



March 11, 2013

Dr. Emilio Álvarez Icaza
Executive Secretary
Inter-American Commission on Human Rights
Organization of American States
1889 F Street, NW
Washington, DC 20006

Re: Thematic Hearing on Human Rights and Solitary Confinement in the Americas.

Dear Dr. Emilio Álvarez Icaza,

I refer to the thematic hearing on human rights and solitary confinement in the Americas, to be held at the Inter-American Commission on Human Rights on Tuesday March 12, 2013 at 11:30 AM. The ACLU welcomes the opportunity to participate in this hearing and hereto attaches the following written testimony for your consideration:

1. Written Testimony of the ACLU on Solitary Confinement in the United States;
2. Written Testimony of the ACLU and Human Rights Watch on the Solitary Confinement of Children in adult jails and prisons in the United States (with appendix);
3. Written Testimony of the ACLU of Florida and Florida Institutional Legal Services on Solitary Confinement in the U.S. state of Florida;
4. Written Testimony of the ACLU of Maine on Solitary Confinement in the U.S. state of Maine (with appendix);
5. Written Testimony of the New York Civil Liberties Union on Solitary Confinement in the U.S. State of New York (with appendixes).

Please do not hesitate to contact me if you require any further information in regard to this matter.

Sincerely,

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**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.*



Written Statement of the American Civil Liberties Union and Human Rights Watch 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) and Human Rights Watch (HRW) are grateful for 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 extremely important issue within the United States, and one on which we hope that the Commission will take action. Our joint testimony today focuses on the specific topic of the solitary confinement of youth under age 18 in the United States, on which we have recently conducted substantial research. We urge the Commission to take up the thematic topic of the solitary confinement of youth across the Americas; undertake a mission to observe and report on this practice in the United States; and recommend to Member States of the OAS that they adopt measures prohibiting this practice.

The Solitary Confinement of Young People in Adult Jails and Prisons in the United States

Every day, in jails and prisons across the United States, young people under the age of 18 are held in solitary confinement.¹ They spend 22 or more hours each day alone, usually in a small cell behind a solid steel door, isolated both physically and socially, often for days, weeks, or even months on end. Sometimes there is a window allowing natural light to enter or a view of the world outside cell walls. Sometimes it is possible to communicate by yelling to other inmates, with voices distorted, reverberating against concrete and metal. Occasionally, they get a book or a bible, and if they are lucky, study materials. But inside this cramped space, few contours distinguish one hour, one day, week, or one month, from the next.

This bare social and physical existence makes many young people feel hopeless and abandoned, or in some cases, suicidal, and can lead to serious physical and emotional consequences. Adolescents in solitary confinement describe cutting themselves with staples or razors, hallucinations, losing control of themselves, or losing touch with reality while isolated. They talk about only being allowed to exercise in small metal cages, alone, a few times a week; about being prevented from going to school or participating in any activity that promotes growth or change. Some say the hardest part is not being able to hug their mother or father.

Experts assert that young people are psychologically unable to handle solitary confinement with the resilience of an adult. And, because they are still developing, traumatic experiences like solitary confinement may have a profound effect on their chance to rehabilitate and grow. Solitary confinement can exacerbate, or make more likely, short and long-term mental health problems. The most common deprivation that accompanies solitary confinement, denial of physical exercise, is harmful to adolescents' health and well-being.

The ACLU and Human Rights Watch estimate that in 2011, more than 95,000 youth were held in prisons and jails. A significant number of these facilities use solitary confinement—for days, weeks, months, or even years—to punish, protect, house, or treat some of the young people who

¹ In the United States, the term "jail" refers to a facility that generally holds individuals awaiting trial in the criminal justice system or sentenced to less than a year of incarceration; "prison" refers to a facility that generally holds individuals sentenced to one or more years of incarceration. We use various terms, including "youth," "teenagers," "children," "young people," and "adolescents," interchangeably to refer to youth under the age of 18. We use the term "solitary confinement" to describe physical and social isolation for 22 to 24 hours per day and for one or more days, regardless of the purpose for which it is imposed.

are held there. Solitary confinement of youth is, today, a serious and widespread problem in the United States.

This situation is a relatively recent development. It has only been in the last 30 years that a majority of jurisdictions around the United States have adopted various charging and sentencing laws and practices that have resulted in substantial numbers of adolescents serving time in adult jails and prisons. These laws and policies have largely ignored the need to treat young people charged and sentenced as if adults with special consideration for their age, development, and rehabilitative potential.

Young people can be guilty of horrible crimes with significant consequences for victims, their families, and their communities. States have a duty to ensure accountability for serious crimes, and protect public safety. But states also have special responsibilities not to treat young people in ways that can permanently harm their development and rehabilitation, regardless of their culpability.

