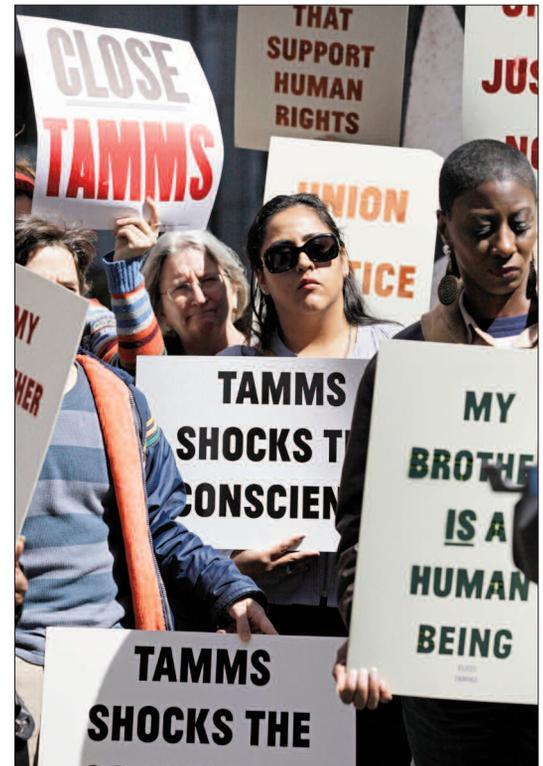


Solitary Confinement

Is long-term isolation of prisoners inhumane?

Debate is growing over the isolation of U.S. prison inmates in virtually round-the-clock solitary confinement. When the practice began booming in the late 1980s, politicians and some prison administrators — many supporting the construction of special “supermax” facilities — said prison safety demanded that “the worst of the worst” inmates be held in prolonged isolation. But even some supporters of long-term solitary acknowledge that many prison systems have used the strategy to warehouse mentally ill inmates. A growing number of federal court decisions prohibit placing the mentally ill in strict isolation, citing evidence that it aggravates their condition. Recently, some states have reduced the number of prisoners in long-term isolation. But in Illinois, guards protesting the planned closure of a supermax argue that transferring inmates to a conventional prison poses grave danger.



Relatives of inmates at the Tamms supermax prison in Illinois support Gov. Pat Quinn's plan to close the facility. Union officials representing prison guards say closure would cost 250 jobs and raise the danger level in institutions to which Tamms prisoners would be transferred.

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Solitary Confinement

BY PETER KATEL

THE ISSUES

Brutal aggression. Unbridled rage. Self-mutilation. Desolation and despair. Descent into madness. Texas prisoner Anthony C. Graves saw it all among inmates locked down in extreme solitary confinement — an ordeal he himself endured for 18 years while awaiting execution for murders he later was exonerated of committing. * ¹

“I would watch guys come to prison totally sane and in three years they don’t live in the real world anymore,” Graves told a Senate Judiciary subcommittee in June. “I know a guy who would sit in the middle of the floor, rip his sheet up, wrap it around himself and light it on fire. Another guy would go out in the recreation yard, get naked, lie down and urinate all over himself. He would take his feces and smear it all over his face.” ²

Accounts of bizarre and self-destructive behavior by prisoners have multiplied as long-term solitary confinement has become commonplace in the U.S. prison system over the past two decades. Mental-health experts who have interviewed prisoners in solitary disagree on whether prolonged isolation robs mentally healthy people of their sanity. But virtually no one doubts that prisoners already mentally ill when they enter solitary tend to deteriorate severely.

* Graves was convicted as an accomplice in the 1992 murders of six members of a Somerville, Texas, family. Recanted testimony by the admitted killer, along with prosecutorial misconduct, led to his exoneration in 2010.



AP Photo/Pat Sullivan

Anthony C. Graves is free after 18 years in solitary confinement in Texas for a crime he didn’t commit. “I would watch guys come to [isolation] totally sane, and in three years they don’t live in the real world anymore,” Graves told a Senate subcommittee in June. The rise in supermax prisons in recent years has sparked questions over whether extended strict isolation is humane and effective in keeping order in prisons.

Questions about psychological effects are part of a larger debate in criminal-justice and human-rights circles over whether confining anyone for long periods in strict isolation is humane and whether isolation is effective in keeping order in prisons while protecting prison workers, other inmates and the public once prisoners are released.

Prison officials impose solitary confinement in a variety of ways and under a variety of names. The best-known may be short-term confinement for rule-breaking — often known as “disciplinary segregation.” ³

But debate centers on prolonged solitary confinement, or “administrative segregation,” which is used in so-called “supermax” prisons, though long-term solitary confinement also is used in conventional prisons. Supermaxes are built specifically to house inmates considered extremely dangerous. The prisoners are locked in individual cells, usually with solid steel doors, for 23 hours a day. They are fed in their cells, through a slot in the door, and chained and guarded when they leave for any reason. Like Graves, some prisoners spend a decade or longer in isolation, with even out-of-cell exercise taken alone in cage-like settings. (Supermaxes may also hold prisoners who are not kept in strict solitary.) ⁴

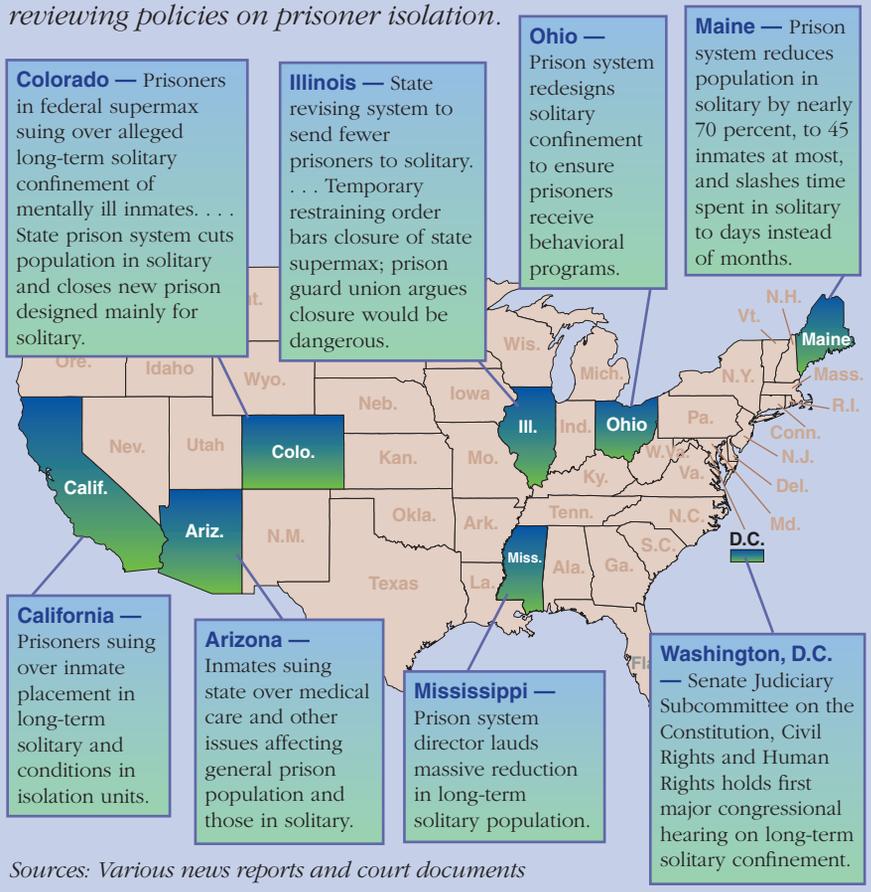
“Increasing the use of high-security segregation is counterproductive, often causing violence inside facilities, contributing to recidivism after release,” Sen. Richard J. Durbin, D-Ill., chairman of the Senate Judiciary Committee’s Constitution, Civil Rights and Human Rights Subcommittee, said in opening the June hearing. ⁵

The controversy over solitary confinement has gone international. Last year, Juan E. Méndez, a former senior staff member for Human Rights Watch who is now the United Nations Human Rights Commission’s investigator on mistreatment of prisoners, * concluded that long-term solitary confinement can amount to torture in some circumstances. He proposes a time limit of 15 days. ⁶

* Méndez’s full title is special rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

Solitary Confinement Under Scrutiny Nationwide

Lawsuits by inmates in a number of states are challenging solitary confinement practices, while in other states penal authorities are reviewing policies on prisoner isolation.



Virtually round-the-clock isolation existed before supermaxes started going up. But the U.S. controversy over long-term solitary confinement began during a supermax boom starting in the 1990s. By the early 2000s, supermaxes in at least 44 states were estimated to hold about 25,000 prisoners. Experts believe that number is now declining because a series of court decisions — as well as the higher expenses involved in running super-secure institutions — are leading some states to reduce or end supermax use.⁷

In June, Illinois Gov. Patrick Quinn, a Democrat, announced the imminent closure of his state's supermax, Tamms Correctional Institution, though that politically controversial move was delayed

by an Illinois state judge in early September. (See "Current Situation," p. 780.)

