



TEXAS
CIVIL RIGHTS
PROJECT

Torture By Another Name

Solitary Confinement in Texas

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About the Texas Civil Rights Project

We are Texas Lawyers for Texas Communities. The Texas Civil Rights Project believes in a State where everyone can live with dignity, justice, and without fear. In its twenty-nine year history, TCRP has brought thousands of strategic lawsuits and spearheaded advocacy to protect and expand voting rights, challenge injustices in our broken criminal justice system, and advance racial and economic justice for historically marginalized communities.

Over the last 25 years, TCRP has established itself as a leader in litigating to achieve criminal justice reform in Texas. With an incarcerated population of approximately 150,000, Texas locks up more people than any other state. TCRP spearheads criminal justice reform in Texas via a program focused on dismantling the underlying causes and effects of mass incarceration through strategic litigation targeted at reforming identifiable institutional practices and conditions that perpetuate mass incarceration at both the front and back end of the criminal justice system.

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| Table of Contents

1	Introduction
1	How Solitary Functions in Texas
3	National Trend Away from Solitary
7	Texas Lags Behind Other States and the Teachings of Court Cases
10	Recommendations
12	Conclusion
13	Endnotes

| Introduction

Solitary confinement is a barbaric and torturous practice that strips people of their dignity. For years, policy makers in Texas have known of the severe harm caused by holding people in isolation. Yet Texas continues to hold thousands of people in isolation for years on end, sometimes decades. In May 2019, Texas held 4,165 people in solitary confinement.¹ On average, people placed in solitary confinement spend approximately five years in isolation.² Amazingly, Texas holds more prisoners in prolonged solitude—six years or longer—than all the other states and Federal Bureau of Prisons *combined*.³ As detailed in this report, the practices in Texas buck a national trend of reform in this area.

In 2015, after years of investigation, we released a comprehensive report with the American Civil Liberties Union of Texas on Texas' use of solitary confinement that detailed the severe deprivations attendant to isolation (the "TCRP-ACLU Report").⁴ Since then, the Texas Civil Rights Project ("TCRP") has continued to investigate how and for what purpose Texas holds people in isolation. We received 52 additional survey responses from people housed in solitary, have conducted numerous in-person visits, and received information from responses to public information act requests. We have also met and spoken with Texas Department of Criminal Justice ("TDCJ") officials. Our continued investigation has confirmed that people are still suffering severe harm in Texas' solitary confinement cells and are being deprived of minimal life necessities. Moreover, despite claims of reform by TDCJ and lawmakers, there is little evidence that meaningful changes have, in fact, been implemented. This report provides contemporary information about the current state of solitary confinement in Texas and recommend reforms based on trends across the country.

| How Solitary Functions in Texas

TDCJ purports to place people in solitary confinement for security purposes—including suspected gang membership or protective custody when someone's life is threatened. However, people's confinement in isolation often persists beyond the existence of any real security threat, and they are commonly left uninformed about the evidence that caused them to be moved to solitary in the first place. While in solitary, people spend 22-24 hours a day in a parking-space-sized, bare-bones cell without educational or environmental stimuli. They do not have access to televisions, educational opportunities, religious services, vocational training, consistent recreation, or adequate mental and physical health care. All of their visits are conducted through thick plexiglass, and they are not allowed to hug or touch loved ones for years on end. Almost all of their time is idle. In fact, people spend their days pacing in their cells, reading limited books they can get delivered from the library, and or sleeping.

The effects of prolonged detention in solitary confinement on the mind and body are numerous; many people who have been subjected to the practice report, for example, depression, suicidal ideation, mood disorders, insomnia, hallucinations, and a loss of ability to feel safe in social situations after as little as 10 days time held in isolation.⁵ Due to the deprivations endured and the severity of psychological harm caused by prolonged isolation, many people held in solitary confinement often report that symptoms of trauma endure well beyond their time in isolation. For some, the trauma can last a lifetime.⁶

For a large group of the solitary confinement population, these horrid conditions are often endured with no hope of release. A substantial number—1,966—of prisoners held in administrative segregation in Texas were originally

placed there only due to their alleged identification with a Security Threat Group (“STG”).⁷ Alleged membership in these groups, which may include gangs and other organized crime organizations, results in automatic and indefinite detention in administrative segregation. TDCJ policy claims this is necessary to promote unit security, but many of the alleged STG members held in administrative segregation have no behavioral or disciplinary history prior to or since their placement there. A prisoner accused of being a STG member can *only* be removed from solitary if they complete an almost two-year process called the Gang Renunciation and Disassociation (“GRAD”) program, which has a 180-bed capacity. In other words, placement in solitary due to STG-classification requires at least an automatic two-year term of confinement.⁸

A person must admit that they are a STG member to start the GRAD process. Therefore, for those people who dispute their STG designation, the GRAD program presents an impossible choice: tell the truth about their lack of gang affiliation and be denied access to the program and continue to be held in solitary indefinitely; or lie about membership in a group and risk retaliation from that group. Additionally, confinement in solitary greatly diminishes the possibility of parole even if someone has a clean disciplinary record while housed there.⁹

The State Classification Committee (“SCC”) is the sole body—composed of TDCJ officials—that is charged with retaining or releasing people from solitary.¹⁰ Every person held in solitary for reasons other than gang classification is supposed to be reviewed every six months, and every person held in solitary due to gang classification is reviewed once every 12 months. These hearings are conducted by the SCC. According to TDCJ’s Administrative Segregation Plan,¹¹ the SCC has an obligation to provide the prisoners who are up for review with detailed reasons for the committee’s decision. However, we have learned that prisoners often do not know why they continue to be held in solitary or how they can be released from isolation.¹² The lack of transparency and objective criteria for release is exceedingly frustrating for people held in solitary, and strips them of any means of rebutting the committee’s conclusion that they are a security threat. For them, the resounding message from TDCJ is that good behavior is a meaningless factor in securing a release decision from SCC.

