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The Safe Alternatives to Segregation Initiative: Findings, Recommendations, and Reforms for the Nevada Department of Corrections

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Acknowledgments

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Executive summary

Throughout the country, advocates, federal and state policymakers, and corrections leaders have called for a dramatic reduction in the use of segregation, also known as solitary confinement or restrictive housing. Whether citing the detrimental psychological and physiological impacts of spending 22–24 hours per day alone and idle in a cell the size of a parking space, the fiscal burden to corrections agencies and potential occupational health hazards to staff of operating such highly restrictive environments, or the fact that the practice can be counterproductive to safety in prisons and the communities to which most incarcerated people will return, these voices collectively agree that bold and sustainable reforms are urgently needed.

The Vera Institute of Justice (Vera) is working to decrease, and ultimately end, the use of restrictive housing in the United States by partnering with state and local corrections systems to significantly reduce and reform their use of the practice. In 2017, with funding from the U.S. Department of Justice’s Bureau of Justice Assistance, Vera partnered with the Nevada Department of Corrections (NDOC) to help the agency better understand and reduce its use of segregation. Vera’s assistance included an in-depth assessment of segregation use in NDOC facilities and identification of opportunities for reform and innovation. This report presents the findings and recommendations from Vera’s assessment, offering Nevada opportunities and strategies to safely reform this practice.

Key reforms

In 2016 and 2017—before its partnership with Vera, as well as during the project’s assessment phase—NDOC affirmed the department’s commitment to safely reducing the use of segregation by instituting several notable reforms, including:

- Significant changes to NDOC disciplinary policy, in particular a substantial reduction in the length of disciplinary segregation sanctions that can be imposed, from a maximum of two years (or more, in practice) to up to 60 days for most offenses—with exceptions for two very serious offenses: assault on staff (a maximum of 180 days) and murder (up to one year);
- The creation of Behavior Modification Units (BMUs) meant to help incarcerated people transition from segregation to less restrictive environments; and
- An end to the transfer of incarcerated people with serious mental illness (SMI) to Ely State Prison (ESP), a remote maximum-security facility, and moving over 50 people with SMI who

were housed at ESP to another facility more able to provide mental health treatment, where some were placed in residential mental health units and others were able to live in the general population.

Key findings

This report presents the findings of Vera’s assessment of NDOC’s use of segregation as it was during the assessment period—based on policies, meetings with staff, focus groups with incarcerated people and with staff, facility tours, and administrative data from January 1, 2016–September 30, 2017. Although there is no universal definition of “segregation” or “restrictive housing,” the terms generally refer to a type of incarceration that removes a person from a prison or jail’s general population (GP) and confines them in a cell, alone or with a cellmate, for 22–24 hours per day with limited human interaction and minimal, if any, constructive activity or programming. Most systems have multiple types of segregation, often including *disciplinary segregation*, used to sanction incarcerated people for violations of facility rules, and *administrative segregation*, used to remove people from a facility’s general population if they are thought to pose a risk to safety and security or for other administrative reasons, such as pending an investigation.

To ensure all segregation units were identified and addressed, Vera and NDOC expanded the focus of this assessment to include any housing units that hold incarcerated people separately from GP and place greater restrictions on their out-of-cell time, congregate activity, and access to programming. As a result, the findings encompass NDOC’s use of administrative segregation (AS) and disciplinary segregation (DS), as well as other units with restrictive conditions, including the Crossroads Unit and BMU at ESP and the intake units at two facilities. Vera’s findings also examine the use of segregation for special populations like women, youth, and people with mental health needs, as well as racial, ethnic, and gender disparities in segregation use. The following are highlights of key findings from Vera’s assessment.

Over 12 percent of NDOC’s population was in some form of segregation.

Over the course of the data assessment period—all four quarters of 2016 and three quarters of 2017—the average daily population of NDOC facilities remained stable at around 13,400 people. On an average day, 12.3 percent of this population was in some form of restrictive housing conditions: 7.6 percent of the total population were in administrative segregation units—units that house people serving disciplinary segregation sanctions *and* those in administrative segregation—while 4.8 percent were in other units with segregation-like conditions.

The number of people in segregation units increased in 2017, despite a decrease in the use of disciplinary segregation sanctions.

Over the first three quarters of 2017, the number of DS sanctions given dropped and the average length of such sanctions also decreased—likely due to NDOC’s disciplinary policy reforms. However, during the same period, the number of people in administrative segregation units—including those serving a DS sanction and those placed in AS for other reasons—increased to a level similar to that last seen in 2015.

People who have been cleared for release from segregation often spend long periods waiting for transfer to general population, due to limited GP bed space.

Vera found that incarcerated people could spend days, weeks, or even months in segregation waiting for transfer to an appropriate GP bed, even after they had completed their DS sanction, been approved for protective segregation (which in NDOC facilities, despite the name, has GP-like housing conditions), or were otherwise judged ready to return to GP. This increases NDOC’s segregation population and means numerous people are in restrictive housing conditions even though the department has determined that there is no reason for them to be there.

A significant number of people were released from NDOC custody to the community directly from administrative segregation or within 30 days of having been in segregation.

During the third quarter of 2017, over 15 percent of people who returned to the community were released directly from segregation or within a month of being there: 151 people were released directly from AS, which accounted for 9.4 percent of all releases that quarter (1,601); an additional 5.7 percent of people released had been in AS within the prior 30 days. This practice means that people are moved quickly from an extremely restrictive and isolating environment to a community environment that requires autonomy and complex social interactions, which adds difficulty to the already challenging process of reentering the community.

Placement in administrative segregation is indefinite, with no clear pathway back to less restrictive settings.

Unlike with disciplinary segregation, there is no cap on the length of time a person can be held in administrative segregation in NDOC and no specific, clearly defined steps people can take to work their way back to GP. Staff at various facilities reported that they had seen some incarcerated people languish in segregation for several years.

Conditions in segregation are highly restrictive and allow very limited out-of-cell time and little to no programming or congregate activity.

As in many jurisdictions, incarcerated people in segregation in NDOC facilities are held in highly restrictive environments. In practice, out-of-cell time varies among facilities and segregation units—for example, from 10 hours out-of-cell recreation per week in one facility to 1.5 hours every other day in another. People in segregation are not allowed congregate activity, and the environment can be very isolating. Contrary to policies on the books, in practice, segregation units seem to offer little to no programming, nor do they allow jobs, small group recreation, or other social activities.

Many people are placed in administrative segregation for pre-hearing detention, awaiting a disciplinary hearing.

Many incarcerated people are placed in segregation in response to an alleged disciplinary infraction, pending an investigation and a disciplinary hearing. In the third quarter of 2017, approximately 19 percent of all AS admissions appeared to be for such pre-hearing detention (PHD). However, many people who were placed in segregation for PHD did not later receive DS sanctions, and in fact, some were placed there after being charged with lower-level infractions that, per policy, are not even eligible for segregation sanctions. Additionally, Vera learned that the investigation and disciplinary hearing process can last for lengthy periods of time—a maximum of 45 days per policy, and reportedly sometimes even longer in practice. For people in segregation for PHD, this can add up to long stays in restrictive housing.

Behavior Modification Units (BMUs) have been developed by multiple facilities to promote the successful transition of people from segregation to GP settings, but conditions in some BMUs resemble restrictive housing.

NDOC's 2017 revised disciplinary policy included a provision calling for the creation of BMUs, specialized housing units with the aim of helping incarcerated people transition from segregation to less restrictive environments. Vera visited all three facilities that had established BMUs at the time and noted that significant variation existed among the BMUs in their operation and conditions of confinement. Moreover, some people in BMUs were being held in very restrictive conditions not substantially different from segregation and were receiving only minimal programming.

A high number of people in segregation units had mental health needs.

According to the data, 41 percent of people in segregation had some kind of mental health flag in their records, as did 36 percent of people in other restrictive housing. Staff and incarcerated people across multiple facilities also described a great need for mental health staff, mental health training for custody staff, and more available and meaningful mental health treatment and programming. Mental health needs were particularly acute at the women's facility, where at the time of Vera's assessment, there were over 450 women—out of a total population of around 1,000—on the mental health caseload (over 150 of whom met the criteria for SMI).

The number and percentage of women in administrative segregation, as well as their average length of stay, decreased, but their length of stay still remained higher than men's.

The proportion of women in segregation in NDOC decreased from 7.3 percent (71 out of 980 women) in the third quarter of 2016 to 5.7 percent (59 out of 1,031 women) one year later. This decline supports staff reports that the department is working to move away from reliance on segregation for women. However, during the third quarter of 2017, the average length of stay of the women who left the segregation unit was 73 days—substantially higher than the averages at the facilities for men, which ranged from 18 to 46 days.

Key recommendations

Based on the assessment of NDOC's use of segregation, Vera recommends multiple strategies to reduce the number of incarcerated people held in segregation—including administrative and disciplinary segregation, as well as intake units and ESP's Crossroads Unit and BMU—in addition to shortening their lengths of stay in such conditions. Some of Vera's key recommendations to NDOC include the following.

- *Only* place people in any type of segregation as a last resort, when they must be separated from the general population in a more secure environment to protect the safety of staff and other incarcerated people. They should be held in the least restrictive conditions and for the shortest time safely possible.
- Make additional revisions to the disciplinary process, including:
 - Limiting the use of DS to only the most serious offenses;
 - Expanding the use of effective alternative responses for other infractions;
 - Shortening time frames for disciplinary investigations and the hearing process, particularly if the person in question is being held in pre-hearing segregation; and
 - Shortening the maximum amount of DS time that can be given as a sanction.
- Avoid releasing people from conditions of segregation directly into the community, by using strategies such as:
 - Employing non-segregation disciplinary sanctions for people who are close to release; and
 - Transitioning people from long-term segregation into less restrictive settings, providing appropriate programming, and preparing people for reentry well in advance of their release dates.
- Address the shortage of general population bed space and the long waits for GP beds that some people in segregation experience, including by:
 - Repurposing some segregation units into GP units, to expand available GP bed space; and
 - Consolidating people who have been cleared for release from segregation but are waiting for an appropriate GP bed together into a single unit, where they can be held in more GP-like conditions of confinement.
- Reevaluate conditions and the use of segregation for vulnerable populations, especially people with disabilities and mental illness, youth, and women.
 - No person with SMI should be placed in a segregation setting.
- Create a clear and meaningful process for review of segregation placements, particularly within 24 hours of a person's placement in segregation, and frequent reviews of everyone in segregation to determine whether they should remain there or can return to the general population.

- Create meaningful programming for people in segregation, including to address specific populations, such as transition programming for people who have been in segregation for long periods of time to help them adjust successfully to a less restrictive environment.
- Ensure that all staff who work in segregation units have additional appropriate training, in areas such as effective communication, crisis intervention, and de-escalation.
- Transform conditions in all segregation units so that they resemble GP as closely as possible, while still maintaining security, by:
 - Increasing out-of-cell recreation;
 - Allowing congregate recreation, when safely possible;
 - Ensuring regular access to phone calls and opportunities for visits as frequently as possible;
 - Providing meaningful programming and treatment; and
 - Implementing other strategies to minimize isolation, boredom, sensory deprivation, and restrictiveness while promoting meaningful and positive socialization.
- Establish minimum requirements for conditions in the BMUs so that they are noticeably less restrictive than segregation units.

Vera presented the findings and recommendations in this report to NDOC in January 2018. From February through September 2018, Vera worked with NDOC to develop an implementation plan to turn the recommendations into concrete reforms across NDOC facilities. This involved prioritizing the recommendations, developing a workplan, and identifying outcome and performance measures. Vera hopes that the agency has and will continue to draw on Vera's recommendations, learn from the experience of peers in the field, and capitalize on its own strengths to improve the lives of the men and women who live in and work in Nevada's prisons.

Introduction and background

In 2017, the Nevada Department of Corrections (NDOC) partnered with the Vera Institute of Justice (Vera) for the Safe Alternatives to Segregation Initiative. The goal of the initiative was for Vera to assess how NDOC used segregation, also commonly known as restrictive housing or solitary confinement; provide recommendations on ways NDOC could safely reduce that use and employ alternative strategies; and assist with implementation planning.

Vera's assessment process

Between February and December 2017, Vera conducted an assessment of NDOC's use of segregation in Nevada state prison facilities. Vera worked throughout the assessment with NDOC's site coordinators—Harold Wickham, deputy director of operations; David Tristan, deputy director of programs (until he transitioned to another role); Sheila Lambert, grant and policy administrator; and Jason Duran, correctional officer of programs—as well as James Dzurenda, NDOC director. In May 2017, the Vera team formally kicked off the partnership by traveling to Nevada to meet in person with members of the NDOC Segregation Reduction Committee and attend a meeting of the Nevada Board of State Prison Commissioners. These meetings allowed Vera to present information on the assessment process, learn about NDOC's use of segregation and become familiar with the system overall. The assessment process then included three main components: analysis of NDOC administrative data, review of the department's policies, and site visits to facilities.

1. Administrative data analysis

Vera requested, and NDOC provided, historical administrative data on the demographics, movement, segregation status, and disciplinary infractions of people incarcerated in NDOC facilities. After cleaning and compiling the data, Vera researchers completed an analysis of data from the seven-quarter period from January 1, 2016 through September 30, 2017, as well as an average daily analysis for the third quarter of 2017. Using both approaches enabled the assessment team to understand how people move through the system over a period of time, as well as the average makeup of the population on a given day. Looking at the latter part of 2017 also allowed Vera to study the (albeit preliminary) effects of the reforms NDOC implemented in 2017, particularly the use of disciplinary segregation.¹

2. Policy review

The Vera team reviewed numerous NDOC policies, including but not limited to policies regarding segregation practices, prohibited conduct and disciplinary sanctions, medical and mental health services, and programs. Particular focus was given to recent policy reforms spearheaded by Director Dzurenda in 2016 and 2017.

3. Site visits

A key component of Vera's assessment was two intensive site visits to NDOC facilities (in May and August 2017), during which the Vera team had the opportunity to see policies in action and learn about practices on the ground. The assessment team conducted daylong visits to Nevada's maximum-security facility and four medium-security facilities, where the vast majority of NDOC's segregated population is concentrated:

- Ely State Prison (ESP) (maximum security);
- Northern Nevada Correctional Center (NNCC);
- Lovelock Correctional Center (LCC);
- High Desert State Prison (HDSP); and
- Florence McClure Women's Correctional Center (FMWCC).

At each facility, Vera completed a thorough tour and conducted an informational meeting with the facility warden and leadership, as well as a variety of correctional officers and other security personnel, caseworkers, mental health staff, and program staff. These meetings allowed the Vera team to learn how segregation is used at each facility and the range of services provided for segregated populations. Through these tours and meetings, the team also gained an understanding of disciplinary practices, decision points for segregation placement, how and when alternative responses are used, procedures for placement in administrative segregation, and practices for review and release to the general prison population or community. The meetings also gave facility administrators and staff an opportunity to share their facilities' strengths and challenges in general, as well as those related specifically to the use of segregation.

In addition, the Vera team conducted two focus groups with staff and two with incarcerated people, in order to better understand the experiences and perspectives of those who had spent time working in and living in segregation units. Vera also observed a disciplinary committee hearing.

During the assessment process, Vera immensely appreciated the efforts and accommodations of NDOC leadership, wardens, staff, and the incarcerated men and women who took the time and energy to facilitate the team’s visits, answer questions, meet with team members repeatedly, join focus groups, and provide substantive data and information at Vera’s request. Throughout this process, NDOC’s commitment to reform was evident in the way people engaged with this work, not to mention the significant policy changes that were already being developed in Nevada.

Segregation in NDOC

Although there is no universal definition of “segregation” or “restrictive housing,” the terms generally refer to a type of incarceration that removes a person from a facility’s general population (GP) and confines them in a cell, alone or with a cellmate, for 22–24 hours per day with limited human interaction and minimal, if any, constructive activity or programming. However, in conducting this assessment, Vera looked closely at an even broader range of housing types: any housing units that (1) hold incarcerated people separately from the general population; and (2) place greater restrictions on their out-of-cell time, congregate activity, and access to programming than in GP.

The following are the types of segregation in NDOC facilities, according to the department’s terminology.

- **Administrative segregation (AS):** An administrative placement in which an incarcerated person is put in segregation (1) to protect that person, other incarcerated people, staff, the institution, or the community; (2) during an investigation into “violent misconduct or misconduct which threatens escape or a significant disruption of institutional operations”; or (3) during an investigation into whether a person should be placed in Protective Segregation.² According to NDOC policy, AS is not to be used as a form of punishment or as a substitute for placement in mental health facilities.
- **Disciplinary segregation (DS):** A form of segregation used as a sanction for incarcerated people who are found guilty of committing infractions during their time in prison. DS sanctions are given for a set period of time, such as 30, 60, or 180 days. In NDOC facilities, people on DS are housed in the same segregation units as those who are classified as being in AS.³
- **Protective segregation (PS):** A form of housing for incarcerated people who require separation from the general population “to ensure their physical safety and well-being or for institutional security.”⁴ A person’s placement in PS may be voluntary or involuntary. People on PS status are typically housed in designated Protective Segregation units—located at Lovelock Correctional Center and High Desert State Prison—that resemble GP housing units in terms of

out-of-cell time, programming, and privileges. Therefore, Vera did *not* count PS as a type of restrictive housing for the purposes of the assessment, although Vera has included findings and recommendations related to PS in this report.

When discussing the impacts of living in restrictive housing, however, it is important to count everyone who experiences these conditions of confinement, regardless of the unit's name and purpose or the person's length of stay or reasons for placement there. Based on site visits to five NDOC facilities—through observation, staff descriptions, and incarcerated people's accounts—Vera determined that, in addition to people in AS and DS, people in some other units experienced living conditions relatively comparable to restrictive housing (meaning that, in practice, people were in their cells for 22 or more hours per day). These units included the Crossroads Unit and the Behavior Modification Unit (BMU) at ESP and the intake units at HDSP and FMWCC. (See page 17 below for more on these units.) Vera counted these units, in addition to all segregation units, when analyzing NDOC's use of restrictive housing.

Reforms prior to and during the assessment

Vera's partnership with NDOC was enhanced by the department's and Director Dzurenda's demonstrated commitment to reducing the use of segregation. NDOC was already forging ahead with reforms prior to joining the initiative and continued to do so during Vera's assessment process.

The following are some of the notable reforms that NDOC implemented in 2016 and 2017:

- NDOC made significant changes to its disciplinary policy in order to reduce the use of disciplinary segregation, particularly by reducing the maximum allowed length of DS sanctions. Previously, an incarcerated person could be sanctioned to up to *two years* of DS per charge for certain disciplinary offenses. In addition, charges could be “stacked,” meaning that after one incident, a person could be found guilty of multiple charges and given multiple, consecutive DS sanctions—which could lead to years of disciplinary segregation. Under the new policy, which began in the spring of 2017, an infraction can result in only one disciplinary charge, and the maximum lengths of DS sanctions have been lowered. For lower levels of offenses, people can now receive maximums of 10 days and 30 days DS and, for more serious offenses, no more than 60 days—with exceptions for two very serious offenses: assault on staff (a maximum of 180 days) and murder (up to one year).

- The new disciplinary policy also called for the creation of BMUs, with the aim of helping incarcerated people transition from segregation to less restrictive environments. BMUs were subsequently created at multiple NDOC facilities in 2017.
- NDOC has also dedicated additional attention to the needs of people who have mental illnesses. In particular, the department developed reforms to keep those with serious mental illnesses (SMI) out of segregation. In 2017, the department began by moving more than 50 people with SMI from the remote, maximum-security ESP to NNCC, a facility with greater ability to provide mental health treatment. The department also worked to clarify and standardize how it defines SMI and other mental health classifications and to implement improved mental health screening and assessment tools.
- NDOC now allows people to earn time off of their segregation sanctions while in general population waiting to be placed in segregation. Due to bed space issues in administrative segregation units, some people are not automatically sent there after receiving a segregation sanction. They may wait in general population until a bed in segregation becomes available. Previously, people would not earn any time off of their segregation sanctions until they were physically placed in segregation. Under the new policy, the person's segregation sentence begins right away, even if they do not go to segregation immediately.

Some of these reforms began prior to Vera's partnership with NDOC, and others were implemented during the assessment. Additionally, in 2018, the department began work on implementing reforms based on a number of Vera's recommendations. The "Implementation Planning" section on page 89 provides more detail on those implementation plans.

Findings and recommendations

The following sections present the findings from Vera’s assessment of NDOC’s use of segregation during the assessment period, as well as recommendations Vera made for ways NDOC can safely reduce that use and employ alternative strategies.

Vera’s *findings* represent observations related to the department’s use of segregation in policy and in practice, based on Vera’s assessment of NDOC data and policies as well as the Vera team’s site visits and discussions with staff and incarcerated people. They reflect NDOC’s use of segregation as it existed during the assessment time period—site visits in May and August 2017, NDOC policies as they existed in 2017, and NDOC data from January 1, 2016–September 30, 2017. The findings do not reflect any changes or reforms that occurred after the assessment period and may capture only some of the impacts of the previously implemented reforms, depending on whether sufficient time had elapsed for effects to be seen. Going forward, ongoing data-tracking and analysis will be critical to measuring and evaluating the impacts of any reforms implemented by NDOC.

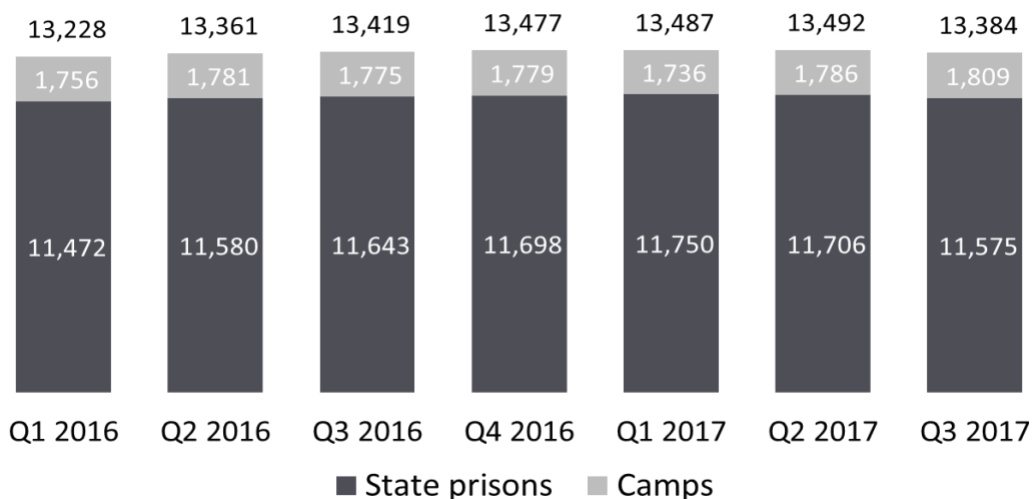
The accompanying *recommendations* suggest strategies for reform and areas requiring further attention and action by NDOC. NDOC has demonstrated a strong commitment to reducing its use of segregation. Vera’s hope is that the findings and recommendations presented in this report will assist NDOC as it works to further this objective.

A. Systemwide use of segregation

The Nevada Department of Corrections has seven state correctional facilities (prisons) and 10 conservation camps.⁵ Figure 1 below provides a broad overview of the total NDOC population and the breakdown between state prisons and camps. When looking at the average daily population (ADP) for each quarter, the number of people in NDOC’s prisons and camps remained fairly stable throughout 2016 and the first three quarters of 2017.

Figure 1.