For the last eighteen months, the ACLU and Human Rights Watch have investigated the solitary confinement of youth under age 18 held in adult jails and prisons across the United States. Our report, attached at Appendix 1, describes the needless suffering and misery that solitary confinement frequently inflicts on young people; examines the justifications that state and prison officials offer for using solitary confinement; and offers alternatives to solitary confinement in the housing and management of adolescents. Our research included in-person interviews and correspondence with more than 125 individuals who were held in jails or prisons while under age 18 in 20 states, and with officials who manage jails or prisons in 10 states, as well as quantitative data and the advice of experts on the challenges of detaining and managing adolescents.

Our report shows that the solitary confinement of adolescents in adult jails and prisons is not exceptional or transient in the United States. Specifically, we found that:

- Young people are subjected to solitary confinement in jails and prisons across the United States, and often for weeks and months.
- When subjected to solitary confinement, adolescents are frequently denied access to treatment, services, and programming adequate to meet their medical, psychological, developmental, social, and rehabilitative needs.
- Solitary confinement of young people often seriously harms their mental and physical health, as well as their development.
- Solitary confinement of adolescents is unnecessary. There are alternative ways to address the problems—whether disciplinary, administrative, protective, or medical—which officials typically cite as justifications for using solitary confinement, while taking into account the rights and special needs of adolescents.

Adult jails and prisons in the United States generally use solitary confinement in the same way for adolescents and adults. Young people are held in solitary confinement to punish them when they break the rules, such as those against talking back, possessing contraband, or fighting; they are held in solitary confinement to protect them from adults or from one another; they are held in

solitary confinement because officials do not know how else to manage them; and sometimes, officials use solitary confinement to medically treat them.

There is no question that incarcerating teenagers who have been accused or found responsible for crimes can be extremely challenging. Adolescents can be defiant, and can hurt themselves or others. Sometimes, facilities may need to use limited periods or forms of segregation and isolation to protect young people from other prisoners or themselves. But using solitary confinement harms young people in ways that are different, and more profound, than if they were adults.

Many adolescents we contacted reported being subjected to solitary confinement more than once while they were under age 18. Forty-nine individuals—more than a third—of the seventy-seven interviewed and fifty with whom we corresponded described spending a total of between one and six months in solitary confinement before their eighteenth birthday.

Adolescents spoke eloquently about solitary confinement, and how it compounded the stresses of being in jail or prison—often for the first time—without family support. They talked about the disorientation of finding themselves, and feeling, doubly alone.

Many described struggling with one or more serious mental health problems during their time in solitary confinement and of sometimes having difficulty accessing psychological services or support to cope with these difficulties. Some young people, particularly those with mental disabilities (sometimes called psychosocial disabilities or mental illness, and usually associated with long-term mental health problems), struggled more than others. Several young people talked about attempting suicide when in isolation.

Adolescents in solitary confinement also reported experiencing direct physical and developmental harm, a consequence of being denied physical exercise or adequate nutrition. Thirty-eight of those interviewed by the ACLU and Human Rights Watch said they had experienced at least one period in solitary confinement when they could not go outside. A few talked about losing weight and going to bed hungry.

We found that young people in solitary confinement in the United States are deprived of contact with their families, access to education and to programming, and other services necessary for their growth, development, and rehabilitation. Twenty-one of the young people interviewed by the ACLU and Human Rights Watch said they could not visit with loved ones during at least one period of solitary confinement. Twenty-five said they spent at least one period of time in solitary confinement during which they were not provided any educational programming at all. Sixteen described sitting alone in their cell for days on end without even a book or magazine to read.

But as a number of jail and prison officials in the United States recognize, solitary confinement is costly, ineffective, and harmful. There are other means to handle the challenges of detaining and managing adolescents. Young people can be better managed in specialized facilities, designed to house them in a less punitive environment, staffed with specially trained personnel, and organized to encourage positive behaviors. Punitive schemes can be reorganized to stress

immediate and proportionate interventions and to strictly limit and regulate short-term isolation as a rare exception.

Solitary confinement of youth is itself a serious human rights violation and can constitute cruel, inhuman, or degrading treatment under international human rights law and standards. In addition, we found that conditions of confinement compound the harm of solitary confinement (such as lack of psychological care, physical exercise, family contact, and education) and often constitute independent, concurrent, and serious human rights violations. Solitary confinement cannot be reconciled with the special status of adolescents under US constitutional law regarding crime and punishment. While not unusual, it turns the detention of young people in adult jails and prisons into an experience of unquestionable cruelty.

The ACLU and Human Rights Watch have called on the United States to abolish the solitary confinement of young people. In particular, we have called on state and federal lawmakers, as well as other appropriate officials, to immediately embark on a review of the laws, policies, and practices that result in young people being held in solitary confinement, with the goal of definitively ending this practice and strictly regulating all forms of isolation and segregation of youth.

