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FISCAL IMPACT REPORT

ORIGINAL DATE 2/08/17

SPONSOR Thomson LAST UPDATED _____ HB 242

SHORT TITLE Isolated Confinement Act SB _____

ANALYST Rogers

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	Indeterminate	Indeterminate	Indeterminate	Indeterminate	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Duplicates HB 175 and SB 185.

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Sentencing Commission (NMSC)

New Mexico Corrections Department (NMCD)

Office of the Attorney General (OAG)

SUMMARY

Synopsis of Bill

House Bill 242 proposes to enact a new act entitled the Isolated Confinement Act. The bill prohibits the use of isolated confinement when an inmate is less than 18 years of age, when a female inmate is pregnant, and when an inmate has a known serious mental illness. HB 242 requires every correctional facility to report the following information to the county commission of the county in which the correctional facility is located and to the legislature, due every three months:

- the name, age and ethnicity of every inmate who was placed in isolated confinement during the previous three months, including every inmate who is in isolated confinement at the time the report is submitted;
- the reason isolated confinement was instituted for each inmate named in the report; and
- the dates on which each inmate was placed in and released from isolated confinement during the previous three months.

HB 242 requires every private correctional facility to report to the county commission of the

county in which the private correctional facility is located and the legislature, due every three months, all monetary settlements that were paid to inmates or former inmates as a result of lawsuits filed by the inmates or former inmates against the private correctional facility or its employees.

Reporting requirements begin July 1, 2017.

FISCAL IMPLICATIONS

With higher staff to inmate ratios and less efficient prison space usage, the cost to house inmates in isolated confinement is more expensive than housing inmates in the general population. Reducing the use of isolated confinement could reduce costs; however, the cost of having these inmates in the general population is unquantifiable. Isolated inmates reduce tension in the general population. Having fewer isolated inmates may require increased guard to prisoner ratios and increased litigation.

In response to a 2015 version of HB 242 (HB 376) the Association of Counties stated “without the use of solitary confinement, there will be an increase in inmate altercations. The cost of inmate assault claims varies a great deal depending upon the extent of injuries. Over the past 4 years the average cost per county detention claim arising out of inmate on inmate altercation has been \$35,740 with the most expensive single claim costing \$245 thousand.

In January 2016, NMCD reported it houses about 460 inmates, or 6.5 percent, in segregation. Neither LFC nor NMCD has a marginal cost estimate for these inmates, but the average per inmate per day cost to house inmates at state owned facilities in FY16 was \$122.67. Other states, such as Arizona, have put the cost of housing maximum security inmates at about \$50 thousand annually compared to \$20 thousand for inmates housed among the general population. There is no estimate for how many inmates would be moved from isolated confinement to the general population under this bill.

Requiring correctional facilities to report on the usage of solitary confinement will result in additional costs to county and state correctional facilities. In previous analysis of similar bills, NMCD estimated that the reporting requirements of the bill could require the hiring of an additional staff member at a cost of approximately \$60 thousand per year.

This bill would decrease costs in some areas and increase costs in others, making the fiscal implications of this bill indeterminate.

NMCD explains because the definition of serious mental illness outlined in the bill appears to be slightly broader than the criteria the department currently uses, the department may need to refine its screening tool for Alternative Placement Areas (APA) to make it broad enough to include all the inmates that meet the criteria for serious mental illness as defined under this bill.

Currently, NMCD states the APA does not meet the definition of isolated confinement contained in the bill, but of course if the bill passes it is likely that some inmates will claim in litigation that their placement therein constitutes isolated confinement.

If NMCD has to engage in a one-on-one monitoring process with inmates who cannot be immediately placed into the MHTC or APA, which would require one correctional officer to solely focus on, observe and supervise this one inmate, then the fiscal impact on NMCD will be

moderate to substantial.

SIGNIFICANT ISSUES

NMSC reports:

In 2014, NMCD implemented the “Motivating Offender Change Program,” a strategy used by the State of Washington that has yielded promising recidivism reduction results. The program allows trained staff members to facilitate cognitive behavioral programming to safely and humanely restrained active predatory inmates.

The Vera Institute of Justice recently published a report entitled: “Solitary Confinement: Common Misconceptions and Emerging Safe Alternatives” (Alison Shames, Jessa Wilcox and Ram Subramanian) (May 2015). A copy of the full report is included with this analysis and the language below is set forth in the introduction to the report:

“What is commonly known as solitary confinement is a practice still widely used by corrections officials in the United States today, largely as a means to fulfill a prison’s or jail’s top priority: the safety of its staff and the incarcerated people under its care. While it is most often deployed when incarcerated people break rules or engage in violent or disruptive behavior, it is also used as a preventative measure in an effort to protect those at high risk of sexual assault and physical abuse in a prison’s or jail’s general population (for example, incarcerated people who are transgender or former law enforcement officers). The term solitary confinement, however, is often not used by corrections officials, who prefer labels such as restricted housing, segregated housing, and special or intensive management.”

NMCD states the department does not normally incarcerate inmates who are under the age of eighteen years old, and it already does not use isolated confinement as it is defined in the bill on its pregnant female prisoners.

The department has established two programs used to treat and rehabilitate known mentally ill inmates, some of whom try to harm themselves or others and need to be removed or isolated from the general population. The department’s Alternative Placement Area (APA) program is used to divert inmates with known serious mental illnesses out of its predatory behavior management program. APA inmates are out of their cells more than two hours per day, and are offered groups, activities, classes, etc. Because the definition of serious mental illness outlined in the bill appears to be slightly broader than the criteria the department currently uses, the department may need to refine its screening tool for APA to make it broader to catch all the inmates that meet the criteria for serious mental illness as defined under this bill. The APA does not meet the definition of isolated confinement contained in the bill, but of course if the bill passes it is likely that some inmates will claim in litigation that their placement therein constitutes isolated confinement.

The department’s second program for the treatment of known seriously mentally ill inmates, including those who try to harm themselves or others and must be removed from the general population, is the Mental Health Treatment Center (MHTC). The MHTC is an inpatient psychiatric hospital where decisions are made by a treatment team with rehabilitation and recovery always kept in mind. There may be times that certain inmates within the MHTC are temporarily kept within their cells twenty two hours a day, a decision made by the treatment

team in order to protect other inmates, to protect the mentally ill inmate from other inmates, or to protect the mentally ill inmate from having access to things to harm himself. Seriously mentally ill inmates are often manipulated, preyed upon, and targeted because of their mental illness in general population. Some seriously mentally ill inmates also act violently, and need to be isolated even while their treatment plans and treatment are implemented and take time to become effective. However, all inmates in the MHTC always have access to and are provided with interactions with others and ample opportunities to participate in educational, vocational or rehabilitative programs - these inmates are seen daily by nursing and psychiatry staff, have regular meetings with their therapist, classification officer, unit manager, recreation officer, educational staff members, and other members of the treatment team. MHTC units are very busy units with inmate porters, different members of security, multiple therapists, other treatment team members, etc., walking through and talking with inmates almost constantly. Therapeutically, each MHTC inmate is offered the level of services in which they are able to meaningfully participate. So while the NMCD does use seclusion at the MHTC, this always done as a therapeutic tool, not as a disciplinary decision, and such seclusion always stems from a psychiatrist's order with the goal of treatment and safety. The treatment team at the MHTC operates in accordance to the "least drastic means" principle. The treatment team meets weekly, sometimes more often, and evaluates every inmate therein to see if they can be moved to a less restrictive setting. While the NMCD's MHTC is an inpatient psychiatric hospital and rehabilitative program, again there are times where a particular inmate must remain in his cell for more than twenty two hours per day for treatment and safety reasons, and this bill's broad definition of isolated confinement would prohibit this practice if the bill passed.

There are also some instances where inmates who are known to be mentally ill sometimes do attack or harm other inmates, themselves, or staff, and are placed in restrictive housing awaiting placement into the APA or the MHTC. Placement into the APA or the MHTC is often done the same day, but this is not always possible due to limited bed space. The bill offers no administrative alternative to the NMCD even while it prohibits the use of isolated confinement on these occasions.

While long term isolated confinement for known mentally ill inmates is not what the department is seeking, it does need some way to protect other inmates and staff from mentally ill inmates who have acted out to act out to harm others. If NMCD has to engage in a one-on-one monitoring process with inmates who cannot be immediately placed into the MHTC or APA, which would require one correctional officer to solely focus on, observe and supervise this one inmate, cost would increase at the department.

ADMINISTRATIVE IMPLICATIONS

NMCD explains bill's requirement that "the department submit a quarterly list of its offenders in isolated confinement to the county commission of the county in which the correctional facility is located is not logical. The county commission has no authority or jurisdiction over the NMCD, even if NMCD were to have any names on such a list or ever use isolated confinement in a manner authorized by this bill."

