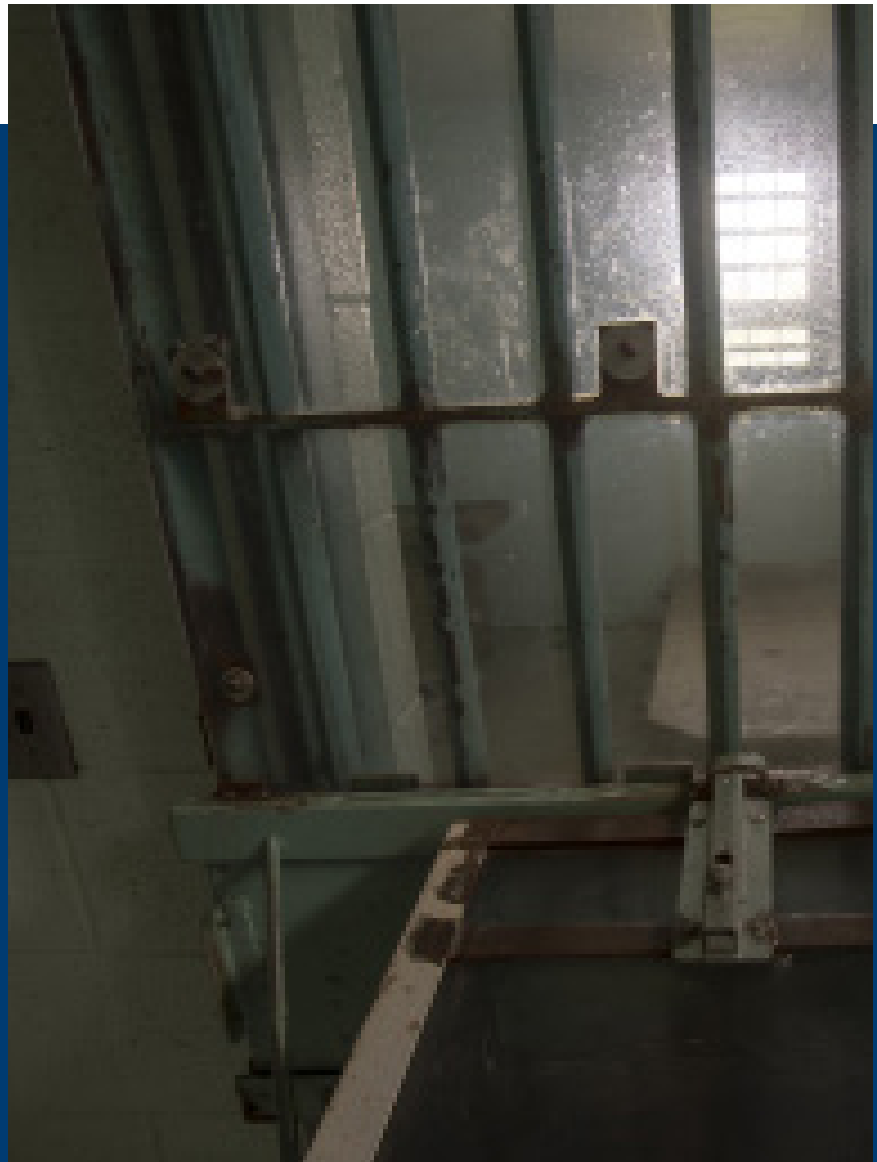


A CALL TO REFORM FEDERAL SOLITARY CONFINEMENT



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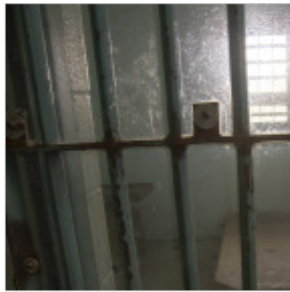


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A Call to Reform Federal Solitary Confinement

Ilanit Turner and Noelle Collins

Executive Summary

Federal solitary confinement is in desperate need of repair. After a 40-year spike in federal incarceration rates beginning in 1980 has tapered off ([Gramlich, 2021](#)), a bipartisan consensus for solitary confinement reform is finally starting to crystallize.

What was once considered a last-resort disciplinary practice in federal prisons has morphed into a default option when other correctional and administrative protocols fail on their first try. This paper is the latest installment in the Texas Public Policy Foundation's series of publications entailing prescriptions for local, state, and federal prison reform. Our research is especially timely as prison officials continue to misuse segregated housing units for medical isolation to combat COVID-19 ([Pavlo, 2020](#)). Because prison officials know they have limited alternatives to curb transmission, improperly using COVID-19 as a justification for solitary confinement is apparently a tempting option. Warehousing sick inmates poses a unique challenge as those who report symptoms are unjustifiably forced to endure an experience known to cause mental and physical harm ([Cloud et.al, 2020](#)).

The current landscape of solitary confinement data released on the Federal Bureau of Prisons (BOP) website is insufficient. The information on the precise order of operations for the types of infractions that land inmates in solitary is vague, publications of hearings considered for segregation are unavailable, and it is nearly impossible to determine the total length of time served in solitary confinement by each inmate. Holding BOP accountable for this information should be emphasized if change is to be effected.

