



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

Hearing on

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

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

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

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

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

Other critics point to the expense of solitary confinement. Supermax prisons typically cost two or three times more to build and operate than even traditional maximum-security prisons.⁴ Yet there is little evidence to suggest that solitary confinement makes prisons safer. Indeed, research suggests that supermax prisons actually have a negative effect on public safety.⁵ Despite these concerns, states and the federal government continue to invest taxpayer dollars in constructing supermax prisons and enforcing solitary confinement conditions. As new fiscal realities force state and federal cuts to essential public services like health and education, it is time to ask whether we should continue to use solitary confinement despite its high fiscal and human costs.

A. What is solitary confinement?

Solitary confinement is the practice of placing a person alone in a cell for 22 to 24 hours a day with little human contact or interaction; reduced or no natural light; restriction or denial of reading material, television, radios or other property; severe constraints on visitation; and the inability to participate in group activities, including eating with others. While some specific conditions of solitary confinement may differ among institutions, generally the prisoner spends 23 hours a day alone in a small cell with a solid steel door, a bunk, a toilet, and a sink.⁶ Human contact is restricted to brief interactions with corrections officers and, for some prisoners, occasional encounters with healthcare providers or attorneys.⁷ Family visits are limited; almost all human contact occurs while the prisoner is in restraints and behind a partition.⁸ Many prisoners are only allowed one visit per month, if any.⁹ **The amount of time a person spends in solitary confinement varies, but can last for months, years, or even decades.**

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

The term “segregated housing” means housing of a prisoner in conditions characterized by substantial isolation from other prisoners, whether pursuant to disciplinary, administrative, or classification action. “Segregated housing” includes restriction of a prisoner to the prisoner’s assigned living quarters.¹⁰

The term “long-term segregated housing” means segregated housing that is expected to extend or does extend for a period of time exceeding 30 days.¹¹

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

B. The detrimental effects of solitary confinement

Solitary confinement is widely recognized as extremely harmful. Indeed, people held in solitary confinement experience a variety of negative physiological and psychological reactions: hypersensitivity to stimuli;¹² perceptual distortions and hallucinations;¹³ increased anxiety and nervousness;¹⁴ revenge fantasies, rage, and irrational anger;¹⁵ fears of persecution;¹⁶ lack of impulse control;¹⁷ severe and chronic depression;¹⁸ appetite loss and weight loss;¹⁹ heart palpitations;²⁰ withdrawal;²¹ blunting of affect and apathy;²² talking to oneself;²³ headaches;²⁴ problems sleeping;²⁵ confusing thought processes;²⁶ nightmares;²⁷ dizziness;²⁸ self-mutilation;²⁹ and lower levels of brain function, including a decline in EEG activity after only seven days in solitary confinement.³⁰ Additionally, suicide rates and incidents of self-harm are much higher for prisoners in solitary confinement. A February 2014 study by the American Journal of Public Health found that detainees in solitary confinement in New York City jails were nearly seven times more likely to harm themselves than those in general population, and that the effect was particularly pronounced for juveniles and people with severe mental illness; in California prisons in 2004, 73% of all suicides occurred in isolation units—though these units accounted for less

than 10% of the state's total prison population.³¹ Recognizing these dangers, professional organizations including the American Psychiatric Association, Mental Health America, the National Alliance on Mental Illness, and the Society of Correctional Physicians have issued formal policy statements opposing long-term solitary confinement, especially for prisoners with mental illness.³²

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

There is a common misconception that prisoners in solitary confinement are dangerous, the “worst of the worst,”³³ but few actually meet this description. If the use of solitary confinement were restricted solely to the violent and predatory, most supermax prisons and isolation units would stand virtually empty. One major reason for the overuse of solitary confinement in U.S. prisons today is that elected officials pushed to build supermax facilities and segregation units based on a desire to appear “tough on crime,” rather than on actual need.³⁴ Many states built large facilities they didn't need, and now fill the cells with relatively low-risk prisoners.³⁵ Sadly, the thousands of people in solitary confinement include many with severe mental illness or cognitive disabilities, who find it difficult to function in prison settings or to understand and follow prison rules.³⁶ For example, Indiana prison officials admitted in 2005 that “well over half” of the state's supermax prisoners suffer from mental illness.³⁷ On average, researchers estimate that at least 30% of prisoners held in solitary confinement suffer from mental illness.³⁸

Solitary confinement is psychologically difficult for everyone, but it is devastating for those with mental illness, and can cause them to deteriorate dramatically. Many engage in extreme acts of self-injury and sometimes suicide. It is not unusual for prisoners in solitary confinement to compulsively cut their flesh, bang their heads against walls, swallow razors and other harmful objects, or attempt to hang themselves. In Indiana's supermax, a prisoner with mental illness killed himself by self-immolation; another man choked himself to death with a washcloth.³⁹ These shattering impacts of solitary confinement are all too common in similar facilities across the country, and have been well documented. **Federal courts have repeatedly held that placing individuals with serious mental illness in such conditions is cruel and unusual punishment under the Eighth Amendment to the Constitution.**⁴⁰

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

Children in both the adult and juvenile systems are routinely subjected to solitary confinement. In adult prisons and jails, youth are often placed in “protective custody” for safety reasons. Despite the prevalence of youth under the age of 18 in adult facilities in the United States—estimated at more than 95,000 in 2011—most adult correctional systems offer few alternatives to solitary confinement as a means of protecting youth.⁴¹ Young people may spend weeks, months, even years in solitary. In addition to “protective custody,” youth in adult facilities may also be isolated as punishment for violating rules designed to manage adult prisoners. In many juvenile facilities, isolation is also used to punish disciplinary infractions. These sanctions can last for hours, days, weeks, or longer and often permit abusive isolation practices.⁴²

Children are even more vulnerable to the harms of prolonged isolation than adults.⁴³ Young people's brains are still developing, placing them at higher risk of psychological harm when healthy development is impeded.⁴⁴ Children experience time differently than adults; they need social stimulation.⁴⁵ Many youth enter the criminal justice system with histories of substance abuse, mental illness, and trauma, problems which often go untreated in isolation, exacerbating

the harmful effects.⁴⁶ A tragic consequence of the solitary confinement of youth is the increased risk of suicide and self-harm, including self-mutilation. In juvenile facilities, more than 50% of all suicides occur in isolation.⁴⁷ For youth in adult jails, suicide rates in isolation are nineteen times those for the general population.⁴⁸ At the same time, youth in isolation are routinely denied minimum education, mental health treatment, and nutrition,⁴⁹ which directly affects their ability to successfully re-enter society and become productive adults.⁵⁰

Efforts are underway to end this practice. In June 2012, the Department of Justice issued national standards under the Prison Rape Elimination Act (PREA), stating that “the Department supports strong limitations on the confinement of adults with juveniles,”⁵¹ and mandating that facilities make “best efforts” to avoid isolating children.⁵² The U.S. Attorney General’s National Task Force on Children Exposed to Violence concluded in 2011, “nowhere is the damaging impact of incarceration on vulnerable children more obvious than when it involves solitary confinement.”⁵³ Internationally, the U.N. Special Rapporteur on Torture has called for a global ban on the solitary confinement of children under 18.⁵⁴ Human Rights Watch and the ACLU have also called on the United States to ban this practice.⁵⁵

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

Unfortunately, solitary confinement has become the default correctional management tool to protect LGBTI individuals from violence in general population. Particularly for transgender women, who are routinely housed in men’s facilities, entire prison sentences are often spent in solitary confinement. In a typical case, Andrea, a transgender woman in a New York State men’s prison, was involuntarily placed in “protective custody,” rather than receiving a meaningful classification assessment. Prison officials’ recommendation for Andrea stated, “Based on the Inmate being transgendered, and his [sic] likeness to a female, the likelihood of him being victimized is great. The inmate both looks and sounds like a female, therefore I recommend his protective custody to prevent any harm based on his looks and transgendered status.”⁵⁶ Andrea, like many transgender women, remained in isolation for her entire three-year sentence and reported ongoing sexual harassment from officers and severe anxiety and depression.⁵⁷

While correctional officials often justify the use of solitary confinement as necessary protection for vulnerable LGBTI prisoners, the effects of such placements are devastating. These placements also fail to keep vulnerable individuals safe. In addition to the stigma of being isolated solely based on one’s actual or perceived LGBTI status, LGBTI individuals in “protective” isolation experience the same mental health deterioration that typically characterizes solitary confinement, are denied access to medically necessary healthcare and programs, and are at increased risk of assault and harassment from officers.⁵⁸ Though the final PREA standards impose strict limits on the use of “protective custody,” correctional agencies continue to house LGBTI individuals in isolation almost as a matter of course.⁵⁹ And while the PREA regulations recognized that solitary confinement for LGBTI prisoners can be psychologically damaging and physically dangerous,⁶⁰ we continue to hear reports of this practice and its devastating effects from LGBTI prisoners and detainees.

