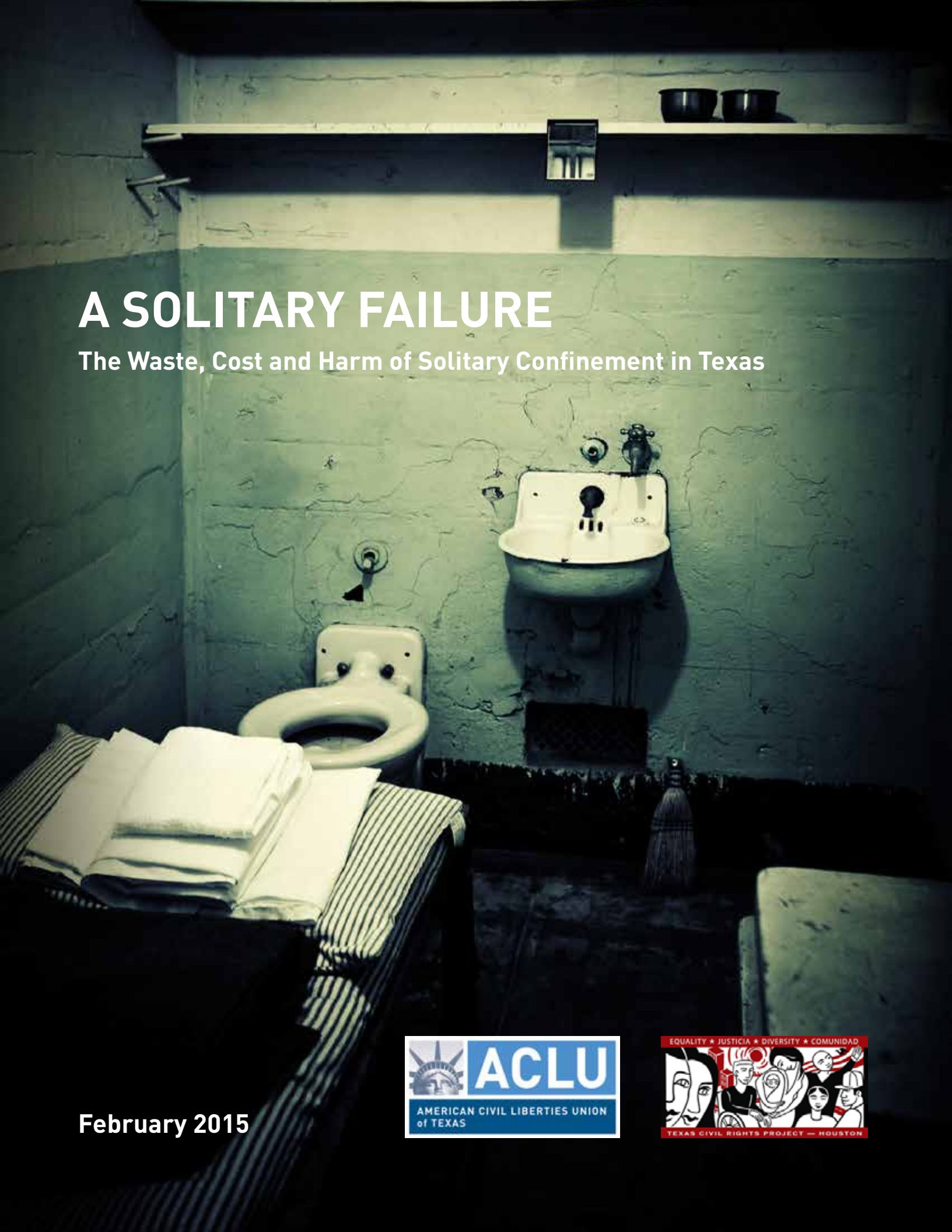


A SOLITARY FAILURE

The Waste, Cost and Harm of Solitary Confinement in Texas



February 2015



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EXECUTIVE SUMMARY

The Texas Department of Criminal Justice (TDCJ) confines 4.4 percent of its prison population in solitary confinement.¹ Texas locks more people in solitary-confinement cells than twelve states house in their entire prison system.² On average, prisoners remain in solitary confinement for almost four years³; over one hundred Texas prisoners have spent more than twenty years in solitary confinement.⁴ The conditions in which these people live impose such severe deprivations that they leave prison mentally damaged; as a group, people released from solitary are more likely to commit more new crimes than people released from the rest of the prison system. Yet in 2013, TDCJ released 1,243 people directly from solitary-confinement cells into Texas communities.⁵ These prisoners return to society after living for years or decades in a tiny cell for twenty-two hours a day, with no contact with other human beings or access to educational or rehabilitative programs.⁶ As documented in this report, this dangerous and expensive practice is making our state less safe.

Alex is one of 6,564 Texas prisoners⁷ who live in a solitary-confinement cell.⁸ It is sixty square feet in size⁹; he can cross its length in six paces.¹⁰ If he lifts his arms to their full wingspan, his fingertips almost graze the walls.¹¹ The cell is completely bare; just a concrete floor and four concrete walls.¹² Alex is not allowed to place anything on his walls, not even a calendar.¹³ The door is made of solid metal with a slot for a food tray, and two thin Plexiglas rectangles to allow officers to see in.¹⁴

1 Texas Department of Criminal Justice (TDCJ) Administrative Segregation Information Sheet, at 6 (Sept. 2014) (obtained from Jeff Baldwin, Chief of Staff, TDCJ, and on file with ACLU of Texas and TCRP). TDCJ's technical term for solitary confinement is administrative segregation. Solitary confinement is the commonly accepted term, used nationwide, to describe the practice of housing prisoners alone in a cell for at least twenty-two hours a day. Therefore, we use the term solitary confinement throughout this report.

2 E. Ann Carson & Daniela Golinelli, Bureau of Justice Statistics, Prisoners in 2012: Trends in Admissions and Releases, at 23-24 (Sept. 2, 2014), available at <http://www.bjs.gov/content/pub/pdf/p12tar9112.pdf>.

3 TDCJ Administrative Segregation Information Sheet, *supra* note 1, at 6.

4 Spreadsheet from TDCJ in response to Open Records Request (ORR) (Nov. 20, 2012) (on file with ACLU of Texas and TCRP).

5 Letter from TDCJ to authors in response to open records request (July 9, 2014) (on file with ACLU of Texas and TCRP).

6 TDCJ Administrative Segregation Information Sheet, *supra* note 1, at 6.

7 Letter from TDCJ to authors, *supra* note 5.

8 We have changed the names of people we interviewed or corresponded with in order to protect confidentiality.

9 The average size of a solitary-confinement cell in Texas is sixty square feet; some are as small as forty-five square feet. Letter from TDCJ to authors in response to open records request (Feb. 27, 2014) (on file with ACLU of Texas and TCRP).

10 Letter from Alex to authors (Sept. 17, 2014) (on file with ACLU of Texas and TCRP).

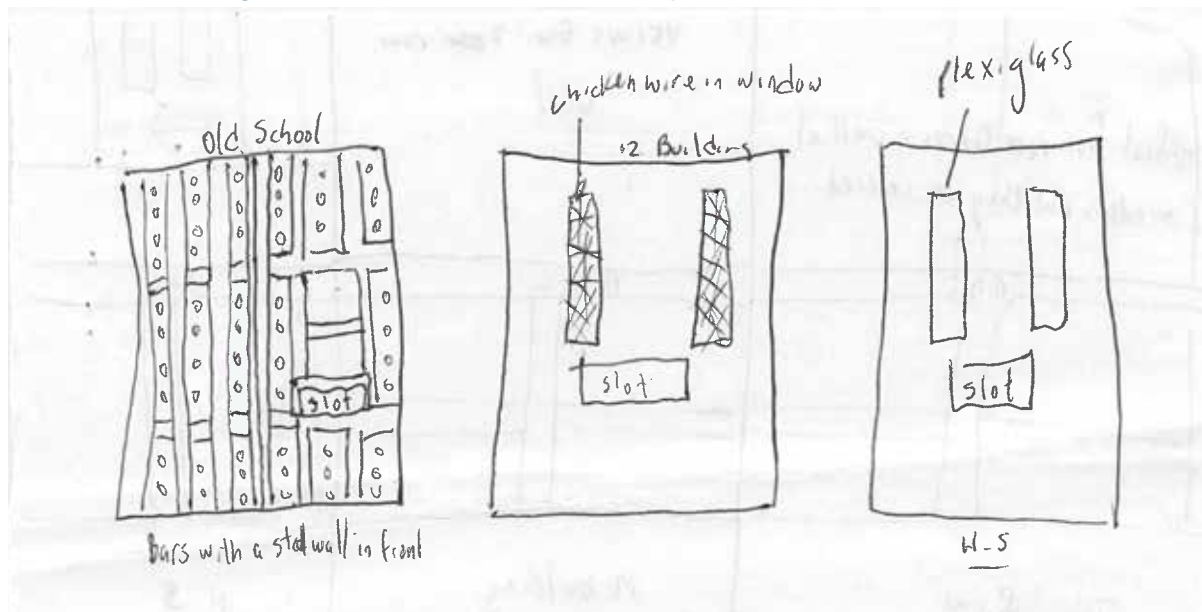
11 *Id.*

12 *Id.*

13 *Id.*

14 *Id.*

Alex's drawing of the door to his solitary cell



Alex calls this cell his “house”;¹⁵ and for the past ten years, it has been the only home he has known.¹⁶

Alex’s entire life is confined within the four corners of his “house.” He eats sitting on the floor or on his bed. He sleeps on a steel bunk along one wall, covered in a thin plastic mattress.¹⁷ He goes to the bathroom in the toilet in the corner. The cell smells “[l]ike mold and urine and feces and filth,” Alex writes. “Like a downtown subway restroom. Like a locker room that’s never been cleaned.”¹⁸

Most days, Alex’s only contact with another human being is the hand that slides his food tray through a slit in his cell door. Weeks pass in which Alex never sees another person’s face, or looks another person in the eyes. He can only talk to people by shouting to other prisoners through the concrete walls. He cannot practice his Christian faith with a community of others who share his beliefs.¹⁹ He cannot play sports or games with other people.²⁰ When his niece comes to visit, he cannot hug her goodbye; he must talk to her through a pane of glass.²¹

¹⁵ Interview with Alex, individual incarcerated in TDCJ (May 28, 2014).

¹⁶ *Id.*

¹⁷ Letter from Alex to authors, *supra* note 10.

¹⁸ *Id.*

¹⁹ TDCJ Administrative Segregation Plan, at att. A (Mar. 2012) [unpublished] [on file with ACLU of Texas and TCRP].

²⁰ *Id.*

²¹ *Id.*

There is no window in Alex's cell.²² His field of vision is limited to peering through the Plexiglas slit in his cell door to the door of the cell opposite him.²³ Alex has not seen the stars in a decade.²⁴ "I miss that so much," he writes. "One time I was going to the hospital, down to Galveston and we were riding the ferry and the sun was coming up and it was the only one I'd seen in years. I'm a pretty tough guy, but it brought tears to my eyes."²⁵

Alex struggles to fall asleep at night. Usually, he can only sleep for four hours.²⁶ The fluorescent light hanging from his ceiling remains on all night.²⁷ The cell block constantly echoes with screams because some of the men confined in neighboring cells have gone insane, cutting themselves or eating their own feces.²⁸ Alex is overwhelmed by the noise: "Constant banging, clanking, rage, anger," he writes. "Like a jammed packed area for a boxing match with everyone screaming murder. The night sounds are the worst. More personal and filled with sadness. It sounds like hell."²⁹

Prison regulations require that officers take Alex outside his cell for one hour several times a week to exercise in a recreation yard. Often, he is deprived of even this minimal reprieve. Officers go for weeks without letting people on his block leave their cell for recreation.³⁰ But even in the recreation space—a caged outdoor box not much larger than his cell, covered in bird feces³¹—Alex is alone.

Solitary confinement forces Alex into a life of idleness. Alex wants to educate himself before returning to society. He wants to get counseling to help him deal with the abuse from his childhood.³² But he is not allowed to take group classes to get his associate's degree.³³ He cannot take classes to help him manage his anger, or join Alcoholics Anonymous to manage the addictions that led him to prison.³⁴ He cannot purchase a television to watch in his cell.³⁵

"I want something meaningful, not meaningless in my life," Alex says. "I do everything I can to make my time mean something. To take responsibility for my day."³⁶

²² Letter from Alex to authors, *supra* note 10.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ Alex's Journal (entries dated June 12 & 19, 2014) (on file with ACLU of Texas and TCRP).

²⁷ Interview with Alex, *supra* note 15.

²⁸ Alex's Journal, *supra* note 26 (entry dated July 7, 2014).

²⁹ Letter from Alex (Sept. 17, 2014), *supra* note 10.

³⁰ Interview with Alex to authors, *supra* note 15.

³¹ Alex's Journal, *supra* note 26 (entry dated June 17, 2014).

³² *Id.*

³³ TDCJ Administrative Segregation Plan, *supra* note 19, at att. A.

³⁴ *Id.*

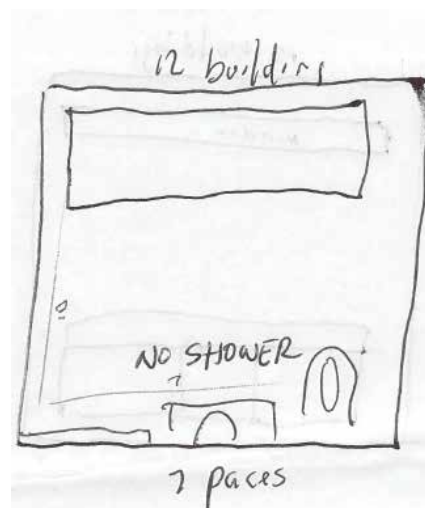
³⁵ *Id.*

³⁶ Alex's Journal, *supra* note 26 (entry dated June 19, 2014).

Alex keeps a journal; he calls it “Wilson,” the name Tom Hanks gave a volleyball—his only companion and confidant while abandoned on a desert island—in the movie *Castaway*.³⁷ Every morning, Alex picks a new word out of the dictionary to learn. He reads inspiring quotations. He reads books on self-improvement from the prison library; the most recent one was *The Power of Habit*, which “is basically about replacing bad habits with good ones. . . . This is the kind of stuff we need to be addressing if we have any hope of giving ourselves a chance.”³⁸ He keeps a strict workout schedule of pushups and crunches.³⁹ On Saturdays, he cleans his cell.⁴⁰ On Sundays, he listens to Lakewood Church on the radio.⁴¹ Each morning he makes his bed; then he lays out a towel on his cell floor, sits on it, and meditates for twenty minutes.⁴² He had to train himself to meditate over time, though; it used “to be so hard because the last thing your nerves or body wants to do is relax when your neighbor is ‘cell warring’ and kicking his door, or when the whole wing is in complete chaos.”⁴³ When someone walks by his cell, he comes up to his cell door to say “hello”; he says, “It keeps the free world present and keeps my social skills from completely wasting away.”⁴⁴ He feeds the lizards that crawl in his cell to keep him company.⁴⁵ He has a “*mantra*”: “I am stronger than this place, I am stronger than these circumstances.”⁴⁶

But the cries from his neighbors’ cells shake his confidence that he will be able to withstand the isolation. Sometimes, he wonders if he will go insane before returning to the outside world.⁴⁷

“I have to be honest,” he wrote. “[W]hen your⁴⁸ back here and the guy next to you is so crazy he’s cutting on his face or eating his feces. It makes things even worse because you don’t know if they came into [solitary] this way, or the walls, this place, has caused it. So you begin to wonder, am I next?”⁴⁹



■ Floor plan of Alex’s cell (drawn by Alex).

³⁷ *Id.* (entry dated June 7, 2014).

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.* (entry dated June 12, 2014).

⁴³ *Id.*

⁴⁴ *Id.* (entry dated June 12, 2014).

⁴⁵ *Id.*

⁴⁶ *Id.* (entry dated June 25, 2014).

⁴⁷ *Id.* (entry dated June 7, 2014).

⁴⁸ Throughout this report, we represented people’s words as they wrote them to us, without edits to grammar or punctuation.

⁴⁹ Alex’s Journal, *supra* note 26 (entry dated July 7, 2014).

Findings

At stake in TDCJ's use of solitary confinement is whether thousands of people like Alex will successfully rejoin their families and society upon their release, or whether they will return to their communities irreversibly damaged by years of isolation and sensory deprivation. Solitary confinement permanently damages people. Rather than prepare prisoners for their eventual return to Texas communities, solitary confinement breaks down their ability to interact with other human beings; erodes their family relationships; deprives them of educational, rehabilitative, and religious programming; causes mentally healthy people to descend into mental illness; and severely exacerbates symptoms for people with pre-existing mental illness.

