

# CHANGE IS POSSIBLE:

A Case Study of Solitary Confinement Reform In Maine



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**MARCH 2013**



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A Case Study of Solitary Confinement  
Reform In Maine

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# Introduction

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**S**olitary confinement destroys lives. Over the past four decades, prisons across the country have increasingly relied on solitary confinement—isolating prisoners in small poorly-lit cells for 23-24 hours per day—as a disciplinary tool for prisoners who are difficult to manage in the general population. But research has shown that these conditions cause serious mental deterioration and illness. Prisoners in solitary confinement hallucinate, they deliberately injure themselves, and they lose the ability to relate to other human beings. When these prisoners are eventually released from solitary confinement, they have difficulties integrating into the general prison population or (especially when they are released directly onto the streets) into life on the outside.

Because of this, human rights advocates across the country are engaged in a campaign to reduce the use of solitary confinement and to improve conditions in solitary units and facilities. Lawsuits are being filed, bills and regulations are being proposed, and exposés are being written, all with the goal of bringing about a change to this barbaric practice. A number of organizations, including my own—the American Civil Liberties Union—have committed a great deal of thought, time, and money to identifying and deploying successful strategies for reforming solitary confinement. No one approach will get the job done, but advocates are trying multiple approaches, with as much coordination as possible, to bring about significant lasting change. Maine has been one of the success stories of this effort. The number of prisoners in solitary confinement has been cut in half; the duration of stays in Maine’s solitary units is generally now measured in days rather than weeks or months; and the treatment of prisoners in these units includes substantially more meaningful human interaction and more opportunity for rehabilitation.

For seven years, I have been involved in Maine’s campaign to reduce the use of solitary confinement. Many times over those years, it seemed that nothing would ever change. Reform measures were watered down, improved policies were ignored, and legislative proposals were flat-out rejected. Then, at some point, through a combination of will, skill, and luck, reforms began to take hold. While Maine’s correction system is far from perfect, the dramatic reduction in the use of solitary confinement and the improvement in the manner in which solitary is employed are almost beyond what I could have imagined seven years ago.

The purpose of this report is twofold: first, to document those changes and the processes that led to them; and second, to inspire other prison reform advocates with Maine’s example. There are times when every advocate for prison reform feels that change is not possible—that the legal and cultural barriers are too firmly rooted, or that the public’s antipathy to prisoners and their families is too powerful. This despondency might lead reformers to settle for superficial measures or, worse yet, to give up the fight in favor of easier targets. It is my great hope that the message of this report—that reform of the use of solitary confinement is both necessary and possible—will provide some measure of encouragement in those difficult moments that every worthwhile campaign experiences.

This report (and the campaign it documents) would not have been possible without the generous support, advice, and encouragement of the ACLU National Prison Project and ACLU Center for Justice. In particular, Amy Fettig, David Fathi, and Vanita Gupta deserve enormous praise and gratitude for their commitment to Maine's reform efforts, and to my efforts to document them. Thank you also to Alysia Melnick, Rachel Myers Healy, Shenna Bellows and Alisha Goldblatt for editorial assistance, to Elizabeth Noble for generously donating her time and photography skills, and to Lance Tapley for his ongoing efforts to document abuses in Maine's prisons and jails and to prevent those abuses. Finally, thank you to Maine's Commissioner of Corrections Joseph Ponte and Maine State Prison Deputy Warden Charlie Charlton for their determination to reform the way prisoners in Maine are punished (which is as strong as any advocate's), and for their cooperation with this report. Though this report was written for an audience of lawyers, lobbyists, organizers, and advocates, the prisoners across America suffering alone, in pain, in tiny, harshly-lit cells, were never far from my mind, and it is to them that this report is dedicated.

*Zachary L. Heiden*  
ACLU of Maine Legal Director  
Portland, Maine  
March 6, 2013

# What Is Solitary Confinement?

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**M**ore than two million people are currently incarcerated in prisons and jails in the United States.<sup>2</sup> The United States incarcerates more people, and a greater percentage of its population, than any other nation—more than twice as many people as Russia, the runner-up.<sup>3</sup> India has a population more than three times greater than the United States, but it imprisons fewer than one-fifth as many people.<sup>4</sup> With so many prisoners in America to supervise, prison and jail administrators have had to devise methods for attempting to house and manage the prisoners in their custody, and for the past two decades the management tool of choice has been solitary confinement.

*“The entire time I was in the Supermax I was in a 7 x 14 reinforced concrete cell, 23 sometimes 24 hours a day. On the days I was allowed out for an hour, I was allowed to be escorted in handcuffs to a 40’ long by 8’ wide chain link enclosure where I would have the cuffs removed and be allowed to pace or do in-place calisthenics for an hour before I was brought back inside for a ten-minute shower, one of three I would receive each week. The lights in the cell were always on, just dimmed at night. The sound of slamming metal doors and jingling keys could be heard 24 hours a day. Each day I would read part of my book, but I had to limit how much I read, since I was only allowed three books from the library each week. If I was lucky, the three books would last me five days.”<sup>1</sup>*

Solitary confinement is the practice of isolating a prisoner in a cell for 22-24 hours per day, with extremely limited human contact; reduced (sometimes nonexistent) natural lighting; severe restrictions on reading material, televisions, radios, or other physical property that approximates contact with the outside world; restrictions or prohibitions on visitation; and denial of access to group activities, including group meals, religious services, and therapy sessions.



*Solitary cells at Maine State Prison*

Sometimes solitary confinement conditions are imposed in separate wings of existing prisons, while other times entire facilities are devoted to solitary confinement. The solitary facilities are generally referred to as “supermax” or “administrative maximum” (ADMAX). The separate solitary confinement units go by a variety of names. They are Special Management Units (SMU) in Maine, Control Units in Illinois, and

Special Housing Units (SHU) in New York and California. The American Bar Association has chosen to use “segregated housing” as an umbrella term.<sup>5</sup> Prisoners and their families generally call it “the hole”.

Approximately 80,000 prisoners are held in solitary confinement in the United States.<sup>6</sup> The public perception has been that solitary confinement is reserved for “the worst of the worst”<sup>7</sup>—a perception that has been frequently nurtured by prison officials eager to avoid legislative or judicial oversight. In reality, though, the vast majority of prisoners subjected to solitary confinement are neither violent nor incorrigible.<sup>8</sup> Many suffer from severe mental illness, while others suffer from cognitive disabilities.<sup>9</sup> Both of these conditions make it difficult for people to understand prison rules or function in the prison setting. When these prisoners break the rules—even very minor rules—they are sent to solitary confinement, which only exacerbates their conditions and makes it less likely (for reasons that will be discussed) that they will be able to behave properly.

Solitary confinement accomplishes one thing: it allows corrections officials and politicians to *appear* tough on crime.<sup>10</sup> But, this appearance is purchased in lost safety (for the public and for those who live and work in prisons), lost funds (to pay for the operation costs that are twice as high as general population facilities), and the lost lives of prisoners who are driven to psychosis and suicide.



# The Origins of Solitary Confinement

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In 1890, the United States Supreme Court recognized that confining human beings for long periods of time can have a profoundly negative effect on their mental well-being. Discussing the practice of solitary confinement, the Court observed:

*A considerable number of the prisoners 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.<sup>11</sup>*

Long-term solitary confinement was first developed as a penological strategy in Philadelphia by Quaker reformers, who believed that if prisoners were left alone (with a Bible) and given time to reflect and pray, they would realize their mistakes and repent.<sup>12</sup> Philadelphia's Walnut Street Jail, established in 1790, became a model for the development of "penitentiaries" across the country, and the practice of isolating prisoners from all human contact (including speech, excepting that of religious advisors and official visitors) came to be known as the "Pennsylvania system."<sup>13</sup> Prisoners would be taken to their cells with black hoods over their heads, and would be kept in the same cell throughout the entire term of their sentence. They would have no contact with other prisoners and only the most limited contact with prison staff, so as to allow for the most possible time for personal reflection and self-improvement.<sup>14</sup> Due to overcrowding at Walnut Street Jail, the Pennsylvania legislature erected two new larger-scale facilities: the Western State Penitentiary, near Pittsburgh, in 1826, and the Eastern State Penitentiary, near Philadelphia, in 1829.<sup>15</sup> These facilities included more cells designed for solitary confinement.