Proposals for reform have been introduced in the state legislatures of Florida, Montana, and Nevada.² The US 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."³ *Yet, according to our research, no law or regulation prohibits this practice in adult facilities in any state, or nationally.* The practice must end. Rather than being banished to grow up locked down in isolation, incarcerated adolescents must be treated with humanity and dignity and guaranteed the ability to grow, to be rehabilitated, and to reintegrate into society.

Our legal conclusions and detailed recommendations for actors within the United States are discussed in more detail in the report, which we attach as appendix 1.

Recommendations for the Inter-American Commission on Human Rights

We commend the Commission for taking up the important topic of solitary confinement in the Americas and we thank the Commission for the opportunity to testify regarding the solitary confinement of youth under age 18 in the United States.

The ACLU and Human Rights Watch believe that this hearing should be the beginning of a sustained and active engagement by the Commission with these issues. We specifically urge the

² 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).

³ 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>.

Commission to take up the topic of the solitary confinement of youth across the Americas. We would suggest that the Commission undertake a mission to observe and report on this practice in the United States. And we recommend that the Commission investigate this practice across the Americas and prepare a thematic report on the topic.

In our view, there is a clear international consensus that this practice is inconsistent with human rights principles such that, based on our investigation and on any additional research undertaken by the Commission, the Commission could immediately recommend to the Member States of the Organization of American States that they adopt measures prohibiting the solitary confinement of youth in law and in practice.

About the American Civil Liberties Union and Human Rights Watch

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.

Human Rights Watch is an independent organization dedicated to promoting and protecting human rights around the globe. We stand with victims and activists to prevent discrimination, to uphold political freedom, to protect people from inhumane conduct in wartime, and to bring offenders to justice. We investigate and expose human rights violations and hold abusers accountable. We challenge governments and those who hold power to end abusive practices and respect international human rights law. We enlist the public and the international community to support the cause of human rights for all. Since 1980, Human Rights Watch has reported on prison conditions within the United States

from a human rights perspective, with a special emphasis on the use of solitary confinement.

Over the past 15 years, Human Rights Watch has conducted investigations in numerous prisons, including super-maximum security prisons; spoken with officials and inmates about solitary confinement; published many reports and commentaries on the issue; and advocated against its misuse. Human Rights Watch has also addressed solitary confinement in other nations, such as Tunisia and Japan. Human Rights Watch has also conducted extensive work on the rights of juveniles in the US criminal justice system, including the youth in adult jails and prisons, and juveniles serving sentences of life without parole.



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March 8, 2013

Mr. Emilio Álvarez Icaza
Executive Secretary
Inter-American Commission on Human Rights
Organization of American States
1889 F Street, NW
Washington, DC 20006

Re: Thematic Hearing on Human Rights and Solitary Confinement in the Americas

I. Introduction

Hundreds of youth and seriously mentally ill inmates are currently being subjected to solitary confinement in prisons, jails and juvenile facilities in the United States State of Florida.

Florida sends more young people under age 18 to adult state prisons than any other state in the nation. Once detained in adult prisons, youth are treated as adults, despite the growing consensus that youth are different and require different interventions. In fiscal year 2010-2011, the Florida Department of Corrections ("FL DOC") reported holding 276 young people under age 18 (although 398 young people under age 18 were admitted to FL DOC custody); the youngest was 14 years old.¹ Florida is similarly out-of-step with a growing national recognition that housing seriously mentally ill inmates in extended solitary confinement is cruel and unusual punishment.² Over 30% of the inmates housed in Florida's extended solitary confinement units are seriously mentally ill.³

Florida law and practice does not prohibit the use of solitary confinement in prisons, jails or juvenile facilities. Inmates are placed in solitary confinement regardless of age and regardless of whether they have a mental illness or developmental disability.

II. Florida Department of Corrections

Florida's state prison system is one of the largest in the United States.⁴ Florida incarcerates 100,272 people in its 60 state prisons and supervises almost 115,000 offenders on community supervision.⁵ Neither Florida law nor its correctional regulations applies solitary confinement any differently to children or those who are seriously mentally ill, as compared to other inmates, demonstrating a willful blindness to the particular vulnerability of these populations.

In Florida, most prisoners are held in open population, where they spend their days out of their cells, participating in programming or outside activity with other prisoners. However, Florida law allows prisoners to be held in extended solitary confinement if they are classified as

requiring disciplinary confinement,⁶ administrative confinement, including close and maximum management,⁷ or, in some cases, protective management,⁸ or these statuses in combination. Prisoners in some of these classifications are held together with a cell mate but physically and socially isolated from others, in a form of extreme isolated confinement. Many of these prisoners are held alone, in physical and social isolation for more than 22 hours, in other words, in solitary confinement.

Disciplinary Confinement (“DC”): An inmate is subject to DC if he commits a rule violation and is sentenced to a period of time in which he is confined to his cell alone or with another inmate. Inmates are confined to a small cell for 22-24 hours per day, with only very limited time spent outside alone in a cage. They are allowed extremely limited property, including only a Bible or other religious reading material. Children placed in DC are not allowed to participate in educational programming unless they are identified as needing special-education services. Many inmates are placed in DC for months and even years at a time because of multiple infractions. There are no limits on how long an inmate can spend in DC.

