



**Written Statement of the American Civil Liberties Union For the Inter-
American Commission on Human Rights**

Hearing on

Solitary Confinement in the Americas
Tuesday, March 12, 2013

The American Civil Liberties Union (ACLU) welcomes this opportunity to submit written testimony to the Inter-American Commission on Human Rights for its hearing on solitary confinement in the Americas. This is an important issue within the United States, and one on which we hope that the Commission can take action.

We urge the Commission to take up the issue of solitary confinement in the Americas; undertake a mission to observe and report on this practice in the Americas; and recommend to all Member States of the Organization of American States that they adopt measures strictly limiting, and in some instances, prohibiting this practice.

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

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

This massive increase in the use of solitary confinement has led many in the United States to question whether it is an effective and humane use of scarce public resources. Many in the legal and medical fields criticize solitary confinement and supermax prisons as both unconstitutional and inhumane, pointing to the well-known harms associated with placing human beings in isolation and the rejection of its use in U.S. prisons decades earlier. Indeed, over a century ago, the U.S. Supreme Court noted that:

[Prisoners subject to solitary confinement] fell, after even a short confinement, into a semi-fatuous condition, from which it was next to impossible to arouse them, and others became violently insane; others still, committed suicide; while those who stood the ordeal better were not generally reformed, and in most cases did not recover sufficient mental activity to be of any subsequent service to the community.³

Other critics point to the enormous costs associated with solitary confinement. For example, supermax institutions typically cost two or three times more to build and operate than even traditional maximum-security prisons in the United States.⁴ Despite the significant costs, almost no research has been done on the outcomes produced by the increased use of solitary confinement or supermax prisons. In the research that has been conducted in the U.S., there is little empirical evidence to suggest that solitary confinement makes prisons safer. Indeed, emerging research suggests that supermax prisons actually have a negative effect on public safety.⁵

Despite these concerns, state governments and the U.S. federal government have continued to invest scarce taxpayer dollars in constructing supermax prisons and enforcing solitary confinement conditions. Yet there are stark new fiscal realities facing our communities today and for the foreseeable future. Both state and federal governments confront reduced revenue and mounting debt that are leading to severe cuts in essential public services like health and education. Given these harsh new realities, many in the United States are asking whether officials should continue to rely on solitary confinement and supermax prisons despite their high fiscal and human costs.

A. *What is solitary confinement?*

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

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

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

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

The stated purpose of solitary confinement in the United States is to confine prisoners who have violated prison rules or prisoners who are considered too dangerous to house with others. It is also sometimes used to confine prisoners who are perceived as vulnerable, such as youths, the elderly, the medically frail, or individuals identified as lesbian, gay, bisexual, transgender or intersex (LGBTI), or otherwise gender non-conforming.

B. *The detrimental effects of solitary confinement*

Solitary confinement is well recognized as painful and difficult to endure. “It’s an awful thing, solitary,” U.S. Senator John McCain wrote of his time in isolation as a prisoner of war in Vietnam. “It crushes your spirit and weakens your resistance more effectively than any other form of mistreatment.”¹² Senator McCain’s experience is consistent with the consensus among researchers that solitary confinement is psychologically harmful.¹³ For example, in their amicus brief in the U.S. Supreme Court case *Wilkinson v. Austin*, a group of nationally recognized mental health experts summarized the clinical and research literature and concluded: “No study of the effects of solitary or supermax-like confinement that lasted longer than 60 days failed to find evidence of negative psychological effects”.¹⁴ After their review of the clinical and research materials, the experts noted that “[t]he overall consistency of these findings – the same or similar conclusions reached by different researchers examining different facilities, in different parts of the world, in different decades, using different research methods – is striking.”¹⁵ A California prison psychiatrist summed it up more succinctly: “It’s a standard psychiatric concept, if you put people in isolation, they will go insane. . . . Most people in isolation will fall apart.”¹⁶

People subject to solitary confinement exhibit a variety of negative physiological and psychological reactions, including: hypersensitivity to external stimuli;¹⁷ perceptual distortions and hallucinations;¹⁸ increased anxiety and nervousness;¹⁹ revenge fantasies, rage, and irrational anger;²⁰ fears of persecution;²¹ lack of impulse control;²² severe and chronic depression;²³ appetite loss and weight loss;²⁴ heart palpitations;²⁵ withdrawal;²⁶ blunting of affect and apathy;²⁷ talking to oneself;²⁸ headaches;²⁹ problems sleeping;³⁰ confusing thought processes;³¹ nightmares;³² dizziness;³³ self-mutilation;³⁴ and lower levels of brain function, including a decline in EEG activity after only seven days in solitary confinement.³⁵

In addition to increased psychiatric symptoms generally, suicide rates and incidents of self-harm are much higher for prisoners in solitary confinement. In California, for example, although less than 10% of the state’s prison population was held in isolation units in 2004, those units accounted for 73% of all suicides.³⁶ One study examined the impact of solitary confinement on the amount of time that passes between incidents in which prisoners harm themselves.³⁷

C. Mentally ill people are dramatically overrepresented in solitary confinement

There is a popular misconception that all prisoners in solitary confinement are violent, dangerous, and disruptive, or the “worst of the worst.”³⁸ But any prison system in the United States only has a handful of prisoners that actually meet this description. If the use of solitary confinement were restricted solely to the dangerous and predatory, most supermax prisons and isolation units would stand virtually empty. The reality is that solitary confinement is overused and misused in the United States. One reason is that elected officials pushed to build solitary confinement facilities based on a desire to appear “tough on crime,” rather than actual need as expressed by corrections professionals.³⁹ As a result, many states built large supermax facilities they didn’t need, and now fill the cells with relatively low-risk prisoners.⁴⁰

Who are the thousands of people who end up in solitary confinement in the United States? The vast majority are not incorrigibly violent criminals. Instead, many are severely mentally ill or cognitively disabled prisoners who find it difficult to function in prison settings or to understand and follow

prison rules.⁴¹ For example, in Indiana’s supermax in the central United States, prison officials have admitted that “well over half” of the prisoners are mentally ill.⁴² On average, researchers estimate that at least 30% of the prisoners held in solitary confinement in the United States are mentally ill.⁴³

Solitary confinement is psychologically difficult for even relatively healthy individuals, but it is devastating for those with mental illness. When people with severe mental illness are subjected to solitary confinement they deteriorate dramatically. Many engage in bizarre and extreme acts of self-injury and suicide. It is not unusual for prisoners in solitary confinement to compulsively cut their flesh, repeatedly smash their heads against walls, swallow razors and other harmful objects, or attempt to hang themselves. In Indiana’s supermax, a mentally ill prisoner killed himself by self-immolation; another man choked himself to death with a washcloth.⁴⁴ Such incidents are all too common in similar facilities across the country.

These shattering impacts of solitary confinement are so well-documented that federal courts in the United States have repeatedly held that placing the severely mentally ill in such conditions is cruel and unusual punishment under the Eighth Amendment to the U.S. Constitution.⁴⁵

D. Children are also subjected to the damaging effects of solitary confinement

Youth in both the juvenile justice system and the adult correctional system in the United States are routinely subjected to solitary confinement. As with adults, solitary confinement is used to protect, manage, punish and even to medically treat young people. In adult prisons and jails, corrections officials often place adolescents in “protective custody” for safety reasons. Unfortunately, this “protective custody” is almost always synonymous with solitary confinement. Despite the prevalence of youth under age 18 in adult facilities in the United States, which the ACLU and Human Rights Watch recently estimated at greater than 95,000 in 2011, most adult correctional systems offer few if any alternatives to solitary confinement as a means of protecting youth.⁴⁶ In adult correctional systems, youth are also often subjected to solitary confinement to punish them for violating facility rules designed to manage adult inmates. As a result, young people may spend weeks, months or years in solitary confinement.