Because it so damages Texas prisoners by confining them in severe conditions, TDCJ ultimately increases crime in Texas communities. Ninety-five percent of incarcerated people return to our communities one day.⁵⁰ TDCJ recognizes in its mission statement that one of its most important duties is to improve public safety: "The mission of the Texas Department of Criminal Justice is to provide public safety, promote positive change in offender behavior, reintegrate offenders into society, and assist victims of crime."⁵¹ Yet years of social isolation, enforced idleness, lack of programming, and sensory deprivation make people released from solitary confinement, as a group, more dangerous within prison walls and ultimately to society. All of us pay the price.

In 2014, the American Civil Liberties Union of Texas (ACLU of Texas) and the Texas Civil Rights Project (TCRP) studied Texas's use of solitary confinement. We conducted a written survey of 147 people in solitary confinement, collected data from public-information requests to TDCJ, interviewed and corresponded with people in solitary confinement, reviewed other states' practices, researched the financial impacts of solitary, consulted with security and psychiatric experts, and interviewed correctional officers.

We discovered that TDCJ overuses solitary confinement compared to other states, houses many people in solitary confinement who could be safely confined in a lower security setting, and keeps people in solitary confinement for years and decades, long after they cease to pose a threat. By overusing solitary confinement, TDCJ increases crime, wastes taxpayer money, increases violence in prison, and causes thousands of mentally ill people to further deteriorate before returning to Texas communities.

⁵⁰ See Timothy Hughes & Doris James Wilson, *Reentry Trends in the United States*, BUREAU OF JUSTICE STATISTICS, <http://www.bjs.gov/content/reentry/reentry.cfm> (last visited Aug. 28, 2014).

⁵¹ TEX. DEP'T. CRIM. JUSTICE, <http://www.tdcj.state.tx.us/> (last accessed Sept. 5, 2014).

What is Solitary Confinement?

People in Texas' solitary-confinement cells spend at least twenty-two hours a day⁵² in a cell that is sixty square feet,⁵³ about the size of a residential bathroom or a walk-in closet. During their years or decades in solitary confinement, they almost never leave their tiny cells.⁵⁴ Although TDCJ policies permit them an hour or two of recreation per day, many of our survey respondents reported that in reality officers almost never take them outside.⁵⁵

Solitary confinement deprives prisoners of any opportunity for self-improvement. People in solitary confinement cannot participate in group educational and rehabilitative programs to help prepare for their release. They cannot work in prison jobs to use their time productively and learn useful skills. They cannot participate in Alcoholics' Anonymous to cure their addictions. They cannot take group classes to get their G.E.D. or associate's degree, to receive the education they need to support their wives, children, and parents. They cannot take group therapy to help them develop healthy coping mechanisms. They cannot practice their faith with a group of like-minded believers and receive the support and moral education that comes from collective worship.⁵⁶

Solitary confinement strips people of all interpersonal contact. Prisoners in solitary confinement spend their days completely alone. They eat alone. They sleep alone. They go to the recreation yard alone. They can only speak to other people by shouting through the cell walls. They only touch another human being when an officer places handcuffs on them to take them to a medical appointment. When their family members come to visit them, they talk to them through wire mesh or a pane of glass; they cannot hold their hand or hug their loved one goodbye. They are not permitted to make phone calls to their parents, wives, or children.⁵⁷ ■

52 TDCJ Administrative Segregation Plan, *supra* note 19, at att. A.

53 Letter from TDCJ to authors (Feb. 27, 2014), *supra* note 9.

54 TDCJ Administrative Segregation Plan, *supra* note 19, at att. A.

55 Interview with Juan, individual incarcerated in TDCJ (June 2, 2014); Interview with Alex, *supra* note 15; Interview with Paul, individual incarcerated in TDCJ (May 30, 2014); Survey response from Brian, individual incarcerated in TDCJ (on file with ACLU of Texas and TCRP); Survey response from Miguel, individual incarcerated in TDCJ (on file with ACLU of Texas and TCRP); Survey response from Steve, individual incarcerated in TDCJ (on file with ACLU of Texas and TCRP); Survey response from Larry, individual incarcerated in TDCJ (on file with ACLU of Texas and TCRP).

56 TDCJ Administrative Segregation Plan, *supra* note 19, at att. A.

57 *Id.*

Finding One: Solitary confinement increases crime in Texas communities.

Permanently damaged by years in isolation, people released from Texas solitary-confinement cells commit more new crimes: They are rearrested at a twenty-five percent higher rate than prisoners released from the overall prison system. Of prisoners released from TDCJ in 2006, 48.8 percent were rearrested within three years,⁵⁸ whereas 60.84 percent of people released directly from solitary confinement were rearrested within the same time period.⁵⁹ According to a preliminary study in California, parolees released from solitary confinement committed new crimes at a thirty-five percent higher rate than parolees released from the overall prison system.⁶⁰ The data from Texas and California are consistent with evidence from other states that solitary confinement increases violent crime, even when controlling for common predictors of recidivism. People released from solitary-confinement cells in Washington State commit new felonies at a thirty-five percent higher rate than people released from the general population.⁶¹ People who had spent time in Florida's solitary-confinement cells are eighteen percent more likely to commit new violent crimes.⁶²



Credit: Texas Department of Corrections

■ Texas solitary-confinement cell

58 See Legislative Budget Board, *Statewide Criminal Justice Recidivism and Revocation Rates 35* (Jan. 2011), available at http://www.lbb.state.tx.us/Public_Safety_Criminal_Justice/RecRev_Rates/Statewide%20Criminal%20Justice%20Recidivism%20and%20Revocation%20Rates2011.pdf.

59 Letter from TDCJ to Rodney Ellis, Tex. Senator (Dec. 6, 2011) (on file with ACLU of Texas and TCRP); E-mail from Ed Sinclair, Analyst, Criminal Justice Data Analysis Team, Tex. Legislative Budget Board, to Burke Butler, Fellow, TCRP (Sept. 26, 2014 07:31 CST) (on file with ACLU of Texas and TCRP).

60 See Keramet Reiter, *Parole, Snitch, or Die: California's Supermax Prisons & Prisoners, 1987-2007*, at 50 (ISSC Fellows Working Paper, Institute for the Study of Social Change, Univ. of Ca. Berkeley, 2010).

61 See David Lovell et al., *Recidivism of Supermax Prisoners in Washington State*, 53 *Crime & Delinquency* 633, 644 (Oct. 2007).

62 See Daniel P. Mears & William D. Bales, *Supermax Incarceration and Recidivism*, 47 *Criminology* 1131, 1151 (2009).

Finding Two: TDCJ overuses solitary confinement at tremendous cost to taxpayers.

TDCJ houses 4.4 percent of prisoners in solitary confinement⁶³—about four times the estimated national average of one to two percent of the prison population.⁶⁴ TDCJ uses overbroad criteria to send people to solitary confinement, capturing many individuals who did not commit any misconduct within the prison system. It also confines people to solitary confinement for lengthy periods—on average 3.7 years⁶⁵—rather than returning them to general population as soon as it is safe to do so. Recognizing the safety consequences of solitary confinement, states like Mississippi have dramatically reduced their reliance on solitary confinement, which improved safety in their prisons and communities and saved taxpayers millions of dollars. It is time for Texas to follow their lead. TDCJ spends \$46 million dollars a year above normal correctional costs to house people in solitary confinement—\$61.63 per day per person housed in administrative segregation, compared to \$42.46 per day per person in general population.⁶⁶ Since Texas taxpayers foot the bill for Texas’s use of solitary confinement, TDCJ should use it as rarely as possible. TDCJ could save taxpayers \$31 million dollars a year just by dropping its use of solitary confinement to Mississippi’s rate of 1.4 percent.⁶⁷

Finding Three: Solitary confinement increases prison violence. Serious assaults on Texas prison staff have increased 104 percent during the last seven years.⁶⁸ Texas’s largest correctional officers union attributes the rise, in part, to TDCJ’s overuse of solitary confinement and the practice of housing people with mental illness in solitary confinement.⁶⁹ In 2013, almost eighty percent of the 499 instances of prisoners exposing officers to bodily fluids occurred in Texas’s solitary-confinement units; none occurred in general-population units.⁷⁰ These assaults led Texas’s largest correctional officers union to call upon the United States Senate to regulate states’ use of solitary confinement.⁷¹ Other states have improved security by drastically reducing their use

63 TDCJ Administrative Segregation Information Sheet, *supra* note 1, at 6.

64 There are no hard numbers on the percentage of states’ prison populations in solitary confinement. Experts estimate that the state average is one to two percent. See JAMES AUSTIN & EMMITT SPARKMAN, NAT. INST. OF CORRECTIONS, PRISONS DIVISION: COLORADO DEPARTMENT OF CORRECTIONS ADMINISTRATIVE SEGREGATION AND CLASSIFICATION REVIEW 17 (Oct. 2011), available at https://www.aclu.org/files/assets/final_ad_seg.pdf.

65 TDCJ Administrative Segregation Information Sheet, *supra* note 1, at 6.

66 This data is unfortunately over eleven years old. TDCJ has said that it does not track the costs of housing people in solitary confinement compared with general population. See CRIM. JUST. POLICY COUNCIL, MANGOS TO MANGOS: COMPARING THE OPERATIONAL COSTS OF JUVENILE AND ADULT CORRECTIONAL PROGRAMS IN TEXAS, PREPARED FOR THE 78TH TEXAS LEGISLATURE 12 (2003), available at http://www.lbb.state.tx.us/Public_Safety_Criminal_Justice/Reports/2003cpd.pdf; Letter from TDCJ to Rodney Ellis, *supra* note 59.

67 See *Reassessing Solitary Confinement: The Human Rights, Fiscal, and Public Safety Consequences: Hearing Before the Senate Judiciary Committee’s Subcommittee on the Constitution, Civil Rights and Human Rights*, 112th Cong. (2012), (written testimony of Christopher Epps, Commissioner of Mississippi Department of Corrections), available at <http://www.judiciary.senate.gov/imo/media/doc/12-6-19EppsTestimony.pdf>.

68 See *Reassessing Solitary Confinement II—The Human Rights, Fiscal, and Public Safety Consequences: Hearing Before the Senate Judiciary Committee’s Subcommittee on the Constitution, Civil Rights and Human Rights*, 113th Cong. (2014) (testimony of Lance Lowry, President, AFSCME Local 3807 Texas Correctional Employees), available at <http://solitarywatch.com/wp-content/uploads/2014/02/Lance-Lowry-Senate-Hearing-Submission.pdf>.

69 See *id.*; see also e-mail from Lance Lowry, President, AFSCME 3807, to Burke Butler, Fellow, TCRP (Sept. 21, 2014 16:41 CST) (on file with ACLU of Texas and TCRP).

70 See Testimony of Lance Lowry, *supra* note 68.

71 See *id.*

of solitary confinement. Mississippi cut serious assaults against staff and prisoners by seventy percent when it reduced its solitary population from one thousand to fewer than 150.⁷² When Maine cut its solitary-confinement population, incidents of prison violence dropped.⁷³ Colorado saw no increase in assaults when it reduced its solitary-confinement population by sixty percent, and the Director of the Colorado Department of Corrections declared that “our institutions will actually be safer” with less solitary confinement.⁷⁴

Finding Four: Solitary confinement causes thousands of mentally ill people to further deteriorate before they return to Texas communities. The universal consensus among mental health experts is that correctional departments must never send people with serious mental illnesses to solitary confinement because complete isolation causes people with serious mental illness to fall apart.⁷⁵ Yet TDCJ confines at least 2,012 people with mental illnesses in solitary confinement⁷⁶ and inadequately monitors them during their time in isolation, providing only cursory checks that are unlikely to identify serious issues. According to our survey results, of those survey respondents who met with a mental health worker, sixty-five percent said their meetings were less than two minutes long.⁷⁷ As a consequence, rates of suicide, attempted suicide, and self-harm in solitary confinement are far higher than rates in the general population: People in solitary confinement are five times more likely to commit suicide than those in the general population.⁷⁸ For the mentally ill who do survive solitary confinement, they return to Texas communities in worse condition than when they entered TDCJ.

72 See Terry A. Kupers et al., *Beyond Supermax Administrative Segregation: Mississippi's Experience Rethinking Prison Classification and Creating Alternative Mental Health Programs*, 20 CRIM. JUST. & BEHAVIOR 1, 5, 7 (July 2009), available at https://www.aclu.org/sites/default/files/images/asset_upload_file359_41136.pdf.

73 See Lance Tapley, *Reducing solitary confinement*, PORTLAND PHOENIX, Nov. 2, 2011, <http://portland.thephoenix.com/news/129316-reducing-solitary-confinement/?page=2#TOPCONTENT>; see also AM. CIV. LIBERTIES UNION OF ME., CHANGE IS POSSIBLE: A CASE STUDY OF SOLITARY CONFINEMENT REFORM IN MAINE 30-31 (Mar. 2013), available at http://www.aclumaine.org/sites/default/files/uploads/users/admin/ACLU_Solitary_Report_webversion.pdf.

74 See *Reassessing Solitary Confinement II—The Human Rights, Fiscal, and Public Safety Consequences: Hearing Before the Senate Judiciary Committee's Subcommittee on the Constitution, Civil Rights and Human Rights*, 113th Cong. (2014) (testimony of Rick Raemisch, Executive Director, Colorado Department of Corrections), available at <http://www.judiciary.senate.gov/imo/media/doc/02-25-14RaemischTestimony.pdf>.

75 See Jeffrey L. Metzner & Jamie Fellner, *Solitary Confinement and Mental Illness in U.S. Prisons: A Challenge for Medical Ethics*, 38 J. AM. ACAD. PSYCHIATRY & L. 104, 105 (Nov. 2010), available at <http://www.jaapl.org/content/38/1/104.full.pdf+html>.

76 Letter from TDCJ to authors, *supra* note 5.

77 Data collected from survey of 147 people incarcerated in Texas prisons who previously spent time in or are currently in solitary confinement (on file with ACLU of Texas and TCRP).

78 Letter from TDCJ to authors, *supra* note 5.

Recommendations

Recommendation One: Change Institutional Attitudes Toward Solitary Confinement.

TDCJ and statewide policymakers must move toward a new institutional attitude that views solitary confinement as a rare practice, to be used only in exceptional circumstances and for short periods. The State of Texas has embraced “smart on crime” reforms in recent years, and this same balancing of benefits against costs should inform our approach to solitary confinement:

- **Train correctional officers to work effectively with people with mental illness.** Texas Correctional Office on Offenders with Medical or Mental Impairments (TCOOMI) should develop additional mental-health training for correctional officers, and make this training a precondition for an additional pay raise. Increased training will allow correctional officers to identify misbehavior based on mental illness and divert people with mental illness to appropriate treatment, rather than sending them to solitary confinement. It will also help to prevent confrontations between correctional officers and mentally ill prisoners that can spiral out of control. A small amount of dedicated additional funding for mental health training is a wise investment for the state because it gives officers skills they need, makes them safer, and could increase job satisfaction and reduce turnover.
- **Enact step-down programs that allow individuals to move to less restrictive housing based on good behavior.** TDCJ should enact programs that allow individuals in solitary confinement to earn greater privileges through good behavior and eventually return to the general population. These programs will ensure that people only stay in solitary confinement for short durations. They will also give prisoners an incentive to comply with prison regulations, thereby making solitary-confinement units safer for correctional officers.
- **Institute an independent oversight entity to monitor TDCJ’s use of solitary confinement and make recommendations for reform.** The legislature should institute an independent oversight body—comprised of mental-health and corrections experts—to collect data on TDCJ’s use of solitary confinement, monitor TDCJ’s practices, and make recommendations for reform. This independent body could play a vital role in ensuring that the public is well informed about this important area of prison management. The independent entity should have the power to inspect TDCJ facilities and interview incarcerated people.

Recommendation Two: Remove People with Serious Mental Illness from Solitary Confinement

A large number of individuals housed in solitary confinement in Texas prisons have serious mental illnesses. These individuals should be removed from solitary confinement and placed in a setting where their mental health needs can be appropriately addressed, helping to ensure that they are not returned to their communities unstable and untreated.