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

Nationally, more than 3,000 prisoners are confined on death rows in 35 states. According to the ABA Standards for the Treatment of Prisoners, death row prisoners may be separated from other prisoners, but should be housed in conditions comparable to those in general population. Solitary

confinement should be used only for brief periods for reasons related to discipline, security, or crime.⁶¹ Despite this clear standard, the overwhelming majority of death-penalty states house death row prisoners in what amounts to solitary confinement. The vast majority of these states confine death row prisoners in segregation or solitary-type conditions based *solely* on their death sentences.⁶² Simply put, they are condemned to solitary for life, a kind of death before dying. This is of singular concern. While solitary confinement is overused in virtually every type of penal or detention facility in the United States, in no other circumstance is solitary confinement automatically and irrevocably imposed.

Death row is not supposed to be a locus of punishment itself, but rather the place where a state houses a condemned prisoner until all of his appeals are concluded, all process due has been observed, and all doubts concerning his execution resolved. This appellate process is invaluable in preventing the execution of the innocent, and those unconstitutionally or otherwise unlawfully sentenced to death.⁶³ Death row conditions endured during these appeals are the same for the guilty and innocent, for those properly and improperly sent to death row. Change, however, is afoot. United States District Judge Leonie Brinkema recently ruled that Virginia's automatic placement of death-row prisoners in solitary confinement—without any process in which the prisoner could challenge the placement, and certainly without respect to their dangerousness, misconduct, or any other individualized reason—violates the right to due process guaranteed by the Constitution.⁶⁴ In Texas, the Department of Criminal Justice, prison guard unions, and advocates are currently discussing revisions to the Texas Death Row Plan, including limiting solitary confinement to those prisoners who break the rules.⁶⁵

G. Solitary confinement is inconsistent with international human rights principles

The U.N. Committee Against Torture, established to monitor compliance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment—a treaty ratified by the United States in 1994—has recommended that the practice of long-term solitary confinement be abolished altogether and has criticized solitary confinement practices in the United States.⁶⁶ Moreover, in a groundbreaking global study on solitary confinement, the U.N. Special Rapporteur on Torture called for a ban on the practice, except in exceptional circumstances, as a last resort, and for as short a time as possible. He also called for increased safeguards against abusive and prolonged solitary confinement, the universal prohibition of solitary confinement exceeding 15 days, and the discontinuance of solitary confinement for juveniles and mentally disabled persons.⁶⁷ The Special Rapporteur has repeatedly requested that the U.S. government grant him access to conduct an investigation of solitary confinement practices in the United States; his request has yet to be granted.⁶⁸

II. The Federal Bureau of Prisons overuses solitary confinement

Recent years have seen increased attention to solitary confinement in the federal Bureau of Prisons (BOP), which as the nation's largest prison system that holds about 15,000 prisoners in solitary confinement.⁶⁹ Following the first-ever Congressional hearing on solitary confinement, in June 2012,⁷⁰ Senator Dick Durbin (D-IL), announced in February 2013 that the BOP had agreed to an independent and comprehensive review of its use of solitary.⁷¹ Reports of the audit's findings, however, have yet to be made public.

In May 2013 the Government Accountability Office (GAO), an independent investigative agency of Congress, issued a damning report on BOP's use of solitary confinement.⁷² The report found

that, despite BOP's extensive use of segregated housing (7% of BOP's 217,000 prisoners), BOP has never assessed whether the practice contributes to prison safety.⁷³ Nor has BOP assessed the psychological effects of long-term segregation, although its Psychology Services Manual notes that extended periods in segregation "may have an adverse effect on the overall mental status of some individuals."⁷⁴ The report concluded that BOP does not adequately monitor segregated housing to ensure that prisoners receive food, out-of-cell exercise, and other necessities.⁷⁵ Moreover, these assessments confirm other criticisms of BOP's segregation practices. In June 2012, eleven prisoners at ADX Florence, BOP's supermax prison in Colorado, filed a class-action lawsuit on behalf of all individuals with mental illness held at the facility; the lawsuit alleges that, contrary to BOP's written policies, prisoners with mental illness are routinely assigned to ADX, and are unconstitutionally denied necessary treatments.⁷⁶ The complaint describes frequent incidents of self-harm and highly symptomatic behavior among the prisoners with mental illness who are held at ADX.⁷⁷

In spite of these criticisms, and although the independent study of BOP's use of solitary confinement is not yet complete, the system will soon significantly expand its capacity to house prisoners in conditions of extreme solitary confinement. In October 2012, BOP acquired an existing, non-operational maximum security state prison in Illinois, Thomson Correctional Center, which has a reported 1,600 cells.⁷⁸ During a November 2013 Senate Judiciary Hearing, BOP Director Charles Samuels indicated that the agency was planning to bring Thomson online as an operational ADX facility.⁷⁹ While BOP is preparing to add more ADX beds, the existing ADX facility in Florence, Colorado, which houses prisoners in the most extreme forms of isolation in the federal system, has a reported capacity of 490 supermax beds, of which 413 are now in use.⁸⁰ Opening Thomson as an ADX would therefore represent a significant and unnecessary expansion of BOP's capacity to subject prisoners to extreme, long-term solitary confinement.

Meanwhile, BOP appears to be mandating a solitary confinement quota in its privately contracted facilities. BOP contracts with fifteen low- and minimum-custody private prisons in its system, which together house nearly 30,000 prisoners.⁸¹ Two of these contracts in particular, and BOP's 2012 CAR XIV solicitation for an additional 1,000 private prison beds, appear to give private prison companies a financial incentive to place excessive numbers of prisoners in isolation by requiring that at least 10% of "contract beds" be located in Special Housing Unit (SHU) cells while compensating the facilities based on the number of beds filled.⁸² These cells are specifically meant to house prisoners in isolation. And because BOP does not generally house prisoners under age 18 in its custody, children in federal custody are also held in contract facilities, under terms that do not necessarily ban the use of solitary confinement.⁸³

III. Solitary Confinement is Costly and Jeopardizes Public Safety

Solitary confinement serves no demonstrable correctional purpose, yet costs more than any other form of imprisonment. There is little evidence on the utility of solitary confinement.⁸⁴ A 2006 study found that opening a supermax prison or SHU had no effect on prisoner-on-prisoner violence in Arizona, Illinois, and Minnesota,⁸⁵ and that creating isolation units had only limited impact on prisoner-on-staff violence in Illinois, none in Minnesota, and actually increased violence in Arizona.⁸⁶ A similar study in California found that supermax or administrative segregation prisons had increased violence levels.⁸⁷ Some researchers have concluded that the severe restrictions in solitary confinement increase violence and engender other behavioral

problems.⁸⁸ Although there is little evidence that solitary confinement is an effective prison management tool, there is ample evidence that it is the most expensive. Supermax prisons and segregation units can cost two or three times as much as conventional facilities to build and operate.⁸⁹ Staffing costs are much higher—prisoners are generally escorted by two or more officers any time they leave their cells, and work that in other prisons would be performed by prisoners (such as cooking and cleaning) is done by staff. A 2007 estimate from Arizona put the annual cost of holding a prisoner in solitary confinement at approximately \$50,000, compared to about \$20,000 for the average prisoner.⁹⁰ In Maryland, the average cost of housing a prisoner in segregation is three times greater than in a general population facility; in Ohio and Connecticut it is twice as high; and in Texas the costs are 45% greater.⁹¹

Not only is there little evidence that the enormous outlay of resources for these units makes prisons safer, there is growing concern that such facilities are actually detrimental to public safety. The pervasive use of solitary confinement means that thousands of prisoners return to their communities after months or years in isolation, emerging without social skills or life skills that would make them better citizens.⁹² A 2006 commission raised concerns regarding the practice of releasing prisoners directly from segregation settings to the community,⁹³ and a 2006 study of prisoners in solitary confinement noted that such conditions may “severely impair . . . the prisoner’s capacity to reintegrate into the broader community upon release from imprisonment.”⁹⁴

