

**United States Committee on the Judiciary  
Subcommittee on the Constitution, Civil Rights, and Human Rights  
"Reassessing Solitary Confinement II: The Human Rights, Fiscal,  
and Public Safety Consequences"**

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Thank you, Chairman Durbin, Ranking Member Cruz, and members of the Subcommittee, for the opportunity to submit written testimony for this hearing on the human rights, fiscal, and public safety consequences of segregation (also known as solitary confinement or restricted housing) in prisons, jails, and detention centers throughout the United States.

The Vera Institute of Justice is an independent, nonpartisan, nonprofit center for justice policy and practice, with offices in New York City, Washington, D.C., Los Angeles, and New Orleans. Since 1961, Vera has combined expertise in research, technical assistance, and demonstration projects to help develop justice systems that are fairer, more humane, and more effective for everyone. Vera's Center on Sentencing and Corrections (CSC) works with government leaders to advance criminal justice policies that promote fairness, protect public safety, and ensure that resources are used efficiently. The center employs the skills and expertise of its staff, as well as the practical knowledge of working criminal justice professionals. Housed within the CSC and drawing on the expertise of both policy and research staff, Vera's Segregation Reduction Project (SRP) partners with states to safely decrease the number of people held in segregation (also called solitary confinement), provides recommendations tailored to the states' specific circumstances and needs, and offers assistance as states plan and implement changes. The SRP is the only project of its kind in North America and the first to do comprehensive assessments and data analyses focused on all types of segregation. In addition to its work with U.S. states, it is a member of the Advisory Group to advise the Center for Naval Analyses Institute for Public Research assessment team's review of the use of restricted housing by the Federal Bureau of Prisons.

## A. Background on Use of Solitary Confinement/Segregation in U.S. Prisons

Since the 1980s, prisons in the United States have increasingly relied on segregation to manage difficult populations. In the most recent numbers available, the U.S. Department of Justice's Bureau of Justice Statistics (BJS) reported in 2008 that the number of people in restricted housing units nationwide increased from 57,591 in 1995 to 81,622 in 2005.<sup>1</sup> Segregation was developed as a method for handling highly dangerous prisoners. However, it has increasingly been used with prisoners who do not pose a threat to staff or other prisoners but are placed in segregation for minor violations that are disruptive but not violent, such as talking back (insolence), being out of place, failure to report to work or school, or refusing to change housing units or cells. In some jurisdictions, these prisoners constitute a significant proportion of the population in this form of housing. For example, before collaborating with Vera, the majority (60.5 percent) of prisoners in one state released from segregation during a one-year period had been sentenced to segregation for these types of minor violations.

Evidence now suggests that holding people in isolation with minimal human contact for days, years, or—in some instances—decades is counterproductive in many cases, as well as exceptionally expensive. Long-term isolation can create or exacerbate serious mental health problems and assaultive or anti-social behavior,<sup>2</sup> result in negative outcomes for institutional safety, and increase the risk of recidivism after release.<sup>3</sup>

In the United States, segregation or solitary confinement is used most commonly: (1) to punish prisoners for rule violations (disciplinary/punitive segregation); (2) to remove prisoners from the general prison population who are thought to pose a risk to security or safety (administrative segregation); and (3) to protect prisoners believed to be at risk in the general prison population; this might be for reasons of retaliation, gang affiliation, or sexual vulnerability (protective custody). Other reasons include ensuring the safety of prisoners under investigation, awaiting hearings, and addressing special needs such as mental health or developmental delay.<sup>4</sup> Most

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<sup>1</sup> James J. Stephan, *Census of State and Federal Correctional Facilities* (Washington, DC: U.S. Bureau of Justice Statistics, National Prisoner Statistics Program, 2008, NCJ 222182). BJS requests information on individuals being held in "restricted housing units," but does not provide definitions for restricted housing units or for different types of segregation for respondents. As a result, the "restricted housing" category may include prisoners held in protective custody and death row units, as well as special needs and mental health units. For this and other reasons, BJS statistics may not accurately capture the numbers of prisoners in segregated settings. The BJS census includes both state and federal prisons, but excludes military facilities, local detention facilities, Immigration and Customs Enforcement facilities, and facilities that only house juveniles.

<sup>2</sup> Venter, H. et.al., "Solitary Confinement and Risk of Self-Harm Among Jail Inmates," *American Journal of Pub. Health*, Vol. 104, No. 3, pp. 442-447 (March 2014).

<sup>3</sup> David Lovell, "Patterns of Disturbed Behavior in a Supermax Population," *Criminal Justice and Behavior* 35 (2008): 9852; David Lovell, L. Clark Johnson, and Kevin C. Cain, "Recidivism of Supermax Prisoners in Washington State," *Crime and Delinquency* 53 (2007): 633-656; and David Lovell and Clark Johnson, "Felony and Violent Recidivism Among Supermax Inmates in Washington State: A Pilot Study" (University of Washington, 2004).

<sup>4</sup> In greater detail, these uses of Segregation can be described as follows: 1) Disciplinary/punitive segregation is a form of punishment for violations of prison rules. For example, a prisoner may be sentenced to a year in segregation for assault or possession of contraband, or for a period of months for violation of a direct order; 2) Administrative segregation removes prisoners from the general prison population who are thought to pose a threat to safety or security or who are believed to have information about an incident under investigation. For example, a gang leader believed to be coordinating gang activities within the prison may be placed in administrative segregation even if that

jurisdictions have guidelines limiting or defining the time a person is sentenced to disciplinary/punitive segregation for specific violations. Administrative segregation is not considered a punishment; the length of time in administrative segregation is typically open-ended with periodic reviews.

