement population reduced violence levels by 70 percent.⁷
- The **Colorado** Legislature required a review of administrative segregation and reclassification efforts for prisoners with mental illness or developmental disabilities.⁸ At the same time, the Colorado Department of Corrections (CDOC) had an external review conducted of its administrative segregation policies and practices. As a result of the reforms implemented through this process in the last few months, CDOC has reduced its administrative segregation population by 36.9 percent.⁹ The CDOC recently announced the closure of a 316-bed

administrative segregation facility, which is projected to save the state \$4.5 million in Fiscal Year 2012-13 and \$13.6 million in Fiscal Year 2013-14.¹⁰

- Correctional leaders in **Michigan** reformed administrative segregation practices through incentive programs that reduced the length of stays in isolation, the number of prisoners subject to such segregation, and the number of incidents of violence and other misconduct. Reduction in segregation has produced better prisoner outcomes at less cost; segregation in Michigan costs nearly double what the state typically pays to incarcerate each prisoner.¹¹
- In **New Mexico** the state legislature mandated a study on solitary confinement's impact on prisoners, its effectiveness as a prison management tool, and its costs.¹² The Lieutenant Governor of **Texas** similarly commissioned a study on the use of administrative segregation in the Texas Department of Criminal Justice, including the reasons for its use, its impact on public safety and prisoner mental health, possible alternative prison management strategies, and the need for greater reentry programming for the population.¹³

NATIONAL STANDARDS FOR SUCCESSFUL REFORM:

In 2010, after a five-year period of drafting and development with input from judges, prosecutors, defense attorneys, corrections officials, civil liberties groups, and law professors, the American Bar Association approved the *Standards for Criminal Justice on the Treatment of Prisoners*.¹⁴ These standards provide comprehensive guidelines for reforming the use of solitary confinement, including:

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

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

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

³ "Tamms Correctional Center Closing-Fact Sheet." *Illinois Department of Corrections*. The State of Illinois. Available at: <http://www.ilga.gov/commission/cgfa2006/upload/TammsMeetingTestimonyDocuments.pdf> (p. 142 of 698)

⁴ Lance Tapley, *Reform Comes to the Supermax*, PORTLAND PHOENIX, May 25, 2011, available at <http://portland.the phoenix.com/news/121171-reform-comes-to-the-supermax/>.

⁵ Terry A. Kupers, et al., *Beyond Supermax Administrative Segregation: Mississippi's Experience Rethinking Prison Classification and Creating Alternative Mental Health Programs*, 36 CRIM. JUST. & BEHAV. 1037, 1041 (2009); John Buntin, *Exodus: How America's Reddest State - And Its Most Notorious Prison - Became a Model of Corrections Reform*, 23 GOVERNING 20, 27 (2010).

⁶ Transcript of Proceedings at 8, *Presley v. Epps*, No. 4:05-CV-00148-JAD (N.D. Miss. Aug. 2, 2010).

⁷ Kupers et al., *supra* note 4, at 1043.

⁸ S. B. 176, 68th Gen. Assem., Reg. Sess. (Colo., 2011).

⁹ COLORADO DEPARTMENT OF CORRECTIONS, REPORT ON IMPLEMENTATION OF ADMINISTRATIVE SEGREGATION PLAN 1-2 (2012), available at <https://www.aclu.org/prisoners-rights/report-co-docs-implementation-administrative-segregation-plan>; see also Denise Maes, *Guest Column: Solitary Confinement Reform is Welcome Sign of Progress*, COLORADO SPRINGS GAZETTE, Jan. 27, 2012, available at www.gazette.com/common/printer/view.php?db=colgazette&id=132524

¹⁰ News Release, Department of Corrections, *The Department of Corrections Announces the Closure of Colorado State Penitentiary II* (March 19, 2012), available at <http://www.doc.state.co.us/sites/default/files/Press%20release%20CSP%20II%20close%20%20Feb%201%202013.pdf>.

¹¹ Jeff Gerritt, *Pilot Program in UP Tests Alternatives to Traditional Prison Segregation*, DETROIT FREE PRESS, January 1, 2012, available at www.freep.com/fdcp/?unique=1326226266727.