Indeed, release directly from isolation strongly correlates with an increased risk of recidivism. Preliminary research from California suggests that rates of return to prison are 20% higher for solitary confinement prisoners.⁹⁵ In Colorado, two-thirds of prisoners released directly from solitary confinement returned to prison within three years; prisoners who first transitioned from solitary confinement to the general prison population were 6% less likely to recidivate in the same period.⁹⁶ A 2001 study in Connecticut found that 92% of prisoners who had been held at the state’s supermax prison were rearrested within three years of release, compared with 66% of prisoners who had not been held in administrative segregation.⁹⁷ Another study, in Washington State, tracked 8,000 former prisoners upon release and found that, not only were those who came from segregation more likely to reoffend, but they were also more likely to commit violent crimes.⁹⁸ Findings like these, suggesting a link between recidivism and the debilitating conditions in segregation, have led mental health experts to call for prerelease programs to help prisoners held in solitary confinement transition to the community more safely.⁹⁹

IV. There are Better Alternatives to Solitary Confinement

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

Numerous states have taken steps to investigate, monitor, reduce, and reform their use of solitary. These reforms have resulted from agency initiative as well as legislative action. **A growing number of state corrections officials have taken direct steps to regulate the use of solitary confinement, especially as it relates to mental health issues and potential litigation.** Responding to litigation that was settled in 2012, the Massachusetts Department of Correction rewrote its mental health care policies to exclude prisoners with severe mental illness from long-term segregation and designed two maximum security mental health treatment units to divert the mentally ill out of segregated housing.¹⁰⁰ In Colorado, as of December 2013, all state wardens have been directed that any prisoners with “major mental illness” are no longer to be placed in

administrative segregation.¹⁰¹ By the end of 2013, facing mounting public scrutiny of its overuse of solitary confinement, the New York City Department of Correction had reassigned all detainees with mental illness in “punitive segregation” at Rikers Island jail to units with more therapeutic resources.¹⁰² In 2007, a New York State solitary confinement law went into effect; the law excludes prisoners with serious mental illness from solitary confinement, requires mental health monitoring of all prisoners in disciplinary segregation, and creates a non-disciplinary unit for prisoners with psychiatric disabilities where a therapeutic milieu is maintained and prisoners are subject to the least restrictive environment consistent with their needs and mental status.¹⁰³

State correctional leaders have also undertaken more comprehensive reforms to their use of solitary confinement. Last week, the New York State Department of Corrections and Community Supervision announced an agreement with the New York Civil Liberties Union to reform the way solitary confinement is used in New York State’s prisons, with the state taking immediate steps to remove youth, pregnant women, and the developmentally disabled and intellectually challenged prisoners from extreme isolation.¹⁰⁴ With the agreement, New York State becomes the largest prison system in the country to prohibit the use of punitive solitary confinement against prisoners under 18.¹⁰⁵ In January 2013, Illinois shuttered its notorious supermax prison, Tamms Correctional Center, a move that will reportedly save the state over \$20 million per year.¹⁰⁶ In November 2013, New Mexico’s corrections secretary outlined a plan to relocate nonviolent prisoners out of segregation, and to relocate “protective custody” prisoners to a separate general-population cluster, cutting the state’s segregation population by half over the next year.¹⁰⁷ Almost 10 percent of New Mexico’s 7,000 prisoners are currently held in segregated housing, and a recent ACLU report condemned the state’s overuse of segregation.¹⁰⁸ In 2012, the Colorado Department of Corrections undertook an external review by DOJ’s National Institute of Corrections; the resulting reforms led to the closure of a 316-bed supermax facility, and projected savings of millions of dollars.¹⁰⁹ Other correctional reforms have emerged in recent years from Mississippi,¹¹⁰ Maine,¹¹¹ and Michigan.¹¹²

Reforms to the use of solitary confinement in juvenile justice facilities are also underway. In June 2013, the governor of Nevada signed into law new restrictions on the isolation of youth in juvenile facilities; the law places reporting requirements on the use of isolation, and forbids holding a child in room confinement for longer than 72 hours.¹¹³ In 2012, West Virginia’s governor signed into law an outright ban on the use of punitive isolation in juvenile facilities.¹¹⁴

State legislatures are calling for studies to address the impact of solitary confinement. In May 2013, the Texas legislature passed a bill requiring an independent commission to take a comprehensive look at the use of solitary confinement in adult and juvenile facilities across the state.¹¹⁵ In 2011, the Colorado legislature required a review of administrative segregation and reclassification efforts for prisoners with mental illness or developmental disabilities.¹¹⁶ In 2011, the New Mexico legislature mandated a study on solitary confinement’s impact on prisoners, its effectiveness as a prison management tool, and its costs.¹¹⁷ Similarly, in 2012 the Lieutenant Governor of Texas commissioned a study on the use of administrative segregation in the Texas Department of Criminal Justice, including the reasons for its use, its impact on public safety and prisoner mental health, possible alternative prison management strategies, and the need for greater reentry programming for the population.¹¹⁸ In 2012, the Virginia Senate passed a joint resolution mandating a legislative study on alternative practices to limit the use of solitary

confinement, cost savings associated with limiting its use, and the impact of solitary confinement on prisoners with mental illness, as well as alternatives to segregation for such prisoners.¹¹⁹

B. ICE implements greater oversight of solitary confinement in all facilities

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

C. ABA Standards provide a model for broad reforms

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

V. Recommendations

1. The ACLU urges Congress to enact legislation that would establish a commission to create national standards to address to overuse of solitary confinement in federal, state and local prisons, jails and other detention facilities. This commission would conduct a comprehensive study of the use of solitary confinement in corrections and detention facilities across the country, the impact of the practice on cost, facility safety, incidents of self-harm, and recidivism. In addition, the commission would develop national standards to address the overuse of solitary confinement. The Department of Justice would take the commission’s recommendations and create regulations that ensure the development of smart, humane and evidence-based best practices that will limit the use of all forms of isolation and solitary confinement, and ban the practice for children under the age of 18, persons with mental illness, and other vulnerable individuals.

2. The ACLU urges Congress to pass legislation to require reforms to the use of solitary confinement in federal facilities operated by or contracted with BOP. This legislation should include a BOP ban on the solitary confinement of juveniles held in federal custody and prisoners with mental illness. BOP should be required to reduce its use of solitary confinement and other forms of isolation in federal prisons by implementing reforms based on the standards for long-term segregated housing established by the American Bar Association's *Standards for Criminal Justice, Treatment of Prisoners*, as well as the findings of the Government Accountability Office (GAO), and the ongoing study of BOP's use of segregation being conducted by outside contractors. Consistent with this type of legislation that would require reforms to the use of solitary confinement, BOP's newly acquired facility at Thomson, Illinois, should not be designated for use as an ADX (supermax) facility. Instead, it should be converted for use as a lower custody, general population prison.
3. The ACLU urges Congress to engage in increased federal oversight and monitoring of BOP's use of solitary confinement and provide more funding to the agency for alternatives to solitary confinement in order to further the goals of transparency and substantive reform. A necessary first step toward reform is the promotion of transparency in segregation practices. Greater accountability would empower citizens, taxpayers, lawmakers, and corrections officials to make informed choices about the use of segregation, a practice which has been shrouded in secrecy and therefore subject to abuse.
4. The ACLU urges Congress to enact legislation that would require federal, state, and local prisons, jails, detention centers, and juvenile facilities to report to the Bureau of Justice Statistics (BJS) who is held in solitary confinement and for what reason and the length of their segregation. BJS should annually publish the statistical analysis and present a comprehensive review of the use of solitary confinement in the United States.
5. The ACLU urges Congress to provide federal funding through the Bureau of Justice Assistance (BJA) or other entity to support federal, state, and local efforts to reduce the use of solitary confinement, with a focus on programming and other alternatives.
6. The ACLU urges Congress to conduct oversight into why the Department of State has not yet granted the United Nations Special Rapporteur on Torture an official invitation to visit the United States to examine the use of solitary confinement in U.S. prisons and detention facilities. Also, the Congress should inquire about the State Department's role in the overdue process of updating the United Nations Standard Minimum Rules for the Treatment of Prisoners (SMRs). New provisions of the SMRs should include a ban on solitary confinement of juveniles and individuals with serious mental illness and protect against prolonged solitary confinement for all persons.