And in recent years, following litigation over conditions in long-term solitary, Mississippi reduced its supermax population by 89 percent, and Ohio by 85 percent. Maine, which hadn't been sued but faces potential litigation, reduced its long-term solitary population by about 70 percent. Joseph Ponte, Maine's corrections commissioner, said the new policy resulted in "substantial reductions in violence," reductions in use of force, chemicals and restraint chairs, and "reductions in inmates cutting [themselves] up — which was an event that happened every week or at least every other week."⁸

Supermax supporters describe such prisons, and their use of strict solitary confinement, as essential for public safety and management of potentially explosive prison populations. Strict solitary keeps highly dangerous inmates in conditions in which they're less able to harm prison staff or other inmates or induce other prisoners to commit violent acts.

"It takes someone whose behavior amounts to a threat and incapacitates their ability to do such things," says Eugene Atherton, a consultant on prison management who was warden of two Colorado prisons and assistant director of the Colorado prison system. "Physically, they can't put their hands on other people, and it's easier to monitor their communications if they are about sending directions to other associates to do harm."

But like other prison professionals, Atherton acknowledges that supermaxes in many states have expanded beyond their intended purpose, making what should be, in his view, a standard prison-management tool a matter of controversy. "A lot of wardens were locking guys up who were headaches but manageable under normal circumstances," he says. "That's a huge error."

Some supermax critics agree that a small number of extremely dangerous prisoners should be isolated from other inmates. Federal courts, though they have placed some restrictions on long-term solitary confinement, have not outlawed it.

The U.S. Supreme Court ruled unanimously in 2005 that prison inmates have a constitutional right to challenge an order transferring them to a supermax because, the court said, strict, long-term solitary confinement isn't ordinary imprisonment. "Almost all human contact is prohibited, even to the point that conversation is not permitted from cell to cell; his cell's light may be dimmed, but is on for 24 hours; and he may exercise only one hour per day in a small indoor room," Justice Anthony Kennedy wrote for the

court. Along with the fact prisoners were sent to supermax for indefinite periods, “These conditions impose an atypical and significant hardship.”⁹

Whether supermaxes necessarily suppress prison violence remains a matter of debate. In Mississippi, prison system officials acknowledged that they had gone overboard in assigning prisoners to the notorious isolation wing of the state penitentiary at Parchman. The wing, known as Unit 32, produced more instead of less violence among prisoners, as well as assaults on staff. “From May in 2007 to August 2007, three homicides,” the state’s corrections commissioner, Michael Epps, told Durbin’s subcommittee. “Highly unusual. One suicide. That’s highly unusual in any prison environment. In addition to that, inmates was throwing urine and feces on staff.”¹⁰

Though the facility’s purpose was to prevent exactly those sorts of events, experts later said that the accumulation of hostility by prisoners — including seriously mentally ill inmates — housed there unjustly, along with security lapses, allowed the violence to happen. The events persuaded Epps to begin working with prisoner-rights lawyers to massively reduce his state’s strict isolation population.¹¹ (See sidebar, p. 778.)

Mississippi aside, hard data don’t exist on whether supermaxes reduce prison violence, researchers say. “What states did was assume that violence stemmed from what certain inmates were doing or incited others to do,” says Daniel P. Mears, a criminology professor at Florida State University in Tallahassee. That case is unproven, he says, partly because standards for tracking prison violence are inconsistent. “The leeway about whether an incident is recordable or not is considerable,” Mears says. “It might be recorded as simple assault or aggravated assault,” depending on the prison or the officer.

Also unclear is the average length of stay in isolation. While some in-

Tight Quarters and Total Isolation

Long-term solitary confinement differs from prison to prison, but its common denominators are isolation and maximum security:

- Prisoners are generally kept in their cells for 23 hours a day, let out only for exercise — taken alone — and showers.
- Cells measure 6 or 7 feet wide by 8 to 10 feet deep. Some have a barred door that allows a view of immediate surroundings. Others have a solid steel door with only a small opening for meal delivery.
- Some prisons allow televisions in cells, possibly restricted to educational or behavioral programming. Rules on reading material, visits and other diversions vary. At the Florence, Colo., supermax, prisoners in the highly restricted Special Housing Unit can talk with family members or other approved visitors by video only and are escorted to the visiting room in hand and leg restraints, including a belly chain.
- In federal supermax prisons, prolonged solitary is considered a disciplinary measure for grave misconduct, such as murdering another inmate, or for being an “extraordinarily extreme” flight risk. In California, gang members and suspected members are automatically placed in long-term isolation. In states such as Michigan, Mississippi and Oklahoma, prisoners considered a threat to staff or other inmates are locked up in long-term solitary.

Sources: Urban Institute; Journal of Law and Policy; National Institute of Corrections; California Department of Corrections and Rehabilitation; Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights, June 19, 2012; Oklahoma Department of Corrections; Michigan Department of Corrections; United States Penitentiary, Administrative Maximum Facility.

mates are isolated for only days or weeks, others spend years alone in their cells. A class-action lawsuit filed this year by a group of prisoners at California’s Pelican Bay supermax reports isolation periods of 11 to 25 years.¹²

Only a handful of states have gathered figures on time spent in isolation, as well as other key prison statistics. In Colorado, prisoners with no mental health problems spent an average of 19.5 months in isolation according to 2011 data; inmates with mental health needs spent about 14.1 months. Nationwide, “Basic data as to the functioning of systems for isolation — the reasons for admission, the duration of stays, the prevalence of mental illness and recidivism rates — are unavailable,” two Yale Law School professors wrote to

the Durbin subcommittee.¹³

Still, a wealth of evidence exists on the effects of long-term solitary on people with mental illnesses. The evidence has persuaded a number of federal judges who have ruled in prisoners’ lawsuits against supermax conditions. “Every federal court to consider the question has held that ‘supermax’ confinement of the seriously mentally ill is unconstitutional,” David C. Fathi, executive director of the ACLU National Prison Project, wrote in 2004.¹⁴

The ACLU prison project is representing inmates at the federal supermax at Florence, Colo., who have suffered from severe mental illness and spent long periods in the prison’s high-security unit. According to the lawsuit, one of them amputated some of his

fingers, a testicle, scrotum and earlobes. Acts by other prisoner-plaintiffs include: swallowing a razor blade to persuade medical staff to amputate his right leg, where he suffered a gunshot wound long ago (he succeeded); amputating a finger, adding it to a bowl of ramen noodle soup and eating it; and swallowing broken glass.¹⁵

Federal Bureau of Prison lawyers haven't yet responded to the lawsuit. But episodes of extreme self-harm, as well as feces-smearing, are common enough among mentally ill prisoners in solitary that mental-health professionals have developed explanations.

Jeffrey Metzner, a psychiatry professor at the University of Colorado medical school in Denver, says self-mutilation seems to be an attempt to feel something, in a setting in which outside stimulation is nearly absent.

Feces-smearing is a way of asserting control by doing something that authorities are unable to stop. "It's also a way of expressing significant anger," says Metzner, a critic of long-term solitary confinement of the mentally ill who has reported on mental-health conditions in prisons on assignment by federal judges and court-appointed monitors.

That issue resonates beyond supermax cell walls. Contrary to what many in the public may think, a large number of prisoners who have served lengthy terms in solitary are released from prison. In a comprehensive study published in 2006, Mears reported that Texas alone released an average of 1,400 prisoners a year directly from strict solitary to the street.¹⁶

"If I were locked down 24-7 for many years, with little human contact and little to do," says Chase Riveland, former corrections director in Colorado and Washington state, "I'd probably be a little bit angry when I got out."

As judges, penologists, prison officials and human-rights activists debate the role of solitary confinement in prisons, here are some of the questions they are asking:

Does long-term solitary confinement constitute torture?

Last year's U.N. report avoided categorically denouncing solitary confinement as torture, but it said solitary imprisonment that lasts for years, and that includes severe restrictions on all human contact, can legitimately be defined that way.

"The longer the duration of solitary confinement or the greater the uncertainty regarding the length of time, the greater the risk of serious and irreparable harm to the inmate that may constitute cruel, inhuman or degrading treatment or punishment or even torture," wrote Méndez, the special investigator.¹⁷

Similar concerns led the American Bar Association to propose in 2010 that "only the most severe disciplinary cases" should lead to solitary confinement of more than 30 days, with a limit of one year in all cases.¹⁸

In Wisconsin in 2006, three federal judges on the Seventh U.S. Court of Appeals likened long-term solitary confinement to the inhumane world of a labor camp in the former Soviet Union.

Writing in a decision on a prisoner's lawsuit, the judges described the inmate's harsh existence: "Stripped naked in a small prison cell with nothing except a toilet; forced to sleep on a concrete floor or slab; denied any human contact; fed nothing but 'nutri-loaf;' and given just a modicum of toilet paper — four squares — only a few times." The judges, ruling in the prisoner's favor, added: "Although this might sound like a stay at a Soviet gulag in the 1930s, it is, according to the claims in this case, Wisconsin in 2002." The prisoner was kept naked for his first three days of isolation, and then for two more days, for alleged misconduct.¹⁹

Some human-rights advocates insist on defining long-term solitary, as practiced in the United States, as torture plain and simple. They have backing from some physicians, among them Atul Gawande, a surgeon, professor of health policy and management at Har-

vard School of Public Health and a journalist-author. He and other medical professionals point to evidence that prolonged isolation from human contact does deep and lasting psychological damage.