Any information that is known about solitary confinement reaches the outside world a day late and a policy short. Charles Dickens (1842), a notable critic of the American penitentiary system, alluded to the effect of ignorance of solitude in his prescient observation a century and a half earlier, "this slow and daily tampering with the mysteries of the brain, [is] immeasurably worse than any torture of the body... and therefore I denounce it, as a secret punishment which slumbering humanity is not roused up to stay". Little has changed. The prolonged effects of solitary confinement take the form of irreversible physical and mental health disorders. When isolated inmates are granted the long-awaited second chance for release right after solitary confinement, they reoffend in rates disproportionately higher than the general prison population ([American Civil Liberties Union, 2014](#)). Long durations in segregation exacerbate mental illnesses, leading to bouts of psychosis. This prevents inmates from integrating back into the labor market, much less society in general,

Key Points

- Solitary confinement use continues to grow and reported data on reasons for placement, due process, and rehabilitative programs are lacking.
- Physical and mental impacts of prolonged solitary confinement are antithetical to the punitive purposes of the prison system.
- Recidivism rates continue to remain unchanged as a result of releasing solitary inmates back into the general population without any intermediary process whether rehabilitative or educational.
- Policy solutions include providing more data & transparency, enhancing due process, expanding programming and privileges for those in solitary, and improving protocols to prevent suicides, violence, and corruption.

and is correlated with higher rates of criminal episodes ([Wilderman & Hojsgaard Andersen, 2020](#)).

The Foundation offers a list of policy solutions to improve the status quo of federal solitary confinement. First and foremost, data transparency is essential. Pulling back the bureaucratic curtain of the federal prison system will reinforce administrative rectitude when deciding to use solitary confinement. Enhancing due process and ongoing review is another way to redirect prison officials to alternative punitive measures. The BOP should also consider expanding educational and rehabilitative programming for inmates in isolation, as these changes will reduce occupancy and recidivism rates with a single policy adjustment ([Esperian, 2010](#)). Lastly, the BOP system owes it to the public to reduce violence and suicide for inmates in solitary by improving mental health assessments. Addressing these issues can also reveal areas of endemic corruption that lead to further misuse of this practice.

For ethical and practical reasons alike, solitary confinement reform is in the interest of both the prisoners and the public. The obstruction and obfuscation of justice at the hands of the BOP presents a compelling case on its own to reassess the morality of current solitary practices.

Introduction

Even when criminal justice reform is being implemented aggressively and frequently, solitary confinement is not typically reported. The questionable practice is generally not well known by the public and therefore goes unchanged. While some states have made progress in reworking and improving how they use inmate isolation in their facilities, the Federal Bureau of Prisons (BOP) has lagged and should now follow suit.

Solitary confinement is a term with quite a few epithets: “isolation; administrative, protective, or disciplinary segregation; permanent lockdown; maximum security; supermax; security housing; special housing; intensive management; and restrictive housing units” ([National Commission on Correctional Health Care, n.d., Definition](#)). These euphemistic names come with similar and overlapping definitions. The international standard defines solitary confinement as being in a cell for 22 or more hours per day for 15 days or more, involuntarily apart from the general prison population ([United Nations General Assembly, 2016](#)). The U.S. Department of Justice (DOJ) supplements these stipulations and defines restrictive housing—its preferred term encapsulating solitary confinement—using three elements:

- *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. ([Department of Justice, 2016b, p. 3](#))*

We rely on the BOP’s distinction between the two main types of Special Housing Units (SHU): “disciplinary segregation” and “administrative detention.” Disciplinary segregation refers to a punitive form of separation from the general prison population due to a BOP rule violation in one of four categories of gradual severity ([28 CFR § 541.13](#)). Administrative detention is a non-punitive form of separation from the general population when the continued presence of the inmate within the general population would pose a serious threat to the institution’s security or vice versa.

It is also worth noting that the BOP goes to great lengths to define and outline the protocols for different SHUs but seldom applies the label “solitary confinement.” Further, when the Office of the Inspector General pressed the BOP for its definition of solitary confinement, the BOP responded that it “does not recognize the term... [and] therefore... does not have a definition or a reference to provide” ([DOJ, 2017, p. 15](#)). The former correctional programs division administrator has also stated that “solitary confinement does not exist within the BOP” ([p. 15](#)).

The BOP must follow with various reforms: Increase transparency and accessibility to data pertaining to the use of SHUs, revise the due process and ongoing review structure only minimally present in today’s system, enhance programming and elevate privileges for those confined to solitary housing, and implement greater services for the prevention of violence and suicide. Reformation as proposed is essential to the function of the BOP if it is to proceed as a just, safe institution.

What Lands Inmates in Isolation

Many of the reasons given to place an inmate in solitary confinement are either difficult to obtain, anecdotal, or both. The decision-making process that determines why an individual ought to be segregated and how long they stay in, what is commonly known among prisoners as “the hole,” is vague.