"Similarly, the requirement for the private facilities to provide lawsuit settlement-related information to the county commission and legislature is not logical, as this has nothing to do with isolated confinement and the bill does not limit the settlement numbers to only lawsuits

involving isolated confinement. Further, since the private facilities generally already follow NMCD policies when housing NMCD inmates, these private facilities will not be utilizing isolated confinement just like the NMCD will not use it in its state owned and operated prison facilities in a manner not authorized by this bill.”

DUPLICATION

HB 242 is identical to HB 175 and SB 185 of the current session.

TR/sb/jle

Solitary Confinement: Common Misconceptions and Emerging Safe Alternatives

MAY 2015

Alison Shames • Jessa Wilcox • Ram Subramanian

FROM THE CENTER DIRECTOR

The overuse and misuse of solitary confinement by our prisons and jails is yet another indication of the overly punitive approach that has characterized our nation's sentencing and corrections practices. Not only do we incarcerate too many people and for far too long, we also have a corrections system that employs, all too frequently and—at times, too casually—the most extreme form of confinement as a routine management strategy; this persists despite decades of evidence pointing to the manifold negative impacts of subjecting people to such conditions. Any serious effort to reduce over-incarceration and its harmful consequences must rest on a commitment to human dignity and focus on the treatment of those in jail and prison.

Although this practice goes by many names—isolation, restricted housing, administrative segregation, protective custody, special housing, disciplinary segregation, etc.—the old adage about ducks applies: if it looks like a duck... As this report makes clear, whatever the label, the experience for the person placed in solitary confinement is the same: confinement to an isolated cell for the overwhelming portion of each day, often 23 hours a day, with limited human interaction and minimal, if any, constructive activity; an experience that all too often leads to harmful outcomes for the person's mental and physical health and the well-being of the community to which he or she returns. As U.S. Supreme Court Justice Anthony Kennedy recently opined, "This idea of total incarceration just isn't working, and it's not humane." It's also a significant drain on the budgets of corrections departments.

Solitary confinement need not be corrections' sole first response to incidents of misconduct, nor should it be casually and routinely used to solve custody management challenges that arise in making housing decisions. In the past decade, several jurisdictions, some of which have worked with Vera, have reduced their use of solitary confinement and implemented safe alternatives.

This report shines a bright light on the use/abuse of solitary confinement and pushes us to recognize the critical connection between what happens to people inside penal institutions and the success of their return to community. It is my sincere hope that it fosters both debate and change, which balance respect for human dignity and safety and security concerns, as these are not—nor need not be viewed as—mutually exclusive. Humane and effective management of our nation's prisons and jails requires nothing less.

A handwritten signature in black ink that reads "Fred Patrick". The signature is written in a cursive, slightly slanted style.

Fred Patrick

Director, Center on Sentencing and Corrections

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Introduction

What is commonly known as solitary confinement is a practice still widely used by corrections officials in the United States today, largely as a means to fulfill a prison's or jail's top priority: the safety of its staff and the incarcerated people under its care. While it is most often deployed when incarcerated people break rules or engage in violent or disruptive behavior, it is also used as a preventative measure in an effort to protect those at high risk of sexual assault and physical abuse in a prison's or jail's general population (for example, incarcerated people who are transgender or former law enforcement officers). The term solitary confinement, however, is often not used by corrections officials, who prefer labels such as restricted housing, segregated housing, and special or intensive management.

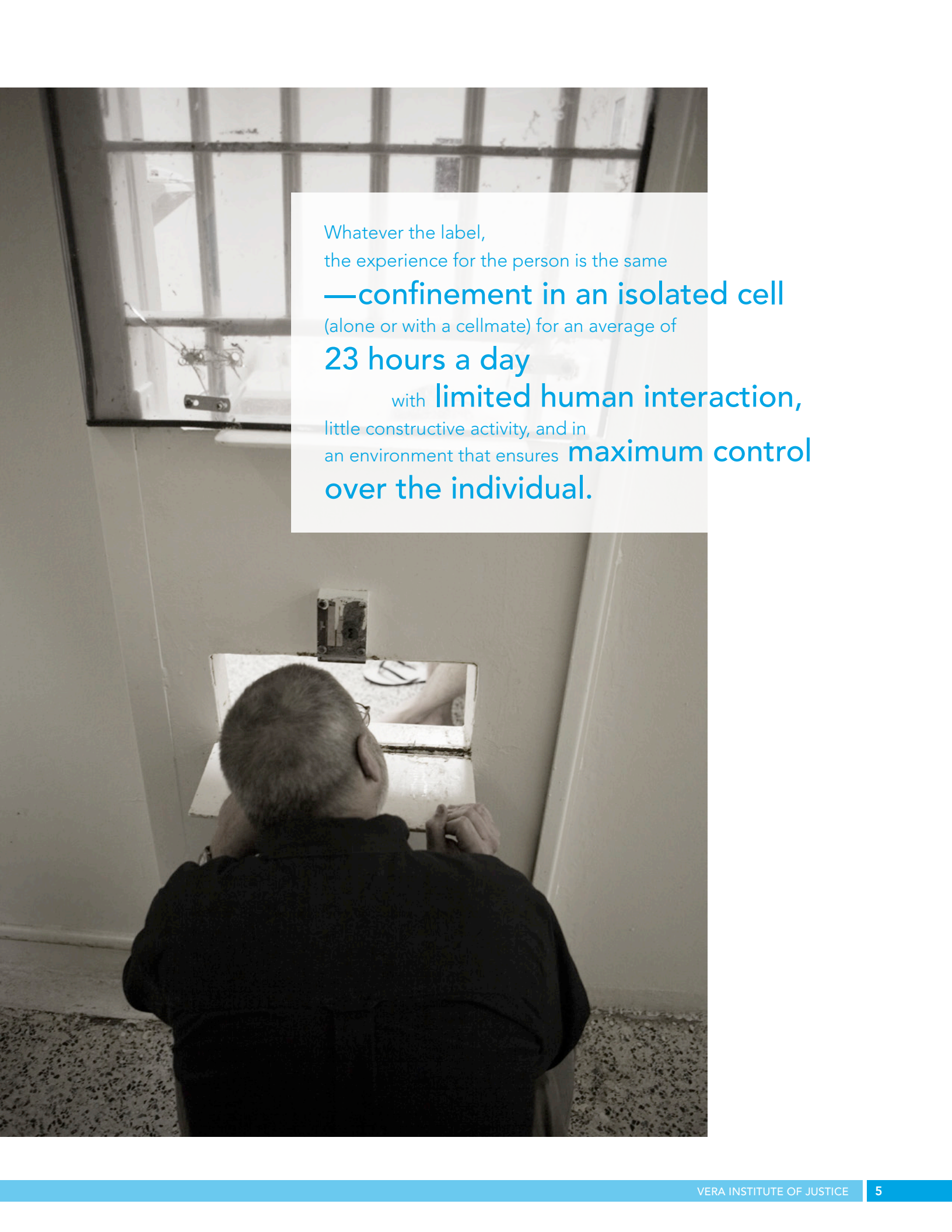
NAMING THE PRACTICE

Corrections officials in the United States refer to solitary confinement by many names, and placement policies also vary by jurisdiction and facility type. The terms in most frequent use today include:

- > **Disciplinary or punitive segregation** is used to punish incarcerated people for violating facility rules. As in the larger criminal justice process, charges are written, a hearing is held, evidence is presented, and, if found guilty, a term in segregated housing is imposed.
- > **Administrative segregation** is used to remove incarcerated people from the general prison or jail population who are thought to pose a risk to facility safety or security. It may be used for those believed to be members of gangs or active in other restricted activities, even if no violation has been identified. Administrative segregation is not technically a sanction or a punishment, and can be indefinite.
- > **Protective custody** is a form of administrative segregation that is used to remove incarcerated people from a facility's general population who are thought to be at risk of harm or abuse, such as incarcerated people who are mentally ill, intellectually disabled, gay, transgender, or former law enforcement officers. While some people who fear for their safety in the general population may request protective custody, this status is often conferred involuntarily.
- > **Temporary confinement** in segregated housing is used when a reported incident is being investigated or related paperwork is being completed, or when no beds are available for transfers.

Some incarcerated people are held in solitary confinement in prisons or jails, while others are held in disciplinary and administrative segregation in supermax facilities, which are freestanding prisons or distinct units in prisons where the entire incarcerated population is housed in solitary confinement.^a

All prisons and many jails in the United States use some form of solitary confinement. Whatever the label, the experience for the person is the same—confinement in an isolated cell (alone or

A photograph of a person in a dark shirt, seen from behind, looking out of a barred window in a prison cell. The window has a metal grate and a lock mechanism. The person's hands are resting on a ledge or table in front of the window. The background shows the interior of the cell, including a door and a wall.

