



Correcting Corrections in America™

SOLITARY CONFINEMENT –

UNDERSTANDING RESTRICTIVE HOUSING UNIT PRACTICES WITHIN THE U.S. DEPARTMENT OF JUSTICE'S BUREAU OF PRISONS

**RECOMMENDATIONS FOR UNIFORM AND HUMANE
SAFEGUARDS AND POLICY MODIFICATIONS IN THE USE OF ISOLATION**

WHITE PAPER

Date:	July 28, 2014
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Version:	v. 0730140711
To Cite:	Donson, Jack & Out4Good Ltd. (2014) Solitary Confinement – Understanding Restrictive Housing Unit Practices within the U.S. Department of Justice's Bureau of Prisons – Recommendations for Uniform and Humane Safeguards and Policy Modifications in the Use of Isolation Retrieve from website: https://www.out4good.org/reports.html





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About Out4Good Ltd.

Out4Good Ltd. ("Out4Good") is a nonprofit organization that helps improve the policy and decision-making processes of non-governmental organizations ("NGOs"), intergovernmental organizations ("IGOs"), educational institutions, businesses, and government policy makers through its collection and analysis of relevant data. Out4Good mentors and pairs such organizations, institutions, and policy makers in an effort to address the numerous issues that affect the earth's rapidly increasing populations and their interactions with *those who govern* them. One of Out4Good's global initiatives addresses incarceration in the United States where it is a recognized expert with regard to the policies of the U.S. Department of Justice's Federal Bureau of Prisons.

Out4Good Ltd.'s White Paper "Solitary Confinement – Understanding Restrictive Housing Unit Practices within the U.S. Department of Justice's Bureau of Prisons - Recommendations for Uniform and Humane Safeguards and Policy Modifications in the Use of Isolation"

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Our unique logo represents the bars of prison, which are not uniform in size, but rather randomly unequal - illustrative of the enormous diversity and inequality existing in our correctional system today. The colors used are the colors that represent us as a nation and they provide a sense of inclusiveness to all. We are all in this together as Americans – advancing needed change to bring sense to the sentencing, custody, and release processes for our nation's incarcerated.

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Statement of the Problem

There are now 7.3 million individuals currently under the control of the criminal justice system in the United States: 2.3 million in prison, 800,000 on parole, and 4.2 million on probation. More than 10 million Americans are arrested each year with 600,000 of them imprisoned. Of the 700,000 incarcerated individuals released each year, 67% will be re-imprisoned within three years due to recidivism.¹

These astonishing numbers include 80,000 individuals who are held in isolation in solitary confinement on any given day, some of whom do not count their stay in days or months, but in years and even decades. Solitary confinement fell out of favor in American prisons for much of the last century until a building boom of supermax or control-unit prisons began in the early 1990s, when being “tough on crime” was all the rage. By 2005, 40 states were operating supermax facilities, the physical design of which served to severely isolate prisoners both from the outside world and from their fellow inmates. Despite the extreme harshness of life in these prisons, the average stay far exceeds the UN’s recommended 15-day maximum.²

During the past several years, solitary confinement has received a great deal of attention throughout the United States. A recent development has been the focus by the U.S. Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights (“Subcommittee”) headed by Senator Dick Durbin. The Subcommittee’s focus on the Federal Bureau of Prisons (“BOP”) has caused the agency to undertake what was referred to as an “independent” study through The National Institute of Corrections (“NIC”). Last year, the contract for the study was awarded to CNA Analysis and Solutions (“CNA”) which is a nonprofit research organization that operates the Center for Naval Analysis and the Institute for Public Research. This study is well underway and a report is due to be circulated soon.

This document (“White Paper”) is written from an inside, “field” perspective of someone who visited special housing units on a weekly basis for more than two decades. Currently, the author attends various meetings with non-governmental organizations (“NGOs”), members of Congress and their staffs, and has even attended an early-on meeting at the NIC with CNA auditors.

¹ Out4Good Ltd., (2014). Congressional Action Mandated to Reduce Rising Costs of Incarceration, p.1. Retrieved from website: <http://www.out4good.org/reports.html>

² Walshe, Sadhbh, Why Do We Let 80,000 Americans Suffer a 'Slow-Motion Torture of Burying Alive'?, The Guardian, March 20, 2014.