Administrative Confinement (“AC”): AC is a catch-all classification for any inmate that FL DOC determines should be confined to a cell rather than being housed in open population. Inmates are placed in general AC when they are pending classification determinations and often when they first arrive at a new institution. Inmates in AC have limited out-of-cell time and property. There is no limit on how long an inmate can spend in AC.

Close Management (“CM”): CM is a form of *indefinite* administrative confinement. Thousands of inmates are housed in CM in Florida. A tri-level system, the most restrictive classification is CM I, which restricts an inmate to a small cell alone for 22 to 24 hours a day with severely restricted property and little interaction with other inmates or staff. Inmates can be classified as CM and DC, which means that they are subject to the restrictions of both classifications. This dual classification is perhaps the most troubling of the solitary confinement classifications in the Florida state system, as it can result in inmates having nothing to do and no one to interact with for years at a time. This is particularly troubling for children and those mentally ill inmates, who are sometimes unable to survive in confinement for years without breaking additional rules, which leads to additional disciplinary sanctions.

Also, the FL DOC uses force, particularly chemical agents, against inmates in solitary and other confinement. The use of chemical agents against an inmate confined alone in his cell who is yelling or banging on his door is common. Yelling and banging in a cell is often a sign that the inmate is decompensating and experiencing severe mental health problems, often because of the stress of solitary confinement. The Eleventh Circuit Court of Appeals, a U.S. Federal Court, condemned Florida’s practice of using chemical agents to compel a known mentally ill inmate to comply with a command that he cannot understand or follow due to incapacity in *Thomas v. Bryant*.⁹ However, FL DOC has not changed its policy to reflect the Court’s decision. Severely mentally ill inmates and other inmates in confinement remain subject to the use of chemical agents.

III. Florida County Jails

In addition to the 100,272 inmates detained in Florida state prisons, Florida incarcerates 53,059 people in its county detention facilities.¹⁰ The Florida Model Jail Standards (“FMJS”) provide

minimum standards of confinement which jails must meet.¹¹ Prior to 1996, the FL DOC was responsible for the standards and inspection process for local county jails. Legislation was passed in 1996 that gave the authority for inspections to officials at the local level.¹² In practice, the application of these standards varies from jurisdiction to jurisdiction.

By statute, young people under 18 charged as adults (with “adult” criminal offenses) must be held in adult jails.¹³ In January 2013, county jails reported an average daily detention population of 478 young people under age 18 statewide, 365 – or 76% - of whom were detained pre-trial.¹⁴ In January 2012, Florida jails reported holding 579 young people under age 18 statewide. While they are in jail, children must be housed separately from adult inmates.¹⁵ Jails are also charged with housing children of a range of ages together in a safe manner; for example, the Duval County Jail in Jacksonville housed an 11 year old with 17 year olds. These requirements and concerns often result in the consignment of young and vulnerable inmates to solitary confinement cells. Even when held separately, these children are generally subjected to the same disciplinary rules as adults. These practices often result in the imposition of solitary confinement as a form of punishment.

The FLMS do not prohibit or regulate the solitary confinement of seriously mentally ill inmates. Seriously mentally ill inmates are often unable to conform their behavior to institutional rules and subjected to extended solitary confinement as a disciplinary measure. There are widespread issues of severely mentally ill inmates placed in solitary confinement in Florida jails who inflict self harm.

In 2011, Florida passed a law allowing counties to detain pre-adjudicated juveniles (e.g. children accused in the juvenile justice system who are awaiting trial) in adult county jails under local standards.¹⁶ Prior to 2011, the Department of Juvenile Justice (“DJJ”), which operates under its own, child-specific standards (*see infra*) ran each facility for juveniles. While the FMJS sub-committee has developed proposed standards for juveniles held in adult jails, the standards regarding isolation of youth do not specifically limit the amount of time and the circumstances under which a youth can be held in solitary confinement.¹⁷

The lack of adequate standards for children in adult jails (regardless of whether they are accused of juvenile or adult offenses) is of significant concern.

IV. Department of Juvenile Justice

In the juvenile justice system, secure detention of youth takes place between arrest and adjudication. Youth under age 18 taken into custody are screened by DJJ to determine if they should be detained in a secure detention facility awaiting adjudication. Generally there is a 21-day limit to secure detention, but those charged with serious offenses can be held up to 30 days. DJJ operates 21 secure detention centers with a total of 1,342 beds. During FY 2009-10 there were a total of 25,008 individual youth in secure detention.