Prison officials often fear that moving prisoners out of segregation will lead to violence and other serious violations. Two states—Ohio and Mississippi—led the way in testing those concerns. In the mid-2000s, Ohio and Mississippi reduced their supermax populations by 89 and 85 percent, respectively. Mississippi went from 1,000 to 150 prisoners in segregation; Ohio went from 800 to 90 prisoners.<sup>5</sup> Mississippi not only reduced the number of people held in segregation but also saw an almost 70 percent decrease in prisoner-on-prisoner and prisoner-on-staff violence, and use of force by officers in the unit plummeted.<sup>6</sup> Following the lead of Ohio and Mississippi, other U.S. states (including Illinois, Maine, New Mexico, and Washington) have reduced their use of segregation and enhanced the use of alternative strategies.

Due in part to this subcommittee’s initial hearing in June of 2012, focus on this issue has increased in recent years. At its January 2013 conference, the American Correctional Association devoted a plenary session to the topic of administrative segregation. A follow-up session, entitled “Segregation: Controversial and Complicated,” was held seven months later, and included a call to action for corrections professionals to look at segregation and examine its uses, benefits and effects on the incarcerated. Also in January, the Association of State Correctional Administrators held a special session on administrative segregation at its winter business meeting, and in September adopted a resolution outlining recommendations for policies regarding restricted-status housing.

Much attention has been drawn to this issue by dedicated advocates, litigators, and the media. ProPublica profiled the use of segregation for the mentally ill,<sup>7</sup> and The Atlantic reported on the conditions at ADX-Florence that prompted a class-action lawsuit against the federal Bureau of

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individual has not violated any rules. Administrative segregation usually lasts for an indeterminate period of time and, for those considered a threat to safety and security, may be of long duration. In some systems, prisoners are not told the reason for their transfer to administrative segregation, and options for reevaluation or release back to the general prison population may be few; 3) Protective custody provides safety for prisoners believed to be at risk in the general prison population, such as a prisoner who provides information to correctional staff about violations committed by others, or someone considered at risk due to physical characteristics or other individual factors. Although segregated for their own protection, restrictions on human contact and programming for prisoners in protective custody can be as severe as for prisoners in disciplinary or administrative segregation; 4) Temporary confinement uses segregation while a reported incident is being investigated; it usually lasts for a short period and begins immediately after a rule violation is identified but before a hearing is conducted; and 5) Supermax (or closed maximum-security) prisons may hold both administrative and disciplinary segregation prisoners. All prisoners in supermax facilities are held in high levels of confinement, typically for long periods of time. Architecturally, supermax prisons are built to restrict visual and tactile contact with others. Educational and programmatic activities are greatly restricted.

<sup>5</sup> Terry Kupers et al., “Beyond Supermax Administrative Segregation: Mississippi’s Experience Rethinking Prison Classification and Creating Alternative Mental Health Programs,” *Criminal Justice and Behavior* 36 (2009): 1037-50.

<sup>6</sup> Ibid.

<sup>7</sup> New York State Promised Help for Mentally Ill Inmates - But Still Sticks Many in Solitary, produced in collaboration with WNYC, August 15, 2013, <http://www.propublica.org/article/new-york-promised-help-for-mentally-ill-inmates-but-still-sticks-many-in-so> (accessed February 24, 2014)

Prisons.<sup>8</sup> In just the past week, following a federal lawsuit brought by the New York Civil Liberties Union, New York State became the largest state to drastically curb the use of segregation for the most vulnerable prisoners. Additionally, New York State Corrections officials have agreed to develop new guidelines limiting the use of segregation except for the most severe infractions.<sup>9</sup> The New York Times Editorial Board applauded the move, noting that segregation “is almost never effective at changing an inmate’s behavior for the better.”<sup>10</sup> Colorado Department of Corrections Executive Director Rick Raemisch decided that he needed to experience solitary confinement in order to understand it, and spent 20 hours in administrative segregation. His experience engendered in him “even more urgency for reform,” noting that failure to reduce the use of segregation will be both counterproductive and inhumane.<sup>11</sup>

## **B. Tension between security concerns and human rights concerns**

Corrections agencies with responsibility for the custody of prisoners must focus on the safety of prisoners and staff and the need to maintain order. While understanding the need to prevent chaos and violence in challenging group settings, human rights advocates—like many others—are concerned with the extensive use of segregation and the severe penalties in the United States compared to other countries, and the deficit of services and the abuses that occur in confinement settings.<sup>12</sup> At times, these competing interests have been settled by litigation or facilitated by advocacy groups and public pressure. As correction agencies, legislators, and the general public become more focused on extreme conditions and the availability of safe and humane alternatives, the opportunity exists for radically reforming conditions of confinement in more constructive, more effective, and less costly ways. Vera’s recommendations, which take into account the importance of not jeopardizing the safety of corrections staff while improving outcomes in the behavior of prisoners, are discussed in section H, below.

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<sup>8</sup> An American Gulag: Descending into Madness at Supermax, June 18, 2012, <http://www.theatlantic.com/national/archive/2012/06/an-american-gulag-descending-into-madness-at-supermax/258323/>

<sup>9</sup> N.Y. Becomes Largest Prison System to Curb Solitary Confinement, February 23, 2014, <http://www.npr.org/2014/02/23/281373188/n-y-becomes-largest-prison-system-to-curb-solitary-confinement>, (accessed on February 24, 2014.)