The purpose of this White Paper is to provide information and recommendations to the Subcommittee from a BOP policy perspective on what the agency refers to as “Restrictive Housing.” This White Paper should be reviewed before any organization studies BOP solitary confinement and restrictive housing unit practices. Its conclusions should be considered by Congress and the NIC in conjunction with the independent study undertaken by CNA.

The public and advocacy groups are concerned about BOP isolation practices and the effects of solitary confinement on individuals, especially the mentally ill. Our involvement with this issue began when our Executive Director provided feedback to the National Association of Criminal Defense Lawyers (“NACDL”) which was incorporated in a letter on this issue to Senator Durbin dated June 18, 2012. A copy of this letter is attached to this White Paper.

There has been an evolution of restrictive housing unit settings within the BOP which must be examined from historical, policy, and field perspectives. The term “restrictive housing” was practically absent in BOP policy statements until May of 2014, when the BOP issued Program Statement 5310.16, Treatment and Care of Inmates with Mental Illness. The current BOP Director, Charles Samuels, has recently used the term “restrictive housing” when testifying before Congress. A search of the BOP public data base reflects this term is used once in current policy despite several separate policies which deal with solitary confinement including Control Unit Programs, Special Management Units, Special Housing Units, and Inmate Discipline. The newest BOP policy regarding the treatment of inmates with mental illness includes two new forms both of which are entitled “Restrictive Housing Mental Health Evaluation” and are the initial review, and follow up review, for isolated inmates. It should be noted that BOP policy has always required a written, in person, psychology assessment report, every 30 days for inmates housed in special housing units.

It may be confusing for someone outside the BOP culture to understand the isolation process given the various terms and slang regarding restrictive housing unit settings. The government has evolved from special housing units commonly known as the “SHU,” the “Hole,” or the “Box,” to “Control Units,” “Special Management Units,” and most recently “Communication Management Units.”

Restrictive Housing Unit policy

Historically, the BOP has utilized two reasons for isolating inmates from the general population referred to as administrative detention and disciplinary segregation. The primary policy governing these practices was traditionally included in one policy entitled Program Statement 5270.08 Inmate Discipline and Special Housing Units. In

2011, this policy was rescinded and separated into two separate policies: Program Statement 5270.09 Inmate Discipline, issued on July 8, 2011, and Program Statement 5270.10 Special Housing Units, issued on August 1, 2011. There are currently at least four BOP policies directly governing restrictive housing: PS 5217.01 Special Management Units, PS 5270.10 Special Housing Units, PS 5270.09 Inmate Discipline, and PS 5212.07 Control Unit Programs.

It is a routine practice for BOP policy guidance to be governed by the issuance of internal memoranda to wardens from the Director or Regional Director rather than the issuance of “Operations Memoranda” as traditionally practiced by the BOP in accordance with Program Statement 1221.66 Directive Management Manual. It would demonstrate transparency for the BOP to share internal memoranda with the CNA auditors for the NIC study regarding all restrictive housing unit guidance. Of specific interest are two memorandums submitted on May 11, 2005 and November 23, 2005 by John M. Vanyur, Assistant Director, Correctional Programs Division, Central Office of the BOP, Washington, D.C. The memos provide guidance relative to post-disciplinary administrative detention. Specifically, the BOP was requiring inmates to reside in restrictive housing after their disciplinary segregation sanction was served unless they had, in some cases, 12 months of clear conduct while residing in restrictive housing. Although dated, the memos affected the agency culture to be desensitized regarding inmates residing in post disciplinary segregation for extended periods.

It is important to understand the various types of restrictive house units and the related statuses and policy terminology set forth below:

Special Housing Units (“SHU”): Most secure federal facilities operate a SHU to separate inmates from the institution’s general population for administrative and disciplinary reasons. Administrative detention and disciplinary segregation are the most common practices of restrictive housing within the federal prison system. Inmates are locked in a cell either alone or with as many as two other inmates, the third sleeping on the floor on a mattress. Cell sizes vary depending on the facility design. In order to understand cell capacities and requirements, refer to BOP Program Statement 1060.11 Rated Capacities for Bureau Facilities. Inmates are locked in their cells 23 hours a day with the opportunity for one hour of recreation, ordinarily inside a small room or outdoor caged area. Food is brought to them on carts and all movement within the unit is done with restraints with inmates handcuffed behind the back. Inmates are rotated between cells on a periodic basis and have very limited access to law library materials. Family and social visiting is often limited or restricted even without formal disciplinary sanctions.