¹² H. Mem. 62, 50th Leg., 1st Sess. (N.M. 2011).

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

¹⁴ ABA Standards for Criminal Justice, Treatment of Prisoners 23-1, et seq (2010), available at http://www.americanbar.org/publications/criminal_justice_section_archive/crimjust_standards_treatmentprisoners.html.

Reassessing Solitary Confinement
The Human Rights, Fiscal, and Public Safety Consequences
Commissioner Christopher Epps
Written Testimony
Public Hearing June 19, 2012
Dirksen Senate Office Building Room 226

I am Christopher B. Epps, Commissioner of Corrections for the State of Mississippi and President Elect of the American Correctional Association.

I have been the Commissioner for almost ten years. I was appointed by a Democratic governor, Ronnie Musgrove and reappointed by two Republican governors, Haley Barbour and Phil Bryant.

I began my career as a correctional officer at the Mississippi State Penitentiary in 1982. Back then, solitary confinement was sparingly utilized for the most incorrigible and dangerous offenders. There was limited cell space available for this specialized population. The tragic murder of a correctional officer in 1989 prompted the construction of Unit 32 at the Mississippi State Penitentiary in Parchman. Unit 32 was a 1,000 bed maximum security unit where all the inmates were in lockdown in single cells for 23 or 24 hours a day, 7 days a week. The unit was opened in 1990 and operated as a single-person celled, administrative segregation unit. Administrative segregation is used for inmates considered a threat to staff, other inmates, or property. These inmates are placed in a single cell for 23 hours a day during weekdays and 24 hours a day on weekends and holidays. During this time, I was the Deputy Superintendent for Operations at the Mississippi State Penitentiary, and I believed administrative segregation was necessary to isolate offenders to provide a safe and secure environment for staff and offenders. I was convinced that an offender should remain in administrative segregation until he demonstrated over a period of time that his behavior had changed and he was no longer a threat to staff, other offenders, and public safety. In many cases this could be for years, and for some, not until their release from prison or death.

Unit 32 began to be recognized as the end of the road by staff and offenders in the Mississippi Department of Corrections. The prison was easy to enter but it was almost impossible to obtain release without exemplary behavior. Staff took the approach that finding reasons to keep offenders in administrative segregation versus finding reasons to release an offender was best to maintain a safe and secure environment. "Truth in Sentencing" laws requiring offenders to serve 85% of their sentence regardless of their behavior and increased incarceration of mentally ill individuals compounded the situation of hopelessness at the prison. Young offenders involved in gangs with long sentences became a large percentage of the population. Offenders began to see Unit 32 as a place where you were housed in a cell without air-conditioning, 23 hours a day, with minimal interaction with others. The environment created a situation where the norm was to be disruptive as there were no incentives to change behavior. As one offender told me, "you took

all our hope and we have nothing to lose.” Unit 32 conditions of confinement were increasingly litigated with a 2003 Consent Decree regarding Death Row offenders in *Russell v. Mississippi Department of Corrections (MDOC)*, and a second Consent Decree in May 2007 for other administrative segregation offenders in *Presley v. MDOC*. Beginning in May 2007, violence began to erupt at Unit 32 and continued through the summer with 3 homicides, many serious disruptive incidents, and a suicide. I began to realize a need for change. A different approach was needed due to the deteriorating and dangerous environment and increased litigation. The good intention of utilizing large administrative segregation units in the Mississippi Department of Corrections was no longer effective. We needed a different approach.

We began to reform Unit 32 by thinking outside the box and recognizing the need to utilize all available resources. The smartest decision I made was utilizing recognized corrections experts provided by the National Institute of Corrections and the American Civil Liberties Union. My staff and I began to collaborate with the plaintiffs’ attorneys to cease a previous attitude of conflict and discord and jointly determine strategies that would achieve a common goal of improved conditions while providing safety and security. Dr. James Austin, the *Presley v. MDOC* plaintiffs’ expert, was an invaluable resource in developing a classification model with objective criteria for placement in administrative segregation and a documented individualized plan for each offender on how to work his way out of administrative segregation. The individualized plan utilized objective criteria, involved the offender, and required face-to-face reviews to discuss progress. Every offender knew exactly what he had to do to obtain his release from administrative segregation and/or increase his privileges. We developed specific administrative housing units for the mentally ill with specially trained correctional officers.