Section 541 under Title 28 - Judicial Administration of the Code of Federal Regulations outlines specific provisions for inmates during the hearing and review process that theoretically protect them from placement in isolation for

reasons other than what is described ([§ 541.13](#)). But with little transparency and accountability, these safeguards fly out the window, and inmates are left at the mercy of a Kafkaesque court. The Government Accountability Office's (GAO) evaluation of federal solitary confinement practices, most recently assessed in 2013, is a testament to the concerning lack of documentation on the part of the BOP and perhaps that it considers solitary confinement a low priority issue in general ([Government Accountability Office, 2013](#)). The review stressed the absence of information on procedural protections, conditions of, and reasons for confinement. The GAO pointed out that inmates are not given a meaningful opportunity to present a viable defense, which contradicts the Supreme Court's precedent established in *Morrisey v. Brewster* (1972). Solitary confinement is an atypical and significant hardship that does indeed invoke due process protections ([Henderson, 2015](#)).

Contrary to popular belief, restrictive housing is not reserved solely for the most violent among the population. The watchdog journalism group Solitary Watch (2018) reports that individuals are sent to solitary confinement not only for punitive purposes but also because of non-violent infractions. While disciplinary policies may differ slightly from one federal facility to another, a regrettably common theme stands out. An unjustifiably broad range of actions and behaviors can lead to placement in segregation as a punishment—none of which fit the BOP's description of dangerous or disruptive activity. According to one extensive survey of prisons across the country, swearing, non-violent disobedient behavior, tobacco use, and attempted suicide were among the most frequent reasons prisoners were sent to solitary confinement ([Vera, 2021](#)). The extensive list of four graduated categorical offenses under subsection 541.13 outlines offenses that, depending on whether committed once or several times, will result in disciplinary segregation. The categories range from “Low,” “Moderate,” “High,” and “Greatest” offenses. According to the list, using obscene language and engaging in non-violent disobedient behavior are not sufficient reasons to be placed in solitary confinement. Smoking will only result in segregation if done in prohibited areas and there is little information provided about whether an inmate was in the wrong area when doing so (again, another argument for transparency). Attempted suicide is not in any of the four categories on the list—which makes sense as this type of behavior requires mental health attention, not a disciplinary sanction. Nevertheless, prison officials bypass the law and consider such acts threatening or disruptive enough to place prisoners in isolation.

According to one extensive survey of prisons across the country, swearing, non-violent disobedient behavior, tobacco use, and attempted suicide were among the most frequent reasons prisoners were sent to solitary confinement.

Part of deciding whether an inmate must be placed in solitary confinement involves an official's conclusion that other available sanctions are insufficient to serve the purposes of the punishment ([DOJ, 2016b](#)). With little to no limiting principle, however, correctional officers are indirectly encouraged to rely on solitary confinement for less severe infractions despite the units intended for only the most incorrigible and exceptionally violent or disruptive inmates. We propose that solitary confinement be used only for the most extreme cases of violent behavior, namely prohibited acts of “Greatest” severity under 28 CFR § 541.13.

There is an internal review process through which inmates can get out of the SHU and an opportunity for an inmate to appeal to the regional director, but it is incumbent on the BOP to publish data on the number of reviews conducted, the timeliness with which they are conducted, and what percentage are granted reviews. The law explicitly states that an inmate may be placed in disciplinary segregation only by order of the Discipline Hearing Officer (DHO) following a hearing in which the inmate has been found to have committed a prohibited act in the “Greatest,” “High,” or “Moderate” category, or a repeated offense in the “Low” category ([28 CFR § 541.20](#)). The Segregation Review Officer (SRO) must conduct a hearing and formal review of each inmate who spends seven consecutive days in disciplinary segregation. Administrative detention has a similar set of protocols for review, albeit more expedient. The warden may place an inmate in administrative detention when the inmate is in holdover status during transfer or is pending classification ([28 CFR § 541.22](#)). The SRO is supposed to conduct a record review within three days of the inmate's placement in administrative detention and hold hearings on the status of each inmate who has spent seven continuous days in isolation. Whether or not those conditions are upheld is unknown to the public.

In 2013, the U.S. Bureau of Prisons acquired the Thomson Correctional Center as the newest federal prison, built with the capability of housing 1,600 inmates in some form of isolated confinement.

As a caveat, administrative detention is a practice that could be eliminated. Oftentimes, corrections officers use this non-punitive variant of solitary confinement under the guise of “protective custody” for vulnerable inmates ([Fettig & Schlanger, 2015](#)). But that use is unnecessary and poses an unfortunate Catch-22: Inmates are discouraged from reporting threats when there is a perceived risk of assault from other prisoners because they know they will be placed in solitary confinement. In this case, isolation is just as dreadful as being the target of an attack.

Solitary Confinement in Numbers

Although the BOP seldom publicizes details surrounding placement in and experience within restrictive housing, it does publish daily updates on the number of inmates in each type of housing unit on its website ([BOP, 2021](#)). We tracked these federal prison statistics through August 2021 and found that over the course of the month, federal prisons averaged 9,655 inmates in Special Housing Units (about 7.4% of the total inmate population). Of these 9,655 individuals, an average of 8,251 were held in administrative detention units, while 1,414 were held in disciplinary segregation.