Whatever the label,
the experience for the person is the same
—**confinement in an isolated cell**
(alone or with a cellmate) for an average of
23 hours a day
with **limited human interaction,**
little constructive activity, and in
an environment that ensures **maximum control**
over the individual.

with a cellmate) for an average of 23 hours a day with limited human interaction, little constructive activity, and in an environment that ensures maximum control over the individual.^b When sources cited in this report refer to the practice as solitary confinement, the authors do as well. Otherwise, consistent with American Bar Association standards, “segregated housing” is used as the generic term for the practice.^c

^a David C. Fathi, “United States: Turning the Corner on Solitary Confinement,” *Canadian Journal of Human Rights*, 4, no. 1 (2015): 168. For the definition of a supermax, see National Institute of Corrections, *Supermax Prisons: Overview and General Consideration* (Washington, DC: US Department of Justice, 1999), 2-3.

^b In 2013, the Arthur Liman Program at Yale Law School reviewed the policies related to administrative segregation for 46 states and the federal Bureau of Prisons. See Hope Metcalf et al., *Administrative Segregation, Degrees of Isolation, and Incarceration: A National Overview of State and Federal Correction Policies: Public Law Working Paper* (New Haven: Yale Law School, 2013), 2. The states not included in the review—Louisiana, South Carolina, Texas, and Utah—all have forms of segregated housing. For information on Utah, see *ibid.*, p. 24, endnote 7. For information on Louisiana, see Editorial, “Four Decades of Solitary in Louisiana,” *New York Times*, November 21, 2014. For information on South Carolina, see Emily Bazelon, “The Shame of Solitary Confinement,” *New York Times*, February 19, 2015. For information on Texas, see American Civil Liberties Union of Texas, Texas Civil Rights Project-Houston, *A Solitary Failure: The Waste, Cost and Harm of Solitary Confinement in Texas* (Houston: ACLU of TX, 2015).

^c The American Bar Association defines “segregated housing” as “housing of a prisoner in conditions characterized by substantial isolation from other prisoners, whether pursuant to disciplinary, administrative, or classification action.” See American Bar Association, *ABA Standards for Criminal Justice Treatment of Prisoners* (Washington, DC: ABA, 2010), § 23-1.0.

There are indications that the use of segregated housing has grown substantially in recent years (perhaps as much as by 42 percent between 1995 and 2005), yet the precise number of people held in segregated housing on any given day is not known with any certainty.¹ Estimates range from 25,000 (which includes only those held in supermax facilities) to 80,000 (which includes those held in some form of segregated housing in all state and federal prisons).² None of these estimates include people held in segregated housing in jails, military facilities, immigration detention centers, or juvenile justice facilities in the United States. Based on research conducted by the Vera Institute of Justice (Vera) and others, the percentage of a state’s prison system’s daily population that is held in segregated housing ranges from five to eight percent, while more recent research found that, in November 2013, the Federal Bureau of Prisons—the largest prison system within the United States—held five percent of its prisoners in segregated housing units.³ Moreover, because these estimates are only one-day snapshots, they most likely underestimate the total number of people subjected to one or more periods in segregated housing over the course of their incarceration.

Against this backdrop, evidence mounts that segregated housing produces many unwanted and harmful outcomes—for the mental and physical health of those placed in isolation, for the public safety of the communities to which most will return, and for the corrections budgets of jurisdictions that rely on the practice for facility safety. As these negative impacts have come to light, concern about its overuse has grown. The severe conditions to which people in segregated housing are subjected are now regularly exposed by mainstream journalists.⁴ Incarcerated people who participate in hunger strikes against its use, such as those at Pelican Bay state prison in California in 2013, receive sympathetic national attention.⁵ And in response to the shift in public opinion, local,

RESEARCH AND DATA LIMITATIONS

A full appreciation of the prevalence and impact of segregated housing in the United States is not yet within our grasp because up-to-date and reliable national data on the number of people held in segregated housing do not exist. While many individual jurisdictions can report accurately the number of incarcerated people they hold in segregated housing, comparing and aggregating this information across jurisdictions is highly problematic as the nomenclature used to describe segregated housing varies widely from state to state and there are no national standards for reconciling these differences.^a For example, the terms “administrative segregation,” “supermax,” and “administrative separation” are used interchangeably, and housing conditions defined as supermax in some states are classified differently in others. For example, in one state, such conditions are formally termed “high-security control.”^b In addition, differences in the criteria for admission to, and release from, segregated housing further confound efforts to compare the use of segregated housing between jurisdictions. Not only do these vary from state to state, they can change significantly even within jurisdictions from year to year.^c

The most recent and comprehensive prison census data, published by the Bureau of Justice Statistics (BJS) in 2008, concern people incarcerated in 1,821 state and federal facilities in 2005.^d However, the number of people reported to be in segregated housing is questionable because the census form used to collect the data did not supply definitions for many of the key terms used by jurisdictions to classify those held in segregated housing. More than 100 facilities indicated that they either did not have people in segregated housing or simply did not answer the question. Moreover, many states failed to match the total number of people in segregated housing with the sum of the segregated sub-types provided (e.g., punitive segregation, death row, protective custody). Researchers encountered similar challenges in a review of supermax custody.^e For example, they discovered that some jurisdictions changed the way in which they counted supermax prisoners over time with some states inconsistently including or excluding people in administrative segregation and protective custody in their count of supermax prisoners. And even more confusingly, some states reported having supermax prisoners but no supermax housing, and vice versa.

Given these challenges and the prevalence of outdated data systems among corrections departments, it should come as no surprise that nearly 12 percent of the total number of people held in segregated housing reported in the 2005 census is an estimate. Until jurisdictions are compelled to create robust reporting systems, with nationally accepted definitions and measures, accurate data on segregated housing practices in the United States will remain elusive.

^a For example, such a count was recently done of the federal prison system by the U.S. Government Accountability Office. That count found that from 2008 through 2013, the number of people in restricted housing units in federal prisons grew by 17 percent (almost triple the six percent rise in the total prison population for that same period). See U.S. Government Accountability Office, *Bureau of Prisons: Improvements Needed in Bureau of Prisons’ Monitoring and Evaluation of the Impact of Segregated Housing* (Washington, DC: GAO, 2013).

^b H. Daniel Butler, O. Hayden Griffin III, and W. Wesley Johnson, “What Makes You the ‘Worst of the Worst?’ An Examination of State Policies Defining Supermax Confinement,” *Criminal Justice Policy Review* 24, no. 6 (2012): 676-694; and Alexandra Naday, Joshua D. Freilich, and Jeff Mellow, “The Elusive Data on Supermax Confinement,” *The Prison Journal* 88, no. 1 (2008): 69-93.

^c Jesenia M. Pizarro and Raymund E. Narag, “Supermax Prisons: What We Know, What We Do Not Know, and Where We Are Going,” *The Prison Journal* 88, no. 1 (2008): 23-42; Butler and Griffin, 2013, pp. 676-694.

^d United States Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Census of State and Federal Adult Correctional Facilities, 2005* (Ann Arbor, MI: Inter-university Consortium for Political and Social Research [distributor], 2010).

^e Alexandra Naday, Joshua D. Freilich, and Jeff Mellow, 2008, pp. 69-93.

state, and federal policymakers are turning their attention to the overuse of segregated housing by the nation's prisons and jails. A subcommittee of the U.S. Senate Judiciary Committee held a series of hearings in 2012 and 2014 focused on reassessing the use of solitary confinement.⁶ In 2014, 10 states announced or implemented policy changes to reduce the number of adults or juveniles held in segregated housing, improve the conditions in segregation units, or facilitate the return of segregated people to a prison's general population.⁷ Some, like Colorado, passed legislation that removed entire classes of people—for example, those with serious mental illnesses—from being housed in long-term segregation.⁸ And, most recently, New York City's Department of Correction made the historic decision to ban the use of segregated housing for all those in its custody 21 years old and younger.⁹

Despite increased attention to the issue, many people—policymakers, corrections officials, and members of the public—still hold misconceptions about and misguided justifications for the use of segregated housing. This report aims to dispel the most common of these misconceptions and highlight some of the promising alternatives that are resulting in fewer people in segregated housing.

