

Reining in Solitary Confinement in Texas: Recent Progress and Next Steps

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Texas Public Policy
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Executive Summary

Solitary confinement must be carefully scrutinized, principally because it constitutes a significant deprivation of liberty for those who have already been segregated from society. Additionally, a growing body of research has found that there are alternatives to prolonged solitary confinement that are not merely less restrictive but also at least as effective for maintaining safety and order.

The data set forth below show that, over the last decade, Texas has significantly cut the number of people in solitary confinement but continues to exponentially exceed other states' numbers when it comes to confining people in solitary for long periods, often for 6 years or more. In light of the overwhelming evidence discussed below demonstrating the serious physical and mental health consequences of such long periods of isolation, policymakers and agency officials must identify safe ways to transition more individuals from long-term solitary confinement while also providing more out-of-cell time and leveraging technology to increase access to programming for those who remain there.

Introduction

Prison may seem like the ultimate deprivation of liberty, but in fact, there are prisons within prisons. Solitary confinement, which segregates inmates from the general correctional population and requires them to spend 22 hours or more a day in a tiny cell, may seem like the path of least resistance for often overburdened corrections personnel, but increasing evidence shows it is harmful to both the individuals affected and, upon their release, to society as a whole.

Corrections officials are charged with important responsibilities such as preventing escapes, protecting staff and vulnerable populations, and promoting effective rehabilitation. They are entitled to some deference in pursuing these goals, but unlike defendants in court, prisoners who claim they are not gang members or did not commit the violation that resulted in their placement in solitary confinement are not entitled to an attorney or perhaps even a hearing. Moreover, correctional staff may view prisoners' actions and statements with skepticism, especially since some were convicted of crimes involving dishonesty.

A 2018 Texas scandal involving correctional officers who planted contraband on prisoners to create disciplinary violations demonstrates that alleged violations are not always clear cut or sometimes may not have any basis at all ([Lisher, 2018](#)). Given that those subject to solitary confinement have limited ability to challenge this placement, external accountability for correctional decisions is critical, and the conservative impulse to temper government power with accountability is particularly important to check the overuse of prolonged solitary confinement.

For a person in solitary confinement with no realistic prospect for regaining greater freedom of movement or other privileges, there is no leverage to incentivize their behavior. Paradoxically, the complete loss of freedom provides a license to act with impunity. This led the association representing Texas correctional

Key Points

- Texas prisons have historically relied on solitary confinement to promote order and safety, but growing research and recent experience suggest that there are often less damaging alternatives to prolonged solitary confinement.
- Texas has made remarkable progress over the last decade in cutting admissions to solitary confinement and eliminating the practice of discharging individuals directly from solitary confinement to society, but Texas continues to far outstrip other states in the number of people kept in solitary for several years or more.
- Texas should build on recent progress by expanding efforts to gradually step down individuals in long-term isolation to a lower custody level while also increasing the use of technology to provide educational programming for those who remain in solitary confinement.

officers, the American Federation of State, County, and Municipal Employees Local 3807, to call for scaling back the automatic use of isolation for those on death row ([Flatow, 2014](#)). Noting that “inmates have very few privileges to lose” ([para. 3](#)) during the hour or two per day a guard must escort the person out of their cell to take a shower and engage in other basic activities, a union representative argued prison guards became targets as a result.

From Colorado to Maine, many jurisdictions have successfully implemented alternative approaches that do not involve ignoring misconduct within prisons but instead utilize other sanctions and withdrawal of privileges for problematic behavior that does not present an imminent danger. Jurisdictions that have reined in the use of prolonged solitary confinement have also implemented incentives for those in segregation for brief periods to earn their way out through gradual participation in more and more programming, even if some of it initially occurs while chained to a table. Other promising policies, which can be implemented either administratively or legislatively, include more closely tracking data on the use of solitary confinement, ensuring due process in placement decisions, and enhancing correctional officer training in de-escalation tactics. Momentum continues to build for reform, with numerous corrections agencies taking internal steps, New Jersey and Minnesota enacting legislation in 2019, and the American Legislative Exchange Council ([ALEC, 2019](#)) adopting a model policy in December 2019.

Accountability can take the form of administrative policies and practices, and in some cases, statutory limitations. For example, there should be protocols for review by management to ensure that a single corrections officer cannot mete out this sanction, at least beyond a 24-hour period. Given the magnitude of the deprivation of liberty involved, limitations on this practice in Texas and across the nation are necessary to avoid succumbing to an “out of sight, out of mind” mentality. Fortunately, like other jurisdictions, Texas has made significant progress in safely reducing the number of people in solitary confinement while also promoting safety for both staff and those who are incarcerated, but more work is necessary, especially to address the disproportionate number of individuals in long-term isolation in Texas as compared with other states.