In juvenile facilities, solitary confinement is frequently used as a sanction for disciplinary infractions. Such sanctions can last for hours, days, weeks or longer, and often open the door to abusive isolation practices.⁴⁷ While the use of solitary confinement in youth facilities is generally of much shorter duration than in adult facilities, the greater impact of isolation on the psyche of children and its negative effect on youth development—and ultimately, rehabilitation—raise serious legal and moral questions about current practices.

Children have special developmental needs and are even more vulnerable to the harms of prolonged isolation than adults.⁴⁸ Young people’s brains are still developing, placing youth at higher risk of psychological harm when healthy development is impeded.⁴⁹ Children experience time differently than adults, and have a special need for social stimulation.⁵⁰ And youth frequently enter the criminal justice system with histories of substance abuse, mental illness and childhood trauma, at far higher levels than in the general population, which often go untreated in isolation, exacerbating the harmful effects of solitary confinement.⁵¹ A serious and tragic consequence of the solitary confinement of

youth is the increased risk of suicide and self-harm, including cutting and other acts of self-mutilation. In juvenile facilities more than 50% of all youth suicides occur in isolation.⁵² At the same time, youth in isolation are routinely denied minimum education, mental health, treatment, and nutrition,⁵³ which directly effects their ability to successfully re-enter society and become productive adults.⁵⁴

For these reasons, efforts are underway to end this practice. Legislators in some states, like Florida, California, Montana, and Nevada have introduced legislation to limit solitary confinement of youth⁵⁵ while other states have raised the age at which children may be charged as adults.⁵⁶ Last year, the U.S. Department of Justice issued national standards under the Prison Rape Elimination Act (PREA) stating that “[a]s a matter of policy, the Department supports strong limitations on the confinement of adults with juveniles.”⁵⁷ As part of these standards the Department has recognized the dangers of placing children in solitary and mandated that facilities make “best efforts” to avoid isolating them.⁵⁸ The U.S. Attorney General’s National Task Force on Children Exposed to Violence recently concluded that, “nowhere is the damaging impact of incarceration on vulnerable children more obvious than when it involves solitary confinement.”⁵⁹ Internationally, the United Nations Special Rapporteur on Torture has recently called for a global ban on the solitary confinement of anyone below the age of 18 years.⁶⁰ Human Rights Watch and the ACLU have also called on the United States to ban this practice, arguing that there is no justification for holding a child in solitary confinement.⁶¹

A separate, joint statement of Human Rights Watch and the ACLU on this topic has also been submitted to the Commission.

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

For prisoners and detainees in the United States who are lesbian, gay, bisexual, transgender, have intersex conditions (LGBTI), or are gender nonconforming, solitary confinement is too often the correctional management tool used to separate them from the general population. This problem has now been recognized in the U.S. Department of Justice’s recently finalized PREA regulations.⁶² Among other provisions, the new regulations include measures to prevent the use of segregation and solitary confinement in correctional facilities. While correctional officials often justify the use of solitary confinement as necessary protection for vulnerable LGBTI prisoners, the stigmatizing effect of this practice can cause significant harm. For example, untreated gender identity disorder (GID) and denial of medically necessary care for those who are transgender often results in depression and suicidal ideation, among other symptoms, which are made significantly worse by forced segregation and isolation. The new PREA regulations recognize that solitary confinement for LGBTI prisoners can be psychologically damaging and physically dangerous.⁶³ At this time, however, such isolation remains broadly practiced by corrections facilities and places of detention across the United States.

Increasingly, concerns have also been raised about the placement of vulnerable prisoners in segregation in immigration detention facilities around the United States. In May 2012, the American Civil Liberties Union Foundation of Georgia (ACLU of Georgia) released a report on the four immigration detention facilities in the U.S. state of Georgia titled *Prisoners of Profit: Immigrants*

*and Detention in Georgia.*⁶⁴ The report covers the largest immigration detention facility in the United States, the Stewart Detention Center, as well as the North Georgia Detention Center (NGDC), Irwin County Detention Center, and Atlanta City Detention Center (ACDC). The report's findings raise serious concerns regarding violations of detainees' rights, including the placement of individuals with mental disabilities in segregation units and the failure to provide adequate mental health care.⁶⁵

F. Solitary confinement is inconsistent with international human rights law and standards

The U.N. Committee Against Torture has recommended that the practice of long-term solitary confinement be abolished altogether and has been particularly critical of solitary confinement practices in the United States.⁶⁶ Moreover, in a groundbreaking global study on solitary confinement, presented in 2011 to the United Nations General Assembly, the U.N. Special Rapporteur on Torture called on all countries to ban the practice, except in very exceptional circumstances, as a last resort, and for as short a time as possible. The Special Rapporteur concluded that solitary confinement is a harsh measure that may cause serious psychological and physiological adverse effects. He found that solitary confinement can amount to cruel, inhuman or degrading treatment or punishment and even torture. He recommended both the prohibition of solitary confinement as punishment and the implementation of alternative disciplinary sanctions. He also called for increased safeguards from abusive and prolonged solitary confinement, the universal prohibition of solitary confinement exceeding 15 days, and a ban on solitary confinement for children and persons with mental disabilities.⁶⁷

II. Solitary Confinement is Costly and Jeopardizes Public Safety

Despite its pervasive use in U.S. prisons, jails, youth facilities and detention centers, there is little evidence on the utility or cost-effectiveness of solitary confinement as a corrections tool.⁶⁸ In particular, there is little evidence that solitary confinement, supermax institutions or administrative segregation units significantly reduce prison violence or deter future crimes.⁶⁹ A 2006 study found that opening a supermax prison or special housing unit (SHU) had no effect on prisoner-on-prisoner violence in the U.S. states of Arizona, Illinois and Minnesota.⁷⁰ The same study found that creating such isolation units had only limited impact on prisoner-on-staff violence in Illinois, none in Minnesota, and actually increased violence in Arizona.⁷¹ A similar study in the U.S. state of California found that supermax or administrative segregation prisons had increased rather than decreased violence levels.⁷²

Some proponents of solitary confinement assert that isolating “the worst of the worst” creates a safer general population environment where prisoners will have greater freedom and access to educational and vocational programs.⁷³ Others defend solitary confinement as a general deterrent of disruptive behavior throughout the prison system.⁷⁴ However, there is only anecdotal support for these beliefs.⁷⁵ Indeed, some researchers in the U.S. have concluded that more severe restrictions imposed on prisoners in solitary confinement increase levels of violence and other behavioral and management problems.⁷⁶

Although there is little empirical evidence that solitary confinement is an effective prison

management tool, there is ample evidence that it is the most costly form of incarceration. Supermax prisons and segregation units are considerably more costly to build and operate, sometimes costing two or three times as much as conventional facilities.⁷⁷ Staffing costs are much higher – prisoners are usually required to be escorted by two or more officers any time they leave their cells, and work that in other prisons would be performed by prisoners (such as cooking and cleaning) must be done by paid staff. Solitary confinement therefore represents an enormous investment of public resources. For example, a 2007 estimate from Arizona put the annual cost of holding a prisoner in solitary confinement at approximately \$50,000 compared to only about \$20,000 for the average prisoner.⁷⁸ In the U.S. state of Maryland, the average cost of housing a prisoner in the state’s segregation units is three times greater than in a general population facility; in the U.S. state of Ohio it is twice as high; and in the U.S. state of Texas the costs are 45% greater.⁷⁹ In the U.S. state of Connecticut the cost of solitary is nearly twice as much as the average daily expenditure per prisoner;⁸⁰ and in Illinois it is three times the statewide average.⁸¹

Not only is there little evidence that the enormous outlay of resources for these units makes prisons safer, there is growing concern that such facilities are actually detrimental to public safety. A blue ribbon commission chaired by the Hon. John J. Gibbons and Nicholas de B. Katzenbach raised concerns regarding the overuse of solitary confinement, particularly the practice of releasing prisoners directly from segregation settings to the community.⁸² One study of prisoners held in solitary confinement noted that such conditions may “severely impair . . . the prisoner’s capacity to reintegrate into the broader community upon release from imprisonment.”⁸³ The pervasive use of solitary confinement means that thousands of prisoners are now returning to the community after spending months or years in isolation. This means that society must face the huge problem of re-socializing individuals who are poorly prepared to return safely to the community.