NDOC total population in state prisons and camps, by quarter, 2016–2017



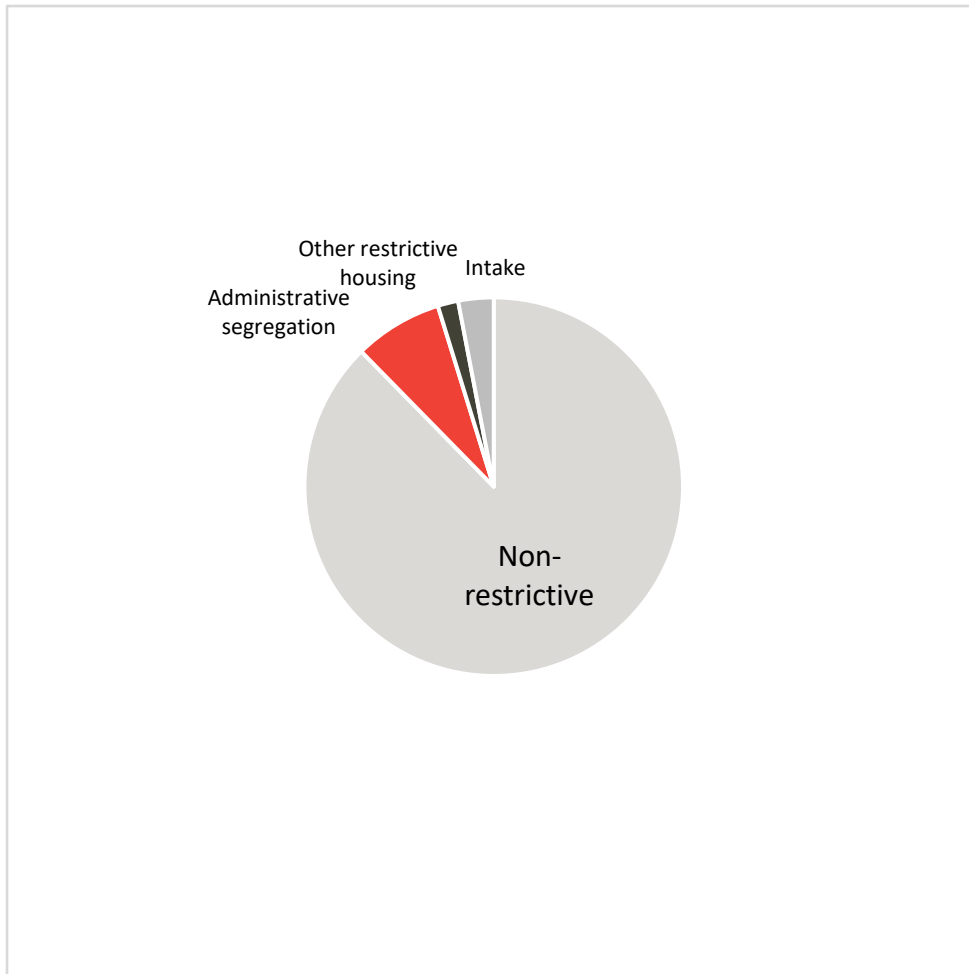
For the purposes of assessing the use of restrictive housing, however, Vera focused primarily on the population in state prisons. The conservation camps are minimum-security facilities and, if there are any incidents serious enough to lead to segregation, the people involved are transferred to an NDOC prison.

Finding A1: Vera determined that 12.3 percent of the NDOC population was in some form of restrictive housing conditions on an average day in the third quarter of 2017.

This percentage was calculated by adding the ADP in each of NDOC’s administrative segregation (AS) units to the ADP of the other units that Vera found to have—at the time—restrictive conditions of confinement similar to segregation. These units included the Crossroads Unit and the Behavior Modification Unit (BMU) at Ely State Prison (ESP) (“other restrictive housing”) and the intake units at High Desert State Prison (HDSP) and Florence McClure Women’s Correctional Center (FMWCC).

Figure 2.

ADP breakdown in the third quarter of 2017, by type of housing



Note: Percentages in charts may not add up to exactly 100 due to rounding. Likewise, the percentages in the bar do not add up exactly to the number in the wedge of the pie, also due to rounding.

- a. **The ADP data showed that 7.6 percent of the total NDOC population was in an administrative segregation unit.** AS units are those that NDOC designated specifically as segregation units, and they housed people on disciplinary segregation (DS) status in addition to those in administrative segregation.
- b. **Another 4.8 percent of the NDOC population was in restrictive housing-like conditions.** The additional units that Vera included are the intake units at HDSP and FMWCC (which held 3 percent of the total population) and the Crossroads Unit and

Behavior Modification Unit (BMU) at ESP (which held 1.8 percent of the NDOC population).

In order to better illustrate the nuances of the various forms of restrictive housing at different facilities, Figure 3 below further breaks out Vera’s accounting of the average number of people in AS units (red), intake units (blue), and other restrictive housing (ESP’s BMU and Crossroads units, dark gray), compared to the population in nonrestrictive housing at each NDOC facility (light gray). This chart demonstrates the number of people in each housing category, as well as the total facility population (the total length of each bar on the chart). It shows that, in addition to the many people in AS, there were a large number of people in intake units at HDSP and FMWCC, and many people in other types of restrictive housing at ESP. Of all the facilities, HDSP had the most people in any type of restrictive housing, followed by ESP and Northern Nevada Correctional Center (NNCC).

Figure 3.

ADP in types of restrictive housing in the third quarter of 2017, by facility

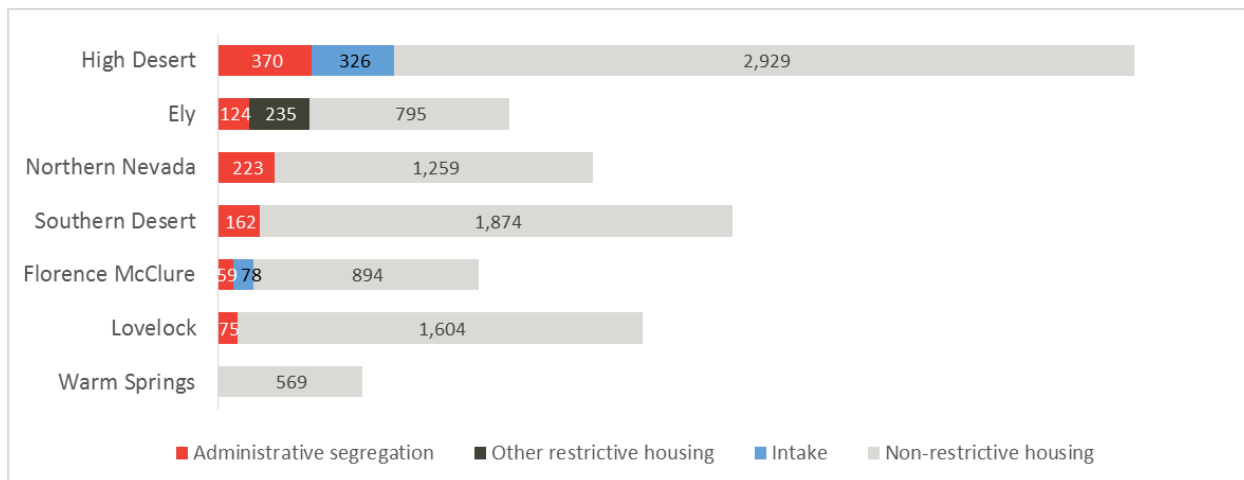
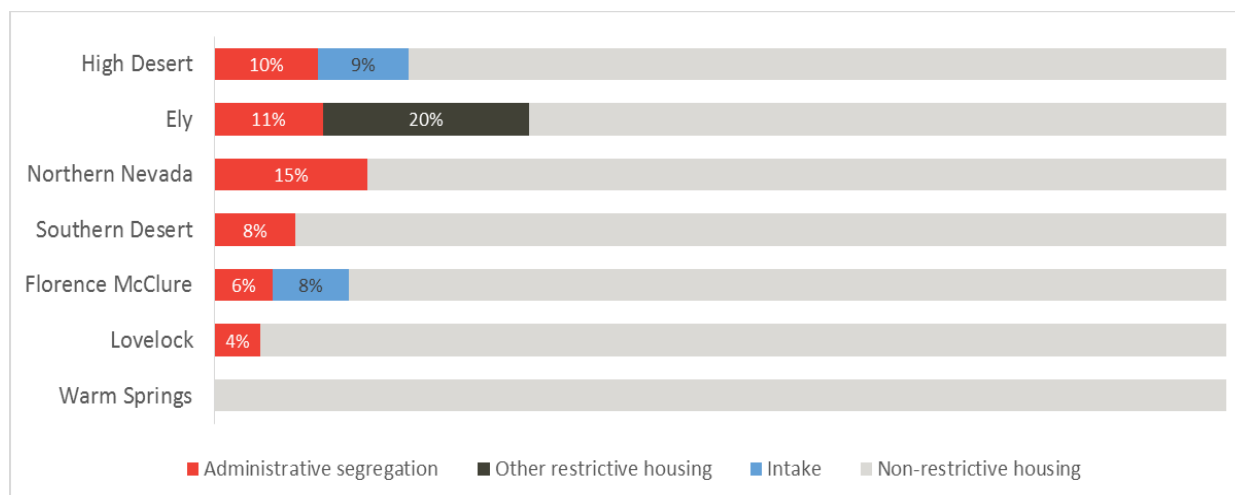


Figure 4 below shows the percent of each facility’s population that was in some form of restrictive housing. An important point illustrated is the fact that, although the total number of people in some form of restrictive housing at ESP was smaller than at HDSP (see Figure 3 above), ESP had a higher proportion of its population in restrictive housing conditions (31 percent) than any other facility. Additionally, intake accounted for a substantial proportion of the people in segregation at HDSP and FMWCC.

Figure 4.

Proportion of the population in types of restrictive housing in the third quarter of 2017, by facility*



* Warm Springs Correctional Center did not have any restrictive housing beds at the time of the assessment. When necessary, people could be transferred to nearby Northern Nevada Correctional Center for placement in segregation. Therefore, Warm Springs does not appear in the figures below that examine segregation data by facility.

- c. **Every person who entered NDOC custody automatically spent an initial period in an intake unit, where they were held in conditions resembling restrictive housing.** Vera found that conditions in NDOC’s intake units at HDSP (for men) and FMWCC (for women) were comparable to restrictive housing. Everyone entering NDOC custody must first go through the intake process while being housed in these intake units, meaning everyone experiences these restrictive conditions during their first weeks in an NDOC facility.

It is worth noting that, although the percentage of people in restrictive housing in NDOC facilities was relatively high, a significant part of this population could be addressed directly with reforms to conditions in intake units and Ely State Prison’s Crossroads Unit and BMU. Vera hopes that NDOC’s segregation population can be substantially reduced with the recommendations included in this report and through collaboration between NDOC leadership and the Safe Alternatives to Segregation Initiative.

- **Recommendation: Pursue multiple strategies to reduce the number of incarcerated people held in restrictive housing—including administrative and**

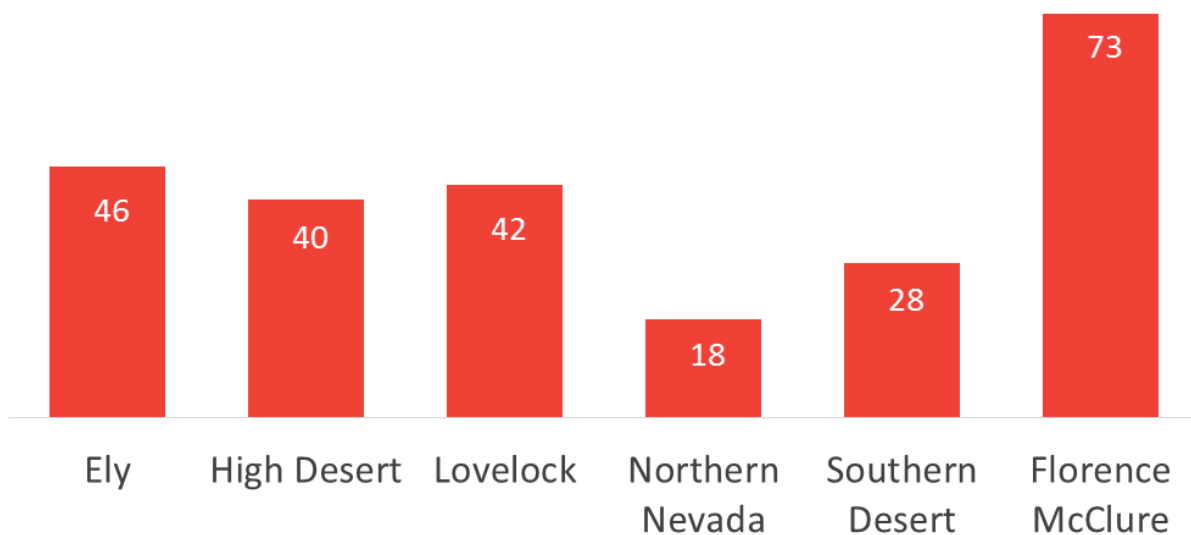
disciplinary segregation as well as other units with restrictive housing environments—in addition to their lengths of stay in such conditions. See page 30 for recommendations related to reducing the use of administrative segregation, page 47 for recommendations related to the disciplinary process and reducing disciplinary segregation, page 61 for recommendations on protective segregation, and page 63 for recommendations regarding the BMUs.

- **Recommendation: Reform conditions in NDOC’s intake units so that they are no longer restrictive housing environments.** The intake units at HDSP (for men) and FMWCC (for women) should allow increased out-of-cell time—at least five hours per day—and some congregate activity. Even though stays in intake may be too short for long-term programming or education, out-of-cell time and activities in small groups can contribute to pro-social behavior and combat the harms associated with enforced idleness and isolation.⁶

Finding A2: The average length of stay in AS varied greatly by facility, between 18 and 73 days. Figure 5 below shows that the average length of stay in AS for women at FMWCC was 73 days, which was higher than at any of the male facilities.⁷

Figure 5.

Average length of stay in AS (in days) in the third quarter of 2017, by facility



- **Recommendation: Determine the reasons for such wide variation in average lengths of stay in AS.** In particular, FMWCC seemed significantly out of step with the other NDOC facilities, and the reasons for this should be further investigated and addressed. Additionally, look into the reasons that NNCC had the lowest average length of stay, and whether they provide any lessons that could help other facilities decrease their lengths of stay. Certainly, there may always be variation among NDOC locations, but understanding and replicating what is working in certain facilities is an important strategy going forward, just as it is important to identify facilities that require further support.
- **Recommendation: Track data on the lengths of stay (including averages, medians, and distributions) on a monthly basis for each facility to monitor how long people remain in segregation and whether lengths of stay are decreasing.** Use this data to inform reforms that transition people out of segregation more quickly.

Finding A3: People who have been cleared for release from segregation to general population (GP) often must wait days, weeks, or even months to be transferred to a GP bed, due to limited bed space in GP. According to staff at multiple facilities, an incarcerated person who has been approved for Protective Segregation (PS) may still spend months in AS waiting for a bed to open up in one of the PS units at Lovelock Correctional Center (LCC) or HDSP. Likewise, people who have completed a DS sanction and should be returned to GP may instead have to remain in segregation—switched to AS status—for a significant amount of time until there is an opening in an appropriate GP unit. People who are in AS for investigative purposes but who have been approved for return to GP may also have to wait before they are transferred out. This has had the effect of increasing segregation populations and keeping people in restrictive conditions for long periods despite the department’s determination that there is no reason for them to be there.

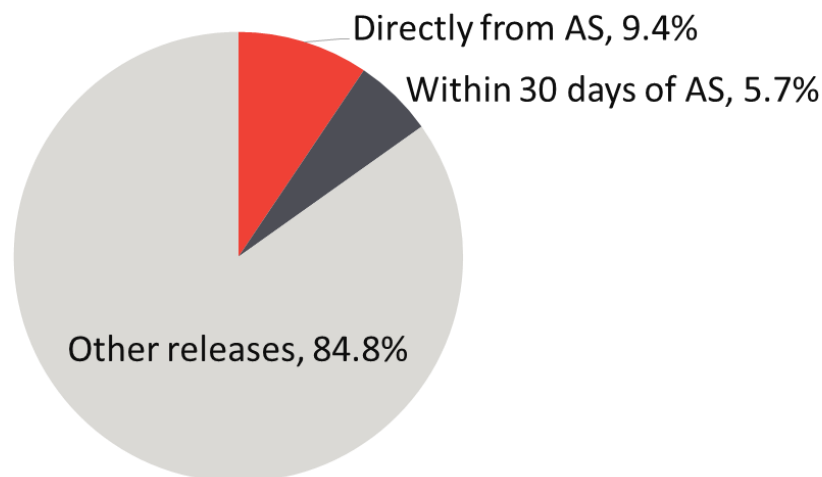
- **Recommendation: Consolidate people who have been cleared for release from segregation together into a single segregation unit and modify conditions there so they are no longer as restrictive.** Allow for significant out-of-cell time and access to programming, education, and services, preferably in a group setting, while people wait for a bed to become available in GP.
- **Recommendation: Repurpose some segregation units into GP units in order to expand GP bed space.** The number of people waiting in a segregation unit to be moved to a less restrictive unit can be addressed by creating more GP beds (and therefore fewer segregation

beds) by repurposing one or more segregation units into GP units. The above recommendation can be a first step towards accomplishing this recommendation.

Finding A4: NDOC administrative data shows that a significant number of people released from NDOC custody were released while on AS status or had been on AS status within 30 days prior to their release.⁸ During the third quarter of 2017, 151 people were released from NDOC custody to the community *directly* from AS. This accounted for 9.4 percent of all NDOC releases (1,601) during that time period. If this trend remained consistent throughout the year, it would equate to more than 600 people being released directly from segregation to the community in one year. Furthermore, an additional 5.7 percent of releases during the third quarter of 2017 were people who had been in AS within the 30 days prior to their release; in other words, when they were released, they had very recently been in segregation.

Figure 6.

Release to the community from AS in the third quarter of 2017



According to NDOC’s recently revised disciplinary policy, no one shall be released directly “from Disciplinary Segregation to the community”; however, the same provision has not been made for people held on AS.⁹ It is not possible to tell from the data whether any of these AS status releases represent people on DS or whether they were all on AS.

- **Recommendation: Do not release people from conditions of segregation directly to the community.** It is critical to put in place safeguards to avoid releases directly to the community. Below are sub-recommendations to help address this issue.
 - a. **If someone who is near release is involved in an infraction, prioritize non-segregation sanctions.** If the offense is serious enough to merit DS, prioritize moving the person from DS to BMU and/or GP as soon as possible, and more than 30 days prior to their release. Ensure that, during their time in DS, they are still able to participate in reentry planning and preparation.
 - b. **For people in longer-term segregation, step them down into a less restrictive setting and begin to prepare them for reentry well in advance of their expected release dates—such as 18 months or two years prior.** Prioritize these people for step-down programming and ensure that they receive the same types of reentry programming and preparation as other incarcerated people. Depending on how recommendations in the BMU section below are addressed, a step-down program for those nearing release from NDOC could be either distinct from, or perhaps an additional function of, a BMU.

Finding A5: New NDOC Administrative Regulation (AR) 801 states that people on “close custody will receive a minimum of five hours a day out-of-cell time, contingent on positive conduct”; however, Vera found this was not consistently implemented across NDOC facilities.¹⁰ At ESP, for instance, people housed in the Crossroads Unit, a close custody unit, received only one to two hours out-of-cell time per day—though ESP staff indicated at the time of Vera’s visit that there was an intention to increase that to two or three hours and allow small groups of up to eight people at a time. In contrast, GP) residents at ESP, who are also designated as close custody, reportedly receive between three and 14 hours of out-of-cell time per day (depending on whether they are GP Level 1 or Level 2).

In addition, at facilities other than ESP, people in AS, DS, and PS are classified as “close custody.” Those in AS and DS receive little out-of-cell time (much less than five hours per day), while those in PS units are in GP-like conditions and do receive several hours out-of-cell per day.

- **Recommendation: Ensure that facilities comply with AR 801 and that everyone on close custody receives at least five hours of out-of-cell time, seven days per week.**¹¹

Creating more opportunities for congregate activities, recreation, and programming would improve conditions for incarcerated people, as well as ease the stresses on staff to provide individual out-of-cell time for each person on close custody in certain units. Staff should track when and how often out-of-cell time is offered, and those records should be reviewed regularly by the warden or associate warden.

Data limitations

Finding A6: NDOC’s administrative data makes systematic, detailed, and comprehensive analysis of restrictive housing difficult. It is important to make agencywide reforms based on analysis of data and evidence. However, this is difficult due to the quality and availability of data in NDOC. A lack of standardization among different facilities, lack of specificity in standardized codes, the form in which data are collected (such as paper files versus digital), and inconsistent record-keeping all result in data that is unavailable or unusable for analysis.

- a. **In particular, NDOC’s designation of “administrative segregation status” encompasses incarcerated people in both non-disciplinary AS and DS.**
 - b. **Furthermore, no standard explanation of why someone is placed on AS is recorded in the data.** This makes it nearly impossible to establish who is held in a restrictive housing unit for disciplinary versus administrative reasons, which in turn makes it very difficult to analyze the use of disciplinary segregation and the disciplinary process, as well as the use of administrative segregation.
- **Recommendation: NDOC needs to make significant changes to the information it tracks and how the department tracks it. Specific recommendations include the following:**
 - a. **Clearly differentiate the reasons people are placed on administrative segregation status. NDOC should add two additional data fields to the segregation status file: Restrictive Housing (RH) Type and RH Reason.** The RH type field should differentiate between protective, administrative, and disciplinary segregation, and the RH reason field should track such reasons as pre-hearing detention, disciplinary segregation sentences, Prison Rape Elimination Act (PREA) investigations, and all other potential reasons for being placed in AS. These designations should be

presented to the end-user as a dropdown menu of standardized choices that apply to all facilities. NDOC staff should track when the reason for being in segregation changes (such as when someone on pre-hearing detention is found guilty of an offense at their hearing and sanctioned to disciplinary segregation) by entering an end date for the old status and beginning a new record for the new status. Standardized values would allow for systematic analysis of segregation statuses.

b. Improve information available on people’s mental health needs and status.

Currently, the administrative data logs three levels of mental health needs, and there are no clear criteria for each. Furthermore, there is not a specific status that designates whether someone has a serious mental illness (SMI). This creates difficulties for tracking and analysis by NDOC. This recommendation should be implemented in tandem with efforts to improve mental health screening conducted at intake. (For recommendations on mental health screening, see page 72.)

c. Establish agencywide standards for documentation and tracking that account for the above-mentioned changes.

NDOC should provide regular trainings to reinforce new protocols for current staff and new recruits and repeat such training as a refresher as time passes.

Finding A7: Movement data from NDOC does not consistently match up with

segregation status designations. *Movement* data tracks the lived experiences of incarcerated people—what unit and cell a person is actually housed in at a certain time—although AS status data indicates only the status that a person has been assigned in the data, rather than their actual housing location. This dual tracking of status and lived experience could be useful in some ways, particularly if, for example, NDOC wants to track how capacity issues prevent people from being in the housing that matches their status. However, when comparing the movement data to the segregation statuses, evidence of inaccurate data was found in the status files. In some cases, a person’s segregation status began prior to their actual placement in a segregation unit. This could indicate that their “segregation time” started before a bed opened in a segregation unit and they were transferred there; however, this is not the only irregularity Vera found. Some segregation status periods for the same person overlapped, suggesting that end dates were not properly entered. There were also some cases of people having long stays in AS housing without a clearly associated AS status record. The limited accuracy of the data makes any effort to properly describe a comprehensive picture of the number of people and lengths of stay in restrictive housing conditions extremely difficult.