We also implemented multi-disciplinary teams to make decisions regarding mentally ill offenders. We developed administrative segregation programs enabling offenders to have graduated incentives with promotions through phases until the majority could be ultimately released from administrative segregation. We made sure that before anyone was released from prison, they went through the step-down unit before they got to general population. Group counseling, alcohol and drugs, life skills, and anger management programs were started for offenders. Group counseling was conducted outside the cells by using an innovative method of attaching leg restraints to a floor restraint. This provided the necessary security to allow face-to-face interaction between offenders. For those offenders who could not be released from administrative segregation because of a lengthy history of violence, gang leadership, escape, or other serious reasons, programs were developed that simulated a general population environment in a high-security setting. We reviewed all offenders at Unit 32 utilizing the revised classification model for administrative segregation. We also eliminated the practice of utilizing subjective decisions to place and keep offenders in administrative segregation.

The Mississippi Department of Corrections administrative segregation reforms resulted in a 75.6% reduction in the administrative segregation population from over 1,300 in 2007 to 316 by June 2012. Because Mississippi’s total adult inmate population is 21,982 right now, that means

that 1.4% are currently in administrative segregation. The administrative segregation population reduction has not resulted in an increase in serious incidents. The administrative segregation reduction along with the implementation of faith-based and other programs has actually led to 50% fewer violent incidents at the penitentiary.

The Mississippi Department of Corrections was able to close Unit 32 in January 2010 due to the reduced administrative segregation population, resulting in an annual savings of approximately \$5.6 million. The reforms also resulted in a dismissal of the *Presley v. MDOC* lawsuit in August 2011. We now have a recidivism rate of 27% over a 3-year period, which is one of the lowest in the country, and it is due to our programs such as Adult Basic Education, vocational school, alcohol and drug programs, fatherhood education, and pre-release programs, as well as our reentry programs.

These reforms were successful because all persons involved had buy-in. Staff at all levels and the offender population were educated and understood what the reforms were and why they were being implemented. Leadership from the Central Office was deployed on-site to actively participate in implementing reforms, which prevented an attitude from field staff that decisions were being made from "higher ups" without any knowledge of what was really going on at Unit 32. I made frequent visits to Unit 32 to demonstrate my commitment to and involvement in implementing the reforms, listening to the concerns of staff and the offender population. Collaboration between all was essential to the success of the reforms. This included management, line staff, offenders and *Presley v. MDOC* plaintiff attorneys and their experts.

I often say, "You have to decide who you are afraid of and who you are mad at" when making decisions on the use of administrative segregation in prison. Almost 95% of all offenders will return to society. There are a very small number of offenders who have to be in administrative segregation because of their continued threat to staff and offenders. These are the offenders we are "afraid of" because of their demonstrated violence or threats to the public. Corrections professionals and the criminal justice system must be careful not to use administrative segregation in prison to manage those who we are mad at because this is an expensive option that takes away resources from important government areas such as education, human services, healthcare, etc., which are the services most needed to make a better society.

Corrections is no different than anything else in our nation; it continues to change and improve. Corrections leaders must realize that to be successful you must always be willing to change and listen to all stakeholders involved in the criminal justice system. You cannot take a one-sided approach. I have been most successful when I have made decisions that were in the best interest of all. We must continue to climb the corrections mountain.

Thank you for the opportunity to appear before the Subcommittee.

Position Statement on Segregation of Prisoners with Mental Illness

Approved by the Board of Trustees, December 2012

Approved by the Assembly, November 2012

"Policy documents are approved by the APA Assembly and Board of Trustees...These are...position statements that define APA official policy on specific subjects..." – *APA Operations Manual*.