In most systems, many prisoners in solitary confinement are released directly to the community. In California, for example, nearly 40% of segregated prisoners are released directly to the community without first transitioning to lower security units.⁸⁴ The U.S. state of Colorado also releases about 40% of its supermax population directly to the community.⁸⁵ Mental health experts have noted the problems with direct release from isolation and called for prerelease programs to help prisoners held in solitary confinement transition to the community more safely.⁸⁶

Although there is not yet comprehensive national research comparing recidivism rates for prisoners released directly from solitary with those released from general population, preliminary research in California suggests that the rates of return to prison are at least 20% higher for solitary confinement prisoners.⁸⁷ Similarly in Colorado, two-thirds of prisoners in solitary confinement who were released directly to the community returned to prison within three years, but prisoners who transitioned from solitary confinement into the general prison population before community re-entry experienced a six percent reduction in their comparative recidivism rate for the same period.⁸⁸

A 2001 study found that 92% of Connecticut prisoners who had been held at the state’s supermax prison were rearrested within three years of release, while only 66% of prisoners who had not been held in administrative segregation were rearrested in the same time period.⁸⁹ These findings are consistent with a recent study in the U.S. state of Washington that tracked 8,000 former prisoners upon release. The study found that not only were those who came from segregation housing more

likely to commit new offenses upon release, they were also more likely to commit violent crimes. Significantly, it was prisoners released directly from segregation who had much higher recidivism rates compared to individuals who spent time in a conventional prison setting before return to the community (64% compared with 41%).⁹⁰ This finding suggests a direct link between recidivism and the extreme and debilitating conditions in segregation.⁹¹

III. There are Better Alternatives to Solitary Confinement

A growing number of states have taken steps, either independently or because of litigation, to regulate the use of solitary confinement for both disciplinary and non-disciplinary reasons. These steps have been taken for several reasons, including the human and fiscal costs of solitary confinement, concern for public safety, and the lack of empirical evidence to support the practice. As a recent *New York Times* article explains, these measures represent an “about face” from the routine use of solitary confinement.⁹² Below we briefly discuss some of the states beginning to address the overuse of solitary confinement in the last few years.

In March 2011, the State of **Maine** Department of Corrections recommended tighter controls on the use of special management units (SMUs). Due to subsequent reforms, the SMU population was cut by over fifty percent; expanded access to programming and social stimulation for prisoners was implemented; and personal approval of the Commissioner of Corrections is now required to place a prisoner in the SMU for longer than 72 hours.⁹³

Over the last few years, the State of **Mississippi** has also reformed its use of solitary confinement. In the process, the state reduced the segregation population of one institution from 1000 to 150 and eventually closed the entire unit.⁹⁴ Prison officials estimate that diverting prisoners from solitary confinement under Mississippi’s new model saves about \$8 million annually.⁹⁵ At the same time, changes in the management of the solitary confinement population reduced violence levels by 70%.⁹⁶

State legislatures have also addressed the problems created by the overuse of solitary confinement and its damaging effects on the mentally ill. For example, the State of **New York** passed a law that excludes the seriously mentally ill from solitary confinement; requires periodic assessment and monitoring of the mental status of all prisoners subject to solitary confinement for disciplinary reasons; creates a non-disciplinary unit for prisoners with psychiatric disabilities where a therapeutic milieu is maintained and prisoners are subject to the least restrictive environment consistent with their needs and mental status; and requires that all staff be trained to deal with prisoners with mental health issues.⁹⁷

Several U.S. states, including Colorado, Michigan, Illinois, New Mexico, Virginia and Texas, as well as the U.S. Federal Bureau of Prisons have recently initiated other reforms.

- The U.S. **Federal Bureau of Prisons** has recently announced its intention to conduct the first-ever review of the agency’s use of solitary confinement.⁹⁸ The Bureau of Prisons holds more than 215,000 prisoners.⁹⁹ Last June, the Director of the Bureau stated in a hearing before the U.S. Senate Judiciary Committee that approximately 7% of its population was

held in some form of restricted housing that constitutes solitary confinement at any given time.¹⁰⁰ Recent reports suggest that the Bureau may have taken steps to reduce the proportion of its population in solitary confinement. But to date, the Bureau had made no information public about its use of solitary confinement.

- In January 2013, the **Illinois** Department of Corrections (IDOC) closed its supermax prison, Tamms Correctional Center, which was designed to house prisoners in complete isolation. According to the IDOC, Tamms was selected to close in part because it was the most expensive facility to operate; it cost over \$60,000 a year – more than three times the state average – to house an inmate at Tamms.¹⁰¹
- In 2011, the **Colorado** Legislature required a review of administrative segregation and reclassification efforts for prisoners with mental illness or developmental disabilities.¹⁰² At the same time, the Colorado Department of Corrections (CDOC) identified administrative segregation reform as a management priority and made a formal request to the National Institute of Corrections, U.S. Department of Justice, for an external review and analysis of its administrative segregation operations. As a result of the reforms implemented through this process in the last few months, CDOC has reduced its administrative segregation population by 36.9%.¹⁰³ After taking these steps to reduce the use of administrative segregation, the CDOC recently announced the closure of a 316-bed supermax facility, which is projected to save the state \$4.5 million in Fiscal Year 2012-13 and \$13.6 million in Fiscal Year 2013-14.¹⁰⁴
- Correctional leaders in the State of **Michigan** have recently reformed administrative segregation practices through incentive programs that have reduced the length of stays in isolation, the number of prisoners subject to administrative segregation, and the number of incidents of violence and other misconduct. Reduction in segregation has produced better prisoner outcomes at less cost; segregation in Michigan costs nearly double what the state typically pays to incarcerate each prisoner.¹⁰⁵
- In **New Mexico** the state legislature mandated a study on solitary confinement's impact on prisoners, its effectiveness as a prison management tool, and its costs.¹⁰⁶
- The Lieutenant Governor of **Texas** similarly commissioned a study on the use of administrative segregation in the Texas Department of Criminal Justice, including the reasons for its use, its impact on public safety and prisoner mental health, possible alternative prison management strategies, and the need for greater reentry programming for the population.¹⁰⁷
- The State of **Virginia** Senate passed a joint resolution mandating a legislative study on alternative practices to limit the use of solitary confinement, cost savings associated with limiting its use, and the impact of solitary confinement on prisoners with mental illness, as well as alternatives to segregation for such prisoners.¹⁰⁸