MISCONCEPTION #1

Conditions in segregated housing are stark but not inhumane

"...[I]t's anything but quiet. You're immersed in a drone of garbled noise—other inmates' blaring TVs, distant conversations, shouted arguments. I couldn't make sense of any of it, and was left feeling twitchy and paranoid. I kept waiting for the lights to turn off, to signal the end of the day. But the lights did not shut off. I began to count the small holes carved in the walls. Tiny grooves made by inmates who'd chipped away at the cell as the cell chipped away at them."¹⁰

This is solitary confinement, described not by an incarcerated person or an advocate but by Rick Raemisch, director of the Colorado Department of Corrections. Charged by the governor with reforming the use of segregated housing by the state's prison system, Director Raemisch decided he needed to experience it firsthand.

When an incarcerated person is placed in segregated housing, he or she is confined to a cell (either alone or with a cellmate) for 22 to 24 hours a day.¹¹ The cell is typically six by eight feet, smaller than a standard parking space. It is furnished with a metal toilet, sink, and bed platform. Reading materials are either strictly limited or prohibited altogether. Natural sunlight in the cell is limited to a very small window or does not exist at all, and fluorescent bulbs light the cell, often throughout the night.¹² Recreation is limited to one hour a day, five days per week, which is taken alone in a cage outdoors or an indoor area (sometimes with a barred top).¹³ Every time the incarcerated person is taken out of solitary

A photograph of a prison cell. The cell is viewed through a set of vertical metal bars. In the background, a light fixture is visible, and the cell appears to be empty. The lighting is somewhat dim, and the overall atmosphere is stark and institutional.

...[I]t's anything but quiet. You're immersed in a drone of garbled noise—
other inmates' blaring TVs, distant conversations, shouted arguments.

I couldn't make sense of any of it, and was **left feeling twitchy and paranoid.** I kept waiting for the lights to turn off, to signal the end of the day.

But the lights did not shut off.

I began to count the small holes carved in the walls. Tiny grooves made by inmates who'd chipped away at the cell as the cell
chipped away at them.

confinement and returned to it, he or she is strip-searched.¹⁴ Interactions with people (other than a cellmate, if double celled) are brief and infrequent. Officers deliver meal trays through a slot in the door; there are only occasional meetings with healthcare practitioners, counselors, or attorneys; and visitation with family may be restricted or prohibited. Any meetings or visits, when they do occur, are almost always conducted through the cell door or conducted by video, speaker, or telephone through a thick glass window.¹⁵ When an in-person visitation is permitted, the incarcerated person is placed in restraints and separated from the visitor by a partition.

Although this is how most incarcerated people experience segregated housing, it need not be this restrictive. Some jurisdictions are experimenting with making conditions more humane and less solitary. For example, Colorado now requires that incarcerated people held in its Management Control Unit receive four hours of time outside their cell each day.¹⁶ New York State, as part of a legal settlement, gives 16- and 17-year-olds in segregated housing at least five hours of exercise and programming outside of their cells five days per week.¹⁷ Maine requires that incarcerated people in segregated housing receive group recreation, counseling sessions, and opportunities to increase privileges through good behavior, as well as greater access to radios, televisions, and reading materials.¹⁸

Some jurisdictions have developed different levels of segregated housing, including “step-down” incentive programs that are structured in progressive phases that provide increasing privileges—such as more time out of the cell,

IS SOLITARY CONFINEMENT TORTURE?

The Eighth Amendment to the United States Constitution protects individuals from “cruel and unusual punishment.”^a Although the United States Supreme Court has affirmed that solitary confinement is a form of punishment subject to scrutiny under Eighth Amendment standards, most federal courts have been unreceptive to limiting its use.^b This may be, in part, because in order to demonstrate an Eighth Amendment violation, an incarcerated person must satisfy a particularly onerous two-part test: first, his or her alleged suffering must be reasonably serious; and second, prison officials must have acted with “deliberate indifference to the prisoner’s health and safety”—where “deliberate indifference” is only proved if it is shown that prison officials “kn[e]w that inmates face[d] a substantial risk of serious harm,” but “fail[ed] to take reasonable measures to abate it.”^c As a result, successful Eighth Amendment claims regarding prison conditions have usually involved the direct action or inaction of prison officials, including medical indifference, failure to protect, and excessive use of force, rather than an overall challenge to general penal practices, such as solitary confinement.^d Indeed, only a few federal courts have held that certain segregation practices—those narrowly limited to the isolation of incarcerated people with serious pre-existing mental illness or those prone to suffer severe mental injury—violate the Eighth Amendment.^f

The reluctance by federal courts to outlaw solitary confinement is in direct contrast to international human rights standards. For example, the United Nations General Assembly, through the Basic Principles for the Treatment of Prisoners, adopted in 1990, encourages governments to undertake efforts to abolish or restrict the use of solitary confinement as a punishment. The European Prison

Rules limit the use of solitary confinement to only exceptional cases and for short periods of time. And the Committee Against Torture, the official body established pursuant to the United Nations' Convention Against Torture, consistently recommends that the practice be abolished altogether.⁹

On an international level, specific reasons are given for why solitary confinement is considered inhumane and degrading. For example, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)—the monitoring body formed out of the European Convention for the Prevention of Torture—has criticized the physical and psychological effects of lengthy solitary confinement on incarcerated people—including increased suicidal thoughts, “fatigue, insomnia, loss of appetite, nausea, headaches, crying fits and bouts of depression becoming more acute in solitary confinement...[as well as] distress upon not being allowed contacts with families and friends....”^h The CPT has also critiqued procedural weaknesses—such as the lack of laws and regulations governing the use of solitary confinement—and noted the risk of permanent damage to incarcerated people due to the absence of appropriate mental and physical stimulation in prolonged isolation.ⁱ The European Court of Human Rights too has emphasized that the long-term dangers inherent in social and sensory isolation can make solitary confinement inhuman or degrading and, in certain circumstances, could amount to torture.^j The Inter-American Court of Human Rights is even more categorical, stating that “prolonged isolation and coercive solitary confinement are, in themselves, cruel and inhuman treatments, damaging to the person’s psychic and moral integrity, and[...]the dignity inherent to the human person.”^k

^a The Eighth Amendment states, “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” U.S. Constitution, Amendment VIII.

^b *Hutto v. Finney*, 437 U.S. 678, 685 (1978); and *Estelle v. Gamble*, 429 U.S. 97 (1976).

^c *Farmer v. Brennan*, 511 U.S. 825, 847 (1994).

^d Christine Rebman, “The Eighth Amendment and Solitary Confinement: The Gap in Protection from Psychological Consequences,” *DePaul Law Review*, 49, no. 2 (1999): 595.

^e *Hutto v. Finney*, 437 U.S. 678, 685 (1978).

^f See *Jones ‘El v. Berge*, 164 F. Supp. 2d 1096 (W.D. Wis. 2001); *Ruiz v. Johnson*, 37 F. Supp. 2d 855 (S.D. Texas 1999), reversed on other grounds, 243 F.3d 941 (5th Circuit 2001), adhered to on remand, 154 F. Supp. 2d 975 (S.D. Texas 2001); *Madrid v. Gomez*, 889 F. Supp. 1146 (N.D. Cal. 1995). Notably, in 2013, the Department of Justice notified a governor for the first time ever—the Governor of Pennsylvania—that the manner in which a state uses isolation with prisoners with serious mental illness violates the Eighth Amendment, see Letter from Thomas E. Perez, Assistant Attorney General, United States Department of Justice, Civil Rights Division, to Tom Corbett, Governor of Pennsylvania (May 31, 2013).

^g Basic Principles for the Treatment of Prisoners, General Assembly Resolution 45/111, U.N. Doc. A/45/49 (1990), Principle 7; Council of Europe Committee of Ministers, Recommendation No. Rec (2006)(2) (January 11, 2006); Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, General Assembly Resolution 46, at 197, U.N. GAOR, 39th Sess., Supp; 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); U.N. Comm. Against Torture, Consideration of Reports Submitted by States Parties Under Article 19 of the Convention: Luxembourg, ¶ 6, CAT/C/CR/28/2 (June 12, 2002); U.N. Comm. Against Torture, Consideration of Reports Submitted by States Parties Under Article 19 of the Convention: Norway, ¶ 156, U.N. Doc. CAT/A/53/44 (May 6, 1998); and U.N. Comm. Against Torture, Consideration of Reports Submitted by States Parties Under Article 19 of the Convention: Sweden, ¶ 225, U.N. Doc. CAT/A/52/44 (May 6, 1997).

^h See European Commission for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 2nd General Report on the CPT’s Activities Covering the Period 1 January to 31 December 1991, CPT/Inf (92) 3 [EN] (April 13, 1992), ¶ 56; see also European Commission for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), The CPT Standards: “Substantive” Sections of the CPT’s General Reports, CPT/Inf/E (2002) 1; *Ramirez Sanchez v. France*, App. No. 59450/00, 45 Eur. H.R. Rep. 49, ¶ 83 (2007); and CPT Norway Report, CPT/Inf (97) 11 [EN] (September 5, 1997).