The "Pennsylvania system" promised more than simply safety and repentance—solitary confinement (the reformers believed) would also save the state money, because there would be no need to specially train guards to manage prisoners, to escort prisoners to meals, or to supervise them in work projects.<sup>16</sup> And there would be cost savings associated with security as well, since isolated prisoners would not be able to concoct escape plans with other prisoners.<sup>17</sup>

That, in any case, was the theory. But, in practice, the prisoners kept in long-term solitary confinement according to the "Pennsylvania system" did not tend to discover a new positive socially responsible mode of existing in the world. Instead, they tended to go insane. This was Charles Dickens's observation of prisoners at Eastern State Penitentiary in 1842: "He is a man buried alive; to be dug out in the slow round of years; and in the meantime dead to everything but torturing anxieties and horrible despair."<sup>18</sup> The Quakers have long since apologized for their role in the development of solitary confinement, and, through the American Friends Service Committee, they are working to end the practice and shut down the Supermax facilities in which it is practiced.<sup>19</sup>

Due to the development of new modes of prison administration (most notably, the reformatory model, which included extensive forced labor), as well as the emergence of questions about the constitutionality of long-term isolation, the “Pennsylvania system” largely disappeared by the beginning of the twentieth century. It was reborn, though, in Marion, Illinois, site of the first modern “control unit” prison, which was established by the Federal Bureau of Prisons in 1973.<sup>20</sup> This facility eventually replaced Alcatraz as the prison of choice for the federal system’s “bad apples.”<sup>21</sup> Marion would be replaced by the ADX facility in Florence, Colorado in 1994, and supplemented by similarly-run “SMUs” and “SHUs” in nearly every state.

# The Psychological Effects of Long-Term Isolation

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*"It's an awful thing, solitary... It crushes your spirit and weakens your resistance more effectively than any other form of mistreatment."  
- Senator John McCain*

Long-term isolation produces clinical effects that are similar to those produced by physical torture. It leads to increases in suicide rates, and even mentally healthy individuals find the experience extremely difficult to endure. For individuals with mental illness, solitary confinement can be worse than a death sentence.

Here is how the psychiatrist Terry Kupers summed up his own research, and the research of psychiatrist Stuart Grassian, into the effects of long-term isolation on the mental health of prisoners:

*Every prisoner placed in an environment as stressful as a supermax unit, whether especially prone to mental breakdown or seemingly very sane, eventually begins to lose touch with reality and exhibit some signs and symptoms of psychiatric decompensation, even if the symptoms do not qualify for a diagnosis of psychosis. . . Even inmates who do not become frankly psychotic report a number of psychosis-like symptoms, including massive free-floating anxiety, hyper-responsiveness to external stimuli, perceptual distortions and hallucinations, a feeling of unreality, difficulty with concentration and memory, acute confusional states, the emergence of primitive aggressive fantasies, persecutory ideation, motor excitement, violent destructive or self-mutilatory outbursts, and rapid subsidence of symptoms upon termination of isolation.<sup>22</sup>*

Or, as a judge put it, placing inmates with mental illness in solitary confinement is “*the mental equivalent of putting an asthmatic in a place with little air to breathe.*”<sup>23</sup> Long-term isolation units make healthy people sick, and make people with mental illness worse, because human beings are social creatures. We depend on contact with other people to maintain equilibrium and to chase out the unpleasant thoughts that naturally occur in everyone’s mind from time to time.<sup>24</sup> More intelligent and emotionally stable prisoners may be more able to resist these effects, but even the most well-adjusted prisoner will experience adverse mental effects—“*a degree of stupor, difficulties with thinking and concentration, obsessional thinking, agitation, irritability, and difficulty tolerating external stimuli (especially noxious stimuli)*”—after just a few days of isolation.<sup>25</sup>

This is how one prisoner who spent two years in isolation at Pelican Bay State Prison in Northern California described the experience:

*Sometimes I feel overwhelmed. I get trepidations, nervous, agitated, I go off the deep end... Here, I feel like I'm in a kennel, closed off from life itself. I feel like I live in a coffin, like a tomb.<sup>26</sup>*

Another man, who spent time in Maine’s prison, described the effect that isolation had on his fellow prisoners, some of whom took extreme measures to harm themselves and disrupt the monotony:

*I would have a hard time counting the times I have seen another inmate cut themselves to the point that the entire floor of their cell was coated in blood, and they were removed for medical treatment after losing consciousness. Suicide attempts were not uncommon. The mentally unstable were punished for their actions rather than treated for their illness. . . . When I was finally released from the Supermax into general population after almost two years, it was overwhelming. There mere sensations of human contact was harsh on my nerves. I would break into cold sweats and shake. I was overly stimulated and anxious all the time. It was very difficult to concentrate on one thing. Even to this day, I have a very difficult time focusing on one thing for very long and I am very easily distracted. The effects of the Supermax reach beyond the confines of its walls and fences.<sup>27</sup>*

Self-harm is, in some ways, the clearest illustration of the break from normal mental health that accompanies isolation. After all, even the most serene and well-adjusted people sometimes experience fear or loneliness or paranoia, if only fleetingly. Most people, though, do not cut themselves until they pass out from blood loss, or engage in the kind of destructive behavior that former hostage Terry Anderson experienced. Anderson was the chief Middle East correspondent for the Associated Press in 1985, when he was taken hostage in Beirut. Atul Gawande retold the story of his isolation in “Hellhole”—his article in the New Yorker discussing the effects of long-term isolation:

*‘I find myself trembling sometimes for no reason,’ he wrote. ‘I’m afraid I’m beginning to lose my mind, to lose control completely.’ One day, three years into his ordeal, he snapped. He walked over to a wall and began beating his forehead against it, dozens of times. His head was smashed and bleeding before the guards were able to stop him.<sup>28</sup>*

There is an additional level of complication for the use of long-term isolation. Not only does long-term isolation have disastrous effects on prisoners’ mental health, but these effects are frequently irreversible. It is this dimension that makes solitary confinement such a terrible choice for corrections institutions, because it means that prisoners will return to society less able to control themselves and relate to their surroundings. This, combined with the well-known but seldom-acknowledged fact that almost all prisoners are eventually released from prison, means that prison practices are making life worse for people both inside and outside the prison walls.

The residual consequences of isolation most commonly manifest as “a continued intolerance of social interaction,” which makes it much more difficult for former prisoners to obtain jobs, establish social connections, nurture family relationships, or become productive members of communities.<sup>29</sup> And, as Dr.



*Solitary cell at Maine State Prison*

Kupers testified to the Maine Legislature’s Committee on Criminal Justice and Public Safety, “*destroying a prisoner’s ability to cope in the free world is the worst thing a prison can do.*”<sup>30</sup> It is bad enough that we should destroy an individual’s ability to cope and capacity for rational thought—bad enough in the ontological sense—but the overuse of long-term isolation also makes it is less likely that former prisoners will be able to take their place in society as responsible and productive members of our communities. That makes us all less safe and secure.

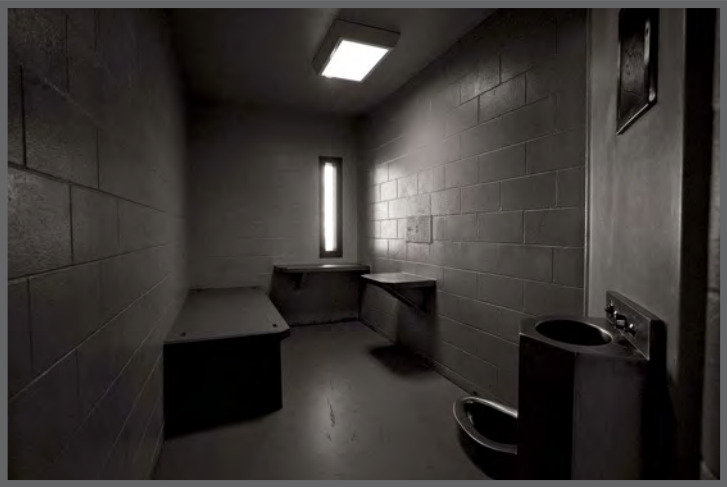
# Before the Reforms: Solitary Confinement in Maine

In Maine, prior to 2010, confinement in the Maine State Prison’s SMU 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 SMU – which could last days, weeks, months, or even years. They did not even have access to radios or television, which could have provided some proxy for human contact. The cell doors in Maine’s SMU 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. Every time a prisoner left his cell, he was in shackles.

*“In all of England, there are now fewer prisoners in ‘extreme custody’ than there are in the state of Maine.”*  
-Atul Gawande, *Hellhole*, THE NEW YORKER, March 30, 2009

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 SMU 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 SMU for “administrative segregation.” In the event of a fight, for example, the prison might send both the aggressor and the victim to the SMU while the matter was investigated. The timeline for investigation was vague, and the depth and quality were suspect. A prisoner might spend days, weeks, or months in the SMU as a result of being attacked by another prisoner. Even after a prisoner had completed a term of disciplinary



*Solitary cell at Maine State Prison*

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.

There was also no policy of providing support or assistance to prisoners transitioning back into general population or out into the free world. In some cases, prisoners were released straight from the SMU onto the streets of Maine communities. Because of the destabilizing effects of isolation, releasing someone back into life on the “outside” 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.