<sup>10</sup> New York Rethinks Solitary Confinement, *New York Times*, 2/21/2014, p. A24, <http://www.nytimes.com/2014/02/21/opinion/new-york-rethinks-solitary-confinement.html>, 2/24/2014 (accessed February 24, 2014)

<sup>11</sup> My Night in Solitary, *New York Times*, February 20, 2014, p. A25, <http://www.nytimes.com/2014/02/21/opinion/my-night-in-solitary.html>; (accessed on February 24, 2014) For a discussion of long term effects of segregation, see also - Solitary Confinement: 29 Years in a Box, February 23, 2014, <http://www.cnn.com/2014/02/23/health/solitary-confinement-psychology/index.html>. (accessed on February 24, 2014)

<sup>12</sup> *The Findings and Recommendations of the Commission on Safety and Abuse in America’s Prisons: Hearing Before the Subcomm. on Corrections and Rehabilitation of the S. Comm. on the Judiciary*, 109th Cong. (2006).

### C. Fiscal Impact of Prison Segregation

There are significant costs associated with the use of segregation in prisons. The majority of the higher costs come from the need for additional staff to monitor segregation units and manage the movement of the prisoners within them. For example, in the Ohio state system in the early 2000s, the supermax required one corrections officer for every 1.7 prisoners; maximum-security housing required one officer for every 2.5 prisoners.<sup>13</sup>

Given the current pressure on states' budgets, many are looking for new and effective paths forward, away from reliance on this costly form of incarceration. Reducing the use of segregation and improving conditions of confinement can affect thousands in one state alone and greatly alter per-person costs of prison housing.<sup>14</sup> Illinois—which, in September of 2012 had over 49,000 men and women in state prisons—provides an example of the importance of reassessing the use of segregation in the nation's prisons. Although only about 5 percent of the prison population was in segregation on any given day, more than half (56 percent) of the 49,000 had spent some time in segregation during their current prison stay. Recognizing the impact of this, Governor Pat Quinn recently led the closure of two prisons and two juvenile facilities in the state, including the Tamms supermax prison. Tamms was costing Illinois taxpayers more than \$26 million a year to hold approximately 180 maximum-security and 180 minimum-security prisoners. This translated into almost \$65,000 per year per prisoner—the highest cost of any IDOC facility.<sup>15</sup>

Mississippi provides another example of the fiscal benefits of reducing the use of segregation. Deputy Commissioner Emmitt Sparkman described the changes as follows: “In 2007, we had nearly 1,300 inmates in long-term segregation and were spending hundreds of thousands of dollars on litigation and maintaining the physical plant. Once we reduced segregation to 335 inmates, we were able to [permanently] close Unit 32. We moved staff to other locations and there was attrition; we saved approximately \$5.6 million a year and were able to avoid layoffs and furloughs.”<sup>16</sup>

### D. Institutional and Public Safety Impacts of Segregation

Although the intent is to increase safety within prisons, segregation does not necessarily reduce violence. A study of correctional systems in Illinois, Arizona, and Minnesota found that segregating some prisoners in supermax facilities did little or nothing to lower overall violence across the system.<sup>17</sup> Prisoner-on-prisoner violence did not decrease in any of the three states. Prisoner-on-staff assaults dropped in Illinois, staff injuries temporarily increased in Arizona, and

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<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

<sup>15</sup> John Maki, “It’s Time for Illinois to Close Tamms Supermax,” *The Huffington Post*, May 23, 2012, [http://www.huffingtonpost.com/john-maki/tamms-prison-closure\\_b\\_1539255.html](http://www.huffingtonpost.com/john-maki/tamms-prison-closure_b_1539255.html) (accessed June 14, 2012).

<sup>16</sup> Vera Institute of Justice Blog, “Mississippi DOC’s Emmitt Sparkman on Reducing the Use of Segregation in Prisons,” October 11, 2011, <http://www.vera.org/blog/mississippi-docs-emmitt-sparkman-reducing-use-segregation-prisons> (accessed February 22, 2014).

<sup>17</sup> This section is excerpted from *The Findings and Recommendations of the Commission on Safety and Abuse in America’s Prisons: Hearing Before the Subcomm. on Corrections and Rehabilitation of the S. Comm. on the Judiciary*, 109th Cong. (2006).

there was no effect in Minnesota.<sup>18</sup> There also is some evidence that officers who work in segregated housing units are more likely to be assaulted. For example, one study found that 57 percent of serious assaults on staff occurred in a control unit that housed less than 10 percent of the facility's prisoners.<sup>19</sup> It may be that segregated prisoners, some of whom have histories of violence, pose a greater threat to officers than prisoners in the general population. However, the harsh living conditions in segregation and, at times, the harsh treatment received there may also exacerbate tendencies toward violence.