Administrative Detention (“AD”): AD is one aspect of the restrictive housing unit process that should receive immediate attention. It is a status which removes an inmate from an institution’s general population when the inmate’s “presence in the general population poses a threat to life, property, self, staff, other inmates, the public, or to the security or orderly running of the institution.”³ It is “non-punitive” according to BOP policy. The most common reasons for the placement of inmates in AD is when they are being investigated for committing a prohibited act, protection cases (“PC”), are a holdover in-transit to a different facility, and post-disciplinary detention.

It is recommend that AD status receive more focus and policy development given its vague language, broad definitional interpretation, and absence of time frames requiring specific staff action. Although 28 CFR Part 541 has significant checks and balances governing AD, there needs to be a revision to include specific time frames in the processing of investigations for suspected prohibited act violations and threat assessments.

Disciplinary Segregation (“DS”): DS is a “punitive” status imposed only by a Discipline Hearing Officer as a sanction for committing a prohibited act. It is similar to AD but usually involves housing in a different area of the SHU with greater property and telephone restrictions. There is significant case law relative to the disciplinary process since the U.S. Supreme Court case of *Wolff v. McDonnell*, 418 U.S. 539 (1974). However, many of the safeguards proscribed in *Wolff v. McDonnell* are not mandated until an incident report is actually issued.

Control Units (“CU”): The concept of the CU originated in the United States Penitentiary in Marion, Illinois in the late 1960s as a program referred to as “CARE”, Control and Rehabilitation Effort.⁴ This concept is often referred to as the “ADMAX” and “supermax.” Inmates are isolated from staff and other inmates and spend 23 hours a day locked in their cells. There is a monitor in the cell for viewing correctional programs unlike the average restrictive housing unit setting. Marion no longer operates a CU. The only CU in the United States is at the BOP’s Florence, Colorado complex. There is a false perception about the number of inmates in the Florence CU which is much smaller than the 408 plus figure often quoted. The BOP operates several restrictive housing unit settings at the Florence complex. The units, in order from the most secure to the least secure, are: CU or H Units, Special Security Units, Special Housing Units, General Population Units, and Intermediate Unit/Transitional Units.

³ 28 CFR 541.23 - Administrative detention status

⁴ “ From Alcatraz to Marion to Florence-Control Unit Prisons in the U.S., by The Committee to End The Marion Lockdown, 1992

The 408 number referenced above, is a total of the various restrictive housing units within the Florence ADMAX which is separate from the Florence complex's penitentiary which houses 607 high security offenders.⁵

Another public misconception is regarding the BOP's practice of "solitary confinement." The BOP does not practice pure solitary, single cell isolation on a mainstream basis aside from the Florence CU. In general, protective custody cases are temporarily held in solitary confinement until a threat assessment is conducted. In addition, inmates who are pending authorization into the witness security program are often held in solitary confinement for long periods while the WITSEC application is being processed.

It is ironic the BOP has not allowed the NIC auditors access to the Florence CU operations when it is the only BOP facility that practices the routine use of solitary confinement.

Special Management Units ("SMU"): SMUs were designed for inmates who participate in, or occupy a leadership role in, geographical group/gang related activity and present unique security and management concerns. The policy which governs SMUs is Program Statement 5217.01 Special Management Units. The policy indicates it is "non-punitive" and lists the placement criteria. It is a four level program which inmates are expected to complete within 18 to 24 months at which time they may be designated to an appropriate facility. In terms of security and control, a SMU is a step up from a US penitentiary and a step down from a special housing unit. The current SMU facilities are USP Lewisburg, Allenwood, and Florence.