- **Exclude people with serious mental illness from solitary confinement.** Serious mental illnesses include, among other conditions: major depression, schizophrenia, bipolar disorder, obsessive compulsive disorder (OCD), panic disorder, post-traumatic stress disorder (PTSD) and borderline personality disorder.⁷⁹ The legislature should dedicate funds for a one-time review to ensure that all individuals with serious mental illnesses in solitary confinement are removed to therapeutic settings. TDCJ should also remove anyone whose medical or mental-health conditions will worsen in solitary confinement. Diverting those with serious mental health issues to psychiatric treatment units or other appropriate settings reduces litigation exposure and improves outcomes for this population, including reducing the causes of recidivism.
- **Provide mental-health screening to everyone within twenty-four hours of placement in solitary confinement.** TDCJ should ensure that no one spends more than one day in solitary confinement without a mental-health screening, conducted in person by a mental-health professional in a confidential setting. If a person has serious mental illness, he must be removed from solitary confinement to a setting where he can receive adequate treatment. People in solitary confinement who are undergoing mental-health treatment must receive an in-person mental-health review once per month, conducted by a mental-health professional in a confidential room where security staff cannot overhear the communication.

⁷⁹ See *What Is Mental Illness?: Mental Illness Facts*, NAT'L ALLIANCE ON MENTAL ILLNESS http://www.nami.org/template.cfm?section=about_mental_illness (last accessed Sept. 16, 2014).

- **Enact policies requiring mental-health professionals to participate in all initial decisions classifying prisoners to solitary confinement, as well as all follow-up placement reviews.** By having mental-health professionals play an ongoing role in classification decisions, TDCJ will ensure that inmates with serious mental illnesses are not sent to solitary confinement in the future.
- **Establish segregated housing with adequate mental-health treatment for the small number of mentally ill people who legitimately need to be housed in a high security setting.** For many mentally ill prisoners, misbehavior is a result of inadequate mental-health treatment and the harmful effects of solitary confinement—which could be remedied with adequate therapeutic interventions and medication. However, there may be a very small number of prisoners with mental illness who legitimately need to be isolated from the rest of the prison population. For these few individuals, TDCJ should create special mental-health segregation units. In those units, people with mental illness must receive ten to fifteen hours a week of out-of-cell therapeutic activities, and at least ten hours a week of unstructured exercise or recreation time.⁸⁰

Recommendation Three: Review Solitary-Confinement Placement System-Wide.

To ensure that TDCJ only houses people in solitary confinement if they pose a serious security risk, TDCJ should:

- **Review all individuals in solitary confinement with the goal of removing as many individuals as possible.** The legislature should fund a one-time review to ensure that the costly practice of solitary confinement is not overused within TDCJ. The review should examine the appropriateness of placement and the duration of placement for each individual currently housed in solitary confinement. If an individual poses no threat, the review should result in removal from solitary confinement. This approach is cost effective because it would right-size the solitary confinement population in Texas.
- **Cease automatic placement in solitary confinement.** Currently, association with certain prison gangs can mean automatic and long-term placement in solitary confinement. 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

⁸⁰ See Jeffrey Metzner & Joel Dvoskin, *An Overview of Correctional Psychiatry*, 29 *PSYCHIATRIC CLINICS N. AM.* 761, 764 (2006), available at http://www.joeldvoskin.com/Metzner___Dvoskin_2006.pdf.

practices in other states that have allowed for placement in less restrictive settings.

- **End flat release of people from solitary confinement into Texas communities.** TDCJ has taken steps to expand step-down programs that provide treatment to help people transition from solitary confinement to life in the outside world. Given that solitary confinement is associated with higher recidivism rates, it is essential that TDCJ further expand this programming to make it available to all those released from solitary. To ensure accountability and transparency, TDCJ should report publicly on the success of these programs and their outcomes.
- **Never house individuals in solitary confinement for over one year except in rare circumstances.** TDCJ should cease housing people in solitary confinement for indefinite periods of time, and never for over one year, unless the following conditions are met: TDCJ conducts a hearing in which it establishes (1) by a preponderance of evidence that the individual, within the previous year, has committed an act which resulted in or was likely to result in serious injury or death to another; or (2) by clear and convincing evidence that there is a significant risk that the individual will cause physical injury to prison staff, other inmates, or members of the public, if removed from long-term isolation. Association with a prison gang alone should not be enough to meet that burden. The hearing committee must not be comprised of staff from the prisoner's unit.

Recommendation Four: Improve Conditions in Solitary Confinement.

After dramatically reducing its solitary-confinement population, TDCJ should take steps to improve conditions for people in its solitary-confinement cells to reduce isolation and the corresponding anti-social tendencies isolation causes:

- **Ensure appropriate programming for individuals held in solitary confinement.** TDCJ should provide people in solitary confinement with opportunities for out-of-cell educational, rehabilitative, and religious programs to help prepare them for their eventual release into the outside world. TDCJ should also develop educational, rehabilitative, and religious programs that people can complete in their cells.
- **Provide adequate stimulation to lower the effects of sensory deprivation.** TDCJ should provide people in solitary confinement with the same access to televisions, radios, books, and magazines that is available in general population. It should also provide more out-of-cell time.

- **Support family relationships.** Solitary confinement significantly impairs family bonds by limiting visitation to no-contact visits and prohibiting telephone calls to loved ones. TDCJ can support family relationships—which in turn aid in rehabilitation—by providing people in solitary confinement with the ability to have contact visits with their loved ones and make telephone calls to their families.
- **Provide adequate mental-health and medical services to those in solitary confinement.** TDCJ should conduct weekly reviews of people in solitary confinement by a mental-health professional. People receiving mental-health treatment should be granted out-of-cell treatment sessions with a mental-health professional, taking place in a confidential room where security staff cannot overhear the conversation. The complete isolation in solitary confinement can also make it more difficult for people to request and access urgent medical care. TDCJ should review the provision of medical care in its solitary-confinement units and ensure that people in solitary confinement receive adequate medical services.

BACKGROUND

The findings documented in this report are hardly news. The dangers of extreme isolation were first observed by correctional experts in the 1800s, causing them to abandon the practice in favor of more humane and constructive conditions of confinement. Now, after decades of experience with the ill effects of solitary confinement, a new generation of experts and policymakers has concluded that solitary confinement must be used as rarely possible and only for brief periods.

The Early Failure of Solitary Confinement

Early experiments with solitary confinement demonstrated that it completely debilitated prisoners, thwarting the fundamental correctional objective of making American communities safer by preparing people to live law-abiding lives in the outside world. In the late 1700s, the Pennsylvania legislature authorized the construction of this country's first-ever block of solitary confinement cells in the Walnut Street Jail.⁸¹



■ Opened in 1829 outside of Philadelphia, Eastern State Penitentiary utilized a system of complete isolation, like its predecessors, Walnut Street Jail and Western State Penitentiary.⁸²

⁸¹ See Craig Haney & Mona Lynch, *Regulating Prisons of the Future: A Psychological Analysis of Supermax and Solitary Confinement*, 23 N.Y.U. REV. L. & SOC. CHANGE 477, 483 (1997).

⁸² See *History of Eastern State Penitentiary, Philadelphia*, E. STATE PENITENTIARY HISTORIC SITE, INC. <http://www.easternstate.org/sites/default/files/pdf/ESP-history6.pdf> (last accessed Sept. 15, 2014).

Then in 1826, Pennsylvania opened Western State Penitentiary, and housed everyone there in solitary confinement.⁸³ Other states soon followed Pennsylvania’s model.⁸⁴ Observers quickly recognized that solitary confinement caused lasting psychological harm, however, permanently damaging inmates beyond repair—until they were utterly unfit for return to free society.⁸⁵ As the United States Supreme Court observed in 1890, the experiment with solitary confinement had completely failed as a correctional practice:

But experience demonstrated that there were serious objections to [solitary confinement]. 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.⁸⁶

Correctional departments had largely abandoned solitary confinement by the early twentieth century because of the irreversible damage it inflicted on prisoners.⁸⁷ Until the 1980s, state and federal prisons used solitary confinement only in rare and extraordinary circumstances.⁸⁸

The Misguided Return of Solitary Confinement in the Late Twentieth Century

Fueled by the “tough on crime” movement and reeling under the pressure of a skyrocketing prison population in the 1980s,⁸⁹ correctional departments forgot the abysmal early failure of solitary confinement. Between 1925 and 1986, the size of the population incarcerated in state and federal prisons skyrocketed by 450 percent.⁹⁰ By

⁸³ See Haney & Lynch, *supra* note 81, at 483.

⁸⁴ See *id.* at 484.

⁸⁵ See GUSTAVE DE BEAUMONT & ALEXIS DE TOCQUEVILLE, ON THE PENITENTIARY SYSTEM IN THE UNITED STATES AND ITS APPLICATION IN FRANCE 5-6 (Francis Lieber, trans., S. Ill. U. Press 1979) (1833).

⁸⁶ *In re Medley*, 134 U.S. 160, 168 (1890).

⁸⁷ See Haney & Lynch, *supra* note 81, at 484-87; see also Jesenia M. Pizarro, Vanja M.K. Stenius, & Travis C. Pratt, *Supermax Prisons: Myths, Realities, and the Politics of Punishment in American Society*, 17 CRIM. JUST. POL. REV. 6, 12 (Mar. 2011).

⁸⁸ Haney & Lynch, *supra* note 81, at 488-89; Pizarro, Stenius, & Pratt, *supra* note 87, at 7.

⁸⁹ It is beyond the scope of this report to detail the policies that contributed to exponential growth in the nation’s prison population. But it is important to note that the drivers of the increase—including the misguided “war on drugs” and harsh sentencing requirements—meant that much of the growth was among non-violent, low-level drug offenders. See The Sentencing Project, Fact Sheet: Trends in U.S. Corrections (Sept. 2014), available at http://sentencingproject.org/doc/publications/inc_Trends_in_Corrections_Fact_sheet.pdf.

⁹⁰ See PATRICK A. LANGAN, JOHN V. FUNDIS, LAWRENCE A. GREENFELD, & VICTORIA W. SCHNEIDER, BUREAU OF JUSTICE STATISTICS: HISTORICAL STATISTICS ON PRISONERS IN STATE AND FEDERAL INSTITUTIONS, YEAREND 1925-1986, at 15 (May 1988), available at <https://www.ncjrs.gov/pdffiles1/digitization/111098ncjrs.pdf>.

the late 1990s, most prisons were operating at over one hundred percent of design capacity.⁹¹ As correctional departments struggled to control overcrowded prisons, many prison officials responded by locking down prisoners in solitary confinement.⁹²

And with elected officials needing to establish their “tough on crime” bona fides, legislatures poured money into the construction of expensive solitary-confinement units.⁹³ Some states even built “supermax” prisons—prisons consisting entirely of solitary-confinement cells. In 1984, there was only one “supermax” facility in the United States.⁹⁴ By 1999, there were sixty supermax facilities in thirty states.⁹⁵ In 2000, the Bureau of Justice Statistics estimated that a over 80,000 people were held in solitary confinement in federal and state prisons.⁹⁶ That was a forty percent increase from only five years earlier, even faster than the rate of growth of the general prison population, which had increased twenty-eight percent over the same period.⁹⁷

Texas was at the forefront of the renewed use of solitary confinement. Facing its own rapidly inflating prison population, Texas imposed a new regime of widespread solitary confinement in the late 1980s. Traditionally, TDCJ had used solitary confinement only as a short-term punishment for in-prison misbehavior, lasting just a few weeks at a time.⁹⁸ But Texas’s prison population boomed in the twentieth century, increasing at an even more dramatic rate than the rest of the country. Between 1925 and 1986, Texas’s prison population increased by over one thousand percent.⁹⁹ By 1986, TDCJ had the third-largest number of people in prison in all fifty states.¹⁰⁰ Rather than augment its correctional force to manage the over 38,000 people it had locked behind bars, Texas responded by warehousing a large portion of its prison population in permanent solitary confinement.¹⁰¹ TDCJ built new units with layouts that harkened back to the Pennsylvania model of the nineteenth century of “total isolation.”¹⁰² Between 1987 and 1994, TDCJ built seven maximum-security prisons, each with 504 administrative segregation cells.¹⁰³ Soon, Texas had solitary-confinement cells throughout the state—and it started to fill them.¹⁰⁴

91 See CHASE RIVELAND, SUPERMAX PRISONS: OVERVIEW AND GENERAL CONSIDERATIONS 5 (Jan. 1999), available at <https://s3.amazonaws.com/static.nicic.gov/Library/014937.pdf>.

92 See *id.*; see also Haney & Lynch, *supra* note 81, at 480.

93 See RIVELAND, *supra* note 91, at 5.

94 See Pizarro, Stenius, & Pratt, *supra* note 87, at 7.

95 See *id.*

96 See VERA INSTITUTE OF JUSTICE, CONFRONTING CONFINEMENT: A REPORT OF THE COMMISSION ON SAFETY AND ABUSE IN AMERICA’S PRISONS 52-53 (June 2006), available at http://www.vera.org/sites/default/files/resources/downloads/Confronting_Confinement.pdf.

97 See *id.* at 53.

98 See ROBERT PERKINSON, TEXAS TOUGH 314 (2010).

99 See LANGAN, FUNDIS, GREENFIELD & SCHNEIDER, *supra* note 90, at 5, 13.

100 See *id.*

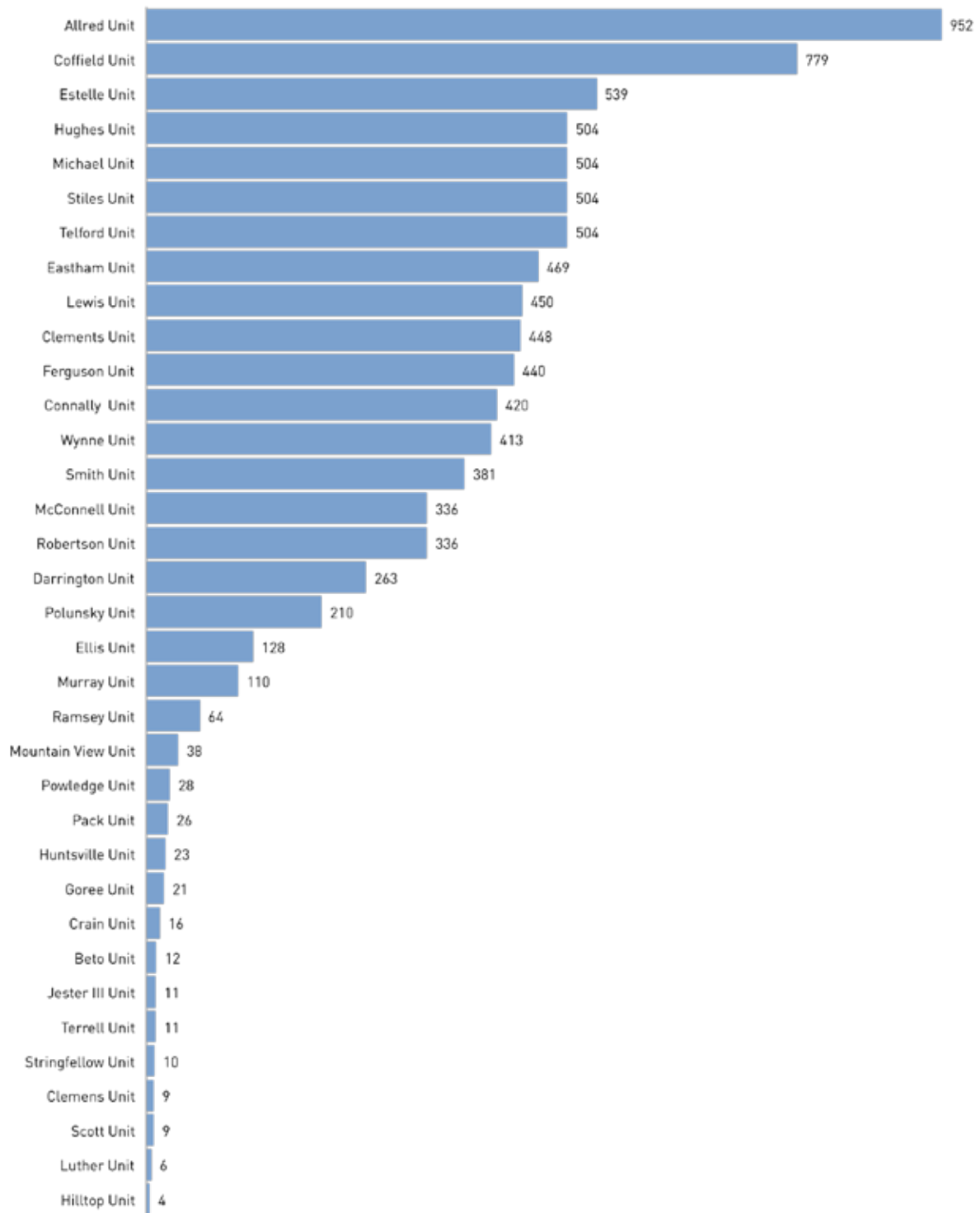
101 See PERKINSON, *supra* note 98, at 314-15.