ENDNOTES

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- ¹ DANIEL P. MEARS, URBAN INST., EVALUATING THE EFFECTIVENESS OF SUPERMAX PRISONS 4 (2006).
- ² Angela Browne, Alissa Cambier, Suzanne Agha, *Prisons Within Prisons: The Use of Segregation in the United States*, 24 FED'L SENTENCING REPORTER 46 (2011).
- ³ *In re Medley*, 134 U.S. 160, 168 (1890) (“[Prisoners subject to solitary confinement] fell, after even a short confinement, into a semi-fatuous condition, from which it was next to impossible to arouse them, and others became violently insane; others still, committed suicide; while those who stood the ordeal better were not generally reformed, and in most cases did not recover sufficient mental activity to be of any subsequent service to the community.”).
- ⁴ MEARS, *supra* note 1, at ii.
- ⁵ See, e.g., KERAMET REITER, PAROLE, SNITCH, OR DIE: CALIFORNIA’S SUPERMAX PRISONS & PRISONERS, 1987-2007 47-51 (2010); MAUREEN L. O’KEEFE, COLO. DEP’T OF CORRECTIONS, ANALYSIS OF COLORADO’S ADMINISTRATIVE SEGREGATION 25 (2005).
- ⁶ Eric Lanes, *The Association of Administrative Segregation Placement and Other Risk Factors with the Self-Injury-Free Time of Male Prisoners*, 48 J. OF OFFENDER REHABILITATION 529, 532 (2009).
- ⁷ *Id.*
- ⁸ *Id.*
- ⁹ Leena Kurki & Norval Morris, *The Purposes, Practices, and Problems of Supermax Prisons*, 28 CRIME AND JUST. 385, 389 (2001).
- ¹⁰ ABA CRIM. JUST. STANDARDS ON THE TREATMENT OF PRISONERS, Standard 23-1.0(r) (2010), available at <http://www.abanet.org/crimjust/policy/midyear2010/102i.pdf> [hereinafter ABA STANDARDS].
- ¹¹ *Id.* at Standard 23-1.0(o).
- ¹² Stuart Grassian, *Psychopathological Effects of Solitary Confinement*, 140 AM. J. OF PSYCHIATRY 1450, 1452 (1983).
- ¹³ *Id.*; Craig Haney, *Mental Health Issues in Long-Term Solitary and “Supermax” Confinement*, 49 CRIME & DELINQ. 124, 130 (2003); see generally Richard Korn, *The Effects of Confinement in the High Security Unit at Lexington*, 15 Soc. Just. 8 (1988).
- ¹⁴ Grassian, *supra* note 12, at 1452-53; Haney, *supra* note 13, at 130, 133; Holly A. Miller, *Reexamining Psychological Distress in the Current Conditions of Segregation*, 1 J. OF CORRECTIONAL HEALTHCARE 39, 48 (1994); see generally Stanley L. Brodsky & Forest R. Scogin, *Inmates in Protective Custody: First Data on Emotional Effects*, 1 FORENSIC REP. 267 (1988).
- ¹⁵ Grassian, *supra* note 12, at 1453; Holly A. Miller & Glenn R. Young, *Prison Segregation: Administrative Detention Remedy or Mental health Problem?*, 7 CRIM. BEHAV. & MENTAL HEALTH 85, 91 (1997); Haney, *supra* note 13, at 130, 134; see generally HANS TOCH, MOSAIC OF DESPAIR: HUMAN BREAKDOWN IN PRISON (1992).
- ¹⁶ Grassian, *supra* note 12, at 1453.
- ¹⁷ *Id.*; Miller & Young, *supra* note 15, at 92.
- ¹⁸ Grassian, *supra* note 12, at 1453; Miller & Young, *supra* note 15, at 92; Haney, *supra* note 13, at 131.
- ¹⁹ Haney, *supra* note 13, at 130; see generally Korn, *supra* note 13.
- ²⁰ Haney, *supra* note 13, at 131.
- ²¹ Miller & Young, *supra* note 15, at 91; see generally Korn, *supra* note 13.
- ²² Miller & Young, *supra* note 15, at 91; see generally Korn, *supra* note 13.
- ²³ Haney, *supra* note 13, at 134; see generally Brodsky & Scogin, *supra* note 14.
- ²⁴ Haney, *supra* note 13, at 133.
- ²⁵ *Id.*
- ²⁶ Haney, *supra* note 13, at 137; see generally Brodsky & Scogin, *supra* note 14.
- ²⁷ Haney, *supra* note 13, at 133.
- ²⁸ *Id.*
- ²⁹ Grassian, *supra* note 12, at 1453; Lanes, *supra* note 6, at 539-40.
- ³⁰ Paul Gendreau, N.L. Freedman, G.J.S. Wilde & G.D. Scott, *Changes in EEG Alpha Frequency and Evoked Response Latency During Solitary Confinement*, 79 J. OF ABNORMAL PSYCHOL. 54, 57-58 (1972).
- ³¹ See Homer Venters et al., *Solitary Confinement and Risk of Self-Harm Among Jail Inmates*, 104:3 AM. J. PUBLIC HEALTH 442, 442-447 (March 2014), available at <http://ajph.aphapublications.org/doi/pdf/10.2105/AJPH.2013.301742>; Expert Report of Professor Craig Haney at 45-46 n. 119, *Coleman v. Schwarzenegger*, 2008 WL 8697735 (ED. Cal 2010) (No: Civ S 90-0520 LKK-JFM P). Another study examined the impact of solitary confinement on the amount of time that passes between incidents in which prisoners harm themselves and found that prisoners in solitary harm themselves on average 17 months earlier than prisoners in general population. See Lanes, *supra* note 6, at 539-40.

³² See AMERICAN PSYCHIATRIC ASSOCIATION, POSITION STATEMENT ON SEGREGATION OF PRISONERS WITH MENTAL ILLNESS (2012), available at http://www.psych.org/File%20Library/Learn/Archives/ps2012_PrisonerSegregation.pdf (“Prolonged segregation of adult inmates with serious mental illness, with rare exceptions, should be avoided due to the potential for harm to such inmates.”); AMERICAN PUBLIC HEALTH ASSOCIATION, SOLITARY CONFINEMENT AS A PUBLIC HEALTH ISSUE, POLICY NO. 201310 (2013), available at <http://www.apha.org/advocacy/policy/policysearch/default.htm?id=1462> (detailing the public-health harms of solitary confinement; urging correctional authorities to “eliminate solitary confinement for security purposes unless no other less restrictive option is available to manage a current, serious, and ongoing threat to the safety of others”; and asserting that “[p]unitive segregation should be eliminated”); MENTAL HEALTH AMERICA, SECLUSION AND RESTRAINTS, POLICY POSITION STATEMENT 24 (2011), available at <http://www.nmha.org/positions/seclusion-restraints> (“urg[ing] abolition of the use of seclusion . . . to control symptoms of mental illnesses”); NATIONAL ALLIANCE ON MENTAL ILLNESS, PUBLIC POLICY PLATFORM SECTION 9.8, available at http://www.nami.org/Template.cfm?Section=NAMI_Policy_Platform&Template=/ContentManagement/ContentDisplay.cfm&ContentID=38253 (“oppos[ing] the use of solitary confinement and equivalent forms of extended administrative segregation for persons with mental illnesses”); SOCIETY OF CORRECTIONAL PHYSICIANS, POSITION STATEMENT, RESTRICTED HOUSING OF MENTALLY ILL INMATES (2013), available at <http://societyofcorrectionalphysicians.org/resources/position-statements/restricted-housing-of-mentally-ill-inmates> (“acknowledg[ing] that prolonged segregation of inmates with serious mental illness, with rare exceptions, violates basic tenets of mental health treatment,” and recommending against holding these prisoners in segregated housing for more than four weeks).

³³ Kurki & Morris, *supra* note 9, at 391.

³⁴ *Id.* at 390-91.

³⁵ Roy King, *The Rise and Rise of Supermax: An American Solution in Search of a Problem?*, 1 PUNISHMENT & SOC’Y. 163, 177 (1999).

³⁶ Haney, *supra* note 13, at 127.

³⁷ Howard Greninger, *Suit Targets Carlisle Prison*, TERRE HAUTE TRIBUNE-STAR, Feb. 4, 2005.