# It Does Not Have To Be That Way: The Maine Reform Example

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*Maine State Prison*

**A**cross the country, pressure has been building to reform and reduce the use of solitary confinement. The motivation for reform has come from diverse directions: the realization that solitary confinement is overused; the awareness that it causes severe and lasting mental health consequences to prisoners; the concern that solitary confinement costs much more money than it is worth; and the belief that it actually makes our prisons and our communities less safe. These strands have come together

in a number of state-level campaigns, and to date, Maine's has been one of the most successful.

Between 2011 and 2012, the Maine Department of Corrections ("MDOC") radically transformed the way that solitary confinement is used in Maine state facilities:

- Fewer people are sent to solitary;
- Prisoners sent to solitary spend less time there;
- Prisoners in solitary are held in better conditions;
- Prisoners in solitary are given access to more care and services to prevent decompensation and deterioration of mental health;
- Prisoners in solitary are given a clear path, based on achievable goals, for earning their way out of solitary.

The same pressures that led to the overuse of solitary confinement in Maine (and elsewhere in the United States)—the political desire to appear "tough on crime," the lack of awareness of other options for prisoner management—were still present during that time, but they were met with countervailing (and ultimately overpowering) pressure to reform. This kind of change is not easy, but many of the lessons of Maine's solitary reform experience are adaptable or even reproducible for other jurisdictions.



Maine's solitary reform efforts are an important example for the rest of the country because of how rapidly the transformation took place:

- February 26, 2010, there were 91 prisoners being held in the two pods (B & C) that made up Maine's SMU.
- May 2011, the C pod of the SMU was closed completely and new policies governing the operation of the remaining pod were put into effect.
- August 23, 2012, there were 46 prisoners being held in the SMU—approximately half the number of 18 months prior.<sup>31</sup>

In addition to the closing of one of the solitary confinement pods, the reduction in the solitary population was accompanied by a greater use of alternative forms of punishment, such as loss of privileges and confinement to a cell in the general population area. And, the prison enacted an incentive system that allows prisoners to earn access to more recreation while in solitary and earlier release from solitary.

The rapid reduction in the use of solitary confinement at the Maine State Prison was also accompanied by a rapid improvement in conditions for the isolated prisoners, including access to radios, televisions, and reading material, which psychiatrists believe reduces the likelihood of decompensation. Prisoners in solitary have also been given more opportunity to interact with other prisoners through group recreation and counseling sessions, and more opportunities to earn perks like additional hours of recreation through positive behavior.



*Commissioner Joseph Ponte*

Maine's example shows both that change to solitary confinement practice is possible, and also that these changes do not require years or decades for implementation. MDOC Commissioner Joseph Ponte had this to say with regard to the tendency of prison administrators to rely heavily on solitary confinement as a tool for keeping order and imposing discipline: "This is how people grew up. This is how we grew up in Corrections. This is how we did business. . . People don't want to look at other ways to do that."<sup>32</sup> But Commissioner Ponte was willing to look for other ways to keep order and protect prisoners and staff, and he was willing to implement those new ways of doing business without hesitation.

## What Happened

*I can promise you today, if you got up from your chairs and drove to a correctional facility right now, without letting any of them near a phone to call ahead, and you went into the segregation unit; you would find inmates there that were only supposed to be there a couple of week or months, but that have been there for months and months, sometimes more. Now the excuse is bed space. "Yes your time is up down here, but there is no bed space so you have to stay." I can tell you there is plenty of bed space.*

*-Anonymous testimony of Maine prisoner, public hearing on solitary reform legislation.<sup>33</sup>*

The story of the success of the Maine solitary reform campaign is evidenced in the policies that have been put in place to govern discipline in Maine's prisons and administration of the Maine State Prison's SMU. Classification of prisoners has been transformed, and admission standards for the SMU have been tightened. Solitary confinement is no longer the default punishment at the Maine State Prison, but rather it is the punishment of last resort when no other option is adequate. Even in situations where prisoners are sent to solitary confinement, corrections staff is required to work with prisoners to develop a road map of behavior that will lead back to the general population. Staff have been given new training and skill-building opportunities for managing difficult prisoners and challenging situations. The administration has placed a greater emphasis on de-escalating situations before there is a serious problem, rather than extracting and punishing the perpetrators afterwards. In addition, it has removed incentives for supervisors to send difficult (but not dangerous) prisoners to the SMU.

The easiest way to understand these policy changes is by reference to the three different mechanisms by which solitary confinement was imposed at the Maine State Prison ("MSP"):

### **1. Disciplinary Segregation:**

**Formerly**, Disciplinary Segregation was used for prisoners who were being punished for a concrete offense. According to policy, prisoners were only assigned to Disciplinary Segregation following a hearing, in which they had a meaningful opportunity to present a defense, and in which they would also be provided with assistance from a specially-trained prisoner advocate. In practice, though, prisoners were rarely (if ever) given any assistance, and most prisoners felt that the hearings were not meaningful. An investigation into the use of solitary (which is discussed in greater detail later in this report), made this finding about the availability of advocates at MSP, "At MSP reportedly no inmates are currently trained and the two trained staff are in the process of being transferred. In our observation of the hearings taking place . . . none were used or discussed with inmates at MSP."<sup>34</sup> In addition, Disciplinary Segregation terms were supposed to be of a definite duration, but in practice many prisoners spent longer

than ordered in Disciplinary Segregation, supposedly due to lacks of bed space in the general population pods.

**Currently**, the policy and practice favors disciplinary sanctions carried out within the general population environment, and Disciplinary Segregation is reserved for the most serious offenses. The MSP now uses a range of options for punishing prisoners that do not involve long-term isolation: confining the prisoner to his own cell; limiting contact visits; restricting the visitors allowed to immediate family; loss of work opportunities; et cetera. Segregation is only considered when responding to an extremely



*Solitary confinement block at Maine State Prison*

serious offense, such as a fight involving weapons. In addition to committing a serious offense, prisoners must also satisfy one of four requirements to be sent to Disciplinary Segregation: 1) the prisoner constitutes an escape risk in less restrictive status; 2) the prisoner poses a threat to the safety of others in less restrictive status; 3) the prisoner poses a threat to his/her own safety in less restrictive status; or 4) there may be a threat to the prisoner's safety in a less restrictive status.

## **2. Administrative Segregation:**

**Formerly**, Administrative Segregation was used anytime the prison wanted to isolate prisoners for an indefinite amount of time. New arrivals to the prison were frequently sent to Administrative Segregation while their status was being reviewed. In the event of a fight, all the prisoners involved in the fight (aggressors and victims alike) were sent to Administrative Segregation while the facts of the incident were sorted out and the officers decided who to charge with an offense. According to policy, Administrative Segregation status was subject to review and was only to be used for limited purposes. But, in practice the policies were ambiguous enough, and the reviews superficial enough, that prisoners had no real due process protection. As in Disciplinary Segregation hearings, prisoners were not actually provided with any assistance to understand the process or mount a defense (despite the promise of such assistance in policy).

**Currently**, Administrative Segregation is only used in extreme circumstances. Under current policy 15.01, prisoners are first placed under Emergency Observation Status in their usual housing environment. That prisoner may only be transferred to the SMU upon approval of supervisory staff, and the reasons for the transfer are documented and reviewed within 72 hours. Like Disciplinary Segregation, Administrative Segregation is only used when 1) the prisoner constitutes an escape risk in less restrictive status;

2) the prisoner poses a threat to the safety of others in less restrictive status; 3) the prisoner poses a threat to his/her own safety in less restrictive status; or 4) there may be a threat to the prisoner's safety in a less restrictive status.

### **3. High Risk Segregation:**

**Formerly**, High-Risk segregation was, in theory, reserved for the “worst of the worst”—prisoners who were thought to be incorrigible threats to the safety of those around them. In reality, though, this was the status assigned when the prison officials gave up on their “corrections” responsibility. The status was broad enough to encompass a wide range of prisoners. According to the former MDOC Policy 15.04, High-Risk Segregation was appropriate when: 1) the prisoner had committed, attempted, or planned an act of violence or arson; 2) the prisoner had committed, attempted, or planned an escape; 3) the prisoner had engaged in (or planned to, attempted to, or threatened to engage in) trafficking in drugs or dangerous contraband; 4) the prisoner had committed at least three infractions resulting in disciplinary segregation; 5) the prisoner had served at least three months of administrative segregation; or 6) the prisoner was at risk of harm if housed in the general population. In effect, when prisoners lost the ability to control their behaviors or to cope with their surroundings because of long-term isolation in Disciplinary or Administrative Segregation, the prison's answer was to send them to more long-term isolation, by simply altering their designation to High-Risk Segregation. Status reviews were carried out only every six months.