In late 2017, Texas publicly claimed to end its use of solitary confinement for punitive reasons. However, that change only paid lip service to actual, systemic change. In fact, only approximately 75 people were positively affected by that “reform”—while the rest of the thousands of people being held in administrative segregation remain in isolation.¹³ Again, as of August 2018, people held in isolation spent approximately five years in isolation.¹⁴

| National Trend Away from Solitary

| Policy & Legislative Advances

There is broad consensus among the corrections, psychiatric and medical community that solitary confinement causes extreme harm.¹⁵ As a result, some policy makers and corrections officials have started to voluntarily implement reforms.

In 2015, President Barack Obama directed the Attorney General of the United States to conduct a review of the “overuse of solitary confinement across American prisons” and to develop strategies for reducing its use.¹⁶ In January 2016, the Department of Justice (the “DOJ”) issued a 128 page report that included numerous “guiding principles” for the use of solitary confinement.¹⁷ The DOJ’s report concluded that prisoners should be “housed in the least restrictive setting necessary to ensure their own safety, as well as the safety of staff, other inmates, and the public” and that the conditions of confinement should include out of cell “opportunities for recreation, education, clinically appropriate treatment therapies, skill-building, and social interaction with staff and other inmates.”¹⁸ The report acknowledged that the “stakes are high” because when applied without regard to basic standards of decency, restrictive housing can cause serious, long-lasting harm.¹⁹ Thus, the practice should be used responsibly and sparingly.

Additionally, solitary confinement has caused concern among some federal legislators. This year, a group of United States senators re-introduced legislation to limit the use of solitary confinement in federal prisons called the Solitary Confinement Reform Act (the “SCRA”).²⁰ The SCRA limits the duration of solitary confinement to a determinate number of days depending on the circumstances, but not longer than 90 consecutive days under any circumstances.²¹ The SCRA also includes provisions that require mental health screening and treatment, specific data tracking, and transitional processes for people to re-enter general population or the free world.²² The bill is currently pending in the United States Senate.

The Liman Center at Yale Law School has studied solitary for years and released an impressively comprehensive nationwide survey on the practice in October 2018. Then in July of this year, the Center also produced a report detailing legislative changes made by several states.²³ These robust surveys contain extensive data on how solitary is used by other states and highlights Texas’ overuse and deficient data-collecting practices. Moreover, the resounding theme of both reports is that states increasingly recognize that solitary is ineffective, inhumane, and dangerous.

As detailed in the Liman Center reports, other states have accomplished reforms that offer a model for Texas to transform its use of solitary confinement. Transformation starts with corrections officials who understand that simply relying on tradition instead of expert research is dangerous and unsound.

Colorado is an example of how bold leadership can not only make prison safer by ending solitary but can also greatly improve prison culture. There, the Director of Corrections, Rick Raemisich, spent a day in solitary confinement and, reflecting on his experience afterward, felt confident that prolonged isolation would have “chipped away” at him.²⁴ Afterward, the state terminated the practice in its prison units that housed mentally ill people and replaced them with de-escalation tactics and psychiatric care. This simple change resulted in a 40 percent reduction in assaults, forced cell entries, and the use of heavy restraints.²⁵ Colorado also built their own restraint furniture—furniture that allows people to be handcuffed for security, but still participate in group activities—that allows prisoners to be out of their cells for a minimum of four hours a day for programming and

other activities with other prisoners. Then, in 2017, Colorado became the first state to follow the United Nations Standards for the Minimum Treatment of Prisoners known as the “Mandela Rules” and limit solitary confinement to fifteen days total and only for serious violations.²⁶

“The practice was pervasive because it was considered reasonable and effective. It was neither. In practice, long-term isolation punished people in a way that not only lacked humanity but sense. And when a program lacks both sense and humanity, the results are as clear as they are disastrous: dehumanization and harm.”

—Rick Raemisch, Colorado Director of Corrections²⁷

In July of this year, the New Jersey Legislature passed one of the most transformative and comprehensive pieces of solitary confinement reform legislation in the country.²⁸ New Jersey now restricts solitary confinement to a maximum of 20 consecutive days and 30 days total in a 60-day period.²⁹ The determinate duration helps to protect against overuse and tempers the extreme negative psychological impact on prisoners. Recognizing that a one-size-fits-all approach is ineffective and inhumane, New Jersey also expressly prohibited the housing of “vulnerable populations” in solitary. This includes persons who are:

- “21 years of age or younger;
- 65 years of age or older;
- Have a disability based on a mental illness, a history of psychiatric hospitalization, or have recently exhibited conduct, including but not limited to serious self-mutilation, indicating the need for further observation or evaluation to determine the presence of mental illness;
- Have a developmental disability;
- Have a serious medical condition which cannot effectively be treated in isolated confinement;
- Are pregnant;
- Are in the postpartum period, or have recently suffered a miscarriage or terminated a pregnancy;
- Have a significant auditory or visual impairment; or,
- Are perceived to be lesbian, gay, bisexual, transgender, or intersex.”³⁰

Other states have similar provisions that include all or some of the populations listed.³¹ This helps to ensure that solitary confinement is not used for people who have a heightened risk of severe harm.

While limiting the duration of solitary should take priority, other states have made significant progress in improving conditions of confinement in solitary. Several states have implemented step-down programs that offer incentives and allow a prisoner to gradually progress out of solitary and earn certain privileges like phone calls home, television time and contact visits.³² Additionally, some states are providing more opportunities for mental and social stimulation by allowing people to have access to televisions, increasing the required minimum number of hours for out of cell time, allowing face to face interaction among inmates, providing access to telephones, requiring access to counseling and allowing opportunities for educational training.³³ Not only do these measures help to reduce the negative psychological consequences of solitary, they also aid in the rehabilitation and socialization of people housed in isolation, smoothing the transition back into general population or the free world.