³⁸ See, e.g., James Ridgeway & Jean Casella, *Locking Down The Mentally Ill: Solitary Confinement Cells Have Become America’s New Asylums*, THE CRIME REP., Feb. 20, 2010, <http://www.thecrimereport.org/archive/locking-down-the-mentally-ill/>; MARY BETH PFEIFFER, *CRAZY IN AMERICA: THE HIDDEN TRAGEDY OF OUR CRIMINALIZED MENTALLY ILL* (2007); JENNIFER R. WYNN, ALISA SZATROWSKI & GREGORY WARNER, THE CORRECTIONAL ASSOCIATION OF NEW YORK, *MENTAL HEALTH IN THE HOUSE OF CORRECTIONS: A STUDY OF MENTAL HEALTH CARE IN NEW YORK STATE PRISONS* 48 (2004). For a recent indictment of states’ and the federal government’s practices of warehousing people with mental illness in prisons, see generally Nicholas Kristof, *Inside a Mental Hospital Called Jail*, N.Y. TIMES, Feb. 9, 2014, <http://www.nytimes.com/2014/02/09/opinion/sunday/inside-a-mental-hospital-called-jail.html> (not focusing on solitary confinement).

³⁹ Karin Grunden, *Man found hanging in cell at Wabash Valley Correctional Facility*, TERRE HAUTE TRIBUNE-STAR, Oct. 1, 2003.

⁴⁰ See, e.g., *Indiana Protection & Advocacy Services Commission v. Commissioner*, Case 1:08-cv-01217-TWP-MJD, Doc. 279 (S.D. Ind., Dec. 31, 2012), available at http://www.in.gov/ipas/files/IDOC_trial_court_decision.pdf (holding that the Indiana Department of Correction’s practice of placing prisoners with serious mental illness in segregation constituted cruel and unusual treatment in violation of the Eighth Amendment); *Jones ‘El v. Berge*, 164 F. Supp. 2d 1096, 1101-02 (W.D. Wis. 2001); *Ruiz v. Johnson*, 37 F. Supp. 2d 855, 915 (S.D. Tex. 1999), *rev’d on other grounds*, 243 F.3d 941 (5th Cir. 2001), *adhered to on remand*, 154 F. Supp. 2d 975 (S.D. Tex. 2001) (“Conditions in TDCJ-ID’s administrative segregation units clearly violate constitutional standards when imposed on the subgroup of the plaintiffs’ class made up of mentally-ill prisoners”); *Coleman v. Wilson*, 912 F. Supp. 1282, 1320-21 (E.D. Cal. 1995); *Madrid v. Gomez*, 889 F. Supp. 1146, 1265-66 (N.D. Cal. 1995); *Casey v. Lewis*, 834 F. Supp. 1477, 1549-50 (D. Ariz. 1993); *Langley v. Coughlin*, 715 F. Supp. 522, 540 (S.D.N.Y. 1988) (holding that evidence of prison officials’ failure to screen out from SHU “those individuals who, by virtue of their mental condition, are likely to be severely and adversely affected by placement there” states an Eighth Amendment claim).

⁴¹ HUMAN RIGHTS WATCH & THE AMERICAN CIVIL LIBERTIES UNION, *GROWING UP LOCKED DOWN: YOUTH IN SOLITARY CONFINEMENT IN JAILS AND PRISONS ACROSS THE UNITED STATES*, 132 (2012), available at <http://www.aclu.org/growinguplockeddown>; WASH. COAL. FOR THE JUST TREATMENT OF YOUTH, *A REEXAMINATION OF YOUTH INVOLVEMENT IN THE ADULT CRIMINAL JUSTICE SYSTEM IN WASHINGTON: IMPLICATIONS OF NEW FINDINGS ABOUT JUVENILE RECIDIVISM AND ADOLESCENT BRAIN DEVELOPMENT* 8 (2009), available at http://www.columbialegal.org/files/JLWOP_cls.pdf.

- ⁴² Sandra Simkins, et al., *The Harmful Use of Isolation in Juvenile facilities: The Need for Post-Disposition Representation*, 38 WASH. U. J.L. & POL'Y 241 (2012), available at <http://digitalcommons.law.wustl.edu/cgi/viewcontent.cgi?article=1019&context=wujlp>; LINDSAY M. HAYES, NAT'L CTR. ON INSTITUTIONS AND ALTERNATIVES JUVENILE SUICIDE IN CONFINEMENT: A NATIONAL SURVEY 40 (2004).
- ⁴³ AM. ACAD. OF CHILD & ADOLESCENT PSYCHIATRY, POLICY STATEMENT ON SOLITARY CONFINEMENT OF JUVENILE OFFENDERS (Apr. 2012), available at http://www.aacap.org/cs/root/policy_statements/solitary_confinement_of_juvenile_offenders; Sandra Simkins et al., *The Harmful Use of Isolation in Juvenile Facilities: The Need for Post-Disposition Representation*, 38 WASH. U.J.L. & POL'Y 241, 257-61 (2012).
- ⁴⁴ Jay N. Giedd, *Structural Magnetic Resonance Imaging of the Adolescent Brain*, 1021 ANNALS N.Y. ACAD. SCI. 77 (2004), available at <http://intramural.nimh.nih.gov/research/pubs/giedd05.pdf>; Laurence Steinberg, *Cognitive and Affective Development in Adolescence*, 9 TRENDS IN COGNITIVE SCI. 69 (2005), available at <http://www.temple.edu/psychology/lds/documents/CognitiveandAffectiveDEvelopmentTICS.pdf>.
- ⁴⁵ Laurence Steinberg et al, *Age Differences in Future Orientation and Delay Discounting*, 80 CHILD DEV. 28, (2009), available at <http://www.wisspd.org/htm/ATPracGuides/Training/ProgMaterials/Conf2011/AdDev/ADFO.pdf>; Jennifer Woolard et al., *Juveniles within Adult Correctional Settings: Legal Pathways and Developmental Considerations*, 4 INT'L J. FORENSIC MENTAL HEALTH 1, 9 (2005), available at <http://www.policyarchive.org/handle/10207/bitstreams/20668.pdf>.
- ⁴⁶ HAYES, *supra* note 42; LINDA A. TEPLIN ET AL., U.S. DEPT. OF JUST., PSYCHIATRIC DISORDERS OF YOUTH IN DETENTION (2006), available at <https://www.ncjrs.gov/pdffiles1/ojdp/210331.pdf>; Patricia Kerig et al., *Posttraumatic Stress as a Mediator of the Relationship Between Trauma and Mental Health Problems Among Juvenile Delinquents*, 38 J. YOUTH & ADOLESCENCE 1214 (2009), available at <http://www.psych.utah.edu/people/people/kerig/pub/PosttraumaticStressasaMediator.pdf>; Jason Washburn et al., *Psychiatric Disorders Among Detained Youths: A Comparison of Youths Processed in Juvenile Court and Adult Criminal Court*, 59 PSYCHIATRIC SERV. 965 (2008), available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2718561/pdf/nihms109770.pdf>.
- ⁴⁷ HAYES, *supra* note 42, at 28; Seena Fazel et al., *Suicide in Prisoners: A Systematic Review of Risk Factors*, 69 J. CLINICAL PSYCHIATRY 1721 (2008); see CHRISTOPHER MUOLA, U.S. DEPT. OF JUST., SUICIDE AND HOMICIDE IN STATE PRISONS AND LOCAL JAILS 9 (2005), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/shsplj.pdf>.
- ⁴⁸ CAMPAIGN FOR YOUTH JUSTICE, JAILING JUVENILES: THE DANGERS OF INCARCERATING YOUTH IN ADULT JAILS IN AMERICA 10 (2007), available at http://www.campaignforyouthjustice.org/documents/CFYJNR_JailingJuveniles.pdf.
- ⁴⁹ *Concerning Pretrial Detention of Juveniles Prosecuted as Adults: Hearing on HB 12-1139 Before the H. Comm. on Judiciary*, 68th General Assem. (Colo. 2012) (statement of Peg Ackerman, County Sheriffs of Colorado), available at http://podcache-101.granicus.com/pstore1/coloradoga/coloradoga_d0c9ed72-c055-4de2-8a9a-730e8104df44.mp4; see Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400-1450 (2004) (in which several provisions do not generally apply to disabled children convicted as adults and incarcerated in adult prisons), available at <http://idea.ed.gov/download/statute.html>; PHYSICAL ACTIVITY GUIDELINES ADVISORY COMM., PHYSICAL ACTIVITY GUIDELINES ADVISORY COMMITTEE REPORT (2008) (recommending that youth engage in moderate to vigorous physical exercise three to five times a week), available at <http://www.health.gov/PAGuidelines/Report/pdf/CommitteeReport.pdf>; U.S. DEPT. OF AGRIC., U.S. DEPT. OF HEALTH & HUM. SERV., DIETARY GUIDELINES FOR AMERICANS (2010) (recommending diet management and increased physical activity to improve public health), available at <http://www.cnpp.usda.gov/Publications/DietaryGuidelines/2010/PolicyDoc/PolicyDoc.pdf>; David E. Arredondo, *Principles of Child Development and Juvenile Justice: Information for Decision-Makers*, 5 J. CENTER FOR FAM., CHILD & CTS. 127 (2004).
- ⁵⁰ U.S. DEPT. OF HEALTH & HUM. SERV., EFFECTS ON VIOLENCE OF LAWS AND POLICIES FACILITATING THE TRANSFER OF YOUTH FROM THE JUVENILE TO THE ADULT JUSTICE SYSTEM: A REPORT ON RECOMMENDATIONS OF THE TASK FORCE ON COMMUNITY PREVENTIVE SERVICES 6-8 (2007), available at <http://www.cdc.gov/mmwr/pdf/rr/rr5609.pdf>; BARRY HOLMAN & JASON ZIEDENBERG, JUSTICE POLICY INST., THE DANGERS OF DETENTION (2006), available at http://www.justicepolicy.org/images/upload/06-11_REP_DangersOfDetention_JJ.pdf.
- ⁵¹ National Standards to Prevent, Detect and Respond to Prison Rape, Docket No. OAG-131, (May 16, 2012) (to be codified at 28 C.F.R. pt. 115), available at http://www.ojp.usdoj.gov/programs/pdfs/prea_final_rule.pdf.
- ⁵² *Id.*
- ⁵³ ATTORNEY GENERAL'S NATIONAL TASK FORCE ON CHILDREN EXPOSED TO VIOLENCE, REPORT OF THE ATTORNEY GENERAL'S NATIONAL TASK FORCE ON CHILDREN EXPOSED TO VIOLENCE, DEFENDING CHILDHOOD: PROTECT, HEAL, THRIVE, 115, 125 (2012), available at <http://www.justice.gov/defendingchildhood/cev-rpt-full.pdf>.