Finally, in recognition of the inherent problems of solitary confinement, the **American Bar Association** (ABA) recently approved standards to reform its use. The ABA's *Standards for Criminal Justice, Treatment of Prisoners* address all aspects of solitary confinement (the Standards use the term "segregated housing").¹⁰⁹ The solutions presented in the Standards represent a consensus view of representatives of all segments of the criminal justice system who collaborated exhaustively in formulating the final ABA Standards.¹¹⁰ The following illustrate some of those solutions:

- a. Provide adequate and meaningful process prior to placing or retaining a prisoner in segregation to be sure that segregation is warranted. (ABA Treatment of Prisoners Standard 23-2.9 [hereinafter cited by number only])
- b. Limit the duration of disciplinary segregation — in general, stays should be brief and should rarely exceed one year. Longer-term segregation should be imposed only if the prisoner poses a continuing and serious threat. Segregation for protective reasons should take place in the least restrictive setting possible. (23-2.6, 23-5.5)
- c. Decrease extreme isolation by allowing for in-cell programming, supervised out-of-cell exercise time, face-to-face interaction with staff, access to television or radio, phone calls, correspondence, and reading material. (23-3.7, 23-3.8)
- d. Decrease sensory deprivation by limiting the use of auditory isolation, deprivation of light and reasonable darkness, punitive diets, etc. (23-3.7, 23-3.8)
- e. Allow prisoners to gradually gain more privileges and be subject to fewer restrictions, even if they continue to require physical separation. (23-2.9)
- f. Refrain from placing prisoners with serious mental illness in segregation. Instead, maintain appropriate, secure mental-health housing for such prisoners. (23-2.8, 23-6.11)
- g. Carefully monitor prisoners in segregation for mental health deterioration and deal with deterioration appropriately if it occurs. (23-6.11)

IV. Recommendations

The ACLU commends the Commission for taking up the important issue of solitary confinement in the Americas. And we thank the Commission for the opportunity to testify regarding the uses and forms of solitary confinement in the United States. The ACLU urges the Commission to conduct an in-depth review of this issue in an effort to end the overuse of solitary confinement across the region.

To this end, we recommend that the Commission initiate an investigation into the practice of solitary confinement in the Americas, including in the United States, and based on the findings of this investigation, prepare a thematic report on the issue. In drafting its report the Commission should pay particular attention to the ABA's *Standards for Criminal Justice, Treatment of Prisoners* as a guide to appropriate policies and practices on the use of solitary confinement for all but the most vulnerable inmates, such as children and those with mental disabilities. We also recommend that the Commission take into consideration the findings and recommendations made by the United Nations Special Rapporteur on Torture, Mr. Juan Mendez, in his report submitted to the United Nations General Assembly in September 2011. This report provides a useful resource for analyzing solitary confinement practice under relevant international human rights laws and standards.

Based on the information presented during this hearing, particularly on practices in the United States, we recommend that this Commission immediately recommend that all member states adopt measures strictly limiting the use of solitary confinement, and prohibiting its use on persons below 18 years of age and persons with mental disabilities.

Finally, we attach as an appendix to this submission a list of questions that the Commission should consider asking the government of the United States in the course of any investigation of the issue of solitary confinement in the Americas.

About the American Civil Liberties Union

The ACLU is a nation-wide, non-profit, non-partisan organization that has worked daily in courts, communities and legislatures across the United States since 1920 to protect and preserve the fundamental rights and liberties of individuals set forth in the Bill of Rights of the U.S. Constitution, ratified treaties, federal and state law. The ACLU has more than a half million members and an affiliate in every state, the District of Columbia and Puerto Rico. Consistent with that mission, the ACLU established the National Prison Project in 1972 to protect and promote the civil and constitutional rights of prisoners in the United States. Since its founding, the Project has challenged unconstitutional conditions of confinement and over-incarceration at the local, state and federal level through public education, advocacy and successful litigation. In 2004, the ACLU created a Human Rights Program specifically dedicated to holding the U.S. government accountable to universal human rights principles in addition to rights guaranteed by the U.S. Constitution. ACLU has brought several petitions and testified before the Commission on various human rights issues in the United States.

The ACLU's national *Stop Solitary* campaign, which was launched in 2010, works to end the pervasive use of long-term solitary confinement and to divert children and persons suffering from mental disabilities and mental illness out of solitary altogether. Due to unprecedented state budget problems that are forcing a second look at the explosive growth in corrections costs, the current focus of the *Stop Solitary* campaign is to ensure that the public and our leaders know that the monetary cost of solitary confinement, coupled with the human cost of increased psychological suffering and sometimes irreparable harm, far outweigh any purported benefits, and that there are more effective, humane and less costly alternatives.

Appendix 1.

Suggested Questions for the United States Government

- A. The Director of the U.S. Bureau of Prisons has testified that at any given time as many as 7% of detainees in its custody are in a form of segregation that amounts to solitary confinement (defined as physical and social isolation of 22-24 hours per day). Please provide additional data:
- a. State the number of prisoners in the custody of the Federal Bureau of Prisons who have been held in solitary confinement for more than 15 days.
 - b. For those prisoners identified in question 1A, state the following:
 1. The institutions where the prisoners are held and the number of prisoners in solitary confinement in each facility;
 2. The mean and median length of stay in solitary confinement in each facility where prisoners are so confined;
 3. The number of prisoners held in solitary confinement in the last 24 months who have a Medical Duty Status (MDS) Assignment for mental illness or mental retardation, as set forth in Chapter 2 of the Federal Bureau of Prisons, Program Statement 5310.12 "Psychology Services Manual" (pp. 12-13);
 4. The reason for placement in or classification to solitary confinement for each prisoner so held; and
 5. The number of suicides, attempted suicides, or other incidents of "self-harm" in the last 24 months for prisoners held in solitary confinement.
 - c. Please provide such data for detainees held in solitary confinement in federal civil detention in connection with their immigration status (or held under contract in facilities that hold such detainees) and in federal juvenile facilities (or held under contract in facilities that hold such detainees).
 - d. Please provide such data for all individuals in the United States held in solitary confinement by state and local officials in prisons, jails, juvenile facilities, or any other places of detention.
 - e. What measures are required by federal, state, and local governments to limit or regulate the imposition of solitary confinement on particularly vulnerable detainees, including children, non-citizens, the elderly, persons with mental disabilities, and LGBTI inmates?

Suggested recommendations to the United States Government

- A. The federal, state and local governments should promote transparency with regard to all physical and social isolation practices by making public all relevant rules and regulations governing placement and conditions in isolation, the costs associated with these practices, and data about rates and duration of all physical and social isolation practices, and particularly solitary confinement.
- B. The federal, state and local governments should ban prolonged solitary confinement and strictly regulate all other physical and social isolation practices.

- C. The federal, state and local governments should ban the solitary confinement of children and persons with mental disabilities.
- D. The federal, state and local governments should compile data on the effect of isolation, and particularly solitary confinement, on children.

¹ DANIEL P. MEARS, URBAN INST., EVALUATING THE EFFECTIVENESS OF SUPERMAX PRISONS 4 (2006).

² Angela Browne, Alissa Cambier, Suzanne Agha, *Prisons Within Prisons: The Use of Segregation in the United States*, 24 FED'L SENTENCING REPORTER 46 (2011).

³ *In re Medley*, 134 U.S. 160, 168 (1890).

⁴ MEARS, *supra* note 1, at ii.

⁵ See, e.g., KERAMET REITER, PAROLE, SNITCH, OR DIE: CALIFORNIA'S SUPERMAX PRISONS & PRISONERS, 1987-2007, 47-51 (2010); MAUREEN L. O'KEEFE, COLO. DEP'T OF CORRECTIONS, ANALYSIS OF COLORADO'S ADMINISTRATIVE SEGREGATION 25 (2005).