- **Recommendation: NDOC should carefully consider the best way to track data in these files, based both on its administrative needs and its analytical preferences.**

This dual-file structure could be useful if accurate data is maintained, especially for tracking fidelity of housing placement to assigned status. It is most important that NDOC establishes mechanisms and implements practices that ensure accurate tracking of segregation statuses can take place moving forward. In addition, NDOC should continue tracking movement data for actual segregation housing, which would require staff to carefully keep track of each unit's purpose and designation (segregation, GP, etc.) by date.

Finding A8: According to the data Vera studied, a person may live in a restricted housing unit while not on AS status or may be on AS status but housed in GP. Although the latter situation is understood as a positive reform allowing a person's sentence to begin prior to placement in a segregation unit, the former situation is concerning. If the data shows that someone is or has spent time in a segregation setting but was not on AS status, there is no way to account for the reasons for placement in segregation, it is more difficult to calculate accurate length of stay data, and it appears that there is no reason for that person to remain in restrictive housing.

- **Recommendation: Identify and remove from segregation anyone who does not have an active AS status.** Every effort should be made to eliminate in practice, and in the data, this discrepancy between status and housing location. If it is not possible to remove people who are not on AS status immediately from segregation, consider alternatives, such as treating those people as if they are on a non-segregation unit by providing more out-of-cell time, increased privileges, and making their stay in that unit not one of a segregation experience.

Demographics of segregation

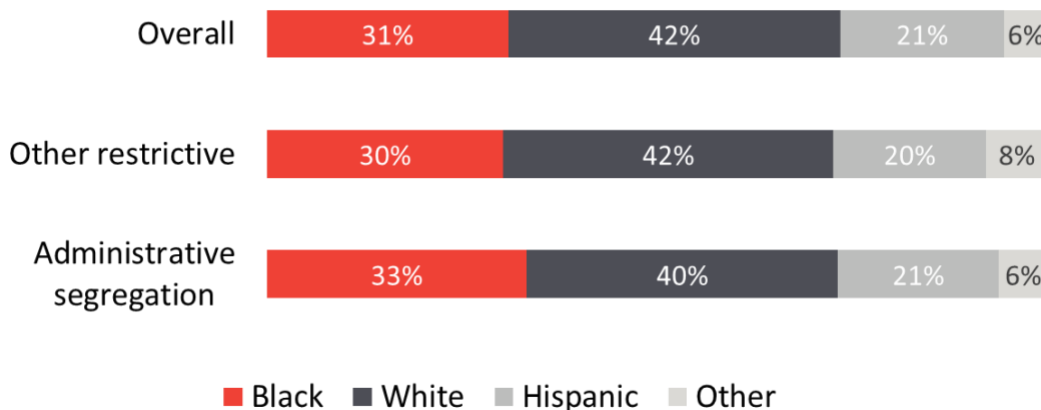
Vera analyzed NDOC's administrative data from numerous perspectives in order to provide a comprehensive understanding of the population in restrictive housing. For detailed analysis on segregation and people with mental health needs, women, and youth and young adults, see sections F, G, and H, respectively (at page 72, page 79, and page 84). Below is a breakdown of the segregation populations by race and ethnicity, as well as an analysis of people with disabilities in segregation.

Race

Finding A9: Racial disparities in NDOC’s use of restrictive housing appeared low. When examining the racial distribution of populations in administrative segregation, other restrictive housing (see findings A1–A3 for more detail), and the overall NDOC population, Vera found that there was a slight overrepresentation of black men in segregation compared to the overall NDOC population. Otherwise, disparities among racial and ethnic groups were low.

Figure 7.

Restrictive housing in the third quarter of 2017, by race



- Recommendation: Going forward, monitor the use of restrictive housing—and the impacts of reforms—for any racial disparities so that they can be addressed.**

Although Vera found a relative lack of racial disparity across different housing conditions at NDOC, Vera strongly encourages the regular tracking of racial disparity throughout NDOC’s various housing and security levels, and NDOC should strive for entirely equitable levels moving forward. Moreover, the department should seek to ensure that any reforms do not have the effect, even unintended, of creating or exacerbating racial disparities, and that all incarcerated people benefit from reforms, regardless of race or ethnicity.

People living with disabilities

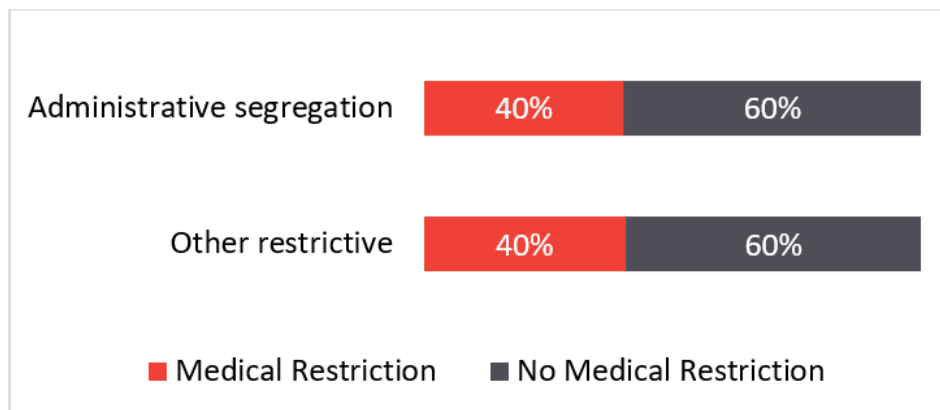
It is also important to consider whether—and if so, how many—people with disabilities are housed in segregation, particularly because disabilities can significantly impact a person’s lived experiences

while in such restrictive environments. Vera found that it was not possible to accurately determine the exact number of people with disabilities who are housed in segregation from NDOC data, because NDOC does not clearly track how many incarcerated people have disabilities or the nature of those disabilities. However, the data did include flags noting when incarcerated people had medical restrictions, which were classified as work and housing restrictions. In an attempt to understand the number of people who may have some level of disability in segregation units, Vera analyzed the data using the medical restrictions flags; essentially, these flags were used as an imperfect proxy to measure disability.

Finding A10: About 40 percent of people in AS—and the same percentage of those in other restrictive housing—had medical restrictions (work and/or housing limitations), as shown in Figure 8.

Figure 8.

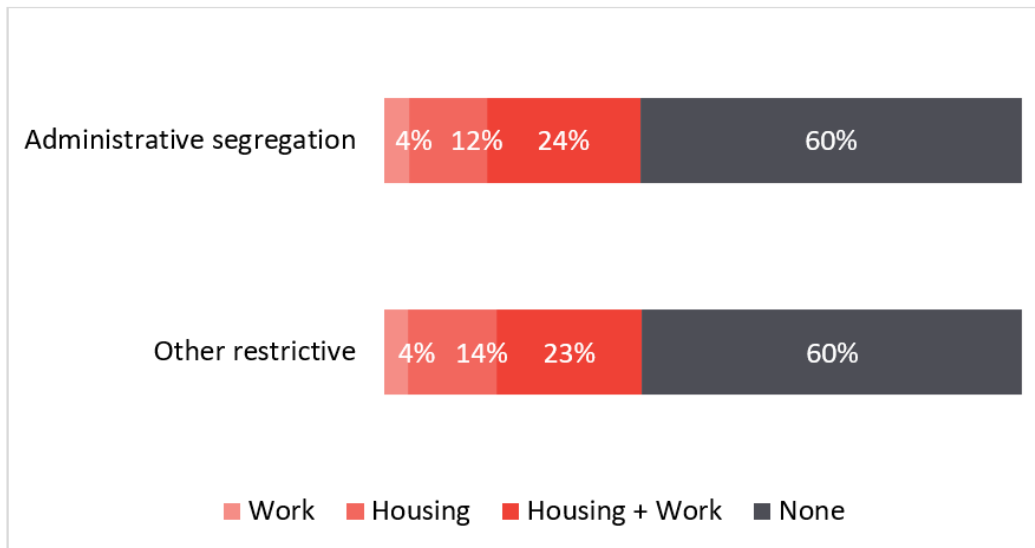
Restrictive housing in the third quarter of 2017, by medical restrictions



When Vera further broke down the medical restrictions between work and housing designations (shown in Figure 9), there was only slight variation between people with some form of medical restriction in AS and those in other restrictive housing units, in terms of which specific types of medical restrictions they had (housing, work, or both). It is also worth noting that almost one-quarter of each segregation population had both housing and work restrictions, perhaps indicating people with a more severe disability or other condition.

Figure 9.

Restrictive housing in the third quarter of 2017, by work and housing restrictions



- Recommendation: Clearly track people who have disabilities, as well as what types of disabilities they have and what accommodations they need.** In addition, NDOC should monitor the number of people with disabilities in each type of segregation, in order to ensure that they are not disproportionately sent to segregation.
- Recommendation: Consider special provisions regarding segregation for people with disabilities and/or whether alternatives to segregation should be developed and employed.** It is important to understand and take into account the unique impacts of segregation on people with disabilities, which may be different from those on people with no disability. For example, housing conditions in segregation may be even more isolating and lacking in social interaction for people who are blind or deaf.

B. Administrative segregation

AS is a type of restrictive housing used by NDOC for multiple purposes. Its use includes immediate, theoretically short-term placement while the department conducts investigations into alleged disciplinary offenses (what is commonly called pre-hearing detention),¹² requests for protective

segregation, Prison Rape Elimination Act (PREA) allegations brought against a person, or other matters. AS also includes indefinite, potentially longer-term housing for people who are considered to pose too much of a threat to be safely housed in GP. As stated in NDOC policy, incarcerated people are placed in AS “to protect the safety of the inmate, other persons, the institution or community or to conduct investigations into violent misconduct or misconduct which threatens escape or a significant disruption of institutional operations.”¹³

However, as noted above, in NDOC data, the designation of “AS status” encompasses these types of (non-disciplinary) AS, but also includes people serving DS. As mentioned previously, this makes it nearly impossible to establish from the data whether someone on AS status is there because they received a sanction of DS or because they were placed in AS for administrative reasons, such as those listed above.¹⁴

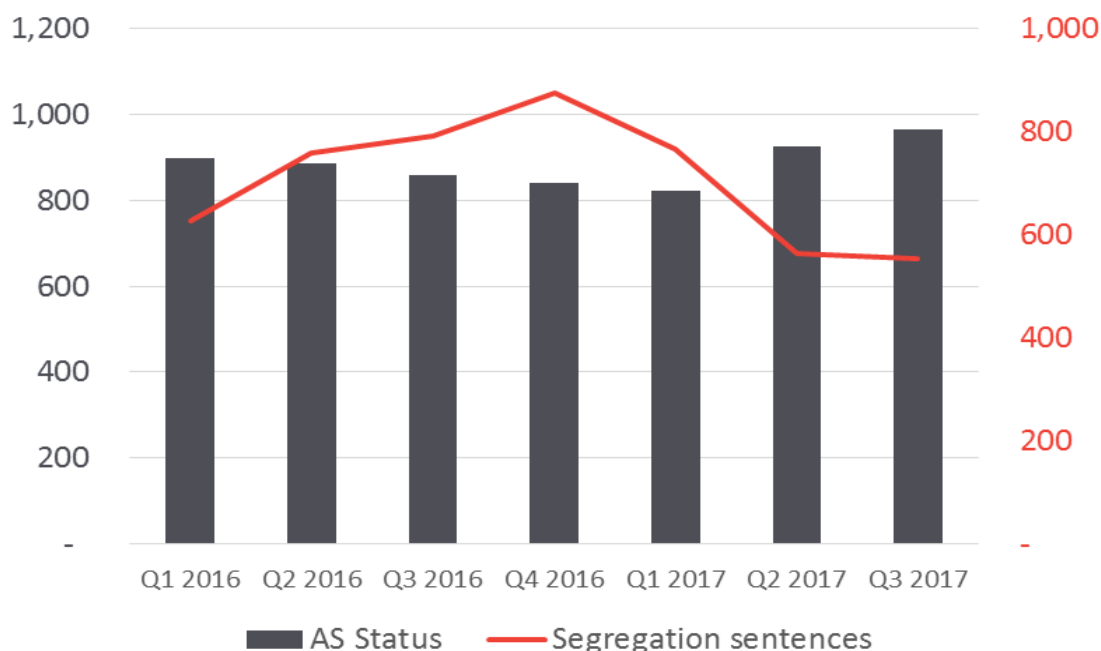
Additionally, there are no separate units for people held on AS status for administrative reasons and those on AS status because they are serving disciplinary segregation sanctions—both categories of people are held in the same segregation units. Moreover, by policy, everyone in AS is subject to the same conditions of confinement, regardless of the reason for their placement.¹⁵

Finding B1: The total number of people on AS status—which includes those serving a DS sanction and those placed in AS for other reasons—increased over the first three quarters of 2017 to a level similar to that last seen in 2015. This increase happened despite a substantial decline in the use of DS as a sanction in 2017. (For more details on NDOC trends in DS usage, see page 32.) Over the same period when DS sanctions dropped, there was no corresponding drop in the number of people on AS status on any given day. The average daily population (ADP) on AS status reached a low of 822 in the first quarter of 2017 but climbed back to 966 by the third quarter of 2017.

The chart below provides a visualization of this phenomenon. The gray bars and corresponding numbers on the left side show the ADP on AS status per quarter, from the first quarter of 2016 through the third quarter of 2017. The red line and corresponding numbers on the right side show the number of DS sentences given per quarter for the same time period, with DS sentences decreasing since the last quarter of 2016. Comparing these two trends illustrates that, while the use of DS sanctions has decreased, the number of people in on AS status has not similarly declined.

Figure 10.

Number of DS sanctions compared to average daily count on AS status, 2016–2017



Finding B2: It appears that NDOC sends many people to segregation for reasons other than to serve DS sanctions, but it is not possible to explain the reasons behind placement in segregation based on the data, as that information is not currently being tracked (as explained in Finding A6 above). Vera found that, of the 1,326 people who entered a segregation unit in the third quarter of 2017 (and who had not been in segregation at any other time earlier in 2017), only 502 had any disciplinary records within the 60 days before they entered segregation; of those, only 358 had a guilty finding, and of that 358, only 150 were sentenced to DS.¹⁶ Therefore, Vera surmises that many of the 1,326 people were in segregation for reasons not related to DS.

- **Recommendation:** Develop a way to clearly differentiate and record the reasons each person is placed in segregation in the future, as noted above in the

recommendation under Finding A6. This would allow for monitoring of the various drivers of the segregation population going forward.

- **Recommendation: Conduct a review of past segregation placements to identify and understand why people are sent to segregation—such as for an investigation, for pre-hearing detention, or on receiving a DS sanction—as well as the relative frequencies of each type of placement.** The review should also look at lengths of stay and where people go when released, for each type of placement, and explore alternative options that could have avoided such placements in segregation, where appropriate.

It is important to understand the underlying reasons for people’s placement in segregation in order to most safely and effectively reduce the segregation population. Vera was not able to conduct a thorough quantitative review due to the lack of administrative data on reasons for placement. NDOC should examine where this information is recorded—whether in individual case files, paper files at each facility, etc.—and then use this knowledge to develop a way to review at least a selection of past segregation placements for the information outlined above.

- **Recommendation: Use this data review of past segregation placements (above), as well as an examination of policy and practices, to better understand the reasons for the recent increase in AS placements and whether it is related to the decline in the use of disciplinary segregation.** In particular, it is important to determine whether the increase in AS use may be an unintended consequence of the disciplinary reforms and subsequent decreased use of DS—whether, for example, some staff may unofficially be using AS in place of DS. Because the use of AS has increased, and particularly because AS has indeterminate and sometimes substantial lengths of stay, it is critical to examine AS placements as a continued major driver of NDOC’s segregation population.

NOTE: The remaining findings and recommendations in this section will pertain only to the use of administrative segregation. They will not address people who are classified in the data as on AS status but who are, in fact, serving DS sanctions (see Section C for more on the disciplinary process and the use of disciplinary segregation).

Finding B3: AS is sometimes used in situations where alternate placements may be appropriate and safe. NDOC staff reported that segregation is often reserved as a response to

instances of violent misconduct or serious threats. However, policy does allow for placement in AS if a person threatens “the orderly operation of the facility or institution” or “a significant disruption of institutional operations.”¹⁷ People are also sometimes placed in segregation when they do not personally pose a serious threat to safety, such as while their requests for protective segregation are investigated. Moreover, Vera heard that incarcerated people often remain in segregation, sometimes for lengthy periods, while waiting for a bed to open up in GP—even though the department has determined that they no longer pose a threat and therefore do not need to be held in such restrictive conditions.

- **Recommendation: As a key principle, people should be placed in segregation only as a last resort, when they must be separated from the general population in a more secure environment to protect the safety of staff and other incarcerated people.** As the American Correctional Association’s (ACA) restrictive housing standards state, “policy, procedure and practice [should] provide that the placement of an inmate in Restrictive Housing shall be limited to those circumstances that pose a direct threat to the safety of persons or a clear threat to the safe and secure operations of the facility.”¹⁸ Segregation should not be relied on simply to promote the orderly operation of a facility, such as by confining people for nuisance behaviors or low-level infractions that are disruptive but do not pose a threat to safety and security.
- **Recommendation: Make every effort to avoid using segregation in response to requests for protective custody.** When incarcerated people request protection, staff should make every effort to identify a housing situation in GP where the requester can be safely housed pending review. Placement in AS should be used only as a last resort, when no other safe temporary alternatives are available. If a person is placed in segregation, ensure that their investigation, classification, and transfer to PS are conducted as quickly as possible. For more on this, see Finding D2 and the subsequent recommendations.

Finding B4: There is a formal process for placing incarcerated people in AS and later reviewing that placement; though, as the data shows (see Finding A8 above), there are people in AS units with no AS status designation, and some people may remain in segregation unnecessarily. A facility’s warden, associate warden, or shift supervisor can order a person’s immediate placement in segregation. This placement must be reviewed within 72 hours—by the “appropriate authority,” according to policy, though the policy does not specify who this authority is.¹⁹

Within three working days, an incarcerated person placed in segregation must receive an initial AS hearing in front of a classification committee made up of at least three employees; policy states that the committee cannot include any staff with direct involvement in the incident or circumstances that led to someone's placement in segregation, but provides no other requirements.²⁰

After this initial hearing, the classification committee will review the incarcerated person in segregation every 30 days. Policy also states that the facility's associate warden (or designee) "will review and determine when retention in [AS] is no longer necessary."²¹ There is no limit to how long a person can be kept in segregation.

- **Recommendation:**

- Require that a person's placement in segregation be reviewed by a higher authority (who was not involved in the initial placement decision) within 24 hours.** This would provide more immediate review of placement decisions and ensure that people whose presence in segregation cannot be justified by reference to safety and security are more quickly returned to GP. Moreover, reviewers would be able to recognize if there are any patterns of improper placement decisions and address them, such as with additional staff training. The 24-hour benchmark is consistent with the ACA restrictive housing standards.²²
- Require that the classification committee that reviews a person's continued housing in segregation be a multidisciplinary committee consisting of at least one non-custody staff member (such as program or mental health staff).** Encourage such committees to be participatory and have meaningful discussions. This would help promote a more robust consideration of each situation and whether an incarcerated person should remain in segregation, or whether another suitable option is available.
- Establish quality assurance measures for the multidisciplinary committees to ensure that they are meeting their intended goals (as described above).** These measures should include periodic observations of committee meetings by supervisory staff and a review of the results of the meetings by the warden.
- Clarify and strengthen the process for frequent review of everyone in segregation to determine whether they should remain in segregation or return to GP housing.** The goals of such review should be to ensure that AS is truly used only as a last resort and to keep people in segregation for the shortest amount of

time, returning them to GP as soon as safely possible. This process should include a meaningful review by the multidisciplinary classification committee of each person in segregation “every seven days for the first 60 days and at least every 30 days thereafter,” as the ACA standards recommend, or ideally even more frequently than that.²³ The committee’s decisions should be reviewed by a higher authority, such as the facility’s warden.

- e. **In particular, ensure additional scrutiny of people who are held in segregation for long periods of time, such as after 15 days.** Some corrections systems have two separate statuses—one for immediate or short-term segregation and another for longer-term segregation; placement on the latter status requires an increased level of review, such as review by administrators in the central office. For example, in the Nebraska Department of Correctional Services, a Central Office Multi-Disciplinary Review Team (MDRT) was established as a safeguard against extended stays in segregation. This high-level committee meets weekly specifically to review people who have been in longer-term segregation.²⁴ The MDRT creates individualized plans, assesses compliance with treatment plans, and reviews cases with an eye to returning people to less restrictive environments as soon as safely possible. In other systems, people who remain on AS past a certain length of time must have their cases reviewed by a high-level authority, such as the department director. NDOC should implement similar strategies of frequent review and review by more senior authorities, like an appropriate member of NDOC central administration, particularly for people who have been in segregation for long periods of time.

Finding B5: Placement in AS can be indefinite, with no clear pathway back to less-restrictive settings. With no cap on the length of time a person can be held in segregation and no clearly defined steps people can take to work their way back to GP, it is possible for someone to remain in segregation for an extended period of time. Staff at various NDOC facilities reported that they have seen some incarcerated people languish in segregation for years.

- **Recommendation:**

- a. **Create individualized plans for each person placed in AS.** As soon as an incarcerated person is placed in AS, staff should develop, in consultation with that person, a clear behavioral and programming plan with the aim of returning the person to

less restrictive housing as promptly as possible. This plan should take into account the person's individualized treatment or programming needs and any history of repeated placements in, or refusal to leave, segregation, as well as the contributing factors to those histories.

- b. **Create programming to help people who have been in segregation for long periods of time transition successfully to a lower-security environment, and ultimately back to GP.** Such programming should address people's specific risks and needs, as well as gradually reintroduce increased out-of-cell time, congregate activity, and privileges.

Finding B6: Conditions in AS units are highly restrictive and allow very limited out-of-cell time for recreation. According to one policy (AR 507), incarcerated people in AS units receive a minimum of seven hours per week of outdoor exercise, "absent inclement weather or staff shortage," in secure recreational spaces; it does not specify if these seven hours must be spread among a certain number of days or if they can be grouped together.²⁵ Another policy (AR 801) states that people in AS units are allowed between one and three hours of out-of-cell time (presumably per day), "contingent on positive conduct"; it also states that they "may be allowed to exercise in small groups."²⁶

In practice, out-of-cell time seems to vary among segregation units and facilities. At NNCC, for example, staff reported that people in AS units received around 10 hours of out-of-cell recreation per week and that they recreated individually unless they are double-celled, in which case they could recreate with their cellmate. At HDSP, staff reported that people in segregation received about 1.5 hours of recreation every other day. Staff at multiple facilities also noted that many people in segregation often turn down their recreation periods, because for various reasons they do not want to leave their cells. This was confirmed by many incarcerated people, who cited reasons such as recreation taking place in small individual enclosures where there is not anything to do, and sometimes being offered recreation at inconvenient times (like at night).

• **Recommendation:**

- a. **Increase and improve out-of-cell recreation time and limit such time only sparingly.** Having such minimal time for exercise outside of a small cell is not healthy for a person's body or mind.²⁷ People in AS units should receive out-of-cell time for five hours every day (not just a few days, or even five days, per week). It is also important to

ensure that the policy provision that makes recreation time “contingent on positive conduct” is not used to deny incarcerated people their out-of-cell recreation time due to low-level or nuisance behaviors; recreation should be limited very sparingly—only on an individualized basis, due to direct safety concerns (such as someone assaulting a staff member while being escorted to a recreation enclosure, for example).