Reforms Through Litigation

Since our last report, legal challenges to the practice of solitary have enjoyed increasing success in Federal Courts of Appeal and District Courts as evidenced by courts' growing reluctance to dismiss challenges to the practice.³⁴ Some states had solitary confinement systems similar to Texas and settled costly lawsuits for constitutional violations. California and Georgia both offer model system-wide reforms obtained through litigation.

CALIFORNIA: Ashker v. Governor of California

California prisoners housed in the Security Housing Unit (“SHU”) of Pelican Bay prison successfully negotiated a settlement with the state in 2015, following litigation.³⁵ The settlement addressed numerous human rights violations but focused on the indefinite isolation of prisoners classified as members of certain gangs, which were on a security threat group list in California. Like our current system in Texas,³⁶ California assigned certain gang members to solitary indefinitely unless and until they denounced their gang affiliation and formally disassociated from the gang. Gang members were only reviewed for release from solitary every six years. The policies resulted in persons being held in isolation for decades.

The settlement resulted in numerous important changes at the Pelican Bay prison, but two of the most transformative were: (1) indefinite confinement in isolation was ended and (2) the system was transformed from a “status-based” system to one that is “behavior-based.”³⁷ The new system requires that all prisoners placed in the SHU receive a determinate sentence not to exceed two years and that a member of a security threat group only be housed in the SHU if they committed a SHU-eligible offense while in prison. The plaintiffs and plaintiffs’ counsel helped formulate the list of SHU-eligible offenses, which primarily includes serious violent offenses. With this change, people, who did not commit an eligible offense, can no longer be sent to the SHU simply because the prison assumed they were affiliated with a gang.

Additionally, California agreed to create a new unit called Restricted Custody General Population Unit that would have limited use for people about whom prison officials had serious security concerns. Even in this more secure facility, people would be able to socialize in small groups, move about the unit without restraints, meet with visitors, enjoy the same amount of out-of-cell time as people in general population, and enroll in educational programming.

After the settlement, the overall population in the SHU decreased by a remarkable 97 percent. Long-term solitary confinement—ten years or more—in the SHU at Pelican Bay decreased by 99 percent.³⁸ The success of Pelican Bay offers an important model for Texas.

GEORGIA: Gumm v. Jacobs

Georgia’s Special Management Unit (“SMU”) was deemed “one of the harshest and most draconian” facilities in the country by solitary confinement expert psychologist Craig Haney.³⁹ Similar to Texas, people held in isolation in Georgia could spend 24 hours a day in their cells and sometimes not be allowed out for months on end. After suing under the Eighth and Fourteenth Amendments, the plaintiffs reached a settlement with the State of Georgia that was approved by a federal judge in May 2019.

Under the terms of the settlement the state is not allowed to hold prisoners in isolation for longer than two years except in extremely limited circumstances and only if they meet one of six defined categories.⁴⁰ If a person is held longer than two years, their housing assignment must be reviewed every quarter. Each prisoner held at the SMU is also given at least four hours a day of out of cell time and two hours per week of out of cell educational

programming. Uniquely, prisoners are allowed to have prison tablets, similar to iPads, in their cells at all times that are equipped with “educational programs, email capability, music, and other media.”⁴¹ Each person held in SMU is to receive an out-of-cell mental health assessment before placement and during their 60 and 90 day reviews.⁴² The requirement that the reviews occur outside of a person’s cell helps prevent circumstances like those in Texas prisons where mental health providers, hired by the State, perform quick, one question checks at someone’s cell door. Now, in Georgia, if a mental health provider discovers that someone has “decompensated” or “is decompensating” then the state must move the person to a treatment facility.⁴³

The population in Georgia’s SMU facility has already reduced by almost half.⁴⁴ This settlement improves conditions of confinement for those people who continue to be housed in solitary and provides novel mechanisms to facilitate rehabilitation and reduce psychological trauma.

United States Supreme Court Justices Raise Concerns

Significantly, some United States Supreme Court Justices have signaled increasing concern about the extreme negative impact of isolation. In 2015, Justice Kennedy expressed concern about the dire mental health impact caused by years in solitary and strongly suggested that the Supreme Court should consider alternatives to long term solitary confinement.⁴⁵ Writing separately to address the specific issue of solitary confinement, Justice Kennedy reaffirmed what research had confirmed for decades, “years on end of near-total isolation exact a terrible price.”⁴⁶ Similarly, Justice Breyer dissented in a capital punishment case and reasoned that a Texas inmate’s claim that his automatic confinement in isolation for the 22 years he was on death row violated the Eighth Amendment. Recognizing the extremely lengthy time period between conviction and execution, Justice Breyer opined that “the ‘human toll’ that accompanies extended solitary confinement is exacerbated by the fact that execution is in the offing” and that “if extended solitary confinement alone raises serious constitutional questions, then 20 years of solitary confinement, all the while under threat of execution, must raise similar questions, and to a rare degree, and with particular intensity.”⁴⁷

Most recently, in 2018, Justice Sotomayor wrote separately from the Court to express her deep concern about solitary confinement and to admonish prison officials that they must “remain alert to the clear constitutional problems raised by keeping prisoners . . . in near-total isolation from the living world in what comes perilously close to a penal tomb.”⁴⁸ Although the Supreme Court has yet to grant certiorari on a case to squarely address the issue of solitary confinement, the cautionary statements from these Justices provide optimism that the Supreme Court may eventually address the constitutionality of the practice overall.