⁶ Eric Lanes, *The Association of Administrative Segregation Placement and Other Risk Factors with the Self-Injury-Free Time of Male Prisoners*, 48 J. OF OFFENDER REHABILITATION 529, 532 (2009).

⁷ *Id.*

⁸ *Id.* Since 1996 the U.S. Attorney General has been authorized by regulation to impose additional restrictions called Special Administrative Measures, or SAMs, on some prisoners in the U.S. federal Bureau of Prisons, who are accused or convicted of terrorism-related offenses. See U.S. Dep't Justice, Fact Sheet: Prosecuting and Detaining Terror Suspects in the U.S. Criminal Justice System, June 9, 2009, available at <http://www.justice.gov/opa/pr/2009/June/09-ag-564.html>; Kareem Fahim, *Restrictive Terms of Prisoner's Confinement Add Fuel to Debate*, N.Y. TIMES, Feb. 4, 2009, at A27, available at <http://www.nytimes.com/2009/02/05/nyregion/05hashmi.html?pagewanted=all>. The SAMs can include limitations on correspondence, visiting, use of the telephone and email communication (including with counsel), religious observances, and interviews with the news media – although the full scope of their impact and application is unknown. 28 C.F.R. 501.3 (1996). See also John Schwartz and Benjamin Weiser, *Judge Allows Trial on Terrorist's Challenge to Prison Rules*, N.Y. TIMES, Oct. 3, 2011, at A23, available at <http://www.nytimes.com/2011/10/04/nyregion/trial-allowed-on-terrorists-suit-over-prison-rules.html>. SAMs can also be imposed on those who are not in solitary confinement.

⁹ Leena Kurki & Norval Morris, *The Purposes, Practices, and Problems of Supermax Prisons*, 28 CRIME AND JUST. 385, 389 (2001).

¹⁰ ABA CRIM. JUST. STANDARDS ON THE TREATMENT OF PRISONERS, Standard 23-1.0(r) (2010), available at <http://www.abanet.org/crimjust/policy/midyear2010/102i.pdf> [hereinafter ABA STANDARDS].

¹¹ *Id.* Standard 23-1.0(o).

¹² Atul Gawande, *Hellhole*, THE NEW YORKER, Mar. 30, 2009, available at http://www.newyorker.com/reporting/2009/03/30/090330fa_fact_gawande.

¹³ See, e.g., Stuart Grassian, *Psychopathological Effects of Solitary Confinement*, 140 AM. J. OF PSYCHIATRY 1450 (1983); Richard Korn, *The Effects of Confinement in the High Security Unit at Lexington*, 15 SOC. JUST. 8 (1988); Stanley L. Brodsky & Forest R. Scogin, *Inmates in Protective Custody: First Data on Emotional Effects*, 1 FORENSIC

REP. 267 (1988); Craig Haney, *Mental Health Issues in Long-Term Solitary and "Supermax" Confinement*, 49 CRIME & DELINQ. 124 (2003); Holly A. Miller & Glenn R. Young, *Prison Segregation: Administrative Detention Remedy or Mental Health Problem?*, 7 CRIM. BEHAV. AND MENTAL HEALTH 85 (1997); HANS TOCH, *MOSAIC OF DESPAIR: HUMAN BREAKDOWN IN PRISON* (1992).

¹⁴ Brief of Professors and Practitioners of Psychology and Psychiatry as Amicus Curiae Supporting Respondent at 4, *Wilkinson v. Austin*, 545 U.S. 209 (2005) (No. 04-4995) [hereinafter Brief of Amicus Curiae]. In *Wilkinson*, 545 U.S. at 223, a unanimous court concluded that the conditions in Ohio's supermax facility, the Ohio State Penitentiary (OSP) gave rise to a liberty interest in avoiding them: "we are satisfied that that assignment to OSP imposes an atypical and significant hardship under any plausible baseline."

¹⁵ Brief of Amicus Curiae, *supra* note 14, at 23.

¹⁶ HUMAN RIGHTS WATCH, *ILL-EQUIPPED: U.S. PRISONS AND OFFENDERS WITH MENTAL ILLNESS* 149 n. 513 (2003).

¹⁷ Grassian, *supra* note 13, at 1452.

¹⁸ *Id.*; Haney, *supra* note 13, at 130, 134; *see generally* Korn, *supra* note 13.

¹⁹ Grassian, *supra* note 13, at 1452-53; Haney, *supra* note 13, at 130, 133; Holly A. Miller, *Reexamining Psychological Distress in the Current Conditions of Segregation*, 1 J. OF CORRECTIONAL HEALTHCARE 39, 48 (1994); *see generally* Brodsky & Scogin, *supra* note 12.

²⁰ Grassian, *supra* note 13, at 1453; Miller & Young, *supra* note 13, at 91; Haney, *supra* note 13, at 130, 134; *see generally* TOCH, *supra* note 13.

²¹ Grassian, *supra* note 13, at 1453.

²² *Id.*; Miller & Young, *supra* note 13, at 92.

²³ Grassian, *supra* note 13, at 1453; Miller & Young, *supra* note 13, at 92; Haney, *supra* note 13, at 131.

²⁴ Haney, *supra* note 13, at 130; *see generally* Korn, *supra* note 13.

²⁵ Haney, *supra* note 13, at 131.

²⁶ Miller & Young, *supra* note 13, at 91; *see generally* Korn, *supra* note 13.

²⁷ Miller & Young, *supra* note 13, at 91; *see generally* Korn, *supra* note 13.

²⁸ Haney, *supra* note 13, at 134; *see generally* Brodsky & Scogin, *supra* note 13.

²⁹ Haney, *supra* note 13, at 133.

³⁰ *Id.*

³¹ Haney, *supra* note 13, at 137; *see generally* Brodsky & Scogin, *supra* note 13.

³² Haney, *supra* note 13, at 133.

³³ *Id.*

³⁴ Grassian, *supra* note 13, at 1453; Lanes, *supra* note 6, at 539-40.

³⁵ Paul Gendreau, N.L. Freedman, G.J.S. Wilde & G.D. Scott, *Changes in EEG Alpha Frequency and Evoked Response Latency During Solitary Confinement*, 79 J. OF ABNORMAL PSYCHOL. 54, 57-58 (1972).

³⁶ Expert Report of Professor Craig Haney at 45-46 n. 119, *Coleman v. Schwarzenegger*, 2008 WL 8697735 (E.D. Cal 2010) (No: Civ S 90-0520 LKK-JFM P).

³⁷ Lanes, *supra* note 6, at 539-40.

³⁸ Kurki & Morris, *supra* note 9, at 391.

³⁹ *Id.* at 390-91.

⁴⁰ Roy King, *The Rise and Rise of Supermax: An American Solution in Search of a Problem?*, 1 PUNISHMENT & SOC'Y. 163, 177 (1999).

⁴¹ Haney, *supra* note 13, at 127.

⁴² Howard Greninger, *Suit Targets Carlisle Prison*, TERRE HAUTE TRIBUNE-STAR, Feb. 4, 2005.