ⁱ See for example, CPT 21st General Report, CPT/Inf (2011) 28 (November 10, 2011).

^j See for example, *Ensslin, Baader, and Raspe v. Federal Republic of Germany*, App. No. 7572/76, 14 D.R. 91 (1978); *Krocher & Miller v. Switzerland*, App. No. 8463/78, 26 Eur. Comm’n H.R. Dec. & Rep 52 (1982); *Ocalan v. Turkey*, 41 Eur. Ct. H.R. 45 (2005); *Ilascu v. Moldova*, 40 Eur. Ct. H.R. 46 (2004). See also *Iorgov v. Bulgaria*, 40 Eur. Ct. H.R. Rep., 7, 22 (2005) (people in isolation with little social contact must be provided with appropriate mental and physical stimulation to prevent their long term deterioration).

^k *Case of the Miguel Castro-Castro Prison v. Peru*, Inter-Am. Ct. H.R. (ser. C) No. 160, ¶ 323 (Nov. 25, 2006); see also *Velasquez Rodriguez Case*, Inter-Am. Ct. H.R. (ser. C) No. 4, 9 ¶ 156 (1988) (finding that “prolonged isolation and deprivation of communication are in themselves cruel and inhuman treatment”).

the opportunity to participate in group activities, television in the cell, and additional reading materials—for sustained compliance to facility rules. Pennsylvania, Washington, and New Mexico have all created step-down programs for gang members held in segregated housing.¹⁹ Washington has an Intensive Transition Program for incarcerated people with chronic behavior problems who are frequently placed in segregated housing, in which they move through a curriculum in stages, progressively learning self-control and gradually engaging in opportunities to socialize until they are ready to return to the prison's general population.²⁰ Michigan operates an Incentives in Segregation pilot project, in which incarcerated people work through six stages (each stage requiring different tasks and bestowing additional privileges) over several months.²¹ The Virginia Department of Corrections has developed a successful step-down program for incarcerated people in administrative segregation that uses evidence-based practices first developed in the community corrections setting. Since 2011, the program has reduced the number of incarcerated people in administrative segregation by 53 percent and the number of prison incidents by 56 percent.²²


MISCONCEPTION #2

Segregated housing is reserved only for the most violent

It is still widely believed that the incarcerated people who end up in segregated housing are the worst of the worst, the most feared, the incorrigibly dangerous. However, several studies have revealed that a significant proportion of the segregated population is placed there for being neither violent nor dangerous. Many are there not as punishment for actually engaging in violence; rather they are there because they have been categorized as potentially dangerous or violent—often because prison officials have identified them as gang members.²³ This type of segregation, based on identification rather than individual activity, is referred to as administrative segregation.²⁴

Segregated housing is not only used to anticipate or react to dangerous or disruptive behavior, it is also used for incarcerated people in protective custody who prison officials believe will be unsafe in the general population. They may be at risk for reasons of mental illness (or other special needs, such as developmental disability), age (such as young people under the age of 18 tried, convicted, and sentenced as adults), former gang or law enforcement affiliation, sexual vulnerability or gender nonconformity, or other reasons, including temporary confinement of someone who has been victimized in general population pending an investigation of the incident.²⁵ Individuals may even request to be removed from the general population. Although these incarcerated people are separated for their own safety, they are subject to the same restrictive conditions as others in segregation.

The most commonly understood justification for segregation is as punishment for a violation of a prison rule. While this practice, known as disciplinary



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segregation, is used as a response to behavior that is violent or dangerous, Vera's experience in the field has shown that disruptive behavior—such as talking back, being out of place, failure to obey an order, failing to report to work or school, or refusing to change housing units or cells— frequently lands incarcerated people in disciplinary segregation.²⁶ In some jurisdictions, these “nuisance prisoners” constitute the majority of the people in disciplinary segregation.²⁷ Before collaborating with Vera, Illinois found that more than 85 percent of the people released from disciplinary segregation during a one-year period had been sent there for relatively minor infractions, such as not standing for a count and using abusive language.²⁸ In Pennsylvania, the most common violation associated with a sentence to segregated housing was “failure to obey an order,” with 85 percent of those written up for this type of violation sent there.²⁹ In 2013, an incarcerated person in South Carolina received a penalty of more than 37 years in solitary confinement for posting on Facebook on 38 different days.³⁰ Piper Kerman, who was incarcerated in a federal prison and is the author of the memoir *Orange is the New Black*, reported to the United States Senate Judiciary Committee in 2014 that she saw many women sent to solitary confinement for at least 30 days for minor infractions such as moving around a housing unit during a count, refusing an order from a corrections officer, and possession of low-level contraband such as small amounts of cash or underwear other than that issued by the prison.³¹

MISCONCEPTION #3

Segregated housing is used only as a last resort

Although many jurisdictions have a list of alternative sanctions that can be used to discipline incarcerated people who are unruly or difficult to manage, the reality is that far too many turn to segregated housing as the first response to bad behavior. This is in stark contrast to the system used in certain European countries, where corrections officers are trained to impose disciplinary measures that are relative and proportionate to the disruptive behavior. Dutch and German prison officials use sanctions such as reprimands, restrictions on money and property, and restrictions on movement or leisure activities. Care is taken to relate the sanction to the alleged infraction.³² In these countries, solitary confinement is used rarely and only for very brief periods of time. For example, an adult male prison in Germany reported using segregation just two or three times in 2012, and another German prison for young adults had utilized its segregation cell twice between 2008 and 2012, and only for a few hours each time.³³

One of the most basic measures that a prison can take to ensure that disciplinary segregation is reserved for those who truly pose a risk to the safety of staff and other incarcerated people is to prohibit its use as a punishment for less serious violations. For instance, Pennsylvania no longer sends anyone to

segregated housing as a sanction for the least serious violations, such as taking unauthorized food from the dining hall and unexcused absences from work, school, or mandatory programs.³⁴ The Illinois Department of Corrections also prohibits the use of segregated housing as a response to certain disciplinary violations.³⁵ And corrections officials in Maine use a range of less severe restrictions, such as limiting work opportunities, in response to minor infractions.³⁶

Some states use structured sanction grids to provide corrections officers with guidance on the appropriate and proportionate punishment for particular behaviors. The sanction grids articulate when less restrictive sanctions (such as mediation or anger management classes, withholding access to the commissary, removing TV privileges, restricting visitation rights, making the prisoner responsible for the costs of damaged property, and assigning the prisoner to an undesirable work shift) may be used, and when more serious sanctions, such as revocation of good time credit and segregation, are appropriate.³⁷

MISCONCEPTION #4

Segregated housing is used only for brief periods of time

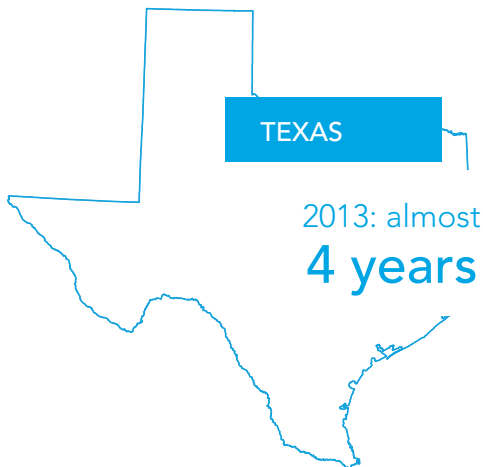
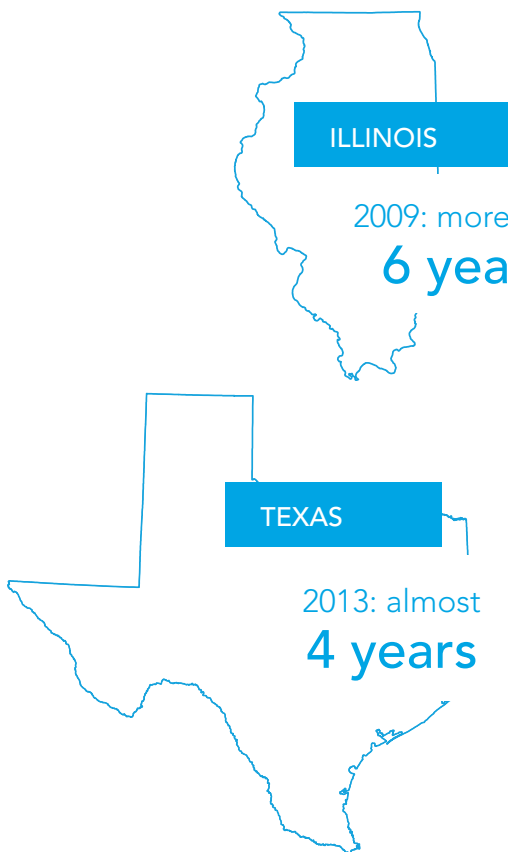
As a matter of policy within the federal prison system and in at least 19 states, corrections officials are permitted to hold people in segregated housing indefinitely.³⁸ While placement in administrative segregation can, with some level of periodic review, be open-ended, a term in disciplinary segregation is almost always a defined period of time.³⁹ Notably, if a term in disciplinary segregation is thought to be too brief, corrections officials can easily “move” incarcerated people from “short-term” disciplinary segregation to long-term administrative segregation by the simple process of reclassification.⁴⁰