The DJJ standards and requirements for the statewide system of secure detention for juveniles do not adequately protect youth from the harms of solitary confinement. DJJ is required to “adopt rules prescribing standards and requirements with reference to [. . .] the disciplinary treatment administered in detention facilities.”¹⁸ The current administrative rules fail to meet national best practices for the use of solitary confinement in terms of (1) inadequate due process before

placement in confinement,¹⁹ (2) mandatory confinement in six circumstances,²⁰ and (3) permitting solitary confinement far exceeding 72 hours.²¹ Furthermore, the DJJ standards fail to prohibit room confinement for children with mental illness and do not require a mental health assessment of a child until DJJ seeks to extend their confinement beyond the five day period.²²

V. Conclusion

The Florida agencies that are charged with safely detaining children and adults accused or convicted of crimes or juvenile delinquency offenses employ a range of solitary confinement practices to manage those in their care. None of these practices adequately protect children or those with mental disabilities from solitary confinement. Indeed, some of these practices permit indefinite solitary confinement for children, those with mental disabilities, and children with mental disabilities.

VI. Recommendations

Florida is out of step with international law and standards. However, there are reasons to be hopeful that Florida may become the first state in the United States to ban the solitary confinement of children and to protect the most vulnerable from this harmful practice:

In February 2013, Florida state Senator Gibson and Representative Ricardo Rangel introduced SB 812, a proposed law to reduce the solitary confinement of young people in adult jails and prisons. SB 812 limits the use of emergency confinement to 24 hours, and requires mental health assessments and regular checks by corrections officers; limits disciplinary confinement to 72 hours, and requires 2 hours a day of out-of-cell recreation and access to educational services; and requires that conditions in protective custody must be the least restrictive necessary for safety, and that youth in protective custody receive 5 hours a day of out-of-cell time. This legislation should be passed and implemented to protect children in facilities statewide.

On April 30, 2010, the DJJ repealed the applicable disciplinary treatment rules.²³ DJJ has expressed a willingness to update the applicable administrative rules to adhere to national best practices on the treatment of juveniles in confinement. These rules should be revised to meet or exceed relevant national and international best practices.

Further, the IACHR's attention to this critical issue is crucial and will encourage Florida to come into compliance with international law and standards. We recommend that the IACHR continue to engage the topic of solitary confinement, including through (1) a mission to observe and report on the practice in the U.S.; (2) investigating and preparing a thematic report on solitary confinement practices across the Americas region; and (3) issuing international standards recommending that OAS member states strictly limit solitary practices and prohibit solitary of children and persons with disabilities.

Sincerely,

/s/
Julie Ebenstein
ACLU of Florida, Foundation

/s/
Cassandra Jae Capobianco
Florida Institutional Legal Services, Inc.

¹American Civil Liberties Union and Human Rights Watch Report Growing Up Locked Down: Youth in Solitary Confinement in Jails and Prisons Across the United States (October 2012) by Ian Kysel, *available at* <http://www.aclu.org/files/assets/us1012webwcover.pdf>

² Statement of the American Civil Liberties Union Before the United States Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights *Hearing on Reassessing Solitary Confinement: The Human Rights, Fiscal, and Public Safety Consequences*, Tuesday, June 19, 2012, at fn. 44, *available at* http://www.aclu.org/files/assets/aclu_testimony__for_solitary_confinement_hearing-_final.pdf

³ *Osterback v. Crosby*, testimony of Dr. Kathryn Burns, Case No. 3:04-cv-210-J-25MCR, (M.D. Fla. 2007).

⁴ The Pew Center on the States, Prison Count 2010 (April 2010) *available at* http://www.pewstates.org/uploadedFiles/PCS_Assets/2010/Pew_Prison_Count_2010.pdf.

⁵ Florida Department of Corrections, Quick Facts (January 2013) *available at* <http://www.dc.state.fl.us/oth/Quickfacts.html>.

⁶ See Fla. Admin. Code R. 33-602.222.

⁷ See Fla. Admin. Code R. 33-6.02.220; Fla. Admin. Code R. 33-601.800.

⁸ See Fla. Admin. Code R. Rule 33-601.221.

⁹ 614 F.3d 1288, 1319 (11th Cir. 2010).

¹⁰ See Florida County Detention Facilities' Average Inmate Population, at 4 (January 2013).

¹¹ Florida Model Jail Standards Manual [hereinafter FMJS], *available at* https://www.flsheriffs.org/our_program/florida-model-jail-standards/fmjs-manual.

¹² Fla. Stat. § 951.23.

¹³ See Fla. Stat. § 985.265.

¹⁴ See FL DOC, Florida County Detention Facilities' Average Inmate Population, at 4 (January 2013).

¹⁵ See Fla. Stat. § 985.265; FMJS ¶ 18.01.

¹⁶ See Fla. Stat. § 985.686

¹⁷ See FMJS, ¶ 13.13

¹⁸ Fla. Stat 985.601(9)(b).