⁴³ See, e.g., James Ridgeway & Jean Casella, *Locking Down The Mentally Ill: Solitary Confinement Cells Have Become America's New Asylums*, THE CRIME REP., Feb.20, 2010, <http://www.thecrimereport.org/archive/locking-down-the-mentally-ill>; MARY BETH PFEIFFER, CRAZY IN AMERICA: THE HIDDEN TRAGEDY OF OUR CRIMINALIZED MENTALLY ILL (2007); JENNIFER R. WYNN, ALISA SZATROWSKI & GREGORY WARNER, THE CORRECTIONAL ASSOCIATION OF NEW YORK, MENTAL HEALTH IN THE HOUSE OF CORRECTIONS: A STUDY OF MENTAL HEALTH CARE IN NEW YORK STATE PRISONS 48 (2004).

⁴⁴ Karin Grunden, *Man found hanging in cell at Wabash Valley Correctional Facility*, TERRE HAUTE TRIBUNE -STAR, Oct. 1, 2003.

⁴⁵ See, e.g., Jones 'El v. Berge, 164 F. Supp. 2d 1096, 1101-02 (W.D. Wis. 2001); Ruiz v. Johnson, 37 F. Supp. 2d 855, 915 (S.D. Tex. 1999), *rev'd on other grounds*, 243 F.3d 941 (5th Cir. 2001), *adhered to on remand*, 154 F. Supp. 2d 975 (S.D. Tex. 2001) ("Conditions in TDCJ-ID's administrative segregation units clearly violate constitutional standards when imposed on the subgroup of the plaintiffs' class made up of mentally-ill prisoners"); *Coleman v. Wilson*, 912 F. Supp. 1282, 1320-21 (E.D. Cal. 1995); *Madrid v. Gomez*, 889 F. Supp. 1146, 1265-66 (N.D. Cal. 1995); *Casey v. Lewis*, 834 F. Supp. 1477, 1549-50 (D. Ariz. 1993); *Langley v. Coughlin*, 715 F. Supp. 522, 540 (S.D.N.Y. 1988) (holding that evidence of prison officials' failure to screen out from SHU "those individuals who, by virtue of their mental condition, are likely to be severely and adversely affected by placement there" states an Eighth Amendment claim).

⁴⁶ HUMAN RIGHTS WATCH & THE AMERICAN CIVIL LIBERTIES UNION, GROWING UP LOCKED DOWN: YOUTH IN SOLITARY CONFINEMENT IN JAILS AND PRISONS ACROSS THE UNITED STATES, 132 (2012), *available at* <http://www.aclu.org/growinguplockeddown>.; WASH. COAL. FOR THE JUST TREATMENT OF YOUTH, A REEXAMINATION OF YOUTH INVOLVEMENT IN THE ADULT CRIMINAL JUSTICE SYSTEM IN WASHINGTON: IMPLICATIONS OF NEW FINDINGS ABOUT JUVENILE RECIDIVISM AND ADOLESCENT BRAIN DEVELOPMENT 8 (2009), *available at* http://www.columbialegal.org/files/JLWOP_cls.pdf.

⁴⁷ Sandra Simkins, et al., *The Harmful Use of Isolation in Juvenile Facilities: The Need for Post-Disposition Representation*, 38 WASH. U. J. L. & POLICY 241 (2012), *available at* <http://digitalcommons.law.wustl.edu/cgi/viewcontent.cgi?article=1019&context=wujlp>; LINDSAY M. HAYES, NAT'L CTR. ON INSTITUTIONS AND ALTERNATIVES JUVENILE SUICIDE IN CONFINEMENT: A NATIONAL SURVEY 40 (2004).

⁴⁸ AM. ACAD. OF CHILD & ADOLESCENT PSYCHIATRY, POLICY STATEMENT ON SOLITARY CONFINEMENT OF JUVENILE OFFENDERS (Apr. 2012), *available at* http://www.aacap.org/cs/root/policy_statements/solitary_confinement_of_juvenile_offenders; Sandra Simkins et al., *The*

Harmful Use of Isolation in Juvenile Facilities: The Need for Post-Disposition Representation, 38 WASH. U.J.L. & POL'Y 241, 257-61 (2012).

⁴⁹ Jay N. Giedd, *Structural Magnetic Resonance Imaging of the Adolescent Brain*, 1021 ANNALS N.Y. ACAD. SCI. 77 (2004), available at <http://intramural.nimh.nih.gov/research/pubs/giedd05.pdf>; Laurence Steinberg, *Cognitive and Affective Development in Adolescence*, 9 TRENDS IN COGNITIVE SCI. 69 (2005), available at <http://www.temple.edu/psychology/lds/documents/CognitiveandAffectiveDEvelopmentTICS.pdf>.

⁵⁰ Laurence Steinberg et al., *Age Differences in Future Orientation and Delay Discounting*, 80 CHILD DEV. 28, (2009), available at <http://www.wisspd.org/htm/ATPracGuides/Training/ProgMaterials/Conf2011/AdDev/ADFO.pdf>; Jennifer Woolard et al., *Juveniles within Adult Correctional Settings: Legal Pathways and Developmental Considerations*, 4 INT'L J. FORENSIC MENTAL HEALTH 1, 9 (2005), available at <http://www.policyarchive.org/handle/10207/bitstreams/20668.pdf>.

⁵¹ HAYES, *supra* note 47; LINDA A. TEPLIN ET AL., U.S. DEPT. OF JUST., PSYCHIATRIC DISORDERS OF YOUTH IN DETENTION (2006), available at <https://www.ncjrs.gov/pdffiles1/ojdp/210331.pdf>; Patricia Kerig et al., *Posttraumatic Stress as a Mediator of the Relationship Between Trauma and Mental Health Problems Among Juvenile Delinquents*, 38 J. YOUTH & ADOLESCENCE 1214 (2009), available at <http://www.psych.utah.edu/people/people/kerig/pub/PosttraumaticStressasaMediator.pdf>; Jason Washburn et al., *Psychiatric Disorders Among Detained Youths: A Comparison of Youths Processed in Juvenile Court and Adult Criminal Court*, 59 PSYCHIATRIC SERV. 965 (2008), available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2718561/pdf/nihms109770.pdf>.

⁵² HAYES, *supra* note 47, at 28; Seena Fazel et al., *Suicide in Prisoners: A Systematic Review of Risk Factors*, 69 J. CLINICAL PSYCHIATRY 1721 (2008); see CHRISTOPHER MUOLA, U.S. DEPT. OF JUST., SUICIDE AND HOMICIDE IN STATE PRISONS AND LOCAL JAILS 9 (2005), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/shsplj.pdf>.

⁵³ HUMAN RIGHTS WATCH & THE AMERICAN CIVIL LIBERTIES UNION, GROWING UP LOCKED DOWN: YOUTH IN SOLITARY CONFINEMENT IN JAILS AND PRISONS ACROSS THE UNITED STATES, 132 (2012), available at <http://www.aclu.org/growinguplockeddown>; *Concerning Pretrial Detention of Juveniles Prosecuted as Adults: Hearing on HB 12-1139 Before the H. Comm. on Judiciary*, 68th General Assem. (Colo. 2012) (statement of Peg Ackerman, County Sheriffs of Colorado), available at http://podcache-101.granicus.com/pstore1/coloradoga/coloradoga_d0c9ed72-c055-4de2-8a9a-730e8104df44.mp4; see Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400-1450 (2004) (in which several provisions do not generally apply to disabled children convicted as adults and incarcerated in adult prisons), available at <http://idea.ed.gov/download/statute.html>; PHYSICAL ACTIVITY GUIDELINES ADVISORY COMM., PHYSICAL ACTIVITY GUIDELINES ADVISORY COMMITTEE REPORT (2008) (recommending that youth engage in moderate to vigorous physical exercise three to five times a week), available at <http://www.health.gov/PAGuidelines/Report/pdf/CommitteeReport.pdf>; DEPT. OF AGRIC., U.S. DEPT. OF HEALTH & HUM. SERV., DIETARY GUIDELINES FOR AMERICANS (2010) (recommending diet management and increased physical activity to improve public health), available at <http://www.cnpp.usda.gov/Publications/DietaryGuidelines/2010/PolicyDoc/PolicyDoc.pdf>; David E. Arredondo, *Principles of Child Development and Juvenile Justice: Information for Decision-Makers*, 5 J. CENTER FOR FAM., CHILD &CTS. 127 (2004); DEPT. OF HEALTH & HUM. SERV., EFFECTS ON VIOLENCE OF LAWS AND POLICIES FACILITATING THE TRANSFER OF YOUTH FROM THE JUVENILE TO THE ADULT JUSTICE SYSTEM: A REPORT ON RECOMMENDATIONS OF THE TASK FORCE ON COMMUNITY PREVENTIVE SERVICES 6-8 (2007), available at <http://www.cdc.gov/mmwr/pdf/tr/tr5609.pdf>; BARRY HOLMAN & JASON ZIEDENBERG, JUSTICE POLICY INST., THE DANGERS OF DETENTION (2006), available at http://www.justicepolicy.org/images/upload/06-11_REP_DangersOfDetention_JJ.pdf; S.B. 1363, 2011-12 Reg. Sess. (Ca. 2012).