This month of tracked statistics also provides an overview of the average duration of SHU placements. On average, 8,536 inmates were in solitary housing for 90 days or less, 1,182 were in solitary housing for more than 90 days, 324 were in solitary for more than 180 days, and 44 were in solitary housing for more than a year. It should be noted that SHU data are slightly skewed around this timeframe as a result of the COVID-19 pandemic, as many of these units were used for inmates who tested positive for the virus as a means of medical isolation ([Pavlo, 2020](#)). Prior to the COVID-19 pandemic, the DOJ ordered that in circumstances of airborne diseases infiltrating into the inmate population, “Until the inmate is transported to a local hospital, he or she will be immediately removed from the institution’s general population” ([DOJ, 2014, p. 13](#)). The BOP released further clarification on where infected inmates should be placed after removal from their cohorts in their COVID-19 Pandemic Response

Plan. This clarification emphasized the difference between medical isolation and restrictive housing; however, at the same time, it concedes that limited housing availability “may require the use of cells normally used for restrictive housing” ([BOP, 2020, p. 5](#)). This concession left many sick inmates confined to SHUs simply for being sick ([Blakinger & Hamilton, 2020](#)). Restrictive housing units are more punitive than regular cells by design. Thus, a sick inmate’s sentence to solitary confinement solely due to illness is just as problematic as it is unacceptable. Inmates have little incentive to report symptoms if they know that solitary confinement is the officer’s prescription for their malady. Federal prisons could have quarantined sick individuals in other open cells that are not typically used for confinement or even taken proactive steps to divide large masses of inmates into smaller groups before any individuals became infected. The issue with this poor use of solitary confinement will be further elaborated upon later on but understanding that this situation may have conflated some of these statistics is important when analyzing the current use of restrictive housing in federal prisons.

Pandemic aside, the behavior of the BOP does not suggest any attempts at reducing the number of individuals in confinement. In 2013, the U.S. Bureau of Prisons acquired the Thomson Correctional Center as the newest federal prison, built with the capability of housing 1,600 inmates in some form of isolated confinement ([Ridgeway & Casella, 2013](#); [Dawson, 2014](#)). This announcement came after several federal lawsuits were filed on the conditions inside of segregated units on behalf of their prisoners. These lawsuits illuminated the rough conditions that inmates too frequently faced in SHUs experience, conditions which, when experienced for prolonged periods, had detrimental effects on the well-being of these prisoners.

Prolonged Impact of Solitary Confinement

Many prisoners at ADX [Administrative Maximum Facility] interminably wail, scream, and bang on the walls of their cells. Some mutilate their bodies with razors, shards of glass, sharpened chicken bones, writing utensils, and whatever other objects they can obtain. A number swallow razor blades, nail clippers, parts of radios and televisions, broken glass, and other dangerous objects. Others carry on delusional conversations with voices they hear in their heads, oblivious to reality and to the danger that such behavior might pose to themselves and anyone who interacts with them. Still, others spread feces and other human waste and body fluids throughout their cells, throw it at the correctional staff and otherwise create health hazards at ADX. Suicide attempts are common. ([Prendergast, 2012](#))

This account by a previously confined prisoner was cited by Prison Legal News from the lawsuit filed on behalf of said prisoner and five others who sued the U.S. Bureau of Prisons in June 2012 ([Prendergast, 2012](#)). Their lawsuit alleged “systemic mistreatment of mentally ill prisoners” ([para. 1](#)). Such a disturbing depiction of life in restricted housing units is far removed from the romanticized vision of solitary confinement that many draw from Alexandre Dumas’ *The Count of Monte Cristo*. While Dantes is able to channel his madness in order to effectively better himself, there is little room for this idealized character arc to manifest in real-life isolation. Instead, this description barely begins to highlight the impacts these individuals experience daily in solitude.

Research on the repercussions of solitary confinement has elucidated several startling findings, specifically about both the mental and physical health of inmates placed in these facilities. One study cited by the National Institute of Justice found that 20% of prisoners in restrictive housing had “serious mental illnesses,” and an additional 25% showed evidence of “marked psychological dysfunction, psychological breakdowns, or brain damage” ([Kapoor & Trestman, 2016, p. 223](#)). These psychiatric disorders, whether developed in or aggravated during a prisoner’s stint in solitary confinement, only worsen as a prisoner’s time spent in solitary lengthens. The psychological effects displayed themselves in numerous ways, many of which were cataloged by psychology Professor Craig Haney:

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, hypersensitivity 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, 2018, p. 371](#))

Although these symptoms are mainly psychological, many result from the physical deterioration of the mind and body. Prolonged solitary confinement can have a detrimental impact on one’s brain, specifically the amygdala and the hippocampus. Isolation leads to alterations to these areas of one’s mind, resulting in greater anxiety, heightened fear, hindered memorization and learning skills, and damaged spatial awareness ([Blanco-Suarez, 2019](#)).