The first SMU facility was established in 2008 according to the BOP's website. This coincides with Program Statement 5217.01, dated November 19, 2008, however, SMUs have been around since at least 2003. On March 17, 2003, M.E. Ray, Regional Director of the BOP Northeast Regional Office submitted a memorandum to all wardens regarding the placement criteria for the SMU at USP Lewisburg. One could speculate that the recently acquired facility in Thompson, Illinois will operate a large SMU operation and may even be utilized to house some of the prisoners currently incarcerated in Guantanamo Bay, Cuba.

SMUs are similar to a special housing unit but under a different name. There is a four phase step down program. All inmates start in Phase I which encompasses a 23 hour lockdown and far less privileges and programs than general population inmates. The SMU policy is similar to the CU policy but there appears to be more safeguards involved with placing inmates in a CU such as a psychological evaluation prior to approval. It is

⁵ "Admissions and Orientation Handbook, US Penitentiary, Administrative Max, Florence, Colorado. Retrieved from <http://www.bop.gov/locations/institutions/flm/>

Out4Good's understanding, the SMU in Lewisburg, PA is a Phase I & II SMU, while there are Phase III & IV SMU's at the Allenwood and Florence complexes.

Communication Management Units (“CMU”): CMUs are for inmates whose current offense conduct requires increased monitoring of communication between the inmate and persons in the general community to protect safety, security, and orderly operation and to protect the public. There is no contact visiting in a CMU. All visits are to be conducted in English unless another language is specified in advance and a translator scheduled. Non-English speaking visits are conducted through simultaneous translation monitoring. Inmates designated to a CMU may be associated with terrorism, those who repeatedly attempted to contact victims and/or attempted illegal activities through approved communication methods, or those who have received extensive disciplinary action due to misuse of communication methods. The BOP operates two CMUs; one in Terre Haute, Indiana which opened in 2006, and one in Marion, Illinois which opened in 2008.

There is no formal public program statement on CMUs, however, it should be noted that the BOP did not publish rules in the Federal Register for comment until April 6, 2010, four years after the first unit opened. On March 10, 2014, the BOP re-opened the comment period for 15 days in response to current, ongoing litigation. It has been more than eight years since the establishment of the first CMU, yet to date there is no formal public policy statement governing CMU operations.

Unverified Protective Custody (“PC”): A specific focus of any restrictive housing unit study should be on what is referred to as unverified protective cases or PC. The most common case of PC is when an inmate requests protection and is separated from the general inmate population. Staff then conducts a threat assessment of the inmate's concerns. If the investigation does not uncover or confirm a legitimate threat to the inmate, the inmate is ordered out of the special housing unit or given an incident report for “failing to accept a work or program assignment,” a violation of Code-306 of 28 CFR Part 541. This is a puzzling practice when an inmate feels there is a legitimate threat and continues to receive incident reports for refusing to be housed in the general population. It then begins a cycle of repeated disciplinary sanctions, with ramifications which include loss of good time, increased classification scoring, loss of family visitation, inability to program or be transferred closer to home.

There is a tendency for inmates with unverified PC cases to languish in restrictive housing for long time periods. This is a very problematic issue and a widespread practice which needs additional policy formulation and accountability.

Transitional Segregation: The BOP often transfers inmates from the parent facility for restrictive housing because of crowding at the current facility or when it does not have a special housing unit. It is a temporary status tracked in the SENTRY computer system as “Trans Seg.” There are two problematic issues associated with transitional segregation. The first is that the inmate’s Central File does not ordinarily go with the inmate, and secondly, the inmate does not receive as much individual attention from the receiving facility’s case manager or counselor because of their existing large individual case loads. Direct access to the inmate by the parent unit investigators and staff is also difficult.

Weekly SHU Review: The responsibilities, review requirements, and documentation of inmates placed in restrictive housing are carried out in accordance with Program Statement 5270.10 Special Housing Units. A weekly meeting is conducted at every BOP facility by institution administrators who review each case from a computer generated roster from SENTRY and/or BOPware. In theory, this meeting should identify those languishing in the SHU and provide accountability for each case. There is a separate correctional services database referred to as the BOPware SHU Application. Some institutions print their weekly reports with this program. It is a national data base and any organization conducting an audit of BOP facilities should obtain samples of these reports. Any study relating to restrictive housing unit data must take into account the tools utilized by the BOP to track inmate data.