After Colorado Department of Corrections Director Rick Raemisch spent 20 hours in a cell in segregated housing, he reported that it was “practically a blink” in comparison to the experience of incarcerated people in Colorado who, at the time, spent an average of 23 months in segregation, with many spending multiple years.⁴¹ In 2009, the average length of stay at the Illinois supermax facility, since closed, was more than 6 years; in 2011, the average length of stay in Washington’s intensive management unit was 11 months; and in Texas, the average amount of time in administrative segregation is almost four years.⁴²

Vera begins its work with a jurisdiction by conducting a comprehensive analysis of administrative data in order to understand how the jurisdiction is actually using segregated housing. Vera’s inquiry encompasses areas that, due to the data limitations addressed above (see “Research and Data Limitations” on page 7), are not typically examined by corrections systems. The findings from these analyses often surprise corrections officials, who overwhelmingly agree that no one should stay in segregation any longer than necessary to achieve the original safety and disciplinary goals underlying the placement. However, Vera’s review of the data regularly shows that incarcerated people who are



Average lengths of stay
prior to reforms



not violent or overly disruptive stay in segregated housing for long periods of time, ranging from months to years and even decades. These findings have led some jurisdictions to implement reforms designed to reduce the likelihood of a person staying in segregated housing for periods of time incongruent with the behavior leading to the placement. For example, the Washington Department of Corrections reduced the amount of time an incarcerated person can be held in administrative segregation from 60 to 47 days, absent direct approval from the Deputy Director.⁴³

To ensure that no one remains in segregated housing for indefinite or very long periods of time, some states mandate frequent reviews and assessments.⁴⁴ Those who are reclassified or are no longer deemed dangerous can be transferred to less restrictive housing units. In Colorado and Pennsylvania, for example, multi-disciplinary committees review segregated housing placements, making it more likely that they are appropriate and objective.⁴⁵ In Pennsylvania, those sentenced to disciplinary segregation may be released upon completion of one-half of the imposed sanction and a review of the Program Review Committee.⁴⁶ In California, after changing its segregated housing placement criteria, the state conducted case-by-case reviews of all people held in segregation that resulted in many being transferred to less restricted housing.⁴⁷

Another method of reducing the amount of time someone spends in segregated housing is to implement a system of incentives that allows an incarcerated person to earn his or her way out earlier than the imposed term. This strategy is informed by research that has demonstrated that positive reinforcement of pro-social behavior increases the chances of that behavior being repeated in the future.⁴⁸ To this end, several states have devised programs designed to target behavior issues.⁴⁹ Some states provide programming for certain incarcerated people, such as gang members with histories of violence, who would otherwise face long-term administrative segregation. Washington instituted the Motivating Offender Change program, which focuses on gang-affiliated people in its maximum custody units. It provides opportunities to learn and practice cognitive-behavioral skills to help reduce violent behavior. Successful graduates

of the program are transferred to a lower custody environment within the general prison population.⁵⁰

MISCONCEPTION #5

The harmful effects of segregated housing are overstated and not well understood

Despite the long-established consensus among researchers that solitary confinement damages, often irreparably, those who experience it for even brief periods of time, its continued use in prisons and jails in the United States implies that many jurisdictions and correctional officials are unaware of or minimize the importance of this body of evidence. According to one report, “[n]early every scientific inquiry into the effects of solitary confinement over the past 150 years has concluded that subjecting an individual to more than 10 days of involuntary segregation results in a distinct set of emotional, cognitive, social, and physical pathologies.”⁵¹ The characteristics that define segregated housing—social isolation, reduced environmental stimulation, and loss of control over all aspects of daily life—create a “potent mix” that produces a litany of negative impacts, including: hypersensitivity to stimuli, distortions and hallucinations, increased anxiety and nervousness, diminished impulse control, severe and chronic depression, appetite loss and weight loss, heart palpitations, talking to oneself, problems sleeping, nightmares, self-mutilation, difficulties with thinking, concentration, and memory, and lower levels of brain function, including a decline in EEG activity after only seven days in segregation.⁵² Upon release from segregated housing, these psychological effects have the potential to undermine significantly an incarcerated person’s adjustment back in the prison’s general population or the community to which he or she returns.⁵³

The harmful effects are compounded for people with mental illness, who make up one-third to one-half of all incarcerated people in segregated housing.⁵⁴ The conditions of segregated housing can exacerbate a preexisting condition or prompt a reoccurrence. As one psychiatric expert explained, “Prisoners who are prone to depression and have had past depressive episodes will become very depressed in isolated confinement. People who are prone to suicide ideation and attempts will become more suicidal in that setting. People who are prone to disorders of mood...will become that and will have a breakdown in that direction. And people who are psychotic in any way...will have another breakdown.”⁵⁵

Suicide rates and incidents of self-harm (such as banging one’s head against the cell wall) are much higher for people in segregation than those in the general prison population.⁵⁶ For example, in California, where an estimated five

percent of the prisoners are placed in segregated housing, 69 percent of the suicides in 2006 occurred in those units.⁵⁷ In Texas, incarcerated people in segregation are five times more likely to commit suicide than those in the general population.⁵⁸ In New York, between 1993 and 2003, suicide rates were five times higher among incarcerated people in segregation than among those in the general prison population.⁵⁹

Several states are revising their segregation policies in light of the harm it poses to vulnerable populations, especially those with mental illness. To settle a lawsuit that charged Pennsylvania with violating the constitutional rights of incarcerated people with serious mental illnesses by keeping them in solitary confinement without access to treatment, the state agreed in January 2015 to keep them out of non-therapeutic segregated housing and to improve their care.⁶⁰ In Colorado, a law enacted in 2014 requires the removal from long-term segregated housing of all incarcerated people with serious mental illness.⁶¹ Washington created a Reintegration and Progression Program that targets incarcerated people with mental health issues, especially those who engage in chronic self-injurious behavior. The program addresses maladaptive thought and behavior patterns and teaches enhanced coping skills to gradually integrate them into a lower level of custody.⁶²

MISCONCEPTION #6

Segregated housing helps keep prisons and jails safer

The most widely accepted and cited reason for using segregated housing is to ensure safety, order, and control within a prison.⁶³ Some prison officials believe that the mere existence of segregated housing controls the amount and seriousness of violence within their facilities (both among prisoners and between officers and prisoners).⁶⁴ However, there is little evidence to support the claim that segregated housing increases facility safety or that its absence would increase in-prison violence.⁶⁵ One study found no relationship between the opening of supermax prisons and the aggregate levels of prisoner-on-prisoner assaults in three prison systems (Illinois, Arizona, and Minnesota).⁶⁶ With respect to the impact on the number of prisoner-on-staff assaults after the opening of supermax facilities, although the number of staff assaults dropped in Illinois, staff injuries from prisoner assaults temporarily increased in Arizona, and there was no effect in Minnesota on the incidents of violence directed toward staff.⁶⁷

While corrections administrators and officers remain concerned that a decrease in the use of segregated housing will endanger both incarcerated people and staff, the fear may be unsubstantiated. Colorado has decreased its use of segregated housing by 85 percent and prisoner-on-staff assaults are the lowest they have been since 2006.⁶⁸ Colorado decreased its use of segregated housing by narrowing the criteria for placement and reducing the length of stay, which included a step-down program that allows those with compliant behavior to be



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released to the general population.⁶⁹ Other states (for example, Illinois, Maine, New Mexico, and Washington) have also reduced their use of segregated housing and increased the use of alternative strategies.⁷⁰ Although it is too soon to fully assess outcomes in these states, evidence to date suggests there has been little or no increase in violence.⁷¹

MISCONCEPTION #7


Segregated housing deters misbehavior and violence

Many prison officials support the use of segregated housing for managing disruptive and violent behavior because they believe that it has both a general and individual deterrent effect on misbehavior.⁷² However, empirical and anecdotal evidence suggests that segregated housing may have little influence on improving the behavior of incarcerated people.

