

March 2018

Law and Justice Interim Committee  
Rachel Weiss

# SJ 25: STATE-LEVEL CHANGES AND ALTERNATIVES TO RESTRICTED HOUSING

## OVERVIEW

### Study Background and Terms

As part of the SJ 25 study of the extent of the use of solitary confinement in Montana, the Law and Justice Interim Committee (LJIC) was asked to examine changes that could be made to reduce or eliminate the reliance on solitary confinement as well as methods used to accomplish these purposes in other states. The study language is specific to juveniles and inmates with mental illness, while this paper looks at alternatives and other states' methods more broadly for all state prisoners. It does not cover detainees in county or local facilities or in federal or tribal custody.

Unless referring to a specific state example or practice, this paper will use the terms “restricted housing,” “restrictive housing,” and “segregation” interchangeably to refer generally to the practice of housing an inmate alone or with a cellmate in a locked cell for the majority of the day. The portion of the paper that describes state-level efforts to reduce the use of restricted housing in that state will use the term or terms that describe the practice in a particular state.

This paper is an attempt to give the LJIC an initial look into restricted housing alternatives used in other jurisdictions, as well as to give some context to the wide scope of reasons a state or facility might implement these alternatives. It provides specific information on a few states where the alternatives have been in effect for longer periods of time or that have similarities to Montana in size or prison structure.

### Key Takeaways

The reasons a state or facility may undertake revisions to its restricted housing statutes, policies, and practices are as varied as the states themselves. At times changes were sparked by lawsuits and at others by initiatives led by an individual at the corrections agency or even at the facility level. In other states, changes came as a result of a combination of litigation and agency or legislative interest.

Whatever the reason for change, the actual results vary as well. What is feasible in a state with a large offender population and multiple state-operated facilities might not fit in a state with a smaller incarcerated population with fewer physical facilities. While one state might be able to dedicate a nearly 500 beds spread over two facilities to provide treatment to mentally ill male offenders, other states with smaller offender populations might not be able to implement that exact change. One state might begin change as a pilot project at one institution, while another will immediately roll out changes statewide.

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While the methods states use to change statutes, policies, and practices related to restricted housing—as well as the initial impetus for those changes—might differ, one commonality stands out: these changes do not happen overnight or all at once. Instead, there are often many stages, with state leaders retooling initial changes after evaluation and reflection. Whether as a result of self-evaluation, litigation, legislation, pressure from advocacy groups or inmates themselves, or a combination of these forces, several states have gone through more than one revision, such as Colorado, Washington, and Virginia. The ongoing nature of these types of changes can make comparisons to other states tricky but highlights that implementing alternatives is often a complicated, multistep process spread out over a span of years rather than months.

## ALTERNATIVES EXPLORED IN OTHER STATES

Regardless of the reasons for or results of state efforts to change restrictive housing practices, there are some common threads between them, which this section attempts to summarize. The pages from the ASCA/Liman Reducing Time-In-Cell Report that the LJIC members received in the March meeting mailing is a useful summary of states' recent or planned changes for 2013 to 2015. A link to that report is available in the [Sources and Resources](#) section of this paper as well as on the LJIC's [webpage](#) for the SJ 25 study.

**Step-down/incentive programs:** Several states have created or revised step-down programs. These programs use incentives to help offenders learn behaviors or practice skills that can keep them from further rule violations that might result in a placement in restricted housing and can help them succeed in general population units. Typically, as an offender completes required programming and demonstrates certain behaviors, the inmate acquires more privileges and “steps down” to a lower level of supervision. The programs vary in the number of levels, with some states combining the various levels into units at one facility, while others spread the programs or units across several facilities. Incentives can include additional or more frequent phone privileges and visitations and access to recreation equipment, television or other audio/visual equipment, additional canteen items, or personal items in the cell.

**High-level corrections staff involvement in placement decisions:** Several states implemented policies that require high-level managers (the prison warden, and in some states the corrections department director or director's office staff) to be involved in reviews of inmates who had spent longer amounts of time in restricted housing or to review and approve movement to or from a restricted housing status. Most of the reviews are of an ongoing nature, that is, conducted as needed or required by policy. But at least one state, Colorado, had a deputy director conduct reviews of inmates who had been placed in administrative segregation for more than 1 year to determine if any of those inmates could be safely housed in less restrictive units.<sup>1</sup>

**Limits on time in segregation:** Some states, through policy or statute, limit the amount of time an inmate may be placed in restricted housing. The specific time limits vary from state to state, and some have qualifiers that allow for longer placements if certain circumstances exist.