"In much the same way that a previous generation of Americans countenanced legalized segregation, ours has countenanced legalized torture," Gawande wrote in *The New Yorker* in 2009. "And there is no clearer manifestation of this than our routine use of solitary confinement — on our own people, in our own communities."²⁰

But prison administrators deny the torture allegation, arguing that prisoners in solitary are, in fact, in regular contact with prison staff. "We seek to ensure that these inmates are not completely isolated as that term may be typically understood," Charles E. Samuels Jr., director of the Federal Bureau of Prisons, told the Senate Judiciary Committee in June.²¹

Atherton, the former Colorado warden and state prison official, also rejects the torture label. "What you are describing is a version of solitary confinement created by prison reform groups out of California, and Human Rights Watch, that have chosen isolated confinement as an issue for the last 20 years," he says. "They have fabricated every possible mythology of what confinement means."

American prisoners in solitary confinement "are not really isolated at all," Atherton says. "They communicate with staff constantly. They have case managers, medical providers talking to them; that is an American Correctional Association standard." Atherton spoke from Afghanistan, where he is a State Department contractor advising the Afghan and U.S. governments on the Afghan prison system.

Prisoner advocates counter that those communications are cursory at best, however. "Three times a day, a guard comes through and slides a food tray through the slot," says the ACLU's

Fathi. “You may occasionally have a mental health person come by and shout through the crack between the steel cell door and the door frame; in my experience, mental health checks are overwhelmingly conducted that way.”

The issue of actual compliance with policies and standards aside, “What’s damaging about solitary confinement is not the absence of literally all human contact,” Fathi says. “What’s damaging is the lack of meaningful human interaction. A prisoner can go weeks, months or years without meaningful human interaction.” As with physical torture, he says, the effects can damage a prisoner for life.

Riveland, the former corrections boss in Colorado and Washington state and now a consultant on prison issues, argues that it’s a mistake to apply the “torture” label across the board. “I’m sure there are instances where some people have undergone treatment that you would label torture,” he says. But misclassification of prisoners is a more widespread problem, Riveland says — “widening the net too much on who stays in solitary and how long, without a serious professional review on, ‘Can we get this person into some other setting?’ ”

Others argue for keeping the focus on conditions they call inhumane. “I’m



Former inmate Chris Marcum shows scars from cutting himself while in isolation at the Tamms supermax prison in Illinois. Several states recently have reduced their supermax populations following litigation over conditions in long-term solitary. In Maine, a prison official said the state’s new policy reduced violence and instances of inmates cutting themselves. Jeffrey Metzner, a psychiatry professor at the University of Colorado medical school, says self-mutilation seems to be an attempt to feel something in a setting where outside stimulation is nearly absent.

not given to hyperbole,” says Fred Cohen, co-editor of the penology trade journal *Correctional Law Reporter* and editor of *Correctional Mental Health Report*, “but I see things so bad that it’s not too much to say that it’s wholesale torture being practiced, in some states more than others.”

in the American Correctional Association’s monthly magazine in 2006. ²²

Nevertheless, the strategy has drawbacks, wrote Chad R. Trulson and So-raya K. Kawucha of the University of North Texas and James W. Marquart of the University of Texas at Dallas. A missing gang member can be

Cohen, who has served as a court-appointed monitor in litigation over prison conditions, cites prisoners confined in solitary for a decade or longer. “One guy told me, ‘I don’t know who I am.’ You’re surrounded by people smearing themselves with feces, eating their own flesh. I met a guy in Illinois who ate his own shoulder.”

Is separating the “worst of the worst” from other prisoners beneficial?

The rationale for constructing supermax prisons would seem clear and straightforward. As some prison officials and politicians pose the issue, certain prisoners are so dangerous to other inmates and to staff that there is no way to house them in general prison populations.

As examples, prison professionals often cite gang leaders who order murders and gang members who are sworn to carry out those orders. “Perhaps the most successful gang-control strategy, from a viewpoint of reducing violence and disorder, has been the isolation of gang members, making it more difficult for them to influence and prey on the general prison population,” three Texas university criminologists wrote

AP Photo/Belleville News-Democrat/George Pawlaczuk

replaced, they noted. And there may be better ways to deal with “peripheral or inactive” gang members, the scholars said: Encourage them to renounce their affiliation, transfer them out of state or enroll them in behavior-change programs.²³

But academics may not make the best guides to the realities of prison administration, argues Gary W. DeLand, former director of the Utah corrections department. “If you have actual knowledge of a serious threat to safety, order or to an individual, and you fail to take action, you are liable,” he says, citing a 1994 U.S. Supreme Court ruling that found that federal prison officials had acted with “deliberate indifference” in failing to protect a transsexual prisoner from rape.²⁴

“What happens if you know you’ve got a heavy risk, if you know you have people who are dangerous to staff and to other prisoners?” DeLand asks rhetorically. “What do you do with them? Put them in suspended animation?” Segregation and isolation is the only practical solution, he argues.

Yet, Florida State’s Mears, who has written a series of detailed studies of supermax confinement — including an evaluation of results — argues that the case for segregating the “worst of the worst” is less definitive than it appears.²⁵ “I did phone interviews and state-by-state visits and I’d hear, ‘It’s worst-of-the-worst control,’” Mears says. “So my response [was], ‘What outcomes would you use to show you’re controlling the worst of the worst?’”

Supermax prisoners can still assault guards, Mears notes, citing so-called “cell extraction” operations after an inmate breaks rules in some way. “They’re also not incapacitated from ordering assaults,” he says, noting that prisoners can send out mail and may be able to receive visits, even if they are not face-to-face. A “savvy leader” can use those occasions to send out directives, Mears notes. And Mississippi’s experience at Unit 32 in 2007, when three prisoners

died during an outbreak of violence between gangs, shows that prisoners can cause violence even when confined in solitary.²⁶

Still, some prison officials say segregating dangerous prisoners in supermax-type settings has improved safety for staff and other prisoners in standard prison housing. In Illinois, following the 1998 opening of the Tamms Correctional Center supermax, “Incidents of inmate-on-inmate assaults, inmate-on-staff assaults, gang-related activities, the number of lockdown days . . . have all gone down,” Michael Randle, then the director of the Illinois corrections department, said during December 2009 testimony in a prisoner lawsuit over conditions at Tamms.²⁷

Charles E. Samuels Jr., Federal Bureau of Prisons director, echoed Randle’s safety argument last June. “If you have individuals who have the propensity to harm others and in many cases who have killed other individuals,” he told the Constitution, Civil Rights and Human Rights Subcommittee, “these are individuals who have proven that they’re going to require a restrictive form of confinement until . . . we are comfortable to ensure the safety of the facility putting them back into general population.”²⁸

Prisoner advocates don’t entirely condemn the idea of separating extremely dangerous prisoners. But these inmates don’t account for most of those in supermax-type units, critics of solitary argue. “People who end up in solitary, most of them, are not the worst of the worst, they’re the sickest of the sick,” says Fathi of the ACLU.

The result is that the supermax effect on the overall safety of prison systems is minimal, Fathi argues. “In every system you can find a handful of prisoners who are truly dangerous and require physical separation from others,” he says. Despite their small numbers, “They are the only justification for building these cruel and extraordinarily expensive facilities.”

Does long-term solitary confinement make normal prisoners mentally ill?

Many prison professionals say long-term solitary confinement is no place for mentally ill prisoners — but that they often end up there anyway. “Every class-action case I’ve ever worked on, they’re over-represented in segregation,” says Steve J. Martin of Austin, Texas, a lawyer and ex-prison officer with long experience as a court-appointed prison monitor. “And they’re over-represented in terms of use of force and disciplinary infractions. Those things are all linked. If you engage in the type of behavior that requires staff use of force, that typically leads to long-term segregation.”

Moreover, Martin says, the controversy over long-term solitary grows out of the increased use of supermax-type confinement for mentally ill prisoners. “American prisons have always held a certain number of prisoners in 22- to 23-hour-a-day lockup,” he says. But the widespread use of it for mentally ill prisoners is relatively recent.

A string of court decisions and settlement orders has barred about a half-dozen prison systems from sending mentally ill inmates to long-term solitary. These started with a 1995 federal court order to remove mentally ill inmates from the Security Housing Unit of California’s Pelican Bay supermax. (See “Background,” p. 777.)

More recently, U.S. District Judge G. Patrick Murphy of East St. Louis, Ill., went further, concluding that supermax confinement could psychologically damage any prisoner. Murphy said in a 2010 ruling concerning Tamms Correctional Center that “a number of inmates who testified to experiencing severe depression and other disturbances while confined at Tamms testified also to significant improvement in their mental health after being transferred to the less restrictive conditions” at another state prison.²⁹

Murphy wrote that prisoners were entitled to hearings before being sent

to Tamms. Conditions there “inflict lasting psychological and emotional harm on inmates confined there for long periods,” he wrote.³⁰

The issue is on some politicians’ minds as well. “Some [inmates] are already seriously mentally ill before they’re confined” in isolation, Durbin said at the Senate Judiciary subcommittee hearing in June. “Others who may not have had any psychological problems before isolation can be driven into a psychosis or a suicidal state.”³¹

Durbin was echoing the conclusions of one of the subcommittee’s witnesses, Craig Haney, a psychology professor at the University of California, Santa Cruz, and a veteran researcher on the effects of long-term supermax-type confinement. Extreme cases of self-mutilation aside, Haney testified, “Solitary confinement places all prisoners exposed to it at grave risk of harm.”³²

All prisoners in solitary, Haney said, may find “this environment . . . so painful, so bizarre and impossible to make sense of, that they create their own reality.” In addition, “The deprivations, restrictions, the totality of control, and the prolonged absence of any real opportunity for happiness or joy fills many prisoners with intolerable levels of frustration that, for some, turns to anger, and then even to uncontrollable and sudden outbursts of rage.”³³

Nevertheless, some supermax defenders dispute the idea that long-term solitary confinement can do lasting mental health damage to a psychologically fit prisoner. “I’ve seen nothing, and I’ve been in this business now for about four decades,” says DeLand. “I’ve yet to run into anything that one could solidly point to as a person without serious emotional problems being affected in a negative way by being isolated.”