Texas Lags Behind Other States and the Teachings of Court Cases

The allegations contained in the aforementioned cases are strikingly similar to the experiences of people held in Texas' solitary confinement. Texas' conditions are some of the most deplorable and onerous in the country, as detailed extensively in the 2015 TCRP-ACLU Report and confirmed more recently in the national survey conducted by the Liman Center for Justice. Indeed, state prisons with *better* conditions have been found in violation of the Eighth Amendment. For example, prisoners in Virginia, unlike those in Texas, were allowed to have a television and/or music player in their cells at all times, request contact visits once every six-months, and request use of a wireless phone during certain hours every day.⁴⁹ Nonetheless, the Fourth Circuit held that the conditions in Virginia's Sussex State Prison death row created a substantial risk of serious psychological and emotional harm and that Virginia prison officials were deliberately indifferent to that risk.⁵⁰ Recounting voluminous evidence from numerous psychological studies and previous court decisions, the court concluded that extended detention in isolation caused extreme psychological harm and agreed that "it would defy logic to suggest that [prison officials] were unaware of the potential harm that the lack of human interaction on death row could cause."⁵¹

Texas has made some minimal changes to its system, but those amendments have not resulted in tangible systematic relief. Recreation continues to be denied, depriving people of even a brief reprieve from isolation for days or weeks at a time. This year, during a July visit to a Texas prison conducted by TCRP staff, one person reported that he had only gone to recreation outside just one time in all of 2019 and only three times in 2018. Another person reported that he had not been to recreation since 2008 because TDCJ claimed to need a full escort team to take him out, which it allegedly did not have.

In 2019, Texas passed a law restricting the use of solitary for pregnant women or women who have given birth in the last 30 days.⁵² While this is a small step forward, Texas still lags behind other states in offering protection for other vulnerable populations. Unlike Colorado, for instance, Texas continues to place disabled people with mental illness in solitary confinement and some in isolated conditions that are not officially labeled as part of the solitary confinement population. In fact, its own program specifically designed to treat people with mental illness is adding to the isolated population.⁵³

Prisoners held in solitary confinement continue to report TDCJ's conscious disregard for their mental health. TDCJ knows from empirical research that mental illness is exacerbated by the unrelenting pain caused by isolation, yet it rarely offers proper treatment. Texas passed a law in 2015 requiring every prisoner to receive a mental health assessment before being placed in solitary and for prisoners not to be placed there if it was determined that it was inappropriate for their mental health.⁵⁴ This law was not retroactive, but it demonstrated an explicit acknowledgment by Texas legislators that solitary caused mental harm and posed an even greater risk to people with existing mental illness.⁵⁵

But still, prisoners reported that since the passage of the law, they have not received a mental health assessment before placement in solitary. 39 percent of survey participants expressed that they suffered from some form of mental illness and 67 percent indicated that they had never received a mental health examination. Some prisoners explained that the entirety of their interactions with mental health providers consisted of minute-long encounters with merely generalized questions like, "how are you feeling today?" Further, requests for treatment often go ignored. One prisoner indicated that he had asked for assistance with his mental health for ten months and it was continually denied. TDCJ's lack of commitment to treating mental illness is reinforced by the fact that it fails to define serious

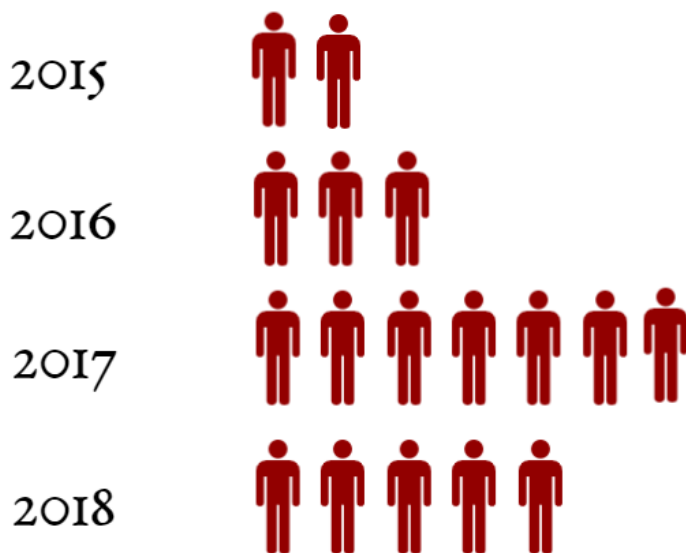
mental illness and track people with serious mental illness.⁵⁶

There is a grave human cost to Texas' deficient policies and practices. Isolation exacerbates mental illness which causes increased incidents of self-harm and suicide. Between 2015 and 2018, there were 17 tragic and preventable suicides in TDCJ's solitary confinement cells.⁵⁷

“These diagnosed issues have gone largely untreated and any treatment I’ve received has been scant if any due to a lack of any trained psychologist. When I am seen by mental health staff it takes place in front of my cell through the door when they walk by for 10 seconds to ask if you are suicidal. I am provided no private or confidential counseling and my treatment takes place in front of the unit assigned office and within earshot of other inmates.”

“They all make fun of me to staff and it gets spread all over the unit to inmates and it puts me at high risk” and “They never really help me. They treat me like the boy who cries wolf.”

Administrative Segregation Suicides by Calendar Year



Data Analyzed by Center for Justice Research at Texas Southern University

Responsiveness to medical needs is also extremely lacking in administrative segregation units. Prisoners with acute medical needs have reported being left to endure days of pain and suffering until unit administrators will take action and seek medical attention for physically ill prisoners. Routine medical needs are also left ignored and unaccommodated. For example, one prisoner who receives frequent dialysis treatment—which requires nourishment proximal to treatment in order to allow the body to recover—describes how he is routinely forced to wait for hours after treatment before he receives any food. Often, he is forced to go almost 12 hours between meals on treatment days despite a pressing clinical need for prompt nourishment.