⁵⁴ The Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman, or degrading treatment or punishment, *Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, delivered to the General Assembly*, U.N. Doc. A/66/268 (Aug. 5, 2011) [hereinafter Special Rapporteur].

⁵⁵ HUMAN RIGHTS WATCH & THE AMERICAN CIVIL LIBERTIES UNION, *GROWING UP LOCKED DOWN: YOUTH IN SOLITARY CONFINEMENT IN JAILS AND PRISONS ACROSS THE UNITED STATES*, 132 (2012), available at <http://www.aclu.org/growinguplockeddown>.

⁵⁶ LGBT PREA comments, http://transequality.org/PDFs/PREA_Comments_April_2011.pdf.

⁵⁷ *Id.* Correspondence on file with authors.

⁵⁸ Sylvia Rivera Law Project, “Its war in here: A Report on the Treatment of Transgender and Intersex People in New York State Men’s Prisons” 17-19 (2007), <http://srp.org/files/warinhere.pdf>

⁵⁹ National Standards to Prevent, Detect and Respond to Prison Rape, *supra* note 51.

⁶⁰ Unfortunately, LGBTI detainees in immigration detention facilities are not covered by the PREA regulations. Leslie Cooper, *New Federal Standards Offer Unprecedented Protections to LGBTI Prisoners*, ACLU BLOG (May 21, 2012, 2:25 PM), <http://www.aclu.org/blog/prisoners-rights-lgbt-rights-womens-rights/new-federal-standards-offer-unprecedented>. Detainees in immigration facilities across the country are often subjected to inhumane conditions, including extended periods of solitary confinement, often in the name of “protecting” LGBTI detainees facing the risk of physical and sexual abuse. The ACLU of Arizona recently produced a report detailing the incredibly degrading treatment faced by LGBTI immigration detainees at facilities in that state. VICTORIA LOPEZ, IN THEIR OWN WORDS: ENDURING ABUSE IN ARIZONA IMMIGRATION DETENTION CENTERS, ACLU OF ARIZONA, (June 2011), available at <http://www.acluaz.org/sites/default/files/documents/detention%20report%202011.pdf>.

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

⁶¹ ABA Crim. Just. Standards on the Treatment of Prisoners, Standard 23-2.6.(a) (2010), available at <http://www.abanet.org/crimjust/policy/midyear2010/102i.pdf>.

⁶² American Civil Liberties Union, *A Death Before Dying: Solitary Confinement on Death Row*, July 2013, available at <https://www.aclu.org/deathrowsolitary>; Mark D. Cunningham & Andrea D. Lyon, “Reason Not the Need”: Does the Lack of Compelling State Interest in Maintaining a Separate Death Row Make It Unlawful?, *AMERICAN JOURNAL OF CRIMINAL LAW*, 33, 13-17 (2006) (discussing death row conditions in multiple states).

⁶³ Death Penalty Information Center, *The Innocence List*, available at <http://www.deathpenaltyinfo.org/innocence-list-those-freed-death-row> (documenting exoneration during appeals process of 143 innocent death-row prisoners); James S. Liebman & Jeffrey Fagan, *A Broken System: Error Rates in Capital Cases, 1973-1995*, available at <http://www2.law.columbia.edu/instructionalservices/liebman/> (documenting 68% reversal rate of death sentences nationally, due to prejudicial legal error).

⁶⁴ *Prieto v. Clarke*, No. 12-CV-1199Slip Copy, 2013 WL 6019215 (Nov. 12, 2013 E.D.Va.).

⁶⁵ Alex Hannaford, *Prison Guard Union Calls on Texas to Curtail Solitary Confinement on Death Row*, TEXAS OBSERVER, Jan. 28, 2014, available at <http://www.texasobserver.org/texas-prison-guard-union-calls-curtailed-solitary-confinement-death-row/>; Steve J. Martin, *Why solitary confinement puts death row guards in jeopardy*, DALLAS NEWS, Feb. 6, 2014, available at <http://www.dallasnews.com/opinion/latest-columns/20140206-why-solitary-confinement-puts-death-row-guards-in-jeopardy.ece> (opinion piece of former corrections officer and Texas prison official).

⁶⁶ *See, e.g.*, U.N. Comm. Against Torture, *Consideration of Reports Submitted by States Parties Under Article 19 of the Convention: Denmark*, ¶ 14, U.N. Doc. CAT/C/DNK/CO/5 (July 16, 2007). When the same Committee reviewed practices in the United States, it expressed grave concerns over the extremely harsh regime imposed on prisoners in “super-maximum” prisons. The Committee specifically noted the prolonged isolation prisoners are subject to and the effect such treatment has on their mental health, and recommended that “[t]he State party should review the regime imposed on [prisoners] in ‘supermaximum prisons,’ in particular the practice of prolonged isolation.” *See* U.N. Comm. Against Torture, *Consideration of Reports Submitted by States Parties Under Article 19 of the Convention: Conclusions and Recommendations of the Committee Against Torture: United States of America*, U.N. Doc. CAT/C/USA/CO/2, at ¶ 36 (May 18, 2006).

⁶⁷ Special Rapporteur, *supra* note 54; *see also* Jules Lobel, *Prolonged Solitary Confinement and the Constitution*, 11 U. Pa. J. CONST. L. 115, 122-25 (2008); Elizabeth Vasiliades, *Solitary Confinement and International Human Rights: Why the U.S. Prison System Fails Global Standards*, 21 AM. U. INT’L L. REV. 71, 98 (2005)

⁶⁸ See Letter from American Civil Liberties Union et al. to Acting Assistant Secretary Urza Zeya, Acting Assistant Secretary Dean Pittman & Deputy Legal Adviser Susan Biniaz (June 19, 2013), available at https://www.aclu.org/files/assets/coalition_letter_to_department_of_state_re_juan_mendez_visit.pdf (urging, in a coalition letter, the U.S. Department of State to invite U.N. Special Rapporteur Juan Mendez to conduct a fact-finding mission to examine the use of solitary confinement in U.S. prisons and other places of detention).