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<sup>1</sup> SB 11-176 Annual Report on Administrative Segregation for Colorado Inmates, Jan. 2017, p. 2.

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**Limited criteria for placement in restricted housing:** A number of states limited the reasons for which an offender could be placed in a segregated cell or unit to the ones that presented the most risk to the security of the institution or the safety of staff and other offenders. This type of revision was often combined with the creation of a team to review placement decisions or assignment of a higher-level corrections staff member to review the decisions. This change can be accompanied by a corresponding revision in disciplinary procedures to allow for more structure and consistency in disciplinary decisions in a prison or statewide.

**Prohibitions on certain classes of persons in restricted housing:** The most common restrictions are on juveniles or pregnant women being placed in restricted housing, as well as restrictions or prohibitions on inmates with serious mental illness.

**Corrections staff involvement:** Many recitals of states' experience stress the need to involve and engage correctional staff in developing alternatives to ensure that their perspectives and needs are considered as well as to communicate to them consistently to ensure revised policies are carried out in the actual units every day. Several states offer or require additional training, such as developing skills to interact more effectively with inmates with mental illnesses.

**Alternative units:** States or facilities developed specialized units to house inmates who require protective custody or to house and treat inmates who need mental health or behavioral health treatment. Alternative units can also be similar to step-down programs, giving offenders different treatment, programming, and privileges if they demonstrate certain behaviors or complete programs.

**Specific to a prison or piloted smaller projects:** Several states piloted a program in one facility and then spread it to others or made resources available to others after a successful test period.

## Legislative Involvement

Legislative involvement in the types of changes made in a state also vary widely.<sup>2</sup> At least 16 states have enacted legislation related to administrative segregation since 2010. Some state legislatures banned facilities from housing youth or pregnant women in restricted housing. Others either created study entities to provide insight and direction on the future of restricted housing or required the state's corrections department to do so. Another common legislative decision is to enact data collection and reporting requirements. A 2015 Nebraska bill even defined and banned "solitary confinement," while also defining and creating restrictions for the state's use of "restrictive housing." A recent Nevada bill limited the use of solitary confinement and added certain protections for inmates believed to have a mental illness or other health condition related to the behavior that resulted in a placement in solitary confinement.

The National Conference of State Legislatures has compiled a list of state enactments related to administrative segregation. A link to that report is available in the [Sources and Resources](#) section of this paper as well as on the LJIC's [webpage](#) for the SJ 25 study.

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<sup>2</sup> Information in this section summarized from "Administrative Segregation: State Enactments," *National Conference of State Legislatures*.

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## Technical Assistance

Several states enlisted the help of outside organizations to examine existing segregation practices and to make recommendations for improvements. For example, South Dakota conducted its review in conjunction with the Crime and Justice Institute at Community Resources for Justice with funding provided by the federal Bureau of Justice Assistance.<sup>3</sup>

Other states have or are working with the Vera Institute for Justice—which is an organization that works with local and state governments to provide research and technical assistance to implement criminal justice system changes<sup>4</sup>—to review the jurisdiction’s locked housing policies and practices. Starting in 2010, the organization worked with five states to review existing processes and recommend changes. Those states were Illinois, Maryland, New Mexico, Pennsylvania, and Washington. A second round of states became subjects of the Vera’s Safe Alternatives to Segregation Initiative. Those five states were Nebraska, North Carolina, and Oregon. Recently, a third round of states began work on this topic: Nevada, Utah, Minnesota, Louisiana, and Virginia.<sup>5</sup>

Based on its work with Nebraska, North Carolina, and Oregon, as well as with two local governments, Vera made four recommendations for the use of restricted housing. “Restrictive housing should be used only:

- As a last resort;
- As a response to the most serious and threatening behavior;
- For the shortest time possible; and
- With the least restrictive conditions possible.”<sup>6</sup>

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<sup>3</sup> Parker and Kane, p. 3-4.

<sup>4</sup> “About Us,” *Vera Institute for Justice*, and the organization’s Form 990 from 2014, available from: <https://storage.googleapis.com/vera-web-assets/downloads/about/financials/2015/990-and-Charities-Filing-6-30-2015.pdf>, last accessed Feb. 15, 2018.

<sup>5</sup> “About Us,” *Vera Institute for Justice*.

<sup>6</sup> Crowley and Sullivan.

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## OTHER STATES, SPECIFICALLY

This section is an effort to give the LJIC a deeper look at what is happening in the world of restricted housing in other jurisdictions, a sampling, if you will. The end goal is to give some state-specific context to the wide scope of reasons a state or facility might implement alternatives to restricted housing and to outline the range of policies and practices that can be used as alternatives.