Releasing prisoners directly to the community from segregation—a not uncommon practice—poses significant dangers to the public as well. One rigorous quantitative study of recidivism after release from prison for prisoners held in segregation found that those released directly from supermax to the community had significantly higher felony recidivism rates and committed new offenses sooner than prisoners who spent three or more months back in the general prison population before release from custody.<sup>20</sup>

### **E. Conditions in Solitary Confinement/Segregation**

Prisoners may stay in segregated housing for years without the opportunity to engage in the types of human interaction, treatment, and education experiences that would help them adjust when reentering either the general prison population or society. Segregated prisoners are typically taken out of their cells for only one hour out of every twenty-four for recreation or a shower. However, in some systems, prisoners are released once a week for a total of five hours. Before being released from their cells, prisoners are cuffed and may be shackled at the waist and placed in leg irons. Recreation times may occur anytime from 7:00 a.m. until 3:00 a.m. Typically recreation takes place in either an open cage outdoors (called a yard) or an indoor area, sometimes with an open barred top. Because many exercise areas are exposed to the weather, prisoners must choose whether to use them during extreme weather conditions or remain in their cells. Extreme weather may greatly reduce the amount of time prisoners are out of the cell, particularly when recreation periods are offered in five-hour blocks. Cellblocks or housing units are also locked down for searches or when serious disruptions occur, further restricting access to exercise and out of cell time.

Except when overcrowding requires double celling, face-to-face human contact with individuals other than corrections officers is virtually eliminated in segregation. Officers deliver meal trays through a slot in the door, and counselors and mental health staff conduct visits through the cell door. Segregation prisoners typically are not allowed contact with other prisoners, and visits with family members are curtailed or may be prohibited for a year or more. When visits are allowed,

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<sup>18</sup> Chad S. Briggs, Jody L. Sundt, and Thomas C. Castellano, "The Effects of Supermaximum Security Prisons on Aggregate Levels of Institutional Violence," *Criminology* 41 (2003): 1341-76.

<sup>19</sup> Peter C. Kratcoski, "The Implications of Research Explaining Prison Violence and Disruption," *Federal Probation* 52 (1988): 27, 28.

<sup>20</sup> David Lovell, L. Clark Johnson, and Kevin C. Cain, "Recidivism of Supermax Prisoners in Washington State," *Crime and Delinquency* 53 (2007): 633-656; and David Lovell and Clark Johnson, "Felony and Violent Recidivism Among Supermax Inmates in Washington State: A Pilot Study" (University of Washington, 2004).

they usually are conducted by speaker or telephone through a thick glass window, precluding the opportunity for human touch.<sup>21</sup>

## F. Impacts of Segregated Protective Confinement on Vulnerable Populations

Physically or sexually vulnerable prisoners may be placed in administrative segregation or solitary confinement for their protection. Although they might not have any violations or pose a threat to staff or others, they are often housed in the same units, and with the same level of intensive security, isolation, and restricted activities, as dangerous and violent prisoners. Mentally ill and developmentally or intellectually delayed prisoners may be placed in disciplinary or punitive segregation for violations related to their inability to function in a prison setting or their vulnerability to manipulation by others.

Although the National Institutes of Health estimates the rate of serious mental illness in the general U.S. population at six percent, among incarcerated persons, the rate triples to about 18 percent.<sup>22</sup> A recent study noted that there were three times as many people with serious mental illnesses in the nation's prisons and jails as in its hospitals.<sup>23</sup> Another study documented that 14.5 percent of male and 31.0 percent of female jail prisoners had current, serious mental illnesses, rates much higher than in the general U.S. population.<sup>24</sup> Prisoners with mental illness often have difficulty functioning in the general population and are held in segregation. The rate of mentally ill prisoners in administrative segregation is estimated to be significantly higher than in the general prison population.<sup>25</sup> A random sample study identified serious mental illness in 45 percent of prisoners in supermax housing.<sup>26</sup>

The presence of severely mentally ill prisoners in segregation may make it more difficult to manage other prisoners and negatively affect conditions for officers and other prisoners on the unit. Prisoners with mental illness typically receive fewer face-to-face services in segregation than they would in the general prison population and may decompensate or act out, resulting in additional disciplinary segregation time. Housing physically or sexually vulnerable, mentally ill, and developmentally delayed prisoners with dangerous and high-security risk prisoners in

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<sup>21</sup> Angela Browne, Alissa Cambier, and Suzanne Agha, "Prisons Within Prisons: The Use of Segregation in the United States," *Federal Sentencing Reporter* 24, no. 1 (2011): 46-49.

<sup>22</sup> National Institute of Mental Health. (2010). *The Numbers Count: Mental Disorders in America*. <http://www.nimh.nih.gov/health/publications/the-numbers-count-mental-disorders-in-america/index.shtml> (accessed May 9, 2013); Dinno, P.M. (1999, July). *Mental health and treatment of inmates and probationers*. Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics; O'Keefe, M.L. and M. Schnell (2008). *Offenders with Mental Illness in the Correctional System*. *Journal of Offender Rehabilitation*, 45, 81-104.

<sup>23</sup> E. Fuller Torrey et al. 2010. *More Mentally Ill Persons Are in Jails and Prisons than Hospitals: A Survey of the States*. Arlington, VA: Treatment Advocacy Center and the National Sheriff's Association (May). [http://www.treatmentadvocacycenter.org/storage/documents/final\\_jails\\_v\\_hospitals\\_study.pdf](http://www.treatmentadvocacycenter.org/storage/documents/final_jails_v_hospitals_study.pdf) (accessed September 27, 2011).

<sup>24</sup> H.J. Steadman, F.C. Osher, P.C. Robbins, B. Case, and S. Samuels, "Prevalence of Serious Mental Illness Among Jail Inmates," *Psychiatric Services*, 60, no 6 (2009).

<sup>25</sup> O'Keefe, Maureen and Marissa Schnell. 2007. *Offenders with Mental Illness in the Correctional System*. *Journal of Offender Rehabilitation*, 45(1-2): 81-104.