The Scope of Solitary Confinement in the U.S. and Texas

In 2016, the United States Department of Justice (DOJ) defined solitary confinement as:

- *Removal from the general inmate population, whether voluntary or involuntary;*
- *Placement in a locked room or cell, whether alone or with another inmate; and*
- *Inability to leave the room or cell for the vast majority of the day, typically 22 hours or more. ([United States Department of Justice, 2016, p. 3](#))*

The DOJ report predominantly uses the term “restrictive housing.” This publication will use the most recognizable term regarding the practice, “solitary confinement,” though the term can be a misnomer in some circumstances. In accordance with the DOJ’s definition, “solitary confinement” may connote conditions of confinement that are not literally solitary, but rather where two individuals are confined in a small cell for at least 22 hours a day. While not crucial to the definition, the average solitary cell is just 60 to 80 square feet ([Cloud et al., 2015](#)).

In 2018, the Association of State Correctional Administrators joined with the Arthur Liman Center for Public Policy at Yale University to produce a survey that generated responses from 45 states and the

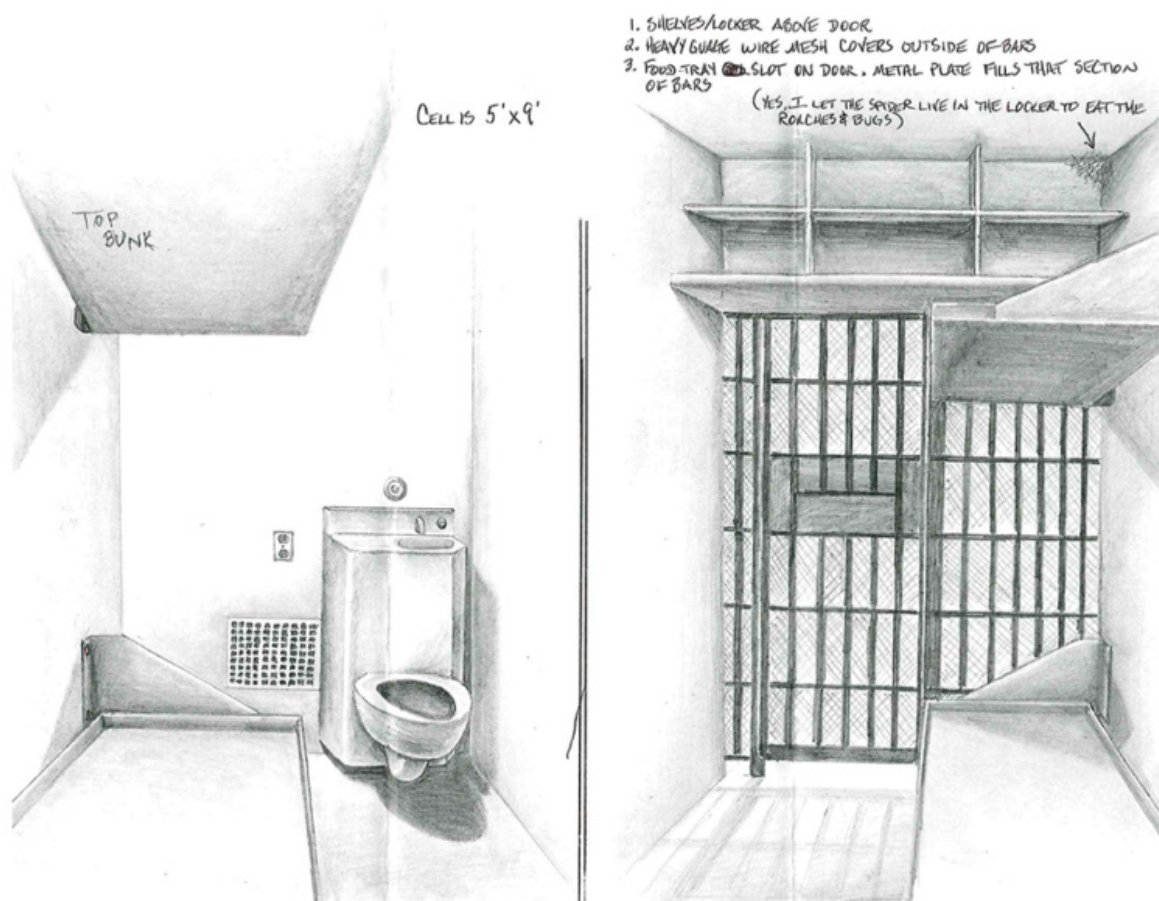
Federal Bureau of Prisons. The survey defined restrictive housing as the practice of placing individuals in separate cells for an average of 22 hours or more per day for 15 or more continuous days ([Association of State Correctional Administrators & the Liman Center \[ASCA-Liman\], 2018, p. 4](#)). The results indicated an average of 4.6% of inmates were in restrictive housing. In the responding jurisdictions, 22.8% of inmates stayed in solitary confinement for 15 to 30 days, and 18.7% stayed a year or more ([pp. 11, 14](#)). The focus on 15 or more continuous days is important because it weeds out cases in which a brief “time-out” is used to defuse a tense situation and focuses instead on substantial periods of isolation, which, as described below, are most problematic from a health standpoint.