BOP Database Systems

SENTRY Database: Anyone conducting a study of individuals in BOP restrictive housing unit settings should be aware of basic computer tracking assignments on what is referred to as the SENTRY database. Auditors are encouraged to obtain targeted SENTRY rosters, with specified criteria, rather than the BOP “data dump” which is commonly provided by the BOP. Targeted rosters not only produce more measurable data relative to specific cases and nationwide trends but can save time and expense in obtaining metadata for any given study. One has the ability to actually run a roster of individual inmates regarding their assigned SMU level. One can also run a roster of entire facilities with a breakdown of SMU levels.

In order to independently evaluate the isolation of an inmate, a random sample of ADX, SMU, CMU, and SHU inmates should be reviewed utilizing various SENTRY transactions. For example, a PP37 transaction is for an individual’s history in any category. If one places “QTR” at the end of a transaction such as PP37 and then the

inmate's BOP register number, one would obtain information setting forth each of the inmate's living quarters during the entire period of incarceration. This report would also show actual movements such as when an individual went from AD to DS, and back to AD.

Entire rosters of restrictive housing unit criteria can be accessed for an institution or even the country and can be processed with multiple categories and conditions. For example, one can start with a nationwide sample of all SMU cases, but qualify it to only include Care Level 3, mentally ill inmates. Every roster has multiple columns for specific categories and the base population can be modified to meet multiple conditions.

Another example would be to run a roster of all inmates currently in Phase I, SMU who are scheduled to be released within the next six months to determine what type of release preparation has been done or what public safety issues are involved. SENTRY is a tool with endless possibilities for specific analysis provided the input criteria are targeted. A roster's columns can actually include information such as age, race, ethnicity, gender, disability, citizenship, and medical status.

There are literally hundreds of SENTRY transactions which track data on all aspects of inmates and facility characteristics. When Congress is reviewing the CNA study results, it should be determined if CNA obtained targeted restrictive housing unit rosters or if it only relied upon what is referred to as a "data dump."

Auditors, professionals, and public officials studying restrictive housing unit placement should also review other individual inmate SENTRY transactions including a PD15, Disciplinary Chronological History; PP44, Overall Offender Profile; and the PR transactions which track administrative remedy processing.

Any comprehensive restrictive housing unit review should examine Inmate Central Files and the various forms associated with restrictive housing unit placement such as BP-292's Special Housing Unit Records, BP-295 Special Housing Unit Reviews, and BP-308 Administrative Detention Orders. These forms contain the documentation of the various requirements of restrictive housing unit placement mandated by policy and law.

The Psychological Data System ("PDS") should be cross referenced to ensure inmates are getting their psychological evaluations every 30 days as well as determine what other entries are being made by staff regarding inmates diagnosed with mental illnesses. PDS is a separate data base maintained by the psychology service department. It should also be noted that there is a cross sharing of psychology data with the Bureau Electronic Medical Records ("BEMR") system.

“After action” reports should be reviewed for every inmate suicide which occurred in a SHU. An “after action” report is a comprehensive review of a critical incident to determine the cause as well as make recommendations for procedural improvements.

All SENTRY 583 reports on significant incidents should be reviewed for a particular institution under review for a given time period. For example, the use of pepper spray, forced cell moves, and four point restraint situations should always not only have a 583 report, but also a correlating video to go along with it. These videos should be reviewed in conjunction with any reports and/or incidents.

In addition, by reviewing the above documentation and interviews, the BOP’s compliance with CFR 541.45, 541.21, 543 could be determined.

Recommendations:

First and second line supervisors, mainly GS9 and GS11 lieutenants, have far too much discretion when it comes to placing offenders in the SHU. The general criterion for SHU placement is that an inmate is disrupting the “orderly running of the institution.” This language is overly broad. It is common for inmates who commit, or are suspected of committing, minor infractions of the disciplinary code to be placed in SHU for weeks; sometimes months. There are four levels of infractions in the disciplinary code: Greatest, High, Moderate, and Low. For example, “using obscene language” is a low severity offense, “lying” is a moderate severity offense, “fighting” is a high severity offense, and “use of narcotics” is the greatest severity offense.