Crucially, the severe aforementioned conditions are endured for inexcusably long amounts of time. Again, Texas leads the nation in holding people in solitary for the longest periods of time. In fact, as of August 2018, over 3,000 Texas prisoners had been in isolation for longer than one year.⁵⁸ 654 people had been there for a decade or longer and 145 people had stays that exceeded two decades.⁵⁹ These unconscionable durations serve no legitimate penological purpose and are astoundingly inhumane.

In addition to Texas holding people in conditions that are cruel and unusual, Texas' inadequate policies and procedures violate prisoners' Fourteenth Amendment due process rights. First, the process for classifying a prisoner as STG is ad hoc and arbitrary and lacks adequate avenues for appeal and review. A number of prisoners held in isolation also strongly dispute their classification as an STG member. STG classification requires only the barest of allegations that a prisoner has exhibited behavior confirming his or her affiliation. Many prisoners suspect they were identified as a member of an STG group based on weak circumstantial evidence, such as wearing a particular kind of jewelry, being from a particular hometown, or possessing artwork depicting certain imagery. People are left to speculate because they are rarely given notice of the evidence used to confirm them leaving them with no way to adequately defend themselves.

Additionally, the reviews for any prisoner housed in isolation in Texas usually last a few minutes, and most people are inexplicably kept in solitary. Based on our surveys, 73 percent of prisoners rated the quality of their hearings as poor. These hearings do not offer an individualized assessment of each person as a person's age, health, disciplinary record in solitary and statements on their own behalf seem to have little to no bearing on the decision to keep someone held in isolation. In fact, the hearing review form lists a series of check boxes and does not require a hearing officer to indicate specific reasons for the denial of release. This process forces people into a helpless situation where they can do nothing to earn their way out of solitary and deprives them of the hope of ever getting out. Furthermore, prisoners cannot have legal counsel, are not informed about the evidence used to justify continuing to house them in isolation, and are refused the opportunity to defend themselves against allegations before they are placed in isolation. Thus, TDCJ does not offer adequate procedures by which isolated prisoners can understand the evidentiary basis for their continued isolation, nor does it provide protocols for identifying these individuals and/or allowing them to affirmatively dispute their status.

“You are rushed through like cattle and are frowned upon when questions asked.”

“They only last 2 to 5 minutes. We strip down to boxers and shower shoes get handcuffed and taken to the hallway on 2 row by wing access door ‘D’ space. Standing in front of a table a guard is on the left and the right. 2 people sit at the table, usually the major or captain of high security and some woman. The paperwork is always already filled out before I get there. They ask for my name and number then hand me the paperwork and say ‘see you in 6 months’ ‘denied’.”

| Recommendations

Like other states, Texas must transform its solitary confinement practice to end the violation of human and constitutional rights happening in its solitary confinement units. In 2015, we offered four categories of recommendations to ensure the protection and rehabilitation of people held in solitary in Texas. TDCJ has failed to make almost any changes that reflect these recommendations, but we reiterate most of them now.⁶⁰ The ACLU-TCRP Report from 2015 recommended that people not be held in solitary for a time period that exceeds one year except in rare circumstances.⁶¹ However, after reviewing changes made in other states, we now strongly recommend a much shorter time period of a maximum of 15 days.

Moreover, while we recognize the need for brief separation from others in some rare and extreme circumstances, no one should ever be held in isolation for any period of time in the conditions that Texas currently has. As we recommended in the ACLU-TCRP Report, TDCJ should make extensive changes to the torturous conditions of confinement⁶² to alleviate some of the mental health consequences and end the current human rights violations.

Based on new information learned through our continued investigation and changes around the country, the following additional changes are also recommended:

Recommendation One: End prolonged isolation for every person in the care, custody and control of TDCJ.

- **Set a determinate duration of 15 days or less for people housed in solitary confinement.** TDCJ should transform its practice to comply with the voluminous data, research, and the Mandela Rules, which state that solitary should not be used for more than 15 days and only for true and verifiable security threats. In rare occasions, a longer stay could be approved for someone to remain in solitary but should only be done if a security threat persists and with the approval of a multi-tiered body of officials. Under no circumstances should TDCJ house someone in isolation for longer than one year. Instead, it should provide treatment and programming that prepares people to re-enter general population. Each person should be given a set release date at the time of placement in solitary and should have periodic reviews to ascertain their progress towards release from restrictive housing.
- **Improve data collection for all solitary confinement units.** The Texas State Legislature should require TDCJ to collect better data on the people it is housing in isolation. It is unacceptable that TDCJ does not define serious mental illness and therefore does not keep records of how many people who suffer from serious mental illness are in isolation. TDCJ should be required to provide annual reports on its use of administrative segregation that include data on releases, retentions, population with serious mental illness, mental health treatment, medical diagnosis, medical treatment, vulnerable population statistics, grievances filed and outcome, use of force incidents, disciplinary actions, and costs.

Recommendation Two: End Automatic Solitary Confinement of Alleged Security Threat Group Members.