From an international perspective, solitary confinement is used in the United States far more often and for longer periods than in countries such as Germany, where it is rare and limited to stays of between 3 and 5 days ([York, 2019](#)). For example, at the Waldeck Prison and Neustrelitz Prison, isolation had only been used a few times over the last several years, in each case for a few hours ([Subramanian &](#)

In 2017, Texas prison officials discontinued the use of solitary confinement as punishment.

Figure 1

Sketch by Texas Prisoner Aaron Striz Showing One of the Solitary Cells in Which He Has Lived for More Than 18 Years



Note. Sketch taken from "A Solitary Condition" by Michael Barajas, January 21, 2020, *Texas Observer* (<https://www.texasobserver.org/solitary-confinement-texas>).

[Shames, 2013, p. 13](#)). The report also states that the maximum period of solitary confinement in any given year under statute in Germany is 4 weeks and only 2 weeks in the Netherlands. German prisons are aspirational in many ways, and their differences from most American prisons in areas such as staffing ratios and physical design arguably contribute to their ability to operate safely with virtually no use of isolation.

Over the last decade, Texas has made significant headway in reducing the number of people in solitary confinement such that an analysis of 2019 data from 39 states by Yale University's Liman Center found that Texas has 3.1% of its prisoners in restrictive housing compared with the national average of 3.8% ([Correctional Leaders Association & the Liman Center \[CLA-Liman\], 2020](#)). Indeed, as of August 31, 2010, there were 8,701 people ([TDCJ, 2010, p. 1](#)) in some form of solitary confinement, which fell to 5,919 as of April 30, 2020 (A. C. Barbee, TDCJ, personal communication, July 2020). In 2017, Texas prison officials discontinued

the use of solitary confinement as punishment, meaning that those who remain there are there because of determinations of gang involvement or security threats ([Blakinger, 2017](#); [Associated Press, 2017a](#)).

Perhaps the area of greatest progress is that TDCJ has almost eliminated the direct discharge of people from solitary confinement over the last decade. In 2010, 1,314 individuals were released directly from this custody level ([TDCJ, 2010](#)), but this figure fell to only 16 by 2018, the most recent year for which data are available ([TDCJ, 2018](#)).

However, Texas is at the bottom when it comes to keeping people in solitary for long periods. For example, as of 2019, some 25.5% of those in solitary confinement in Texas have been there for 6 years or more, compared to the 5.7% average across the 33 surveyed states, including Texas ([CLA-Liman, 2020, pp. 13-14](#)). This equates to 1,124 Texans, far exceeding the 431 people in isolation for 6 years or more in the other 33 states surveyed in 2019. Texas also surpasses other states for stays of between 3 and 6 years and of at least

1 year, with a total of 67.4% within these three categories, compared to the national average of 25.4%. (pp. 13-14) Data obtained from TDCJ as of April 30, 2020, reflects that the solitary population at TDCJ continues to be composed mostly of people there for extended periods, with 67% of those so confined having been there for a year or more (A. C. Barbee, TDCJ, personal communication, July 2020).

Texas has more than one type of solitary confinement. The most common form is administrative segregation or security detention, which also includes the small number of state jail inmates in “SR custody,” which denotes individuals who have attempted to escape a security restraint. These individuals are separated from the general population because they have either been determined to be too dangerous to others or have been determined to be gang members by the Security Threat Group Management Office (TDCJ, 2017). In 2017, TDCJ announced it would no longer use administrative segregation for punitive reasons, but disciplinary violations form part of the basis on which it is determined that an individual poses too great a danger to remain in the general population (Harding & Steffensen, 2019). As of April 30, 2020, administrative segregation encompasses 4,466 individuals in state prisons and 58 in state jails (A. C. Barbee, TDCJ, personal communication, July 2020). They spend at least 22 hours in their cells each day. Depending on the unit, some have showers in their cells, while others must be escorted to take a shower.

Some 1,966 of the prisoners held in administrative segregation are there due to identification with a Security Threat Group (Harding & Steffensen, 2019, pp. 1-2). TDCJ recognizes 12 Security Threat Groups, ranging from the Aryan Nation to the Bloods and Crips to the Mexican Mafia (TDCJ, 2007). In 2018, 385 individuals were placed in administrative segregation immediately upon intake (TDCJ, 2018, p. 2). Upon arrival, these individuals would not fall within the category of having demonstrated a security threat at TDCJ so the remaining reason for administrative segregation classification upon intake would be suspected gang membership (Blakinger, 2017; Associated Press, 2017a). TDCJ’s official policy is to provide a review for prisoners in administrative segregation every 6 months. However, this review is done every 12 months for those placed there due to identification with a Security Threat Group (Harding & Steffensen, 2019). In order to return to the general population, those in administrative segregation deemed to be members of a Security Threat Group must complete a 2-year process known as the Gang Renunciation

and Disassociation (GRAD) program. It requires that individuals acknowledge their role in a Security Threat Group, a requirement that is justified only insofar as TDCJ is entirely accurate in identifying such individuals.