During his stint as Utah corrections director, DeLand says, systematic audits he ordered to spot problems that could lead to lawsuits never picked

up evidence of solitary confinement driving prisoners into mental illness. “I am not familiar with any study that’s been done that would indicate that being locked in isolation for some period of time is going to cause mental health problems.”

Cohen of *Correctional Mental Health Report* says he is not aware of any studies that objectively assess the mental health of people before and after solitary confinement. But, he adds, “In the last 25 years, I’ve been to probably 100 prisons. I have seen guys that I have known before they went in [to solitary] who became hopelessly mad.”

Some prisoners could be faking insanity, Cohen acknowledges. But he says that would be hard to imagine “for guys who come in from the street as dudes, who are fastidious, who smear themselves with feces.”

But Metzner of the University of Colorado, who also has a long track record in prison work and opposes solitary confinement for mentally ill inmates, argues that prolonged isolation doesn’t induce mental illness, except in unusual cases.

Long-term solitary can make anyone depressed, Metzner says. And “that can be harmful even without mental illness. But it’s uncommon for people to become psychotic if they’re in segregation, absent existing mental illness.” ■

BACKGROUND

Repentance in Isolation

Long-term solitary confinement as a penal strategy dates back to the formation of American prisons.

In 1787, the Pennsylvania legislature ordered that a wing of a jail on Walnut Street in Philadelphia be converted to a “penitentiary house,” where

convicts would be held in isolation for the length of their sentences. Lawmakers believed that without the distraction of cellmates, prisoners could reflect on their errors and repent for them — hence the term “penitentiary,” which eventually passed into common usage as a synonym for prison.³⁴

In 1821, New York state adopted the isolation strategy for a recently built prison at Auburn, about 35 miles west of Syracuse. Eighty convicts considered in special need of repentance were locked in dark isolation cells with only a Bible for company.

Whatever progress the prisoners made in repairing their souls, their bodies suffered. By early 1823, five had died of consumption, as tuberculosis was then known, and 41 were gravely ill. Others lost their minds.

Auburn shifted to a system in which prisoners were allowed out of their cells to work, though they weren’t allowed to talk to each other. “Industry, obedience, silence” was the institution’s doctrine.

Elsewhere, the idea of redemption through isolation still appealed to state officials. When Pennsylvania built Eastern Penitentiary outside Philadelphia in 1829, the idea was to keep all prisoners — not a select group — in total, permanent isolation.

Isolation at Eastern was so complete that prisoners were brought in with black hoods over their heads, so that they’d be unable to see even the prison grounds. The prisoners never left their cells, until death or end of sentence.

Unlike modern solitary, prisoners were required to work. Looms or workbenches were part of cell furniture. Still, a prisoner’s separation from other people was all but total. Food was passed through a slot designed so that even glimpsing the guard delivering the tray was impossible. The only exceptions were occasional visitors — not family or friends, but officials and a few foreign researchers.

Among those researchers were the French social thinker Alexis de Tocqueville and his friend, Gustave de Beaumont. They visited Eastern in 1831 during an American tour that produced Tocqueville's classic two-volume *Democracy in America* (1835, 1840). Tocqueville seemed impressed by what he saw. One prisoner told him and Beaumont, sincerely or not, that he considered "being brought to the Penitentiary as a signal benefit of Providence."³⁵ Another prisoner sobbed incessantly, Tocqueville reported. The man said he hoped he would be accepted back into society upon release.

For their part, the prison's official inspectors defended solitary as redemptive. "The sense of shame and feelings of remorse drives them to some source of consolation," they wrote, "and the ordinary means of stifling an actively reproving conscience being denied by reason of their solitariness, the comforts of the Bible and the peace of religion are eagerly sought for."³⁶

The British novelist Charles Dickens, who spent a day at Eastern in 1842, took away a different impression. He concluded, "This slow and daily tampering with the mysteries of the brain [is] immeasurably worse than any torture of the body . . . because its ghastly signs and tokens are not so palpable to the eye and sense of touch as scars upon the flesh."³⁷

Supreme Displeasure

In September 1889, a Colorado jury convicted James J. Medley of murdering his wife the previous May. He was sentenced to hang.³⁸

The sentence, handed down in November of that year, included a provision called for by a newly enacted law: Medley was to be held in solitary confinement until his execution.³⁹

Colorado's new homicide law had been enacted in April 1889. But under the Colorado constitution, laws took

effect 90 days after passage. Thus, the crime had been committed when the previous homicide law was in effect — a law that didn't require solitary confinement for prisoners awaiting execution.

Medley's lawyer filed a habeas corpus petition seeking the prisoner's release. It reached the U.S. Supreme Court in 1890. The high court decided in Medley's favor, ruling that the convicted man's sentencing violated the constitutional prohibition on "ex-post-facto" laws, which apply a new statute to an offense committed when a previous law was in effect.

The court cited a history of "serious objections" to solitary confinement. In Pennsylvania and other states that followed its example, "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," the court said, "and others became violently insane; other still committed suicide while those who stood the ordeal better were not generally reformed."⁴⁰

The court also called solitary confinement "an additional punishment of the most important and painful character [that is] therefore forbidden" under the Constitution's ex-post-facto provision.⁴¹ Moreover, because the homicide law in force when Medley committed his crime was no longer in effect, the Supreme Court reasoned that it could not simply send him back for a new trial. "James J. Medley is entitled to have his liberty."

Accordingly, the court ordered him freed from prison.

To this day, solitary confinement critics quote Medley's passage about the effects of solitary confinement. Most recently, Hope Metcalf, director of Yale Law School's Arthur Liman Public Interest Program, and Judith Resnik, a Yale law professor, cited the description in testimony to the Senate Judiciary subcommittee hearing in June.⁴²

Nevertheless, Cohen, the *Correctional Law Reporter* co-editor, noted that the high court didn't reject solitary confinement as inherently unconstitutional. "It was merely found to be sufficiently harsh to be an ex-post-facto (that is, not then authorized) punishment," Cohen wrote.⁴³

He further argued that Medley suffers from a built-in weakness. "The majority's reliance on the much older Philadelphia system of silence and the mental suffering it caused seems quite misplaced where a death sentenced inmate was to be kept in mandatory solitary for about four weeks, with guaranteed access by various visitors, and with no mention whatsoever of the particular conditions of confinement."⁴⁴

Institutionalizing Solitary

The country's first prison for the hardest of hard-core criminals was a federal prison opened on Alcatraz Island in San Francisco Bay in 1934. Its inmates included the Prohibition-era gangster Al Capone and other notorious criminals, as well as prisoners known for escape or for assaulting fellow inmates or officers. Alcatraz is "commonly recognized as the forerunner of today's supermax facilities," wrote Riveland, the former Washington state corrections director, in a 1999 guide to supermax administration.⁴⁵

Even so, Alcatraz prisoners were housed one to a cell but weren't confined nearly full-time to those cells, as are many supermax prisoners in today's institutions. Round-the-clock solitary confinement was used as punishment — limited to 14 days, with an interval of 14 days required before officials could impose it again.⁴⁶

The U.S. government closed Alcatraz in 1963 because it was nearly three times more expensive to run than any other federal prison, due to its island location.⁴⁷

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Chronology

1787-1842

Round-the-clock isolation of prisoners begins in Pennsylvania and New York in the belief that enforced solitude encourages repentance.

1787

Pennsylvania turns a wing of a Philadelphia jail into a “penitentiary house,” where prisoners are kept in their cells.

1821

New York imposes isolation regime at a new state prison in Auburn.

1829

Eastern Penitentiary, designed to completely isolate prisoners, opens outside Philadelphia.

1842

British novelist Charles Dickens visits Eastern and reports that long-term solitary confinement was “immeasurably worse than any torture of the body.”

1890-1963 U.S.

Supreme Court expresses skepticism about solitary confinement but doesn't reject it.

1890

High court frees a Colorado man sentenced to hang for his wife's murder, saying he'd been punished with solitary confinement under a law that shouldn't have been applied to him.

1934

Federal government opens prison for hard-core prisoners on Alcatraz Island in San Francisco Bay, considered the predecessor of supermax prisons.

1963

After Alcatraz is closed as too expensive, the government opens a replacement in Marion, Ill.

1983-1998

Supermax era begins as prisons are built to hold the “worst of the worst” in strict solitary confinement; prisoner-rights lawyers begin challenging the strategy.

1983

Prisoners kill two guards at the federal prison at Marion, prompting a lockdown of all prisoners.

1989

California opens Pelican Bay prison with Security Housing Unit (SHU) designed to hold prisoners in their cells for 23 hours a day.