102 See *id.*

103 JOHN SHARP, TEXAS COMPTROLLER OF PUBLIC ACCOUNTS, A REPORT FROM THE TEXAS PERFORMANCE REVIEW 47 (Apr. 1994).

104 See *id.*

Solitary confinement cells in the State of Texas per prison unit



Who is in Texas Solitary-Confinement Cells?

Fifty-three percent¹⁰⁵ of prisoners in solitary confinement are there because TDCJ determined that they were either an escape risk or a security threat to officers or other prisoners.¹⁰⁶ On average, they remain in solitary confinement for three and a half years, which indicates that TDCJ continues to isolate many people long after they cease to pose a threat.¹⁰⁷ Forty-six percent are in solitary confinement because TDCJ determined that they were members of one of eight gangs—not because they committed any misconduct while incarcerated.¹⁰⁸ The remaining prisoners are in in “Protective Custody”—isolated in solitary confinement for their own protection.¹⁰⁹

The population in Texas’s solitary-confinement cells is predominantly male;¹¹⁰ there are only 103 women in Texas solitary-confinement cells.¹¹¹ Nineteen people in solitary-confinement cells are under the age of 19, and forty-four are over sixty-five years old.¹¹²

Thirty-three percent of people in solitary confinement committed non-violent offenses¹¹³ such as property and drug crimes.¹¹⁴

The population in Texas’s solitary-confinement cells is disproportionately Hispanic.¹¹⁵ Hispanics comprise over fifty percent of the solitary-confinement population, even though they make up only thirty-two percent of the general population.¹¹⁶ The racial disproportion is likely because the eight gangs automatically housed in solitary confinement are predominately Hispanic.¹¹⁷ ■

105 Letter from TDCJ to authors, *supra* note 5.

106 TDCJ Administrative Segregation Plan, *supra* note 19, at 1.

107 Letter from TDCJ to authors, *supra* note 5.

108 E-mail from TDCJ Office of the General Counsel to Burke Butler, Fellow, TCRP (Sept. 9, 2014, 08:35 CST) (on file with ACLU of Texas and TCRP).

109 Letter from TDCJ to authors, *supra* note 5; TDCJ Administrative Segregation Plan, *supra* note 19, at att. A.

110 Letter from TDCJ to authors, *supra* note 5.

111 *Id.*

112 *Id.*

113 *Id.*

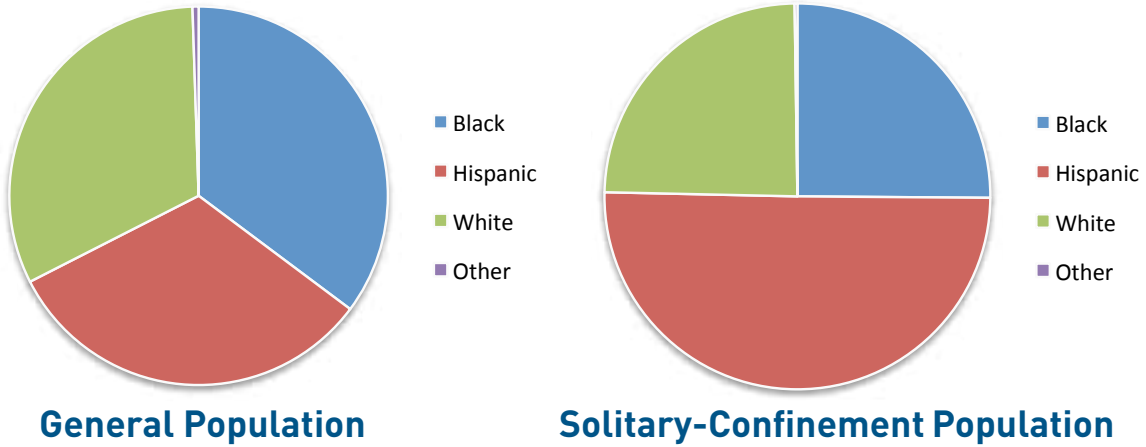
114 *Id.*

115 *Id.*

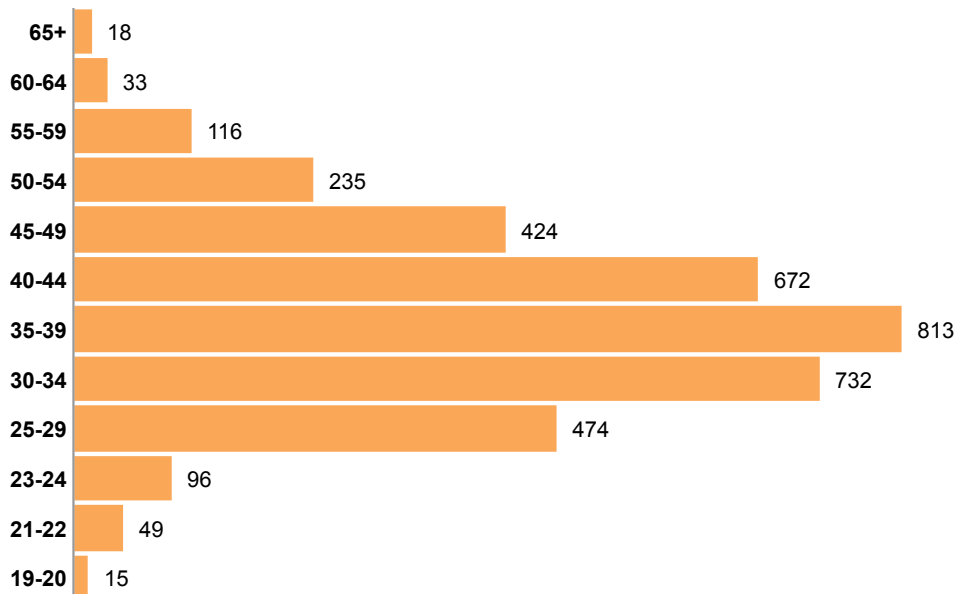
116 *Id.*

117 *Id.*

Racial breakdown of general population compared to solitary-confinement population



Age breakdown of people in solitary confinement



The Renewed Consensus: Solitary Confinement is a Dangerous and Expensive Correctional Practice

Predictably, after diverting thousands of prisoners to solitary confinement, correctional departments around the country soon learned that solitary confinement increased violence both in prison and in American communities. In May 2007, violence erupted in Mississippi's solitary-confinement unit.¹¹⁸ By the summer, three people in the unit had been murdered.¹¹⁹ Officials in Mississippi recognized that “[a] different approach was needed due to the deteriorating and dangerous environment.”¹²⁰ In March 2013, a former gang member released from a Colorado solitary-confinement cell assassinated the Executive Director of the Colorado Department of Corrections. His successor, Rick Raemisch, said that the murder underscored the urgent need for reform of Colorado's use of solitary confinement. “Whatever solitary confinement did to that former inmate and murderer,” Mr. Raemisch wrote, “it was not for the better.”¹²¹

Recognizing that solitary confinement endangers the public, many states are changing their ways. Between 2007 and 2012, Mississippi reduced its solitary-confinement population from one thousand prisoners to fewer than 150.¹²⁴ Maine cut the number of people in solitary cells in half between 2010 and 2012 and gave those who remained in solitary group recreation, counseling sessions, opportunities to earn more recreation through good behavior, and

“Is [solitary confinement] really necessary? And is it necessary at the level of current use? And I think when you look critically at it, the answer is [that] we don't need these kinds of numbers of inmates in these kinds of high security settings, and we can better prepare them for release, because ninety-eight percent of our inmates are getting out.”

—Commissioner of the Maine Department of Corrections Joseph Ponte¹²²

“This is a message I deliver directly to my wardens. I say to them: ‘Who wants to live directly next to someone who was just released from solitary confinement? Think about how dangerous that is.’”

—Executive Director of Colorado Department of Corrections Rick Raemisch¹²³

118 See Testimony of Christopher Epps, *supra* note 67.

119 See *id.*

120 See *id.*

121 Rich Raemisch, *My Night in Solitary*, N.Y. TIMES, Feb. 20, 2014, at A25, available at <http://www.nytimes.com/2014/02/21/opinion/my-night-in-solitary.html>.

122 STOP SOLITARY: MAINE'S COMMISSIONER OF THE DEPARTMENT OF CORRECTIONS JOSEPH PONTE ON REDUCING HIS STATE'S SOLITARY CONFINEMENT POPULATION, available at <https://www.aclu.org/prisoners-rights/stop-solitary-maines-commissioner-department-corrections-joseph-ponte-reducing-his> (last accessed Sept. 5, 2014).

123 See Testimony of Rick Raemisch, *supra* note 74.

124 See Kupers, *supra* note 72, at 5.

greater access to radios, televisions, and reading materials.¹²⁵ In 2013, Illinois closed its supermax prison, Tamms Correctional Center.¹²⁶ Colorado reduced its population in solitary confinement by nearly sixty percent between 2011 and 2014.¹²⁷ In February 2014, Mr. Raemisich vowed to further reduce Colorado's solitary-confinement population,¹²⁸ and two months later the Colorado legislature passed a bill excluding people with serious mental illnesses from solitary confinement.¹²⁹ New York corrections officials agreed to new guidelines limiting the maximum length of time people should spend in solitary and eliminated the use of solitary confinement against the most vulnerable prisoners: juveniles, pregnant women, and people with developmental disabilities.¹³⁰ In August 2014, the California Department of Corrections took preliminary steps to revise its misguided use of solitary confinement by instituting policies to greatly reduce the number of mentally ill people in solitary confinement, improve mental-health treatment, and increase suicide-prevention measures.¹³¹ Under the new measures, California will move 2,740 mentally-ill people out of solitary confinement.¹³²

By reducing their use of solitary, states made their prisons safer and saved taxpayers millions of dollars. When Mississippi reduced its solitary-confinement population, violent incidents dropped by almost seventy percent,¹³³ and it saved taxpayers \$5.6 million a year.¹³⁴ Mississippi still has one of the lowest recidivism rates in the country.¹³⁵ Incidents of violence in Maine's prisons dropped when it cut its solitary-confinement population in half.¹³⁶ By closing Tamms Correctional Center, Illinois saved taxpayers \$26.6 million a year.¹³⁷

125 See AM. CIV. LIBERTIES UNION OF ME., *supra* note 73, at 13.

126 See *Tamms Supermaximum Security prison now closed*, AMNESTY INT'L (Jan. 10, 2013), <http://www.amnestyusa.org/our-work/latest-victories/tamms-supermaximum-security-prison-now-closed>.

127 Testimony of Rick Raemisich, *supra* note 74.

128 See Allison Sherry, *Colorado corrections chief: I will reduce solitary confinement*, DENVER POST, Feb. 25, 2014, http://www.denverpost.com/news/ci_25227021/colo-corrections-chief-i-will-reduce-solitary-confinement.

129 See Michael Muskal, *Colorado bans solitary confinement for seriously mentally ill*, L.A. TIMES, June 6, 2014, <http://www.latimes.com/nation/nationnow/la-na-nn-colorado-mentally-ill-isolation-20140606-story.html>.

130 See Benjamin Weiser, *New York State in Deal to Limit Solitary Confinement*, N.Y. TIMES, Feb. 19, 2014, at A1, *available at* <http://www.nytimes.com/2014/02/21/opinion/new-york-rethinks-solitary-confinement.html>.

131 See Erica Goode, *Federal Judge Approves California Plan to Reduce Isolation of Mentally Ill Inmates*, N.Y. TIMES, Aug. 29, 2014, at A11, *available at* http://www.nytimes.com/2014/08/30/us/california-plans-to-reduce-isolation-of-mentally-ill-inmates.html?_r=0.

132 See *id.*

133 See Kupers, *supra* note 72, at 7.

134 See Testimony of Christopher Epps, *supra* note 67, at 3.

135 See *id.*

136 See Tapley, *supra* note 73.

137 See ILL. DEP'T OF CORRECTIONS, TAMMS CORRECTIONAL CENTER CLOSING—FACT SHEET 142, *available at* <http://cgfa.ilga.gov/upload/TammsMeetingTestimonyDocuments.pdf> (last accessed Aug. 28, 2014).

SOLITARY CONFINEMENT INCREASES CRIME

Prisons should make our communities safer, but solitary confinement makes them more dangerous. Solitary confinement causes prisoners to develop lasting mental illnesses, destroys their ability to relate to others, tears apart their family safety nets, and deprives them of vocational, educational, rehabilitative, and religious programming. After subjecting people to years or decades of solitary confinement, TDCJ sets them free in Texas communities—where, impaired by their years of complete isolation, they commit crimes at higher rates than people released from the general population. Solitary confinement does more than cause lasting harm to the people confined there; it ultimately harms our communities.

Solitary Confinement Permanently Damages People Who Will One Day Return to Texas Communities

Solitary Confinement Causes Permanent Mental Deterioration

Solitary confinement can cause people’s mental health to seriously deteriorate, creating or exacerbating psychiatric symptoms that persist long after their release and impede their ability to reintegrate to society. The medical consensus is that most human beings cannot withstand the prolonged isolation and sensory deprivation that solitary confinement entails, and our survey of people incarcerated in Texas prisons produced predictable results. Ninety-five percent of respondents to our survey had developed some sort of psychiatric symptom as a result of solitary confinement; thirty percent reported having oral or physical outbursts, fifty percent reported suffering from anxiety or panic attacks, and fifteen percent reported hallucinations.¹³⁸ Solitary confinement’s impact on the human brain is as brutal as a traumatic physical injury; prisoners of war who spent six months in solitary confinement had abnormal brain-wave patterns months after their release.¹³⁹

Studies document that people in solitary confinement are also at a higher risk of suffering from psychiatric disorders.¹⁴⁰ Dr. Stuart Grassian, one of the nation’s leading

¹³⁸ Data collected from survey of 147 people incarcerated in Texas prisons who previously spent time in or are currently in solitary confinement (on file with ACLU of Texas and TCRP).

¹³⁹ See Atul Gawande, *Hellhole*, NEW YORKER, Mar. 30, 2009, <http://www.newyorker.com/magazine/2009/03/30/hellhole>.

¹⁴⁰ See Craig Haney, *Mental Health Issues in Long-Term Solitary and “Supermax” Confinement*, 49 CRIME & DELINQUENCY 124, 138-40 (Jan. 2003), available at <http://www.supermaxed.com/NewSupermaxMaterials/Haney-MentalHealthIssues.pdf>; Terry A. Kupers, *What to Do*

experts on the psychiatric effects of solitary confinement, found that many people in solitary confinement develop a unique psychiatric syndrome: They lose their capacity to think clearly or concentrate; lose their memory; hallucinate; have panic attacks; ruminate on obsessive thoughts of “revenge, torture, and mutilation of the prison guards”; get lost in paranoid delusions; and have poor impulse control.¹⁴¹ These symptoms do not go away when people leave prison; they persist long after release, inhibiting the ability to adjust to normal life and reintegrate into the community.¹⁴²

Summing up the research on solitary confinement’s psychological impact, Dr. Terry Kupers, of the Wright Institute, writes that “it is very clear . . . that for just about all prisoners, being held in isolated confinement for longer than 3 months causes lasting emotional damage if not full-blown psychosis and functional disability.”¹⁴³ In the words of a staff psychiatrist from a California state prison, “It’s a standard psychiatric concept, if you put people in isolation, they will go insane. . . . Most people in isolation will fall apart.”¹⁴⁴

The psychological impact of Texas’s solitary-confinement cells was documented by University of California professor Craig Haney when he served as an expert in the prisoners’ rights case *Ruiz v. Estelle*.¹⁴⁵ Dr. Haney found that “high numbers of prisoners were living in psychological distress and pain” in Texas’s solitary-confinement cells:

I’m talking about forms of behavior that are easily recognizable and that are stark in nature when you see them, when you look at them, when you’re exposed to them. In a number of instances, there were people who had smeared themselves with feces. In other instances, there were people who had urinated in their cells, and the urination was on the floor. . . . There were many people who were incoherent when I attempted to talk to them, babbling, sometimes shrieking, other people who appeared to be full of fury and anger and rage and were, in some instances, banging their hands on the side of the wall and yelling and screaming, other people who appeared to be simply disheveled, withdrawn and out of contact with the circumstances or surroundings. Some of them would be huddled in the back corner of the cell and appeared incommunicative when I attempted

with the Survivors? Coping With the Long-Term Effects of Isolated Confinement, 8 CRIM. JUST. & BEHAV. 1005, 1005-06 (2008), available at http://www.nrcat.org/storage/documents/usp_kupers_what_do_with_survivors.pdf.

141 See Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 WASH. U.J.L. & POL’Y 325, 335-36 (2006).

142 See *id.* at 333.

143 Kupers, *supra* note 140, at 1005-06.

144 HUMAN RIGHTS WATCH, ILL-EQUIPPED: U.S. PRISONS AND OFFENDERS WITH MENTAL ILLNESS 19 n.512 (Oct. 2003), available at http://www.hrw.org/node/12252/section/19#_ftnref513.