The following safeguards and policy modifications should be implemented for the humane treatment of inmates placed in restrictive housing unit settings:

1. In the “normal” course of correctional facility operations, offenders should not be placed in the SHU unless they have committed, or are suspected of committing, a high or greatest severity offense. This alone would reduce the number of inmates placed in SHUs. The emphasis is “normal” because there are times when placement may be warranted for lesser offenses but this should not be the standard operating procedure.

The actual BOP policy justification language for an inmate’s placement in the SHU is that the inmate’s presence in the general population poses a threat to life, property,

self, staff, other inmates, the public, or to the security or orderly running of the institution.⁶

2. BOP policy mandates a seven day review hearing process for those who are placed in a restrictive housing unit. The inmate has a right to attend this review, yet the BOP does not formally inform inmates this is an option. Independent research would show that inmates do not normally physically attend such a hearing because they are not informed of this process. An inmate's first seven day review hearing should be attended "in person" unless it is specifically waived in writing.
3. A staff representative should be afforded to inmates placed in restrictive housing to be present at the seven day hearing. This would be similar to the current BOP practice of providing a staff representative for inmates involved in the formal disciplinary process when charged with committing a prohibited act. However, staff representatives are not afforded to inmates placed in restrictive housing through no fault of their own, such as protective custody. Inmates can spend months in AD without staff representation.
4. Unlike when an incident report is actually written, there are no mandated time frames on "investigations" or how long it takes the Discipline Hearing Officer ("DHO") to conduct a hearing. Investigations, hearings, and threat assessments for PC cases and assault victims must be processed in specific time frames with written justification required to exceed the time frames.

There is a significant amount of federal case law regarding mandated time frames on incident report processing and unit discipline hearings, but there is a great need to also mandate time frames on investigations and threat assessments.

When staff observe a violation of the disciplinary code, they have 24 hours to write an incident report. If they do not observe it personally, but hear of it from informants, or via other means of intelligence, they begin an "investigation." This is where a breakdown in the timeframe occurs. There are no mandated time frames for investigations. It is not uncommon for someone to be placed in the SHU and not even be interviewed by the investigators for several weeks, sometimes months because there is no mandate.

5. It is also common in investigations regarding drug possession and serious assaults within the prison facilities for the BOP to refer charges to federal law enforcement agencies such as the FBI. When this happens, all time frames for incident report

⁶ Bureau of Prisons, Program Statement 5270.10 [Special Housing Units](#)

processing cease. There is no required time frame for follow up in BOP policy so the BOP should be mandated to check at least weekly with the referral agency to determine if charges will be prosecuted. Ordinarily, federal authorities only have the resources to process the most serious offenses and often choose not to pursue prosecution. It is not uncommon that significant time passes before incident reports are released for BOP processing due to inadequate follow up.

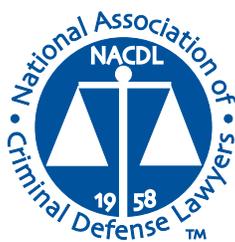
6. Like investigations, there is no time frame mandating the DHO to conduct a hearing when an incident report is referred to them by the Unit Discipline Committee (“UDC”). When the DHO imposes punitive segregation time for a violation of institutional conduct, there is no requirement for credit for the prior time served in the SHU. DHOs should be mandated to process hearings in a specific time frame and the offender should be credited with the time spent in the SHU towards any DS term imposed.
7. The BOP policy on SHUs would lead one to believe inmates placed in restrictive housing have access to reentry and educational programs. Follow up needs to be done in this area because it does not appear any formal programming is conducted in SHU settings.
8. SHU inmates are limited to one telephone call every 30 days, the same as if they were serving DS for violating the disciplinary code. Inmates in administrative detention status should be afforded a telephone call at least once every five days. Communication with family is important, especially given the effects of isolation and the higher rates of inmate suicide attempts in the SHUs. A telephone call every 30 days should only be implemented while the inmate is serving punitive DS.
9. Visiting is often limited to weekdays only for inmates in SHUs. This is problematic as most families cannot travel on the weekdays due to school and work requirements. Inmates on AD without punitive visiting restrictions imposed by a DHO should be afforded the same visiting schedule as the general population inmates.
10. There is a practice for unverified PCs to be housed in special housing for months, sometimes years. If staff cannot verify an inmate’s request for protective custody, they order the inmate into the general prison population and issue an incident report if they do not return to the general prison population. The Designation and Sentence Computation Center (“DSCC”) in Grand Prairie, Texas has a tendency to deny unverified PC transfers that are submitted. As a result, inmates remain in the SHU indefinitely. Serving a sentence in the SHU is not the intent of policy or law. SHUs are not designed as long term units.