¹⁹ Fla. Admin. Code R. 63G-2.012 only requires a formal hearing if confinement lasts longer than 5 days. The length of confinement cannot exceed five days “unless the release of the youth into the general population would jeopardize the safety and security of the facility.” No youth may be held in confinement for more than 5 days without a hearing conducted by a DJJ supervisor who is not employed at the detention center.

²⁰ Fla. Admin. Code R. 63G-2.012(4)(g) requires mandatory confinement in six instances: (1) A physical attack and/or battery by a youth on anyone in the facility; (2) Possession of any contraband that could reasonably be considered a weapon; (3) An escape or an attempt to escape; (4) Any gang related activities that could jeopardize safety or security; (5) Any attempt to resist staff that elevates to “active resistance” [as defined in the department’s PAR Chapter 63H-1, F.A.C.] (6) Felony property damage.

²¹ Fla. Admin. Code R. 63G-2.012(4)(d). The length of time of confinement is dictated by three factors: (1) severity of the rule violation, (2) past disciplinary history, (3) behavior while in confinement.

²² Fla. Admin. Code R. 63G-2.012(4)(j).

²³ See Florida Administrative Weekly, vol. 36-17, at 1925 (April 30, 2010) *available at* http://www.dep.state.fl.us/air/rules/regulatory/hospital_waste/NORD_HMIWI_published_4-30-10.pdf



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8 March 2013

Mr. Emilio Álvarez Icaza
Executive Secretary
Inter-American Commission on Human Rights
Organization of American States
1889 F Street, NW
Washington, DC 20006

Re: Thematic Hearing on Human Rights and Solitary Confinement in the Americas

Dear Sir:

Enclosed, please find the testimony of the American Civil Liberties Union of Maine concerning human rights and solitary confinement, filed in connection with the Inter-American Commission on Human Rights hearing on solitary confinement on 12 March 2013. Also enclosed is a recently-completed report that documents the Maine experience in reforming the punishment practices relating to solitary confinement at the Maine State Prison Special Management Unit. We appreciate the opportunity to submit this material, and we hope that it will be useful to the commission in its investigation and deliberation.

Very truly yours,

Zachary L. Heiden,
ACLU of Maine Legal Director



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.



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Thematic Hearing of the Inter-American Commission on Human Rights on Solitary Confinement in the Americas

Written Testimony of the New York Civil Liberties Union Regarding the United States' Use of Solitary Confinement as Practiced in New York State Prisons

March 12, 2013

“I am writing your office concerning the death of a mental ill prisoner. The prisoner recently hung himself here in Upstate SHU. . . . They kept writing this prisoner up with misbehavior reports while he came to SHU on a minor incident years ago. Instead of giving him treatment, they chose to keep him suffering alone in a cell. This is definitely a case of abuse of human life.”—November 2012 letter from a prisoner subjected to punitive isolated confinement in a New York “Special Housing Unit” at Upstate Correctional Facility

The New York Civil Liberties Union thanks the honorable Commissioners for the opportunity to submit written testimony for the thematic hearing on solitary confinement in the Americas.

The New York Civil Liberties Union (“NYCLU”) was founded in 1951 as the New York affiliate of the American Civil Liberties Union and is a non-profit, nonpartisan organization with nearly 50,000 members across the state. Our mission is to defend and promote the fundamental principles and values embodied in the Constitution, New York laws, and international human rights law, on behalf of all New Yorkers, including those incarcerated in jails and prisons.

In October 2012, the NYCLU published *Boxed In: The True Cost of Extreme Isolation in New York’s Prisons*,¹ which is submitted as an attachment with this testimony. *Boxed In* contains the findings of an intensive year-long investigation by the NYCLU into the use of solitary confinement and other extreme isolation practices in New York State prisons.

We respectfully submit this testimony to inform the Commission about the United States’ use of solitary confinement, as practiced in state-run prisons in New York. As described below and detailed in *Boxed In*, state-level policies and practices allow solitary confinement to be a tool of first resort to discipline prisoners for breaking prison rules. In New York, of all the prisoners held in conditions of solitary confinement or extreme isolation at any time, nearly 90 percent are serving disciplinary sentences for violating prison rules. From 2007 to 2011, New York’s prisons issued approximately 70,000 punitive sentences to solitary confinement, with an average sentence of 150 days. New York’s practices cause severe pain and suffering, and mental and physical harm, including suicide, for no legitimate reason. We submit this testimony to highlight the urgent need for the issuance of guidance and recommendations to the United States to restrict the use of solitary confinement.

The Use of Extreme Isolation in New York State Prison

New York State operates 58 different prison facilities, composed of minimum-, medium-, and maximum-security prisons, across the state. Individuals incarcerated in New York State prisons are serving a sentence following a criminal conviction. Approximately 55,000 individuals, including men, women and juveniles, are incarcerated in the state prisons.