**Currently**, the High-Risk Segregation status has been eliminated.

Small changes can make a remarkable difference. Previously, prisoners frequently found themselves serving extended periods in segregation because their bed in general population had been given to another prisoner. That prisoner would remain in the SMU for additional days, weeks, or months until another bed in general population opened up. This was not accidental. Unit supervisors were using the SMU as a way to get rid of prisoners that were challenging to manage. But now, MDOC policy 15.01 includes this requirement: “If a prisoner is moved out of his/her bed, the prisoner's bed shall be retained pending the review of emergency observation status.”<sup>35</sup> Under the current policy, a prisoner may spend time in the SMU, but during that period the prisoner's bed in the general population remains open. This change accomplished two things: first, prisoners are not spending more time than planned in the SMU; and second, unit staff are now pressured to find ways to manage difficult prisoners within their units.

The new requirements for corrections staff have been accompanied by additional training opportunities in methods and techniques for managing difficult prisoners, as well as additional tools for disciplining prisoners in the general population. Commissioner Ponte believes that the training program should incorporate more tools and techniques, such as “verbal judo”—a verbal and emotional conflict management tool—and to reduce training that is not truly connected to the responsibilities of the corrections staff:

*We spend a lot of time on firearms and self-defense—those kinds of things. We don't spend a lot of time on verbal judo and the kinds of interventions you would use most of the time.*

*We really need to look at that. You're not shooting prisoners every day. If you fire a gun in your lifetime, it would be something. But you're talking to prisoners every day, so lets spend time on the kinds of things that really make a difference. We haven't done that yet.*<sup>36</sup>

One of the biggest advances, from both the perspective of constitutional rights and prisoner health, has been the dramatic curtailment of the use of Administrative Segregation pending the outcome of an investigation. For example, previously, if one prisoner attacked another and the second prisoner tried to defend himself, both prisoners would be sent to segregation while staff made a determination of who actually started the altercation. These investigations could take weeks or months, during which time the victim of an attack would be subjected to all of the negative health effects of long-term isolation, as well as interruption of educational or therapeutic programming and inability to earn or accrue "good time" credits. That practice was changed by Maine DOC Policy 20.1, which provides that:

*No prisoner shall be detained pending investigation, hearing, or review or appeal of recommended disciplinary dispositions except as provided in Policy 15.1, Administrative Segregation, using the procedures and criteria for the placement of a prisoner on administrative segregation status.*

Finally, prisoners are made aware as soon as they arrive at the SMU that the prison wants their stay to be temporary and to last as little time as possible. For each prisoner in segregation, a team of staff made up of corrections and mental health professionals meets to create and document a plan for returning the prisoner to the general population.<sup>37</sup> The plans include specific requirements, which might include the following:

- Meet with mental health staff;
- Meet with correctional case worker;
- Meet with unit management team.

The plans also have specific goals for the prisoner to work towards, with the assistance of staff:

- No ideation or acts of harm to self;
- No ideation or acts of harm to others;
- Adequate control of impulses;
- Socially appropriate interactions with others.

This approach stands in marked contrast with the previous approach of either keeping prisoners locked up with no control over their future, or else moving prisoners from the SMU to the general population (and back again) with no attention to the kinds of skills and behaviors necessary for living in a society (either in or out of prison). The previous default assumption reflected circular logic about the role of the SMU: we only use the SMU for the "worst of the worst" so if a prisoner is in the SMU it must be because he is among the "worst of the worst." The current approach attempts to break that circle: the prisoner did something that resulted in him being sent to the SMU, but there is no reason that needs

to happen again. This approach also demonstrates awareness that long-term isolation itself can cause the exact kinds of anti-social or aggressive behaviors that would earn a prisoner the label “worst of the worst.” Seen in that light, the reforms to Maine’s SMU are more than a collection of policy changes; they are evidence of a deeper shift in attitude about the nature of human behavior, the impacts of isolation on that behavior, and the potential efficacy of corrections staff to make a positive contribution to an individual’s life.

## How It Happened

*“Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”*

*-United States Constitution, Amendment Eight*

*“[A]ll penalties and punishments shall be proportioned to the offense; excessive bail shall not be required, nor excessive fines imposed, nor cruel nor unusual punishments inflicted.”*

*-Maine Constitution, Article One, Section Nine*

### Pre-History of the Solitary Reform Campaign

**M**aine was not an overnight success story. The early 1970s saw substantial class action litigation over the conditions in the segregation unit at the Maine State Prison in Thomaston. A federal consent decree was entered in 1973 in the matter of *Inmates of the Maine State Prison v. Mullaney*, which required that the MDOC adopt (and comply with) a new policy regarding “the use and management of solitary confinement cells.”<sup>38</sup> That policy provided for basic due process for prisoners before they were sent to isolation cells, ensured that conditions in the cells met basic minimal standards, and capped the number of days that prisoners could spend in isolation.<sup>39</sup> Additional litigation followed in the late 1970s and early 1980s, including a class action lawsuit *Lovell v. Brennan*, brought by the ACLU National Prison Project, the Maine Civil Liberties Union (now the ACLU of Maine), and Pine Tree Legal Assistance.<sup>40</sup> That case, which was based in part on the earlier consent decree, “in large measure” sparked “substantial improvements” in the way prisoners were treated.<sup>41</sup> But, subsequent to those decisions, the State of Maine built a new “Supermax” facility down the road from the antiquated Thomaston prison, and—whether by operation of law or as a result of neglect—the earlier consent decree requirements were pushed aside.<sup>42</sup>

In 2005, the MCLU and ACLU National Prison Project took up the question of long-term isolation of prisoners with serious mental illness. Courts across the country were unanimous in the conclusion that subjecting prisoners with serious mental illness to long-term solitary confinement violates the Eighth Amendment’s prohibition on “cruel and unusual punishment.”<sup>43</sup> Courts had approved consent decrees across the country that



Maine State Prison

prohibited prisons from confining prisoners with schizophrenia, bipolar disorder, and other serious illnesses in solitary confinement units or facilities. If Maine would not agree to such a prohibition as well, the ACLU National Prison Project and the MCLU were prepared to take them to court.

The MDOC ultimately agreed, and the ACLU, MCLU, and Disability Rights Center of Maine negotiated a series of rule changes that resulted in the creation of a

“Secure Mental Health Unit” where prisoners with serious mental illness could be given extra monitoring and treatment without compromising the safety of the facility.<sup>44</sup>

Unfortunately, good policies do not always result in good practice. Subsequent visits to the Maine State Prison by the MCLU and Amnesty International revealed that the “Secure Mental Health Unit” was simply being used as an SMU with a different name. Prisoners were still being warehoused, were still denied meaningful human contact, and were not being given any of the treatment or therapy (except for pharmaceuticals) that their conditions warranted. The advocates had hoped that the rule changes would lead first to better treatment for prisoners with serious mental illness and, later—after the prison administration had grown comfortable with a new way of thinking about prisoner well-being—to better treatment for all prisoners. Instead, the prison officials had kept the same punishment philosophy in place, while moving a few beds around and changing the name on the unit.

At that point—in early 2009—the MCLU and the ACLU National Prison Project began planning in earnest for a class action lawsuit aimed at reforming the use of solitary confinement in Maine.

### The Legislative Campaign

**A**t around the same time that the ACLU was preparing for litigation in Maine, other activists in Maine began developing plans for legislation aimed at curing a number of documented problems in the Maine State Prison—the overuse of restraint chairs and chemical agents, the lack of due process in prisoner discipline, and the

*Question: Why is solitary confinement reform important?*

*Rev. Jill Saxby, Maine Council of Churches: “For us, it’s a moral issue and human rights issue. It has to do with affirming the inherent worth and dignity of every person, who is made in the image of God. Everything we’ve learned about solitary and its effects on the human person (the prisoner, the jailer, the society) tells us that it is morally wrong and that society needs to be reminded of our moral responsibility to those whose behavior leads to imprisonment.”<sup>45</sup>*

inhumane effects of long-term isolation. Emily Posner was an early leader of that effort. She was inspired by Atul Gawande's New Yorker article<sup>46</sup> and by her correspondences with Herman Wallace, one of the "Angola Three" who was held in solitary confinement in Angola Prison in Louisiana for decades.<sup>47</sup>

*Gawande mentioned that Maine had one of the highest rates in the country in regards to percentage of inmates in solitary confinement compared to the facility's total population. I was shocked and upset that my state was making such headlines. I wrote a letter to Jim Schatz, a member of the Maine state legislature's Criminal Justice Committee. I also sent him a copy of 'Hell Hole.' I asked if he would be interested in crafting a piece of legislation that addressed the use of long-term solitary confinement in Maine prisons. He agreed and we were off.<sup>48</sup>*

Posner and Rep. James Schatz (D-Blue Hill) ultimately drafted a bill, An Act to Ensure Humane Treatment for Special Management Prisoners,<sup>49</sup> which the MCLU and other advocates helped shape. The bill had a number of components:

- A 45-day cap on the number of days that a prisoner could spend in solitary confinement (with exceptions for prisoners who commit serious acts of violence, sexual assault or murder on staff or other prisoners; prisoners who escape or attempt to escape; or prisoners who present an immediate risk of harm to others);
- a prohibition on the placement of prisoners with serious mental illness in solitary confinement, and a process for removing formerly healthy prisoners who begin to exhibit symptoms of serious mental illness from solitary;
- a set of basic due process requirements for prisoner disciplinary proceedings and status reviews;
- a prohibition on the use of chemical agents or forcible extractions for the purpose of punishment; and
- a prohibition on the transfer of prisoners to out-of-state facilities lacking analogous protections.