⁶⁹ During the June 2012 Senate hearing on solitary confinement, Charles E. Samuels, Jr., Director of the Federal Bureau of Prisons, stated that seven percent of the total federal prison population is held in solitary confinement. With a current federal prison population of approximately 217,000, this means that 15,190 prisoners are being held in isolation in federal facilities. See *Reassessing Solitary Confinement: The Human Rights, Fiscal, And Public Safety Consequences: Hearing before the Subcomm. on the Constitution, Civil Rights, and Human Rights of the S. Comm. on the Judiciary*, 112th Cong. 12 (2012) (verbal exchange between Charles E. Samuels, Jr. and Sen. Al Franken (D-MN)).

⁷⁰ See *The Constitution, Civil Rights, and Human Rights*, U.S. SEN. COMM. ON THE JUDICIARY, <http://www.judiciary.senate.gov/about/subcommittees/constitution.cfm> (last visited June 24, 2013).

⁷¹ Press Release, Sen. Dick Durbin (D-IL), Durbin statement on Federal Bureau of Prisons Assessment of its Solitary Confinement Practices (Feb. 4, 2013), <http://www.durbin.senate.gov/public/index.cfm/pressreleases?ID=07260483-4972-4720-8d43-8fc82a9909ac>.

⁷² See U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-13-429, IMPROVEMENTS NEEDED IN BUREAU OF PRISONS' MONITORING AND EVALUATION OF IMPACT OF SEGREGATED HOUSING 2 (2013) [hereinafter GAO REPORT ON SEGREGATED HOUSING]. "Segregated housing" refers to housing units in which prisoners are locked in their cells for approximately 23 hours a day, either alone or with a cellmate. GAO REPORT ON SEGREGATED HOUSING, at 6.

⁷³ *Id.* at 33.

⁷⁴ *Id.* at 40.

⁷⁵ *Id.* at 41.

⁷⁶ See *Mentally Ill Prisoners at Federal Supermax File Class Action Suit Alleging Deliberate Mistreatment*, Washington Lawyers' Committee for Civil Rights and Urban Affairs (June 18, 2012), available at <http://www.supermaxlawsuit.com/2012-06-18-Supermax-Press-Release.PDF>.

⁷⁷ *Id.*

⁷⁸ See Capital Asset Plan and Business Case Summary, Exhibit 300, Part I: Summary Information And Justification (All Capital Assets), Administrative USP Thomson, IL, Mar. 29, 2013, <http://www.justice.gov/jmd/2014justification/exhibit300/usp-thomson.pdf> (requesting funding for USP Thomson); Reuters, Update 1-Illinois Prison Eyed To House Guantanamo Detainees, Nov. 15, 2009, <http://www.reuters.com/article/2009/11/15/guantanamo-idUSN1546843320091115> (reporting that Thomson, as constructed, has 1,600 cells)

⁷⁹ See Videorecording of Charles Samuels, Jr., testifying at Senate Judiciary Committee Hearing SD-226, Nov. 11, 2013, at 52:00-54:00, available at <http://www.senate.gov/isvp/?comm=judiciary&type=live&filename=judiciary110613> (discussing BOP's need for more ADX beds in the context of Thomson). See also Press Release, Durbin, Bustos: Robust Funding for Prison Activation in Omnibus Appropriations Bill is Good News for Thomson, Jan. 13, 2014, <http://www.durbin.senate.gov/public/index.cfm/pressreleases?ID=e0120b76-bfc9-4f5c-9655-1d76fe3202ee> ("In July 2013, the Senate Appropriations Committee, of which Durbin is a member, approved funding for the activation of the Thomson correctional facility at the level that was requested by President Obama in his Fiscal Year 2014 budget proposal which was delivered to Congress last April."); Budget for Fiscal Year 2014 at 730, Department of Justice, available at <http://www.whitehouse.gov/sites/default/files/omb/budget/fy2014/assets/jus.pdf> (requesting "\$166.3 million in program enhancements to begin the activation process for three institutions (Federal Correctional Institution at Hazelton, West Virginia, United States Penitentiary at Yazoo City, Mississippi, and ADX United States Penitentiary at Thomson, Illinois)").

⁸⁰ See Letter from John Boehner et al. to President Barack Obama, Feb. 12, 2009, at 1, http://royce.house.gov/uploadedfiles/final_signed_gtmo_letter_12_feb_09.pdf (stating that ADX Florence has a capacity of 490 supermax beds); Federal Bureau of Prisons, USP Florence Admax, <http://www.bop.gov/locations/institutions/flm/> (last visited Feb. 4, 2014, 11:45 a.m.) (stating that USP Florence currently has a population of 413 supermax prisoners).

⁸¹ *Population Statistics*, Federal Bureau of Prisons, http://www.bop.gov/about/statistics/population_statistics.jsp (last visited Feb. 12, 2014).

⁸² *Contract between Corrections Corporation of America and BOP for management of Eden Detention Center*, at 53, available at TEXAS PRISON BID'NESS, <http://www.texasprisonbidness.org/files/facilities/contracts/Contract%20->

%20CCA%20Eden.1-100.pdf (last visited Feb. 2, 2014) (hereinafter Eden Contract); *Contract between GEO Group and BOP for management of Reeves County Detention Center Reeves contract*, at 56, available at TEXAS PRISON BID'NESS, <http://www.texasprisonbidness.org/files/facilities/contracts/Contract%20-%20RCDC%20CAR6.1-109.pdf> (last visited Feb. 2, 2014)(hereinafter Reeves Contract); Federal Bureau of Prisons, CAR XIV, Solicitation No. RFP-PCC-0021, at 12 (Aug. 2, 2012), available at <https://www.fbo.gov/utills/view?id=db982f62c592f7f88489220a7e112154>.

⁸³ See Paul Guerino, Paige M. Harrison & William Sabol, Bureau of Justice Statistics, US Department of Justice, "Prisoners in 2010" (2011), <http://bjs.gov/content/pub/pdf/p10.pdf>; Heather West, Bureau of Justice Statistics, US Department of Justice, "Prison Inmates at Mid-year 2009 – Statistical Tables" (2010), <http://bjs.ojp.usdoj.gov/content/pub/pdf/pim09st.pdf>.

⁸⁴ Mears, *supra* note 1, at 1-2.

⁸⁵ Chad S. Briggs, et al., *The Effect of Supermaximum Security Prisons on Aggregate Levels of Institutional Violence*, 41 CRIMINOLOGY 1341, 1341-42 (2006).

⁸⁶ *Id.* at 1365-66.

⁸⁷ REITER, *supra* note 5, at 44-46.

⁸⁸ See Kurki & Morris, *supra* note 9, at 391; Miller & Young, *supra* note 15.

⁸⁹ CAROLINE ISAACS & MATTHEW LOWEN, AM. FRIENDS SERV. COMM., BURIED ALIVE: SOLITARY CONFINEMENT IN ARIZONA'S PRISONS AND JAILS 14 (2007); Daniel P. Mears & Jamie Watson, *Towards a Fair and Balanced Assessment of Supermax Prisons*, 23 JUST. Q. 233, 260 (2006).

⁹⁰ ISAACS & LOWEN, *supra* note 89, at 4.

⁹¹ MEARS, *supra* note 1, at 20, 26, 33; Connecticut Department of Correction, Average Daily Expenditure Per Inmate, available at <http://www.ct.gov/doc/cwp/view.asp?a=1505&q=265600>.

⁹² See, e.g., REITER, *supra* note 5, at 2 (noting that in California nearly 40% of segregated prisoners are released directly to the community without first transitioning to lower security units); O'KEEFE, *supra* note 5, at 23 (noting that Colorado also releases about 40% of its supermax population directly to the community).

⁹³ COMMISSION ON SAFETY AND ABUSE IN AMERICA'S PRISONS, CONFRONTING CONFINEMENT 55 (2006), available at http://www.vera.org/download?file=2845/Confronting_Confinement.pdf (Hon. John J. Gibbons & Nicholas de B. Katzenbach, Co-Chairs).

⁹⁴ Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 Wash. U. J.L. & Pol'y 325, 333 (2006).

⁹⁵ REITER, *supra* note 5, at 50.

⁹⁶ O'KEEFE, *supra* note 5, at 25.

⁹⁷ LEGISLATIVE PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE, RECIDIVISM IN CONNECTICUT 41 (2001).