- b. **Offer outdoor recreation time to people in a clear and meaningful way, at reasonable times of the day, and in spaces that—unlike the small recreational enclosures currently used—are suitable for physical activity and have appropriate exercise equipment.** These considerations could encourage incarcerated people to take advantage of their recreation periods and enable them to get meaningful exercise.
- c. **Allow some congregate recreation, when safely possible.** The department should employ an individualized approach to determine whether some incarcerated people, carefully matched for compatibility, can be safely allowed to have congregate recreation in small groups.
- d. **Look for ways to offer indoor, unrestrained out-of-cell time, especially during inclement weather.** This could include allowing time on the tier or in a dayroom, as well as the creation of exercise cells on segregation units.²⁸
- e. **Consider other strategies to encourage people to leave their cells for out-of-cell recreation.** Consulting directly with those who have been most reluctant to participate in out-of-cell activities about their reasoning could be illuminating and point to unexplored options for promoting out-of-cell recreation and socialization. Other strategies could include utilizing mental health, program, social work, or religious staff to counsel and encourage reluctant people to leave their cells.
- f. **Monitor whether incarcerated people are leaving their cells for recreation or other activities.** Emphasize to segregation staff the importance of recreation and out-of-cell time. Staff should keep—and regularly examine—records to determine if certain people are frequently refusing to leave their cells for recreation or if some units have lower rates of participation in recreation than others, so that these issues can be addressed.

Finding B7: Staff described to Vera that conditions and privileges in AS units are meant to be similar to GP; however, in addition to receiving very little out-of-cell

recreation time, people in segregation are not allowed congregate activity, and the environment can be very isolating. Incarcerated people in AS receive the same standard clothing, meals, correspondence privileges, and canteen spending limit as those in GP, but some canteen items may be prohibited for security reasons.²⁹ Contact visits are allowed “unless security of the institution dictates otherwise,” and phone calls are allowed but may be limited, per each institution’s procedures.³⁰ Policy also notes that people in segregation “may be assigned to work details on the tier or exercise yard,” although Vera did not hear about this happening in practice.³¹

NDOC staff reported that they are considering ways to bring activities into segregation units, although this seems to vary somewhat by facility. For example, staff at NNCC told Vera that they recently began allowing MP3 players in segregation, and they are looking to set up a library and provide education packets to people there. ESP staff reported that people in Crossroads (close custody) units have been allowed limited, on-unit jobs; however, people in segregation are not given jobs.

- **Recommendation: Implement strategies to minimize isolation, boredom, sensory deprivation, and restrictiveness of conditions in segregation, to make them as close to GP as possible while still maintaining security.** Although some people may need to be separated from the general population in order to maintain safety, this separation need not equal isolation. Indeed, it is critical to make segregation less isolating in order to mitigate the negative effects on people held there, particularly on their mental health, and to better prepare people for release to GP and, eventually, the community.³² The department should do the following in addition to expanding out-of-cell time:
 - a. **Ensure people in segregation have regular access to phone calls and opportunities for visits as frequently as possible.** NDOC can hold people in environments that are separate and more secure without significantly limiting their access to phone calls and visits with loved ones. Visits should, by default, be contact visits, absent an individualized determination that allowing someone a contact visit would jeopardize the safety of others. A great deal of research demonstrates the importance of communication and maintaining family engagement for both incarcerated people and their loved ones; frequent and meaningful family visits can lead to better outcomes for incarcerated people, including fewer infractions while incarcerated and a lower risk for recidivism.³³

- b. **Consider providing paid jobs, on the tier and yard, for incarcerated people in segregation.** This would allow them to earn money and productively occupy their time.
- c. **Implement strategies to increase productive and recreational in-cell activities that reduce forced idleness and sensory deprivation.** Create more opportunities for productive in-cell activities by, for example, increasing access to reading materials and delivering programming and activities, including via televisions, MP3 players, or tablets.³⁴ NDOC should also consult with incarcerated people, who may have additional ideas for activities they would enjoy and could safely engage in. However, these in-cell activities should not be a substitute for out-of-cell recreation time or group programming.
- d. **Introduce opportunities for people to make decisions, exercise agency, and control aspects of their environment.** Research shows that the lack of control incarcerated people generally have over their surroundings and their inability to make and implement decisions—particularly in very restrictive environments—can lead to *institutionalization* or *learned helplessness*, a condition associated with poor mental health and lack of motivation.³⁵ Introducing environmental alterations to counter this condition can help improve mental health outcomes and promote pro-social behavior. Strategies could include offering privileges that allow people to develop or retain some control over their surroundings, such as access to an alarm clock, use of a radio, control of their cell lighting, or the ability to have wall decorations.
- e. **Consider creating “cool down” or de-escalation spaces in segregation units as well as in GP.** For example, the Oregon Department of Corrections developed its first “blue room,” where people can go to watch videos of natural scenery, in a restrictive housing unit. A study of this unit found promising results among incarcerated people who were able to use the blue room, including fewer acts of violence, self-reports of feeling “soothed” by the videos, and prison staff observations that blue room users appeared “calmer,” along with a lower rate of disciplinary infractions.³⁶
- f. **As the above strategies are implemented, track and monitor their use and effectiveness.** It is critical that NDOC staff track people’s engagement with new strategies and activities as they are offered, in order to best identify what is working and what may need future adjustment.

Finding B8: The privileges and amenities of people in AS can be further restricted, according to policy, when they “are necessary to prevent the destruction of property, maintenance of health and/or safety of any person, or otherwise to maintain the security of the institution,” although Vera did not hear about this happening, and it is not possible to identify incidences of such restrictions in the data.³⁷ These restrictions can, per policy, be imposed without a formal hearing process, on approval of the associate warden or designee. They can be continued indefinitely with written record of the restrictions, continuing approval by the unit supervisor, and review by the associate warden every 30 days. If a person is given “a significant restriction of basic cell furnishings, personal hygiene implements (except razors), food, bedding, or standard . . . clothing,” they will be referred to a psychologist within 24 hours of the restriction’s approval, “to determine the medical and/or mental health effects of such restrictions on the inmate.”³⁸

- **Recommendation:**

- a. **Ensure that the basic amenities and privileges available in segregation are restricted only as a last resort, when absolutely necessary for the health and safety of incarcerated people and staff.** If restrictions are made due to such risks, ensure that appropriate medical and mental health staff are involved in the situation and provide any needed treatment. Staff should develop, in consultation with the affected person, a detailed behavioral and treatment plan with the aim of returning the amenities as soon as possible.
- b. **Reviews of restrictions by the associate warden should be done much more frequently than every 30 days and should be coordinated with the behavioral and treatment plan.**

Finding B9: People in AS are generally not provided with programming or other productive activities. These opportunities are withheld despite the fact that policy states that “[t]o the extent possible, consistent with security, inmates in [AS] will be allowed to participate in institutional programs.”³⁹ A recently revised policy also discusses “positive correctional management practices,” which are to be implemented in various units, including AS:

Positive correctional management practices are designed to increase inmate out-of-cell time in an effort to increase positive socialization. These practices can include work details on the

tiers and yard, board games, interaction with clinicians, intermural [sic] sports such as basketball, recreation yard access in small groups and . . . access to library books.⁴⁰

However, based on Vera’s site visits and discussions with NDOC staff, it seemed that AS units offered little to no programming, nor did they allow work details, small group recreation, or access to board games and similar activities.

- **Recommendation: The types of positive management practices described in NDOC policy are a constructive addition to restrictive environments, and the department should strive to implement them in all types of housing where they do not yet exist, including AS.**
 - a. **Offer meaningful programming to address the needs of people in AS units.**
In particular, out-of-cell group programming in a classroom-like environment should be offered, based on the needs identified in individualized plans developed with custody staff, case workers, and mental health staff as necessary.⁴¹
 - b. **Provide opportunities for other out-of-cell, congregate activity in order to promote meaningful and positive socialization.** Such opportunities could include informal social interaction, such as playing board games and other group recreation on the tier or outdoors.
 - c. **Employ strategies to encourage people who are reluctant to leave their cells to do so, in order to participate in programming and socialization.** Some people may be hesitant to leave their cells, even for beneficial programming, particularly if they have been in segregation for long periods of time. As with recreation, mental health, program, social work, or religious staff could be used to counsel and encourage these people to participate in programming. Other creative solutions that systems have used to support people in taking advantage of out-of-cell time include providing peer mentors for people with mental health needs, preceding programming with games and informal recreation time, or bringing dogs from puppy programs onto the unit to encourage people to leave their cells.⁴²

Finding B10: People who are affiliated with a gang (which NDOC terms a “Security Threat Group” or STG) are housed in segregation at a rate higher than those with no gang affiliation. The greatest disparity exists for those identified by NDOC as STG “leaders,” who are housed in AS at a rate 3.54 times higher than those with no gang affiliation. However, even those

with lower-level gang affiliations (often called “suspects” and “associates”) exhibit disparate presence in AS, at rates 60 to 75 percent higher than those with no STG affiliation. Table 1 below illustrates this disparity: while seven percent of people with no STG affiliation (“no rank”) were in AS, 26 percent of those labeled as an STG leader were in AS, as were 12 percent to 13 percent of people with other STG designations (suspect, associate, or member).

Table 1.

People with STG affiliations in AS: counts and disparity

	ADP	<i>In Administrative Segregation</i>		Disparity ⁴³
		Count	% in Seg	
Suspect	337	40	12%	1.60
Associate	1,620	208	13%	1.75
Member	1,065	129	12%	1.66
Leader	52	14	26%	3.54
No Rank	8,502	623	7%	1.00

Additionally, Table 2 below shows that incarcerated people ages 18–24 and 25–34 make up a greater share of those with STG designations than they do of the total NDOC population: 18- to 24-year-olds make up 12 percent of the total population but 16 percent of the STG population, and 24- to 34-year-olds make up 32 percent of the total population but 43 percent of the STG population. The higher rate of STG affiliation in these age ranges suggests the importance of addressing this particular population through programming and policy.

Table 2.

STG affiliation distribution by age

	Number in STG population	Number in Total NDOC population	% of STG population	% of Total NDOC population
<18	8	17	0%	0%
18-24	553	1,608	16%	12%
25-34	1,465	4,244	43%	32%
35-44	975	3,419	28%	26%
45-54	367	2,420	11%	18%
55-64	64	1,250	2%	9%
>64	2	92	0%	1%
Unknown	3	334	0%	2%
Total	3,437	13,384	100%	100%

ESP staff also shared that people with STG status are intentionally kept separate from members of other STGs, often in separate housing units. They explained how this presents difficulties in housing people with STG status and moving them back into appropriate GP units after time in segregation.

- **Recommendation: Develop strategies that focus on addressing the STG population, particularly by providing pathways out of segregation and alternatives to segregation for STG-affiliated people.** One model to consider would be the “Restoration to Population Program (RPP)” that was developed by the New Mexico Corrections

Department.⁴⁴ In this program, inactive STG members, without having to renounce their gang affiliation, are placed in a separated setting where they can participate in programs, including drug treatment, GED courses, and work skills development. The Colorado Department of Corrections also has a gang disengagement program for STG members willing to disengage from criminal activity, and a large number of high-ranking STG members have reportedly participated.⁴⁵

Finding B11: High Risk Potential (HRP) Status is a particularly restrictive form of segregation, which staff say NDOC reserves for people who have exhibited assaultive behavior or pose a risk of escape. NDOC policy only briefly discusses the designation of HRP status, a special classification within AS.⁴⁶ People on this status are classified as maximum custody and are housed in segregation at ESP, the only facility with maximum-custody beds. NDOC policy requires all incarcerated people in maximum custody to be confined to single cells, “except for scheduled exercise periods, showers, visits, professional interviews and hearings, or telephone calls”; when outside of their cells, people on HRP status must be under direct supervision, are moved in restraints and under escort, and are subject to body searches on exiting and returning to the unit.⁴⁷

According to staff at ESP, people on HRP status are housed among those with other classifications in the segregation unit, but are subject to *additional* security measures on top of those used for everyone in maximum custody—such additional measures include more frequent cell searches and more staff required for out-of-cell escorts (three officers, using full restraints and a lead). People are reportedly placed on HRP status at the warden’s discretion, due to assaultive behavior, such as murder or attempted murder, or posing a high risk of escape. Staff reported that the review process for HRP is more significant now than in previous years, requiring a more critical review of whether someone merits such a restrictive status. Placement on HRP is reportedly reviewed every six months. At the time of Vera’s visit to ESP, there were 23 people on HRP; staff characterized this number as higher than usual, partly as a result of two recent attempted murders.

- **Recommendation: Ensure that HRP status is used sparingly, only as a last resort when absolutely necessary, and for the shortest possible duration.**
 - a. **Add clear provisions regarding the use of HRP to existing policy.** As with other types of segregation, policy should clearly outline the requirements and safeguards for

placement on HRP status, conditions while on HRP, and the process for reviewing and removing someone from HRP status.

- b. **Ensure that continued placement on HRP status is reviewed by a multidisciplinary team much more frequently than every six months.**⁴⁸ These more frequent reviews should involve substantive deliberation by a multidisciplinary team and have the goal of moving people off of HRP status at the earliest point possible.
- c. **Place a limit on the amount of time a person can remain on HRP.** It is important that HRP is not a completely indefinite placement.
- d. **Create individualized plans for each person placed on HRP status, to clarify what they must do and how they can get off of HRP.** As soon as an incarcerated person is placed on HRP status, staff should develop, in consultation with the affected person, a clear behavioral plan with the aim of returning the person, as promptly as possible, to AS or less restrictive housing, such as the BMU.

Finding B12: Men with death sentences are housed in the “Condemned Men’s Unit” (CMU) at ESP alongside other people in segregation, but many of them are afforded greater privileges and out-of-cell time. Men in CMU are on maximum-custody status, which according to policy, is a highly restrictive status requiring single cells, very limited out-of-cell time, and movement in restraints and under escort.⁴⁹ However, Vera learned from staff at ESP that many men housed in CMU are provided with “crossover privileges.” This means that, if their behavior merits it, they are afforded additional out-of-cell time—staff said that generally they receive at least five hours out per day—including recreation on the yard and on the tier in groups of around 12 people. At the time of Vera’s visit to ESP, 57 of the 65 death-sentenced men housed there were receiving “crossover privileges.”

This strategy seems to be producing positive results. Staff on the unit reported that this population was “by far our best behaved” and called the CMU “one of the better places to work” at the facility.

- **Recommendation: Further reduce unnecessary restrictions for men in CMU, to approximate GP conditions as much as safely possible.** It is commendable that, rather than keeping everyone in CMU in restrictive conditions simply because of their sentence, NDOC allows many men in CMU to have congregate activity and more out-of-cell time than traditional restrictive housing. It would also be beneficial to provide programming for this population and

to further distinguish their conditions of confinement from segregation. The North Carolina Department of Public Safety (NCDPS), for example, has established units for people sentenced to death that, although separate from the rest of the prison population, essentially function and look like GP units; NCDPS has reportedly had success with this model.⁵⁰ Should some people in ESP’s CMU require greater levels of restriction due to their behavior, that should be addressed on an individual basis, as it would be for any other incarcerated person.

C. The disciplinary process

Within the Nevada Department of Corrections, DS is a form of segregation that is given as a sanction to incarcerated people who are found guilty of committing a disciplinary infraction during their time in prison. DS sanctions are given for a set period of time, such as 30, 60, or 180 days. In NDOC facilities, people serving DS sanctions are housed in the same segregation units as those who are classified as being in AS.⁵¹ As noted above, in NDOC’s data, people serving a DS sanction and people who are in AS are all designated as “administrative segregation status,” and it is therefore not possible to differentiate between these groups in the data.

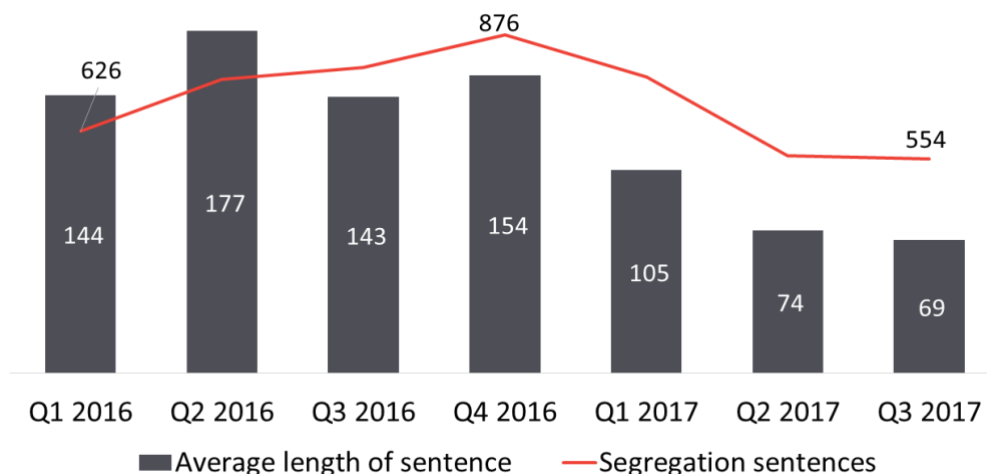
Vera analyzed data on disciplinary charges, hearings, guilty findings, and sanctions given for the seven-quarter period from January 1, 2016–September 30, 2017, as well as an average daily analysis for the third quarter of 2017. Looking at the latter part of 2017 allowed Vera to study the (albeit preliminary) effects of the disciplinary process reforms NDOC implemented in 2017.⁵²

Finding C1: Overall, the number of DS sanctions given—and the average length of these sentences—decreased from 2016 to 2017. This likely reflects the disciplinary policy reforms implemented in February 2017.

Figure 11 below shows the number of DS sentences given per quarter and the average length of sentences, in days, by quarter. The number of DS sanctions peaked at 876 in the fourth quarter of 2016, then decreased; 554 DS sanctions were given in the third quarter of 2017. The average length of DS sentences given in the second quarter of 2016 was 177 days (almost six months). This average dropped to 69 days in the third quarter of 2017.

Figure 11.

Number of DS sentences and average length of DS sentences in days, per quarter



Finding C2: The percentage of disciplinary charges with guilty findings that received DS sanctions decreased from 2016 to 2017 for minor, general, and major charges.

NDOC divides disciplinary charges into four categories: minor, general, major, and work charges.⁵³

Table 3 below shows the number and percentage of charges for which a person was found guilty and received DS as a sanction in 2016 and the first three quarters of 2017. The proportion of major charges resulting in DS sentences dropped from 58 percent to 49 percent. The proportion of general charges leading to DS sentences dropped from nine percent to two percent. In 2016, only nine minor charges (close to zero percent) resulted in a segregation sentence, and in 2017 through the end of September, no minor charges received DS sentences. The proportion of work charges leading to DS sanctions went up, but these represent only about one percent of all charges with guilty findings.

Table 3.

Disciplinary segregation sentences by charge level, 2016 and 2017

	2016		Q1 – Q3 2017	
	Seg	% Seg	Seg	% Seg
Minor	9	0%	-	0%
General	756	9%	88	2%
Major	2,887	58%	1,384	49%
Work	27	15%	22	19%

Finding C3: The average length of DS sanctions given decreased from 2016 to 2017 for minor, major, and work charges, and slightly increased for general charges. Table 4 below shows the average length of disciplinary segregation sentences (in days) given, once someone had been adjudicated as guilty of a charge. As noted above, the proportion of major charges leading to DS sentences dropped from 58 percent to 49 percent; however, the average length of these DS sentences dropped much more substantially, from 186 days to 57 days.

Table 4.

Average length of DS sentences in days, by charge level, 2016 and 2017

	2016		Q1–Q3 2017	
	% Seg	Average Length of Sentence	% Seg	Average Length of Sentence
Minor	0%	46	0%	-
General	9%	29	2%	31
Major	58%	186	49%	57
Work	15%	54	19%	32

Finding C4: A majority of the DS sanctions that were given were for major charges—a category that includes the most serious infractions—and this proportion increased from 2016 to 2017. In 2016, 78 percent of all DS sanctions were given for major charges, and in the first three quarters of 2017, 93 percent of all DS sanctions resulted from major charges. Conversely, the proportion of DS sanctions given for non-major charges dropped from 22 percent in 2016 to 7 percent in 2017. Notably, under the revised disciplinary policy put in place in 2017, general and minor charges are not eligible for DS sanctions.⁵⁴ Table 5 below lists the top 10 charges that most frequently led to DS sanctions during the first three quarters of 2017—all of which are major charges (denoted by “MJ”)—as well as the percentage of each type of charge that led to a DS sanction (as opposed to other sanctions).

Table 5.

Top 10 charges receiving disciplinary segregation sanctions, first three quarters of 2017

Charge	Seg. Sanctions	Rate of Seg.
MJ26: Possession of contraband	233	70%
MJ53: Poss. / Sale of Intoxicants	194	67%
MJ54: Use of Intoxicants	156	49%
MJ3: Battery	102	78%
MJ2: Assault	77	86%
MJ56: Tattooing or Poss Tat Device	73	18%
MJ25: Threats	58	57%
MJ44: Failure to submit drug / alch test	58	62%
MJ57: Fail/Refuse to Cell as Assigned	46	39%
MJ55: Poss/Sale/Intro/Manf of Tobacco	45	45%

Finding C5: Under the disciplinary policy that NDOC dramatically revised in 2017, the maximum DS sanction that can be given for any one offense was reduced, and the practice of “stacking” multiple DS sanctions together was prohibited.⁵⁵ The new policy laid out that Class A offenses (the most serious class of infractions) can garner up to 60 days of DS; Class B offenses can result in up to 30 days DS; and Class C offenses can receive up to 10 days. Class D and E offenses cannot result in DS sanctions.⁵⁶ There are two exceptions to the 60-day limit—assault and battery on staff can be sanctioned with up to 180 days of DS, and murder with up to one year.

- **Recommendation: Continue this progress by further limiting the use of DS to only the most serious offenses.** NDOC should assess all infractions and carefully consider which offenses should be eligible for a DS sanction and which should not; DS as a sanction option should be reserved for only the most serious and violent infractions. As a starting point, all Class C offenses—which include infractions such as receiving stolen property, trading or bartering, and refusal to participate in programming—could be precluded from resulting in segregation. The same could be done for nonviolent Class A and B offenses, like tobacco possession and adulteration of food or drink. All infractions should be reviewed, and segregation significantly restricted as a potential response.
- **Recommendation: Further shorten the maximum amount of DS time that can be given as a sanction.** For example, some states have implemented a 30-day maximum, and one state, Colorado, limits the use of segregation to no more than 15 consecutive days.⁵⁷

Finding C6: A variety of disciplinary sanctions other than DS are available and are frequently used. Disciplinary sanctions may include loss of a variety of privileges—including, but not limited to, outdoor recreation, canteen, telephone calls, and visits.⁵⁸ Other possible disciplinary sanction options include restitution (for loss or damage of property), loss of statutory good time credits, extra work detail (for Classes C–E offenses only), loss of property (for Classes D–E only), and verbal reprimands or counseling (for Class E offenses only).