<sup>26</sup> Lovell, David. 2008. *Patterns of Disturbed Behavior in a Supermax Prison*. *Criminal Justice and Behavior*, 35(8): 985-1004. <http://cjb.sagepub.com/content/35/8/985> (accessed May 8, 2013).



segregation units unnecessarily increases the population in these units, creates security challenges due to the deficits in physical/intellectual functioning and vulnerability to manipulation and abuse of these prisoners, and eliminates congregate and programming options that would be available in the general prison population.

Similarly, prisoners who are placed in solitary confinement as a means to protect them from sexual assault are exposed to a harsh environment that may eliminate opportunities to interact with others and benefit from programming, reduce face-to-face time with mental health or other providers, and result in emotional and physical decompensation and lack of preparation for successful release to community due to restrictions in this high security setting.

## **G. Vera's Segregation Reduction Project**

Launched in January 2010, Vera's Segregation Reduction Project (SRP) aims to demonstrate that states can reduce the numbers of prisoners they hold in segregation without jeopardizing institutional or public safety, as well as to create a replicable model that can be adapted for use in other jurisdictions. Innovations by an increasing number of jurisdictions demonstrate that prison systems can effectively reduce their use of segregation and safely enhance alternatives, thus improving conditions of confinement for prisoners and leading to cost reductions.

It does this by working with state prison systems to

- Analyze the use of segregation and its outcomes throughout the state prison systems;
- Review criteria to determine who should be held in segregation and who could be moved safely to the general prison population;
- Enhance programs to safely transition prisoners out of segregation;
- Make recommendations for alternatives to segregation for vulnerable populations;
- Improve programming and conditions of confinement for those who remain in segregation; and
- Analyze whether the reduction of the use of segregation effects overall levels of violence in the institution or the re-commission of violations.

The SRP is currently partnering with the Illinois Department of Corrections, the Maryland Department of Public Safety and Correctional Services, and New Mexico's Corrections Department. The project also collaborates with the Washington State Department of Corrections to assess its segregation policies and practices, analyze the effects of its use of segregation, and implement recommendations for enhancing responses to protective custody, disciplinary, and intensive management populations.

## **I. Segregation Reduction Project Findings**

The findings presented below are based on intensive assessments in 21 key prison facilities in the United States and demonstrate the importance of policy and practice change in the use of segregation.



- Segregation sentences are frequently out of scale for the type and severity of the offense, especially since alternative sanctions (such as confinement in cell or restrictions in privileges) are available.
- Despite their relatively lower risk of violence or serious threats to others, women are often subject to the same harsh system of discipline, restricted housing, and restraints as men – and often for less serious violations than men.
- Special needs populations (severely mentally ill, developmentally/intellectually delayed, and vulnerable prisoners with no prison rule violations) are often held in high-security segregation units with the same restrictions, lack of programming and activity, isolation, and extreme use of restraints as dangerous prisoners and those with serious in-prison offenses. Due to their inability to function in the open prison population, they often remain in segregation for years in conditions inappropriate for their needs and violation histories.
- Prisoners sent to disciplinary segregation for rule violations often accumulate extensive additional disciplinary time by committing violations while in segregation such as yelling, banging, defacing their cell, or throwing objects through the food slot, and may spend multiple years in segregation as disciplinary sentences accumulate.
- Prisoners in administrative segregation (who have not been identified as having committed rule violations but are considered a threat to the safe and orderly operation of the system) also may spend multiple years (sometimes, more than a decade) in segregation without an anticipated release date, and are held without needed services, congregate activities, programming, or mechanisms to earn their way out of segregation.
- Prisoners in both punitive and administrative segregation often go long periods without reconsideration of their length or conditions of stay.
- State DOCs may not comply with their own policies for minimum and maximum sentence lengths for disciplinary sentences. For example, disciplinary segregation sentences may routinely exceed the number of days allowable in a system’s Sentencing Matrix and more than double the maximum sentence.
- The sentencing policies within corrections have often stood for decades without reexamination.
- Changes in the use of segregation and alternatives can alter the lives of thousands of prisoners (usually those experiencing the most severe prison conditions) even in a single jurisdiction.

## **II. Bringing About a Culture of Change**

The SRP uses a collaborative approach that combines (a) intensive site visits to key facilities, (b) in-depth workgroup sessions with system and facility administrators and staff on their use of segregation, challenges, and needs, (c) policy and case file reviews, (d) debriefings for administrators and staff on project findings, and (e) comprehensive quantitative analyses to provide corrections officials with data-informed recommendations. Close collaboration at the agency and facility level and attention to a state’s unique challenges encourage statewide adoption of changes. For example, in the Illinois Department of Corrections (IDOC), Vera and IDOC administrators presented SRP’s recommendations to all 27 wardens, and changes are now being implemented in all IDOC facilities.

### III. Progress Updates from SRP Partner States

Some of Vera's partner sites have provided updates regarding their progress below.