MCLU Public Policy Counsel Alysia Melnick observed that the bill was not perfect,

*But philosophically it was on the right track. It reflected the emerging understanding that solitary confinement, particularly when prolonged or when used with mentally ill prisoners, is ineffective, costly, and extremely damaging – both to the prisoners themselves and to the cell blocks and communities to which they return.<sup>50</sup>*

A coalition of organizations (the MCLU, NAACP, Maine Council of Churches, Disability Rights Center of Maine) and individuals (prison volunteers Jim Bergen and Judy Garvey, former prisoner Ray Luc Lavasseur, journalist Lance Tapley) came together to form the Maine Prisoner Advocacy Coalition (M-PAC) to advocate for the passage of the bill. As Bergen noted in recent written comments submitted to the U.S. Senate Judiciary



Committee's Subcommittee on the Constitution, Civil Rights and Human Rights, the original goals were modest:

*The resulting Bill – LD 1611 – was modest in that given the DOC's intransigence, advocates were not optimistic in gaining a major transformation. It established necessary limits to the use of solitary based on the current research findings on this form of deprivation, presumably before the point where severe psychological damage can take place. Advocates also wanted to ensure that each prisoner in solitary would be checked at regular intervals for mental and physical deterioration by a trained mental health practitioner. We also hoped to enforce an end to 'cell extractions,' 'restraint chairs,' and other so-called 'tools.' With this Bill, it seemed that we were not pushing the envelope too far, and that our legislation would be viewed as moderate and politically capable of passing through the state legislative process successfully, despite views to the contrary on the part of Maine's DOC.<sup>51</sup>*

Despite the fact that the goals of the legislation were modest (from an administrative standpoint) and necessary (from a human rights standpoint), the legislation met with immediate and forceful opposition from the MDOC.

On February 17, 2010, the Maine Legislature's Joint Committee on Criminal Justice and Public Safety held a public hearing on LD 1611. The hearing began at 1:00 in the afternoon and continued until 11:00 that night and featured 45 witnesses. Of those, 29 spoke in favor of the bill, 14 spoke in opposition, and two spoke neither for nor against the bill.

Supporters included representatives from the Maine Association of Psychiatric Physicians, the Maine Psychological Association, the Maine Council of Churches, the Roman Catholic Diocese of Portland, the American Friends Service Committee, the Maine Prisoner Advocacy Coalition, the Immigrants Legal Advocacy Project, and the Maine Civil Liberties Union. Psychiatrist and author Dr. Stuart Grassian also testified in support, as did Prof. Richard Maiman of the University of Southern Maine political science department and Prof. Craig McEwan of Bowdoin College. Numerous former prisoners and parents of former prisoners also testified in support.

Opponents included representatives from the MDOC and the unions that represent prison staff (AFSCME and MSEA), and the Maine Sheriff's Association, as well as a number of corrections officers, a psychiatric nurse, and other members of the public.

A lawyer for the Maine Medical Association and a representative of the Healing Justice Program of the American Friends Service Committee testified neither for nor against.

The lead sponsor of the bill, Rep. Schatz, spoke first:

*The passing of this bill will allow Maine citizens to be more informed and certain that what takes place in our institutions is consistent with our values as human beings and the need to return offenders to their communities as productive citizens.<sup>52</sup>*

Prisoners were unable to attend the hearing, so their testimony (in the form of letters and comments) was presented by Judy Garvey of M-PAC.

Numerous religious figures testified in support of the bill. Among them was Rev. Susan

Murphy, an Episcopal priest from Sanford, Maine:

*There are those who say, prisoners deserve to be treated like animals and yet we arrest people for treating animals in the same way we are treating persons in segregation but we often just turn our eyes away because it will cost us something. We are already paying the price for the inhumane treatment of prisoners in solitary confinement. These persons—most of them—will return to society and what have we created?<sup>53</sup>*

and Eric C. Smith, Associate Director of the Maine Council of Churches:

*Each of us is worthy of respect and dignity simply because we are human beings. This is the starting point for all laws that protect human life and mandate minimum standards by which we will live together in society. This principle is so foundational, that even when we violate those laws, even when we harm another person, even when we must be punished and removed from society, we do not negate our humanity.<sup>54</sup>*

Experts in corrections policy and penology, including Maiman and McEwen, testified in support of the bill as an important step towards reversing long-term destructive priorities in the corrections industry:

*In a well-functioning prison system, special management should be used as a last resort and applied for relatively short periods of time. Long applications of special management and their routine use as a punishment device fuel anger, resistance, and future bad conduct. They not only disable inmates from smooth adaptation to later release from prison, but more immediately, disable them from effective participation in the social system of the prison.<sup>55</sup>*

Some of the most compelling testimony came from parents and family members of prisoners or former prisoners. One mother, Daureen Stevens, told how she felt like she was experiencing the pain of solitary confinement with her son—a feeling familiar to parents:

*My son spent many years in solitary confinement which seemed like an endless dark tunnel to me. Even though I had my freedom, I was also imprisoned within my desperation for him to survive. My thoughts and fears of losing my son is an unbearable gut-wrenching empty feeling whenever he is in solitary confinement. The thought of losing him to a delusional/mental state of mind, or even death sat in the deepest part of my soul and mind. . . Ask yourself, would you send your child to their room for a week, a month, or even years to punish them for something they did wrong?<sup>56</sup>*

Those concerns were echoed by mental health professionals. Dr. Janis Petzel testified as President of the Maine Association of Psychiatric Physicians:

*When the extreme stressor of solitary confinement is layered on top of a pre-existing psychiatric condition, the results are disastrous for the individual: psychosis, suicide or self harming behaviors, complete emotional breakdown. This type of overwhelming experience can make permanent, negative changes in the brain.<sup>57</sup>*

And Dr. Grassian, one of the world's foremost experts on the psychological effects of long-term isolation, testified about the problems with Maine's facilities, programming, and lack of adequate mental health supervision:

*Institutions like the SMU 'look' good; they make it seem like we are 'getting tough on crime.' But in reality, we are getting tough on ourselves. 95% of all incarcerated individuals are eventually released, some directly out of SMU settings. We have succeeded in making those individuals as sick, as internally chaotic, as we possibly can. Over the long term, the SMU does not create a safer environment; it creates a far more dangerous environment.<sup>58</sup>*

Civil rights advocates, including the MCLU's Melnick, drew the explicit connection between the harms caused by solitary confinement and the promise of change embodied in the proposed legislation:

*We understand that change is hard. Supporters of reform must fight against formidable limits to training, staff and programmatic resources. And, in presentations before this Committee, OPEGA,<sup>59</sup> and the Board of Visitors noted the serious challenges in trying to change a long-standing and ingrained prison culture. But make no mistake, change is both possible and necessary.<sup>60</sup>*

Opposition to the solitary reform legislation was led by then-Commissioner of the MDOC, Martin Magnusson:

*This bill would seriously jeopardize the health and safety of both staff and inmates and require substantial additional costs to the Department and the State during a budgetary crisis. I can tell you with 100% certainty that more of our staff and inmates would be at serious risk to be injured or killed if this LD was passed.<sup>61</sup>*

That promise of future harm to prisoners and guards was enough to carry the day, and all but two members of the Committee (one of whom was the lead sponsor) ultimately voted against the legislation. When the bill came to the floors of the House and Senate, a number of legislators echoed the concerns expressed by the Commissioner that the safety of staff and prisoners would be jeopardized by a reduction and regulation of the use of solitary confinement, while others disputed the scientific basis for concern about long-term isolation.

Following that substantial setback, advocates for reform were able to achieve what they believed at the time was the most modest shred of a victory: the conversion of the thorough and detailed oversight bill (with strict prohibitions and clear requirements) into a legislative resolve requesting that a government entity hand-picked by the MDOC study the limited question of due process rights for prisoners with mental illness. It would be an overstatement to say that advocates were not terribly optimistic about the potential value of such a study. As the reform advocates awaited the study, they took comfort in the knowledge that they had forced lawmakers and those charged with overseeing corrections policy to have a real and deep conversation about solitary confinement in Maine's prisons.

## [The Sherrets Report](#)

**M**aine's proposed solitary-reform legislation, LD 1611 (124th Legislature) was ultimately converted into Resolve Chapter 213, LD 1611. The legislation had been titled "An Act to Ensure Humane Treatment for Special Management Prisoners,"<sup>62</sup> but the resolve

was ultimately titled “Resolve, Directing the Department of Corrections to Coordinate Review of Due Process Procedures and To Ensure Transparency in Policies Regarding the Placement of Special Management Prisoners.” The gap between those two titles provides a fair proxy for the gap in enthusiasm that the advocates (and their supporters in the legislature) felt between the original bill and its final approved form.