¹ *Boxed In: The True Cost of Extreme Isolation in New York’s Prisons*, New York Civil Liberties Union, Oct. 2012. In addition to this report, the American Civil Liberties Union and Human Rights Watch recently authored a joint report on the use of solitary confinement on young people (persons under the age of 18) nationally. This report, *Growing Up Locked Down*, includes a separate section documenting New York State policies and practices on solitary confinement of young people. See *Growing Up Locked Down*, ACLU & Human Rights Watch, Sept. 2012 at pp. 128-135.

New York’s solitary confinement or extreme isolation cells are known as “Special Housing Units” or “SHUs.” New York’s SHU cells are spread out over 39 different prison facilities, including two facilities—Upstate Correctional Facility and Southport Correctional Facility—which were built exclusively for the purpose of holding people in extreme isolation.

All individuals incarcerated in New York prisons are governed by the “Standards of Inmate Behavior,” a list of more than 100 rules that relate to every aspect of prisoner behavior, from personal grooming to personal interactions. Correction officials may “sentence” an individual to solitary confinement for violations of these rules. Prisoners may receive a sentence of solitary confinement for minor infractions, for non-violent misbehavior, for a simple misunderstanding between a prisoner and a corrections officer, or even for reporting a sexual assault that is disputed and deemed unsubstantiated by corrections staff.

On any given day, approximately 4,500 people or 8% of state prison population are confined in SHU. Once in SHU, conditions are governed by a uniform set of regulations and policies, regardless of the particular facility where the individual is confined in SHU. Prisoners are locked in 22 to 24 hours a day and are deprived of all meaningful human interaction and mental stimulation. Food is delivered through a slot in the cell door. No phone calls are allowed. No meaningful education, substance-abuse, re-entry or other programs are offered, and few personal possessions are permitted. Approximately half of the individuals held in SHU are kept in solitary confinement, completely alone, in cells about the size of an office elevator. The other half are held with another prisoner, a practice known as “double-celling,” forcing two prisoners to endure each other’s constant presence—including showering, defecating, eating, and sleeping—twenty-four hours a day.

The Findings and Recommendations of the NYCLU’s Study

Boxed In describes New York’s procedures for placing prisoners in isolation; provides a demographic and statistical overview of those confined in SHU; and documents the reasons for, and duration of, such confinement. The report also provides first-hand accounts by prisoners of the psychological impact of isolation and the conditions in SHU, including the lack of programming and difficulties individuals placed there have in obtaining appropriate and necessary medical and mental health treatment.

The report also incorporates accounts of corrections staff, who describe carrying home the negative consequences of working in SHU facilities, and the accounts of family members, who must cope with added emotional burdens of having loved ones in SHU. As well as documenting the findings of the NYCLU’s investigation, the report includes information on comparative experiences of other states within the United States where solitary confinement practices have recently been reformed, and makes concrete recommendations for reform of these practices in New York State.

The key findings of *Boxed In* include:

- 1) Solitary confinement and other forms of extreme isolation used in New York State prisons causes individuals severe physical and mental harm;

- 2) New York State lacks safeguards to ensure that prisoners are subjected to isolation only in exceptional circumstances and for the briefest period possible;
- 3) New York State fails to ensure that prisoners are not subjected to isolation for discriminatory purposes;
- 4) New York's use of solitary confinement and other forms of extreme isolation undermines rehabilitation by denying prisoners access to meaningful programming and by failing to provide for clear procedures to assess, treat and respond to underlying behaviors that prison officials claim justifies a punitive sentence to SHU;
- 5) Vulnerable prisoners, including juveniles, the elderly and prisoners with mental illness, may be subjected to extraordinarily lengthy periods of solitary confinement and extreme isolation.²

Case Study of Tonja Fenton

The risk of harm to prisoners caused by New York's arbitrary and unconstrained use of solitary confinement has not abated since the publication of the NYCLU's report. Below we describe the case of one individual who was confined in solitary confinement until March of this year and who is a plaintiff in the NYCLU's class action civil rights lawsuit in federal district court, challenging New York's isolation policies and practices. The facts that follow are contained in a legal complaint filed on March 6, 2013, attached to this testimony.

Ms. Tonja Fenton is a 39-year-old African-American mother of two teenage sons, who live in Queens, New York with Ms. Fenton's domestic partner. Ms. Fenton is incarcerated for a non-violent financial crime, and she will be released from prison within a year. During her incarceration, Ms. Fenton maintained her family ties by speaking to her family frequently, and she prepared for her upcoming release by participating in rehabilitative programming. However, these life-affirming activities were severely disrupted in 2012, when prison officials imposed three disciplinary sentences to solitary confinement, totaling approximately 730 days, all for alleged non-violent misbehavior. As a result of these sentences, Ms. Fenton's physical, emotional, and psychological health deteriorated severely.