Prolonged segregation of adult inmates with serious mental illness, with rare exceptions, should be avoided due to the potential for harm to such inmates. If an inmate with serious mental illness is placed in segregation, out-of-cell structured therapeutic activities (i.e., mental health/psychiatric treatment) in appropriate programming space and adequate unstructured out-of-cell time should be permitted. Correctional mental health authorities should work closely with administrative custody staff to maximize access to clinically indicated programming and recreation for these individuals.

Background to the Position Statement

The number of persons incarcerated in prisons and jails in the United States has risen dramatically during the past three decades, accompanied by a significant increase in prisoners with serious mental illness. Studies have consistently indicated that 8 to 19 % of prison inmates have psychiatric disorders that result in significant functional disabilities and another 15 to 20 % require some form of psychiatric intervention during their incarceration (1, 2).

Physicians who work in U.S. correctional facilities face challenging working conditions, dual loyalties to patients and employers, and a tension between reasonable medical practices and the prison rules and culture. In recent years, physicians have increasingly confronted a new challenge: the prolonged solitary confinement, or segregation, of prisoners with serious mental illness. This prevalent corrections practice and the difficulties in providing access to care in these settings have received scant professional or academic attention (3).

Segregated inmates are isolated from the general correctional population and receive services and activities apart from other inmates. For the purposes of this position statement, segregation refers to conditions of confinement characterized by an incarcerated person generally being locked in their cell for 23 hours or more per day (4). Inmates may be segregated for institutional safety reasons (administrative segregation), disciplinary reasons (disciplinary segregation), or personal safety (protective custody) (5). Correctional systems vary regarding the specific conditions of confinement in segregation units (e.g., one to two inmates in a cell, inmate access to a radio or television, other property restrictions, visitation privileges, etc.). The definition of "prolonged segregation" will, in part, depend on the conditions of confinement. In general, prolonged segregation means duration of greater than 3-4 weeks.

Several studies have shown that inmates with serious mental illness have more difficulty adapting to prison life than do inmates without a serious mental illness. Morgan, Edwards, and Faulkner (6) reported that seriously mentally ill prisoners were less able to successfully

negotiate the complexity of the prison environment, resulting in an increased number of rule infractions leading to more time in segregation and in prison. Lovell and Jemelka (7, 8) found that inmates with serious mental illnesses committed infractions at three times the rate of non-seriously mentally ill counterparts.

Placement of inmates with a serious mental illness in these settings can be contraindicated because of the potential for the psychiatric conditions to clinically deteriorate or not improve (6, 10). Inmates with a serious mental illness who are a high suicide risk or demonstrating active psychotic symptoms should not be placed in segregation housing as previously defined and instead should be transferred to an acute psychiatric setting for stabilization.

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Voices from Montana Solitary



Inmates in solitary confinement at Montana State Prison and the Montana Women's Prison describe solitary in their own words.

Loneliness and despair

"I live in a box. . . Imagine being locked in your bathroom but instead of a tub there's a bed. . . . It's a very dehumanizing experience to suffer living like this for months. I've been doing it for years trying to survive." - William

"I try to ignore the madness around me, but it's suffocating and relentless. Sitting on my bed hearing others screaming out their doors, banging and kicking, flooding their cells because it's the only way they know to express their suffering. It's hard not to let this affect you. Depression is rampant throughout this building. It's hard to stay positive. Every day I battle just to stay sane and keep my wits as others around me are broken down mentally... I have become extremely paranoid as I keep withdrawing from people becoming more and more antisocial as the time goes... Unfortunately for some this style of living is too much to handle and they look for escape through suicide. Some succeed. If you are treated and you live like an animal, how long before you start to believe that you are no longer human?" - William

"Sometimes it's so quiet you can hear and feel your own thoughts. Sometimes I just talk to break the silence... Inmates who come into the hole for the first time, it's hard on them. They want out. They cry. They plead with whomever passes by for mental help, hoping for some type of reassurance." - Jena

Psychological effects

"Since being here I have changed dramatically, I never knew what anxiety was. Unfortunately I am now very familiar with it. I have become extremely paranoid as I keep withdrawing from people becoming more and more antisocial as the time goes on. The worst part is I'm also familiar with another feeling - hate - such a strong word and powerful emotion making my outlook on life bitter and nasty." William.