In recent years, TDCJ has created several programs related to GRAD and to successful reentry into the general population and ultimately society:

- **Returning Population GRAD (RP-GRAD)** – begun in August 2014, this program provides prison gang members who are returning to prison with the opportunity to immediately participate in a program similar to GRAD. This keeps them from placement into restrictive housing.
- **Cognitive Intervention Transition Program (CITP)** – begun in March 2014, this program assists offenders in the transition from Security Detention to the General Population and from G5 custody [a custody level for those who have committed an assault behind bars just above administrative segregation with tightly limited visitation and other privileges] to other custody levels. Programming consists of over 300 hours of classroom activities and workbooks designed for independent study. The curriculum targets work on emotional balance, beliefs, dysfunctional thinking patterns, life and coping skills, problem solving, and building/maintaining appropriate and healthy relationships.
- **Corrective Intervention Pre-Release Program (CIPP)** – begun in July 2012, this program provides pre-release programming in a less restrictive environment for offenders who were previously housed in Restrictive Housing. The curriculum utilizes evidence-based principles and strategies targeting criminogenic needs, use of cognitive behavioral interventions, and the enhancement of reentry opportunities for offenders upon release. The program curriculum incorporates the use of technology to deliver portions of the material and allows offenders to participate in group recreation and group treatment. (A. C. Barbee, TDCJ, personal communication, October 2020)

As of April 30, 2020, there were another 1,391 individuals in safekeeping in Texas prisons along with 4 in state jails (A. C. Barbee, TDCJ, personal communication, July 2020). This status refers to those individuals, such as police

TDCJ continues to be composed mostly of people there for extended periods, 67% of whom have been there for a year or more.

officers, transgender people, and those under threat from a gang, whom TDCJ has determined face harm in the general population. Since they are allowed visitation and other privileges not given to those in administrative segregation and, in some cases, requested placement in safekeeping, they are not counted in national data comparing Texas to other states on the use of solitary confinement ([CLA-Liman, 2020](#)). Accordingly, the data in the Yale/CLA-Liman report on the number of people in solitary at TDCJ aligns with the figures in TDCJ's annual statistical reports for the number of people in administrative segregation (recently rebranded "security detention"), which is not inclusive of those individuals in safekeeping.

Another challenge is special populations. In 2019, Texas lawmakers enacted legislation banning the use of solitary confinement for pregnant women and women who recently gave birth ([Clarke, 2019](#)). As of April 30, 2020, there were 61 women in administrative segregation at Texas prisons (A. C. Barbee, TDCJ, personal communication, July 2020). Those with mental illness represent a much larger group in administrative segregation. TDCJ reports that some 1,297 of those individuals in administrative segregation had a flag for mental illness.

Finally, in light of the COVID-19 pandemic, experts have emphasized the importance during the pandemic of distinguishing medical isolation from solitary confinement. At least in theory, there are many key differences, including that placement in medical isolation is to be based on a decision by medical staff following a clinic assessment and, likewise, the point at which the individual is returned to the general population ([Cloud et al., 2020](#)). TDCJ assures that "medical isolation ends when the individual meets pre-established clinical and/or testing criteria for release from isolation" ([TDCJ, n.d.-b](#)). Additionally, privileges such as access to recreation, phone calls, and mail should not

be limited in medical isolation unless necessary to protect others ([Cloud et al., 2020](#)).

In October, TDCJ provided the following information to the Foundation and Right on Crime regarding their use of medical isolation: "Depending upon the layout of the facility, they may be moved to a single-cell or they may also be cohorted with individuals who are of the same testing status (asymptomatic vs. symptomatic). The offender is allowed a phone call to let loved ones know of their testing status. They do receive mail and reading material. Typically, an offender would spend 14 days or less in medical isolation" (A. C. Barbee, TDCJ, personal communication, October 2020). As of October 14, 2020, there were 1,423 individuals in medical isolation in TDCJ prisons and jails ([TDCJ, n.d.-a](#)).

Health Consequences of Solitary Confinement

The *Journal of the American Academy of Psychiatry and the Law* has explained the negative psychological impact of prolonged isolation:

Isolation can be psychologically harmful to any prisoner, with the nature and severity of the impact depending on the individual, the duration, and particular conditions (e.g., access to natural light, books, or radio). Psychological effects can include anxiety, depression, anger, cognitive disturbances, perceptual distortions, obsessive thoughts, paranoia, and psychosis. ([Metzner & Fellner, 2010, p. 104](#))

Additionally, a study ([Lovell et al., 2007](#)) found that inmates released directly from a prison known as a supermax unit (because it is dedicated entirely to solitary confinement) committed new felonies at a rate 35% higher than that of inmates of the same risk profile released from a general population facility ([p. 646](#)). However, those stepped down to the general population in the months prior to release only

THE ANTHONY GRAVES STORY



Texan Anthony Graves spent 18 years on death row, including 10 years in solitary confinement, before being exonerated of a murder. In his congressional testimony, Graves stated "I would watch guys come to prison totally sane, and in three years they do not live in the real world anymore" (Senate Judiciary Subcommittee on Constitution, Human Rights and Civil Rights Hearing, 2012, p. 26). One fellow inmate, Graves said, "would go out into the recreation yard, get naked, lie down and urinate all over himself. He would take his feces

and smear it on himself." Graves added, "I have not had a good night's sleep since I have been out," he said. "I have mood swings that just cause emotional breakdowns."

had a slightly higher recidivism rate that was not statistically significant than the control group of those who were never placed in solitary confinement.