Studies have contrasted “control-oriented” prisons, which rely on formal sanctions like segregated housing, with others that are “responsibility-based,” which provide incarcerated people with self-governance opportunities, or “consensual,” which incorporate features of both the control-oriented and responsibility-based models of prison management.⁷³ Researchers tested the relationship between these approaches and prison order and found that prisons that employed a responsibility-based or consensual management model experienced lower levels of minor and serious disorder than prisons that were more control oriented.⁷⁴ Moreover, there is no evidence that confinement in a supermax facility produces a deterrent effect on the individual.⁷⁵ A recent study found that exposure to short-term disciplinary segregation as a punishment for initial violence did not deter incarcerated people from committing further violence in prison.⁷⁶

Some theoretical models describe the behavior of incarcerated people as a reaction to the strains, frustrations, and pains of imprisonment combined with little access to mitigating factors.⁷⁷ Subjecting incarcerated people to the severe conditions of segregated housing and treating them as the “worst of the worst” can lead them to become more, not less, violent.⁷⁸

Rather than rely on segregated housing to deter misbehavior, some prison systems are providing incarcerated people who are most likely to misbehave with special programming. For example, Washington has an Intensive Transition Program for incarcerated people with chronic behavior problems who are frequently placed in segregated housing, in which they move through a curriculum in stages, progressively learning self-control and gradually engaging in opportunities to socialize until they are ready to return to the prison’s general population.⁷⁹ Pennsylvania is in the process of implementing Behavior Modification Units with a similar focus.⁸⁰



A recent study found that **exposure to short-term disciplinary segregation as a punishment** for initial violence **did not deter**

incarcerated people from committing further violence in prison.

MISCONCEPTION #8

Segregated housing is the only way to protect the vulnerable

Some people in segregated housing are not violent and do not misbehave but require or request protection from the general population. These include incarcerated people who suffer from mental illness, have developmental or intellectual disabilities, are vulnerable because of their sexuality (e.g., they are lesbian, gay, bisexual, or transgender), may be retaliated against by other prisoners (e.g., they are former gang members or have testified against someone in the facility), committed sex offenses against children, or are former law enforcement officers or public officials. Many prison officials believe these vulnerable incarcerated people can only be kept safe by placing them in segregated housing with conditions as restrictive as those imposed on people who commit the most violent and dangerous acts.

Some jurisdictions are taking a different approach. Rather than isolating those at risk of victimization, they are creating specialized units, which house vulnerable incarcerated people together and provide privileges and programs that are similar to those available in the general population units.⁸¹ In Washington state, for example, the Skill Building Unit houses incarcerated people with developmental and intellectual disabilities in a general population setting that is dedicated to meeting their needs.⁸² The unit provides out-of-cell programming, including daily opportunities to interact with each other and staff during meals and recreation in the dayroom. Unit residents also participate in supported work and other activities to help them function more independently while in prison and upon release. Corrections officers assigned to the unit are trained how to respond appropriately to people with special needs and help them live healthy and safe lives.⁸³ The Washington Department of Corrections reports that the unit has resulted in safer living conditions for these incarcerated people and safer working conditions for corrections staff.⁸⁴

Still other jurisdictions have reformed or are in the process of reforming their use of segregated housing for certain types of vulnerable incarcerated people: Pennsylvania now sends those with significant mental illness, who formerly would have been placed in disciplinary or administrative segregation, to therapeutic units; New York State banned the use of segregated housing to discipline pregnant women or any incarcerated person under the age of 18; in California, a federal judge has ordered the state to find more suitable housing for physically disabled prisoners; and New York City has pledged to eliminate the use of segregated housing for all incarcerated people aged 21 years old and younger.⁸⁵ Alaska and Maine have also enacted laws that ban the use of segregated housing for juveniles for punitive reasons.⁸⁶



Rather than isolating those at risk of victimization, **[some jurisdictions] are creating specialized units,** which house vulnerable incarcerated people together **and provide privileges and programs** that are similar to those available in the general population units.

MISCONCEPTION #9

Safe alternatives to segregated housing are expensive

A common objection among corrections officials to reducing the use of segregation is that few safe alternatives exist and they are too costly to implement. However, growing concern among policymakers and the public about overincarceration in the United States has put the use of segregated housing under particular scrutiny, and for good reason: segregated housing harms those subject to it, produces little, if any, improvement in public and prison safety, and is much more expensive than less restrictive housing. The significant fiscal costs associated with building and operating segregated housing units and facilities are due to the reliance on single-cell confinement, enhanced surveillance and security technology, and the need for more corrections staff (to handle escorts, increased searches, and individualized services).⁸⁷ For example, in 2013, the estimated daily cost per inmate at the federal administrative maximum (supermax) facility was \$216.12 compared to \$85.74 to house people in the general prison population.⁸⁸ In 2003, the daily per capita costs of operating a supermax prison in Ohio were estimated at two-to-three times that of regular security units—\$149 per day compared to \$63 per day, with one corrections officer for every 1.7 prisoners in supermax compared to one for every 2.5 in less restricted housing.⁸⁹

Many of the policy and practice changes undertaken by jurisdictions to reduce their reliance on segregated housing described in this report cost little to implement. Time and patience are required, but not necessarily an enhanced budget. In addition, many of the alternative programs, such as reentry programming and integrated housing units, may only require extending programs that already exist, which would save on start-up costs. Finally, by safely decreasing the number of incarcerated people held in segregated housing, jurisdictions may be able not only to close expensive segregation units and supermax prisons, but free up the staff and other resources needed to pursue evidence-based programming that will help many more incarcerated people return successfully to their communities.



In 2013, the daily **cost** per inmate at the **federal supermax** facility was **\$216.12** compared to **\$85.74** to house people in the **general prison population.**

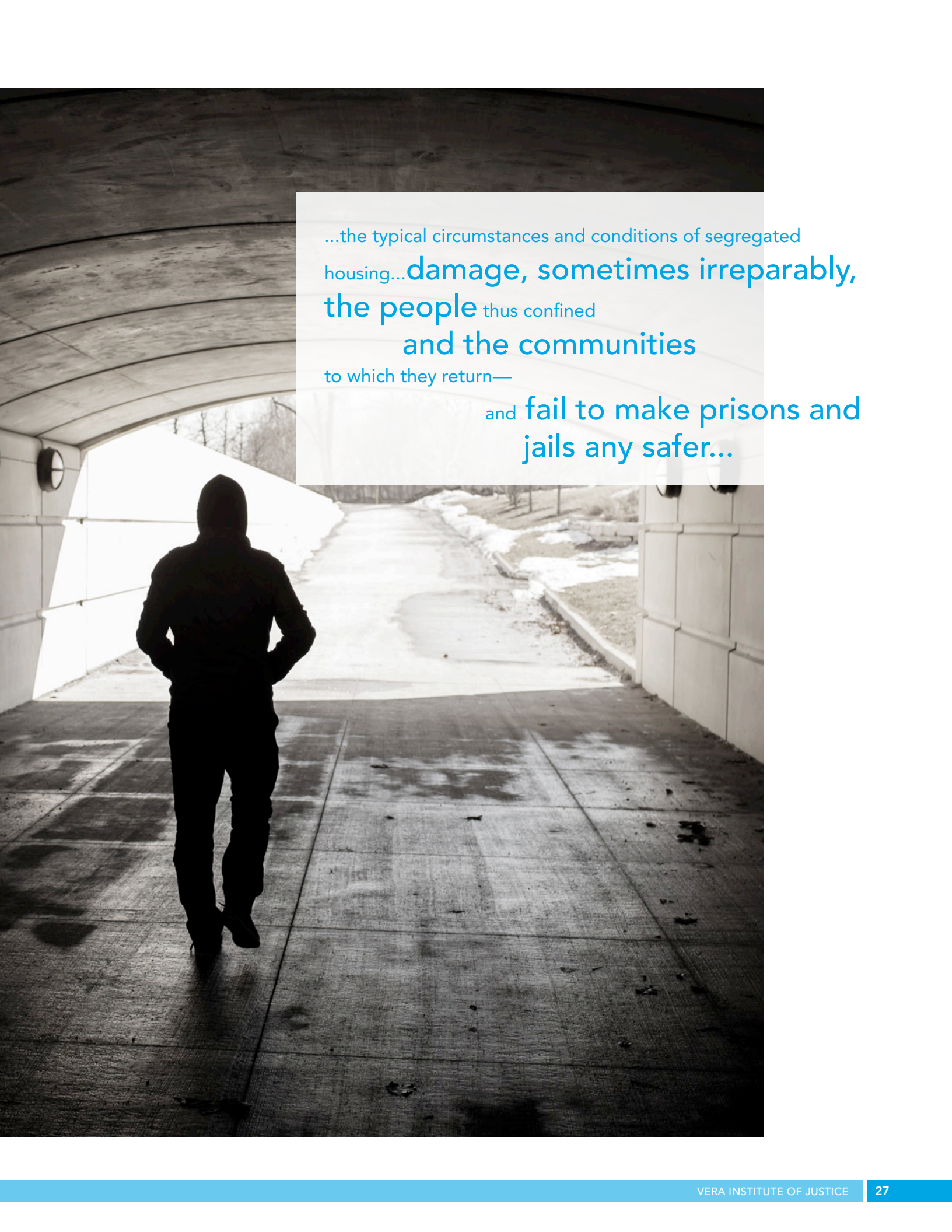
MISCONCEPTION #10

Incarcerated people are rarely released directly to the community from segregated housing