The Resolve was short:

*Sec. 1 Commissioner of Corrections’s review of due process and other policies related to placement of the special management prisoners at the Maine State Prison. Resolved: That the Commissioner of Corrections shall, in consultation with the mental health and substance abuse focus group of the State Board of Corrections, review due process procedures and other policies related to the placement of special management prisoners. In its review of due process procedures and placement policies, the commissioner shall also consider and propose an appropriate timeline for regular reporting to the joint standing committee of the Legislature having jurisdiction over corrections matters; and be it further.*

*Sec. 2 Reporting date established. Resolved: That the Commissioner of Corrections shall report findings and recommendations pursuant to the report under section 1, including any suggested policy or legislative changes, to the joint standing committee of the Legislature having jurisdiction over corrections matters by January 15, 2011.*

The Mental Health and Substance Abuse Focus Group (“the Group”) of the State Board of Corrections was comprised of staff members from the MDOC and the Department of Health and Human Services (MDHHS), as well as corrections and health care professionals from Maine jails. The Group was chaired by Dr. Steve Sherrets, a psychologist who served as the Mental Health/Criminal Justice Manager for MDHHS.

The Resolve was finally approved on April 15, 2010, but the Group did not begin its work until the summer of 2010. Once the Group began to work, though, it worked extremely diligently. By its own account, the Group went “beyond the required scope of the charge” to consider the broader implications of corrections procedure and practice on the mental health and well-being of prisoners, as well as the safety and administrative needs of staff.<sup>63</sup> The Group accepted suggestions from outside groups and individuals, including many of the advocates who had worked on the legislative campaign. The MCLU submitted multiple memoranda and kept in touch with Sherrets throughout the process. The Group spent “100s of hours doing the ground work” for the report, and it was given broad access and assistance by the MDOC.<sup>64</sup>

The Group’s conclusions were shocking in their thoroughness and honesty, and they confirmed many of the claims that the advocacy community had made in support of the legislation. The report went beyond simply identifying serious problems to recommending necessary changes to address those problems.

The first problems that the report identified was the amount of discretion exercised by corrections officers in sending prisoners to the SMU, coupled with a lack of clear record keeping and reporting about the population of the SMU—why were prisoners there,

what had they done wrong, and when would they be returned to the general population. The Group's first recommendation—one that overlays and informs all subsequent recommendations—embodies the need for prison staff to get away from using long-term isolation as the punishment of choice:

- Recommendation 1 Overview: The Focus Group recommends consideration of exploration and development of alternatives developed for the general population of inmates so general population staff will have more alternatives for behavioral intervention than what is afforded by the use of Disciplinary Segregation, Administrative Segregation and the Protective Custody inmates. This should result in hopefully preventing many of them from being placed in an SMU. When an inmate is placed they frequently lose their bed and receive the most intensive/costly interventions available in the facility. The individual also has the experiences of the greatest degree of restriction and loss of liberty and rights. This could arguably be justifiable if the program worked at permanently changing behavior but current research and experience suggest that we achieve questionable positive effects on the inmate or their future behavior. One can even argue that repeated use of SMU's without the type of behavioral/prescriptive programming we are suggesting may well have a deleterious effect on future pro-social behavior. Better management of behavioral responses and contingent reinforcers, could well reduce not only the use of these units but result in an increase in appropriate behavior in the general population and hopefully a better transition to appropriate behavior in the community.<sup>65</sup>

Additional recommendations include the following:

- The hiring of professional behavioral health staff with backgrounds in behavior modification (Recommendation 2);
- regular periodic meetings between mental health staff from various facilities (Recommendation 3);
- ongoing collection of data concerning the SMU population, including the yearly cumulative time that any prisoner spends in the SMU (Recommendations 4 and 3U);
- review of the use of the SMU to house prisoners awaiting completion of investigations (Recommendation 7);
- keep the beds of prisoners sent to the SMU open in order to ensure that there is a place for them in the general population as soon as they are ready to be released from the SMU (Recommendation 1U);
- develop additional tools and sanctions for imposing discipline in the general population so that the SMU is only a last-resort punishment (Recommendation 2U);
- make sure that fully-trained “counsel substitutes” are available to assist all prisoners, especially prisoners with limited cognitive abilities (Recommendation 4U and 6U);

- improve the physical space in the SMU so that there is adequate airflow and enhanced sensory stimulation available (Recommendation 8U and 9U);
- flexibility in relaxing the conditions of confinement in the SMU when there are mental health concerns, including increased human contact, out-of-cell time, and access to therapy (Recommendation 11U);
- special training for SMU staff, including mental health treatment protocols, de-escalation techniques, and special cognitive challenges (such as brain injuries) (Recommendation 14U); and
- include mental health and security staff in joint planning sessions to develop intervention plans for prisoners (Recommendation MHU 20).<sup>66</sup>

Because the recommendations were so detailed, and because they were based on both insider knowledge and insider access by well-credentialed authors, they would have been difficult to ignore. Difficult, though, is not the same as impossible. Like all institutions, corrections departments naturally resist pressure to change. Advocates for reform at the MCLU viewed the report as the MDOC's last best chance to reform itself, or else the report would be Exhibit One in a federal civil rights case.

Commissioner Ponte, though, took the recommendations head on. In an interview conducted for this report, he noted that "the facts are the facts...clearly, that was our practice. That is how we ran prisons forever. So, I couldn't back away and say 'we don't do that.'"<sup>67</sup> The commissioner set up a second working group tasked with developing plans for implementing the recommendations, and the group was instructed that if they were opposed to implementing any of the particular recommendations, they needed to have a very good reason.

Jim Bergin, one of the advocates who leads the Maine Prisoner Advocacy Coalition, is a member of that group:

*This Working Committee had weekly meetings through a year, meeting at Maine State Prison in Warren, Maine, and consisted of [staff and advocates]. The presence of the two Advocates on the Committee, at the suggestion of Commissioner Ponte, was a radical innovation for the MDOC that was in marked contrast to the previous MDOC Administration for which "transparency" was a dirty word, and M-PAC was a problem that wouldn't go away.*<sup>68</sup>

Bergin believes that the ultimate goal of the working group is "the potential of all but eliminating the use of solitary" and he sees the use of rigorous data collection as "a means to measure the success or failure of the Policy changes" in achieving that ultimate goal safely and efficiently.<sup>69</sup> Bergin continues to receive regular briefings on policy development, as well as data on prisoner discipline, which he in turn shares with the larger prisoner-advocacy community.

# Keys to Success

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## Honest Assessment

Maine’s solitary reform successes were built upon an honest assessment of how Maine’s prison officials were using long-term isolation and the effect that isolation was having on prisoners. This is, in itself, remarkable. Most reform efforts are met with apologetics and sophistry—“this is the only way to do things, it isn’t as bad as you think, and you really don’t understand how the system works.” That is a very difficult barrier for advocates—most of whom, most of the time, are working outside the system they are trying to reform.

The second-to-last step that led to Maine’s remarkable overhaul of its solitary system—



*View of recreation area at Maine State Prison*

right before Commissioner Ponte created and implemented the new governing policies, but after the long years of legislative advocacy, negotiations, and litigation threats—was an investigation of Maine’s SMU by government officials. Normally, the prospect of government officials investigating themselves would not inspire a great deal of confidence or enthusiasm by advocates. At best, the investigators would normally be predisposed to present their co-workers and superiors in a favorable light, and at worst the

investigatory impulses would normally be captured by the greater interest in maintaining the status quo. One would expect this to be especially true in a specialized field, such as corrections, where there is a sharp divide between insiders and outsiders and a strong concern over basic safety that permeates even the most modest policy challenges.

Luckily, that was not the dynamic that emerged in Maine. As described before, the Maine Legislature charged the corrections commissioner to consult with a small subcommittee of a relatively-inactive policy setting board—the Mental Health and Substance Abuse Focus Group of the Maine Board of Corrections—in order to review “due process procedures and other policies related to the placement of special management prisoners.” That group went deeper and further than anyone—advocates or corrections professionals—expected. Their report documented that there were, in fact, significant problems with the way that long-term isolation was used in Maine prisons, and it included many substantial recommendations for ways that solitary could be reformed. These findings and recommendations are discussed in greater detail in a separate section of the report,

but it is the existence of this honest self-critical report—independent of the information contained within it—that is almost more remarkable than the changes that stemmed from the report. After all, very little (if any) of the information in the report was news to the many experts and advocates who worked on solitary reform in Maine, and certainly none of it was news to the prisoners who were forced to endure brutal and dehumanizing treatment. What is news, and is important to note, is that the report – detailing the serious problems with solitary and recommending significant change – was produced by government officials, many of whom had worked in corrections.