In addition to the internal physical changes to a confined prisoner’s health, one’s ability to be physically active—an essential component of a healthy lifestyle—is extremely limited, resulting in external changes as well. Not only does the absence of physical activity increase health risks in those confined, but it also intensifies the effects of many preexisting conditions such as hypertension, diabetes, arthritis, and heart disease, especially among older inmates ([Williams, 2016](#)).

Vitamin D deficiency is also among these health risks. The National Center for Biotechnology Information conducted a study in Massachusetts that revealed that inmates at the maximum-security level had significantly lower vitamin D levels than those at the medium- or minimum-security level ([Nwosu et al., 2014](#)). Such a lack of vitamin D may lead to weakened skeletal functions, as was observed by Robert King Wilkerson, an inmate who described the scenes he had witnessed while incarcerated: “I saw some guys throw a football and break their arms because their bones had gotten so brittle, their muscles so weak. Dudes would run the yard and hit a small hole and their ankle would just snap” (quoted in [Quandt et al., 2019, p. 36](#)).

Prolonged isolation due to solitary confinement can cause or exacerbate preexisting mental instability and physical impairment. Placing a mentally ill inmate in solitary confinement creates an unproductive situation for all involved: The prison system is forced to handle an overcrowded isolation unit filled, arguably, with the wrong type of inmate, and the mentally ill inmate himself will never be able to improve or benefit from the correctional prison goals ([Metzner & Fellner, 2010](#)).

The case against solitary confinement, especially for the mentally ill, is not new. U.S. federal courts have issued rulings in the past that prohibit the practice against this population, with one federal judge stating that isolation “is the mental equivalent of putting an asthmatic in a place with little air” ([Madrid v. Gomez, 1995, p. 1265](#)). Nevertheless, prisoners diagnosed with mental illness are 170% more likely to be sent to extended solitary confinement than their healthier counterparts ([Siennick et al., 2020](#)). The Supreme Court has left lower courts across the U.S. to establish standards of their own regarding the constitutionality of psychological harms imposed on inmates by isolation ([Dillon, 2019](#)).

The BOP should be required to provide at least an annual update on the population of mentally ill in solitary confinement and should continue to improve upon its latest edition of policy proposals. The recent initiatives

include expanding mental health treatment programs and increasing the capacity of existing secure mental health units. Since 2016, the agency has slowly begun addressing these issues. The BOP began to divert mentally ill inmates from long-term segregation into less restrictive housing by creating specialized secure mental health units. Additional psychological screening and programming were then added to the initiative. The BOP also started proactively offering mental health care to all federal BOP inmates to prevent the kind of disruptive behavior that would normally result in isolation ([DOJ, 2016b](#)).

Recidivism and Public Safety

It is imperative to acknowledge what happens when an inmate's time in confinement is complete, especially when considering the detriment their mind and body endured in isolation. The process of the release of prisoners from solitary back into society, rather than back into the general prison population, fell under scrutiny in 2013. In March of that year, Evan Ebel murdered two innocent citizens. He had been released from long-term restrictive housing directly back into society on January 28, 2013, less than two months prior ([Mitchell, 2013](#)). This story exemplifies the daunting reality of prisoners reverting to criminal conduct after being isolated from society for an extended period.

Recidivism of an individual after being released from the general prison population is common, but reentry into society after physically being isolated from any other human interaction is cause for even greater concern. One study completed in Washington state found that inmates released directly from solitary housing committed new felonies at a rate 35% higher than that of inmates of the same risk profile released from the general population of a correctional facility ([Lovell et al., 2007, p. 644](#)).

The Department of Justice recognized these issues and attempted to reform the process of reintroduction to society in the BOP through a list of recommendations. Among these recommendations was that inmates should not be released directly from restrictive housing to the community, "absent a compelling reason" ([DOJ, 2016b, p. 95](#)). What such a compelling reason would entail is never defined, leaving the implementation of the recommendation to the discretion of the BOP. They also called on the BOP to implement "a clear plan for returning the inmate to less restrictive conditions" ([DOJ, 2016b, p. 95](#)). This report was published five years ago, and the BOP has yet to produce such a plan.

As long as the BOP does not define a clear strategy for reintroducing these inmates back into the general prison

population and, eventually, back into society, criminals will continue being released directly from confinement into the communities and neighborhoods that law-abiding residents call home. And as long as the possible mental health issues one may have developed while in solitary housing before their release are not addressed, the actions of a former inmate may be unpredictable and dangerous to all they encounter. The mental duress endured by inmates during their time in restrictive housing can easily debilitate their ability to think rationally; without conducting proper rehabilitation within federal prisons to assist reintegration to life outside of confinement, citizens remain in danger.

While these proposals and the others provided by the DOJ may sound promising in creating necessary adjustments to the practice of solitary confinement, including changes implemented to prevent recidivism, there is currently no way of tracking the BOP's progress in applying or executing these changes. All of these issues—the physical and mental impacts of prolonged isolation, the recidivism of previously confined inmates, and the ambiguous nature of the practices of the prisons—demand attention and resolution.