11. Sometimes first time offenders on bond, who have never served a day in jail, surrender to camps only to be placed in restrictive housing awaiting bed space. The BOP is capable of coordinating bed availability and/or adding temporary beds outside of the SHU. Each institution has a pipeline and a staff member designated to screen the pipeline and divert offenders when overcrowding is an issue.
12. Compliance with duress systems referred to as “panic buttons” should be reviewed. Although some facilities reference duress buttons and emergency alert, it does not appear there is a formal BOP policy pertaining to this issue. Inmates in special housing units are only checked every 30 minutes so it would be important for a standardized nationwide emergency alert mechanism that is mandatory for medical and other emergencies.
13. Compliance with the American Disabilities Act (“ADA”) should also be a focus for any comprehensive review of restrictive housing units within facilities operating under the BOP or its various contractors.
14. Review the medical care of “Chronic Care” and “Care Level 3” inmates who are housed in SHUs to ensure that they are receiving proper medical attention.
15. Inmates currently in the SHU for an extended period should be interviewed for feedback on the BOP’s compliance with the current policy requirements for programming, visiting, medical care, and the administrative remedy process.
16. Law Library access is often limited in SHU operations and inmates find it difficult, if not impossible, to file remedies, and respond to pending court proceedings. SHU inmates should have greater access to the law library, paper, and adequate writing materials.
17. Inmates should be asked if they are receiving program reviews in the SHU and an acknowledgement of this should be obtained in writing. The inmate’s signatures should be verified with those located in the central file on the program review forms.
18. The BOP should adopt an ombudsman program, operated by a neutral third party, to hear and assist inmates in navigating the available avenues that exist to resolve any issues they have at the facility level.

Conclusion

In order to effectively study BOP solitary confinement practices, one must have an understanding of the policies, organizational structure, infrastructure, and nuances of the BOP. By utilizing the BOP's existing tracking tools, such as SENTRY, BEMR, PDS, and general BOPware programs, a study may avail itself of this metadata lending credibility to its then evidence-based findings. Without inmate surveys, interviews, and targeted data points, any review would result in superficial findings.

Addressing these recommendations, and the implementation of remedial processes, will provide more checks and balances for the BOP resulting in more humane treatment of isolated inmates. It would also demonstrate to the increasingly expanding set of interested parties, including the highly focused media, an attempt by the BOP to comply with Congressional legislation and global incarceration and human rights standards.



Lisa Monet Wayne
President

June 18, 2012

The Honorable Dick Durbin
711 Hart Senate Bldg.
Washington, DC 20510

Dear Senator Durbin:

On behalf of the National Association of Criminal Defense Lawyers (NACDL), I write to thank you for scheduling a hearing for the purpose of **“Reassessing Solitary Confinement: The Human Rights, Fiscal and Public Safety Consequences.”** The National Association of Criminal Defense Lawyers (NACDL) is the preeminent organization in the United States advancing the mission of the nation’s criminal defense lawyers to ensure justice and due process for persons accused of crime or other misconduct. NACDL believes that safe and humane prisons must be the highest priority of any correctional system.

The NACDL opposes the use of long-term solitary confinement in our prison systems for the following reasons:

- (1) Solitary confinement results in greater prison violence.
 - Solitary confinement increases the risk of torture, excessive force and other forms of physical abuse, because there is an absence of witnesses and many detainees have been held in solitary confinement for years.
 - Long-term segregation has been shown to increase prisoner-on-staff and prisoner-on-prisoner assaults.
- (2) Solitary confinement endangers the psychological health of inmates.
 - Research shows that people who experience long periods of isolation in prison often experience serious and sometimes lasting deterioration in mental and physical health.
 - Prisoners with mental illness are significantly overrepresented in supermax prisons and similar solitary confinement facilities, and once subjected to the extreme social and sensory deprivations of solitary confinement, many mentally ill prisoners deteriorate dramatically.
 - Direct studies of the effects of prison isolation have documented a wide range of harmful physiological and psychological effects including increases in negative attitudes and affect, insomnia, anxiety, panic, withdrawal, hypersensitivity to external stimuli, ruminations, cognitive dysfunction, perceptual distortions and hallucinations, loss of control, aggression, rage, paranoia, hopelessness, lethargy, depression, emotional breakdowns, self-mutilation, suicidal impulses, heart palpitations, appetite loss and weight loss, and lower levels of brain function, including a decline in EEG activity.

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Richard S. Jaffe Birmingham, AL
Evan A. Jenness Santa Monica, CA
Elizabeth Kelley Cleveland, OH
Tyrone Moncriffe Houston, TX
Tracy Miner Boston, MA
George H. Newman Philadelphia, PA
Kirk B. Obear Sheboygan, WI
Timothy P. O’Toole Washington, DC
Maria H. Sandoval San Juan, PR
Mark A. Satawa Southfield, MI
Marvin E. Schechter New York, NY
Melinda Sarafa New York, NY
David Smith Alexandria, VA
Penelope S. Strong Billings, MT
Jeffrey E. Thoma Fairfield, CA
Jennifer Lynn Thompson Nashville, TN
Edward J. Ungvarsky Arlington, VA
Geneva Vanderhorst Washington, DC
Christopher A. Wellborn Rock Hill, SC
Steven M. Wells Anchorage, AK
Christie N. Williams Dallas, TX
Solomon L. Wisenberg Washington, DC
William P. Wolf Chicago, IL

Executive Director
Norman L. Reimer Washington, DC

(3) Solitary confinement undermines prisoner reentry and public safety.

- Studies show that prisoners who are released from segregation directly to the community reoffend at higher rates than general-population prisoners.
- Although there is no compelling evidence that solitary confinement “works,” in general or for any particular type of inmate, alternative approaches to handling violent prisoners are proven to both reduce levels of institutional aggression and decrease recidivism among such prisoners upon release.

Aside from the overwhelming weight of research demonstrating the dangers and ineffectiveness of solitary confinement, there is the issue of fiscal responsibility. The cost of confining prisoners in segregation is astronomical. Supermax cells cost on average 50% more than general population cells. In Illinois, it costs \$92,000 per year to hold an inmate in solitary confinement at Illinois’s Tamms Correctional Center. That figure is two to three times higher than the cost of keeping an inmate at the state’s other maximum-security prisons.

The solitary confinement practices of the US detention system are far below the basic minimum standards for treatment of prisoners under international law. Adopted by the United Nations, the Standard Minimum Rules for the Treatment of Prisoners (“Standard Rules”), recognize solitary confinement and prolonged segregation as appropriate only in exceptional circumstances, to be used sparingly. In an October 2011 report by the UN’s special rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez urged all countries to ban the solitary confinement of prisoners except in very exceptional circumstances. UN rapporteur Méndez also called on the international community to agree to impose an absolute prohibition on solitary confinement exceeding 15 consecutive days because 15 days is the point at which solitary confinement becomes prolonged, as a practical matter and as a conservative assessment of when, based on his survey of medical research, the harm suffered by individuals held in solitary confinement constitutes torture or cruel, inhuman, or degrading treatment or punishment.

Once again, the NACDL would like to thank you for presiding over a much needed hearing on solitary confinement. After hearing from the witnesses, NACDL strongly encourages you to consider Congress’ potential role in limiting the use of solitary confinement in state, local and federal detention facilities.¹ We look forward to working with you on this important issue.

Sincerely,



Lisa Monet Wayne
President

cc: Members of the Senate Judiciary Committee

¹ It is our understanding that at the federal level, the use of pure solitary confinement (one man, one cell) is less common than placement in Special Housing Units (SHUs), defined by the BOP as “housing units in Bureau institutions where inmates are securely separated from the general inmate population, and may be housed either alone *or with other inmates*.” SHU conditions raise many (if not all) of the same concerns as pure solitary confinement, and the BOP’s reliance on these units warrants scrutiny during the hearing.