It would have been easy for the Group to stick to its narrow mandate of reviewing due process procedures, and it would have been a surprise to nobody if the Group had said that those procedures were adequate or that they satisfied basic constitutional minimums. That, in fact, had been the conclusion of a Maine Assistant Attorney General who was asked to review and explain the due process implications of the Maine State Prison's procedures for imposing solitary confinement. But instead, the Group decided to take a serious and objective look at the entire operation of Maine's SMU—the policies, the actual practices, and the shortcomings in each. Their research reinforced many of the claims and concerns made by advocates, and because the group included both mental health and corrections personnel, their conclusions could not easily be dismissed.

Expert reports and reviews are frequently used in the solitary reform process, and advocates have been extremely fortunate to be able to rely on so many highly credentialed, deeply experienced medical, psychological, and penological experts to help conduct those investigations and produce those documents. Maine's experience, though, points out the value of a different kind of investigation—one conducted by government insiders of their own system. This is not to say that individuals with as much integrity and commitment as the group that conducted the Maine investigation will be easy to find—they will not. But advocates should begin the search and devote serious energy to nurturing any potential they find in government insiders, particularly those with mental health, corrections, or public safety backgrounds. The Maine report ended up being one of the most important components fueling the state's reform efforts – and it had the impact it did because of who the authors were (insiders) and where they were from (Maine).

## Organizing and Cooperation

**M**ost of the history of Maine's solitary reform campaign was antagonistic. Lawsuits were brought, and more lawsuits were threatened. Solitary reform legislation was proposed and debated, which the MDOC leadership viewed as a hostile and unjustified intrusion into their sphere of operations. They marshaled every available resource—lobbying, personal appeals, a media campaign, demonstrations by staff and their family members, dire warnings of riots and mayhem—to oppose it. Many legislators and other government officials were dismissive of the scientific and medical claims of advocates, and of those advocates themselves. As just one example: Dr. Grassian has studied the mental health



consequences of long-term isolation for decades. His testimony was challenged by the Maine Legislature's Criminal Justice and Public Safety Committee with derisive inquiries about what makes him an expert and why he thought his decades studying prisoners outside of Maine had any applicability to Maine prisoners. It was that kind of campaign.

For their part, the advocates were not shy about using the word "torture" to describe long-term isolation, which upset many corrections officials as well as sympathetic staff members. One staff member asked advocates, repeatedly and incredulously—"You are calling us torturers—how can we work with you after that?"

Harsh words were also accompanied by threats. Commissioner Ponte acknowledged that the threat of litigation by the MCLU played a significant role in creating a sense of urgency. In an interview with Lance Tapley, a Maine journalist who has documented the problems of long-term isolation in Maine's prison, Commissioner Ponte noted that he did not come to Maine looking to reform the use of solitary—the issue was waiting for him, in the form of "threats of lawsuits by the ACLU."

But, despite these antagonisms, the final stages of the Maine campaign were characterized by a great deal of cooperation between advocates and corrections professionals. In large part, this was due to the arrival of a new corrections commissioner, who felt no ownership over the prior policies, who had an interest in working with advocates, and who had not been scarred by previous years of contentiousness. For example, as described before, Commissioner Ponte established a working group with the directive of implementing the recommendations of the Mental Health/Substance Abuse Focus Group's report—not "reviewing and discussing" the recommendations, but "implementing" them. That group includes the commissioner and administrative staff from the MDOC, the warden and deputy warden of the Maine State Prison, the president of the Portland branch of the Maine NAACP, and the co-coordinator of the Maine Prisoner Advocacy Coalition. Outside groups, including the ACLU and the Maine Council of Churches, have had extensive meetings with staff at the Department of Corrections and at the Maine State Prison, and have been given the opportunity to speak with line officers and prisoners about changes to the use of solitary confinement.

Maine represents an example of the need for forceful advocacy (including, sometimes, litigation) and an openness to working collaboratively. Neither strategy on its own was able to bring about broad and deep changes to the entrenched views and practices surrounding solitary confinement. In Maine's case, advocates were only able to switch from antagonism to cooperation after a change in leadership at the Department of Corrections. Hopefully that will not be necessary in every jurisdiction, but it is a dynamic that advocates would do well to notice, consider, and take advantage of when possible.

## Overcoming Institutional Inertia

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The first challenge for a solitary reform campaign is overcoming inertia. Using long-term isolation to punish prisoners has been the normal practice in the United States for a very long time—as Commissioner Ponte put it, “It’s how we were brought up.”<sup>70</sup> And, unfortunately, overcoming that resistance to change is not easy. Despite volumes of evidence, settlements and court decisions, and the experiences of places like Maine and Mississippi, the Director of the Federal Bureau of



*Maine State Prison*

Prisons nonetheless told a Senate hearing in 2012 that the Bureau hardly uses long-term isolation, and that solitary confinement not really a problem anyway.<sup>71</sup> Since the Federal Bureau of Prisons is the largest prison system in the country, the director’s views and lack of concern carry unfortunate weight.

But, by telling prisoners’ stories, sharing the medical science in support of reform, reminding people of their moral obligation to treat other human beings with dignity, and applying judicious pressure, inertia can eventually be overcome.

Once that happens, advocates must find ways to overcome the next set of barriers—the predictable counter-arguments in support of the status quo. These, too, can be overcome, but it will be more challenging. Luckily, Maine’s experience can help.

### Is It Safe?

Safety is the primary objection that sinks every unsuccessful prison reform effort—it was successfully deployed by Maine’s former corrections commissioner, Martin Magnusson, to derail proposed legislation, and it was echoed by every unsupportive legislator. Nobody wants to be responsible for needlessly risking the safety of corrections staff or prisoners, and, faced with the specter of that possibility, many decision makers will find it easier to simply do nothing.

But, given the experiences in Maine, the safety excuse is no longer a tenable argument for completely blocking reform. Even after reducing the population of the SMU by more

than half, Maine has seen no statistically significant rise in incidents of violence. In fact, by some measures, the violence has decreased. Commissioner Ponte requires regular data collection concerning violent incidents, and he reviews that data regularly. He noted in August 2102 that “the violence in the population is a little better than before we made the changes. You could say it is about the same—it hasn’t really gone up or gone down, it is about the same.”<sup>72</sup> Inevitably, there will be serious violent incidents in prison. But Maine’s experience shows that using long-term isolation to punish prisoners does not prevent to such incidents. Prisons can punish prisoners in more humane ways than long-term isolation without risking anyone’s safety.

## Are There Any Alternatives?

**L**ong-term isolation has been the punishment of choice for so long in so many prisons and jails that it is difficult for corrections officials to imagine any other way of doing things. Solitary, they will insist, is the only tool they have for punishing those prisoners who will not follow the rules.

Unlike the safety argument (which the public may be willing to accept on face value), this excuse should not easily gain traction with the public, judges, or legislators. After all, this is prison—there are an endless number of things that staff can do to enforce rules that do not involve solitary confinement. In Maine, these alternatives include short-term confinement within the general population unit, temporary loss of work privileges, temporary loss of contact visits, and limits on numbers of approved visitors. On top of that, the Maine State Prison has trained its corrections staff to look for ways to defuse situations before there are violations of the rules. Staff are trained to take copious notes on prisoner interactions, so that they are able to anticipate problems. They are also trained in “verbal judo”—a technique for redirecting a prisoner’s energy and de-escalating a situation.

Not only are there plenty of disciplinary alternatives to solitary confinement, but the alternatives actually work much better. Prisons do not impose discipline for its own sake (if they do, that is another problem altogether); they impose discipline to correct behavior and keep people safe. But, using solitary confinement as a form of discipline makes it so that prisoners lose the ability to control themselves and their thoughts, which means they are less likely to act rationally and correctly in the future. That, in turn, makes everyone less safe—guards, other prisoners, and the public.

## Is Reform Really Worth the Effort?

**U**nfortunately, it is a widely held view in the national corrections community that reform is not worth the effort. Commissioner Ponte shared that he initially learned about the process of solitary reform from Mississippi’s Commissioner Christopher Epps at a national meeting of corrections commissioners. But, he found that few of his colleagues were

interested in learning more: “there are not a lot of people saying, ‘Hey what’d you do and how’d you do that?’”<sup>73</sup> Some people will be persuaded by the moral case against torture, and others will be persuaded by the medical concerns or the public policy arguments. But, for those who are still unpersuaded, there is one important remaining response: money.