According to NDOC data, sanctions given in 2017 included loss of specific privileges, such as yard, gym, and hobby craft privilege. The maximum duration for which such privileges can be withheld is detailed in policy and varies with the class of the disciplinary violation. One policy specifies, however, that someone “may not be subject to the loss of visiting privileges unless the misconduct that resulted in the charged disciplinary offense relates specifically to an incident involving visitors and/or the visiting process.”⁵⁹ According to the data, in the first three quarters of 2017, “loss of visiting privilege” was issued as a sanction 260 times, while “visiting restriction” was issued 85 times. Loss of phone privilege was used as a sanction 1,434 times (and was the fifth most commonly given sanction).

Table 6.

Top sanctions given for infractions, first three quarters of 2017

<u>Sanction</u>	<u># in 2017</u>	<u>% of total</u>
Verbal Reprimand	2,497	18.3%
Loss Of Canteen Privilege	2,446	17.9%
Restitution	1,888	13.8%
Disciplinary Segregation	1,503	11.0%
Loss Of Phone Privilege	1,434	10.5%
Property Forfeiture	820	6.0%
Suspended Sanction	665	4.9%
Stat Loss Referral	617	4.5%
Extra Duty	491	3.6%
Institutional Transfer	338	2.5%
All others	954	7.0%
Total	13,653	100.0%

Table 6 above shows how many times various sanctions were given in the first three quarters of 2017. The most frequently used sanction was verbal reprimand, which made up 18.3 percent of all sanctions given. The second most common sanction was loss of canteen privileges, which was imposed 2,446 times (17.9 percent of total sanctions given). Restitution was the third most common sanction, at 13.8 percent. DS was the fourth most common sanction, imposed over 1,500 times and making up 11.0 percent of the total sanctions given.

- **Recommendation: Continue to expand the use of effective alternative sanctions; potentially harmful sanctions, however, should be minimized.**
 - a. **Consider creating additional sanctions that could be used as alternatives to DS and other sanctions.** Ask staff and incarcerated people to contribute ideas for feasible and effective sanctions.
 - b. **Minimize the loss of visitation or telephone privileges as sanctions.** Communication and engagement with family and other loved ones is crucial for the wellbeing and future success of incarcerated people.⁶⁰ Ensure that policy is followed and

that visiting privileges are taken away only in response to a serious offense that relates directly to the visiting process, and use this sanction sparingly. Enact a similar policy regarding telephone calls.

Finding C7: Some disciplinary sanctions can be suspended for 60 days. If a person remains disciplinary infraction-free for a probationary period of 60 days after they are found guilty of a charge, the original sanctions may be waived. If someone is found guilty of another offense during that time, the entire suspended sanction must be imposed.⁶¹ DS sanctions, however, cannot be suspended, nor can any sanctions for Class A offenses.⁶²

- **Recommendation:**

- a. **Allow staff the discretion to suspend DS sanctions, when appropriate based on the circumstances.** Ideally, DS sanctions would be reserved for only the most serious and violent offenses. However, should DS remain a possible sanction for other infractions in NDOC policy, staff should have the option to suspend segregation sanctions.
- b. **If someone with a suspended sanction is found guilty of another offense, allow staff the discretion to impose only a portion of the person’s suspended sentence, or even an alternative sanction (such as loss of privileges).** This would allow sanctions to be more tailored to the individualized circumstances of both an initial incident (that leads to a suspended sanction) and a second incident.

Finding C8: Policies provide staff with little guidance on when different sanctions should be used or how to choose between them.⁶³ For example, it is unclear when it is appropriate to issue a sanction of DS rather than an alternative-to-segregation sanction for infractions where both responses are options.

- **Recommendation: Provide clear guidance to staff—in policy and in staff training—on the use of sanctions, and exercise oversight of sanctioning decisions.** A structured sanctioning matrix is one helpful strategy for accomplishing this.

- a. **Ensure that all staff who act as disciplinary hearing officers or members of disciplinary hearing committees (DHC) receive in-depth training specific to the disciplinary process.** Training should include guidance on how to use discretion when choosing suitable sanctions (such as what mitigating factors should be considered), as well as education about the potential harms of time in disciplinary segregation.
- b. **When reviewing disciplinary hearings in their institutions, wardens should assess all sanctions given to ensure they are appropriate and proportionate to the offenses and the individual situations.** Wardens should monitor that all staff are correctly exercising discretion (and counsel any staff who appear to be issuing inappropriate sanctions) and use their power (per policy) to modify any sanctions that they judge to be disproportionate.
- c. **Designate a staff person in the NDOC central office to monitor the use of sanctions at each facility, in order to ensure appropriate use of sanctions and consistency across facilities.**

Finding C9: Staff are allowed to issue warnings for minor infractions, but they report this does not happen often and is not tracked when it does. NDOC policy states that staff can respond to “minor disciplinary offenses” by issuing a warning and/or counseling the person as an alternative to employing the formal disciplinary process.⁶⁴

- **Recommendation: Train and encourage staff to respond to minor infractions with appropriate verbal warnings, counseling, and other forms of communication.**
 - a. **Ensure that staff understand that the use of verbal warnings and counseling are available and acceptable options.** Provide guidance on when these responses are most appropriate.
 - b. **Provide staff with Crisis Intervention Team (CIT) training, as well as education on conflict resolution, Motivational Interviewing, and other forms of communication and de-escalation practices.** Staff training is important to foster an environment where issues and problems can be addressed effectively before they escalate to incidents that may result in segregation.
 - c. **Monitor staff responses to incarcerated people’s behavior to see whether staff use such techniques rather than resorting to the disciplinary process for all infractions.**

d. **Expand the infractions for which verbal warnings and counseling are an option.** These options should be available beyond just minor infractions.

- **Recommendation: Consider developing a “swift and certain” system of immediate, informal responses on the unit, as an alternative to the formal disciplinary process for certain lower-level, nonviolent infractions.** Decades of research on human behavior indicate that an immediate response to behavior is more effective than a delayed response, and the immediacy is more important than the severity of the response.⁶⁵ The department could develop a model that allows correctional officers and supervisors to respond swiftly to infractions on the unit, through the immediate use of fair and proportionate sanctions. Types of responses, such as a reprimand and warning or loss of yard time, should be less restrictive than those given in the formal disciplinary process, and there must be a review system to ensure sanctions are used appropriately and consistently. To provide specific guidance to staff, there should be a clear, structured response matrix with the sanctions for each infraction that is eligible for an immediate response, with harsher sanctions for more serious or repeat infractions.

For example, State Correctional Institution Somerset, an adult prison facility in Pennsylvania, piloted a program where officers on the unit impose swift and certain sanctions—such as loss of dayroom time or restriction to cell except for meals, programming, etc.—for specified misbehaviors. The facility has seen promising results after the first preliminary review, as did a women’s facility when it implemented a similar pilot, and Pennsylvania is planning to expand the program to more facilities.⁶⁶

- **Recommendation: Establish clear guidance on offering additional privileges and other *positive* reinforcements to reward desired behavior.** This information should be explained in writing and verbally to the incarcerated population and staff. Use of these practices should be consistently reinforced and monitored to provide maximum effectiveness.

Finding C10: The maximum time frames that policy allows for the investigation of disciplinary violations and the hearing process can add up to lengthy periods of time, which can be particularly harmful for people in pre-hearing segregation. According to policy, a Notice of Charges must be served to a charged person within 15 days of discovery of the offense *or* of the completion of the investigation into the incident; the hearing must then be held

within 30 days.⁶⁷ However, if the preliminary hearing officer amends the charge after a review, a new Notice of Charges must be issued within 15 days, and a hearing shall be conducted within 30 days after that.⁶⁸ During Vera’s visits, staff at one facility described that, in practice, the investigation and hearing process often took close to 60 days rather than the 45-day maximum outlined in policy.

- **Recommendation: Shorten the time frames for disciplinary investigations and the hearing process.** There are multiple ways this could be accomplished.
 - a. **Shorten the maximum time frames allowed in policy.** The time frame for the hearing should be reduced to a maximum of 15 days, and additional supports should be provided to ensure that investigations and hearings can be completed in a timely manner.
 - b. **In particular, shorten the maximum time frames and prioritize expediting an investigation if the person in question is being held in pre-hearing AS.** If an incarcerated person is being held in the restrictive conditions of segregation during the disciplinary process, it is even more important for the maximum time frames to be shortened and the process to proceed quickly. Policy should provide for such cases to have a specific time frame, shorter than that for cases where the incarcerated person remains in GP while awaiting their hearing.

Finding C11: Disciplinary hearings for major and work offenses are conducted by a Disciplinary Hearing Committee. According to the revised disciplinary policy, a DHC must be made up of three NDOC employees—at least one member must be from classification and another from custody, and the chairperson must be at the rank of a lieutenant, caseworker III, or above.⁶⁹ During Vera’s site visits, some staff reported that it often proves difficult to gather sufficient staff in order to convene these hearings; sometimes staff must even lock down a unit in order to convene a DHC. This is concerning because locking down units is extremely disruptive to important activities that can provide structure and meaning to incarcerated people’s lives, such as visits, recreation, and educational and behavioral programs. At a disciplinary hearing that Vera staff observed at FMWCC, the DHC was composed of three staff: a lieutenant, a case worker, and a correctional officer. The lieutenant presided over the hearing while the other two staff observed the proceedings and, at the conclusion of the hearing, voiced agreement with the lieutenant’s determination of guilt; there was no other discussion or consultation between committee members. It is not clear whether this is common practice or simply reflective of that specific DHC.

- **Recommendation:**
 - a. **Establish regularly scheduled disciplinary hearings.** Making disciplinary hearings regularly scheduled events would make them more predictable and hopefully easier to schedule and would contribute to an understanding that they are routine, important pieces of the management responsibilities of the facilities.
 - b. **Modify policy so that one member of the committee must be a non-custody and non-classification staff member, such as program or mental health staff.** It can be very valuable to bring together a multidisciplinary group of staff with different backgrounds and views to assess an incarcerated person during a hearing and determine appropriate sanctions. This ensures a broader engagement with the issues involved in a specific disciplinary hearing and provides additional points of view—both of which are important to issues of fairness and effective resolution of diverse situations.
 - c. **Train and encourage staff serving as committee members to be active participants—to discuss the case among themselves and to consult with one another regarding findings of guilt and the application of appropriate sanctions.**

Finding C12: At FMWCC, staff reported that they identify women who have completed most of their time in DS or are doing particularly well, cut their DS time by up to 50 percent, and move them to the BMU.

- **Recommendation: Continue the practice of reducing DS time based on positive behavior and moving women out of segregation.** Some could be transferred to the BMU, as is current practice, while others may be appropriate to go straight back to GP without first spending time in the BMU.
- **Recommendation: Expand this practice of early release to all facilities with segregation.** Consider ways to expand the practice of reviewing people serving DS—perhaps at the halfway point of their sanction, or perhaps on a more continual basis—and providing time cuts in their sanctions and early release from segregation when appropriate. This provides an

incentive for people to show positive behavior while serving DS time and helps them return to less restrictive housing more quickly.

Finding C13: “Self-mutilation” is a disciplinary offense, although it is not further defined or explained in policy; this could potentially result in disciplinary sanctions for acts of self-harm or suicide attempts.⁷⁰ Data shows that, in 2016, there were a total of 205 guilty verdicts for the charge “self-mutilation,” and 15 of these resulted in a DS sanction. In the first three quarters of 2017, there were 142 guilty verdicts for this charge, with none receiving a DS sanction.

- **Recommendation: Remove “self-mutilation” from the list of disciplinary violations, making it ineligible for a DS sanction.** There should be no possibility of giving a DS sanction for self-mutilation. Additionally, clearly educate staff about this change and ensure that instances of self-harm or suicide attempts are responded to with appropriate medical and mental health care and are never treated as disciplinary violations.

Pre-hearing detention

Finding C14: Many incarcerated people seem to be placed in administrative segregation for what is essentially pre-hearing detention (PHD) after being charged with a disciplinary infraction, but before having a disciplinary hearing.

- Although PHD is not coded specifically in the data as a reason for admission to segregation, many new admissions to AS are likely for PHD.** Vera found that 19 percent of admissions into AS in the third quarter of 2017 occurred on the same day that a disciplinary infraction by the same person was recorded—presumably, their transfers to AS were related to their alleged infractions.
- Infractions that seemingly lead to PHD often do not result in DS sentences. Of the infractions for which people were presumably placed in PHD in the first three quarters of 2017, only 31 percent resulted in DS sanctions being given at disciplinary hearings.** The other 69 percent did not. Some of these people may not have received DS sentences due to having “time served” in segregation already (the pre-hearing detention), but it is impossible to quantify this based on the data.
- Some people admitted to PHD were charged with infractions that would not merit segregation sentences.** As Table 7 shows, in the first three quarters of 2017, 151

general or minor level infractions led to PHD—yet only four of these resulted in segregation sentences. Under the new disciplinary policy, general and minor offenses are not eligible for DS sanctions.⁷¹ This indicates that some people are placed in segregation for offenses too minor to warrant DS sanctions and that do not rise to a level of threat that merits segregation pre-hearing, either. This may indicate that pre-hearing segregation is being used as an informal form of punishment.

Table 7.

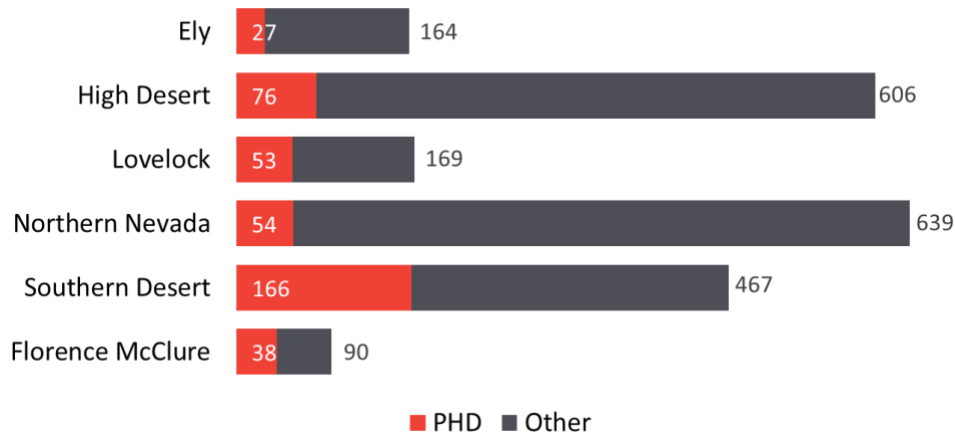
Top charges leading to PHD in the third quarter of 2017

Charge	PHD	Seg. Sanction	%
MJ57: Fail/Refuse to Cell as Assigned	66	13	20%
G6: Fighting	61	1	2%
MJ26: Possession of contraband	58	36	62%
MJ3: Battery	45	29	64%
G14: Failure to Follow Rules and Regs	34	1	3%
MJ25: Threats	22	7	32%
MJ53: Poss. / Sale of Intoxicants	19	8	42%
MJ54: Use of Intoxicants	18	7	39%
M4: Horseplay	17	-	0%
G18: Delaying, Hindering, Inter W/ Staff	16	2	13%

- d. **All facilities with segregation seem to use PHD.** Figure 12 below shows the total number of admissions to AS, as well as the number of those that were presumably for PHD, during the third quarter of 2017 at each facility. In all, 414 people were presumably sent to PHD during this quarter.

Figure 12.

Admissions to AS by facility, in the third quarter of 2017



e. **Policy provides that if an incarcerated person is placed in segregation pending a disciplinary hearing and that hearing leads to a “not guilty” finding or charges are dismissed, “a special classification hearing will be scheduled to determine the inmate’s status.”**⁷² This means that people who are not guilty of an infraction may remain in segregation even longer, awaiting such a hearing.

- **Recommendation: When people are charged with infractions, they should be placed in AS for pre-hearing detention as a last resort, only when necessary for safety and security**—that is, when their behavior was serious and violent and poses an imminent threat to the safety of staff or incarcerated people. Otherwise, the person should remain in GP while awaiting a disciplinary hearing.

a. **Establish alternative options to placing a person in segregation following an incident. Here are some examples of alternative strategies:**

- **Allow a person time to calm down after an incident in a “cool-down” or de-escalation room and then return to GP.** The length of time spent in such spaces should be measured in terms of hours rather than days. These rooms should be spaces designated and specifically designed to promote de-escalation and “cooling off.” For example, the Oregon Department of Corrections has developed “blue rooms”, as discussed earlier on page 40, where relaxing nature videos are shown, and the Colorado Department of Corrections uses de-escalation rooms with murals,

soothing music, soft lighting, and comfortable chairs.⁷³ Staff trained in de-escalation techniques should also interact with people in cool-down spaces to help them regain their composure and practice self-control.

- **When two or more people are involved in a dispute or altercation, use other methods of separating them, without placement in segregation.**

Sometimes, placing people in different GP housing units or ensuring that they do not work in the same area or go to the same programs may be enough to ensure safety. Additionally, staff trained in conflict resolution could provide mediation to resolve disputes among incarcerated people rather than relying on segregation.

b. **When people are placed in AS for PHD, ensure the following:**

- **Continue to monitor their behavior and the risk they pose, and release them back to GP as soon as safely possible**, even if this is before the disciplinary hearing is held.
- **Ensure that any time spent in pre-hearing segregation is credited as time served** (towards a disciplinary segregation sanction) or otherwise taken into consideration when a disciplinary sanction is given.
- **Anyone found not guilty of an alleged infraction, or who has the charges against them dismissed, should be returned from pre-hearing segregation to a GP unit immediately.** Anyone found guilty and sanctioned to a non-DS sanction should also be returned to GP to serve their sanction there.

D. Protective segregation

PS is a form of housing for incarcerated people who require separation from the general population “to ensure their physical safety and well-being or for institutional security.”⁷⁴ People may be placed in PS voluntarily or involuntarily, and they are generally housed in designated Protective Segregation units located at LCC and HDSP. Because conditions in these PS units closely resemble GP housing, Vera did *not* count PS as a type of restrictive housing for the purposes of this assessment. However, a few findings and recommendations related to PS are included below.

Finding D1: PS units are relatively GP-like in that there is unrestrained movement, congregate activities, and significant out-of-cell time. Vera observed that PS units at LCC

and HDSP are separated from the general population, but conditions are otherwise very similar to GP (in terms of movement, out-of-cell time, programming, and other opportunities). According to NDOC policy, PS units “will have the same canteen, educational, programming and recreational privileges, as those in general population, which do not conflict with institutional safety or security,” although these “units may be managed differently at different institutions, depending on the security needs and management of the institution.”⁷⁵

- **Recommendation: Further enshrine in policy the current practice of GP-like conditions in PS units, including a minimum number of hours out of cell per day, unrestrained movement, and access to programming and congregate activity.** This would help ensure the consistency and sustainability of NDOC’s commendable practice of having GP-like PS units.

Finding D2: According to policy—and in practice, as Vera heard from NDOC staff—incarcerated people who request protection are often placed in AS pending an investigation and their classification to PS.⁷⁶

- **Recommendation: When incarcerated people request protection, staff should make every effort to identify a housing situation in GP where people can be safely housed pending review.** This rehousing should be done in consultation with the person requesting protection. Ensure that placement in AS is a last resort, used only when no other safe temporary alternatives are available. If a person is placed in segregation, ensure that the person’s investigation, classification, and transfer to PS are conducted as quickly as possible.
- **Recommendation: When someone who requests PS is placed in AS, conduct a follow-up classification review quickly, at the most within 10 days.** It is possible that the circumstances that precipitated the initial request and placement in AS can change after only a matter of days, so each placement should be reviewed in order to reevaluate the circumstances.

Finding D3: Some people on PS status are housed in segregation units, rather than PS units. NDOC staff explained that people with PS status may be placed in a segregation unit if they are having trouble with other incarcerated people in the more open PS units, if they are being held at

NNCC (where there is no official PS unit) for medical or mental health treatment, or if there is a long wait for a PS unit bed to become available. For those people on PS who are in segregation, their PS status is reviewed only every six months. Policy states that these reviews are done “with the ultimate goal of the inmate reintegrating into general population” if possible.⁷⁷

- **Recommendation: For people on PS who are housed in segregation, review their classification more frequently.** Reviews should be done on a weekly basis. For people who are placed in PS involuntarily or who are on PS status in a segregation unit rather than a PS unit, PS status reviews are important opportunities to assess safety concerns and consider the possibility of movement to a less restrictive or GP unit.

E. Behavior modification units

NDOC’s 2017 revised disciplinary policy included a provision calling for the creation of BMUs, specialized housing units with the aim of helping incarcerated people transition from segregation to less restrictive environments.⁷⁸ BMUs were subsequently created at multiple NDOC facilities in 2017 and are continuing to be modified and enhanced. At the time of Vera’s August 2017 visit, three facilities—HDSP, FMWCC, and ESP—had established BMUs. Vera visited all three facilities and noted that significant variation exists among facilities, both in their operation and conditions of confinement.⁷⁹ This section first details findings and recommendations for BMUs generally. In order to capture some of the nuances of each facility’s BMU, following this general section are three distinct subsections for each of the three BMUs that Vera observed. Note, however, that many of the recommendations presented in these subsections may apply to other BMUs as well.

Finding E1: BMUs have been developed by facilities (HDSP, FMWCC, and ESP) to facilitate people’s transitions from segregation to GP settings. These units were created in response to recently revised ARs 733 and 801. According to AR 733, BMUs “are designed to transition an inmate from a segregation setting to one that more resembles [GP]. It is expected that during an inmate’s stay in a BMU that an inmates’ ability to interact with staff and inmates in a socially acceptable manner will be encouraged.”⁸⁰ AR 801 states that BMUs “will provide a reintegration or step down process for inmates that have been housed in segregation units in an effort to review the inmate’s ability to interact with staff and inmates in a socially acceptable manner.”⁸¹ The implementation of a step-down program to help incarcerated people transition from

highly restrictive environments to less-restrictive conditions, and ultimately GP, is a promising strategy, similar to programs being implemented in many prison systems around the country.⁸²

However, at the time of Vera's visit, some people in BMUs were being held in very restrictive conditions not that different from segregation (see Finding E2 below for more details). This may be in part because NDOC's ARs do not provide many specifics, leaving ambiguity in how BMUs should be operated. How the units should function, what conditions should be like, who should be placed there, and how people can progress to a GP unit are all questions left largely unaddressed by NDOC policy. As a result, at the time of Vera's visit, the BMUs at each facility seemed to have differing goals, each specific to the facilities' respective needs. This is understandable, but also leaves potential for confusion and inconsistency. It may be useful to maintain some flexibility so that BMUs can be customized for specific populations or to meet the needs of certain facilities. However, Vera also recommends the following:

- **Recommendation: Conduct a centralized review of all BMUs.** This review should examine how the BMUs have been implemented so far and consider what is working well, what challenges or unintended consequences have arisen, and what could be improved, in order to inform systemwide policy clarifications that outline important requirements for all BMUs. It could also be useful for identifying and highlighting strategies for responding to specific needs and populations, and possibly applying a mission-based approach to each BMU in order to provide an array of targeted programming throughout the NDOC system.
- **Recommendation: Establish *minimum requirements* for conditions in the BMUs that are noticeably less restrictive than segregation units.** Although some variation in conditions between different BMUs—and among various levels or phases within a BMU—may be acceptable, there should be minimum standards that differentiate BMUs from segregation and that all BMUs must meet (see recommendations below for more details).
- **Recommendation: Track people who are placed in BMUs in order to assess and monitor program effectiveness.** Specifically, staff should track the number of people placed in each BMU, their demographics, lengths of stay, and any reentry to segregation from a BMU. Tracking such data is important to assess effectiveness of these programs and identify where improvements could be made.