145 See *Ruiz v. Johnson*, 37 F. Supp. 2d 855, 908-09 (S.D. Tex. 1999), *rev’d on other grounds*, 243 F.3d 941 (5th Cir. 2001), *adhered to on remand*, 154 F. Supp. 2d 975 (S.D. Tex. 2001).

to speak with them. Again, these were not subtle diagnostic issues. These were people who appeared to be in profound states of distress and pain...

The bedlam which ensued each time I walked out into one of those units, the number of people who were screaming, who were begging for help, for attention, the number of people who appeared to be disturbed, the existence, again, of people who were smeared with feces, the intensity of the noise as people began to shout and ask, Please come over here. Please talk to me. Please help me. It was shattering. And as I discussed this atmosphere with the people who worked here, I was told that this was an everyday occurrence, that there was nothing at all unusual about what I was seeing.¹⁴⁶

The federal judge presiding over the Ruiz case wrote that Texas's solitary-confinement cells "are virtual incubators of psychoses—seeding illness in otherwise healthy inmates."¹⁴⁷ Based on the psychological effects of solitary confinement, the judge determined that Texas's solitary-confinement cells constituted cruel and unusual punishment in violation of the Eighth Amendment of the United States Constitution.¹⁴⁸

“Families of these individuals [placed in solitary confinement] are faced with monumental challenges in helping their loved one’s adapt to life on the outside. . . . We should never lose sight of a person’s humanity and their need for family and human contact. Developing pro-social services and strengthening family relationships within prison walls is paramount to public safety—both inside and outside prison fences. ”

—Jennifer Erschabek, Executive Director of Texas Inmate Families Association.¹⁴⁹

¹⁴⁶ *Id.* at 909-10.

¹⁴⁷ *Id.* at 907.

¹⁴⁸ *See id.* at 914-15.

¹⁴⁹ E-mail from Jennifer Erschabek, Executive Director, TIFA, to Matthew Simpson, Policy Strategist, ACLU of Texas (July 14, 2014, 07:56 CST) [on file with ACLU of Texas and TCRP].

Solitary Voices

“Everyday from dusk to dawn theres noise, banging, clanking, yelling, screaming. Everyday someone is getting hurt or hurting themselves. Everyday theres fire and floods and complete chaos & hate. Everyday there’s loneliness. I woke up last night to someone screaming ‘Let Me Out of Here’ (again) over and over with so much anguish there was no doubt he was **screaming from his very soul**. But he was just screaming what we are all thinking. Everyday is a challenge here. **A challenge against insanity.**”¹⁵⁰

“Felt isolated, withdrew from people socially; clean, organize, obsessively, hand wash, felt despair, felt disoriented/confused, panic, couldn’t sleep until exhausted. Bad dreams, see **something on walls moving but nothing there.**”¹⁵¹

“Now I know how the caged animal must feel and why it paces the way it does. I feel so angry at times and I pace this cell for hours trying to get my thoughts and feelings under control. I feel suffocating feelings and have anxiety attacks that I feel are going to kill me sometimes—heart attack. **I sometimes see things in this cell like ghosts flitting around the floor & walls.** I can’t sleep for days at time and the officers count every hour and most of them bang on your door, shine their lights in your face and make you get up and show them you I.D. card—tell you make sure you are alive. I get so angry I cuss, kick the door & walls and lose any self control I have and I actually start to think about really ending this torment—I sometimes sleep so much I lose track of days at a time—sometimes several. That’s when I really feel disoriented/confused/afraid.”¹⁵²

¹⁵⁰ Alex’s Journal, *supra* note 26 (entry dated July 29, 2014).

¹⁵¹ Survey response from Anna, individual incarcerated in TDCJ (on file with ACLU of Texas and TCRP).

¹⁵² Survey response from Nathan, individual incarcerated in TDCJ (on file with ACLU of Texas and TCRP).

Sergio's Story

TDCJ sent Sergio to solitary confinement when he was nineteen years old. During his three and a half years in solitary confinement, Sergio had virtually nothing to do. Every day, he would wake up when breakfast was served, usually at three or four o'clock in the morning. Then he would listen to the radio for four to five hours, and work out in his cell. Although he could not watch television, Sergio rigged his radio so he could listen to television shows like Fox News, Anderson Cooper, *Dateline*, *Everybody Loves Raymond*, and *Seinfeld*. (Under prison regulations, he was not allowed to rig his radio that way; he just tried not to get caught.) He would eat lunch at ten o'clock, and then listen to more radio or read. His favorite books were *Tuesdays with Morrie*, which he loved "because it's about a guy who talks to his friend once a week about life lessons, success and marriage," and *The Time Traveler's Wife*. He would play chess with other prisoners by drawing out a chess board, numbering it, and then calling out his moves to people in other cells. At four in the afternoon, Sergio would have dinner, and at 8:00 p.m. officers would distribute the mail; he received a letter from his family a couple of times a month.

In January 2014, Sergio finally got out of solitary confinement. We met with Sergio in May. Although Sergio was scheduled to be released from prison in eight months, he felt damaged and unprepared for the real world after his time in solitary. Sergio said that he is not "comfortable being around people" and does not go to the recreation room. He prefers to stay in his cell and obsessively tries to order everything perfectly there because "if it ain't right, I get agitated." Before he was in solitary confinement, Sergio says, "I used to be a people person and like being around people." But, Sergio says "it's weird after three years back there" in solitary confinement. Now, he doesn't like "having other people being close to me" and says that "stuff gets balled up inside" of him.¹⁵³ ■

¹⁵³ Interview with Sergio, individual incarcerated in TDCJ (May 28, 2014) (on file with ACLU of Texas and TCRP).

Solitary Voices

“I have difficulty talking to people now and I feel paranoid at times in my cell—I see shadows and I’ve started to hear **voices whisper my name** the last couple of years in my cell . . . feel closed in!”¹⁵⁴

“**I am an honorably discharged combat veteran diagnosed with PTSD**, anxiety disorder, panic disorder, etc. Isolation is torture. There can be no other word for it. ‘Isolation’ simply means you are single-celled. You are not removed from the effects of other inmates’ extreme behavior resultant from ad seg. People flood the areas by plugging toilets. Fires are routinely started so you wake in the middle of the night choking on black smoke. Electricity gets turned off. People scream, yell non-sensical gibberish all night. They bang doors 24 hours. . . .”¹⁵⁵

¹⁵⁴ Survey response from Greg, individual incarcerated in TDCJ (on file with ACLU of Texas and TCRP).

¹⁵⁵ Survey response from Pedro, individual incarcerated in TDCJ (on file with ACLU of Texas and TCRP).

Letter From Alex

“When you dive deep in the ocean and when you go to make your ascension, it’s very important to make stops to calibrate your air. You can’t just swim to the surface. If a diver rushes to the surface too fast, they put themselves in serious risk of injury (called “the bend”). In some cases it can be fatal if the diver cannot go immediately back down and start over, or be rushed to a hyperbaric chamber. . . .

“Coming out of my cell feels like I’ve gone to the surface too fast. When the doors roll, everything is amplified. Nerves are cranked to 10. Lights are too bright. A mop bucket being pushed by an S.S.I. sounds like a mid-day freight train with horns blaring. It’s hyper-sensitivity on the grandest scale, with the feeling like the whole world is watching. . . .

“I’m a people person. Before I came here I was outgoing, very social. Maybe even too much the life of the party. And I hate this cell, I hate it. But in some crazy way as much as I enjoyed our meeting and its purpose, a part of me couldn’t wait to get back to my cell. In one big haste to return to the very same place that cause it. My cell is my hyperbaric chamber.

“T.D.C.J., as well as I’m sure all prison systems, will claim that ad. seg. is not a punishment in itself. But the system puts an even greater burden on the segregated inmate being released. Since there’s no available programming for substance abuse (AA, NA) or groups to address Anger Management like you may find in the general population. If you’re released on parole or released period, an ad. seg. inmate not only has to struggle with the issues they had going into prison. The isolated ad. seg. inmate has to deal with the adverse symptoms caused by the prison itself.

“I feel fortunate because I recognize these things. While I’m in no way suggesting I’ll have it easier than the next man when I leave here. I’m looking forward to the challenge, I’m looking to the day I’ll leave this cell for the last time and slowly make my way to the top.¹⁵⁶ ■

156 Letter from Alex to authors (May 30, 2014) (on file with ACLU of Texas and TCRP).

Solitary Voices

“Being secluded to a small cell 23 hours a day-plus affects every sane individual in one way or another. A person has to yell just to socialize. To those who are not socializing, it **is a constant cacophony of noise—constant!** A person is affected negatively in every way!”¹⁵⁷

“In another state of mind. You could not tell day from night. You were always backward. Sleep all day stay up all night. No light coming in the building. **You be lost.**”¹⁵⁸

“It **dehumanizes** you and causes a enmity in you against staff and feelings of worthlessness and despair.”¹⁵⁹

Isolation Erodes People’s Capacity to Interact with Others

Solitary confinement damages people’s ability to relate to other human beings. It erodes the social skills people need to raise children, support their spouses, help aging parents, participate in their communities, cooperate with neighbors, and hold down jobs.

Prisoners in solitary confinement are always alone. They live in a cell alone. They go to the recreation yard alone. They eat alone. For weeks, they do not see another person’s face. To speak to anyone else, even a person in a neighboring cell, they must shout through the cell walls. The only time they touch another human being is when a correctional officer places handcuffs on their wrists to take them to the recreation yard.

Stripped of all social contact for years at a time, their capacity to relate to human beings decays.¹⁶⁰ In the words of Dr. Grassian, people in solitary confinement suffer from “a continued intolerance of social interaction” even after their release.¹⁶¹ Dr. Grassian has had the opportunity to evaluate people years after their release from solitary confinement.¹⁶² He says that “these individuals had become strikingly socially impoverished and experienced intense irritation with social interaction, patterns dramatically different from their functioning prior to solitary confinement.”¹⁶³ As Dr. Haney describes, the lack of contact creates a “pervasive feeling of unreality,” which causes people to “experience a paradoxical reaction, moving from initially being starved

¹⁵⁷ Survey response from Will, individual incarcerated in TDCJ (on file with ACLU of Texas and TCRP).

¹⁵⁸ Survey response from Charles, individual incarcerated in TDCJ (on file with ACLU of Texas and TCRP).

¹⁵⁹ Survey response from Andy, individual incarcerated in TDCJ (on file with ACLU of Texas and TCRP).

¹⁶⁰ See Haney, *supra* note 140, at 138-40.

¹⁶¹ Grassian, *supra* note 141, at 333.

¹⁶² See *id.* at 354.

¹⁶³ *Id.*

for social contact to eventually being disoriented and even frightened by it.”¹⁶⁴ In our survey, fifty-nine percent of respondents reported that they had “difficulty interacting with other people” as a consequence of their time in solitary.¹⁶⁵

Indeed, many of the symptoms of mental and emotional damage caused by solitary confinement impair normal human interaction:

Consistent patterns emerge, centering around . . . extreme anxiety, anger, hallucinations, mood swings and flatness, and loss of impulse control. In the absence of stimuli, prisoners may also become hypersensitive to any stimuli at all. Often they obsess uncontrollably, as if their minds didn’t belong to them, over tiny details or personal grievances. Panic attacks are routine, as is depression and loss of memory and cognitive function.¹⁶⁶

Solitary confinement also causes “significantly increased negative attitudes and affect, irritability, anger, aggression and even rage.”¹⁶⁷ People are thus rendered incapable of resuming the normal familial and community relationships that are essential to successful reentry. According to Dr. Kupers, the inevitable result of confinement in solitary is the “decimation of life skills” because it “destroys one’s capacity to relate socially, to work, to play, to hold a job or enjoy life.”¹⁶⁸

Yet eventually, TDCJ sends these damaged people back to Texas communities. After years in solitary confinement, they are unprepared to resume the roles society expects of them: as parents, spouses, employees, and neighbors.

¹⁶⁴ See *Reassessing Solitary Confinement: The Human Rights, Fiscal, and Public Safety Consequences: Hearing Before the Senate Judiciary Committee’s Subcommittee on the Constitution, Civil Rights and Human Rights*, 112th Cong. (June 19, 2012) (testimony of Craig Haney, Prof. of Psychology, Univ. of Ca. Santa Cruz), available at <http://www.judiciary.senate.gov/imo/media/doc/12-6-19HaneyTestimony.pdf>.

¹⁶⁵ Data collected from survey of 147 people incarcerated in Texas prisons who previously spent time in or are currently in solitary confinement (on file with ACLU of Texas and TCRP).

¹⁶⁶ Brandom Keim, *The Horrible Psychology of Solitary Confinement*, WIREd, July 10, 2013, <http://www.wired.com/2013/07/solitary-confinement-2/>.

¹⁶⁷ See Testimony of Craig Haney, *supra* note 164.

¹⁶⁸ Keim, *supra* note 166.

Solitary Voices

“Being enclosed for so long just looking at **4 walls, a toilet and metal bars is all I look at 24 hours a day**, so when and if I go to visitation, my dad says I cant stop looking around. And when I come back to my cell I get depressed to have to go thru it all again being away from any & everything & my family.”¹⁶⁹

“[Solitary confinement] makes one lose self of all humanity as we are **treated worse then animals in a kennel** feels suffocating like walls are closing in makes one lose sense of reality.”¹⁷⁰

“[T]his is a dark sad cut off place, no people interaction, no one to talk to & rec with. **You go crazy just wanting someone to talk** to or play dominos with some times, or just to talk about things with, everything keeps you isolated from others some times for years & years at a time! **How can you isolate a man that long & expect him to have good/acceptable social/people skills when hes released to gen. pop. or the free?**”¹⁷¹

“It is becoming harder to deal with real life problems. Mainly because I feel suspended in time. **No human contact.** Very little human interactions.”¹⁷²

Solitary Confinement Severs Family Bonds

TDCJ should support incarcerated people in maintaining family bonds, but solitary confinement severs those bonds. Strong family bonds can help prisoners successfully reintegrate into society; people in prison who receive visits from their family members are thirty percent less likely to commit new crimes than those who never received a visit.¹⁷³ Yet solitary confinement interferes with family bonds by limiting families to a “no-contact visit,” during which prisoners are separated from their family members by a pane of glass or metal mesh.¹⁷⁴ People in solitary confinement cannot hold their family member’s hand or hug them goodbye. “The contact visit means everything,” says Jennifer Erschabek, Director of the Texas Inmate Families Association (TIFA), a non-profit organization that advocates for the family members of people incarcerated in Texas prisons. “That little interaction is so appreciated by the guys. And you can feel it

¹⁶⁹ Survey response from George, individual incarcerated in TDCJ (on file with ACLU of Texas and TCRP).

¹⁷⁰ Survey response from Chris, individual incarcerated in TDCJ (on file with ACLU of Texas and TCRP).

¹⁷¹ Survey response from Richard, individual incarcerated in TDCJ (on file with ACLU of Texas and TCRP).

¹⁷² Survey response from Ignacio, individual incarcerated in TDCJ (on file with ACLU of Texas and TCRP).

¹⁷³ See William D. Bales & Daniel P. Mears, *Inmate Social Ties and the Transition to Society: Does Visitation Reduce Recidivism?*, 45 J. Res. CRIME & DELINQ. 287, 304-05 (2008).

¹⁷⁴ TDCJ Administrative Segregation Plan, *supra* note 19, at att. A.

in the hug.”¹⁷⁵ The restrictions on people in solitary confinement add further trauma to family members; they may drive a full day across Texas to visit their son, only to see him in a glass cage and speak to him through a telephone.¹⁷⁶ At the most restrictive level of solitary confinement, prisoners can only visit with their family once a month—far less than people in the general population.¹⁷⁷ People in solitary confinement also cannot call their family members, which is often their only way to maintain ties with loved ones who are too far away or cannot afford to visit. TIFA knows firsthand that solitary confinement profoundly impairs family bonds. For a person placed in solitary confinement for even the average length of almost four years, TIFA says, it is “almost impossible for that person to remain in meaningful contact with their family and other members of their support network.”¹⁷⁸ Solitary confinement cuts away the interpersonal safety net that people need to support their transition back to life in the outside world.

Lori and Frank

Lori and Frank’s love story epitomizes how solitary confinement prevents prisoners from accessing the family and religious support they need to rehabilitate. Lori met her husband, Frank, when she was fourteen and he was sixteen. “I felt in love the first moment he smiled at me,” she recollected. Frank has been in solitary confinement since 2003. Lori does everything she can to support her husband. She drives to see him every week—125 miles each way—to visit with him through a pane of glass. She writes prolifically to him, and he writes to her; when we spoke, she had just received letter 395 from Frank. Lori reconnected her husband with his estranged sister, who has visited him three times in the last several months. To show Frank love and support, she tracked down Frank’s childhood friends and took them with her on her weekend visits.