We recommended this change⁶³ in the ACLU-TCRP Report, but it needs special attention. Currently, alleged association with certain prison gangs can mean automatic and indefinite placement in solitary confinement. TDCJ has 12 gangs that it considers to be Security Threat Groups and eight of the twelve gangs are primarily Latinx gangs, which results in an overrepresentation of Latinx people in solitary.⁶⁴ While addressing gang violence is a key element of ensuring security, other criminal justice systems have successfully housed gang members in settings less restrictive and less expensive than solitary confinement. TDCJ should consider alternative housing for this population, including reviewing practices in other states that have allowed for placement in less restrictive settings. Alleged gang members should not be housed in solitary confinement simply because of an alleged gang affiliation if they have committed no in-prison violence connected to their alleged gang membership. Furthermore, alleged gang affiliated people should never be housed in isolation for an indefinite duration. TDCJ should develop a data and trauma-informed plan to deal with its prison gang population that does not require haphazardly locking people alone for years. This change would reduce the solitary population by almost half.

Recommendation Three: Transform the Housing Review Process.

- **Make the SCC reviews hearings of record.** The SCC hearing process is grossly unregulated. People housed in solitary report that the hearings often last mere minutes and they are rarely given the opportunity to effectively defend themselves. Since there are no records of the interactions at these hearings, prisoners and administrations can never adequately review them. TDCJ should require that SCC hearings be recorded to allow them to be assessed for compliance with TDCJ policy and effectiveness. In the alternative, TDCJ should develop objective criterion-based reviews of each SCC hearing officer that include in-person observation by a supervisor.
- **TDCJ should establish an internal audit process for reviewing SCC rulings.** Right now, there is no known specialized audit process for SCC rulings. People housed in solitary can write a grievance if they disagree with the ruling, but decisions of the SCC are rarely overturned. TDCJ should create a review process that is specific to SCC rulings about restrictive housing status to improve the process for corrections officials and people in custody. This change will also allow TDCJ to replace SCC hearing officers that are negligent in their duties to offer meaningful reviews and to create objective criteria for review that is communicated with people held in solitary.
- **Provide adequate notice of the evidence used against a person.** Currently, SCC officers can simply check a box on a form that indicates that they believe a person is a “security threat” and should continue to be housed in isolation. This boundless authority allows them to omit any facts proving that a security threat exists. Letters are supposed to be given to each person after a SCC hearing informing them of the reason they are being continued in solitary. However, in practice, these letters operate like standardized forms and do not give any details about why someone must remain in isolation or how they can be released. TDCJ should require each hearing officer to detail the evidence used to determine that someone should continue to be held in solitary and give specific steps a person must take to be removed. If an SCC officer fails to complete the aforementioned steps, TDCJ should require SCC officers to release the person from solitary.

| Conclusion

It is long past time for Texas to reckon with its broken solitary confinement system. Although TDCJ espouses a commitment to the safety, rehabilitation and successful societal re-entry of the people in its care, its solitary confinement policies and practices paint a different picture. The conditions in which TDCJ confines people fuel mental illness and are so detrimental that the United Nations labels isolation in similar conditions beyond 15 days as torture.⁶⁵ There is no justification for TDCJ to continue to overuse solitary against the great weight of psychological, medical, and corrections expert advice.

Between 2016 and 2018, TDCJ released 136 people directly from isolation back into Texas communities. Undoubtedly, a number of the people released back into Texas communities have long stints in solitary. These individuals will face more obstacles to successful re-entry. Those obstacles have far reaching consequences for the individual and for society.

There is a better way forward. TDCJ owes it to the people in its custody and to society to elect to end its overuse of solitary and to fully commit to the humane care and rehabilitation of Texas prisoners.