Finding E2: Out-of-cell time for people housed in BMUs often still resembles that of restrictive housing. A number of men who are housed in the BMU at HDSP described very limited out-of-cell time. At HDSP, where the BMU is organized into phases, this was especially prevalent in the first two phases of the program, which staff explained provide for only one hour of recreation time, five days per week (the same as in segregation), as well as perhaps some out-of-cell time for programming and treatment. Moreover, men housed in the BMU at ESP are not allowed more than two hours per day of out-of-cell time—essentially the same as in segregation—though, unlike in segregation, they are allowed unrestrained movement when out-of-cell.

- **Recommendation: Increase out-of-cell time and congregate activities for people housed in BMUs.** Out-of-cell time and group socialization are essential components of a successful step-down program and two of the key things differentiating BMUs from segregation.
 - a. **Provide more than five hours per day minimum out-of-cell time, per AR 801,** with more time out-of-cell always being preferable. It is crucial to provide more out-of-cell time in the BMU than in segregation, even in the first phase of the program.
 - b. **Follow AR 733 and progressively increase out-of-cell time as a person moves through the phases of the BMU.** Out-of-cell time in BMUs should be more than in segregation from day one and should also increase progressively to help incarcerated people transition towards GP.
 - c. **Out-of-cell time should include structured activities in addition to unstructured recreation time.** AR 801 promotes and includes several suggestions for structured and congregate activities in BMUs, including “work details on the tiers and yard, board games, interaction with clinicians, intermural [sic] sports such as basketball, recreation yard access in small groups and ... access to library books.”⁸³

- **Recommendation: Provide specialized programming in BMUs.** Ample programming is needed to ensure that BMUs promote increased socialization and prepare people for reintegration into GP—the goals of BMUs as stated in policy—as well as meet incarcerated people’s needs. At least some of the programming should be provided in groups and out-of-cell, in a classroom-like environment.⁸⁴

- **Recommendation: Allow unrestrained movement in all BMUs.** Continue—and codify in policy—the practice of permitting incarcerated people in BMUs to move around the unit

unrestrained. This is another aspect of conditions that would set BMUs apart from segregation and help prepare people to return to GP.

- **Recommendation: Promote participation in BMU programming with positive incentives; do not implement disciplinary consequences for failure to participate.** Incentives like those mentioned in AR 733 (increased contact visits, phone privileges, and access to canteen) should be used to encourage participation in programming and compliance with BMU operations.⁸⁵ Additional incentives should also be developed, with input from staff and incarcerated people. It is also important for case workers and mental health staff to engage with anyone who is unwilling to participate in programming and make attempts to address their needs. Alternative sanctions should be used for people in the BMU in an effort to avoid additional segregation time.

Finding E3: AR 801 limits the maximum amount of time in a BMU to 30 days; however, the lengths of stay in BMUs are reportedly significantly longer than this policy dictates.⁸⁶ Staff at HDSP reported that there was a target length of 90 days for people in the BMU. FMWCC staff also estimated that the longest stay in the BMU was around 90 days.

- **Recommendation: Follow AR 801 and limit the maximum time someone can be in a BMU to no more than 30 days.** If this cannot be accomplished immediately, develop a progressive plan for implementing this policy with target dates. The programming provided in BMUs should be appropriate to this time frame and should prepare people for reintegration back into GP after 30 days.
- **Recommendation: If a phase or level system is used in a BMU, adjust the time frame to account for the 30-day maximum length of stay.** Having several levels—such as the five phases Vera observed in the BMU at HDSP—may be unnecessary and too difficult to progress through in a shorter time period. It may work better to have just a few phases. In addition, progression through the BMU phases could follow an “opt-out” model (vs. an “opt-in” model), where everyone progresses by default to the next phase after a specific time frame (such as one week) *unless* staff flag specific concerns and the classification committee decides that person should not yet progress.

Finding E4: Classification teams determine progression through BMU phases and programming. At FMWCC, the classification team is made up of case workers and wardens who meet about once per month to review the women in the BMU. At HDSP, the team includes custody staff, mental health staff, caseworkers, and an associate warden. They meet with the person under review, assess their behavior, and then make a determination. Staff meet on a weekly basis to discuss individual movements through phases. People can be moved backwards one phase, as well as forwards through the phases. The warden must approve the program completion or removal of someone from the BMU.

- **Recommendation: The classification team for every BMU should be multidisciplinary and should meet every seven days to review people’s placements in the BMU, per AR 801.** These frequent reviews by the classification team can hopefully more quickly and easily identify people who are ready to progress to the next phase or be released to GP.
- **Recommendation: People housed in a BMU should participate in their classification team meetings.** After the decision is made, the team should verbally communicate it to the affected person and explain the reasons for the determination.

Finding E5: There appeared to be significant confusion on the part of many BMU participants regarding the process for moving through and out of the BMU. Based on staff descriptions of the process for getting out of the BMU and conversations with women in the BMU at FMWCC, there were clearly differing understandings of BMU program details.

- **Recommendation: Establish a clear process and criteria for moving people through a BMU program and ultimately to GP and ensure that staff and BMU participants understand them.** These processes should be laid out in writing and verbally communicated to each person on entry to the BMU and reinforced at each classification team review. Staff should also be trained to understand all aspects of the BMU, so they are able to clarify the program for incarcerated people.

Finding E6: There is inconsistency across facilities in how staff are selected to work in the BMU, and those staff do not receive additional training specific to the BMU. A

significant factor in the success of a step-down program is identifying the appropriate staff to work there. At HDSP, staff assigned to the BMU were reportedly “hand-selected,” which was thought to have contributed to successes in its implementation. At FMWCC, staff who work in the BMU are GP officers rather than segregation officers, even though the women in the BMU all enter it directly from segregation.

- **Recommendation: Ensure that staff are carefully selected for BMUs.** Establish specific criteria for staff who are assigned to BMUs. Provide specialized training for staff assigned to BMUs related to the aims of the units, the specialized conditions and programming there, and the needs of people who are housed there—including the effects segregation can have on people and the needs they may have while transitioning to less restrictive housing.

Behavior Management Unit at High Desert State Prison

The BMU at HDSP was designed as a step-down program for people who are coming out of segregation but are not ready to go directly to GP. Assignment to the BMU following segregation is determined by the warden.

Finding E7: Many of the people sent to the BMU have mental health designations. Staff reported anecdotally that the BMU seems to have become a de facto mental health unit due to the high number of people with mental health needs placed there. This suggests that there are a large number of people with mental illness being placed in segregation (and subsequently transitioned to the BMU), who would benefit from alternatives to placement in segregation in the first place. However, limitations to the NDOC mental health data-tracking (as described in Finding F4 below) make it difficult to quantify the exact number of people with mental health needs in the HDSP BMU.

- **Recommendation:** See the recommendations regarding people with mental health needs included in section H below.

Finding E8: Out-of-cell time and programming is minimal in the initial phases of the BMU, and incarcerated people reported a desire for more programming at all phases.

The BMU at HDSP is divided into five phases that people must progress through in order to return to a GP unit. Progress through each successive phase is based on positive behavioral progress and

accompanied by increased out-of-cell time and privileges. However, at the time of Vera’s visit, the first two BMU phases allowed for no more out-of-cell time than is granted in segregation units, which limits the ability to provide programming, mental health care, and other meaningful opportunities for out-of-cell socialization.

- **Recommendation: Increase out-of-cell time for recreation as well as group and individual programming for people housed in the BMU.** See the recommendations under Finding E2 above for more details.

Finding E9: HDSP staff reported that priority for placement in the BMU is given to people who are nearing release from prison yet are still in segregation. Men being transferred from segregation in the remote ESP facility to HDSP, near Las Vegas, in anticipation of their release were specifically mentioned. Staff noted a goal of placing people in the BMU three months prior to their release.

- **Recommendation: Continue using BMUs as one strategy to avoid releasing people to the community directly from segregation.** Consider whether a transfer to a BMU is appropriate for people in segregation who are nearing their release from NDOC custody but are not ready for GP. Such a transfer would facilitate their transition from segregation and could ultimately help them return to GP before their release. BMU placement consideration should begin far earlier than three months prior to a person’s release, however. The longer people have out of conditions of segregation before their release, the more likely they are to successfully adapt and re-socialize. See recommendations under Finding A4 for more details.

Behavior Management Unit at Florence McClure Women’s Correctional Center

The 98-bed BMU at FMWCC functions as a pathway out of segregation for people on both DS and AS status. Out-of-cell tier time in groups of 16 is allowed for between two and three hours per day and includes access to phones and showers. The personal property that women were not allowed to have while in segregation is returned to them in the BMU. Women have access to the same privileges as GP, but some services—education, chapel, law library, and mental health services—are brought to them on the unit. They do go off the unit in groups according to a schedule; each wing of the BMU leaves the unit for meals, recreation, and canteen together.

Finding E10: At FMWCC, women may sometimes be sent to the BMU from GP as a response to behaviors—including lower-level infractions, such as failure to participate in programming or jobs. Employing the BMU as a behavioral consequence could potentially confuse the goals of a BMU as a step-down program from segregation with that of disciplinary sanctions.

- **Recommendation: Establish alternative sanctions in response to failure to work.** Because work and programming are goals of FMWCC, and failure to participate creates a problem, limiting privileges or other alternative sanctions would be more appropriate. In addition, staff should employ motivational interviewing and counseling to attempt to understand the underlying reasons for a person’s failure to work or participate in programming and determine a solution.
- **Recommendation: Clarify the mission and functions of BMU.** If entry to the BMU can come from both segregation and GP units, it is even more critical to clearly outline the criteria for entry into the BMU and the necessary steps for movement out of the BMU.

Finding E11: FMWCC staff noted a shortage of mental health treatment in the BMU, as there was only one mental health clinician to do rounds.

- **Recommendation: Increase mental health staff availability for women in the BMU.** Moreover, introducing group therapy and programming in addition to current rounds by the clinician could increase the level of mental health services women in the BMU receive.

Behavior Modification Unit at Ely State Prison

ESP also created a BMU in 2017, with the goal of transitioning people from long-term segregation to lower custody levels. This unit specifically aims to involve people who had exhibited assaultive behavior in the past and as a result served DS sentences of six months to one year. Conditions in the BMU allow for a very limited number of jobs and property and canteen privileges resembling those of a GP unit, but outdoor recreation takes place in individual recreation enclosures. Men are also double-celled in this highly restricted housing unit.

Finding E12: People in both the BMU and Crossroads Unit at ESP are housed in the same unit and, according to staff, experience similar conditions of confinement. The BMU is intended to be a step-down program for people transitioning out of segregation to lower security units. The Crossroads Unit, on the other hand, was developed for those who have been in AS for long periods of time for reasons unrelated to violent behavior.

- **Recommendation: Distinguish these two units from one another in terms of purpose, function, programming, and organization.** House BMU and Crossroads on separate units to further clarify the distinctiveness of each program. Ensure staff and incarcerated men understand the difference between the programs.

Finding E13: Men housed in the BMU and the Crossroads Unit at ESP are double-celled but receive very little out-of-cell time—about the same amount per day as men housed in the AS unit, who reside in single cells. Staff noted that, in units with very little out-of-cell time, such as AS and the BMU, many incarcerated people may prefer being single-celled to having to share a cell with another person. This may cause people to view BMU as a less desirable placement than AS, which could motivate them to act out in order to remain in, or return to, AS. Moreover, having no more out-of-cell time than in AS runs counter to the BMU's intended purpose of being a step-down unit to transition people to less restrictive housing and ultimately GP, where they will have much more out-of-cell time.

- **Recommendation: Increase out-of-cell time for people housed in the BMU and Crossroads Unit to at least five hours per day, per AR 801—for recreation, programming, and congregate activity.** BMUs must be a true step down from segregation, which means having notably different conditions. Moreover, because incarcerated people are double-celled in these units, it is important to ensure that increased out-of-cell time and privileges exist to provide sufficient benefits to outweigh the inconvenience of having a cellmate, in order to incentivize people to progress into and through the BMU. It is also critical to ensure that the BMU and Crossroads Unit do not, in practice, amount to double-celling people in segregation-like conditions, to avoid unintended consequences of such practices that have been experienced in other jurisdictions.⁸⁷ See the recommendations under Finding E2 above.

- **Recommendation: Consider implementing a phase- or level-based approach for people to progress through the BMU and Crossroads Unit programs.** Having meaningful goals and incentives to look forward to can be an important driver for changes in behavior.

Finding E14: ESP staff reported that they were considering allowing group recreation time in the BMU in the future.

- **Recommendation: Allow group recreation for men housed in the BMU in practice and in policy.** Make this standard practice from the beginning of a person’s time in the BMU. The first phase could include group recreation with a smaller number of people and progress to larger groups as people move through the program levels.

F. Mental health

Finding F1: AS and other restrictive housing units held a high proportion of people who were flagged in the data as having mild, moderate, or severe mental health needs.

As shown in Figure 13 below, 41 percent of people in AS had a mental health flag, as did 36 percent of people in other restrictive housing. In comparison, the proportion of the overall NDOC population with mental health needs was lower, at 32 percent.

Figure 13.

Restrictive housing in the third quarter of 2017, by mental health status level (flag)

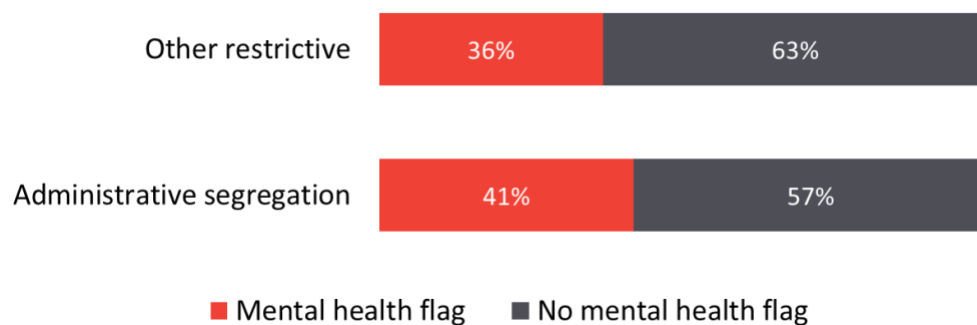
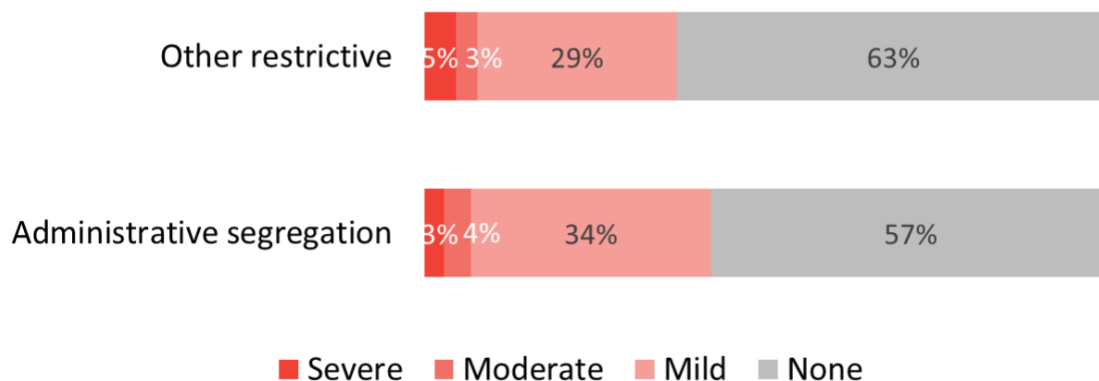


Figure 14 below breaks the mental health flags down by levels of severity. Seven percent of people in AS and eight percent of those in other restrictive housing had moderate or severe mental health flags.

Figure 14.

Restrictive housing in the third quarter of 2017, by mental health status level



- Recommendation: No person with an SMI designation should be placed or remain in a segregation or restrictive housing setting.** Should a mental health professional identify that a person in segregation has a significant mental health need, the mental health professional should immediately recommend the person be removed from segregation and placed in a more therapeutic environment.
- Recommendation: Establish diversion protocols and/or units for people with mental health designations.** These protocols should give special attention to those diagnosed with SMI and require placement in units specially equipped to address mental health needs. Ideally, people with mental health needs would be diverted away from segregation in the first place, to a mental health treatment unit or other specialized unit designed to meet specific needs of the population. A few models to consider: the North Carolina Department of Public Safety established Therapeutic Diversion Units aimed at addressing mental health needs rather than placing people in segregation, and the New York City jail system developed a mental health diversion program called the Clinical Alternatives to Punitive Segregation.⁸⁸

- **Recommendation: Conduct a review of everyone with mental health flags in segregation and determine if their placement should be precluded due to mental health status.** It is critical to reevaluate the mental health needs of the NDOC population. Ideally, the rate of mental health flags in segregation should be less than that of general population.
- **Recommendation: Review and improve the mental health screening used during the NDOC intake process to better identify people with mental health needs.** Ensure that information on those diagnoses and needs follows each person as they move out of intake and through the NDOC system. Also ensure there is ample opportunity for people to have contact with mental health professionals and receive appropriate diagnoses at all times throughout their incarceration.
- **Recommendation: Develop and improve means of documenting and tracking mental health information.** Include more specific tracking of incarcerated people’s diagnoses, medications and/or equipment, limitations, and any other associated needs.

Finding F2: Policy states that mental health evaluations should take place within 30 days of a person’s placement in AS. According to policy, “a qualified clinical psychologist or psychiatrist will interview in person and complete a meaningful evaluation on the status of each [person]” in segregation within 30 days of the person’s placement there.⁸⁹ Such evaluations will then be completed every 90 days while the person remains in segregation.

- **Recommendation: Anyone who is on the mental health caseload should receive a mental health review prior to or immediately after placement in segregation.** Mental health staff should also be consulted and involved in decisions regarding placement in, continuation in, and release from segregation.
- **Recommendation: Require mental health evaluations to be conducted for people who are not on the mental health caseload within seven days of placement in segregation.** The ACA standards require that “policy, procedure, and practice provide that a mental health practitioner/provider completes a mental health appraisal within 7 days of

placement” in restrictive housing.⁹⁰ Ensure that evaluations are always conducted face-to-face in an out-of-cell location that protects confidentiality.

Finding F3: Policy also requires a healthcare professional to “make a health and welfare check” at least once a day, documenting the time and date and “their observation” of the person.⁹¹ Any issues noted during the check should be documented, and the professional should make appropriate referrals to medical and mental health staff. However, it is unclear whether these checks are meant to be for all incarcerated people or just those who have previously been referred to medical or mental health staff.

- **Recommendation: Continue to prioritize welfare checks for all people in segregation, particularly those with mental health needs.** Every effort should be made to have a meaningful interaction with the person during a welfare check, and steps should be taken to offer private out-of-cell space for consultation should the need arise.
- **Recommendation: Assess the effectiveness of health and welfare checks in determining the needs of incarcerated people.** At stake here is whether these checks are sufficient in identifying someone’s deterioration and whether the person needs to be seen in a more private setting. An assessment of the health and welfare checks should aim to identify any opportunities for improvement.

Finding F4: Due to the limitations of the NDOC data system, Vera could not determine if people diagnosed with SMI were ever being given a sanction of DS. However, NDOC policy states that a person “who is diagnosed as SMI or has a medical condition that directly affects the inmate’s conduct shall not” be given a sanction of DS.⁹² Limitations in the administrative data do not allow Vera to differentiate between AS and DS, so it is not possible to verify the extent to which this is adhered to in practice, but the data does show that there are people with mental health designations of “severe” (as shown in Finding F2) who are placed in segregation.

- **Recommendation: Expand current NDOC policy to exclude any person with SMI (or with a “severe” mental health flag) from segregation units and all conditions of restrictive housing.**

- **Recommendation: Establish a formal process for monitoring intakes into segregation units to ensure no one with a SMI is inadvertently sent to segregation.**
- **Recommendation: Work with medical and mental health professionals to assess and identify other types of conditions that should also exclude people from segregation units.** Examples include, but are not limited to, dementia or Alzheimer’s disease.

Finding F5: The disciplinary process should include mental health professionals when the incarcerated person involved has any mental health designation. According to policy, incarcerated people going through the disciplinary process should be referred to a mental health professional for a psychological evaluation they are assigned to the Mental Health Program or have been diagnosed with an SMI, or if it is known or suspected that they have a medical condition (such as dementia, Alzheimer’s, post-traumatic stress disorder, or traumatic brain injury) or a mental illness that was “a substantial cause of the misconduct.”⁹³

Per policy, this evaluation should determine “whether the misconduct was a result of the inmate’s mental health or whether the mental illness contributed to the misconduct”; if either is the case, the person “shall be given reasonable and appropriate accommodations in preparation for the hearing and ... may be provided with assistance during the hearing.”⁹⁴ Moreover, the hearing officer or DHC may mitigate the sanction imposed.⁹⁵

- **Recommendation: Ensure staff fully understand the importance of policies related to mental health needs as they relate to the disciplinary process.** Mental health needs and the appropriate protocols are often confusing. Provide initial training and refresher courses on the best practices of mental health care and responses as they relate to NDOC policy.
- **Recommendation: Restrict the use of segregation during PHD for people with mental health flags or other medical issues as described above.** Anyone meeting that criteria should be reviewed by mental health staff before placement in segregation, and if there is an immediate security need and this is not possible, mental health staff should evaluate the placement within 12 hours.

Finding F6: According to policy, mental health staff can play a role in the modification or suspension of sanctions. Policy states that “[u]pon request of mental health staff, modification or suspension of sanctions imposed maybe reviewed and changed by the Warden.”⁹⁶ Although Vera understands that mental health staff can have roles in the classification committees and DHCs, Vera’s observations did not indicate that it is common practice for mental health staff to use this policy to request modification or suspension of sanctions that are imposed.

- **Recommendation: Mental health staff should be empowered to use this provision more often in order to best provide appropriate care to people with mental health needs.** This could be done through their role in the multidisciplinary committees or by including mental health staff in the weekly disciplinary reviews that take place. Custody staff should be made aware of this provision and trained to identify potential mental health needs. Additionally, mental health staff should regularly monitor the issuance of disciplinary sanctions in order to look for and identify potential issues.

Finding F7: Staff and incarcerated people across multiple facilities described a shortage of mental health staff, training, treatment availability, and meaningful behavioral and mental health programming.

- **Recommendation: Prioritize mental health care throughout NDOC.** Leadership should establish a goal of improving mental health care and accessibility throughout NDOC facilities, regardless of custody status or unit location.
- **Recommendation: Ensure that all correctional staff who work in segregation units have additional appropriate training.** Training should include how to recognize the signs of mental illness and other health problems, so that they are able to adequately monitor people housed on the unit (as per policy).
- **Recommendation: Create a referral form for an officer to refer someone to be seen by mental health staff.** This form could include a checklist of potential reasons that someone would be referred to mental health and would highlight—in practice—the specific things that an officer should look for while doing rounds.

Finding F8: Non-mental health staff receive a limited amount of mental health training to aid them in managing incarcerated people with mental health needs. NDOC reported to Vera that the only mental health-related training that custody staff receive is during the standard preservice training. Even staff who are assigned to segregation units, BMUs, and mental health units (MHUs) do not receive additional training on mental health.