1995

Federal judge in San Francisco prohibits confinement of mentally ill prisoners at the SHU and concludes that conditions were close to intolerable even for the mentally healthy.

1998

Illinois opens Tamms Correctional Center, which became a target of prisoners' litigation and a center of political controversy.

2001-2012

Prisoner lawsuits, combined with tightened finances for states, increase pressures to restrict supermax confinement.

2001-2002

Supermax prisoners in Ohio, Mississippi and Wisconsin sue over their conditions of confinement.

2004

Nationwide, 44 state supermaxes hold an estimated 25,000 prisoners.

2005

U.S. Supreme Court rules in Ohio lawsuit that prisoners have a right to challenge orders transferring them to supermax and to qualify for release from solitary.

2006

U.S. Appeals Court ruling on Wisconsin suit likens supermax conditions to those in the Soviet gulag in the 1930s.

2007

Violence in Mississippi's supermax prompts state immediately to lay groundwork for reducing supermax population.

2010

Ruling on a lawsuit by Illinois supermax prisoners, federal judge writes that conditions at the prison cause lasting psychological damage. . . . American Bar Association proposes one-year limit on strict solitary confinement.

2011

U.N. investigator says long-term solitary confinement can amount to torture, proposes 15-day limit.

2012

Prisoner-rights lawyers file lawsuits alleging inhumane conditions at federal supermax in Florence, Colo., and state supermaxes in California and Arizona. . . . Senate subcommittee holds hearing on long-term solitary confinement. . . . Illinois Gov. Patrick Quinn orders Tamms supermax closed. Prison guards' union says decision threatens safety at prisons to which Tamms inmates are to be transferred. . . . Illinois state judge temporarily blocks Tamms closing.

Controversial Study Supports Use of Solitary

Inmates claim no ill effects, but critics cite flaws in research.

Until recently, supporters of long-term solitary confinement had little academic research to back up what their experience told them: that placing inmates in isolation for long periods — is an indispensable tool in running a prison system.

Now, a controversial study based on research among Colorado prisoners is filling the gap — at least as far as advocates of solitary confinement are concerned.

The results, published in 2010 by the Justice Department's National Institute of Justice, are based on psychological tests administered to about 250 Colorado prisoners — some mentally ill — in both solitary and in the prison system's general population. The average length of a stay in solitary in Colorado is two years, but the study doesn't say how long each study participant in solitary had spent there. The tests included prisoners' self-assessments of their own psychological condition.¹

A report on the study, co-written by Maureen L. O'Keefe, research director for the Colorado Department of Corrections, concluded that "there was initial improvement in psychological well-being across all study groups." What's more, it said "elevations in psychological and cognitive functioning that were evident at the start of the study remained present at the end of the study."²

The report noted that researchers had not expected these results and that the study's conclusions contradicted "the bulk of literature" indicating that solitary confinement "is extremely detrimental to inmates with and without mental illness."³

"People who rail against isolated confinement were very disappointed in the outcome of the report," says Eugene Atherton, a Pueblo, Colo.-based prison management consultant and former Colorado warden. "The research showed the opposite of what they had hoped would be proved." Atherton, now working for the State Department to advise the Afghan gov-

ernment on development of a prison system, spoke from Kabul.

Advocates of solitary confinement have used the study to support their view that isolating prisoners for long periods — usually known in the field as "administrative segregation" or "ad seg" — is a legitimate form of punishment and necessary for maintaining control of inmate populations.

Last June, Charles E. Samuels Jr., director of the Federal Bureau of Prisons, told the Senate Judiciary Committee's Constitution, Civil Rights and Human Rights Subcommittee that the study found that "no negative effect on individuals in restrictive housing has occurred."⁴

But opponents of solitary confinement argue that the study is flawed and should not be used to shape prison policy.

O'Keefe and study adviser Jeffrey L. Metzner, a University of Colorado psychiatry professor and longtime expert on mental health in prison, acknowledged that the report shouldn't be taken as conclusive evidence that applies to all long-term solitary nationwide. "This study may not generalize to other prison systems, especially those that have conditions of confinement more restrictive and/or harsher than CSP [Colorado State Penitentiary]," they wrote last year in a professional journal, *Correctional Mental Health Report*.⁵

Writing separately, Metzner said, "Such results should not be interpreted to indicate that there is little harm associated with housing inmates with mental illness on a long-term basis in" solitary confinement. Metzner served as an adviser on the study. Others included Jamie Fellner, a senior adviser to the U.S. program of Human Rights Watch, an advocacy group that is critical of long-term solitary confinement.⁶

Despite the caveats, the report has generated a furious response from corrections experts, who have concluded that isolation damages prisoners who were either mentally ill to start with or mentally healthy when their isolation began.

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Its replacement was the federal prison at Marion, Ill., which opened in 1964. There, the only prisoners initially kept in their cells 23 hours a day were those locked in the prison's "control unit," which was reserved for 35 inmates considered especially dangerous.⁴⁸

In October 1983, during a period of rising tension, two control unit prisoners killed two guards in a 10-hour span. Each prisoner was being escorted to his cell when he turned on a guard and stabbed him to death. Rules then in effect didn't require control-unit

prisoners to be handcuffed when outside their cells.⁴⁹

After the killings, the federal Bureau of Prisons put Marion on permanent "lockdown." When an inmate was let out of his cell, he was chained, handcuffed and escorted by three guards. Visitors saw inmates only through a Plexiglas window and spoke to them over a telephone. Work programs ceased. (Today, Marion is a medium-security prison, without permanent solitary.)⁵⁰

The killings prompted a call to re-establish a federal death penalty, which the U.S. Supreme Court had re-

jected in 1972. "Locking some men up will not stop them from injuring others," Bureau of Prisons Director Norman Carlson said shortly after the homicides. "They use virtually anything to make deadly weapons, and they spend their days plotting murder. We can keep them in their cells for 23 hours a day, but we can't weld the bars shut. For these few, the death penalty is the only answer."⁵¹

Congress passed a new federal capital punishment law in 1988 and expanded its application in 1994. Among politicians, the debate over that move

Stuart Grassian and Terry Kupers, psychiatrists with long professional track records in correctional mental health, argued, for example, that relying on prisoners to assess their own psychological conditions constitutes a fundamental flaw of the study. The testing materials the researchers used weren't designed specifically for prison inmates, Grassian and Kupers wrote. Prisoners in the study sample were told that the purpose was to research adjustment to prison life.

"Anyone with a background in corrections knows that is not the kind of information an inmate would likely expose," Grassian and Kupers wrote. "It could harm him, even surreptitiously, for example at a parole hearing or in hearings to determine whether he could progress to higher levels in [administrative segregation]." ⁷

Grassian, a retired Harvard Medical School professor, and Kupers, a professor at the Wright Institute in Berkeley, Calif., a postgraduate clinical psychology school, also wrote that the study failed to evaluate test results in light of prison mental-health records. These would have provided data, they wrote, against which to assess the test results. ⁸

The study's critics may have feared that it would be used to justify maintaining or even expanding the number of prisoners in solitary confinement. But that has not been the result, at least in Colorado. After the report was issued, the legislature last year ordered the state corrections department to report annually on progress in removing mentally ill or developmentally disabled prisoners from solitary confinement. The bill imposing the requirement was prompted by an increase in the number of mentally ill prisoners placed in solitary. ⁹

But changes in the prison system went deeper. Administrators have been sending fewer prisoners of any kind to solitary confinement. Along with a general decrease in the prison population, partly resulting from lowered penalties for some drug crimes, the decline in the solitary population led this year to

closure of the brand-new Colorado State Penitentiary in Canon City. It had been used mainly for strict solitary confinement of the long-term type, with virtually round-the-clock isolation and limited human contact. ¹⁰

The \$162 million prison, opened in 2010 with room for 948 administrative-segregation prisoners, has housed only 316 inmates since it opened. ¹¹

Atherton acknowledges the report hasn't settled the issue. "On goes this battle," he says, "with those who know little or nothing about correctional institutions and criminal behavior who are applying their own suburban standards to prisons."

— Peter Katel

¹ Maureen L. O'Keefe, "One Year Longitudinal Study of the Psychological Effects of Administrative Segregation," Colorado Department of Corrections, University of Colorado, Colorado Springs, Oct. 31, 2010, pp. v-vi, 11, www.ncjrs.gov/pdffiles1/nij/grants/232973.pdf.

² *Ibid.*, p. ii.

³ *Ibid.*

⁴ "Sen. Richard J. Durbin Holds a Hearing on Reassessing Solitary Confinement," *CQ Transcriptions*, June 19, 2012.

⁵ Jeffrey L. Metzner and Maureen L. O'Keefe, "Psychological Effects of Administrative Segregation: The Colorado Study," *Correctional Mental Health Report*, May/June, 2011, p. 1, www.civicresearchinstitute.com/online/article_abstract.php?pid=14&iid=512&aid=3553.

⁶ *Ibid.*, p. 14 and "Acknowledgements" page.

⁷ Stuart Grassian and Terry Kupers, "The Colorado Study vs. the Reality of Supermax Confinement," *Correctional Mental Health Report*, *op. cit.*, p. 9.

⁸ *Ibid.*, p. 10.