A review of the research on the psychological effects of solitary confinement by Psychology Professor Craig Haney (2019) found evidence of “stress-related reactions (such as decreased appetite, trembling hands, sweating palms, heart palpitations, and a sense of impending emotional breakdown); sleep disturbances (including nightmares and sleeplessness); heightened levels of anxiety and panic; irritability, aggression, and rage; paranoia, ruminations, and violent fantasies; cognitive dysfunction, hyper-sensitivity to stimuli, and hallucinations; loss of emotional control, mood swings, lethargy, flattened affect, and depression; increased suicidality and instances of self-harm; and, finally, paradoxical tendencies to further social withdrawal” (Haney, 2019, p. 371).

Researchers have also detected some neurological indicia associated with prolonged isolation. For instance, it can reduce the size of the hippocampus as well as its capacity for generating new neurons (Blanco-Suarez, 2019). This can negatively affect the ability to learn and remember, as well as spatial awareness. Brain scans have found that the amygdala, the part of the brain involved with emotions, increases its activity in response to isolation, which is associated with heightened fear and anxiety.

Christopher Guffey, who has been in solitary confinement in a Texas prison for more than 16 years, told the *Texas Observer* that “isolation shatters the mind and corrupts the soul, and breeds a darkness that even the light of Jesus Christ struggles to diminish” (Barajas, 2020, section III). “Between 2015 and 2018, there were 17 tragic and preventable suicides in TDCJ’s solitary confinement cells” (Harding & Steffensen, 2019, p. 8).

How Other Jurisdictions Have Downsized Solitary Confinement

Several recent examples demonstrate how the use of prolonged solitary confinement has been reined in while improving correctional environments for both staff and inmates.

At its state prison in Warren, Maine, where the population in solitary confinement was reduced from 139 to between 35 and 45 in just one year, implemented some of the strategies included using alternatives to respond to routine disciplinary violations and cutting the duration of isolation. Notably, additional review at a higher level was instituted. “Rather than the shift captain being able to place an inmate in segregation for more than three days, the segregation unit manager and the housing unit manager” had to agree

after a 72-hour period to continue the segregation, followed by the ratification of that decision by the commissioner. (ALEC, 2019). Following the changes, violence, use of force, and self-harm incidents declined, as did overtime costs for correctional officers (Barber, 2012).

In response to litigation, Mississippi similarly instituted several changes, including a step-down system to accelerate transition back into the general population and increased training for prison guards (Simms, 2017, p. 249). All told, Mississippi achieved a 75% drop in solitary confinement over 6 years, enabling the shuttering of the solitary unit at the Parchman prison that saved taxpayers \$6 million per year (Pinkston & Hirschhorn, 2013). More importantly, following implementation of the new policies, violence against staff and prisoners within Mississippi’s correctional system declined nearly 70% (Simms, 2017, pp. 249-250).

Finally, Colorado has had the most tragic and dramatic experience in overhauling the use of solitary confinement. In 2013, an individual released directly from solitary confinement murdered the state’s director of corrections, Tom Clements (Prendergast, 2014). Dating back to 2002, half of those released from Colorado prisons who subsequently committed murder served time in solitary confinement (Crummy & Brown, 2016). Moreover, 47% of those leaving solitary were discharged directly to the street (Prendergast, 2014). Colorado phased out this dangerous practice and also reduced the solitary count from 1,500 in 2011 to just 185 by 2016, even as inmate assaults on staff fell over this time (Hall, 2016). In 2017, Colorado eliminated solitary confinement periods of more than 15 days, achieving the international standard that is part of the Mandela Rules (Associated Press, 2017b; United Nations Office on Drugs and Crime, 2015). Key reforms implemented by the Colorado Department of Corrections included de-escalation rooms and gradually increasing hours outside the cell for programming, even when that initially involves the inmate being chained to a table during the programming. The Colorado Department of Corrections also enhanced transparency, including submitting annual reports to the Legislature.

Many other jurisdictions, including both state prison systems and local jails, have achieved substantial reductions in the use of solitary confinement, often with outside technical assistance providers. For example, the Vera Institute has highlighted the reductions achieved through its partnerships with the Nebraska Department of Correctional Services, North Carolina Department of Public Safety, Oregon Department of Corrections, New York City Department of Corrections, and Middlesex County Adult Correction Center in New Jersey (Digard

[et al., 2018](#)). Similarly, corrections leaders such as former Colorado Department of Corrections Executive Director Rick Raemisch, former Idaho Department of Correction Director Henry Atencio, North Dakota Department of Corrections and Rehabilitation Director Leann Bertsch, and former Ohio Department of Rehabilitation and Correction Director Gary Mohr have described the steps they took to reduce solitary confinement, which involved both changes in practice and culture ([ASCA-Liman, 2018](#)).