Solutions to the Problem

More Data and Transparency

Changing a system that is hidden from public view poses a challenge. Galvanizing this change begins with identifying the available information about everyday prison practices. The current data on the BOP website, however, make it difficult to analyze the inventory of inmate statistics. One needs to spend just a few minutes on the "Statistics" tab ([BOP, 2021](#)) to realize that the only useful information includes four bar graphs tallying the minute daily fluctuations in different types of restricted housing units. The first graph shows the amounts of time inmates spend in restricted housing ranging from 90 to 364 days. The second illustrates a bleak backlog of individuals held in either administrative detention or disciplinary segregation. The third graph, only slightly more revealing than the others, displays the vague reasons for placement in administrative detention, but not for disciplinary segregation. A corresponding graph for the latter form of confinement would be just as important to publish. The final graph outlines, without providing a sufficient explanation for each, the other forms of higher security restricted housing units, including "Special Housing Units," "Special Management Units," and "Administrative Maximum Facility." The other three charts can also leave the reader with more questions than answers.

As of November 18, 2021, over 2,000 inmates were held in special housing units awaiting a transfer but not for a

suspected violation ([BOP, 2021](#)). Among the roughly 4,500 inmates with pending hearings or investigations, the BOP fails to provide any detail on the severity of the violation. Correctional staff may use solitary confinement at their own discretion, with little to no accountability. Another 470 inmates are in solitary confinement for reasons that have yet to be determined at all, their classification is “pending” (although it is unclear whether that means the classification of the inmate or the conduct itself is “pending”). It is unclear whether it is violent conduct that imperils other inmates/correctional officers or a low categorical transgression such as smoking a pack of cigarettes in the wrong area that lands an inmate in solitary confinement. Applying the same sanction to both actions conflates the seriousness of the crimes committed and corrupts the original purpose of disciplinary segregation. The vague language used to describe prohibited acts means that not all offenses are statutorily proscribed, and many can be interpreted under a range of severity.

The BOP website is a black box of information and should therefore be compelled to provide data on the use of solitary for special populations. Those with serious mental illnesses and developmental disabilities, for example, are routinely overlooked as categories that should otherwise be considered exceptions to solitary placement. Yet, the dearth of robust procedural guidelines for populations such as these may explain why they are disproportionately represented in solitary confinement ([Siennick et al., 2020, p.13](#)). According to the Bureau of Justice Statistics (BJS), 23% of federal inmates who spent 30 days or more in restrictive housing suffer from mood disorders and another 23% suffer from serious psychological distress ([Beck, 2015](#)). Some federal court cases have established the precedent that placing mentally ill individuals in solitary confinement violates the Cruel and Unusual Punishments Clause of the Eighth Amendment ([Madrid v. Gomez, 1995](#); [Ruiz v. Johnson, 1999](#); [Palakovic v. Wetzel, 2017](#)). Any desire toward reform ought to begin with the shortest solitary sentences for inmates with mental illnesses. Solitary confinement rates of other especially vulnerable populations like the elderly, chronically ill, pregnant, and people under 21 should be published in order to track their time in isolation.

Regarding the available information on due process, the webpage mentions that nearly 3,000 inmates are awaiting a hearing for a BOP violation ([2021](#)). Other critical pieces of the punitive puzzle, namely the status and outcome of these trials, are supposed to be available through the Freedom of Information Act, but the BOP’s slow-moving bureaucracy makes finding this information prohibitively difficult. We filed a request in September and have not heard back

Increasing data accessibility and transparency is essential to reducing solitary confinement misuse and overuse. Bridging the gap between the information that is currently released versus what should be included is possible so long as the federal prison system is willing and able to comply.

since. Having information on hearings and the details of alleged violations is necessary to ensure that the process is functioning as it should.

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Due Process and Ongoing Review

More meaningful due process in solitary placement is desperately needed. Contrary to what is codified for inmates prior to and during a hearing ([28 CFR § 541.20](#)), inmates have very limited rights to due process and discovery in practice. While some redactions may be needed for security reasons, it is hard to rebut evidence that is not disclosed. This is both a policy and constitutional issue regarding the level of due process that is required to deprive someone of liberty.

The Supreme Court’s decision in *Sandin v. Conner* exemplifies the confusion and harm in determining prisoners’ procedural due process claims. In *Sandin*, the court ruled that without a finding of guilt by substantial evidence of prison officials’ misconduct against a prisoner (i.e., claims of wrongful placement in solitary confinement), the claims of a prison hearing as a denial of due process are void ([1995](#)). *Sandin* was determined at a time when there was little evidence that demonstrated a significant distinction between the effect of being in the general prison population or solitary confinement ([Henderson, 2016, p.486](#)). The assumption that there is no psychological difference between graduated levels of confinement shifted focus away from the prisoner’s liberty interest and toward the nature of deprivation imposed on them instead. Today, however, the mental impacts of solitary confinement relative to the general prison population are well-

documented (as noted in this paper) and distinctively more severe. The Supreme Court's decision vastly narrowed the ability of prisoners to create due process interest ([Sbaratta, 1996](#)). Part of reducing the misuse of solitary confinement involves reinforcing a thorough application of due process. We therefore suggest that the BOP ensures a new hearing when prison officials defer to solitary confinement.