- **Recommendation: Identify and offer training on mental health care-related skills to non-mental health staff.** All custody staff—particularly those working in segregation, specialized units, and MHUs—should be competent in working with people who have mental health needs. Providing training to increase knowledge about mental illness, as well as skills and strategies for interacting with people who have mental health needs, is critical to promoting successful interactions between staff and incarcerated people.⁹⁷ Corrections departments have found trainings such as Mental Health First Aid and Corrections Crisis Intervention Team training to be extremely valuable for their staff.⁹⁸

Finding F9: There are significant mental health needs at FMWCC. During the visit, Vera staff were told that there were 461 women on the mental health caseload, of whom 168 met the criteria for SMI. However, the capacity of the MHU is just 38. The high level of mental health needs among the women incarcerated at FMWCC, particularly if they are not met with adequate treatment and support, could contribute to the use of segregation at that facility.

- **Recommendation: Expand the capacity to provide mental health services and supports at FMWCC.** With a mental health caseload as large as that at FMWCC, there clearly is a significant need for more mental health services. This should include expanding the number of MHU beds available for those with the most severe mental health needs, as well as establishing a residential Structured Care Unit, like that at NNCC, and increasing outpatient-type mental health treatment available in incarcerated settings.

G. Women

Florence McClure Women's Correctional Center is NDOC's only women's facility. As such, it contains women of every custody level, from minimum to maximum security. The facility's ADP in the third quarter of 2017 was 1,031.

Finding G1: The number and percentage of women in AS decreased from 7.3 percent (71 of 980 women) in the third quarter of 2016 to 5.7 percent (59 of 1,031 women) one year later. This drop indicates progress in moving away from reliance on segregation.

- a. **On the day of Vera's visit, only two of the 56 women in segregation were on DS; the other 54 were on AS status.**
- b. **For those on AS, FMWCC staff estimated that about half were awaiting disciplinary hearings.** This indicates a potential overuse of PHD, given the large number of women in AS for such detention compared to the very small number of women serving actual DS sentences.
- c. **FMWCC staff estimated that some of the other women on AS status had been cleared for release to GP and were simply waiting for a GP bed to open up.** Based on these characterizations of the FMWCC segregation unit, it appears that a significant proportion of the segregation population could likely have been safely housed in GP rather than segregation.

Finding G2: During the third quarter of 2017, the average length of stay of the women who left the AS unit was 73 days. As demonstrated in Figure 5 under Finding A2, this average was substantially higher than at other NDOC facilities. However, during Vera's visit, the FMWCC warden explained that staff and leadership were committed to ensuring much shorter lengths of stay for any women in segregation and trying to avoid the use of segregation altogether.

- **Recommendation: Review the people currently housed in the AS unit at FMWCC and determine lengths of stays and reasons for AS placement.**
- **Recommendation: Track lengths of stay going forward, and monitor data.** This tracking and monitoring should inform and prompt release decisions from the AS unit. (This

recommendation coincides with the recommendation under Finding A2 referenced earlier in the report.)

- **Recommendation: Evaluate all women currently in segregation to understand their lengths of stays and reasons for AS placement, determine who could safely be moved out of segregation, and develop individualized plans for the others.** Also, conduct interviews or surveys of these women to determine their pathway to segregation—not just the actual behavior, but the underlying reasons behind the behavior. This information can be used to identify supports that can be provided in GP as a preventative measure and begin a discussion about strategies and guidance to give staff on how to address those underlying issues.

Finding G3: FMWCC Warden Neven and staff at the facility expressed to Vera that there is a preference against using segregation as a disciplinary sanction; the data shows that it is used on some occasions, however. Table 9 below demonstrates that the top 10 charges for which women received DS sanctions during the first three quarters of 2017 were both relatively few in number and largely nonviolent (though the top charge of “battery” is a violent offense), and they include two general (lower-level) charges.

Table 9.

Top 10 charges resulting in DS sanctions for women, first three quarters of 2017

Charge	Seg. Sanctions	Rate of Seg.
MJ3: Battery	36	78%
MJ30: Sexually stimulating activities	21	81%
MJ56: Tattooing or Poss Tat Device	8	25%
MJ26: Possession of contraband	7	58%
MJ32: In Unauthorized area / Hiding	7	100%
G6: Fighting	6	23%
MJ6: Escape	6	86%
MJ44: Failure to submit drug / alch test	6	100%
MJ53: Poss. / Sale of Intoxicants	6	100%
G14: Failure to Follow Rules and Regs	5	2%

Thus, at FMWCC, segregation was not being used solely in response to serious, violent offenses; it was also a frequent response to lower-level and nonviolent offenses. Moreover, research and experience show that incarcerated women tend to be less violent than incarcerated men, and even when violence or conflict does occur in women's facilities, it can generally be handled effectively through trauma-informed strategies of separation, conflict resolution, and de-escalation.⁹⁹ In addition, as noted in Finding G1, many women in segregation at FMWCC had been deemed appropriate for GP placement but were simply waiting for a GP bed to become available.

Based on these characteristics of the FMWCC segregation unit, it appears that a significant proportion of the segregated population could likely have been safely housed in GP, rather than segregation. It is, therefore, Vera's opinion that having a full segregation unit at FMWCC is unnecessary; alternative strategies could be employed, and the space could be better used in other ways. Strategies to implement these reforms effectively include the following.

- **Recommendation: Repurpose the current segregation unit at FMWCC (Unit 4 at the time of Vera's facility visit).** This unit could be repurposed as an expanded MHU or other specialty unit and rely on a limited number of available cells for cool down rooms or temporary separation in a non-segregation like setting.
- **Recommendation: Identify and establish two cells to be made available as last resort, short-term restrictive housing in the event of a temporary removal from the larger population.** The idea behind leaving two segregation cells empty for emergency use is that they mostly remain entirely empty. Should use of these cells become necessary, they should be used sparingly and for the shortest amount of time, when there is an immediate threat to safety and security of the institution or person.
- **Recommendation: Create a wider array of alternative sanctions to use in place of segregation at FMWCC.** By establishing alternative sanctions to disciplinary issues, staff would be able to respond with more nuance to issues at hand. This would support the stated desire by FMWCC leadership to use segregation as little as possible and to have women work things out among themselves by deploying conflict resolution strategies.
- **Recommendation: Provide staff with Crisis Intervention Team (CIT) training, conflict resolution training, and other de-escalation practices.** In addition to

alternative sanctions, staff training is important to foster an environment where issues and problems can be defused, rather than heightened to a point where they result in the use of segregation.

- **Recommendation: Provide staff training in gender responsivity and trauma informed practices.** The National Resource Center on Justice Involved Women (NRCJIW) is an excellent resource for agencies seeking training and better understanding around the importance of gender-responsive practices and the impacts of trauma in a correctional setting.¹⁰⁰
- **Recommendation: Review NDOC’s and FMWCC’s policies and practices and revise, where necessary, to account for gender differences and the need for trauma-informed care.** As this review is undertaken, Vera recommends consulting policy guides and tip sheets available through NRCJIW. In particular, NRCJIW has a policy guide that provides a step-by-step process for helping agencies think through how gender-responsive and trauma informed their policies are.¹⁰¹ NRCJIW also has a shorter tip sheet adapted from this guide for jails that provides a quick roadmap for reviewing and revising policies.¹⁰² NDOC should also consult other organizations that provide guidance on working with justice-involved women, including the National Institute of Corrections.

Finding G4. Women at FMWCC reported spending extended time in segregation as a result of being identified as an alleged perpetrator in a PREA investigation. At FMWCC, Vera encountered several women who claimed to have been in the segregation unit for long periods of time (between three and six months) due to being the subject of a PREA investigation; some reported being found not guilty, but still waiting to be moved to GP.¹⁰³

- **Recommendation: NDOC should examine the PREA investigation process at FMWCC, as well as all other NDOC facilities.** NDOC should identify ways that investigations can be prioritized and expedited, without sacrificing the integrity and quality of such investigations. The PREA standards require that all allegations of sexual abuse or harassment are investigated “promptly, thoroughly, and objectively.”¹⁰⁴ It is important that each case is taken seriously and investigated comprehensively. However, it is also important that these investigations are completed in a reasonable period of time.

- **Recommendation: NDOC should also ensure that people are not automatically placed in segregation based on a PREA allegation.** Although the PREA standards do require facilities to “separate the alleged victim and abuser,” they do not mandate that the alleged abuser be placed in segregation.¹⁰⁵ NDOC staff should evaluate each case and separate alleged victims and abusers without using segregation whenever possible, such as by moving the alleged abuser to a separate GP housing facility. The person against whom an allegation has been made should be placed in segregation only if their presence in GP poses a serious threat to the safety and security of others—the same criteria used for any placement in segregation.

Finding G5: Conditions in Unit 10—the intake unit for all women in NDOC—are highly restrictive. Staff reported that women generally receive only a few hours out-of-cell per week—similar to segregation—and are generally unrestrained, but not able to congregate with other incarcerated people during that time.

- **Recommendation: Increase out-of-cell time for women in Unit 10/Intake to a minimum of five hours per day and allow some congregate activity.**¹⁰⁶ As noted on page 21, intake units should be reformed so that their environments do not constitute restrictive housing. Even if the stay in FMWCC’s intake unit is too short to begin education or programming, out-of-cell time and informal activities in small groups can contribute to pro-social behavior and combat the harms associated with enforced idleness and isolation.

Finding G6: Policy no longer allows for the placement of pregnant women in restrictive housing. The revised policy AR 733 includes this provision: “Women who are pregnant, post-partum, recently had a miscarriage, or recently had a terminated pregnancy should not be placed in restrictive housing.”¹⁰⁷ However, as the term “restrictive housing” is not specifically defined, and AR 733 is a policy focusing on DS, the wording of this provision leaves it somewhat unclear whether pregnant women can be placed in other types of segregation, such as AS.

- **Recommendations: Ensure that this policy is applied to all forms of segregation in NDOC facilities.** Establish procedures that align with this policy, train staff in its implications and requirements, and monitor segregation placements at FMWCC closely to ensure the policy is not violated.

H. Youth and young adults

Youth

NDOC's Youthful Offender Unit (Unit 9) at LCC houses all young males under the age of 18 who have been tried and convicted of crimes as adults. LCC leadership and staff described to Vera significant challenges that they face in managing this unique unit and meeting the needs of the youth. The unit consists of 10 cells, each able to accommodate two people, that open to a small common area with tables and an enclosed small recreation yard to the side. At the time of Vera's May 2017 visit, there were 19 young people held there. Although it is not officially a segregation unit, the unit's physically small nature, the limited number of youth and their separation from the adult population, and the fact that the young people rarely leave the unit for activities or programming, create de facto conditions that end up being fairly isolating. Additionally, because there are no alternative housing placements for this population, segregation is sometimes used within the unit to keep certain youth separated—such as a newly arrived young person going through the intake process or someone who requires protection from other youth.

Finding H1: LCC is first and foremost an adult facility and was never intended to house juveniles. When the Youthful Offender Unit was moved to LCC, no new staff positions or specialized training were provided. Yet proportionally, a much greater amount of staff time is required to manage programming and services for young people; because young people have different needs, and different skills and strategies are required to work with them.

- **Recommendation: Provide staff training specific to the needs, development, and concerns of incarcerated young people.** As long as NDOC has incarcerated people under the age of 18 in its care, it is important to provide staff with the necessary tools to effectively understand, manage, and support this population.
- **Recommendation: Explore the possibility of establishing an agreement with the Nevada Juvenile Justice System to house these youth until they turn 18.** This would allow for housing all justice-involved young people in juvenile facilities where staff are more readily equipped to address the needs of a younger population.

Finding H2: According to LCC staff, the Youthful Offender Unit is “open,” and the youth can generally be out of their cells and congregate on the unit most of the time.

Having an open unit for youth to socialize and interact has enormous benefits.

- **Recommendation: Continue to ensure plentiful out-of-cell time and congregate activities for all youth on the unit.** Maintaining an environment that encourages out-of-cell time, congregate activities, and positive socialization could contribute to positive outcomes for the youth.

Finding H3: There are significant limitations to the programming available in the Youthful Offender Unit. Youth receive at most one hour of education, only four days per week.

Moreover, staff reported that it is not uncommon for classes to be cancelled due to teachers or classroom space being unavailable. Also, once youth turn 18 and transfer to the adult population, they are no longer able to access the same educational programs, even if they have not finished. During Vera’s visit, the young people reported interest in more activities and programming. Idle time and boredom were strongly expressed concerns, exacerbated by the fact that the youth spend so much time confined to a small unit with a limited group of people.

- **Recommendation: Increase the number of education programming hours for youth.** Education programming should follow the guidelines set out by Nevada Rev. Stat. § 388H and provide appropriate learning opportunities.¹⁰⁸
- **Recommendation: Establish a continuum of education programming for youth as they transition from the Youthful Offender Unit to adult GP units.** Youth should be able to continue any educational programs that were in process while in the Youthful Offender Unit, and such programming should be made accessible to them on entering an adult GP unit.
- **Recommendation: Increase other programming and structured activities available to youth.** These options can include formal programming facilitated by trained staff, but also informal activities, such as games, crafts, and sports. Vera recommends looking to the practices of successful juvenile systems for guidance. Although there are differences between juvenile and adult systems, some of the age-appropriate strategies, programming, and treatment practices could certainly be replicated for young people held in an adult system.¹⁰⁹

- **Recommendation: Consider allowing youth to participate in education and other programming or activities with people in the over-18 population.** It is possible—and in compliance with PREA standards—to allow youth and adults to congregate for programming or other activities, provided there is appropriate staff supervision.¹¹⁰ This could allow youth, when they turn 18, to continue and finish any classes or programming they have been involved in. It could also help expand the amount of programming, activities, and social interaction the youth have access to beyond their small unit.

Finding H4: Youth on the unit can be placed in Protective Segregation status, where they remain on the unit but are kept separate from the other youth for their safety; this results in the young person spending most of their time alone in a cell, and their out-of-cell time is spent alone as well—conditions that are essentially like segregation.

At the time of Vera’s visit in May 2017, there was one youth on PS status, and his situation was described as indefinite (at least until he turned 18), as there were no alternative units where he could be placed. This highlights the difficulties of housing a small population of minors in an adult system. Although there is every indication that this was an exception to the standard practice at the Youthful Offender Unit, it points to the limitations of such a physically small unit, and the potential for long-term segregation of some youth due to lack of other available options.

- **Recommendation: No one under the age of 18 should ever be housed in conditions of segregation. Whether this is in-cell lockdown or any other form of restrictive housing, segregation should not be considered an option for juveniles regardless of their conviction status.** Alternative sanctions should be used to respond to infractions, and other measures should be taken to prevent conflict between youth.
- **Recommendation: Develop alternative housing options for young people who require separation from others.** In exceptional circumstances (such as when Vera visited the Youthful Offender Unit in May 2017), it is imperative that segregation conditions not be relied on for protection of a person. Alternatives that do not result in placing someone under the age of 18 in isolation must be developed and adopted.¹¹¹

Finding H5: Family visits and maintaining outside relationships is extremely difficult for the young people on this unit. Most are from Las Vegas, and the distance between Las Vegas and the facility in Lovelock, Nevada, is a significant barrier for families and loved ones.

- **Recommendation: Consider relocating the Youthful Offender Unit to one of the NDOC facilities closer to Las Vegas.** Should an agreement with the Nevada Juvenile Justice System not be feasible, NDOC should consider moving the Youthful Offender Unit to a facility closer to Las Vegas. Geographic proximity to the city would bring many benefits to this population, including the potential for increased family visitation and a larger pool of potential staff and volunteers who could help provide programming, activities, and mentorship, for example.¹¹²

Finding H6: When each young person turns 18 years old, common practice is for them to be moved to segregation while awaiting transfer to HDSP. The wait for a transfer reportedly can last anywhere from a couple of weeks to 3–6 months.

- **Recommendation: Prioritize appropriate GP beds for youth aging out of the Youthful Offender Unit and support their successful transition to this new setting.** Establish specific protocols for safe and appropriate transition from the Youthful Offender Unit to adult GP. Planning for this transition should begin months in advance in order to guarantee bed space in an appropriate GP unit and avoid segregation placement. Below are recommendations to establish programming specific to young adults ages 18–25, ideally in a specified unit. This should be the destination for young people leaving the Youthful Offender Unit, and having such a designated unit should aid in this transition.

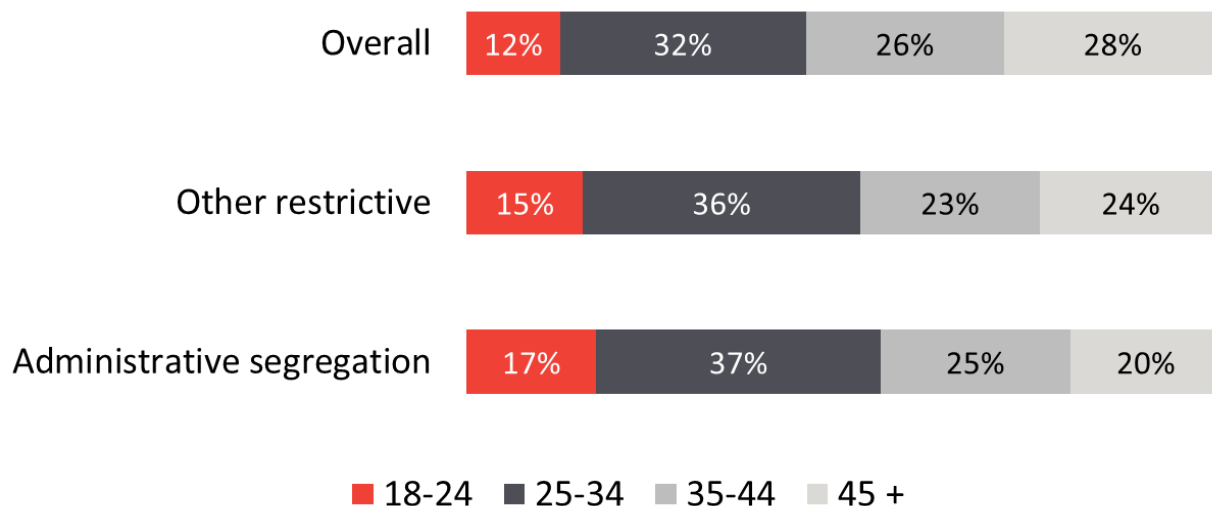
Young adults

The transition from a unit like the Youthful Offender Unit—or from the community or a local jail—to NDOC adult facilities is understandably a difficult one. As noted above in Finding H6, young people are frequently placed in segregation while they wait for a GP bed in the adult system to become available, thus making that transition even more difficult. The associated negative impacts on the person as a result of this practice can be particularly significant, as research shows that essential brain development is still taking place in young people, up until age 25.¹¹³

Finding H7: In general, younger people ages 18–34 are overrepresented in AS. During the third quarter of 2017, young adults ages 18–24 made up 17 percent of the AS population and 15 percent of the population in other restrictive housing, compared to only 12 percent of the total NDOC population. For the same time period, people ages 25–34 represented 37 percent of the AS population and 36 percent of the population in other restrictive housing, compared to 32 percent of the overall population. Both age groups are placed in segregation and other restrictive housing at disproportionate rates.

Figure 15.

Restrictive housing in the third quarter of 2017, by age



- Recommendation: Develop age-appropriate programming for young adults, with one aim being to reduce the number of young people who are placed in segregation.** Programming focused on positive decision making and conflict resolution would be beneficial to this population and help ease young people’s transitions—from the community to prison, or from the Youthful Offender Unit to a unit for young adults. In addition, as detailed in Table 2 in section B, incarcerated people ages 18–24 and 25–34 have higher rates of STG designations compared to older age groups throughout NDOC facilities. This suggests a need for targeted interventions for young people around STG related issues.

As NDOC is considering programming for this age range, Vera recommends looking at the Connecticut Department of Corrections’ T.R.U.E. program for young adults ages 18–25 as a model for establishing rehabilitative programming focused on reframing what a young adult unit looks

like.¹¹⁴ Another possibility is to consider using this programming for 18- to 25-year-olds to serve as a platform for developing young adult mentors for the under-18 population. Mentors have proven extremely important in Connecticut’s T.R.U.E. program.

- **Recommendation: Establish housing and programming specific to young adults ages 18–25 in the same facility as the newly located Youthful Offender Unit, in one of the facilities near Las Vegas.** Having youth and young adults in the same facility would further support the transition of youth to young adult housing on turning 18. It would also make it more feasible to provide programming or other activities to both groups at the same time.

Implementation planning

From February through September 2018, Vera worked with NDOC to develop an implementation plan to turn the recommendations in this report into concrete reforms across NDOC facilities. This implementation plan involved prioritizing the recommendations, developing a workplan, and identifying outcome and performance measures. Although this was the official kickoff of the implementation phase of the project, Vera also provided guidance on reforms NDOC was already implementing during the assessment process, particularly the development of the Behavior Management Units (BMUs)—NDOC’s step down from segregation units.

Based on the Vera team’s assessment, several priorities were identified as potential starting points for the next stage of NDOC’s reforms. This set of priorities included expanding the use of non-segregation sanctions; reforming the new BMUs, transitioning them to be true steps down from segregation; ending segregation at the women’s facility; and bringing facility practice into compliance with many of the reforms that were written into policy in 2016. These priorities were identified based on a preliminary assessment of the level of impact the reforms would have on NDOC’s goal of reducing the use of segregation, as well as the level of feasibility in implementing the reforms on the ground.

Vera and NDOC then worked together to create an implementation plan that identified the NDOC official who was going to lead each reform, the estimated timeline, necessary policy changes, training needs for facility staff, deliverables, and quality assurance measures. In order to ensure implementation efforts produce the intended results and have a positive impact on the agency, Vera worked with NDOC to identify outcome and performance measures, create a tracking tool for these measures, and establish a reporting structure. This process is essential to both highlighting where

reforms are showing success, as well as identifying areas where those intended results are not being realized, so a course correction can be made with the on-the-ground implementation. If NDOC implements many of these reforms effectively, the department should see a reduction in its segregation population, a reduction in the length of stay for people in segregation, an increase in the number of people effectively transitioning out of segregation and back to GP, and an eventual end to the use of segregation for vulnerable populations, such as young people and those with mental health needs.

At the conclusion of the implementation planning phase, and Vera's partnership with NDOC, the agency focused its implementation plan on bringing facility-level practice into compliance with policy changes enacted in 2016, increasing out-of-cell time for people in the BMUs to five hours per day, increasing the programming in the BMUs, and reducing the number of infractions that can result in placement in restrictive housing. If fully implemented, these changes have the potential to dramatically reduce NDOC's restrictive housing population by diverting people away from segregation; creating a new release mechanism out of segregation—which would decrease the amount of time people spend in segregation; and ensuring people are successful once they leave segregation so they do not return.

Vera worked with NDOC to begin initial discussions on additional changes to the BMUs and kick off reforms at Florence McClure Women's Correctional Center. Vera looks forward to seeing NDOC implement these reforms and identify new priorities for 2019 and beyond. It is Vera's hope that this report can serve as a resource to identify and implement those next priority areas.

Conclusion

Leadership of the Nevada Department of Corrections (NDOC) has joined a diverse range of corrections practitioners, policymakers, advocates, and national and international organizations in calling for significant reductions in the use of restrictive housing in prisons. Whether citing the potentially devastating psychological and physiological impacts of spending 23 hours a day alone in a cell the size of a parking space or the lack of conclusive evidence demonstrating that segregation makes correctional facilities or communities safer, these voices agree that reform and innovation are critical endeavors.

As NDOC continues to move forward with its implementation of current and future reform efforts, Vera hopes that the agency will continue to learn from its peers, capitalize on its own strengths, and use the recommendations in this report to help improve the lives of the men and women who live and work in Nevada's prison.