Endnotes

- 1 It should be noted that Texas uses the term “administrative segregation” for its isolated housing units, but, in practice, “administrative segregation” is nothing more than solitary confinement by another name. Therefore, for the purposes of this report we will refer to the practice by its widely accepted name: solitary confinement. Texas defines administrative segregation as the “non-punitive, maximum custody status involving separation of an offender from the general population within the prison institution for the purpose of maintaining safety, security, and order among general population offenders, correctional personnel, and the public.”
- 2 Open Records Request Response from TDCJ to TCRP June 2019 (on file with TCRP).
- 3 Association of State Correctional Administrators & Arthur Liman Center For Public Interest Law at Yale Law School, *Reforming Restrictive Housing: The 2018 ASCA-Liman Nationwide Survey of Time-in-Cell* (Oct. 2018), available at https://law.yale.edu/system/files/area/center/liman/document/asca_limn_2018_restrictive_housing_revised_sept_25_2018.pdf.
- 4 A Solitary Failure: The Waste, Cost and Harm of Solitary Confinement in Texas, ACLU and TCRP, page 25-26 (2015) available at https://texascivilrightsproject.org/wp-content/uploads/2019/08/SolitaryReport_2015.pdf.
- 5 Craig Haney, Mental Health Issues in Long-Term Solitary Confinement and “Supermax” Confinement, 49 *Crime & Delinquency* 124, 132 (2003).
- 6 *Ruiz v. Johnson*, 37 F. Supp. 2d 855 (S.D. Tex.1999); A Solitary Waste, ACLU and TCRP, page 25-26 (2015) available at https://texascivilrightsproject.org/wp-content/uploads/2019/08/SolitaryReport_2015.pdf; Dr. Stuart Grassian, Psychiatric Effects of Solitary Confinement, 22 *Wash. U. J.L. & Pol’y* 325, 353 (2006) (“Moreover, the harm caused by such confinement may result in prolonged or permanent psychiatric disability, including impairments which may seriously reduce the inmate’s capacity to reintegrate into the broader community upon release from prison”).
- 7 Spreadsheet from TDCJ in response to Open Records Request (ORR) (June 10, 2019) (on file with TCRP).
- 8 TDCJ Rehabilitation Program Departmental Reports, (on file with TCRP). One of the criteria for acceptance into GRAD requires that a person not be involved in any STG activities for a minimum of 2 years. Therefore, for some people, solitary confinement is an automatic 4 year sentence or longer depending on when they are able to meet the non-activity requirement to start the GRAD process.
- 9 Parole Texas, TDCJ Risk Factors Scale, available at http://www.paroletexas.com/articles/Risk_assesment_new.pdf (last visited Sept. 20, 2019). The parole matrix is used to determine if a person should be granted release by assessing a person’s risk. The matrix adds 2 points to a person’s risk score for being housed in solitary and 2 additional points if they are accused of being a STG member. Therefore, STG prisoners face an automatic increased risk score of 4 points, which makes it unlikely that they will be approved for parole, even if they have a stellar in-prison disciplinary record.
- 10 Texas Department of Criminal Justice, Administrative Segregation Plan (March 2012).
- 11 *Id.*
- 12 *Gang Renouncement and Disassociation (GRAD) Process*, Texas Department of Criminal Justice, https://www.tdcj.texas.gov/divisions/cid/stgmo_GRAD.html (last visited Sept. 10, 2019).
- 13 Michael Barajas, *Texas Leads the Nation in Long-Term Solitary Confinement*, *Texas Observer* (Oct. 10, 2018) <https://www.texasobserver.org/texas-prisons-lead-the-nation-in-long-term-solitary-confinement/>; Trey Shaar, *Texas Ends Solitary Confinement As Punishment, But Still Keeps Thousands Alone In Cells*, *KUT* (Sept. 22, 2017), <https://www.kut.org/post/texas-ends-solitary-confinement-punishment-still-keeps-thousands-alone-cells>;
- 14 Spreadsheet from TDCJ in response to Open Records Request (ORR) (June 10, 2019) (on file with TCRP).
- 15 “*The Psychological Effects Of Solitary Confinement: A Systematic Critique*,” 47 *CRIME J* 365, Craig Haney, *Crime and Justice*.
- 16 U.S. Dep’t of Justice, *U.S. Department of Justice Report and Recommendations Concerning the Use of Restrictive Housing* 1 (Jan. 2016), available at <https://www.justice.gov/archives/dag/report-and-recommendations-concerning-use-restrictive-housing>.
- 17 *Id.*
- 18 *Id.* at 99.
- 19 U.S. Department of Justice Report and Recommendations Concerning the Use of Restrictive Housing (January 2016), available at <https://www.justice.gov/archives/dag/file/815561/download> (last visited Sept. 20, 2019).
- 20 Solitary Confinement Reform Act, S. 719, 116th Cong. (2019).
- 21 *Id.*
- 22 *Id.*
- 23 Arthur Liman Center For Public Interest Law at Yale Law, *Regulating Restrictive Housing: State and Federal Legislation on Solitary Confinement as of July 1, 2019*, available at https://law.yale.edu/sites/default/files/area/center/liman/document/restrictive_housing_legislation_research_brief.pdf (last visited Sept. 10, 2019).
- 24 Rick Raemisch, *My Night in Solitary*, *New York Times*, (Feb. 20, 2014), <https://www.nytimes.com/2014/02/21/opinion/my-night-in-solitary.html>.
- 25 Rick Raemisch, *Why I Ended the Horror of Long-Term Solitary Confinement*, *American Civil Liberties Union*, (Dec. 5, 2018, 4:30 PM), <https://www.aclu.org/blog/prisoners-rights/solitary-confinement/why-i-ended-horror-long-term-solitary-colorados-prisons>.
- 26 Association of State Correctional Administrators & Arthur Liman Center For Public Interest Law at Yale Law School, *Reforming Restrictive Housing: The 2018 ASCA-Liman Nationwide Survey of Time-in-Cell*, 67 (Oct. 2018), available at https://law.yale.edu/system/files/area/center/liman/document/asca_limn_2018_restrictive_housing_revised_sept_25_2018.pdf; G.A. Res. 70/175, U.N. Doc. A/RES/70/175 (Jan. 8, 2016).; <https://undocs.org/A/RES/70/175>, Rule 44.
- 27 *Id.*
- 28 Catherine Kim, *Solitary confinement isn’t effective. That’s why New Jersey passed a law to restrict it*, *Vox*, (Jul. 11, 2019, 4:35 PM), <https://www.vox.com/policy-and-politics/2019/7/10/20681343/solitary-confinement-new-jersey>.