It costs two to three times as much money to keep a prisoner in solitary confinement as it does to keep him or her in the general population. In Maine, a prisoner in the SMU was not allowed to go anywhere without full shackles and two guards for escorts. A prisoner in Maine’s SMU would have arm and leg shackles placed on for a 10-foot walk to the shower cell, and the two guards that were needed to escort that prisoner were not available for any of the other tasks that needed to be performed at the prison during that shower. Prisoners in Maine’s SMU, and in analogous facilities around the country, were not allowed to go to the dining hall for meals, which meant that staff needed to package up the meals, bring the meals to the SMU, and then bring the dirty dishes back to the dining hall. In prison, staff time equals money, and Maine (like most states) spends inordinate amounts of money on solitary confinement that could be better spent elsewhere. After all, under Maine’s previous policies, prisoners might be housed in the SMU for all sorts of reasons, very few of which correlated with a tendency towards violence. But, the blanket security practices at the SMU made it an extremely expensive facility to operate, in addition to all the related costs that stem from the long-term effects of solitary confinement.

The money Maine now saves on its SMU can be put towards programing and facilities, which is especially important given the financial crisis that the state has experienced in recent years. New money from the state budget has been extremely hard to come by, and solitary reform provided a way for the MDOC to free up money that was being spent unnecessarily. That process should appeal to decision-makers across the country, no matter how they feel about the moral or medical case for solitary reform.

## **Do Advocates Really Understand?**

**T**he leaders of Maine’s solitary reform campaign were doctors, lawyers, clergy, parents, spouses, organizers, and former prisoners. Despite concerted recruitment efforts, though, the campaign did not include any corrections officers. Many of the people involved had spent substantial amounts of time in prisons and jails, and a number of the leaders, like former State Representative Stan Moody, had spent time as chaplains at various facilities. But reform opponents were still enthusiastic about claiming superior knowledge based on personal experience. Advocates were told that if they really knew what it was like in prisons and jails, they would have a different position—maybe they would believe that long-term isolation did not cause health problems, or maybe they would believe that these problems did not matter because prisoners deserve whatever ill treatment they receive. A desire to reform the use of solitary confinement will frequently be portrayed as evidence of a lack of understanding.

Fortunately, advocates for solitary reform have a growing list of allies with substantial personal experience working in corrections, including Maine’s Corrections Commissioner Ponte and Mississippi’s Corrections Commissioner Epps. Both of these men and many of their senior staff have gone through the process of reducing and reforming the use of solitary confinement, and they have said on multiple occasions that it is a worthwhile undertaking. Here is Commissioner Epps, who has also served as the President of the American Correctional Association, testifying before the Senate Judiciary Committee:

*The Mississippi Department of Corrections administrative segregation reforms resulted in a 75.6% reduction in the administrative segregation population from over 1,300 in 2007 to 316 by June 2012. Because Mississippi’s total adult inmate population is 21,982 right now, that means that 1.4% are currently in administrative segregation. The administrative segregation population reduction has not resulted in an increase in serious incidents. The administrative segregation reduction along with the implementation of faith-based and other programs has actually led to 50% fewer violent incidents at the penitentiary.<sup>74</sup>*

And here is the testimony of Commissioner Ponte:

*The MDOC has been able to keep one segregation pod closed for the last year. There has not been an increase in violent incidents as a result. Efforts to improve the unit management approach are still underway as the culture shifts from punitive responses to more positive responses. Shifting thinking among staff is challenging and takes time and education. As positive outcomes are seen and experienced, staff buy-in increases.<sup>75</sup>*



*Maine State Prison*

Inevitably, advocates for reform will encounter influential decisionmakers who do not want to listen to science, who do not want to listen to doctors, who do not care what clergy have to say, and who are unmoved by the first-person accounts of people who have actually experienced long-term isolation. They may not want to hear from the ACLU either. Maine advocates experienced all those forms of hostility, and the last refuge argument was, “you just don’t understand.”

To them, you can say that Commissioner Ponte understands and the head of the American Correctional Association understands as well. They understand, and they believe that reforming the use of solitary in prisons and jails is in everyone’s best interest. With each passing year, as more and more states undertake reform efforts, there will be more corrections officials available to testify to the possibility of safely and efficiently moving away from a corrections system that depends on locking people in a dark room, alone, to lose their minds.

# The Lessons of The Maine Reform Campaign

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It is the great hope of prison reformers in Maine (including this author) that Maine will serve as an example for what is possible in solitary confinement reform. Commissioner Ponte has noted that Mississippi's solitary reform efforts were inspiring to him—once he heard the story of Mississippi Corrections Commissioner Christopher Epps's actions, he felt that “if he can do that in Mississippi I know we can do that in Maine.”<sup>76</sup> In turn, Commissioner Ponte hopes that Maine's successes will be inspiring to others.

## Lesson One: Bring All the Pieces Together

Advocates, like the MCLU's Alysia Melnick, hope that colleagues around the country recognize how many different pieces there are to a successful solitary reform campaign, and how they can fit together:

*It's crucial that the benefits of reducing and reforming use of solitary be communicated from all perspectives – meaning, this isn't just about humane treatment of prisoners, or our moral and societal obligation to refrain from torturing those we incarcerate. It's about that – but it's also about good public policy, and about reforming a practice that's proven so costly to our nation not just in terms of ruined lives of the prisoners themselves, but also in terms of increased recidivism, injuries to staff and other inmates, and the tremendous fiscal burden on taxpayers. Overuse and abuse of solitary serves no one.*<sup>77</sup>

Maine's solitary reform campaign was made up of diverse voices and perspectives committed to the same goals: doctors, clergy, lawyers, prisoners, family members, legislators, and volunteers who were simply moved to action. Each of these people had different critical roles to play, personal stories to share, medical information to explain, and moral visions to proclaim. The reform efforts would not have been possible without all of them. Advocates around the country who are embarking on a solitary reform effort should pull together the largest, most diverse coalition that can be successfully organized and managed.

In Maine, the faith community provided important moral leadership and represented a perspective free from partisan influence. Rev. Richard Kilmer of the National Religious Coalition Against Torture (“NRCAT”) is a resident of Maine, and he was committed to seeing his home state light the way for other states across the country. As Rev. Kilmer noted,

*The National Religious Campaign Against Torture advocates for reform because prolonged solitary confinement destroys prisoners' minds, denies the opportunity for community, and violates the inherent, God-given dignity and worth of every person. As people of faith, we are called to speak for those in our community who have no voice, including individuals who are incarcerated.*<sup>78</sup>

NRCAT's participation led, in turn, to the involvement of the Maine Council of Churches, for whom the campaign was a way of "affirming the inherent worth and dignity of every person, who is made in the image of God."<sup>79</sup> And, once the Maine Council of Churches became involved, its individual member congregations became interested, which led to volunteers writing letters, attending hearings, and visiting prisoners to collect stories.

## Lesson Two: The Importance of Leadership

**A** reform effort will not manage itself, and a shared goal is not the same as a shared plan. Organizations like the ACLU, with experience in legal, legislative, and public advocacy, can provide help getting reform efforts off the ground, but they are not the only ones and they cannot do it alone. The Maine Prisoner Advocacy Coalition that formed around the solitary reform campaign included both professional advocates (including the ACLU) and grassroots volunteers, many of whom had personal connections to the problems associated with the overuse of solitary confinement—either because they themselves had experienced it, or because they had tried to help friends or relatives rebuild their lives after a long stay in solitary. That coalition, in turn, provided leadership to the larger community of concerned individuals who were able to pressure their elected representatives to support reform.

Leadership from the advocacy community is, unfortunately, only one ingredient. Maine's reforms were only possible after leadership in the state correction system made reform a priority. Identifying and encouraging corrections officials who are interested in following in the path set by Commissioner Ponte ought to be a goal of a successful reform effort.

## Lesson Three: The Judicious and Timely Application of Pressure

**I**n the end, the MDOC overhauled its use of long-term isolation without being ordered to by a judge or a piece of legislation. But, that end would never have been reached if not for the application of pressure along the way in the form of threatened lawsuits and proposed legislation. Maine's Corrections Commissioner acknowledged this: when asked in an interview about the motivation for change, he noted that he did not come to Maine looking to reform the use of solitary but that the issue was waiting for him in the form of "threats of lawsuits by the ACLU."<sup>80</sup>

Credible legal threats and well-crafted legislation do not appear by magic. Because of the ACLU's long history of litigating complex prisoner rights cases, and its nationwide presence, it can be an important resource in developing a strategy for applying the right types of pressure at the right time. There is a saying from Abraham Maslow that it is tempting, if all you have is a hammer, to treat everything like a nail. One of the great strengths of the ACLU is that it has access to a diverse selection of tools. The problem of

solitary confinement is one in which different settings, and different moments, will demand the application of different forms of pressure: a lawsuit, a public education campaign, legislation, grassroots pressure, or some combination. In preparing for a solitary reform campaign, advocates should think about how to maximize the efficiency of that pressure.

## Conclusion

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**W**hen the pressure does eventually cause the resistance to change to give way, and when the campaign begins to experience more successes than setbacks, it will be as a result of the combined commitments of every sort of person. No campaign will be identical, but the movement to reform solitary confinement is developing both volume and momentum. As remarkable as the reforms in Maine have been, there is reason to hope that in coming years they will seem insignificant.



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