Although reforms to solitary confinement most often do not require legislation, statutory changes can make positive changes more durable rather than being subject to changes in agency leadership. While it is too early to assess the impact of bills enacted in 2019, both New Jersey and Minnesota adopted legislation to reform the use of solitary confinement.

The New Jersey bill ([A314, 2019](#)) encompasses several reforms. First, it only permits the use of solitary confinement, defined as segregation for 22 hours a day or more, if there is “reasonable cause to believe that the inmate or others would be at substantial risk of serious harm as evidenced by recent threats or conduct.” It also caps the time in solitary at 20 consecutive days or 30 total days over any period of 60 days, unless there is a facility-wide lockdown. The legislation, which went into effect in August 2020, requires state prisons and county jails to screen inmates for mental illness before and during isolated confinement and includes a data reporting provision. The bill also contains specific limits on the use of solitary confinement for vulnerable populations, such as the seriously mentally ill and pregnant women. It prohibits solitary confinement in such instances, with exceptions for unit-wide lockdowns, 24-hour emergency placements, protective custody, and if a clinician certifies that it is necessary.

The Minnesota legislation ([SF 1911, 2019](#)), also enacted in 2019, takes a narrower approach. The bill, championed by state Rep. Nick Zerwas (R-Elk River), was propelled by investigative reporting in the *Minneapolis Star-Tribune* that revealed 1,600 individuals were in solitary confinement for 6 months or more, including many who were mentally ill and had simply disobeyed an order ([Mannix, 2016](#)). The bill requires a psychological screening before those exhibiting signs of mental illness may be placed in solitary confinement. It also calls for daily wellness checks and creates a path for those in solitary confinement to earn back privileges through good behavior, including returning to the general population. Finally, the legislation creates reporting requirements to track the number of people in solitary confinement and prohibits releasing individuals directly from solitary confinement to the public.

Recommendations

Provide additional annual transparency on TDCJ’s use of solitary confinement

TDCJ’s annual statistical report currently includes data on how many individuals are in each level of custody, including administrative segregation and safekeeping. However, it should also include a breakdown of how many have been in isolation for extended periods of time. Additionally, this reporting should include special populations such as those with mental illness. Finally, unit-specific data should be shared internally and externally, allowing for identification of facilities that may be disproportionately utilizing solitary confinement even after accounting for differences in the composition of their incarcerated population.

Enhance training of correctional officers in de-escalation tactics

An examination of correctional officer training at TDCJ found that one area where it is deficient is in interpersonal skills ([Miller, 2016](#)). Enhancing training in communication skills that contribute to de-escalation could defuse conflicts that may lead to solitary confinement. Such de-escalating training, including mental health first aid training for corrections officers, has been an important part of the North Carolina Department of Public Safety’s initiative to reduce the number of people in solitary confinement. ([Wilcox et al., 2016](#)). It parallels the Crisis Intervention Training (CIT) that most major police departments have implemented because of its effectiveness in helping officers defuse encounters, particularly those with mentally ill persons, resulting in greater use of diversion and increased officer satisfaction ([Rogers et al., 2019](#)).

Implement Colorado’s approach of gradually introducing more out-of-cell time

Part of the success in Colorado stemmed from gradually giving those who had been in solitary confinement for many years more time out of their cell. The increased level of acclimation to human interaction was achieved, consistent with security concerns. For example, individuals were initially connected by restraints to the bench at the table while participating in small group programs conducted at tables ([Lantigua-Williams, 2016](#)). Former Colorado Department of Corrections Executive Director Rick Raemisch, who spearheaded the reforms, points to the 10-in-10 program, which begins with 10 hours of therapy per week followed by 10 hours of extracurricular activities. Raemisch explains:

The first step-down program is really just more of a socialization period when they’re out with other inmates a minimum of four hours per day. Once the clinicians feel that they’re ready to move on, they go into another step-down program where there’s actual

therapy programming: anti-anger, cognitive programming, things of that nature. We looked at it systemwide and saw the [violent] incidences were down. (Lantigua-Williams, 2016, para. 24)

With proper staffing and physical space, this approach could allow TDCJ to reduce the number of individuals who have been in isolation for long periods.

Expand GRAD program and experiment to see if shorter duration is equally effective

No one should remain in solitary confinement unless they continue to present a substantial danger, but this raises the question of what avenues are available to those in solitary confinement to prove that whatever factors led to them being placed there are no longer present. Such hope also helps counteract risks that are increased to the extent a person in solitary confinement comes to believe he has “nothing to lose” by acting out even while in solitary.

At TDCJ, a period of exemplary behavior and gang renunciation are two factors that are often required to unlock the solitary confinement cell. The agency’s Gang Renouncement and Disassociation program includes many steps to ensure the participant is sincere and, between 2000 and 2015, 4,754 inmates have completed the program, and just 19 were found to have returned to their gangs (Schiller, 2016). While this level of success is impressive, on an annualized basis, this means only 317 individuals complete the program, far fewer than the number of individuals assigned to administrative segregation, even accounting for the recent decline in that figure. As of August 31, 2020, only 33 individuals were enrolled in GRAD, and another 43 were enrolled in RP-GRAD for a total of 76 (A. C. Barbee, TDCJ, personal communication, October 2020).