- 29 N.J. Stat. § 30:4-82.8.
- 30 *Id.*
- 31 Arthur Liman Center For Public Interest Law at Yale Law, *Regulating Restrictive Housing: State and Federal Legislation on Solitary Confinement as of July 1, 2019*, 2-4, available at, https://law.yale.edu/sites/default/files/area/center/liman/document/restrictive_housing_legislation_research_brief.pdf (last visited Sept. 10, 2019).
- 32 See *id.*; See also SF 8, 2019 Leg., 1st Spec. Sess. (Minn. 2019); HB 763, 2019 Leg. Reg. Sess. (Mont. 2019).
- 33 Association of State Correctional Administrators & Arthur Liman Center For Public Interest Law at Yale Law School, *Reforming Restrictive Housing: The 2018 ASCA-Liman Nationwide Survey of Time-in-Cell* 61-62, 67, (Oct. 2018), available at https://law.yale.edu/system/files/area/center/liman/document/asca_limam_2018_restrictive_housing_revised_sept_25_2018.pdf.
- 34 See *Bailey v. Fisher*, 647 Fed. Appx. 472 (5th Cir. 2016); *Barnes v. Givens*, 746 Fed. Appx. 401 (5th Cir. 2018); *Zavala v. City of Baton Rouge*, No. 3:17-cv-00656-JWD-EWD, 2018 U.S. Dist. LEXIS 160602 (M.D. La. Sep. 20, 2018); *Finley v. Huss*, 723 Fed. Appx. 294 (6th Cir. 2018); *Isby v. Brown*, 856 F.3d 508 (7th Cir. 2017); *Scott v. Godinez*, No. 16-CV-01145, 2016 U.S. Dist. LEXIS 91376, at *5 (C.D. Ill. July 14, 2016); *Vermillion v. Levenbagen*, No. 1:15-cv-00605-RLY-TAB, 2018 U.S. Dist. LEXIS 87605 (S.D. Ind. May 22, 2018); *Fritts v. Kelley*, No. 5:16-CV-00141 DPM-PSH, 2017 U.S. Dist. LEXIS 27722 (E.D. Ark. Feb. 28, 2017); *Dupont v. Wall*, 288 F.Supp.3d 504 (D.R.I 2018); *Proctor v. LeClaire*, 846 F.3d 597 (2d Cir. 2017); *Braithwaite v. Phelps*, 734 Fed.Appx. 114 (3d Cir. 2018); *Shepard v. Quillen*, 840 F.3d 686 (9th Cir. 2016); *Hernandez v. County of Monterey*, 70 F. Supp. 3d 963 (N.D. Cal. 2014); *Saavedra v. Kernan*, No. 1:14-CV-00870-EPG, 2016 WL 3477213 (E.D. Cal. June 27, 2016); *Jamerson v. Heimgartner*, 752 F. App'x 557, (10th Cir. 2018).
- 35 *Ashker v. State of California*, No. C 09-5796 CW, 2014 U.S. Dist. LEXIS 75347 (N.D. Cal. June 2, 2014).
- 36 A Solitary Failure: The Waste, Cost and Harm of Solitary Confinement in Texas, ACLU AND TCRP, page 25-26 (2015), available at https://texascivilrightsproject.org/wp-content/uploads/2019/08/SolitaryReport_2015.pdf
- 37 Center for Constitutional Rights, *Summary of Ashker v. Governor of California*, <https://ccrjustice.org/sites/default/files/attach/2015/08/2015-09-01-Ashker-settlement-summary.pdf> (last visited Sept. 10, 2019).
- 38 Center for Constitutional Rights, *One year since Pelican Bay settlement, long-term solitary drops 99%*, The CCR blog (Oct. 18, 2016), <https://ccrjustice.org/home/blog/2016/10/18/one-year-pelican-bay-settlement-long-term-solitary-drops-99>.
- 39 Southern Center for Human Rights, *Georgia Prisoners Reach Settlement to Reform One of the "Harshest and Most Draconian" Solitary Confinement Units in the Nation*, (Jan. 9, 2019), https://www.schr.org/resources/georgia_prisoners_reach_settlement_to_reform_one_of_the_harshest_and_most_draconian.
- 40 *Id.*
- 41 *Id.*
- 42 *Id.*
- 43 *Id.*
- 44 *Id.*
- 45 *Davis v. Ayala*, 135 S.Ct. 2187, 2208-09 (2015) (Kennedy, J., concurring).
- 46 *Id.*
- 47 *Ruiz v. Texas*, 137 S.Ct. 1246, 1247 (2017) (Breyer, J., dissenting).
- 48 *Apodaca v. Raemisch*, 139 S.Ct. 5, 10 (2018) (Sotomayor, J., concurring).
- 49 *Porter v. Clarke*, 923 F.3d 348, 353 (4th Cir. 2019).
- 50 *Id.*
- 51 *Id.* at 361.
- 52 Tex. Gov't Code § 493.032
- 53 Jolie McCullough, *Solitary confinement worsens mental illness. A Texas prison program meant to help can feel just as isolating.*, Texas Tribune (Apr. 23, 2019), <https://www.texastribune.org/2019/04/23/texas-prisons-solitary-confinement-mental-health-program>. (In 2014, TDCJ created a mental health therapeutic diversion program ("MHTDP") that was supposed to allow people to participate in group counseling, individual counseling and self-study programs. However, the *Texas Tribune* recently reported that years after its formation, the program has proven to be a disappointment to people in custody, does not operate as advertised and does little to improve the mental health of its participants. Prisoners report that the program operates much like solitary confinement in that they are held in isolation almost continuously. Alarming, MHTDP participants are not included in the official count of prisoners held in solitary even though they are held in like conditions.)
- 54 Tex. Govt. Code § 501.068 (2015).
- 55 *Id.*
- 56 See A Solitary Failure: The Waste, Cost and Harm of Solitary Confinement in Texas, ACLU and TCRP, page 25-26 (2015) available at https://texascivilrightsproject.org/wp-content/uploads/2019/08/SolitaryReport_2015.pdf; ASCA-Liman Restrictive Housing 2018, (September 25, 2018), fn. 80 https://law.yale.edu/sites/default/files/area/center/liman/document/asca_limam_2018_restrictive_housing_released_oct_2018.pdf
- 57 Open Records Request Response from TDCJ to TCRP July 2019 (on file with TCRP).
- 58 Open Records Request Response from TDCJ to TCRP June 2019 (on file with TCRP).
- 59 *Id.*
- 60 A Solitary Failure: The Waste, Cost and Harm of Solitary Confinement in Texas, ACLU and TCRP, (2015), available at https://texascivilrightsproject.org/wp-content/uploads/2019/08/SolitaryReport_2015.pdf
- 61 *Id.* at 14.
- 62 *Id.* at 14-15.
- 63 *Id.* at 13-14.
- 64 *Security Threat Groups: On the Inside*, Texas Department of Criminal Justice (August 2007) https://www.tdcj.texas.gov/documents/Security_Threat_Groups_GRAD.pdf.
- 65 United Nations Standard Minimum Rules for the Treatment of Prisoners ("Nelson Mandela Rules"), Rule 44 (Jan. 6, 2016) available at, <https://undocs.org/A/RES/70/175>.



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