Faith has played a central role in Lori and Frank’s relationship. “He is a huge person of faith,” Lori said of her husband. “Over the years, he’s recognized that God is working in him and refining him, and he definitely has some things to be fixed in his life. He believes that God created both of us as spirit mates together.” God is a central focus of their meetings and letters. “We talk about

¹⁷⁵ E-mail from Erschabek to Simpson, *supra* note 149.

¹⁷⁶ *See id.*

¹⁷⁷ TDCJ Administrative Segregation Plan, *supra* note 19, at att. A.

¹⁷⁸ E-mail from Erschabek to Simpson, *supra* note 149.

God, we write about God, we write about us having faith with each other,” Lori explained. “And as implausible as it is, my pastor, our friends, our families, are in constant prayer that those walls are gonna fall down.”

Yet rather than nurture the seeds of Frank’s faith, TDCJ places many limitations on his religious practice. “Faith plays a part in our relationship,” Lori told us. “But Frank has no ability for faith to play a part in what he does. He has never seen a chaplain set foot in [the solitary-confinement unit].” Lori knows a woman whose husband is imprisoned in general population; the woman participates in a guided Bible study with her husband every week. Lori has no such opportunity to study the Bible with her husband under the guidance of a pastor. And her husband cannot attend religious services, like people in general population can. “We’re gonna figure out a way to get him home,” Lori says. “Until then, it would certainly be nice if he could go to a church service.”

Lori wishes she could speak to her husband on the phone or hold his hand during their visits. “Human touch is so restorative, and he deals with negativity 24/7, and that two hours we have every weekend, he calls it his ‘charging up time,’” she explained. “To be able to hold hands, and connect without the glass—I’m pretty darn strong, but just being able to hold his hand so he felt the connection, so he can be strong for what he has to endure in there.” Lori started to cry when she recounted what it would mean to her and Frank to be able to hold hands once a week. “I wouldn’t care what hoops I would have to go through to have a contact visit with my husband,” she said. “I would do whatever they wanted me to. Even if had to be in a separate room, with his leg chained to the floor, whatever they have to do, I would be willing to. . . . It would make such a difference for him to endure what he has to endure to pay his debt to society. . . . And I could endure, too. Because I am in there with him.”¹⁷⁹ ■

“From the year 2000, in April, when my stepson went into [solitary confinement], the next time his mother was able to touch him was in 2010. . . . In other words, there is no ability to hug each other—you can have no physical contact with that individual if they are in [solitary], period. From a mother’s perspective, that’s heartbreaking. The fact that you can’t hug periodically.”¹⁸⁰

¹⁷⁹ Telephone interview with Lori, family member of individual incarcerated in TDCJ (Sept. 23, 2014).

¹⁸⁰ Telephone interview with Robert, family member of individual incarcerated in TDCJ (Sept. 17, 2014).

TDCJ Deprives People in Solitary Confinement of All Opportunities for Self-Improvement

Solitary confinement forces people into lives of complete idleness, depriving them of any opportunity for self-improvement. TDCJ excludes people in solitary confinement from all rehabilitative programs—programs designed to prepare people for life in the outside world.¹⁸¹ They cannot take group courses to earn their G.E.D. or associates’ degree to support a future career.¹⁸² They cannot work in a prison job to pass their hours productively.¹⁸³ They cannot learn a trade that could help them one day meet their responsibilities as breadwinners for their families.¹⁸⁴ Seventy percent of respondents to our survey professed adherence to a religion;¹⁸⁵ yet people in solitary confinement cannot practice their faith with others and receive the many educational, moral, and spiritual benefits of collective worship.¹⁸⁶ Although over sixty-five percent of people in solitary confinement have an addiction,¹⁸⁷ they cannot join recovery programs like Alcoholics Anonymous.¹⁸⁸ They cannot learn how to manage their anger by receiving group counseling.¹⁸⁹ They cannot watch television to keep up with the news.¹⁹⁰ TDCJ makes it impossible for people to use their time in prison productively. Instead, it confines them in cells to waste away. Dr. Haney observed that many people in isolation “lose the ability to initiate or to control their own behavior” because they are stripped of all ability to meaningfully direct their lives.¹⁹¹

181 TDCJ Administrative Segregation Plan, *supra* note 19, at att. A.

182 *See id.*

183 *See id.*

184 *See id.*

185 Data collected from survey of 147 people incarcerated in Texas prisons who previously spent time in or are currently in solitary confinement (on file with ACLU of Texas and TCRP).

186 TDCJ Administrative Segregation Plan, *supra* note 19, at att. A.

187 Letter from TDCJ, *supra* note 5.

188 TDCJ Administrative Segregation Plan, *supra* note 19, at att. A.

189 *Id.*

190 *Id.*

191 Haney, *supra* note 140, at 139.

Solitary Voices

“That’s the difference between [solitary confinement] and general population. There’s no structure. In GP unless your medically unassigned your gonna work, if you want to shower you have a certain time. If you want to eat you got to be there. There’s school. There’s church. There’s commissary. There’s medical. There’s laundry. Like in the freeworld if you want something you have to go and get it. That’s how GP is. . . . I’m saying there’s structure and a sense of living that comes with accountability and responsibility. . . . In [solitary confinement] . . . Everything is brought to you. There’s no responsibility, no purpose no schedule forced upon you. **No reason to get up and live.** You get out of your cell for rec, medical, visit, or death.”¹⁹²

“[Solitary confinement] has been the reason I’ve really & **truly never gotten any true rehabilitation** in getting rid of these problems that have made me so aggressive!”¹⁹³

“**My mental illness has worsened** because as a ad-seg category ... prisoner, I am not allowed to attend my alcohol anonymous/narcotic anonymous, religion study class, chapel library session to help me stay occupied and balanced. I was also taken out of school and vocation trade masonry brick laying.”¹⁹⁴

The Consequence of Overusing Solitary is More Crime in Texas Communities

When it permanently scars Texas prisoners, TDCJ ultimately damages our communities. Solitary confinement increases recidivism. As a group, people released directly from Texas’s solitary-confinement cells every year—1,243 in 2013 alone—commit more new crimes than people released from the general population.¹⁹⁵ Of all prisoners released from Texas prisons in 2006, 48.8 percent were rearrested within three years,¹⁹⁶ whereas 60.8 percent of people released from solitary confinement were rearrested within that same time period.¹⁹⁷

Moreover, studies from other states show that solitary confinement increases crime. In California, preliminary data suggests that people released on parole from solitary-

¹⁹² Alex’s Journal, *supra* note 26 (entry dated June 5, 2014).

¹⁹³ Survey response from Carlos, individual incarcerated in TDCJ (on file with ACLU of Texas and TCRP).

¹⁹⁴ Survey response from Andy, *supra* note 159.

¹⁹⁵ Letter from TDCJ, *supra* note 5.

¹⁹⁶ See LEGISLATIVE BUDGET BOARD, *supra* note 58, at 35.

¹⁹⁷ Letter from TDCJ to Rodney Ellis, *supra* note 59; E-mail from Sinclair to Butler, *supra* note 58.

confinement cells recidivate at a thirty-five percent higher rate than parolees from the overall prison system.¹⁹⁸ And a 2007 study of 1,205 people released from federal prisons found that harsher prison conditions increased rearrest rates after release.¹⁹⁹

People who had spent time in Florida solitary-confinement cells committed new violent crimes at an eighteen percent higher rate.²⁰⁰ In Washington State, people released directly from solitary committed new felonies at a thirty-five percent higher rates than their peers released from general population, even when controlling for common predictors of recidivism.²⁰¹

“[W]e are releasing inmates into our communities every day, who have spent years in solitary conditions with little or no treatment to correct the behavior which lead to their incarceration in solitary conditions.”

—Lance Lowry, President AFSCME Local 3807, Texas Correctional Employees²⁰²

TDCJ’s short re-entry programs cannot erase the social and mental deterioration caused by years of isolation. TDCJ now provides a handful of re-entry programs to help some prisoners readjust to ordinary life before their release from solitary confinement. For example, the Serious and Violent Offender Reentry Initiative (SVORI) gives people seven months of in-cell programs designed to help them manage their anger, reduce “thinking errors,” teach them about employment, and prevent substance abuse.²⁰³ The Administrative Segregation Pre-Release Program (ASPP) provides people with ninety days of instruction through workbooks they can fill out in their cell, instruction via a computer monitor from a remote instructor, and weekly one-hour meetings with case managers to discuss rehabilitative opportunities in the outside world.²⁰⁴ While more programming should always be encouraged, a few months of in-cell workbooks or computer instruction cannot repair the destruction caused by years or decades of sensory deprivation and social isolation. Moreover, these programs have limited capacity and therefore can only serve a small handful of the people who could benefit from them. For example, the SVORI program can only accommodate sixty-three people at once,²⁰⁵ and ASPP can only accommodate less than two hundred people.²⁰⁶ TDCJ should provide rehabilitative programming throughout people’s time in prison—not just as a Band-Aid solution a few months before their release into the outside world.

198 See Reiter, *supra* note 60, at 50.

199 See M. Chen & Jesse M. Shapiro, *Do Harsher Prison Conditions Reduce Recidivism? A Discontinuity-based Approach*, 9 AM. LAW & ECON. REV. 1, 3, 8, 23-24 (2007).

200 See Mears & Bales, *supra* note 62, at 1151.

201 See Lovell et al., *supra* note 61, at 644.

202 See Testimony of Lance Lowry, *supra* note 68.

203 Letter from TDCJ, *supra* note 9.

204 See *New Pre-release Program Serves Administrative Segregation Offenders*, CRIM. JUST. CONNECTIONS (Nov./Dec. 2012), available at http://www.tdcj.state.tx.us/connections/NovDec2012/agency_vol20no2.html.

205 SVORI Fact Sheet (July 2013) [on file with ACLU of Texas and TCRP].

206 Administrative Segregation Pre-Release Program Fact Sheet (July 2013) [on file with ACLU of Texas and TCRP].

TEXAS OVERUSES SOLITARY AT TREMENDOUS COST TO TAXPAYERS

Contrary to the trend nationwide to reduce the population confined in solitary, TDCJ overuses solitary confinement on people who pose no threat, while Texas taxpayers foot the bill. TDCJ could save taxpayers tens of millions of dollars each year by lowering its use of solitary confinement to Mississippi's level of 1.4 percent.

Solitary Confinement Costs Texas Taxpayers at Least \$46 Million a Year

Texas taxpayers currently spend an extra \$46 million or more each year to house 6,564 prisoners in solitary confinement instead of general population. Solitary confinement is more expensive than regular housing: It costs forty-five percent more than housing the same person in general population, or \$61.63 per person per day compared to \$42.46 per person per day.²⁰⁷ The solitary-confinement units require more staff to maintain security and deliver services; moreover, people in solitary confinement are single celled, such that TDCJ must operate more cells in order to house them.²⁰⁸ Indeed, the actual cost of solitary confinement is likely much higher, as this estimate fails to capture expenses that are difficult to measure or not borne by the prison system itself. Hidden costs include stress on correctional officers, weakened family relationships, and reduced ability to function in the world outside TDCJ. And Texas taxpayers unquestionably spend more money when people return to prison after their release because their time in solitary confinement created or exacerbated anti-social behaviors and mental illnesses.

Given the fiscal implications for taxpayers, TDCJ should approach housing decisions with the mindset of using solitary confinement as rarely as possible. TDCJ should send people to solitary confinement only when necessary to maintain safety and order; and it should regularly and thoroughly review the placement of individuals in solitary confinement with the intention of removing them as soon as it is possible to do so safely.

²⁰⁷ See CRIM. JUST. POLICY COUNCIL, *supra* note 66, at 12.

²⁰⁸ See DANIEL P. MEARS, EVALUATING THE EFFECTIVENESS OF SUPERMAX PRISONS 35 (Jan. 2006), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/211971.pdf>.

Texas Overuses Solitary Confinement

Unfortunately, TDCJ is trapped in the outdated and expensive mindset of using solitary confinement as a routine correctional practice. TDCJ houses 4.4 percent of Texas prisoners in solitary confinement, much higher than the estimated national average of one to two percent.²⁰⁹ And prisoners remain in solitary-confinement cells for an average of almost four years,²¹⁰ indicating that TDCJ makes little effort to return people to general population as soon as they cease to pose a threat. TDCJ could save taxpayers \$31 million dollars a year just by lowering its population in solitary confinement to Mississippi's rate of 1.4 percent.²¹¹ TDCJ could reduce its solitary-confinement population while still preserving prison safety: Mississippi had seventy percent fewer violent incidents in its prisons when it reduced its solitary-confinement population from one thousand to 150.²¹²

TDCJ houses too many people in solitary confinement in part because its standard is overbroad, capturing many people who could be safely housed in general population. TDCJ automatically houses 3,194 people²¹³ in solitary confinement on the grounds that they “associate[e] or affiliate[e]” with a gang.²¹⁴ Gang status alone—divorced from individual misbehavior or active participation in gang activities—is not a threat to prison safety. Security expert Steve Martin—a former TDCJ correctional officer who served as TDCJ Legal Counsel from 1981-83 and TDCJ General Counsel from 1983-85—explains that using gang affiliation alone ends up “catching folks that don’t really need segregated confinement; their status as a gang member is not in and of itself a threat.”²¹⁵ Isolating suspected gang members or affiliates is an extreme overreaction that fails to improve prison safety and actually may undermine it. In a survey of wardens and superintendents of adult prisons in forty-eight states conducted by the National Gang Crime Research Center (NGCRC), over half of the respondents said that “no human contact status” was not “effective for the control of gang members.”²¹⁶ Toni V. Bair, former warden of Virginia’s death row, describes Texas’s practice of automatically segregating gang members as “the antithesis of what modern correctional professional classification management is supposed to be about. . . . That’s not twentieth century corrections—that’s eighteenth century corrections.”²¹⁷ Mr. Bair emphasizes that the entire purpose of classifying people in prison is to “find out what the needs are so you

209 See AUSTIN & SPARKMAN, *supra* note 64, at 17.

210 Letter from TDCJ, *supra* note 9.

211 See Testimony of Christopher Epps, *supra* note 67.

212 See Kupers et al., *supra* note 72, at 5, 7.

213 E-mail from TDCJ Office of the General Counsel to Butler, *supra* note 108.

214 TDCJ Security Threat Group Plan, 5-6 (Jan. 2012) [on file with ACLU of Texas and TCRP].

215 Telephone Interview with Steve Martin, Security Expert and Former General Counsel, TDCJ (June 13, 2014).

216 GEORGE W. KNOX, THE PROBLEM OF GANGS AND SECURITY THREAT GROUPS (STG’s) IN AMERICAN PRISONS AND JAILS TODAY: RECENT FINDINGS FROM THE 2012 NGCRC NATIONAL GANG/STG SURVEY (2012), available at <http://www.ngcrc.com/corr2012.html>.

217 Telephone Interview with Toni V. Bair, former Warden, Virginia death row (Sept. 30, 2014).

can habilitate them, and to better manage your inmate population”; when correctional departments automatically place people in solitary confinement, Mr. Bair says, “you miss so many people coming in that we could have helped, such as suicidal inmates, mentally ill inmates, and inmates with alcohol and drug problems.”²¹⁸ TDCJ should send people to solitary confinement only if they pose an actual danger to officers or other inmates as demonstrated through their actions. Instead, it isolates thousands of people who do not actually present a security risk, such as low-level or inactive gang members who behaved peacefully within prison.

Moreover, once people are confined to solitary for gang affiliation, TDCJ does little to shorten their stay. These prisoners can only get out of solitary confinement

by participating in the Gang Renouncement and Disassociation Process (GRAD), which provides nine months of programming on substance abuse, alcohol abuse, group classroom instruction, anger management, and criminal-addictive behavior.²¹⁹ While the GRAD program is a useful avenue to help people return to general population, it does not resolve the underlying problem that TDCJ sends too many people to solitary confinement in the first place. Moreover, people must go through a probationary period of one year in solitary confinement to even qualify for the program.²²⁰ The long wait, combined with too few spots in the GRAD program, creates a bottleneck that traps people in solitary for far too long. As the GRAD program itself only has a capacity to hold 180 people at any one time,²²¹ it would take over twelve years for every eligible person to enter the program and be diverted from solitary. As a consequence, people affiliated with a gang spend on average over five years in solitary confinement.²²²



Credit: iStock user jessekarjalainen

■ Most inmates confined in solitary spend years there.