⁹⁸ COMMISSION ON SAFETY AND ABUSE IN AMERICA'S PRISONS, *supra* note 93, at 55.

⁹⁹ Terry Kupers, *What To Do with the Survivors? Coping with the Long-term Effects of Isolated Confinement*, 35 CRIM. JUST. & BEHAV. 1005 (2008).

¹⁰⁰ See Press Release, U.S. District Court Approves Settlement Reached in Five-Year Litigation Over Solitary Confinement of Mentally Ill Prisoners, Bingham McCutchen (Apr. 12, 2012), available at <http://www.dlc-ma.org/prisonsettlement/index.htm> ("As a result of the litigation, DOC already has implemented significant systemic reforms, including a mental health classification system, a policy to exclude inmates with severe mental illness from long-term segregation, and the design and operation of two maximum security mental health treatment units as alternatives to segregation."); Settlement Agreement, Disability Law Center, Inc. v. Massachusetts Department of Correction, et al., Civil Action No. 07-10463 (MLW).

¹⁰¹ See Memorandum from Lou Archuleta, Interim Director of Prisons, Colorado Department of Corrections, to Wardens, Offender Services (Dec. 10, 2013) (directing wardens to no longer refer prisoners with "major mental illness" or "MMI Qualifiers" to administrative segregation, reproducing the wording of a new administrative code section describing the policy, and noting that the Department is "working to move" MMI prisoners out of administrative segregation), available at <http://aclu-co.org/sites/default/files/Memo%20Mental%20Health%20Qualifiers%20Ad%20Seg%20MEMO%20%282%29.pdf>.

¹⁰² See Sean Gardiner, *Solitary Jailing Curbed: New York City Department of Correction Stops Solitary Confinement for Mentally Ill Inmates Who Break Rules*, WALL ST. JOURNAL, Jan. 5, 2014, available at http://online.wsj.com/news/articles/SB10001424052702304617404579302840425910088?mod=rss_newyork_main.

¹⁰³ See N.Y. MENTAL HYGIENE LAW § 45.07(z) (2011); N.Y. CORRECTION LAW §§ 137, 401, 401(a) (2008).

¹⁰⁴ See Stipulation for a Stay with Conditions, Docket No. 11-CV-2694 (SAS), Peoples v. Fischer, (S.D.N.Y. Jan. 24, 2014), available at http://www.nyclu.org/files/releases/Solitary_Stipulation.pdf.

¹⁰⁵ See NYCLU Lawsuit Secures Historic Reforms to Solitary Confinement, NYCLU.org, Feb. 19, 2014, <http://www.nyclu.org/news/nyclu-lawsuit-secures-historic-reforms-solitary-confinement>; Benjamin Weiser, *New*

York State to Limit Use of Solitary Confinement, N.Y. TIMES, Feb. 19, 2014, <http://www.nytimes.com/2014/02/20/nyregion/new-york-state-agrees-to-big-changes-in-how-prisons-discipline-inmates.html>.

¹⁰⁶ See Tamms Supermaximum Security Prison Now Closed, Amnesty International, Jan. 10, 2013, <http://www.amnestyusa.org/our-work/latest-victories/tamms-supermaximum-security-prison-now-closed>; Steve Mills, *Quinn's Prison Plan Causes Stir*, CHICAGO TRIBUNE, Feb. 23, 2012, available at http://articles.chicagotribune.com/2012-02-23/news/ct-met-illinois-state-budget-prisons-20120223_1_super-max-maximum-security-prison-maximum-security-inmates; Dave McKinney and Andrew Maloney, *Gov. Pat Quinn: Close super-max downstate Tamms prison*, CHICAGO SUN TIMES, February 22, 2012, available at <http://www.suntimes.com/news/politics/10785648-418/gov-pat-quinn-close-super-max-downstate-tamms-prison.html>.

¹⁰⁷ Associated Press, *New Mexico Prisoner Segregation Under Review*, LAS CRUCES SUN-NEWS, Nov. 24, 2013, http://www.lcsun-news.com/las_cruceres-news/ci_24592049/new-mexico-prisoner-segregation-under-review.

¹⁰⁸ http://nmpoertylaw.org/WP-nmclp/wordpress/WP-nmclp/wordpress/wp-content/uploads/2013/10/Solitary_Confinement_Report_FINALsmallpdf.com_.pdf

¹⁰⁹ COLO. DEP'T OF CORR., REPORT ON IMPLEMENTATION OF ADMINISTRATIVE SEGREGATION PLAN 1-2 (2012), available at <https://www.aclu.org/prisoners-rights/report-co-docs-implementation-administrative-segregation-plan>; see also Denise Maes, *Guest Column: Solitary Confinement Reform is Welcome Sign of Progress*, COLORADO SPRINGS GAZETTE, Jan. 27, 2012, available at www.gazette.com/common/printer/view.php?db=colgazette&id=132524; News Release, Colo. Dep't of Corr., The Department of Corrections Announces the Closure of Colorado State Penitentiary II (March 19, 2012), available at <http://www.doc.state.co.us/sites/default/files/Press%20release%20CSP%20II%20close%20%20Feb%201%202013.pdf>.

¹¹⁰ The state of Mississippi saved \$8 million annually and saw a 70% reduction in violence levels when it closed an entire solitary confinement unit. See Terry A. Kupers et al., *Beyond Supermax Administrative Segregation: Mississippi's Experience Rethinking Prison Classification and Creating Alternative Mental Health Programs*, 36 CRIM. JUST. & BEHAV. 1037, 1041 (2009); John Buntin, *Exodus: How America's Reddest State – And Its Most Notorious Prison – Became a Model of Corrections Reform*, 23 GOVERNING 20, 27 (2010).

¹¹¹ In Main, tighter controls and approval requirements on the use of SMUs, as well as expanded programming options, led to SMU population reductions of over 50%. See Lance Tapley, *Reform Comes to the Supermax*, PORTLAND PHOENIX, May 25, 2011, available at <http://portland.the phoenix.com/news/121171-reform-comes-to-the-supermax/>.

¹¹² In Michigan, new segregation parameters have led to fewer violent incidents. See Jeff Gerritt, *Pilot Program in UP Tests Alternatives to Traditional Prison Segregation*, DETROIT FREE PRESS, January 1, 2012, available at www.freep.com/fdcp/?unique=1326226266727.

¹¹³ See Nev. SB 107, available at <http://www.leg.state.nv.us/Session/77th2013/Reports/history.cfm?billname=SB107>.

¹¹⁴ See Associated Press, *W.Va. Ends Solitary Confinement for Juveniles*, TIMES W.V., Apr. 26, 2012, available at <http://www.timeswv.com/westvirginia/x130096856/W-Va-ends-solitary-confinement-for-juveniles>.

¹¹⁵ <http://www.capitol.state.tx.us/billlookup/Text.aspx?LegSess=83R&Bill=SB1003#>.

¹¹⁶ S. B. 176, 68th Gen. Assem., Reg. Sess. (Colo., 2011).

¹¹⁷ H. Mem. 62, 50th Leg., 1st Sess. (N.M. 2011).

¹¹⁸ Press Release, Office of the Lieutenant Governor, *Lt. Governor Dewhurst Issues Select Interim Charges Relating to Transportation, Homeland Security and Criminal Justice* (Jan. 13, 2012), available at <http://www.ltgov.state.tx.us/prview.php?id=337>.

¹¹⁹ S. J. Res. 93, 2012 Leg., Reg. Sess. (Va. 2012).

¹²⁰ See U.S. Immigration and Customs Enforcement, 11065.1: Review of the Use of Segregation for ICE Detainees (2013), available at http://www.ice.gov/doclib/detention-reform/pdf/segregation_directive.pdf.

¹²¹ ABA Standards, *supra* note 10, Standard 23-2.9.

¹²² *Id.* Numerous other professional organizations—medical, correctional, psychological experts, as well as human-rights organizations and others—oppose the practice of long-term solitary confinement, particularly as it is used to warehouse prisoners who suffer from mental illness and those who are vulnerable due to their age or other characteristics. See Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Interim Rep. of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, U.N. Doc A/66/268, ¶¶ 76-78 (Aug. 5, 2011) (asserting that solitary confinement for longer than 15 days constitutes torture, and that juveniles and people with mental illness should never be held in solitary confinement); AMERICAN ACADEMY OF CHILD AND ADOLESCENT

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