#### 1. *Illinois Department of Corrections (IDOC) – Segregation and Administration Detention Project*<sup>27</sup>

*In January 2011, the Illinois Department of Corrections kicked off its Long Term Segregation and Administrative Detention project, informed by the work of Vera Institute of Justice. In the latter part of 2010, Vera visited each of the Department's Maximum Security prisons as well as our Closed Maximum facility, Tamms. Vera partnered with the Department's Planning and Research Unit to provide statistics, which drove the direction of the project. At project kick-off, the Department had 2,204 segregation inmates with 2.8 years as an average length of stay in segregation. Vera analyses also revealed that 85 percent of the segregation population was in disciplinary segregation for less severe types of infractions. Since it was also found that those who spent less time in segregation were not more likely to commit new violations during the first twelve months of release into general prison population, we were on our way to identify areas of improvement.*

*The implementation of Vera recommendations has several layers of effort:*

- ***Culture Change.*** *We committed to changing the culture of discipline in our facilities by utilizing progressive discipline, rather than providing literal interpretation of the disciplinary code violation chart, thus resulting in less time in segregation and more appropriate and effective sanctions. This effort will help reduce the number of new disciplinary segregation inmates. During the past calendar year, the overall population grew by approximately 900, during this time we reduced the number of offenders in segregation by 90.*
- ***Mental Health.*** *To support progressive appropriate discipline, we are including our Mental Health staff on reviews of segregation placements.*
- ***Incentive Program.*** *In the instances where we had inmates serving years of segregation time, we instituted a Long Term Segregation Incentive Program to assist in behavioral modification and return to general population through a tiered approach. This has been positively received by both staff and inmates.*
- ***Restoration of revoked time.*** *Department practice has been when an offender is sent to segregation, depending on the offense, we also revoked any good time earned. The Department is reviewing offenders with revoked time and restoring time where warranted. In FY12, over 97,000 days were restored.*

*In 2013, our Closed Maximum facility (Tamms) closed. These offenders were transferred*

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<sup>27</sup> Update provided by the Department of Corrections, March 2013.

*to our other maximum security facilities. They have been given the opportunity to participate in the incentive programs already described.*

*The Mantra of the program has been to determine if we are 'mad at the offender or scared of them' when making recommendations for segregation time and transfer. Taking the personal element out of the applied discipline has been a benefit to the Wardens in their constant review of the segregation time applied. To date, we have seen improvements in the behavior of the inmates serving segregation time, which lessens the safety concerns to our staff. At some facilities, the segregation unit has seen a drop in numbers so that the cells can be used for general population. .... Updates from our professional staff indicate that the modified approach with the buy-in of staff is making this project a success.*

## **2. Washington State Department of Corrections (DOC) – Segregation Reduction Project**

*In May 2011, we asked Vera to come assess our Intensive Management Units (IMUs) and give us recommendations for improvements. A prison system can largely be judged by how it operates its highest-custody units. Due to budget cuts, we were losing a partnership with the University of Washington that helped us assess and examine use of long-term segregation, and we wanted to reach out to an independent organization on a national level.*

*Based on the Segregation Reduction Project's review and recommendations, a committee of administrators, mental health staff, and managers of WA DOC's segregation units are now developing plans to implement some of Vera's recommendations, including providing more resources to mentally ill offenders and other vulnerable populations in segregation and creating programming in group settings for offenders in segregated living units.*

*Today, we are working on expanding our Intensive Transition Program (ITP): a program designed to gradually introduce IMU offenders back into general prison population. Targeted to offenders who frequently return to the IMU, the ITP at Clallam Bay in northern Washington has an 80 percent success rate and enhances staff and public safety by having fewer offenders return to their communities directly from segregation units. Since our involvement with Vera, we have committed more dollars to this successful ITP program and have doubled it in size. We are also seeking ways to expand mental health treatment into more IMUs around the state. In November 2011, we also permanently closed a 100-bed segregation unit at the Washington State Penitentiary and have safely reduced the number of segregated prisoners by 170 at a time when the incoming offender population was becoming more violent. Only about 2.7 percent of the 16,000 beds in the Washington prison system are now housed in Intensive Management Units.*

*We have also significantly expanded congregate opportunities in our IMUs while maintaining safety, based on the Vera's suggestions. The Motivating Offender Change (MOC) Program IMU congregate learning program at the Washington State Penitentiary has been in operation since August 2013, utilizing violence reduction cognitive-*

*behavioral interventions (CBI). This program employs creative structures using high security chairs that allow maximum custody prisoners (including opposing gang members) to receive programming in a classroom-like environment. This is offered on a voluntary basis and is popular with inmates and staff. The IMU at Monroe Correctional Complex also has instituted a congregate learning program with mental health/CBI components. This programming is delivered in a classroom setting, again using high security seating. Congregate programming is also beginning for the IMU/ITU population at WA DOC's women's facility. (See Attachment A)*

*WA DOC also has completed a pilot study to determine the incidence of developmentally and intellectually disabled offenders and those with traumatic brain injury in the population. The Department of Corrections (DOC) is creating a Skill Building Unit (SBU) at Cedar Hall – Washington Correction Center (WCC). This special housing will ensure that offenders with Intellectual Disability (IQ below 69), many with Borderline intellectual Functioning (IQ 70 – 79), and some offenders with a Traumatic Brain Injury at the moderate and severe levels are appropriately treated, protected from abuse, and provided specialized habilitation programming in a safe secure environment. Offenders will develop skills that will allow them to function more independently both while in prison and when released. (See Attachment B) Providing housing that meets the needs of these special populations will reduce the potential for offenders with DD/ID/TBI to be housed in and remain in segregation and maximum custody beds.*

*Overall, we have seen a 30% reduction in the use of segregation statewide from January 2011 to June 2013. We have also experienced a decline in “use of force” incidents in the Washington State Penitentiary (including mental health, high risk, and gang populations) from June 2012 to March 2013 and a decline in inmate grievances.<sup>28</sup> (See Attachment C)*