⁹ "DOC gets report on solitary confinement review," *The Associated Press*, Nov. 18, 2011.

¹⁰ Kristen Wyatt, "Colorado closing Canon City prison," *The Associated Press*, March 19, 2012.

¹¹ Tracy Harmon, "Reduced crime means less need for state prisons," *Pueblo Chieftain* (Pueblo, Colo.), March 21, 2012; Tracy Harmon, "\$162 million prison opens," *Pueblo Chieftain*, Aug. 26, 2010.

overshadowed, for a time, arguments about the wisdom, cost and ethics of confining prisoners in solitary for periods of years. ⁵²

In fact, the Marion lockdown became the template for supermax prisons nationwide. At the federal level, the administrative maximum (ADX) prison in Florence, Colo., which opened in 1994, was built to enable a regime of permanent lockdown. By then, too, the Marion model had started spreading to state prison systems.

The best-known state supermax, the Security Housing Unit (SHU) of Peli-

can Bay State Prison in California, opened in 1989. SHU prisoners were locked in their cells for all but about one hour a day. Massachusetts followed suit in 1991, with a supermax on the grounds of the state prison at Walpole, where prisoners were locked in cells for 22 hours a day. "This unit sends a message to both existing inmates and potential criminals that disruptive behavior is not going to be tolerated in the Massachusetts prison system," Gov. William Weld said. ⁵³

By 1998, about 20,000 prisoners were housed under supermax condi-

tions in 34 states — either in newly built institutions or in existing prisons or prison wings retrofitted as supermaxes. ⁵⁴

Virtually as soon as the wave of supermax construction began, some corrections professionals began questioning whether the facilities were needed, at least on such a broad scale. "Fad, trend or wise investment?" Riveland, the former Washington state prison system director, asked in a 1999 report published by the Justice Department's National Institute of Corrections. ⁵⁵

Some States Rethinking Solitary Confinement

Trend began with inmate lawsuit over Ohio supermax prison.

The prison world has a new buzzword: “reclassification.” High costs, litigation and controversy involving long-term solitary confinement are prompting politicians and prison officials to question whether prisoner isolation has been overused. As a result, some states are revamping their security classifications under which certain prisoners are segregated in round-the-clock lockdown.

The reclassification trend, so far limited to a few states, got its first major impetus from Ohio’s decision in the early 2000s to drastically reduce its population housed in long-term solitary with little human contact in the state’s supermax prison, the Ohio State Penitentiary. At the time, the state was embroiled in a lawsuit by prisoners challenging their transfer to the supermax. In 2005, the U.S. Supreme Court upheld prisoners’ right to challenge such transfers.¹

But by the time the court ruled, Ohio already had changed its classification system. By 2008, only 53 of 533 prisoners who had been in supermax in the early 2000s remained there. The others had been reclassified to lower security levels, a move that took them out of solitary.²

The most dramatic shift in state policy came in Mississippi in 2007. Prompting the change was an increase in violence in the notorious isolation wing of the state penitentiary at Parchman — Unit 32, which held only prisoners in round-the-clock solitary — made possible by a breakdown in isolation security procedures.³

At the time, the Mississippi prison system was being sued by prisoners represented by the National Prison Project of the American Civil Liberties Union (ACLU). The lawsuit had already led to talks between prison system officials and lawyers for inmates on changing the classification system. Following the violence, officials quickly accepted changes in the system proposed by the ACLU’s classification expert, James Austin (who had also worked on the Ohio revamping). A few months later,

about three-quarters of Unit 32 prisoners had been reclassified for transfer to the prison’s general population.⁴

Austin had concluded that under the old classification system, some prisoners were sent to Unit 32 immediately after they began their sentences, without having broken any rules. Many prisoners remained in the unit for years though they had not committed any misconduct there and should have been eligible for transfer. “Required reassessments were not being done . . . [and] the caseload for case managers was so large that they could not have adequate contact with prisoners,” said a study by experts including Austin, other ACLU staff members and Mississippi prison officials.⁵

As prisoners were reclassified, the population of Unit 32 plummeted from about 1,000 to fewer than 150.⁶

The Ohio and Mississippi reclassifications are now being used as a template for other states. The Vera Institute of Justice, a New York-based criminal justice system think tank and advocacy organization, is working with Illinois, Maryland and New Mexico on revamping their classification systems.⁷

The projects are designed to develop new standards for releasing prisoners from segregation, strengthening programs by which prisoners can move out of solitary confinement and improving conditions in solitary. “Vera aims to demonstrate that states can reduce the numbers of prisoners they hold in segregation without jeopardizing institutional or public safety,” Michael Jacobson, Vera’s president, told the Senate Judiciary Committee’s Constitution, Civil Rights and Human Rights Subcommittee last June. The organization also hopes to create a “replicable model” that other states can use.⁸

Work on the project so far shows that many prisoners are sent to solitary for minor rule-breaking, three Vera Institute reclassification specialists wrote last year. These offenses include “unauthorized movement, failure to report to work or school, insolence or talking back and disobeying a direct order,” the

Riveland didn’t answer the question directly. But he wrote that supermaxes were significantly more expensive to build and operate, their conditions raised ethical and constitutional issues of inhumane treatment and effects on staff as well as prisoners could be negative. “When there is little interaction except in control situations,” Riveland wrote, “the adversarial nature of the relationships tends to be one of dominance and, in return, resistance on both sides.”⁵⁶

Constitutional Issues

As supermaxes proliferated, prisoner advocates and human-rights activists began a campaign to limit their use, or abolish them altogether.

The first major lawsuit over supermax conditions was a 1993 federal case that combined more than 300 individual suits by inmates at California’s Pelican Bay prison. A trial featured harrowing testimony from prison experts about systematic brutality and mis-

treatment of inmates throughout the prison and in its SHU supermax wing — testimony cited in detail in a 345-page ruling by U.S. District Judge Thelton E. Henderson in 1995.⁵⁷

Henderson ruled that prison system officials “cross the constitutional line when they force certain subgroups of the prison population, including the mentally ill, to endure the conditions in the SHU, despite knowing that the likely consequence for such inmates is serious injury to their mental health.” Another subgroup, Henderson ruled, was made up of inmates

experts wrote. “Confinement to segregation is often out of scale for these violations.”⁹

The Illinois corrections department reported that Vera’s analysis showed that 85 percent of prisoners were in long-term, limited-human-contact solitary for “less severe” infractions. “It was also found that those who spent less time in segregation were not more likely to commit new violations during the first 12 months of release into general prison population,” the department reported in comments that Jacobson relayed to the Senate subcommittee.¹⁰

Overall, Illinois officials reported, “The mantra of the program has been to determine if we are mad at the offender or scared of them when making recommendations for segregation time and transfer.”¹¹

In Mississippi, meanwhile, reclassification has improved conditions in the prison system, according to a top official. “When we started moving people to lower security levels, we found that there was no increase in violence,” Deputy Corrections Commissioner Emmitt Sparkman wrote on the Vera Institute’s blog. “We’ve been conditioned that 23-hour lockdowns make it safer, make it better for staff and other offenders and for the system. In Mississippi, we’ve found that’s not necessarily true.”¹²

The Ohio story has been more complicated. The most recent prison system director, Gary Mohr, said that when he took over last year he found dangerously high levels of violence. In response, he announced a new classification system early this year that would house an estimated 300 to 500 gang members and other dangerous prisoners in “control” units or special prisons.¹³

Those units include cells for virtually round-the-clock solitary confinement. But officials made a point of stressing differences between their system and previous versions of long-term solitary confinement. They said “control” prisoners would be able to earn a way into less restrictive conditions and

would be enrolled in behavioral programs. “Control prisons are not designed as disciplinary centers,” the department said in its annual report for last year. “Offenders in control units will still have access to programming designed to change their way of thinking.”¹⁴

— Peter Katel

¹ *Wilkinson v. Austin*, 544 U.S. 74 (2005), www.law.cornell.edu/supct/html/04-495.ZS.html.

² “Examples of supermax prisons whose purposes have changed,” The Associated Press, April 5, 2008.

³ Terry A. Kupers, *et al.*, “Beyond Supermax Administrative Segregation,” *Criminal Justice and Behavior*, July 21, 2009, p. 4, https://www.acu.org/images/asset_upload_file359_41136.pdf.

⁴ *Ibid.*

⁵ *Ibid.*, p. 5.

⁶ *Ibid.*, p. 5.

⁷ “Segregation Reduction Project,” Vera Institute of Justice, undated, www.vera.org/project/segregation-reduction-project.

⁸ Michael Jacobson, written testimony, Senate Judiciary Committee, Subcommittee on the Constitution, Civil Rights and Human Rights, June 19, 2012, www.vera.org/files/michael-jacobson-testimony-on-solitary-confinement-2012.pdf.

⁹ Angela Browne, Alissa Cambier and Suzanne Agha, “Prisons Within Prisons: The use of Segregation in the United States,” *Federal Sentencing Reporter*, October 2011, p. 29, www.jstor.org/discover/10.1525/fsr.2011.24.1.46?uid=3739816&uid=2129&uid=2&uid=70&uid=4&uid=3739256&sid=21101142915511.