Accordingly, TDCJ and policymakers should explore what resources would be needed to expand the capacity of the GRAD and RP-GRAD programs while also identifying whether some participants could complete it in fewer than the current requirement of 9 months.

Require specific assessment of dangerousness and consideration of alternatives before assignment to segregation upon admission

While the presence and activities of Security Threat Groups pose significant obstacles to operating correctional institutions, it is also true that in some cases people inside and outside prisons join these organizations partly for their own protection. If a person admitted to prison has not previously committed an act of violence during a prior incarceration, the fact that they are suspected of being a member of a Security Threat Group does not necessarily mean that they will be disruptive and require long-term isolation. Lance Lowry, who heads the Texas Correctional Employees Union,

noted that there has not been any evidence that punitive solitary confinement “positively rehabilitates the individual” (Clarke, 2018, para. 3).

As the Texas prison population has fallen dramatically in recent years—120,709 as of the end of September 2020, which is 19,775 below operating capacity (Legislative Budget Board, 2020)—this could create an opportunity to ensure that members of rival Security Threat Groups are not present at the same unit or, at a minimum, at the same building within a unit. Even if there is only one Security Threat Group in a particular unit, efforts to reduce membership and provide positive alternatives are warranted. However, once the risk of immediate conflict is mitigated through separation by unit or the wings of a unit, prison officials may see less risk of an immediate conflict, avoiding the perceived need for resorting to extended isolation.

Continue expanding use of alternatives to solitary for individuals with mental illness and other special needs

TDCJ has implemented several solutions to address the substantial share of the population with mental illness, including:

- Program for the Aggressive Mentally Ill Offender (cognitive behavioral therapy program for those in administrative segregation that is designed to help them step down to a lower level of custody).
- Chronically Mentally Ill Inpatient Program (providing inpatient psychiatric hospitalization for patients requiring long-term, intensive mental healthcare).
- Chronically Mentally Ill Outpatient Program (serves patients requiring psychiatric sheltered housing).
- Mental Health Therapeutic Diversion Program (provides an alternative to administrative segregation for certain mentally ill offenders who would otherwise be housed in the restrictive housing environment).
- TDCJ psychiatric facilities (for those with mental illness so severe that they require care outside the unit).

The Chronically Mentally Ill Outpatient Program is particularly notable since it is part of the “sheltered housing,” sometimes referred to as “missioned housing” by other correctional agencies, that was funded as an exceptional item in TDCJ’s current budget. It provides a more humane alternative to isolation for not only those with serious mental illness but also those with developmental disabilities and geriatric-related illnesses. The U.S. Department of Justice has recommended such missioned housing, noting that this has enabled many to safely curtail the use of solitary confinement (United States Department of Justice, 2016, p. 74). Given that more than 1,200 individuals with a mental health

Figure 2

Inmates Play Dominoes at New Sheltered Housing Wing of Jester Unit



Note. Picture from TDCJ's *Connections Newsletter*, (25)3, January/February 2018, "Aging prison population drives need for more sheltered housing" section (https://www.tdcj.texas.gov/connections/2018JanFeb/agency_vol25no3.html)

flag remain in administrative segregation, agency officials and policymakers should identify opportunities for greater utilization of alternative forms of custody (A. C. Barbee, TDCJ, personal communication, July 2020).

Strengthen administrative reviews and cap duration of isolation absent exigent circumstances

The danger of someone being trapped in solitary confinement based on insufficient or even inaccurate evidence is not merely theoretical. In November 2019, it was revealed that many New York prisoners had been placed in solitary confinement due to flawed drug tests that produced false-positive results (Ransom, 2019). This illustrates the importance of ensuring due process and high-level review.

TDCJ does provide individuals with a review within 7 days of their placement in administrative segregation, but the Administrative Segregation Committee (ASC) that considers whether additional isolation is warranted consists entirely of staff appointed by the warden for that unit (TDCJ, 2012). Policies must reflect that TDCJ is such a large agency compared with its counterpart in Maine where the corrections commissioner reviews each case of prolonged isolation, but TDCJ's institutional division is divided into multiple regions, each of which has a director. By involving them in this process, the agency can ensure that there is consistency from one unit to the next and that wardens are not overusing solitary confinement.

There is also a need to strengthen the process of subsequent review for those who remain in isolation after the initial evaluation. Currently, TDCJ's State Classification Committee reviews each person in administrative

segregation every 6 or 12 months, with the longer set-off being for those held in solitary due to alleged gang status. The Texas Civil Rights Project conducted research that found the hearings are usually cursory, lasting just a few minutes without any requirement that the hearing officer indicate in writing a specific reason for denying transfer to a lower level of custody (Harding & Steffensen, 2019). Those individuals surveyed about their hearing described it as a cattle call with 73% saying they were dissatisfied with the quality of these hearings (p. 9). These hearings should be more rigorous in order to provide some level of due process. This can be accomplished through providing an opportunity to respond to the specific evidence on which the solitary classification is based, requiring a written record stating the reason for denial, and creating an appeals process beyond the grievance mechanism for general complaints.