### **3. New Mexico Corrections Department – Innovative Practices<sup>29</sup>**

- ***A Restoration to Population Program (RPP)** began at a northern correctional facility this January in response to Vera recommendations. The goals of this program are to (a) integrate prisoners from Level 6 (Administrative Segregation) to Level 3 (Medium Security - GP) and (b) develop a gang renunciation program. The first group of prisoners to start the RPP pilot were 25 interactive, non-predatory prisoners who moved from Level 6 (Administrative Segregation) to a step-down unit in their home facility for three weeks, then moved to this facility to participate in the RPP program. The second group of 25 to 26 Level 6 (Administrative Segregation) prisoners will be moving to the RPP program soon. The initial target was to identify 140 prisoners for the program, but prisoners have begun requesting to join the program and we are weighing expansion. This will help reduce the state's Level 6/Administrative Segregation crowding issues and reduce its use overall.*

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<sup>28</sup> Washington State Department of Corrections. (2013). Restrictive Housing (DOC Internal Report). Olympia, WA.

<sup>29</sup> Update provided by the Director of Prisons, Jan 2014.

- **Restoration to Population Program (RPP)** for prisoners with **mental health** issues. The Department's Alternative Placement Area (APA) provides mental health services for Level 6 (Administrative Segregation) prisoners. In reassessing, we believe the vast majority of these prisoners are non-predatory and do not meet the current definition of who should be placed in Level 6 (Administrative Segregation). Prisoners who are identified as non-predatory will be moved to a Mental Health Treatment Center facility. This environment will make it easier to provide group counseling and other MH programs than possible in the current segregated environment. Those APA prisoners who are identified as predatory (about 12 cells) will be transferred to a more secure setting. These moves will decrease the size of the APA population and move non-predatory prisoners with mental health challenges from a strict segregation environment to one that better facilitates mental health programming and reintegration to the general population.
- **Response to Gangs.**
  - A separate correctional facility houses all active currently non-predatory prison gang members. At this facility, we will offer cognitive and other education programming, as well as a "Cease Fire" program, specifically for gang members.
  - One prison gang will be downgraded from a Security Threat Group to a Disruptive Group. This allows these prisoners to be housed in below Level 4/Maximum Security housing. Again this will help reduce crowding in Level 4/Max facilities and reduce our use of segregation. Through revised use of the Level system, we have witnessed the demise of one prison gang and are now designing responses to meet the needs of the dozen or so remaining active, non-predatory members.
- **Motivating for Offender Change** is a program that will be used for those prisoners identified as predatory and appropriate for Level 6/Administrative Segregation; this program is currently proving successful in Washington State's Department of Correction.
- **Protective Custody** prisoners are housed in a group setting in one Level 3/Medium security facility, instead of in segregation-type units. They live in a GP-like setting with congregate activities and out-of-cell time, recreation, therapeutic groups, and programming, except that they only interact with other PC prisoners. Populations in this PC include sex offenders, ex gang members, ex law enforcement members, and other at risk prisoners.
- The Department also is working to shift the emphasis **away from using Disciplinary Segregation** in response to infractions and **enhance the use of alternative sanctions**. This is still a work in progress since much of the change has to do with changing the culture.

- *Finally, the Department has revised policy to effectively **reduce the amount of time** it takes for prisoners to move through the **disciplinary disposition process**. This policy update is in process.*

*Overall, the Department is convinced that these changes, as well as others in the planning stages, are going to significantly reduce our segregation numbers and better meet all programming needs. The RPP and the PC implementations are already progressing much more smoothly than expected.*

## **H. Recommendations**

### **I. Strategies to Reduce Use of Segregation in Confinement Settings**

While the immediate need in most jurisdictions is to reduce the number of people in segregation and improve conditions for those remaining, attention should also be paid to implementing longer-term strategies to reduce the need for such drastic measures. For example, increasing the training and tools available to corrections staff, particularly in communication skills and conflict reduction techniques, can help reduce the defiance, hostility, and disrespect that so often leads to the violation by prisoners of rules and commands, and give officers the tools to defuse prisoner-on-prisoner conflicts and assaults. Providing more pro-social activities and greater degrees of autonomy within institutions can also lessen boredom that so often leads to anti-social outbursts against staff and other prisoners.

In the near term, innovations by an increasing number of jurisdictions demonstrate that prison systems can effectively and safely reduce the use of segregation. Based on ongoing implementations in SRP partner states and other jurisdictions, alternative sanctions for disciplinary violations (such as restricted movement in their current housing and reduction in other privileges) have proven as effective or more effective in reducing costs and improving outcomes while maintaining or enhancing safety for staff and prisoners. Strategic approaches to achieving positive results include:

1. ***Reducing intakes to segregation by using alternative sanctions for all but the most serious violations.*** Alternative sanctions may include restrictions of privileges like visitation, programs, commissary, and recreation time; restrictions on movement (referred to in some systems as “confined to cell” or “keep locked”); or transfers to a different facility or level of security.
2. ***Limiting the violations for which segregation is a sanction, and segregation time for categories of violations.*** For violations such as talking back (insolence), being out of place, failure to report to work or school, or refusing to change housing units or cells, alternative sanctions should be considered.
3. ***Reviewing currently segregated population.*** Conducting individual case reviews will allow policy changes, such as fewer violations that result in segregation and reduced segregation time, to apply to the currently segregated population. Such reviews would

include assessments of the violation leading to segregation time, behaviors while in segregation, and potential for safe release to the general prison population.