In 2016, a U.S. Inspector General's report ([DOJ, 2016a](#)) found that there were many more complaints about SHU conditions in federally run prisons than in contract prisons, but also found that some contract prisons immediately placed transferred inmates into the SHU solely because of a lack of open bed space. The BOP should require that both its own prisons and contract facilities ensure no one is placed in solitary for such a reason that has no relationship to their conduct. As referenced earlier, the COVID-19 outbreak put this exact issue to the test, and the BOP failed once more ([Shapiro, 2020](#)). Segregated units have been exploited during the pandemic, which presents a blatant disregard for the statutes in place to ensure that SHUs are used for disciplinary purposes only. Although the pandemic presented extraordinary conditions for prison officials to act under, the BOP's handling of the outbreak in its prisons was ineffective from the beginning and was underscored by their outright refusal to publish COVID-19 data ([Blakinger & Hamilton, 2020](#); [Park & Meagher, 2021](#)).

The BOP should follow some states in implementing a matrix of alternative punishments such as withholding of privileges that should be used before resorting to segregation. On paper, the BOP does use graduated sanctions involving the "least restrictive" conditions, but, because of limited data in the field, it is difficult to determine whether inmates are placed in solitary confinement for punitive or non-punitive reasons. Instead, implementing matrices similar to what many states use could serve as a more robust alternative.

A state prison in Warren, Maine, for example, reduced its isolated population by nearly 75% because it instituted additional review at a higher level ([American Legislative Exchange Council, 2019](#)). The prison achieved it by ensuring that multiple authorities had to agree after a three-day period to continue segregation. The rate of violence, use of force, and self-harm decreased, as did costs to the administration ([Barber, 2012](#)).

Texas has also implemented efforts to reduce security-threat group membership that often lands inmates in solitary confinement even when they do not pose a significant disruption. By reducing membership, officials perceive less risk of an impending conflict and do not resort to extended

isolation ([Levin, 2021](#)). Segregation should only be used for cases involving the most serious disciplinary violations and threats to the safety of other inmates and correctional officers.

Of all the issues surrounding solitary confinement, misplacement and being held without a trial are among the worst. The 2014 suicide of Kalief Browder is one example among many where an inmate, accused of a misdemeanor but never found guilty, was held for years in solitary confinement without due process ([Schwartz & Winerip, 2015](#)). Implementing a matrix to handle short-term cases like Mr. Browder could prevent such perversions of justice. More meaningful reviews must also occur to prevent the excessive build-up of long-term cases as well.

Programming and Privileges

Isolation for 23 hours a day muddles what should be a clear distinction between equitable punishment and inhumane treatment. At a minimum, and to promote rehabilitative growth as opposed to mental deterioration, the BOP should expand programming and privileges for people in solitary.

In 2016, the Department of Justice made several recommendations encouraging the BOP to provide more programming opportunities to those in restricted housing. Their ideal revision suggested that the minimum amount of time an inmate in solitary spends out of their unit is increased to allow time for "recreation, education, clinically appropriate treatment therapies, skill-building, and social interaction with staff and other inmates" ([DOJ, 2016b, p. 99](#)). Also included in these suggestions was to offer superior opportunities for prisoners to participate within their cells. Like many of the other recommendations mentioned from this list, the lack of transparency within the BOP leaves unclear the degree to which such changes have been adhered. However, several state prisons have exemplified increases in programs and privileges in confinement.

In an attempt to incentivize improved behavior and provide greater privileges, Tennessee allows their solitary inmates visitors, for they believe it is an important piece of the rehabilitative process ([Tennessee Department of Corrections, 2019, Policy # 506.16, 2](#)). Colorado prisons have leveraged technological advancements to provide similar services to their inmates. In their state facilities, as well as those of 19 other states, inmates in solitary housing have the opportunity to use iPads for education and job training ([Kruzman, 2018](#)). In 2017, Colorado also became the first state to eliminate long-term solitary confinement and replaced it with step-down programs and mental health units ([Raemisch, 2017](#)). Under pressure from lawsuits, California and New York have also significantly reduced

their populations in solitary ([Lovett, 2015](#); [Mann, 2017](#)). A Washington state prison reduced its isolation population by half via an innovative program that divided inmates with different problems into different programs and treated them accordingly ([Neyfakh, 2015](#)).