Setting a maximum period of solitary confinement with precision is challenging. On the one hand, the negative effects begin soon after placement, as it has been found that even a few days of solitary confinement affect the brain. One study found that, after a few days, the electroencephalogram (EEG) pattern begins shifting in a way that is indicative of stupor and delirium (Grassian, 2006, p. 331). Still, there is a distinction between a condition that can revert to normal upon reentering the general population and long-term medical consequences noted above, such as those suffered by Anthony Graves (see inset about Anthony Graves).

The imperative is to balance the deleterious consequences of long-term isolation with the need to respond to urgent safety threats with a brief "time out" to defuse the situation. In light of the successful experiences in Colorado and many other jurisdictions, correctional institutions should strive to limit periods to no more than 15 to 20 days. To the extent a longer period is permitted, circumstances should be strictly specified, such as a unit-wide lockdown or because the inmate has been determined to be responsible for a serious violent or sex offense such as murdering another inmate. Additionally, in such cases, continued placement beyond the 15- to 20-day mark should be approved by a regional director unless the person has committed a violent act while incarcerated, is currently participating in the GRAD program, or is currently participating in gradual reintegration efforts as outlined above.

Conclusion

Brief periods of isolation are occasionally necessary to protect the safety of both people who are incarcerated and the staff responsible for them. TDCJ has made remarkable progress over the last decade both in cutting

the population in solitary confinement by about half and eliminating releases from this custody level, but the agency continues to keep a far greater percentage of its population in long-term isolation than other states. Given the physical and mental health repercussions of multi-year periods of solitary confinement and the proven success of states like

Colorado in transitioning from this practice, policymakers and TDCJ officials should take additional steps to address this, consistent with protecting the safety of everyone inside and outside Texas prisons. In doing so, Texas can affirm the importance of the last modicum of liberty even for those who are already segregated from society. ★

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Marc A. Levin, JD, is the chief of policy and innovation for the Right on Crime initiative at the Texas Public Policy Foundation.

An attorney and accomplished author on legal and public policy issues, Levin began the Foundation's criminal justice program in 2005. This work contributed to nationally praised policy changes that have been followed by dramatic declines in crime and incarceration in Texas. Building on this success, in 2010, Levin developed the concept for the Right on Crime initiative, a Foundation project in partnership with Prison Fellowship and the American Conservative Union Foundation. Right on Crime has become the national clearinghouse for conservative criminal justice reforms and has contributed to the adoption of policies in dozens of states that fight crime, support victims, and protect taxpayers.

In 2014, Levin was named one of the *Politico 50* in the magazine's annual "list of thinkers, doers, and dreamers who really matter in this age of gridlock and dysfunction." He also serves on the board of directors for the National Association of Drug Court Professionals.

Levin has testified on criminal justice policy on four occasions before Congress and has testified before legislatures in states including Texas, Nevada, Kansas, Wisconsin, and California. He also has met personally with leaders such as U.S. presidents, speakers of the House, and the Justice Committee of the United Kingdom Parliament to share his ideas on criminal justice reform. In 2007, he was honored in a resolution unanimously passed by the Texas House of Representatives that stated, "Mr. Levin's intellect is unparalleled and his research is impeccable."

Since 2005, Levin has published dozens of policy papers on topics such as sentencing, probation, parole, reentry, and overcriminalization which are available on the TPPF website. Levin's articles on law and public policy have been featured in publications such as the *Wall Street Journal*, *USA Today*, *Texas Review of Law & Politics*, *National Law Journal*, *New York Daily News*, *Jerusalem Post*, *Toronto Star*, *Atlanta Journal-Constitution*, *Philadelphia Inquirer*, *San Francisco Chronicle*, *Washington Times*, *Los Angeles Daily Journal*, *Charlotte Observer*, *Dallas Morning News*, *Houston Chronicle*, *Austin American-Statesman*, *San Antonio Express-News*, and *Reason Magazine*.

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About Texas Public Policy Foundation

The Texas Public Policy Foundation is a 501(c)3 nonprofit, nonpartisan research institute. The Foundation promotes and defends liberty, personal responsibility, and free enterprise in Texas and the nation by educating and affecting policymakers and the Texas public policy debate with academically sound research and outreach.

Funded by thousands of individuals, foundations, and corporations, the Foundation does not accept government funds or contributions to influence the outcomes of its research.

The public is demanding a different direction for their government, and the Texas Public Policy Foundation is providing the ideas that enable policymakers to chart that new course.

About Right on Crime

Right on Crime is a national campaign of the Texas Public Policy Foundation, in partnership with the American Conservative Union Foundation and Prison Fellowship, which supports conservative solutions for reducing crime, restoring victims, reforming offenders, and lowering taxpayer costs. The movement was born in Texas in 2007, and in recent years, dozens of states such as Georgia, Ohio, Kentucky, Mississippi, Oklahoma, and Louisiana, have led the way in implementing conservative criminal justice reforms.

