



Written Statement of the
American Civil Liberties Union of Maine

Before the
Inter-American Commission on Human Rights

Thematic Hearing on
Human Rights and Solitary Confinement in the Americas

Tuesday 12 March 2013

The American Civil Liberties Union of Maine (“ACLU of Maine”) appreciates the opportunity to provide testimony to the Inter-American Commission on Civil Rights (“IACHR”) on the critical issue of solitary confinement and human rights. Solitary confinement destroys lives. Isolating prisoners in small, poorly-lit cells for 23-24 hours per day is a commonly-used disciplinary tool for prisoners in the United States who are difficult to manage in the general population. But, research has shown that these conditions cause serious mental deterioration and illness, which manifest in the form of hallucinations, self-injury, and the loss of the ability to relate to other human beings. When prisoners are eventually released from solitary confinement, they have difficulties integrating into the general prison population and into public life, which makes all members of the public less safe.

The ACLU of Maine is one of the ACLU’s 53 affiliates, and reform of the use of solitary confinement has been one of our top priorities for the past five years. Those reform efforts have been somewhat successful, and it is our hope that they will serve as a demonstration of what is possible and as a model for achieving significant change. The process that led to reform of solitary confinement use in Maine is documented in a new report, “Change Is Possible: A Case Study Of Solitary Confinement Reform In Maine,” which is attached as an appendix to this testimony.

As this report documents, Maine has reduced the population of its solitary confinement “Special Management Unit” by over 70%. Prisoners who do end up in solitary confinement spend less time there, are treated like human beings while there, and are shown a clear path to reentry into the general prison population. All of this has been accomplished without compromising the safety of prison staff or other prisoners, and with significant cost and resource savings. Maine’s reform successes represent a rebuttal to everyone who declares that solitary reform cannot or should not be done.

Prior to 2010, solitary confinement in Maine meant isolation alone in an 86 square foot cell with limited natural lighting for 23 hours per day during the week, and 24 hours per day on the weekends. The only break in this monotony of isolation was one hour of outdoor exercise (only on weekdays) alone in a small yard, though, for much of the year in Maine, outdoor exercise is not an attractive proposition. Other than fleeting interactions with correction staff, prisoners had no human contact during their stays in the Special Management Unit. Prisoners were not even given access to radios or television, which could have provided some proxy for

human contact. The cell doors in Maine’s Special Management Unit are too thick to allow conversations among prisoners. Medical and mental health screenings were sporadic and brief—often conducted through the cell door—and record keeping was inconsistent. The impact of this lack of human contact was clear. Prisoners frequently exhibited symptoms of serious mental illness, even in cases when no such symptoms had previously manifested.

The purported justifications for subjecting prisoners to isolation varied widely, and the nexus between such treatment and any legitimate penological goals was often impossible to discern. For example, prisoners at the Maine State Prison could be sent to the Special Management Unit for “disciplinary segregation”—as punishment for an assortment of rule violations from the serious (fighting) to the trivial (moving too slowly in the lunch line). And, despite the seriousness of solitary confinement, prisoners in disciplinary hearings were rarely provided assistance understanding the process or a meaningful opportunity to present a defense. Other prisoners were sent to the Special Management Unit for “administrative segregation.” In the event of a fight, for example, the prison might send both the aggressor and the victim to the Special Management Unit while the matter was investigated. The timeline for completing investigations was vague, and the depth and quality were suspect. A prisoner might spend days, weeks, or months in the Special Management Unit as a result of being attacked by another prisoner. Even after a prisoner had completed a term of disciplinary isolation, or been adjudged the victim rather than the aggressor in a fight, he might remain in solitary confinement for additional days, weeks, or months because of a shortage of beds in the general population units.

In some cases, prisoners were released straight out of the Special Management Unit onto the streets of Maine communities. Because of the destabilizing effects of isolation, releasing someone back into the community abruptly and with no support leads to difficulty for both the former prisoner and the community. The cost of this practice was spread among family members, community members, and taxpayers who pay for court and corrections costs in the event of recidivism.