While national data are not available, jurisdictions often hold people in segregated housing until they complete their sentences, releasing them directly to the community. Between 1987 and 2007, California released an estimated 900 incarcerated people each year directly to the community from its secure housing units; in 2013, Texas released more than 1,200 incarcerated people in this way.⁹⁰ Releasing people directly from segregated housing into the community sets them up for failure—and endangers the safety and well-being of the communities to which they return—because in segregated housing, people more often than not receive no reentry planning services or rehabilitative programming, such as substance abuse counseling or classes related to life skills or anger management.

Moreover, data from some states suggest that recidivism rates for incarcerated people who have been held in segregated housing, regardless of whether they are released directly to the community, is significantly higher than for those who have not spent time in segregated housing while in prison. A 2001 review of recidivism data in Connecticut found that 92 percent of those who had been held in administrative segregation were rearrested within three years, compared to 66 percent of incarcerated people who had not been held in administrative segregation.⁹¹ Another study found that confinement in super-max housing is associated with an increased risk of violent reoffending.⁹² In Colorado, the recidivism rate for those who had been held in administrative segregation was between 60 and 66 percent, while the recidivism rate for those in general population was 50 percent.⁹³

While the research is mixed, there is at least one study that shows the likelihood of reoffending by those who have been held in segregated housing may be reduced by returning them to the general prison population for as brief a period as three months before they are released to the community.⁹⁴ In Colorado, all people leaving restrictive housing (formerly called administrative segregation) spend up to 180 days in a transition unit where they receive cognitive behavioral programming and spend six hours a day outside of their cell before they return to the general prison population or to their communities.⁹⁵ Other jurisdictions have introduced reentry programming to those in segregated housing, primarily aimed at helping them re-socialize and get accustomed to interacting with other people. New Mexico created a Re-Entry and Release Unit for people in segregated housing who are within 180 days of release where



...the typical circumstances and conditions of segregated housing...**damage, sometimes irreparably, the people** thus confined **and the communities** to which they return—
and **fail to make prisons and jails any safer...**

they participate in education and behavioral health programming, are not in restraints during group education activities, and move freely amongst other incarcerated people in recreation areas.⁹⁶

Conclusion

Segregated housing remains a mainstay of prison management and control in U.S. prisons and jails largely because many jurisdictions still subscribe to some or all of the common misconceptions laid out in this report. Few in American corrections would dispute that its use may be unavoidable from time to time and for very brief periods to manage incarcerated people who have committed especially violent or dangerous acts. However, increasingly, policymakers, corrections officials, and the general public are justifiably questioning the human and societal toll of its widespread use. A large body of evidence has now well established that the typical circumstances and conditions of segregated housing—the deprivation of regular social intercourse and interaction, the removal of the rudimentary sights and sounds of life, and the severe restrictions on such basic human activities as eating, showering, or recreating—damage, sometimes irreparably, the people thus confined and the communities to which they return. And they fail to make prisons and jails any safer for those incarcerated or for the people who work in them.

Much of this research affirms the objections expressed by the United States Supreme Court 125 years ago in its landmark case of *In re Medley*. The court declared that solitary confinement is not “a mere unimportant regulation as to the safe-keeping of the prisoner....[A] considerable number of the prisoners... f[a]ll, after even a short confinement, into a semi-fatuous condition...[while] others bec[o]me violently insane; others still, [commit] suicide; while those who st[an]d the ordeal better [are] not generally reformed, and in most cases d[o] not recover sufficient mental activity to be of any subsequent service to the community.”⁹⁷

Whether prompted by the public’s growing appetite for broad criminal justice reform or compelled by court orders, some jurisdictions are making progress. But much more remains to be done. Every effort must involve the implementation of policies and practices that effectively ban the use of segregated housing as an emergency response to minor rule infractions and as the default placement for those in need of protection—such as incarcerated people with serious mental illness, physical disabilities, or who are at risk of sexual victimization or violent retaliation. Not only will safe alternatives to segregated housing improve overall conditions in prisons and jails, but they will help build the foundation all incarcerated people need to return successfully to their communities.

ENDNOTES

- 1 Percent increase calculation done by Vera Institute of Justice researchers as part of its Segregation Reduction Project, based on data from the 1995 and 2005 *Census of State and Federal Adult Correctional Facilities*. For an estimate of the number of people in segregated housing in 1995, see U.S. Department of Justice, Bureau of Justice Statistics, *Census of State and Federal Adult Correctional Facilities, 1995* [Computer file]. Conducted by the U.S. Department of Commerce, Bureau of the Census. ICPSR ed. Ann Arbor, MI: Inter-university Consortium for Political and Social Research [producer and distributor], 1998. Doi:10.3886/ICPSR06953.v1. For an estimate of the number of people in segregated housing in 2005, see United States Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Census of State and Federal Adult Correctional Facilities, 2005*. ICPSR24642-v2. Ann Arbor, MI: Inter-university Consortium for Political and Social Research [distributor], 2010-10-05. <http://doi.org/10.3886/ICPSR24642.v2>.
- 2 For the estimate of 25,000 incarcerated people in segregated housing, see Daniel P. Mears, *Evaluating the Effectiveness of Supermax Prisons* (Washington, DC: Urban Institute, 2006), 4. For the estimate of approximately 80,000 incarcerated people in segregated housing, see United States Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Census of State and Federal Adult Correctional Facilities, 2005*. ICPSR24642-v2. Ann Arbor, MI: Inter-university Consortium for Political and Social Research [distributor], 2010-10-05. <http://doi.org/10.3886/ICPSR24642.v2>.
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- 25 For information on incarcerated people in segregation due to mental instability, see Craig Haney, 2003, pp. 124-156. For information on children in segregated housing, see American Civil Liberties Union and Human Rights Watch, *Growing Up Locked Down: Youth in Solitary Confinement in Jails and Prisons Across the United States* (New York: ACLU & HRW, 2012) <https://www.aclu.org/files/assets/us1012webwcover.pdf>. Additional reasons to place someone in protective custody include advanced age, former affiliation as a law enforcement officer, the crime committed (e.g., a particularly heinous act or sex offenders), owe debts to others in the facility, and testified against someone in the facility.
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was calculated using data available as of August 13, 2013. Burke Butler, Arthur Liman Fellow, the Texas Civil Rights Project, e-mail exchange with Vera, Washington, DC, April 18, 2015.

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- 67 Ibid, pp. 1365-1367.
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- 85 For information on Pennsylvania, see Samantha Melamed, January 8, 2015, http://articles.philly.com/2015-01-08/news/57797425_1_solitary-confinement-illness-inmates. For information on New York State, see Benjamin Weiser, February 19, 2014, <http://www.nytimes.com/2014/02/20/nyregion/new-york-state-agrees-to-big-changes-in-how-prisons-discipline-inmates.html?ref=solitaryconfinement>. Despite California's agreement in 2012, the state continues to house disabled prisoners in segregation units. A federal judge ordered the state to suspend this practice in February 2015. Paige St. John, "Federal Judge Orders California to Stop Isolation Housing of Disabled Inmates," *Los Angeles Times*, February 3, 2015. For New York City's new policy, see endnote 9.
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About Safe Alternatives to Segregation Initiative

In March 2015, the Vera Institute of Justice (Vera) launched the Safe Alternatives to Segregation (SAS) Initiative—a two-year national campaign aimed at reducing the number of incarcerated people held in segregated housing while simultaneously improving safety in prisons and jails. In addition to providing technical assistance to state and local jurisdictions selected through a competitive bidding process, SAS features a series of publications and an online resource center (to be launched in June 2015) that highlight the latest research and policy analysis by leaders in the field. For more information about SAS, contact Christine Herrman, project director, Center on Sentencing and Corrections, at cherrman@vera.org.

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