¹⁰ Jacobson, *op. cit.*

¹¹ *Ibid.*

¹² Emmitt Sparkman, “Mississippi DOC’s Emmitt Sparkman on reducing the use of segregation in prisons,” *Current Thinking* (blog), Vera Institute of Justice, Oct. 31, 2011, www.vera.org/blog/mississippi-docs-emmitt-sparkman-reducing-use-segregation-prisons.

¹³ “Prisoners with gang links to be isolated,” *Dayton Daily News* (Ohio), Feb. 15, 2012 p. A1; “Annual Report, 2011,” Ohio Department of Rehabilitation and Correction, undated, www.drc.ohio.gov/web/Reports/Annual/Annual%20Report%202011.pdf.

¹⁴ *Ibid.*, “Annual Report,” p. 4.

with mental conditions — chronic depression and brain damage effects, among them — who would severely deteriorate in solitary. In December 1995, Henderson followed up by ordering the removal of 100 severely mentally ill prisoners from the SHU by year’s end.⁵⁸

Nevertheless, Henderson explicitly refrained from concluding that conditions in the SHU were unconstitutional across the board. They “may well hover on the edge of what is humanly tolerable for those with normal resilience, particularly when endured for extend-

ed periods of time,” Henderson wrote. “They do not, however, violate exacting Eighth Amendment standards.”⁵⁹ The amendment, which prohibits “cruel and unusual punishments,” is central to analyzing the constitutionality of prison conditions.⁶⁰

The Pelican Bay ruling led to a series of federal lawsuits by the American Civil Liberties Union (ACLU) on behalf of prisoners confined in solitary in Wisconsin, Ohio, Connecticut, New Mexico and Indiana. (The New Mexico case began in state court.) By

2007, those suits led to settlements or court orders prohibiting confinement of seriously mentally ill prisoners in supermax facilities.⁶¹

When another supermax lawsuit reached the U.S. Supreme Court in 2005, the justices also refrained from defining long-term solitary as unconstitutional. But the decision did uphold prisoners’ arguments that they’d been denied due process when they were sent to the Ohio supermax. Likewise, once in solitary, the court said, prisoners had a constitutional

right to periodic review of their cases, with the possibility of earning transfer out of solitary.⁶²

Following the high court action, prisoners argued in a lower federal court that the prison system wasn't actually carrying out the due-process proceedings, despite what officials had told the Supreme Court. In 2007, a federal district judge ruled that Ohio was still denying prisoners an effective procedure to win release from the supermax.⁶³

Meanwhile, opposition to long-term solitary confinement was intensifying in the domestic and international human-rights community. The ACLU, in addition to litigating for years over conditions for prisoners in prolonged solitary confinement, launched a campaign to "stop solitary." Among the reasons was solitary's effect on mental health, among both mentally ill prisoners and those who'd been mentally stable before being locked in prolonged isolation. Argued the ACLU, "The clinical impacts of isolation can actually be similar to that of physical torture."⁶⁴ ■

CURRENT SITUATION

Fight Over Supermax

In early September, Associate Circuit Judge Charles Cavaness of Alexander County, Ill. (Cairo), issued a temporary restraining order halting Gov. Quinn's planned closure of the Tamms supermax. The action had the potential to make "the prisons that remain more dangerous for employees," the judge said.⁶⁵

That conclusion echoed arguments by union prison guards and other staff, who have been fighting Democrat Quinn's plan to close Tamms, a con-

ventional prison for women and some centers for juvenile offenders.

The judge's order followed an arbitrator's decision upholding the union's position that Quinn's decision violated the employees' labor contract. Both sides were ordered to negotiate a solution within 30 days. The judge's decision effectively maintains the status quo until a deal is reached.

The legal battle between Quinn and the American Federation of State, County and Municipal Employees union (AFSCME) demonstrates the complications of the debate over supermax prisons. Among the big issues in Illinois: jobs, safety in the state's remaining prisons, state spending on an institution running at far below capacity because of a court ruling and longstanding human-rights concerns over supermax confinement.

Ever since Quinn began publicly weighing the possibility of shutting Tamms, AFSCME leaders have insisted that the move — in addition to costing 250 jobs in economically struggling southern Illinois — would raise the danger level in institutions to which Tamms prisoners would be transferred. "Conditions are already volatile and dangerous in the prison system, which is jammed," Henry Bayer, AFSCME's executive director in Illinois, said in early August.⁶⁶

When he spoke, the confrontation between the union and Quinn had been heating up. In late July, The Associated Press reported that the state corrections department ordered pat-down searches of employees as they left work at about 15 state prisons. Union members alleged that the search order was designed as retaliation for leaks to a newspaper about plans to transfer as many as nine Tamms inmates to prisons in other states. Union leaders said the reported plan to send dangerous inmates out of state showed that Illinois officials were aware that the supermax was the only safe place to house those inmates within the boundaries of their own state.⁶⁷

Among the nine reportedly considered for transfer was Henry Brisbon, who entered prison on a 1,000- to 3,000-year sentence for killing an engaged couple in 1973. In prison, he was sentenced to death for stabbing another inmate to death. His death sentence was commuted to life imprisonment when, in 2000, Republican Gov. George Ryan declared a moratorium on the death penalty, which the Illinois legislature later abolished.⁶⁸

Inmates classified as extremely dangerous may have been the only ones left at Tamms in the wake of the 2010 federal court ruling that prisoners had a constitutional right to challenge transfer to Tamms. By this year, according to a budget summary by Quinn's office, Tamms had a prisoner population of 389, or slightly more than half the prison's 753-inmate capacity. The prison's annual operating cost is \$62,000 per prisoner, compared with the state average of \$21,405.⁶⁹

When Quinn disclosed his plan in June to close Tamms, he said he hoped the legislature would channel the savings into the Department of Children and Family Services, which had suffered a \$50 million budget cut that would eliminate 375 jobs. "I think the priority is children, not a half-empty prison," he said.⁷⁰

Alan Mills, legal director for the nonprofit Uptown People's Law Center in Chicago, which represented prisoners in the case that led to the federal court ruling, says the court decision strongly influenced the governor's decision. The judge forced a "recognition that penologically you don't need Tamms," Mills says.

New Litigation

Recent lawsuits against federal and state supermaxes continue a legal offensive under way virtually since the first such prison opened. Lawsuits filed

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At Issue:

Should solitary confinement be limited to one year?



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“it’s an awful thing, solitary,” Sen. John McCain wrote of his time as a prisoner of war in Vietnam. “It crushes your spirit and weakens your resistance more effectively than any other form of mistreatment.” McCain spent about two years in solitary; in the United States today, many prisoners are held in continuous solitary confinement for five years, 10 years or longer.

It’s undisputed that solitary confinement is profoundly and sometimes irreparably damaging, and the damage becomes more severe with increasing duration. In 2010, a federal judge reviewing conditions at Illinois’ Tamms supermax prison concluded that “Tamms imposes drastic limitations on human contact, so much so as to inflict lasting psychological and emotional harm on inmates confined there for long periods.” And in 2005, a group of mental health experts told the U.S. Supreme Court that “no study of the effects of solitary or supermax-like confinement that lasted longer than 60 days failed to find evidence of negative psychological effects.” Some effects, such as a slowing of brain activity, are detectable after as little as one week.

On the other side of the ledger, there’s little proof that solitary confinement promotes prison or public safety, and a growing body of evidence indicates that it’s actually counterproductive. A 2006 study found that opening a supermax prison had no effect on prisoner-on-prisoner violence in Arizona, Illinois and Minnesota. Indeed, Mississippi Corrections Commissioner Christopher Epps recently testified before a U.S. Senate subcommittee that when his state slashed its solitary population by 75 percent, violent incidents fell by half. And a 2004 study from Washington state found that prisoners who had experienced solitary confinement were more likely to commit new crimes upon release, and also committed more serious crimes, than similar prisoners who had not been in solitary.

No one denies that some prisoners sometimes require physical separation so they don’t harm others. But physical separation can be achieved without the extreme social isolation and sensory deprivation that are the hallmarks of solitary confinement. Based on the overwhelming evidence of its harmful effects, the United Nations Special Rapporteur on Torture in 2011 recommended a global ban on solitary confinement lasting more than 15 days. But even a one-year limit would dramatically reduce the suffering and damage caused by solitary confinement as it’s practiced in the United States today. It should be adopted without delay.



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in the debate over whether solitary confinement is beneficial or hostile to prisoner management, legal considerations have received insufficient attention.

The Supreme Court has repeatedly ruled that officials have a duty to take reasonable measures to protect prisoners from violence. But to provide reasonable measures to protect safety, officials must be able to control prisoners’ mobility, interaction with other prisoners and capability to harm others. Hands-on methods of control (i.e., grappling, fighting) provide a high risk of injury. Restraint methods such as pepper spray, electronic restraint devices and restraint chairs provide safer force options. Despite abundant data demonstrating the safety benefits, detractors are campaigning to ban their use.

Solitary confinement is effective for managing prisoners who are a serious threat to others. However, the well-established effectiveness and safety benefits of solitary — just as with pepper spray or restraint chairs — have become targets of self-styled reformers. There are many operational justifications to support the value of solitary confinement; however, one that justifies attention is the litigation threat to corrections officials if they fail to protect prisoners from violence when the officials know of a serious or excessive risk of prisoner-on-prisoner violence.