Endnotes

- ¹ See “Reforms Prior to and During the Assessment” section on page 14 for a more detailed list of NDOC reforms.
- ² NDOC Administrative Regulation (AR) 507, “Administrative Segregation,” effective May 20, 2010, 1.
- ³ NDOC AR 733, “Disciplinary Segregation,” effective May 16, 2017, 2.
- ⁴ NDOC AR 509, “Protective Segregation,” effective October 15, 2013, 1.
- ⁵ The seven prisons are Ely State Prison (ESP), Florence McClure Women’s Correctional Center (FMWCC), High Desert State Prison (HDSP), Lovelock Correctional Center (LCC), Northern Nevada Correctional Center (NNCC), Southern Desert Correctional Center (SDCC), and Warm Springs Correctional Center (WSCC).
- ⁶ For example, Middlesex County Adult Corrections Center (MCACC), a local jail in New Jersey and former Safe Alternatives to Segregation Initiative partner site, moved from holding people in its intake unit in segregation conditions to allowing them GP-like, congregate out-of-cell time for approximately six hours per day, without seeing an increase in violence or incidents. Léon Digard, Elena Vanko, and Sara Sullivan, “Rethinking Restrictive Housing: Lessons from Five U.S. Jail and Prison Systems,” online special report (New York: Vera Institute of Justice, 2018), <https://perma.cc/4GYH-BNLT>; and Vera discussions with MCACC leadership during a visit to the facility on May 7, 2019.
- ⁷ These numbers are based on data for people who were moved out of an AS cell in the third quarter of 2017. However, some individuals may have been moved out of one AS cell and into another, and this data does not account for that. Combining sequential stays in AS would provide the most accurate description of the lived experiences in segregation. In this case, if these sequential stays were counted as one stay in an AS unit, then the average length of stay would increase slightly, and the number of releases from AS would drop.
- ⁸ Vera’s analysis shows that AS status data is not always complete or accurate and could represent either an undercount or overcount. This again highlights the importance of accurate data input and collection.
- ⁹ NDOC AR 733, 2. The policy also says that the person soon to be released shall instead be housed in GP or a Behavior Modification Unit (BMU) during the last 30 days of their incarceration, depending on their “propensity for misconduct.” Ibid.
- ¹⁰ NDOC Administrative Regulation (AR) 801, “Correctional Programs/Classes/Activities,” effective March 7, 2017, 6.
- ¹¹ NDOC has indicated to Vera the intent of this part of the AR provided for at least five hours of out-of-cell time, *five* days per week, rather than seven.
- ¹² According to disciplinary policy, an incarcerated person “whose behavior or misconduct is such that the inmate is a threat to the safety and security or the orderly operation of the facility or institution” may be placed in segregation until that person’s “condition is addressed and the inmate’s behavior or misconduct is no longer an issue”; such segregation “is not to be considered part of the sanction imposed.” NDOC Administrative Regulation (AR) 707.1, “Inmate Disciplinary Manual,” effective February 22, 2017, 23–24.
- ¹³ NDOC AR 507, “Administrative Segregation,” effective May 20, 2010, 1.
- ¹⁴ Here, it is important to note that NDOC has an Administrative Segregation (AS) status as well as Administrative Segregation units. As is detailed in the report, AS status and placement in AS units do not always align in terms of the timeline as documented in the administrative data that Vera analyzed. When discussing AS status, this report will characterize it as being “on AS,” and when describing AS units, this report will use the terminology “in AS” or simply “segregation.”
- ¹⁵ NDOC AR 507, 5-8.
- ¹⁶ It is possible, though difficult to tell with certainty, that some of the 502 may have gone to segregation for pre-hearing detention.
- ¹⁷ NDOC AR 707.1, 23; and NDOC AR 507, 1.
- ¹⁸ American Correctional Association (ACA), “Restrictive Housing Expected Practices” (2018), Standard 4-RH-0001.

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- ¹⁹ NDOC AR 507, 2.
- ²⁰ *Ibid.*, 2-3.
- ²¹ NDOC AR 507, 4-5.
- ²² ACA, “Restrictive Housing Expected Practices,” Standard 4-RH-0002.
- ²³ *Ibid.*, Standard 4-RH-0008.
- ²⁴ Nebraska Department of Correctional Services AR 210.01, “Restrictive Housing,” effective June 30, 2018, 10-11. Although the MDRT meets weekly, each person in longer-term restrictive housing is reviewed less frequently, “at least every 90 days.”
- ²⁵ NDOC AR 507, 7.
- ²⁶ NDOC AR 801, 6.
- ²⁷ See, for example, Stuart Grassian, “Psychiatric Effects of Solitary Confinement,” *Washington University Journal of Law & Policy* 22, no. 1 (2006), 325-383. <https://perma.cc/5CGT-TYJR>; Craig Haney, “Mental Health Issues in Long-term Solitary and ‘Supermax’ Confinement,” *Crime & Delinquency* 49, no. 1 (2003), 124-156, <https://perma.cc/D876-YLCK>; and Brie A. Williams, “Older Prisoners and the Physical Health Effects of Solitary Confinement,” *American Journal of Public Health* 106, no. 12 (2016), 2126-2127, <https://perma.cc/4E4V-PB8T>.
- ²⁸ A cell on a segregation unit could be converted to an “exercise cell” for indoor recreation. Hampden County Correctional Center (HCCC) in Massachusetts, for example, has had much success using an exercise cell in its restrictive housing unit. The designated cell has exercise equipment, such as exercise bands and balls and instruction manuals for exercise programs. Time in the exercise cell acts as a supplement to regular recreation periods, and it serves as an incentive for demonstrating positive behaviors. Vera conversations with HCCC officials; and Elsie Reed, “Department Implements Innovative Improvements to Disciplinary Segregation Unit,” Hampden County Sheriff Department Ludlow Massachusetts blog, January 29, 2016, <https://perma.cc/R9NV-8QVN>. The North Carolina Department of Public Safety reports to Vera that it has also set up exercise cells in some segregation units.
- ²⁹ For example, staff noted that nail clippers and products in “squeeze bottles” are not allowed. NDOC AR 507, 6-7.
- ³⁰ NDOC AR 507, 7.
- ³¹ NDOC AR 801, 6.
- ³² For research on the negative effects of segregation, see, for example, Grassian, “Psychiatric Effects of Solitary Confinement,” 2006; Haney, “Mental Health Issues,” 2003; Stuart Grassian and Nancy Friedman, “Effects of Sensory Deprivation in Psychiatric Seclusion and Solitary Confinement,” *International Journal of Law and Psychiatry* 8, no. 1 (1986), 49-65; and Craig Haney, *The Psychological Impact of Incarceration: Implications for Post-Prison Adjustment* (Santa Cruz, CA: University of California-Santa Cruz, 2006), 88, <https://perma.cc/AP29-AXWU>.
- ³³ Vera’s Family Justice Program produced several reports that speak to the importance of maintaining family engagement. In these reports, Vera cites research showing how family visits can lead to better outcomes, including a lower risk for recidivism, for incarcerated people. Vera Institute of Justice, *Why Ask About Family* (New York, Vera Institute of Justice, 2011), <https://perma.cc/42L6-35UX>. For example, Former Washington Department of Corrections Secretary Bernie Warner stated that 2010 data from the department revealed that incarcerated people who visited regularly with family were six times less likely to commit another infraction while incarcerated than those who did not. Margaret diZerega and Jules Verdone, *Setting an Agenda for Family-Focused Justice Reform* (New York: Vera Institute of Justice, 2011), <https://perma.cc/42YK-VWVX>. See also Grant Duwe and Valerie Clark, “Blessed Be the Social Tie That Binds: The Effects of Prison Visitation on Offender Recidivism,” *Criminal Justice Policy Review* 24, no. 3 (2013), 271-279, <https://perma.cc/EQ52-JTCG>.
- ³⁴ For example, the Hampden County Sheriff’s Department in Massachusetts distributes preprogrammed MP3 players to inmates in segregation as a reward for demonstrating positive behavior and following the rules. The material programmed into the MP3 players includes self-help audio programs, treatment programs, contemporary and classical music, nature sounds, and audiobooks. The sheriff’s department has found MP3 players to be a cost-effective way to keep incarcerated people engaged in productive activities and to reinforce positive behavior. For more on the Hampden County Sheriff’s Department’s use of MP3 players, see John Evon and Francis Olive,

"The Utilization of MP3 Players in Correctional Segregation Units," *Corrections Today* 74, no. 6 (December 2012–January 2013), 53-56. The Colorado Department of Corrections also provides tablets that can deliver programming, entertainment, and video visitation to incarcerated people. Vera telephone call with Rick Raemisch, executive director, Colorado Department of Corrections, January 2, 2018.

- ³⁵ For example, see Mark Schweitzer, Laura Gilpin, and Susan Frampton, "Healing Spaces: Elements of Environmental Design that Make an Impact on Health," *Journal of Alternative and Complementary Medicine* 10, supplement 1 (2004), S71-S83, <https://perma.cc/E88X-M5SH>; Roger S. Ulrich, "Effects of Interior Design on Wellness: Theory and Recent Scientific Research," *Journal of Health Care Interior Design* 3 (1991), 97-109; Roger S. Ulrich, Craig Zimring, Xiaobo Quan, and Anjali Joseph "Environment's Impact on Stress," in *Improving Healthcare with Better Building Design*, edited by Sara O. Marberry (Chicago: Health Administration Press, 2006).
- ³⁶ See Matthew Hutson, "Can 'Blue Rooms' Make Prisons Safer and More Humane?" NBC News, September 7, 2017, <https://perma.cc/9YVD-G5KA>; and Bryan Denson, "Oregon Prison Tackles Solitary Confinement with Blue Room Experiment," *Oregonian*, August 21, 2014, <https://perma.cc/LLK9-7QGV> and <https://perma.cc/LLK9-7QGV>.
- ³⁷ NDOC AR 507, 5.
- ³⁸ *Ibid.*, 5-6.
- ³⁹ *Ibid.*, 6.
- ⁴⁰ NDOC AR 801, 6.
- ⁴¹ Numerous systems have introduced classrooms in restrictive housing units, where small groups of incarcerated people (often up to 6–8 people) can participate in education and programming. People can sit, restrained, in some type of "security" or "programming" chair or desk, and the classrooms may contain white boards, TVs, or smart boards for instruction. For example, Virginia Department of Corrections (VADOC) provides group programming to people in their step-down program. VADOC, "Virginia DOC Administrative Segregation Step Down Program: Partnering Science with Corrections," <https://perma.cc/D7YV-TDRP>. Washington State Department of Corrections provides programming in similar classrooms in their Intensive Management Units. It should be noted that secure chairs should be used as a last resort and only if necessary for the safety of incarcerated people and staff.
- ⁴² See Rick Raemisch and Kellie Wasko, *Open the Door: Segregation Reforms in Colorado* (Colorado Springs, CO: Colorado Department of Corrections, 2015), <https://perma.cc/29K2-ZHHM>.
- ⁴³ The "Disparity" column shows the ratio of the percentage of people with that gang affiliation who are in segregation compared to the percentage of people with no affiliation who are in segregation (which is seven percent).
- ⁴⁴ For more, see Vera Institute of Justice, "Webinar: Using Assessment to Drive Reform," March 31, 2016, <https://perma.cc/78UE-QN96>.
- ⁴⁵ Rick Raemisch, executive director, Colorado Department of Corrections, January 2, 2018, Vera telephone call.
- ⁴⁶ NDOC AR 521, "Custody Categories and Criteria," effective May 19, 2015, 2.
- ⁴⁷ *Ibid.*, 1-2.
- ⁴⁸ As noted above, the ACA expected practices outline that people in restrictive housing should have their status reviewed "every seven days for the first 60 days and at least every 30 days thereafter." ACA, Standard 4-RH-0008.
- ⁴⁹ NDOC AR 521, 1-2.
- ⁵⁰ Jessa Wilcox, Léon Digard, and Elena Vanko, *The Safe Alternatives to Segregation Initiative: Findings and Recommendations for the North Carolina Department of Public Safety* (New York: Vera Institute of Justice, 2016), <https://perma.cc/P74E-G4Q2>.
- ⁵¹ NDOC AR 733, 2.
- ⁵² See "Reforms prior to and during the assessment" section on page 14 for a more detailed list of NDOC reforms.
- ⁵³ NDOC AR 707, "Inmate Disciplinary Process," effective May 16, 2017, 5-11. The charges are further broken down into classes, ranging from Class A (the most serious, which can garner the harshest sanctions) to Class E.

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- 54 DS can only be given as a sanction for major or work charges (Classes A–C), and not for general charges (Class D) or minor charges (Class E). NDOC Administrative Regulation (AR) 707.2, “Disciplinary Sanctions,” effective February 13, 2017.
- 55 NDOC AR 707, 2. The new policy bans the practice of “stacking” charges, or writing up multiple charges against an incarcerated person for a single incident, which could lead to multiple disciplinary segregation sanctions being imposed.
- 56 NDOC AR 707.2.
- 57 Colorado Department of Corrections, Administrative Regulation 650-03, “Restrictive Housing,” effective April 15, 2018, 2.
- 58 NDOC AR 707.2.
- 59 NDOC AR 707.1, 25.
- 60 See note 33. Vera Institute of Justice, *Why Ask About Family* (New York: Vera Institute of Justice, 2011); and Margaret diZerega and Jules Verdone, *Setting an Agenda for Family-Focused Justice Reform* (New York: Vera Institute of Justice, 2011), <https://perma.cc/6QEM-4HKD>. See also Duwe and Clark, “Blessed be the Social Tie that Binds.”
- 61 NDOC AR 707.1, 26; and NDOC AR 707.2.
- 62 NDOC AR 707.2.
- 63 NDOC AR 707.1, “Inmate Disciplinary Manual,” effective February 22, 2017; and NDOC AR 707.2.
- 64 NDOC AR 707.1, 4.
- 65 See for example Valerie Wright, *Deterrence in Criminal Justice: Evaluating Certainty vs. Severity of Punishment* (Washington, DC: The Sentencing Project, 2010), <https://perma.cc/SM2D-3779>; and Swift Certain & Fair, <https://perma.cc/3JTP-WWG8>. Most of this research has focused on community corrections, but its principles of behavioral modification are relevant to institutional corrections as well.
- 66 Presentation by Trevor Wingard, superintendent, SCI-Somerset, on September 27, 2016; and BetaGov, “A Swift, Certain, Fair Model in a Women’s Prison,” 2017. <https://perma.cc/C2JX-62XX>.
- 67 NDOC AR 707.1, 6-9, 13.
- 68 *Ibid.*, 10.
- 69 *Ibid.*, 5.
- 70 NDOC AR 707, 5. Note: Tattooing is a separate disciplinary offense (MJ 56).
- 71 NDOC AR 707.2.
- 72 NDOC AR 507, 5.
- 73 See Hutson, “Can ‘Blue Rooms’ Make Prisons Safer,” 2017; U.S. Department of Justice (DOJ), Federal Bureau of Prisons, National Institute of Corrections, “Oregon Prison Tackles Solitary Confinement,” 2014; and Raemisch and Wasko, *Open the Door*, 2015. In Colorado, incarcerated people can request to go to de-escalation rooms when they feel the need, stay as long as needed, and then request to leave when they are ready.
- 74 NDOC AR 509
- 75 NDOC AR 509, 3-4.
- 76 AR 509 even says these individuals “*should* be placed in Administrative Segregation pending classification” (emphasis added). NDOC AR 509, 1; see also NDOC AR 507, 1.
- 77 NDOC AR 509, 2.
- 78 NDOC AR 733.
- 79 NDOC has indicated to Vera that plans are moving forward to implement BMUs at LCC and NNCC.
- 80 NDOC AR 733, 4.
- 81 NDOC AR 801, “Correctional Programs/Classes/Activities,” effective February 13, 2017, p. 6.
- 82 Association of State Correctional Administrators (ASCA) and Liman Center for Public Interest Law at Yale Law School, *Reforming Restrictive Housing: The 2018 ASCA-Liman Nationwide Survey of Time-in-Cell* (New Haven, CT: ASCA and Liman Center for Public Interest Law at Yale Law School, 2018), <https://perma.cc/FS49-6U34>.
- 83 NDOC AR 801, 6.
- 84 See note 43 for more details on classroom settings in restrictive housing.
- 85 For example, Colorado addresses people who are reluctant to leave their cells using multiple strategies: a progressive series of three “interventions” by various staff members, bringing dogs from the dog programs onto the units and offering people the opportunity to interact with them

outside of their cells, and providing art therapy to allow people to express their feelings without having to talk. Raemisch and Wasko, *Open the Door*, 2015; and Vera staff visits to the Colorado State Penitentiary, March 2016 and March 2018.

- ⁸⁶ NDOC has indicated that, in practice, the 30-day limit in the BMU is an intended goal, suggesting that this policy is not yet treated as a strict rule, but rather an aspiration. Vera recommends the 30-day limit be followed.
- ⁸⁷ See, for example, Joseph Shapiro, "Doubling Up Prisoners In 'Solitary' Creates Deadly Consequences," NPR, March 24, 2016, <https://perma.cc/AU3H-CC8K>.
- ⁸⁸ To learn more about diversion units, see the Safe Alternatives to Segregation Resource Center's promising practices section, in particular: North Carolina's Therapeutic Diversion Units (<https://perma.cc/7828-2HPF>), Pennsylvania's Diversionary Treatment Units (<https://perma.cc/3X5K-7LSC>), and Colorado's diversion for people with SMI (<https://perma.cc/C5LK-LXV2>). For New York City, see Sarah Glowa-Kollisch, Fatos Kaba, Anthony Waters et al., "From Punishment to Treatment: The 'Clinical Alternative to Punitive Segregation' (CAPS) Program in New York City Jails." *International Journal of Environmental Research and Public Health* 13 (2016), <https://perma.cc/9SE8-ARPF>.
- ⁸⁹ NDOC AR 507, "Administrative Segregation," effective May 20, 2010, 8.
- ⁹⁰ ACA, "Restrictive Housing Expected Practices" (2018), Standard 4-RH-0010.
- ⁹¹ NDOC AR 733, 2.
- ⁹² NDOC AR 707, 2-3.
- ⁹³ *Ibid.*, 2-3.
- ⁹⁴ *Ibid.*, 2-3.
- ⁹⁵ *Ibid.*, 2-3.
- ⁹⁶ NDOC AR 707.1, 35.
- ⁹⁷ In addition to providing mental health training to corrections officers, some jurisdictions have created new positions that straddle custody and program staff functions. For example, VADOC created the position of treatment officer. Corrections officers receive additional, specialized training and are then able to provide programming and support in addition to their usual security duties. VADOC has found these staff to be incredibly useful in working with incarcerated people, including people with mental illness and those in restrictive housing settings. Vera conversations with VADOC staff and site visits to VADOC facilities, April–October 2017. See also VADOC "Virginia DOC Administrative Segregation Step Down Program," <https://perma.cc/N97G-GEWU>.
- ⁹⁸ To learn more about these trainings, see Mental Health First Aid USA, <https://perma.cc/4P5Q-CU76>; CIT International, Inc., <https://perma.cc/KAL5-W8WQ>; and DOJ, Federal Bureau of Prisons, National Institute of Corrections, "Crisis Intervention Teams: A Frontline Response to Mental Illness in Corrections," <https://perma.cc/5BN7-CDAB>.
- ⁹⁹ See for example E. Ann Carson and Elizabeth Anderson, Prisoners in 2015 (Washington, DC: DOJ, Bureau of Justice Statistics, 2016), <https://perma.cc/U55D-R484>; Miles D. Harer and Neal P. Langan, "Gender Differences in Predictors of Prison Violence: Assessing the Predictive Validity of a Risk Classification System," *Crime & Delinquency* 47, no. 4 (2001): 513-536, <https://perma.cc/87C5-DT8B>; Kathryn Ann Farr, "Classification for female inmates: Moving forward," *Crime & Delinquency* 46, no. 1 (2000): 3-17, <https://perma.cc/93RQ-UWQ6>; Alyssa Benedict, Becki Ney, and Rachel Ramirez, Gender Responsive Discipline and Sanctions Policy Guide for Women's Facilities (Silver Spring, MD: DOJ, Office of Justice Programs, The National Resource Center for Justice Involved Women, 2014), <https://perma.cc/A73J-XF67> (accessed January 4, 2018); and National Resource Center on Justice Involved Women, "Using Trauma-Informed Practices to Enhance Safety and Security in Women's Correctional Facilities," 2014, <https://perma.cc/D9JN-4YN8>.
- ¹⁰⁰ National Resource Center on Justice Involved Women, <https://perma.cc/AKF4-G4NR> (accessed January 4, 2018).
- ¹⁰¹ Benedict, Ney, and Ramirez, Gender Responsive Discipline, 2014.
- ¹⁰² Alyssa Benedict, "Jail Tip #3: Review Discipline Policies and Practices," 2016, adapted from Gender Responsive Discipline and Sanctions Policy Guide for Women's Facilities, <https://perma.cc/C4EW-38RJ>.

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- ¹⁰³ Although Vera did not learn of any issues related to PREA investigations or resultant stays in segregation in NDOC male facilities, undoubtedly there are PREA complaints made by men, and any related policy recommendations should apply to all NDOC facilities.
- ¹⁰⁴ PREA Standards § 115.71 Criminal and administrative agency investigations, <https://perma.cc/UJE9-RPA4>.
- ¹⁰⁵ PREA Standards, § 115.64 Staff first responder duties. <https://perma.cc/H75C-XFLS>.
- ¹⁰⁶ AR 801 states people on close custody should receive a minimum of five hours of out-of-cell time per day.
- ¹⁰⁷ NDOC AR 733, 1-2.
- ¹⁰⁸ See Nev. Rev. Stat. 388H, <https://perma.cc/5ZGY-VRG2>.
- ¹⁰⁹ See for example, Richard A. Mendel, *The Missouri Model: Reinventing the Practice of Rehabilitating Youthful Offenders* (Baltimore, MD: Annie E. Casey Foundation, 2010), <https://perma.cc/J5W7-YCXJ>.
- ¹¹⁰ Although many systems believe that youth and adults must be separated “by sight and sound” at all times due to PREA standards, there is nothing in the standards that precludes their interaction in programming or activities; the important part is maintaining adequate levels of staffing and supervision at all times. PREA § 115.14, <https://perma.cc/XV3E-BCHF>.
- ¹¹¹ See, for example, Stop Solitary for Kids, “Not in Isolation: How to Reduce Room Confinement While Increasing Safety in Youth Facilities,” 2019, <https://perma.cc/M36P-UNSG>. [font is NYTimes for #111]
- ¹¹² See Ryan Shanahan and Margaret diZerega, *Identifying, Engaging, and Empowering Families: A Charge for Juvenile Justice Agencies* (New York: Vera Institute of Justice, 2016), <https://perma.cc/4UMR-W25H>.
- ¹¹³ Research on brain development has found that young adults are a distinct developmental group, particularly regarding impulsive behavior, risk-taking, and decision-making. Council on State Governments Justice Center, *Reducing Recidivism and Improving Other Outcomes for Young Adults in the Juvenile and Adult Criminal Justice Systems* (New York: Council on State Governments Justice Center, 2015), <https://perma.cc/QQC4-DVLE>. See also Linda P. Spear, “The Adolescent Brain and Age-Related Behavioral Manifestations,” *Neuroscience and Biobehavioral Reviews*, 24, no. 4 (2000), 417-463, <https://perma.cc/Z77W-5R8K>.
- ¹¹⁴ Vera Institute of Justice, “Dispatches from T.R.U.E.,” blog series, <https://perma.cc/Q8FG-JWFZ>.