### Colorado

Colorado's experience with reducing its use of restrictive housing was more dramatic than that in most other states. In 2013, several years after the state corrections department had begun to implement changes designed to reduce the number of inmates in restrictive housing, a parolee who had recently been released directly from segregated housing murdered the then-director of the department and another individual. Despite the unusual history, the state is also an example of how the legislature has played a role in revising segregation practices and how changes take place over time.

Initial efforts to revise the state's segregation use and practices began in 2011 by the late Tom Clements in part due to his initiative and in part due to legislative involvement.<sup>7</sup> That same year, the state's legislature enacted a bill to require the Department of Corrections to provide a written report on the use of administrative segregation, as well as the department's efforts to reclassify offenders who had a mental illness or were developmentally disabled.<sup>8</sup>

Director Clements engaged national experts to examine the state's current administrative segregation policies and practices, including how offenders were classified in state institutions,<sup>9</sup> and began to implement changes based in part on the results of that review. Reforms included reviews by high-level executive office staff to determine if certain inmates who had been in administrative segregation for 1 year or more should be moved to a lower classification level. Colorado also implemented a treatment program for inmates with serious mental illness who were then in segregated housing. As of January 2016, Colorado had two of these residential programs for men (totaling nearly 500 beds) and one for women (total of 240 beds).

Rick Raemisch, who became director of the department after Clement's death, continued his predecessor's efforts and made additional changes to reduce the state's inmate population housed in administrative segregation. Instead of calling the housing practice "administrative segregation," the department created new policies for what it called "restricted housing-maximum security status." The policies revised guidelines for what behaviors would result in an offender being placed in restricted housing, which reduced the number of offenses that would result in a restricted housing placement from 38 to 11. They also set a time limit for how long an offender could be assigned to restricted housing for a violation: a maximum of 12 months.<sup>10</sup>

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<sup>7</sup> Unless otherwise noted, information in this section is summarized from Raemisch and Wasko.

<sup>8</sup> Senate Bill 11-176.

<sup>9</sup> Austin and Sparkman, p. 2.

<sup>10</sup> SB 11-176 Annual Report on Administrative Segregation for Colorado Inmates, Jan. 2017, pgs. 4, 8.

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In 2014, a second legislative act restricted the use of “long-term isolated confinement” for offenders with a serious mental illness unless “exigent circumstances” existed. The bill—Senate Bill 14-064—created a working group to advise the Department of Corrections on the “proper treatment and care” of these offenders.<sup>11</sup>

In addition, the department created several units that serve as “step-down” programs to increase the amount of time that offenders spend out of cells and involved in programming to develop skills to allow them to live in less restricted housing settings. By 2015, the department reported that it prohibited female or youthful offenders from being housed in a restricted housing-maximum security status and that it housed 217 offenders (1.2% of the state’s offender population) in the restricted housing status.<sup>12</sup>

The Colorado General Assembly has also been involved in limiting the use of segregated housing for juveniles. A 2016 bill prohibited the state from placing a youth in seclusion for more than 4 consecutive hours in a day unless certain conditions are met. The bill provided that a youth may not be held in seclusion for more than 8 hours over 2 consecutive days without a court order. In addition, staff must be trained in specific techniques and methods to work with youth, and facilities must collect, maintain, and report specific information related to the use of seclusion.<sup>13</sup>

## Mississippi

In 2005, Mississippi began broad revisions to its administrative segregation and inmate classification policies.<sup>14</sup> The state had started the process earlier in the decade as a result of litigation over the housing and treatment of death row prisoners. Most Mississippi state prisoners placed in administrative segregation were housed in one 1000-bed unit at the state prison. Many prisoners residing in the unit, Unit 32, were assigned to permanent administrative segregation. Although revisions to Unit 32 conditions and administrative segregation practices began as a result of federal litigation, they continued when the attorneys for the inmates and the Department of Corrections began a collaboration to revise the inmate classification system that determined the prisoners assigned to Unit 32.

Despite an outbreak of violence in the unit while the effort was underway, the department continued with the revisions, ultimately reassigning around 75% of the unit’s inhabitants to general population status. The physical layout and use of the unit were remodeled to create additional general population cells, as well as room for programming and recreation. Additional education and mental health services were directed to the unit’s inmates, and a step-down mental health treatment program was created to assist inmates both adjusting gradually to general population conditions and earning placement in less restrictive conditions. Officers assigned to the unit are given specific, intensive mental health training.

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<sup>11</sup> Senate Bill 14-064.