⁵⁴ U.S. DEPT. OF HEALTH & HUM. SERV., EFFECTS ON VIOLENCE OF LAWS AND POLICIES FACILITATING THE TRANSFER OF YOUTH FROM THE JUVENILE TO THE ADULT JUSTICE SYSTEM: A REPORT ON RECOMMENDATIONS OF THE TASK FORCE ON COMMUNITY PREVENTIVE SERVICES 6-8 (2007), available at

<http://www.cdc.gov/mmwr/pdf/rr/rr5609.pdf>; BARRY HOLMAN & JASON ZIEDENBERG, JUSTICE POLICY INST., THE DANGERS OF DETENTION (2006), *available at* http://www.justicepolicy.org/images/upload/06-11_REP_DangersOfDetention_JJ.pdf.

⁵⁵ S.B. 812, 2013 Leg. (Fl. 2013), *available at* <http://www.flsenate.gov/Session/Bill/2013/0812> (Youth in Solitary Confinement Reduction Act); H.B. 536, 2013 Leg. (Mt. 2013), *available at* <http://data.opi.mt.gov/bills/2013/billpdf/HB0536.pdf> (Act Providing Restrictions For the Use of Long-Term Solitary Confinement; and Providing Definitions, Prohibitions, Limitations, Determination and Due Process, Conditions, and Documentation); S.B. 107, 2013 Leg. (Nv. 2013), *available at* <http://www.leg.state.nv.us/Session/77th2013/Bills/SB/SB107.pdf> (Restrict[ions on] the Use of Solitary Confinement on Persons in Confinement).

⁵⁶ CAMPAIGN FOR YOUTH JUSTICE, STATE TRENDS: LEGISLATIVE VICTORIES FROM 2005 TO 2010 REMOVING YOUTH FROM THE ADULT CRIMINAL JUSTICE SYSTEM (2011), *available at* http://www.campaignforyouthjustice.org/documents/CFYJ_State_Trends_Report.pdf.

⁵⁷ National Standards to Prevent, Detect and Respond to Prison Rape, Docket No. OAG-131, (May 16, 2012) (to be codified at 28 C.F.R. pt. 115), *available at* http://www.ojp.usdoj.gov/programs/pdfs/prea_final_rule.pdf.

⁵⁸ *Id.*

⁵⁹ ATTORNEY GENERAL’S NATIONAL TASK FORCE ON CHILDREN EXPOSED TO VIOLENCE, REPORT OF THE ATTORNEY GENERAL’S NATIONAL TASK FORCE ON CHILDREN EXPOSED TO VIOLENCE, DEFENDING CHILDHOOD: PROTECT, HEAL, THRIVE, 115, 125 (2012), *available at* <http://www.justice.gov/defendingchildhood/cev-rpt-full.pdf>.

⁶⁰ The Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman, or degrading treatment or punishment, *Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, delivered to the General Assembly*, U.N. Doc. A/66/268 (Aug. 5, 2011) (by Juan Mendez) [hereinafter Special Rapporteur].

⁶¹ HUMAN RIGHTS WATCH & THE AMERICAN CIVIL LIBERTIES UNION, GROWING UP LOCKED DOWN: YOUTH IN SOLITARY CONFINEMENT IN JAILS AND PRISONS ACROSS THE UNITED STATES, 132 (2012), *available at* <http://www.aclu.org/growinguplockeddown>.

⁶² National Standards to Prevent, Detect and Respond to Prison Rape, *supra* note 57.

⁶³ Unfortunately, LGBTI detainees in immigration detention facilities are not covered by the PREA regulations. Leslie Cooper, *New Federal Standards Offer Unprecedented Protections to LGBTI Prisoners*, ACLU BLOG (May 21, 2012, 2:25 PM), <http://www.aclu.org/blog/prisoners-rights-lgbt-rights-womens-rights/new-federal-standardsoffer-unprecedented>. Detainees in immigration facilities across the country are often subjected to inhumane conditions, including extended periods of solitary confinement, often in the name of “protecting” LGBTI detainees facing the risk of physical and sexual abuse. The ACLU of Arizona recently produced a report detailing the incredibly degrading treatment faced by LGBTI immigration detainees at facilities in that state. VICTORIA LOPEZ, IN THEIR OWN WORDS: ENDURING ABUSE IN ARIZONA IMMIGRATION DETENTION CENTERS, ACLU OF ARIZONA, (June 2011), *available at* <http://www.acluaz.org/sites/default/files/documents/detention%20report%202011.pdf>. Transgender and gay detainees are already at higher risk of sexual violence and inadequate medical care while in immigration detention. *Id.* at 23. On top of those concerns, LGBTI detainees are often subjected to long-term “protective custody” – extended periods of isolation, sometimes for 23 hours per day, and harsh treatment by detention officials. *See* Immigration Equality, *Conditions of Detention*, <http://www.immigrationequality.org/issues/detention/conditions-of-detention/> (last visited June 15, 2012).

⁶⁴ ACLU FOUNDATION OF GEORGIA, PRISONERS OF PROFIT: IMMIGRANTS AND DETENTION IN GEORGIA (Azadeh Shahshahani ed., 2012).

⁶⁵ *Id.* at 13-19. It is notable that at all four Georgia facilities, detainees who communicate mental health concerns or have mental health disabilities are punitively assigned to segregation units. *Id.* at 62, 77, 91, 105. The case of Ermis Calderone, which is detailed in the ACLU of Georgia's report, is particularly telling: he suffered a panic attack at Stewart, and although he exhibited no threat of violence to others, Ermis was placed in segregation for nearly five of the six months he was detained. *Id.* at 63. Ermis's prolonged placement in the segregation unit was also in disregard of Stewart's, Immigration and Customer Enforcement's, and international standards on the maximum time detainees can spend in segregation. *Id.* at 63, 69.

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

⁶⁷ Special Rapporteur, *supra* note 60; *see also* Jules Lobel, *Prolonged Solitary Confinement and the Constitution*, 11 U. PA. J. CONST. L. 115, 122-25 (2008); Elizabeth Vasiliades, *Solitary Confinement and International Human Rights: Why the U.S. Prison System Fails Global Standards*, 21 AM. U. INT'L L. REV. 71, 98 (2005).

⁶⁸ MEARS, *supra* note 1, at 1-2.