²¹⁸ See *id.*

²¹⁹ TDCJ Gang Renouncement and Disassociation Process (GRAD) Program Description (on file with ACLU of Texas and TCRP).

²²⁰ E-mail from William Stephens, Director, Correctional Institutions Division, TDCJ, to Jorge Renaud, Texas Criminal Justice Coalition (Sept. 12, 2014, 12:01 CST).

²²¹ TDCJ Administrative Segregation Information Sheet, *supra* note 1, at 1.

²²² E-mail from TDCJ Office of the General Counsel to Butler, *supra* note 108.



■ A solitary confinement cell on Texas death row.

The Texas Comptroller of Public Accounts—“the chief steward of the state’s finances”²²³—has condemned TDCJ’s policy of automatically isolating gang members in solitary-confinement cells who could be more cheaply housed in a lower security setting. The Comptroller conducted a public study of Texas’s use of solitary confinement in 1994, sampling 131 prisoners. He discovered that fifty-four of them—forty-one percent—had no prison record of disciplinary assaults, meaning that they did not present a security risk

to the safety of correctional officers or other prisoners.²²⁴ The Texas Comptroller also criticized TDCJ’s policy of “warehousing gang members” because it “prevents them from receiving any rehabilitative treatment”; he found no reason that the gang members could not be double celled, work, and take group classes.²²⁵ The Comptroller observed that solitary-confinement cells should be exclusively used for “the most difficult inmates.”²²⁶ TDCJ failed to implement the Comptroller’s recommendations.

Other states use more appropriate measures to identify gang members who pose an actual threat. Colorado amended its statute to limit its use of solitary confinement against gang members to situations where it is necessary to maintain safety, for example, when a person “actively participates in disruptive” gang behavior.²²⁷ Mississippi limits solitary confinement to people who have attempted an escape, committed a serious infraction, or are active, high-level members of a gang.²²⁸ Virginia houses gang members in solitary confinement only if they commit certain offenses tied to gang activity, or serve in a “documented” leadership role.²²⁹ Washington does not automatically isolate gang members; instead, it employs an “Operation Ceasefire” model that restricts the privileges of individuals and groups who commit serious violent infractions.²³⁰ With the use of “Operation Ceasefire,” violent infractions dropped by fifty percent.²³¹

²²³ See *About Us: Meet Texas Comptroller Susan Combs*, TEX. COMPTROLLER OF PUB. ACCOUNTS, <http://www.window.state.tx.us/about/> (last visited Sept. 2, 2014).

²²⁴ See SHARP, *supra* note 103, at 78.

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ COLO. REV. STAT. § 17-1-109; see 2011 COLO. SESS. LAWS 176.

²²⁸ See Kupers et al., *supra* note 72, at 5.

²²⁹ Va. Dep’t of Corrections Operating Procedure: Security Level Classification 830.2, at 8 (Jan. 1, 2012; Amended June 6, 2014).

²³⁰ WASHINGTON STATE DEP’T OF CORRECTIONS, OPERATION PLACE SAFETY: FIRST YEAR IN REVIEW 2-3 (May 28, 2014), available at http://nnscommunities.org/uploads/Operation_Place_Safety_First_Year_Report_2014.pdf.

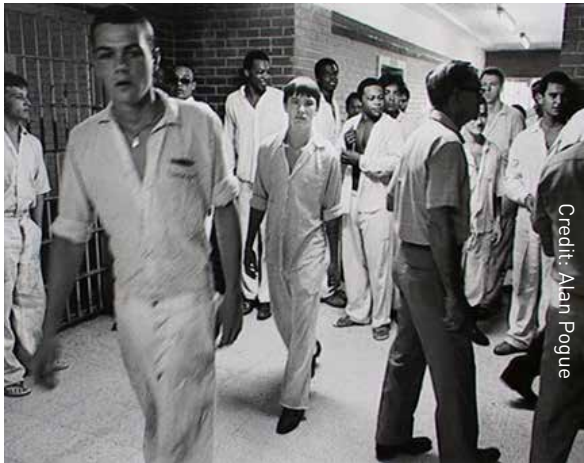
²³¹ See *id.*

Tom's Story

TDCJ demonstrated the irrationality of its addiction to solitary confinement recently when it condemned a prisoner to more time in isolation for growing a five o'clock shadow. Tom is twenty-four years old; he has been in solitary confinement for forty-one months. TDCJ sent Tom to solitary confinement because it believed he was a member of the Aryan Brotherhood, though Tom claims that he is not. Tom was on the waiting list for the GRAD program, his only avenue to get out of solitary, but he was recently kicked off the list for not shaving. TDCJ policy forbids all facial hair; but Tom was only permitted to use a razor when he showered. When Tom missed his chance to shower, TDCJ determined that his "scruff" violated TDCJ policy—a policy that bears no connection to gang activity, and represents no security threat. On account of that minor infraction, he was sent to the bottom of the waiting list for participation in the GRAD program.²³² ■

²³² Interview with Tom, individual incarcerated in TDCJ (June 26, 2014).

TDCJ INCREASES PRISON VIOLENCE BY OVERUSING SOLITARY CONFINEMENT



■ Hunstville Unit.

Solitary confinement increases violence in Texas prisons. Trapped in solitary confinement with no social contact and no programming, people become increasingly aggressive and disturbed—and more difficult to control.

Solitary Confinement Makes Texas Prisons Less Safe

Serious assaults on Texas prison staff have increased 104 percent during the last seven years.²³³ Texas's largest correctional officers union attributes the increase in violence in part to TDCJ's overuse of solitary confinement and practice of housing mentally ill people in solitary.²³⁴ Lance Lowry, president of the union, says that solitary confinement "creates a different individual, it really does—socially, psychologically. It is the equivalent of locking a kid in a closet. It's not going to fix a lot of problems."²³⁵ In 2013, almost eighty percent of the 499 instances of prisoners exposing officers to bodily fluids occurred in Texas's solitary-confinement units; none occurred in the general population.²³⁶ With absolutely nothing to do, people in solitary take out their anger on officers. "They're bored," Mr. Lowry explains. "What else are they going to do? They're locked in a box all day. It's a game for them. They can't play checkers or dominos together. So, the first guy who can get the Lieutenant down here and piss him off wins. . . . Let's focus these guys on something other than the staff."²³⁷ Texas's correctional officers union called for national standards governing the use of solitary confinement, explaining that its overuse makes Texas prisons more dangerous for correctional officers.²³⁸ It further recommends that TDCJ utilize a greater array of sanctions, short of solitary confinement, to address misconduct.²³⁹

²³³ See Testimony of Lance Lowry, *supra* note 68.

²³⁴ See *id.*; E-mail from Lowry to Butler, *supra* note 69.

²³⁵ Telephone interview with Lance Lowry, President, AFSCME Local 3807 [Sept. 16, 2014].

²³⁶ See Testimony of Lance Lowry, *supra* note 68, at 1.

²³⁷ Telephone interview with Lance Lowry, President, AFSCME Local 3807 [Sept. 16, 2014], *supra* note 235.

²³⁸ See Testimony of Lance Lowry, *supra* note 68, at 1-2.

²³⁹ Telephone interview with Lance Lowry, President, AFSCME Local 3807 [Sept. 19, 2014].

Solitary Confinement Deprives Officers of the Option to Incentivize Good Behavior

Solitary confinement also deprives officers of an important tool—their power to incentivize good behavior by creating a system of earned privileges. People in solitary confinement have no freedoms; nor can they earn greater freedom through good behavior. As a consequence, they have no incentive to comply with prison regulations. Jeanne Woodford, who served as Director of the California Department of Corrections and Warden of San Quentin, writes that “allowing inmates privileges based on good behavior enhances security because it creates incentives for inmates to comply with prison regulations. When inmates are permanently and automatically housed in highly restrictive environments . . . it is more difficult to control their behavior.”²⁴⁰ Mr. Lowry explains that the lack of incentives in solitary confinement ends up impairing correctional officers’ ability to control prisoners:

I think the best people know how to control human behavior, is your cable company. If you don’t pay your bill, they take your privileges away. They’re smart. If you don’t pay your bill, they don’t leave you with a salty screen. They leave you with a preview of what’s on. . . . They leave this message on for a reason. You know everyone else is watching Days of their Lives. I don’t know why prison administrators don’t see that. . . . Controlling privileges is how you control these individuals.²⁴¹

Mr. Lowry suggests that TDCJ could offer a step-down program that allows people to earn their way to greater privileges, and out of solitary confinement, through good behavior.²⁴²

²⁴⁰ Letter from Jeanne Woodford, former Director, Ca. Dep’t of Corrections to TDCJ (Jan. 27, 2014) (on file with ACLU of Texas and TCRP).

²⁴¹ Telephone interview with Lance Lowry, *supra* note 235.

²⁴² *Id.*



■ Rogelio Baca stands in his cell in the administrative segregation wing of the Estelle Unit in Huntsville.

Violence Escalates When Officers Deny People in Solitary Confinement Basic Necessities

Violence in solitary confinement further escalates when correctional officers deny prisoners basic necessities. Eighty percent of our survey respondents reported that they received an “insufficient amount” of food;²⁴³ and thirty-one percent reported that prison staff had served them the “loaf,”²⁴⁴ a “bland, brownish lump” of ground-up food without seasoning—which they may be forced to eat over and over again for weeks at a time.²⁴⁵ People reported other deprivations besides food: Twenty-two percent claimed they were denied water,²⁴⁶ and another twenty-two percent said they were denied showers.²⁴⁷ Numerous people also said that officers almost never take them out of their cells for recreation despite TDCJ policies requiring that prisoners in isolation receive one to two hours of recreation a day.²⁴⁸ Ted, a correctional officer who asked us not to use his real name, reports that solitary confinement breeds hostility between prisoners and officers. In the unit in which Ted works, officers punish individuals in solitary confinement by refusing them food, showers, or recreation time, which angers inmates. According to Ted, it is not uncommon for prisoners to act out, even after the original officers have already finished their shifts. As a result, the hostility can spiral out of control, culminating in correctional officers violently subduing the prisoner.²⁴⁹

Other States Improved Prison Safety by Reducing Solitary Confinement

Other states have found that drastically reducing the use of solitary confinement improves prison safety. When Mississippi reduced its solitary population from one thousand to less than 150, serious assaults against staff and prisoners dropped by seventy percent.²⁵⁰ Mississippi lowered violence in part by instituting an incentive system to encourage good behavior and allow people in solitary to acquire greater freedoms. Mississippi Department of Corrections Deputy Commissioner Emmitt Sparkman explained that people in solitary “participated in the programs, we gave them more

243 Data collected from survey of 147 people incarcerated in Texas prisons who previously spent time in or are currently in solitary confinement (on file with ACLU of Texas and TCRP).

244 *See id.*

245 Eliza Barclay, *Food As Punishment: Giving U.S. Inmates ‘The Loaf’ Persists*, NAT’L PUBLIC RADIO Jan. 2, 2014, available at <http://www.npr.org/blogs/thesalt/2014/01/02/256605441/punishing-inmates-with-the-loaf-persists-in-the-u-s>.

246 Data collected from survey of 147 people incarcerated in Texas prisons who previously spent time in or are currently in solitary confinement (on file with ACLU of Texas and TCRP).

247 *See id.*

248 Interview with Juan, *supra* note 55; Interview with Alex, *supra* note 16; Interview with Paul, *supra* note 55; Survey response from Brian, *supra* note 55; Survey response from Miguel, *supra* note 55; Survey response from Steve, *supra* note 55; Survey from Larry, *supra* note 55.

249 Telephone interview with Ted (July 15, 2014).

250 *See* Kupers, *supra* note 72, at 5, 7.



Credit: Flickr user mlsnp

■ Walls Unit in Huntsville, Texas

freedoms, and we saw a huge decrease in violence. . . . Typically, people in segregation just sit idle and alone, sometimes for years. You have to give a guy an incentive to do better.”²⁵¹ When Maine cut its solitary-confinement population, incidents of prison violence dropped.²⁵² Colorado saw no increase in assaults when it reduced its solitary-confinement population by sixty percent, and the Director of the Colorado Department of Corrections declared that “our institutions will actually be safer” with less solitary confinement.²⁵³ According to Commissioner Sparkman, lowering solitary confinement also improved working conditions for staff: “In segregation, you typically have two-on-one escorts and use restraints, and there are continuous searches—and that’s a drain on staff. When we had large numbers of people in segregation, staff were under constant pressure. . . . With these lower numbers, there’s much less stress on staff.”²⁵⁴

251 Emmitt Sparkman, *Mississippi DOC’s Emmitt Sparkman on reducing the use of segregation in prisons*, VERA INSTITUTE OF JUSTICE, (Oct. 31, 2011), available at <http://www.vera.org/blog/mississippi-docs-emmitt-sparkman-reducing-use-segregation-prisons>.

252 See Tapley, *supra* note 73.

253 Testimony of Rick Raemisch, *supra* note 74.

254 Sparkman, *supra* note 251.

MENTALLY ILL PEOPLE DETERIORATE IN SOLITARY CONFINEMENT

TDCJ must never place people with serious mental illnesses in solitary confinement. Although solitary confinement causes mental distress for anyone, the impact of solitary confinement is especially profound for people with serious mental illnesses such as major depression, schizophrenia, bipolar disorder, OCD, panic disorder, PTSD, and borderline personality disorder.²⁵⁵ Already vulnerable, people with serious mental illnesses inevitably fall apart in isolation.²⁵⁶ According to Dr. Haney, people with serious mental illness “will be unable to withstand the psychic assault of dehumanized isolation, the lack of caring human contact, the profound idleness and inactivity, and the otherwise extraordinarily stressful nature of [solitary] confinement without significant deterioration and decompensation.”²⁵⁷ Corrections expert Steve Martin refers to the phenomenon of placing the mentally ill in solitary confinement as “the perfect storm” because of the way in which people with mental illness get stuck in solitary confinement.²⁵⁸ Dr. Pablo Stuart, who served as an expert witness in a California class-action suit about solitary confinement, explained that people with mental illness deteriorate in solitary, until they can no longer comply with prison regulations and start to act out.²⁵⁹ As their mental health unravels, their misbehavior escalates; as a consequence, many people with mental illness end up permanently trapped in solitary.²⁶⁰

The Universal Consensus: Never Place the Seriously Mentally Ill in Solitary Confinement

The consensus is universal: Federal courts, the American Bar Association (ABA), the American Psychiatric Association (APA), and the United States Department of Justice (DOJ) agree that correctional departments must exclude people with serious mental illness from solitary confinement. Federal courts have ruled that our prisons should not place mentally ill people in solitary confinement because it exacerbates their symptoms, in violation of the Eighth Amendment’s prohibition on cruel and unusual punishment.²⁶¹ In the words of one federal judge, placing a mentally ill person in solitary confinement

²⁵⁵ See NAT’L ALLIANCE ON MENTAL ILLNESS, *supra* note 79.

²⁵⁶ See Metzner & Fellner, *supra* note 75, at 105.

²⁵⁷ Haney, *supra* note 140, at 142.

²⁵⁸ Telephone interview with Steve Martin, Corrections Expert and Former General Counsel, TDCJ (Sept. 23, 2014).

²⁵⁹ Transcript of Evidentiary Hearing at 2771-72, *Coleman v. Brown*, No. 5014 (E.D. Cal. Dec. 5, 2013).

²⁶⁰ See *id.*

²⁶¹ See, e.g., *Jones v. El v. Berge*, 164 F. Supp. 2d 1096, 1101-02 (W.D. Wis. 2001); *Ruiz*, 37 F. Supp. 2d at 915; *Coleman v. Wilson*, 912 F. Supp. 1282, 1320-21 (E.D. Cal. 1995); *Madrid v. Gomez*, 889 F. Supp. 1146, 1265-66 (N.D. Cal. 1995); *Casey v. Lewis*, 834 F. Supp. 477,

“is the mental equivalent of putting an asthmatic in a place with little air to breathe.”²⁶² In its Standards for the Treatment of Prisoners, the ABA called for the exclusion of people with mental illness from solitary confinement.²⁶³ The APA issued a formal position statement explaining that people with serious illness should almost never be placed in solitary confinement; when they are, they need extra clinical support.²⁶⁴ The United Nations Special Rapporteur on Torture declared that prolonged solitary confinement is a form of torture, and should never be used against people with mental disabilities.²⁶⁵ After an extensive investigation, the DOJ announced that Pennsylvania’s policy of housing people with mental illness in solitary confinement was an unsound correctional practice—both on humanitarian and public-safety grounds:

Neither the interests of the Pennsylvania Department of Corrections nor those of the Commonwealth of Pennsylvania are served when one of its prisons subjects prisoners to conditions that deny prisoners with psychiatric disabilities the benefit of mental health treatment and exacerbate their mental illness. When the mental health of prisoners deteriorates, when their episodes of paranoia and psychosis intensify, and when they engage in behaviors more dangerous to themselves and others, taking care of them becomes more difficult and more dangerous for correctional officers and more expensive for the Commonwealth. Moreover, those living outside the prison’s walls feel the negative impact of the prison’s mistreatment of prisoners with serious mental illness when these prisoners return to the community.²⁶⁶

Texas Sends Thousands of People with Mental Illness to Solitary Confinement

Despite this universal consensus, TDCJ does not even track the number of people with serious mental illness in solitary confinement.²⁶⁷ Mr. Martin says that TDCJ’s failure to track people with serious mental illness is “an alarming flaw from a correctional

1549-50 [D. Ariz. 1993]; *Langley v. Coughlin*, 715 F. Supp. 522, 540 (S.D.N.Y. 1988).