<sup>12</sup> ASCA/Liman Reducing Time-In-Cell Report, p. 62-63.

<sup>13</sup> Senate Bill 16-1328.

<sup>14</sup> Unless otherwise noted, information about Mississippi is from “Beyond Supermax Administrative Segregation: Mississippi’s Experience Rethinking Prison Classification and Creating Alternative Mental Health Programs.”

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After the classification system revisions and development of specific, limited criteria for placement in administrative segregation, the number of inmates assigned to that status dropped from 1,000 to around 150. According to data from October 1, 2015, that number was around 185, or 1% of the state's total male prison population.<sup>15</sup>

## North Dakota

After experiencing record-high populations in its administrative segregation units and the overall prison population, North Dakota corrections officials established a multidisciplinary team to review its use of administrative segregation in the state's prisons. The department had found that the increasing numbers of inmates in that housing status didn't increase staff and inmate safety in the facilities.<sup>16</sup>

The team developed new procedures used to discipline inmates for rule infractions and to reduce the number of violations that could land an inmate in disciplinary detention, which is a form of administrative segregation. The members also created a plan to help inmates in administrative segregation to transition back to regular housing, including allowing certain inmates to spend a day in the regular population but return to the administrative segregation cell at night.<sup>17</sup> Individualized treatment is offered to inmates whose behaviors require longer stays in segregation, with the goal of helping the inmate develop skills that can be used to succeed in the general population.<sup>18</sup> The revisions were tested in one facility before being implemented statewide.<sup>19</sup>

Since the review of administrative segregation and revisions to administrative segregation policies and procedures, North Dakota holds about 28-40 inmates in that housing status compared to 100 or more before the changes.<sup>20</sup>

## South Dakota

Beginning in 2013, the South Dakota Secretary of the Department of Corrections began to assess and revise the state's nonpunitive restricted housing policies and practices with technical assistance funded by a federal grant.<sup>21</sup> A steering committee then created a 5-level restricted housing program. The committee included department leadership and staff, as well as staff from the state's Department of Social Services, which is responsible for behavioral health services in the state facilities.

The steering committee also developed a mission and vision for restricted housing as well as specific criteria for placement in restricted housing. Once in restricted housing, an inmate may earn additional privileges and begin to transition back to a general population status by participating in programs and meeting behavioral targets. The 5-level program includes a timeline for inmate progression: 300 days to move through the first 3 to 4 levels of the program and an additional 120 days in a 5<sup>th</sup> level

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<sup>15</sup>ASCA/Liman Aiming to Reduce Time-In-Cell Report, Table 2, p. 22.

<sup>16</sup> Braun.

<sup>17</sup> Braun.

<sup>18</sup> Braun, and Grueskin, "Prison Officials Change Tactics as Research Points to Failures of Seclusion."

<sup>19</sup> Berlinger, "ND Department of Corrections and Rehabilitation Adopts New Motto for Inmates."

<sup>20</sup> Grueskin, "Prison Officials Change Tactics as Research Points to Failures of Seclusion."

<sup>21</sup> Unless noted otherwise, information in this section is summarized from Parker and Kane, "Reshaping Restrictive Housing at South Dakota State Penitentiary."

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that is spent in a less restrictive transition unit. Each level has specific timelines, expected behaviors, rewards or incentives, and treatment or programming to help the inmates in the unit meet the requirements to move to the next level or back to regular housing.

In addition, the correctional staff created a daily behavior tracking log to provide more immediate feedback to inmates and to create an additional opportunity for communication and interaction between inmates and unit staff. The logs also assist case management staff when conducting regular status reviews with inmates.

The program includes specific data the department must collect and review and performance measures to provide information about restrictive housing and to assist department and state leaders as well as the public evaluate the implementation and effectiveness of the level system. In addition, the department created a “fidelity tool” to measure how closely the program structure is being followed and decisions and behavior documented.

To address staffing concerns and challenges, the department revised its selection system to hire restricted housing unit staff and created additional incentives to attract staff with the skills identified as necessary to meet the restricted housing mission and vision. Additional incentives included additional pay and revised work schedules to limit consecutive days worked and to provide every other weekend off. The unit was staffed as a permanent team rather than shifting assignments. The department also provides specialized training to unit officers.

The department used a short pilot program to test the level system initially, then began full implementation of the program in early 2015. One year after the launch of the pilot project, the department reported a decline in the restricted housing unit driven by lower admissions to the unit. It also reported gradually lower rates of violent incidents in restricted housing, including that the rate was lower than the rate in the general population at the end of 2015. Rates of release from restricted housing status directly to the community were also lower than before the revisions.

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