Psychiatrists and psychologists who study prisoners and prison systems have documented the disastrous effects that long-term isolation has for prisoners. A number of these studies were summarized in a 2009 article by Dr. Atul Gawande in *The New Yorker*.¹ The piece fueled the desire in Maine to reduce the use of solitary confinement for healthy prisoners, ban its use for

¹ Atul Gawande, *Hellhole*, THE NEW YORKER, March 30, 2009.

prisoners with serious mental illness, and impose increased regulation, oversight, and due process. Dr. Gawande documented some of the more horrific examples of solitary confinement and its effects from across the country, and he also noted that the United States embraces this form of punishment far in excess of any other country. He specifically noted that there were more prisoners in solitary confinement in Maine (population 1.2 million) than in all of England (population 50 million). Mainers did not appreciate this notoriety and set out to do something about it.

In 2010, Mainers mobilized around legislation to reduce and reform the use of solitary confinement. The ACLU of Maine helped organize the support for the reform bill because we believed that the policies and practices at the Maine State Prison Special Management Unit violated the Constitution. Punitive isolation can violate the United States Constitution's prohibition of cruel and unusual punishment² and its guarantee of due process. In *Wilkinson v. Austin*, for example, the U.S. Supreme Court ruled that prisoners have a constitutionally-protected interest in avoiding placement at Ohio's Supermax prison, due to the extreme isolation and limited environmental stimulation they face at that facility.³ Accordingly, the Court said, prisoners in the United States are entitled to notice and a meaningful opportunity to be heard prior to their transfer to that facility.⁴ Even before the U.S. Supreme Court's ruling in *Wilkinson*, courts in the United States had ruled that placement in solitary confinement, by virtue of lack of contact, loss of privileges, and dearth of work or educational opportunities imposes an "atypical and significant hardship" which gives rise to constitutional protection.⁵

Though the Maine solitary reform legislation did not pass, advocates for reform did not give up. Advocates maintained political pressure by pushing for a comprehensive investigation of the use of solitary confinement in the Maine State Prison, and the results of that investigation were damning. The report from that investigation contributed to the prison administration's

² *Hutto v. Finney*, 437 U.S. 678, 685 (1978) (finding that evidence sustained finding that conditions in isolation cells violated prohibition against cruel and unusual punishment, and district court had authority to place maximum limit of 30 days on confinement in isolation cells).

³ *Wilkinson v. Austin*, 545 U.S. 209 (2005).

⁴ *Id.* at 224.

⁵ See, e.g., *Colon v. Howard*, 215 F.3d 227, 231-32 (2nd Cir. 2000) (finding 305 days in segregated housing unit to be an atypical and significant hardship); *Hatch v. District of Columbia*, 184 F.3d 846, 858 (D.C. Cir. 1999) (ruling that on remand, court should determine whether twenty-nine weeks of segregation is atypical); *Williams v. Fountain*, 77 F. 3d 372 n.3 (11th Cir. 1996) (finding one year in solitary confinement atypical and significant).

decision to substantially reduce the use of solitary confinement, the amount of time prisoners would spend in solitary confinement, and the likelihood that prisoners would remain in solitary any longer than necessary. Specifically, the following reforms were enacted for the Maine State Prison:

- Solitary confinement is now reserved for the most serious offenses, and most prisoners are punished in their own units (by losing privileges or being confined to their own cell within the general population);
- A prisoner cannot be sent to the Special Management Unit for more than three days without the approval of the Commissioner himself;
- When a prisoner is sent to the Special Management Unit, his bed remains open until he returns;
- Prisoners in the Special Management Unit have the opportunity to have their punishment time cut in half through good behavior;
- Prisoners in the Special Management Unit have an opportunity to interact with other prisoners and with mental health staff in a group setting, and they have an opportunity to attend group religious services. Attendance in group treatment sessions earns the prisoner additional recreation time, which can be used indoors or outdoors;
- Prisoners are more closely monitored for changes in mental health status; and
- Prisoners in the Special Management Unit have access to televisions, radios and reading material, which alleviate some of the oppressive qualities of isolation.

These changes, which have led to a 70% reduction in the use of solitary confinement at the Maine State Prison, have not been accompanied by an increase in violence towards guards or other prisoners. Maine's prison is now a safer and more humane place because of these reforms.

As the attached ACLU of Maine report documents, the investigation of corrections practices in Maine by credible experts was an important step on the road to reform. Investigations of this nature are not easy to produce, but the IACHR is in a strong position to perform, or at least encourage, such investigations. We recommend that the IACHR continue to engage with this important topic, and that it consider establishing a mission to observe and report on the use of solitary confinement in the United States. The IACHR should also prepare a thematic report on solitary confinement practices in the United States and in the Americas, and, ultimately, the IACHR should issue international standards recommending that OAS member states strictly limit solitary confinement practices.