²⁶² *Madrid*, 889 F. Supp. at 1265.

²⁶³ See AM. BAR ASS’N STANDARDS FOR THE TREATMENT OF PRISONERS 23-2.8(a) (2010), available at http://www.americanbar.org/publications/criminal_justice_section_archive/crimjust_standards_treatmentprisoners.html#23-3.8.

²⁶⁴ See AM. PSYCH. ASSOC., POSITION STATEMENTS: SEGREGATION OF PRISONERS WITH MENTAL ILLNESS (2012), available at <http://www.psychiatry.org/advocacy--newsroom/position-statements>.

²⁶⁵ See UN News Centre, *Solitary confinement should be banned in most cases, UN expert says* (Oct. 18, 2011), <http://www.un.org/apps/news/story.asp?NewsID=40097#U6C7uZRdUmk>.

²⁶⁶ Letter from Thomas E. Perez, Assistant Attorney General, U.S. Dep’t of Justice, Civil Rights Division, & David J. Hickton, U.S. Attorney, Western Dist. Pa., to Tom Corbett, Governor, Pa. (May 31, 2013), available at http://www.justice.gov/crt/about/spl/documents/cresson_findings_5-31-13.pdf.

²⁶⁷ Letter from TDCJ, *supra* note 5.

management standpoint—on its face it calls into question TDCJ’s management.”²⁶⁸ TDCJ has 2,012 people in solitary confinement on its mental-health case load, however.²⁶⁹ Moreover, our investigation revealed that TDCJ houses many people with serious mental illness in solitary confinement—and solitary confinement significantly worsens their mental health. During our research, we met with multiple people whom TDCJ had diagnosed with a serious mental illness, but who nonetheless remained in solitary confinement. In many cases, their symptoms appeared significantly exacerbated by complete isolation. Several of these individuals appeared to us in such an obvious and advanced stage of psychosis that we determined they lacked the capacity to understand our legal disclosures or to consent to have their stories shared in this report. They described violent auditory and visual hallucinations and appeared trapped in paranoid and obsessive thinking.

Henry’s Story

Henry is one of over two thousand people in solitary confinement with a mental illness. TDCJ diagnosed him with bipolar I disorder with psychotic features. He attempted suicide while in general population. Despite Henry’s prior suicide attempt, TDCJ sent him to solitary confinement in 2005, where he remains to this day. In isolation, Henry felt that “everything was crushing in on me at one time,” and told us, “[I] see things that aren’t there and have conversations with people who aren’t there.” He attempted suicide a second time while in solitary confinement. Although TDCJ documented Henry’s mental illness, visual and auditory hallucinations, and suicide attempts in his medical chart, it failed to take him out of solitary confinement.²⁷⁰ ■



The prevalence of mental illness among people in TDCJ’s solitary-confinement cells is epitomized in their high rates of suicide and self-harm. A person trapped in solitary confinement is five times more likely to kill himself than someone in general

²⁶⁸ Telephone interview with Steve Martin, *supra* note 258.

²⁶⁹ *Id.*

²⁷⁰ Interview with Henry, individual incarcerated in TDCJ (July 11, 2014); Henry’s medical records (obtained from Health Services Archives) [on file with ACLU of Texas and TCRP].

population.²⁷¹ For every one hundred prisoners in solitary confinement, there are 2.4 instances of self-inflicted injury, compared to 0.3 instances in general population.²⁷²

TDCJ Inadequately Monitors and Treats People with Mental Illness in Solitary Confinement

TDCJ also fails to adequately treat people with mental illness once they are trapped in solitary confinement. TDCJ only evaluates a person's mental health immediately upon sending him to a solitary-confinement cell if he currently receives mental-health treatment. All others only receive a mental-health evaluation after a full month.²⁷³ Under this policy, people who need mental-health treatment but are not on TDCJ's current caseload fall through the cracks. After the initial evaluation, mental-health officers only conduct mental-health assessments every three months.²⁷⁴ In a three-month period, people can easily deteriorate into a crisis state.

Worse, TDCJ may be falling short of meeting even its own meager standards for mental-health screenings. We requested all mental-health evaluations for several prisoners who had been diagnosed with a serious mental illness by TDCJ. Yet the files for several people had few or no evaluations covering their period in solitary confinement. For example, TDCJ diagnosed Paul with a mental illness. While in general population in 2009, he attempted to kill himself by overdose. Afterward, he was treated at a TDCJ psychiatric unit for his mental-health problems.²⁷⁵ Although we requested all of Paul's mental-health evaluations, TDCJ did not turn over a single evaluation for the three-year period he spent in solitary confinement.²⁷⁶ This lack of documentation suggests that TDCJ may not provide frequent, in depth review of the mental-health needs of people in solitary, even those with a history of serious mental illness.

Moreover, to the extent it provides them, TDCJ's mental-health reviews are too superficial to properly identify people's mental-health needs.²⁷⁷ Of those survey respondents who met with a mental health worker, sixty-five percent said their meetings were less than two minutes long.²⁷⁸ Sixty-two percent of survey respondents said

²⁷¹ Letter from TDCJ, *supra* note 5.

²⁷² *See id.*

²⁷³ TDCJ Medical and Mental Health Care in Segregation/Death Row (on file with ACLU of Texas and TCRP).

²⁷⁴ *See id.*

²⁷⁵ Paul's medical records (obtained from Health Services Archives) (on file with ACLU of Texas and TCRP).

²⁷⁶ *See id.*

²⁷⁷ Data collected from survey of 147 people incarcerated in Texas prisons who previously spent time in or are currently in solitary confinement (on file with ACLU of Texas and TCRP).

²⁷⁸ *Id.*

they never had enough time to discuss their mental-health needs with mental-health workers.²⁷⁹

TDCJ’s mental-health reviews are also not confidential. Seventy-five percent of respondents said their mental-health review was merely conducted by speaking through their cell door, rather than in a private meeting room.²⁸¹ Eighty-nine percent of survey respondents said that their medical treatment was not confidential.²⁸² Numerous people reported that officers overhear all of their confidential medical conversations²⁸³ and repeat confidential medical information to other officers or prisoners.²⁸⁴ Because of the lack of confidentiality, prisoners may not disclose mental-health issues, fearing stigma or humiliation.²⁸⁵

“I thought that someone from mental health was suppose to make rounds but this only happens here once a year. And its ‘How you doing today?’ And if you say ‘ok’ they move on to the next cell.”²⁸⁰

²⁷⁹ *Id.*

²⁸⁰ Alex’s Journal, *supra* note 26 (entry dated June 9, 2014).

²⁸¹ *Id.*

²⁸² Data collected from survey of 147 people incarcerated in Texas prisons who previously spent time in or are currently in solitary confinement (on file with ACLU of Texas and TCRP).

²⁸³ Survey response from Chris, individual incarcerated in TDCJ (on file with ACLU of Texas and TCRP); Survey response from Ivan, individual incarcerated in TDCJ (on file with ACLU of Texas and TCRP); Survey response from Charles, *supra* note 158; Survey response from Oscar, individual incarcerated in TDCJ (on file with ACLU of Texas and TCRP).

²⁸⁴ Survey response from Ivan, individual incarcerated in TDCJ (on file with ACLU of Texas and TCRP); Survey response from Miguel, *supra* note 55; Survey from Diego, individual incarcerated in TDCJ (on file with ACLU of Texas and TCRP); Survey response from Edward, individual incarcerated in TDCJ (on file with ACLU of Texas and TCRP); Survey response from Kyle, individual incarcerated in TDCJ (on file with ACLU of Texas and TCRP); Survey response from Duncan, individual incarcerated in TDCJ (on file with ACLU of Texas and TCRP); Survey response from Simon, individual incarcerated in TDCJ (on file with ACLU of Texas and TCRP); Survey response from Ernesto, individual incarcerated in TDCJ (on file with ACLU of Texas and TCRP).

²⁸⁵ See Grassian, *supra* note 141, at 333.

Solitary Voices

“**Non-medical staff** are always present during interviews and exams and I have heard them discussing it between the guards and in front of other inmates.”²⁸⁶

“I’ve witness medical talk to officer about other inmates **medical problem** and I’ve even had officers tell me that a inmate has AIDS.”²⁸⁷

“Every single time I go talk to the mental health lady, the officers who escort me stand in the room with me listening to **every word** of what I say.”²⁸⁸

“[The treatment] was the same day only due to me threatening to kill myself, an the interview was not held confidentially, it was either talk to mental health in front of the prison official’s or they wouldn’t talk with me, so I was force’d **against my will** to expose alot of my mental health history before the prison official’s.”²⁸⁹

In October 2014, TDCJ announced a new program called the Administrative Segregation Therapeutic Diversion Program (ASTDP).²⁹⁰ According to TDCJ, the program will divert a small number of people with mental illness from solitary confinement to an alternative treatment environment.²⁹¹ Unfortunately, this program only includes 252 beds.²⁹² Therefore, it can only serve thirteen percent of the 2,012 mentally ill people in solitary.²⁹³ Moreover, TDCJ has not provided advocates with details about the program, such as the criteria for entering it, the length of the program, the type and frequency of treatment available, and the amount of out-of-cell time and rehabilitative programming people in it can access.²⁹⁴ Consequently, it is impossible to evaluate whether ASTDP will be an effective alternative to solitary confinement for people with mental illness.²⁹⁵

Texans do not want mentally ill prisoners to return to their communities in an even more deteriorated mental state than when they entered prison. Yet TDCJ places people with mental illnesses in conditions that seriously exacerbate their symptoms, and it fails to provide them with adequate treatment while they are there.

²⁸⁶ Survey response from James, individual incarcerated in TDCJ (on file with ACLU of Texas and TCRP).

²⁸⁷ Survey response from Ignacio, *supra* note 172.

²⁸⁸ Survey response from Henry, individual incarcerated in TDCJ (on file with ACLU of Texas and TCRP).

²⁸⁹ Survey response from Lee, individual incarcerated in TDCJ (on file with ACLU of Texas and TCRP).

²⁹⁰ TDCJ Administrative Segregation Information Sheet, *supra* note 1, at 4.

²⁹¹ *See id.*

²⁹² *See id.*

²⁹³ *See id.*

²⁹⁴ *See id.*

²⁹⁵ *See id.*

Solitary Voices

“I have a worsening of my antisocial behaviors and thoughts. The depression and **self-destructive behaviors I have have intensified** consistently since being placed in AD.SEG. Im aware of my thought process and mental illness however I have trouble controlling the symptoms . . .”²⁹⁶

“Mostly, it’s the **continued screaming**. The crying, pleading, and gibberish people yell 24 hours a day. It’s very unnerving. **To a combat vet, it’s torture**. Panic & anxiety skyrocket. Exhaustion sets in for lack of sleep. I had to draw, in pencil, a large mural on one wall of my cell, talking to myself, just to focus on something other than the cries.”²⁹⁷

“I’ve done **tried to kill my self** twice Hanged & cut & Ive been asking for help.”²⁹⁸

“After being in seg. for 13x years, I now suffer from, depression, I’m antisocial, & **mood swings & suicidal attempts**.”²⁹⁹

“**I’m losing my sanity**.”³⁰⁰

296 Survey response from Ivan, *supra* note 284.

297 Survey response from Pedro, *supra* note 155.

298 Survey response from Duncan, individual incarcerated in TDCJ (on file with ACLU of Texas and TCRP).

299 Survey response from Jeremy, individual incarcerated in TDCJ (on file with ACLU of Texas and TCRP).

300 Survey response from Samuel, individual incarcerated in TDCJ (on file with ACLU of Texas and TCRP).

CONCLUSION: OUR VALUES AND COMMITMENTS AS TEXANS

Solitary confinement violates our fundamental values as Texans—the values that define who we are as a state and set us apart. We value self-starters who take steps to improve their lives and overcome hardship. We value hard work. We value religious worship, along with the high moral standards it encourages and the community bonds it nurtures. We value family relationships because they form our lifelong moral commitments, bring us joy, and sustain us through times of difficulty. A Texan, responding to a recent blog post about Texas values on the Houston Chronicle website, put it perfectly: “Texas values—Freedom, Faith, Family.”³⁰¹

We expect our criminal justice system to reflect these values. We want our neighbors to have these values. We want our prisons to foster these values in the incarcerated people who will one day become our neighbors. Yet as detailed in this report, solitary confinement destroys all opportunities for self-improvement, denies the option to work, deprives prisoners of collective religious worship, and impairs family relationships. We have known since the 1800s that solitary confinement does not work for American prisons. This report documents that solitary confinement does not work for Texans.

Texas’s outdated mindset also runs contrary to our commitment as Texans to employ fiscally prudent policies that increase the safety of our communities. In many respects, Texas has led the country on smart-on-crime reforms that utilized best practices, decreased crime, and saved taxpayer money. But in a key area, Texas legislators and TDCJ have failed to implement smart-on-crime policies: solitary confinement. Texas relies heavily on solitary confinement even though it was discredited in the nineteenth century as an unsound correctional practice, wastes taxpayer money, and increases insecurity in our prisons and communities.

Less solitary confinement is not about going “soft” on crime; it is about being smart on crime. It makes how we punish more cost-effective, and more likely to produce positive outcomes that decrease crime in our communities. With less solitary confinement, Texas prisons can carry out their mission more effectively. It is time for Texas to drastically reduce its use of solitary confinement—and ensure that our prison system employs policies that reflect the values and commitments that unite us as Texans.

³⁰¹ Craig Hlavaty, *What exactly are “Texas values” these days?*, TEXICAN, June 28, 2012, <http://blog.chron.com/thetexican/2013/06/what-exactly-are-texas-values-these-days/>.

METHODOLOGY

This report was researched and written by Burke Butler, Arthur Liman Fellow, TCRP, and Matthew Simpson, Policy Strategist, ACLU of Texas, and edited by Rebecca L. Robertson, Legal and Policy Director, ACLU of Texas.

To research this report, we submitted public information requests to the Texas Department of Criminal Justice (TDCJ) and University of Texas Medical Branch (UTMB); sent a survey to people in Texas prisons about solitary confinement and collected and analyzed the responses; interviewed experts on incarceration, security, mental illness, and the Texas prison system; and interviewed people who were either currently housed in or had previously spent time in solitary confinement.

We sent surveys to **668 people** incarcerated in Texas prisons between December 2013 and May 2014 to ask about their experiences in solitary confinement, and received **147 responses**—a twenty-two percent response rate. Those surveys included forty-nine closed and open-ended questions, based on a similar survey developed by the Correctional Association’s Prison Visiting Project in New York. We sent:

(1) **585 surveys** randomly to people incarcerated at nine facilities with high solitary-confinement populations: Coffield, Connally, Darrington, Eastham, Estelle, Ferguson, Lewis, Telford, and Wynne (sixty-five surveys sent randomly to each facility); and

(2) **Eighty-three surveys** to people in Texas prison who had written to the TCRP, the Prison Justice League, or the non-profit Texas Interfaith directly or whose families had reached out on their behalf.

In May to August 2014, lawyers and clerks with TCRP and the ACLU of Texas conducted interviews with people in solitary confinement. We met with each person one to two times and in many cases corresponded with them extensively after our visit. Where possible, we confirmed their stories with their prison records. These interviews were conducted by Burke Butler, Satinder Singh, Priscilla Kennedy, Monique Rodriguez, Pedro Blandon, Margaret Brunk, Ryan Jones, Rebecca Pillar, Hunter Jackson, and Ethan Ranis.

Cindy Eigler, Amy Fettig, Craig Haney, and Steve Martin reviewed drafts of this report and generously provided their feedback and guidance.

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Finally, we are profoundly grateful to the many men in solitary confinement in prisons across the state of Texas who wrote to us, responded to our surveys, and spoke with us in person about their experiences. Their courage to share their stories, many of which were difficult to tell, made this report possible. We fervently hope that their willingness to help us expose all that is wrong with solitary confinement will put Texas at long last on the path to reform.