The Supreme Court has ruled that if officials know of a substantial risk of harm to a prisoner, but knowingly disregard the risk by failing to take reasonable measures to abate it, and the prisoner suffers serious harm, the officials may be found deliberately indifferent and thus liable for the harm to the prisoner. When officials know a prisoner is a gang member, a predator or has other violent propensities, assigning that prisoner to general housing and permitting the prisoner to have direct interaction with other inmates pose a strong potential to create a substantial threat of violence to other prisoners. Solitary limits prisoner violence by limiting physical contact with other inmates and staff. Simply put, limiting or controlling violent prisoners’ interaction with other prisoners greatly limits the potential for violence.

A time limit on confinement is appropriate in cases where the aim is to discipline a rule-breaking inmate. But when the isolation is based on a prisoner’s history of being a violent predator or violent gang member, the time frame for solitary confinement should be indefinite. A few months in isolation do not change a highly dangerous individual into an easily manageable prisoner. Solitary confinement of such prisoners is, in many cases, essential to the safety of other inmates and staff.

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in recent months against the federal supermax at Florence, Colo., the California supermax at Pelican Bay and the Arizona state prison system, including its long-term solitary unit, present a long list of charges against officials of the three systems.

None of the systems has yet filed a detailed response to the allegations. However, Federal Bureau of Prisons Director Samuels in effect countered the federal lawsuit's allegations that the Florence supermax housed deeply mentally ill prisoners and denied them effective treatment. "Only a very small proportion of offenders are held in more restricted housing, and most for only brief periods of time," Samuels said.

Referring to the strict-solitary wing, Samuels said placement "is restricted to inmates who clearly pose an extreme safety risk and need stringent restrictions to maintain safety for other inmates, staff, institutional operations and the public."⁷¹

The lawsuit against the Florence prison, filed on behalf of five inmates by Arnold & Porter, a prominent Washington law firm, and the Washington Lawyers' Committee for Civil Rights and Urban Affairs, lays out a harrowing account of untreated mental illness in the most restrictive of the solitary confinement units.

"Even where prisoners . . . are properly identified as having a serious mental illness," the lawsuit states, "many are not given appropriate treatment, including either counseling or medication." In allegedly withholding treatment, the bureau is ignoring its own rules, the lawsuit says.⁷²

The lawsuit's lengthy and highly detailed accounts of self-mutilation and other self-destructive behavior prompted a similarly detailed and impassioned denunciation of the supermax by Andrew Cohen, a contributing editor at *The Atlantic* magazine and a legal analyst for CBS News' "60 Minutes."

"For these inmates," Cohen wrote of mentally ill prisoners in strict solitary, "the prison is a gulag, a place of unspeakable cruelty and state-sponsored wickedness, run by officials who ignore their own policies and seem to revel in humiliating prisoners by depriving them of basic human dignities."⁷³

A separate but related lawsuit filed last May centers on the suicide of an allegedly severely mentally ill inmate at Florence in 2010. José Martin Vega, who was serving four consecutive life sentences on a 1995 conviction for racketeering and armed drug trafficking, had been diagnosed as a paranoid schizophrenic, the lawsuit alleges.⁷⁴

Vega's brother, Raymond, represented by an Arnold & Porter lawyer, is suing warden Blake R. Davis over the suicide, alleging that prison staff chained Vega, sometimes for 10 days or more at a time, instead of treating him. "The behavior claimed by the BOP (Bureau of Prisons) to justify such abuse was a product of Vega's untreated mental illness," the lawsuit states, without specifying Vega's behavior.⁷⁵

Vega was found dead in his cell. A coroner ruled he had hanged himself.

Treatment of mentally ill prisoners, including those held in long-term solitary, is also a major issue in a federal class-action lawsuit filed in March against Arizona prison officials for allegedly seriously deficient medical care, including mental health care, throughout the state's prison system.⁷⁶

Lawyers for the state deny specific allegations. And, they wrote in their first response to the lawsuit, they specifically rejected the claim that prison officials "are deliberately indifferent to a substantial risk of serious physical or psychiatric harm" to prisoners in solitary. Further, they said that prisoners are kept in solitary only for unspecified short periods of time, except for prison gang members. The latter, the state said, can exit solitary by providing information about gang activities and renouncing membership.⁷⁷

And California's Pelican Bay supermax is the target of a class-action lawsuit filed last May that centers on gang members and alleged members. California prison policy, the lawsuit alleges, is to confine these prisoners in strict solitary unless they "debrief" with prison staff — that is, provide information on other inmates' gang activities. Informing on fellow prisoners, the lawsuit says, would invite retaliation on the informants and their families. "Accordingly, for those many prisoners who refuse or are unable to debrief, defendants' policies result in 'effectively permanent' solitary confinement," the lawsuit says.⁷⁸

Moreover, according to the lawsuit, evidence of gang affiliation for at least some of the prisoners is sketchy. One plaintiff, George Ruiz, has been in solitary confinement for 22 years "based on nothing more than his appearance on lists of alleged gang members discovered in some unnamed prisoners' cells and his possession of allegedly gang-related drawings."⁷⁹

The lawsuit, filed by lawyers of the New York-based Center for Constitutional Rights, followed a hunger strike last year by prisoners in the Pelican Bay long-term solitary unit. Among other issues, they were protesting the debriefing requirement. In response, California's undersecretary of corrections, Scott Kernan, told prisoners that the state would assess the criteria by which prisoners are categorized as gang members, as well as the debriefing procedure.⁸⁰

After the lawsuit was filed, the department declined to comment. But a spokesman told a reporter that the department was still designing a system under which prisoners could "demonstrate their ability to refrain from criminal gang behavior" and would undergo preparation for living in "housing in a less restrictive environment." Prisoners still in solitary would get added privileges if they "refrain from criminal gang behavior."⁸¹

OUTLOOK

'Losing Favor'

Prison experts generally concur that supermaxes and the strict isolation they represent will keep declining in use. "It's losing favor as a result, to some extent, of litigation," says Martin, the Texas-based prison consultant and monitor. Driving the supermax decline, he says, are judicial prohibitions on keeping mentally ill prisoners in strict solitary.

Aside from the fact that mentally ill prisoners typically make up a large percentage of supermax inmates, Martin says, "There is growing acknowledgement by prison administrators that we need to be more careful in choosing to put people in segregation and need to be more careful in how long we keep them. Systems are learning to operate without such a reliance on segregation."

Atherton, the Colorado prison consultant, also sees a trend, but argues that it won't and shouldn't lead to complete abolition of long-term solitary. Financial pressures to close supermaxes are real, he says, and politicians may want to close isolation units to build support among prison critics. "They'll close administrative segregation and say, 'Look what a wonderful person I am.' Or they will be judicious and preserve the ways in which wardens can put bad people in lockup."

Strict solitary confinement won't disappear, Atherton argues. "Wardens and correctional professional associations will rise up and preserve the ability to provide administrative segregation, which by law is constitutional." However, he says, "It might be used less because of the cost."

Cohen, the Arizona penology editor, also says further supermax closings are likely — but only "if you

can pitch it in a way that says you're not compromising safety inside or out."

One danger of continuing a relatively high use of strict solitary, he says, is that prisoners will come to depend on court rulings prohibiting that form of imprisonment for the mentally ill. "You end up putting a premium on mental illness: 'If it takes being crazy to stay out, I'll be crazy.'"

DeLand, the former Utah corrections official and a defender of strict solitary confinement, concedes that supermax construction became a "fad." But, he says, "You have to recognize you have certain prisoners" who require round-the-clock lockdown.

"You want your very best people running these operations," DeLand says. Under those circumstances, he says, "They work pretty well."

Nonetheless, says the ACLU's Fathi, financial and legal pressures to decrease use of long-term solitary are becoming overwhelming. "This is an enormously expensive way to house people," he says. "As states are experiencing fiscal pressure, they are taking a long-overdue second look at whether this is an appropriate use of scarce public dollars."

Meanwhile, prison professionals are increasingly recognizing that supermax-type confinement "is overused and that there are people there who don't belong there."

Mills of the Uptown People's Law Center in Chicago, whose litigation against the Tamms supermax in Illinois helped set the stage for the governor's order to close the prison, says that move represents an irreversible trend. "In 10 to 15 years, I don't think that more than one or two will be left."

Supermaxes, Mills says, "were an experiment that never had an evidentiary basis in the first place. There is no empirical evidence that they make prisons systems any safer. The economy no longer gives states the money to experiment." ■

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About the Author

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FOR MORE INFORMATION

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American Correctional Association, 206 N. Washington St., Alexandria, VA 22314; 703-224-0000; www.aca.org. Provides material on solitary confinement.

Civil Rights Litigation Clearinghouse, University of Michigan Law School, 625 South State St., Ann Arbor, MI 48109; 734-647-2160; <http://clearinghouse.net>. National repository of litigation documents, many from major lawsuits over conditions in solitary confinement.

National Institute of Justice, 810 7th St., N.W., Washington, DC 20531; 202-307-0703; www.nij.gov/nij/topics/corrections/institutional/welcome.htm#. Justice Department's research arm; includes a library of studies on prison issues.

Segregation Reduction Project, Vera Institute of Justice, 1100 First St., N.E., Suite 950, Washington, DC 20002; 202-465-8900; www.vera.org/project/segregation-reduction-project. Advocacy effort that aims to lower the number of prisoners in long-term solitary confinement, conducted with state corrections departments.

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