The most practical and cost-effective approach that the BOP should implement at the federal level is gradually exposing those in solitary for long periods to more outside-of-cell programming, such as those initiatives undertaken by state prisons ([Wilcox et al., 2016](#)). Allowing inmates' mental and physical health to depreciate is not only morally wrong but potentially dangerous for the prisoner and those around them. This is demonstrated by the higher recidivism rates of those immediately released into the general population without any mitigating program. Revisions from state prisons succeeded in reducing the number of inmates held in isolation, alleviating factors that exacerbate mental illness, and incorporating workforce reentry initiatives that lower recidivism rates. The New York state prison system saw a 16% decrease of inmates in restricted housing after implementing policy that revised privileges for those in solitary confinement ([Mann, 2017](#)). These privileges incentivized good behavior which correlated to the decrease in solitary population. By applying the standards and examples set by New York and other state prison facilities that have revised the privileges and programs offered to inmates in isolation, the BOP can cultivate a healthier, more humane solitary atmosphere. Even though issues like security might require a person's removal from the general population, that does not mean rehabilitative efforts have to end. A productive remedy involving improved programming. As another policy solution going forward, the BOP should emphasize the use of alternatives for all but the most serious threats and disciplinary violations. Solitary confinement only logistically complicates the prison administration and limits an inmate's ability to keep from reoffending and reintegrating into the general population.

Violence and Suicide Prevention

The BOP should enhance protocols to prevent suicides and violence in SHUs. The 2019 apparent suicide of Jeffrey Epstein presents one of the most recent damning cases of administrative negligence. The lack of sufficient oversight and mental health protocols jeopardizes public safety and high crime investigations where it is crucial for defendants to face their accusers in court. In Epstein's case, the BOP came under intense criticism for prematurely removing him from suicide watch after he had been found nearly unconscious with marks on his neck ([Watkins, 2019](#)). The two BOP employees in charge of monitoring him the night he died were sleeping on the job and then falsified records to show they were awake ([Shanahan, 2021](#)).

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Unlike Epstein, who was held alone in a cell based on protective custody, other inmates typically must share a cell meant for one. Unlike in state prisons, inmates in the BOP SHUs actually have a cellmate even though their custody still falls within the solitary definition since out-of-cell activities are generally limited to one hour per day ([Thompson & Shapiro, 2016](#)). While having a cellmate can make for a less lonely experience, there have been many instances of violence, which can be expected given the close living quarters, dire conditions, and backgrounds of those involved ([Complaint at 5, Slater, 2014](#); [Georgia Department of Corrections, 2014](#); [Alaska Department of Corrections, 2014](#)). It is also worth remembering that, according to the data available, solitary confinement is not reserved for only the worst of the worst—low-level infractions are among the reasons people are sent to solitary confinement as well ([Solitary Watch, 2018, p. 1](#)). Knowing that isolation is used as a first-resort control strategy highlights the dehumanizing effects of sharing a cell with an inmate whose criminal background is separated by several orders of magnitude. To prevent fatal delayed reactions, the BOP must ensure that inmates who feel reasonably threatened by their cellmate can be immediately relocated.

The BOP should provide an account of what has been done to avoid suicides and violence in the future. Calls for transparency and accountability might appear naïve, but these concerns can be abated by coupling them with the demand for more thorough investigations of prison officials themselves. Correctional officers play a much-needed and underappreciated role in society, but they are just as prone to corruption through bribery and favors as anyone else—especially if they are overworked and underpaid ([Penal Reform International, 2016](#)). Instances of outright abuse of power, for example, have taken place where prison guards threaten inmates with solitary confinement unless they performed certain sexual acts ([State v. Scott, 1989](#)). Tolerating abuse is easy when prison officials are not held accountable for wrongfully placing inmates in isolation. It

is in the interest of officials in and out of the federal penal system to ensure that violence and criminal activity are not perpetrated at the hands of the gatekeepers.

Conclusion

For years, the Texas Public Policy Foundation has advocated for solitary confinement reform. The Foundation argues that brief periods of isolation are occasionally necessary to maintain the safety of inmates and the staff who oversee them. However, given the physical and mental health ramifications of overextended periods in isolation, federal policymakers and the DOJ should heed this paper's advice to address the repercussions while maintaining the safety of those inside and outside the walls of prisons across the country.

- Enhance recordkeeping about the justification for placement and length of time spent in solitary confinement.
- Bolster inmates' right to due process and prioritize alternative measures for all but the most severe disciplinary violations.
- Expand programming and privileges for people in isolation, focusing on improving reintroduction to the general prison population.

- Lastly, do everything possible to prevent suicides and violence in special housing units.

The damaging impacts of extended periods of isolation are well-documented. Because academic studies on federal inmates are difficult to conduct due to strict Institutional Review Board policies and the clandestine practices of the BOP, exact data of who is sitting in solitary confinement for punitive and non-punitive reasons are difficult to verify. On a final research note, future reports on the reasons for placement in administrative detention versus disciplinary segregation are desperately needed for this field of research to identify the extent to which solitary confinement is used for punishment or something else.

Perhaps the Federal Bureau of Prisons could take a page from the Clintonian handbook of making an unfavorable, last resort policy "safe, legal, and rare." In doing so, they can reinforce the last iota of liberty of those who ostensibly have nothing left to lose. ★

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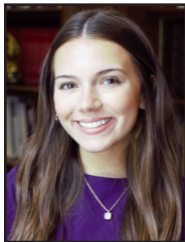
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