4. ***Providing tiered incentives to reduce segregation time for sustained good behavior.*** Providing incentives in the form of reductions in segregation helps encourage good behavior and gives facility management flexibility to manage behavior.
5. ***Increasing protective custody (PC) bed availability to prevent prisoners from remaining at higher custody levels than necessary.*** Specialized PC units provide opportunities for congregate activities and programming to help prisoners successfully return to the general non-PC population (when it becomes safe to do so) or the community, are a more effective setting for therapeutic and other service delivery, and, once established, are less costly than segregation units.

Jurisdictions have demonstrated that this can be done even with challenging protective custody populations. At Lea County Correctional Facility in New Mexico, prisoners with sex offense convictions, ex-law enforcement officers, and gang members requiring protection are successfully integrated in units that operate similar to general population housing. Prisoners in PC eat together, take recreation together, go to school and religious meetings together, and participate in a wide range of classroom and group-based programming. A therapeutic community treatment model allows group participants to talk about issues like substance abuse. Non-violent segregation prisoners from other institutions are also transferred to Lea County so they can live in congregate, program-enriched settings. Classrooms and dayrooms during congregate activities appear quiet, safe, orderly, and interactive.

6. ***Creating or expanding “missioned” general population housing targeted to the needs of prisoners who are mentally ill, developmentally delayed, or at risk for sexual victimization or other bodily harm.*** Designing housing for mentally ill and vulnerable protective custody prisoners in general the prison population provides greater access to mental health resources, programming, and opportunities for congregate activities, and reduces exposure to litigation. Administrators can create or expand dedicated housing units where programming, procedures, and other conditions are tailored to the needs of populations, while still ensuring safety. These units help systems reserve scarce security resources for ensuring the safety and security of all populations, creating potential cost savings.

Missioned housing allows focused delivery of procedures and programming for special needs populations. These units are most effective when placed in geographical locations most likely to attract and maintain social work and mental health staff. Such units afford prisoners opportunities to interact with each other and with staff during meals, recreation, dayroom and work activities, and out-of-cell programming. Disciplinary violations are handled on the unit whenever possible to avoid circulation of unit residents through segregation units.



7. ***Increasing programming for prisoners in segregation.*** Programming should include opportunities for gradual resocialization to prepare prisoners for return to the general prison population and congregate activities for prisoners serving long terms in segregation.

This includes structuring housing, procedures, and programming by types of prisoners in segregation, so security resources are used only as required to maintain the safety and security of each population. These units address violence, gang disaffiliation, and behavioral interventions for prisoners who continually return to segregation. Security protocols and staffing are targeted by housing unit for each focus.

8. ***Improving basic physical conditions.*** Where practical, high security units of all types need improved basic physical conditions in cells and recreational spaces to reduce the severe impact on mental and physical health. For example, more natural light, larger cells, and recreational spaces that are protected from the weather are changes that do not compromise safety; introducing minor privileges, like increased access to reading and writing materials or other personal possessions, offers stimulation and their removal is a potential sanction for violations.
9. ***Increasing mental health and social work staff across facilities and special needs/protective custody units to enhance the delivery of treatment and programs and reduce disruptions.***
10. ***Implementing transition programs and housing to transition segregation prisoners to the general population prior to their release from custody.*** Such programs would include preparation for congregate activities and housing, preparation for job opportunities in the community, and linking to resources in the community.

## II. National Recommendations

1. ***Mandate gathering of national data on segregation.*** A major challenge with existing national-level data on segregation is a lack of clarity on types of segregation. For example, to date there are *no* reliable national statistics on populations in different forms of segregation. Additionally, the current BJS census does not include segregated populations in jails or Immigration and Customs Enforcement detention centers, so the size of this population is completely unknown. The BJS census also is conducted only once every five years. A more comprehensive census, completed more regularly and with more precise definitions, is vital to inform decision-making and legislation on the use of segregation in the United States.
2. ***Conduct a national study on the impact of segregation.*** Expert studies should be funded to assess the costs of the use of (different types of) segregation compared to housing in the general prison population, and costs associated with incarceration in prison overall. In 2011, Vera's Cost Benefit Analysis Unit (CBAU) developed a sophisticated methodology to calculate prison costs and conducted a survey to collect

this data. While this survey did not include specific information on segregation, it could be used as a model for this type of data collection.

3. ***Create national standards.*** National standards on the use of segregation would encourage the field to adopt best practices for these settings. Some examples of similar work that Vera has been involved with include staffing of the privately funded Commission on Safety and Abuse in America's Prisons (the subject of a 2006 Subcommittee Hearing on Corrections and Rehabilitation),<sup>30</sup> and assisting the congressionally-mandated National Prison Rape Elimination Commission in developing the national standards to address sexual abuse in confinement settings. Creation of national standards governing the use of segregation would build on the work already undertaken by many states and this Subcommittee.

## **I. Concluding Statement**

In closing, I would like to thank the Chairman and Ranking Member for holding this important hearing, and for the opportunity to provide written testimony. Please do not hesitate to contact us if the Vera Institute of Justice can provide further assistance.

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<sup>30</sup> *The Findings and Recommendations of the Commission on Safety and Abuse in America's Prisons: Hearing Before the Subcomm. on Corrections and Rehabilitation of the S. Comm. on the Judiciary*, 109th Cong. (2006). See also *Confronting Confinement* (New York: Vera Institute of Justice, 2006).