First, New York prison officials sentenced Ms. Fenton to 365 days in solitary confinement in New York's SHU in response to allegations that Ms. Fenton helped another prisoner purchase a hair dryer, hair curling iron, and sneakers. A second disciplinary sentence of approximately 180 days to solitary confinement was imposed on Ms. Fenton for reporting a sexual assault that prison officials later deemed unsubstantiated. Finally, officials sentenced Ms. Fenton to another approximately 180 days of solitary confinement when Ms. Fenton sent a sample of food that she was served while in solitary confinement to a federal court in support of a civil rights lawsuit alleging retaliation and food tampering by corrections officers.

² For an analysis of New York's procedures relative to juveniles, *see Growing Up Locked Down*, *supra* note 1, at 1.

While in SHU, Ms. Fenton was held in a small, grimy cell for twenty-three hours a day. Ms. Fenton was deprived of meaningful social interaction, mental stimulation, and rehabilitative programming. Solitary confinement severely disrupted Ms. Fenton's ability to maintain her ties with her family: once locked in "the box," Ms. Fenton could no longer communicate regularly with her sons as she had been doing each day by phone before being removed from the general prison population and subject to solitary confinement. The inability to keep a watchful eye over her children, and to hear regularly from her sons and her domestic partner, caused Ms. Fenton great pain. To cope with the forced idleness and monotony of twenty-three-hour isolation, Ms. Fenton invented a game for herself that involved poking small holes in a paper folder. Corrections staff told her the paper game was "contraband." Ms. Fenton talked to herself just to hear a human voice.

Ms. Fenton's psychological health deteriorated significantly after being placed in SHU. She experienced panic attacks, rage, loss of impulse control, paranoia, severe and chronic depression, concentration deficits, difficulties with memory, social withdrawal, and confusion. For the first time in her life and as a result of her solitary confinement, Ms. Fenton contemplated suicide.

New York's Use of Solitary Confinement Violates International Human Rights Standards

New York prison officials, as a matter of policy and practice, subject thousands of individuals each year to solitary confinement and other forms of extreme isolation in a manner that is arbitrary and unjustified and that causes them severe physical and mental pain and suffering.³ These policies and practices contravene regional and universal human rights standards safeguarding, even and especially for the incarcerated, the right to be protected from torture and other forms of cruel, inhuman, or degrading treatment or punishment, the right to be free from discrimination, the right to health, and the right to family life.⁴

The United States' failure to adopt and enforce throughout the states the well-known principles and best practices established by the Commission—principles that would make the New York prison system safer and more humane—has allowed a human rights crisis to fester in New York's state prison system.⁵

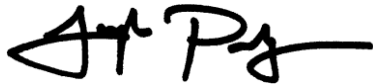
³ See *Report on Immigration in the United States: Detention and Due Process*, Inter-American Commission on Human Rights, ¶ 292, OEA/Ser.L/V/II. Doc. 78/10, Dec. 30, 2010 ("The Inter-American Commission must emphasize that solitary confinement takes a terrible mental and physical toll on the person, and would remind the [United States] that solitary confinement must be used as a measure of last resort, for very limited periods of time and subject to judicial review.").

⁴ American Declaration of the Rights and Duties of Man, O.A.S. Res. XXX, *adopted by the Ninth International Conference of American States* May 2, 1948, *reprinted in* Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L/V/1.4 rev. 13, June 30, 2010; U.N. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *ratified by the United States* Oct. 21, 1994, S. TREATY DOC. NO. 100-20, 1465 U.N.T.S. 85; International Covenant on Civil and Political Rights, *ratified by the United States* June 8, 1992, S. EXEC. DOC. E, 95-2, 999 U.N.T.S. 171.

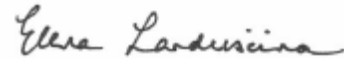
⁵ See Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, Principle XXII.3, *approved by the Commission during its 131st regular period of sessions held from March 3-14, 2008, reprinted in* Basic Documents Pertaining to Human Rights in the Inter-American System, *supra* note 4, at 166-

We thank the Commission for the opportunity to provide information related to the use of solitary confinement in the United States. We respectfully request that the Commission investigate and document the use of solitary confinement in the United States and issue guidance to ensure that the United States complies with international law and human rights standards, protecting the basic health, safety, and dignity of all individuals, including the incarcerated. We welcome the opportunity to provide you with additional information about this issue.

Thank you for your consideration.



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- APPENDIX A *Boxed In: The True Cost of Extreme Isolation in New York’s Prisons*, New York Civil Liberties Union, Oct. 2012.
- APPENDIX B Third Amended Complaint in *Peoples v. Fischer*, 11-CV-2694 (United States Federal District Court for the Southern District of New York).

67 (prohibiting solitary confinement in punishment cells, prohibiting solitary confinement for children deprived of liberty, and permitting solitary confinement “only . . . as a disposition of last resort and for a strictly limited time, when it is evident that it is necessary to ensure legitimate interests relating to the institution’s internal security, and to protect fundamental rights”).