⁶⁹ Kurki & Morris, *supra* note 9, at 391.

⁷⁰ Chad S. Briggs, et al., *The Effect of Supermaximum Security Prisons on Aggregate Levels of Institutional Violence*, 41 CRIMINOLOGY 1341, 1341-42 (2006).

⁷¹ *Id.* at 1365-66.

⁷² REITER, *supra* note 5, at 44-46.

⁷³ Kurki & Morris, *supra* note 9, at 391.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *See* H. MILLER & G. YOUNG, *Prison Segregation: Administrative Detention Remedy or Mental Health Problem?* 7 CRIM. BEHAV. AND MENTAL HEALTH 85 (1997).

⁷⁷ CAROLINE ISAACS & MATTHEW LOWEN, AM. FRIENDS SERV. COMM., *BURIED ALIVE: SOLITARY CONFINEMENT IN ARIZONA'S PRISONS AND JAILS* 14 (2007); Daniel P. Mears & Jamie Watson, *Towards a Fair and Balanced Assessment of Supermax Prisons*, 23 JUST. Q. 233, 260 (2006).

⁷⁸ ISAACS & LOWEN, *supra* note 77, at 4. MEARS, *supra* note 1, at 20, 26, 33.

⁷⁹ MEARS, *supra* note 1, at 20, 26, 33.

⁸⁰ CONNECTICUT DEPARTMENT OF CORRECTION, AVERAGE DAILY EXPENDITURE PER INMATE, <http://www.ct.gov/doc/cwp/view.asp?a-1505&q=265600>.

⁸¹ Steve Mills, *Quinn's Prison Plan Causes Stir*, CHICAGO TRIBUNE, Feb. 23, 2012, available at

http://articles.chicagotribune.com/2012-02-23/news/ct-met-illinois-state-budget-prisons-20120223_1_super-max-maximum-security-prison-maximum-security-inmates; Dave McKinney, *Quinn Closes Super-max Downstate Tamms Prison*, LAKE COUNTY NEWS-SUN, Feb. 21, 2012, available at <http://newssun.suntimes.com/10790998-417/quinn-close-super-max-downstate-tamms-prison.html>.

⁸² COMMISSION ON SAFETY AND ABUSE IN AMERICA'S PRISONS, CONFRONTING CONFINEMENT 55 (2006), available at http://www.vera.org/download?file=2845/Confronting_Confinement.pdf.

⁸³ Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 WASH. U. J.L. & POL'Y 325, 333 (2006).

⁸⁴ REITER, *supra* note 5, at 2.

⁸⁵ O'KEEFE, *supra* note 5, at 23.

⁸⁶ Terry Kupers, *What To Do with the Survivors? Coping with the Long-term Effects of Isolated Confinement*, 35 CRIM. JUST. & BEHAV. 1005 (2008).

⁸⁷ REITER, *supra* note 5, at 50.

⁸⁸ O'KEEFE, *supra* note 5, at 25.

⁸⁹ LEGISLATIVE PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE, RECIDIVISM IN CONNECTICUT 41 (2001).

⁹⁰ COMMISSION ON SAFETY AND ABUSE IN AMERICA'S PRISONS, *supra* note 82, at 55.

⁹¹ *Id.*

⁹² Erica Goode, *Rethinking Solitary Confinement: States Ease Isolation, Saving Money, Lives and Inmate Sanity*, N.Y. TIMES, Mar. 11, 2012, at A1, A18.

⁹³ Lance Tapley, *Reform Comes to the Supermax*, PORTLAND PHOENIX, May 25, 2011, available at <http://portland.thephoenix.com/news/121171-reform-comes-to-the-supermax/>.

⁹⁴ Terry A. Kupers et al., *Beyond Supermax Administrative Segregation: Mississippi's Experience Rethinking Prison Classification and Creating Alternative Mental Health Programs*, 36 CRIM. JUST. & BEHAV. 1037, 1041 (2009); John Buntin, *Exodus: How America's Reddest State – And Its Most Notorious Prison – Became a Model of Corrections Reform*, 23 GOVERNING 20, 27 (2010).

⁹⁵ Transcript of Proceedings at 8, *Presley v. Epps*, No. 4:05-CV-00148-JAD (N.D. Miss. Aug. 2, 2010).

⁹⁶ Kupers et al., *supra* note 94, at 1043.

⁹⁷ See N.Y. MENTAL HYGIENE LAW § 45.07(z) (2011); N.Y. CORRECTION LAW §§ 137, 401, 401(a) (2008).

⁹⁸ DURBIN STATEMENT ON FEDERAL BUREAU OF PRISONS ASSESSMENT OF ITS SOLITARY CONFINEMENT PRACTICES (Feb. 4, 2013), <http://durbin.senate.gov/public/index.cfm/pressreleases?ID=07260483-4972-4720-8d43-8fc82a9909ac>.

⁹⁹ UNITED STATES FEDERAL BUREAU OF PRISONS, WEEKLY POPULATION REPORT, http://www.bop.gov/locations/weekly_report.jsp.

¹⁰⁰ Reassessing Solitary Confinement: The Human Rights, Fiscal, and Public Safety Consequences Before the Subcomm. on the Constitution, Civil Rights, and Human Rights of the S. Judiciary Comm., 112th Cong. (2012), available at <http://solitarywatch.com/wp-content/uploads/2012/06/transcript-of-the-hearing.pdf>.

¹⁰¹ Illinois Department of Corrections, “Tamms Correctional Center Closing-Fact Sheet,” The State of Illinois, 142 available at, <http://www.ilga.gov/commission/cgfa2006/upload/TammsMeetingTestimonyDocuments.pdf>.

¹⁰² S. B. 176, 68th Gen. Assem., Reg. Sess. (Colo., 2011).

¹⁰³ COLO. DEP’T OF CORR., REPORT ON IMPLEMENTATION OF ADMINISTRATIVE SEGREGATION PLAN 1-2 (2012), available at <https://www.aclu.org/prisoners-rights/report-co-docs-implementation-administrative-segregation-plan>; see also Denise Maes, *Guest Column: Solitary Confinement Reform is Welcome Sign of Progress*, COLORADO SPRINGS GAZETTE, Jan. 27, 2012, available at [www.gazette.com/common/printer/view.php?db=colgazette\\$&id=132524](http://www.gazette.com/common/printer/view.php?db=colgazette$&id=132524)

¹⁰⁴ News Release, Colo. Dep’t of Corr., *The Department of Corrections Announces the Closure of Colorado State Penitentiary II* (Mar. 19, 2012), available at <http://www.doc.state.co.us/sites/default/files/Press%20release%20CSP%20II%20close%20%20Feb%201%202013.pdf>.

¹⁰⁵ Jeff Gerritt, *Pilot Program in UP Tests Alternatives to Traditional Prison Segregation*, DETROIT FREE PRESS, January 1, 2012, available at www.freep.com/fdcp/?unique=1326226266727.

¹⁰⁶ H. Mem. 62, 50th Leg., 1st Sess. (N.M. 2011).

¹⁰⁷ Press Release, Office of the Lieutenant Governor, *Lt. Governor Dewhurst Issues Select Interim Charges Relating to Transportation, Homeland Security and Criminal Justice* (Jan. 13, 2012), available at <http://www.ltgov.state.tx.us/prview.php?id=337>.

¹⁰⁸ S. J. Res. 93, 2012 Leg., Reg. Sess. (Va. 2012).

¹⁰⁹ ABA Standards, *supra* note 10, Standard 23-2.9.

¹¹⁰ *Id.*