"I feel that I've become more paranoid. . . Sometimes I feel that I can't make it out on the floor, when I first started my solitary time it was hard . . . on my brain. I was angry and I held onto it feeling that the c/o's were trying to break me and mold me into something or keep pushing me to keep me back here. . . Solitary confinement is very difficult mentally." Jena

Physical effects

"Whenever I am in solitary confinement I get severe headaches that persist no matter what kind of medication I take to alleviate the pain. I also cannot seem to gain any weight in solitary confinement. I always lost about 10 pounds as soon as I get locked up and then just stay at a consistent weight after that." - Frank

"I've noticed a lot of physical issues. Your aches become worse. You get kinks in your neck which causes headaches. I clench my teeth, grind them when I sleep. There seems to be no ventilation. I've had plenty of sinus problems, loss of weight (that I can't gain back)... I see a lot of ladies who will pick at themselves out of boredom, and infections happen." - Jena

Relentless boredom

"Over the years family members have asked me to describe my average day and I have always skirted the question by telling them to watch 'Groundhog Day' and then picture that movie taking place in a bathroom." - Frank

"For me the biggest deviation from my routine comes when I just don't feel like doing anything at all. Sometimes I just lay on my bed and stare at the ceiling or out the window. Those are the times when days or weeks go by where I don't do anything." - Frank

The one hour out of the cell

"I'm handcuffed and escorted to what they call a recreation yard. To me it's nothing but a really big dog kennel. This cage they put us in is surrounded by concrete walls and the ceiling is covered with a mesh net you can't really see through." - William

Cold, hungry and smelly

"You are not allowed to buy items from the canteen as the rest of the population. Things like clothes to stay warm or food items so that you are not starving at night are not allowed. We can't even buy hygiene items like lotion to avoid dry skin." - William

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Solitary Confinement of Juvenile Offenders

Approved by Council, April 2012

To be reviewed by June 2017

By the Juvenile Justice Reform Committee

Solitary confinement is defined as the placement of an incarcerated individual in a locked room or cell with minimal or no contact with people other than staff of the correctional facility. It is used as a form of discipline or punishment.

The potential psychiatric consequences of prolonged solitary confinement are well recognized and include depression, anxiety and psychosis¹. Due to their developmental vulnerability, juvenile offenders are at particular risk of such adverse reactions². Furthermore, the majority of suicides in juvenile correctional facilities occur when the individual is isolated or in solitary confinement.

Solitary confinement should be distinguished from brief interventions such as "time out," which may be used as a component of a behavioral treatment program in facilities serving children and/or adolescents, or seclusion, which is a short term emergency procedure, the use of which is governed by federal, state and local laws and subject to regulations developed by the Joint Commission, CARF and supported by the National Commission of Correctional Healthcare (NCHHC), the American Correctional Association (ACA) and other accrediting entities.

The Joint Commission states that seclusion should only be used for the least amount of time possible for the immediate physical protection of an individual, in situations where less restrictive interventions have proven ineffective. The Joint Commission specifically prohibits the use of seclusion "as a means of coercion, discipline, convenience or staff retaliation." A lack of resources should never be a rationale for solitary confinement.

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty establish minimum standards for the protection of juveniles in correctional facilities. The UN resolution was approved by the General Assembly in December, 1990, and supported by the US. They specifically prohibit the solitary confinement of juvenile offenders. Section 67 of the Rules states:

"All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned." In this situation, cruel and unusual punishment would be considered an 8th Amendment violation of our constitution³.

Measurements to avoid confinement, including appropriate behavioral plans and other interventions should be implemented⁴.

The American Academy of Child and Adolescent Psychiatry concurs with the UN position and opposes the use of solitary confinement in correctional facilities for juveniles. In addition,

any youth that is confined for more than 24 hours must be evaluated by a mental health professional, such as a child and adolescent psychiatrist when one is available.

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