

**STATEMENT
OF THE
HUMAN RIGHTS DEFENSE CENTER**

*Reassessing Solitary Confinement II: The Human Rights, Fiscal,
and Public Safety Consequences*

**BEFORE THE
UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON THE CONSTITUTION, CIVIL
RIGHTS AND HUMAN RIGHTS**

**PRESENTED ON
February 25, 2014**

STATEMENT OF THE HUMAN RIGHTS DEFENSE CENTER

*“We're all of us sentenced to solitary confinement inside our own skins, for life.”
— Tennessee Williams, Orpheus Descending*

Chairman Durbin, Ranking Member Cruz and Members of the Subcommittee:

The Human Rights Defense Center (HRDC) is a 501(c)(3) non-profit organization dedicated to protecting the rights of persons incarcerated in prisons, jails and other detention facilities. HRDC publishes *Prison Legal News* (PLN), a monthly print magazine that reports on issues related to criminal justice and prisoners’ rights. Since 1990, PLN has extensively covered topics regarding solitary confinement and isolation units in the U.S. prison system.

HRDC submitted a comprehensive statement for the record of the first Subcommittee hearing on solitary confinement, held on June 19, 2012, which we incorporate by reference here. We did not address the financial implications of solitary confinement in our prior statement, as our research and reporting over the past several decades has found that prison officials are willing to inflict torturous punishments on prisoners regardless of the expense, even if those punishments, such as solitary confinement, are unnecessary or even counterproductive.

To address the totality of issues related to solitary confinement, however, this Statement presents a brief discussion of the financial costs of solitary. Additionally, appended to this Statement are three articles concerning solitary confinement published in *Prison Legal News* between October 2012 and February 2014, which we believe are particularly relevant to this topic.

The Financial Costs of Solitary Confinement

Beyond the many documented problems with solitary confinement, including adverse effects on prisoners’ mental health and increased recidivism rates that endanger public safety, solitary is much more expensive than housing prisoners in general population units.¹

For example, according to a 2006 study by the Urban Institute, the average cost of housing a prisoner in the supermax unit at the Ohio State Penitentiary (OSP) was more than twice as high (\$149 per day) than the cost of incarcerating a prisoner in general population (\$63 per day).²

The costs are higher because solitary confinement units typically have higher staff-to-prisoner ratios, resulting in elevated staffing expenses. According to the Urban Institute study,

¹ www.solitarywatch.com/wp-content/uploads/2012/01/fact-sheet-the-high-cost-of-solitary-confinement.pdf

² www.urban.org/UploadedPDF/411326_supermax_prisons.pdf

“[The] increased cost of the OSP is due, in part, to the fact that it has a staff-to-prisoner ratio 50 percent higher than that of the state’s maximum-security prison.”³

As noted by the ACLU in its written statement for the June 2012 Subcommittee hearing on solitary confinement: “[A] 2007 estimate from Arizona put the annual cost of holding a prisoner in solitary confinement at approximately \$50,000 compared to only about \$20,000 for the average prisoner. In Maryland, the average cost of housing a prisoner in the state’s segregation units is three times greater than in a general population facility; in Ohio it is twice as high; and in Texas the costs are 45% greater. In Connecticut the cost of solitary is nearly twice as much as the average daily expenditure per prisoner; and in Illinois it is three times the statewide average.” [internal footnotes omitted]⁴

In California, according to 2010-2011 data, the average annual cost for housing prisoners in Administrative Segregation Units (ASUs) at Pelican Bay State Prison was \$77,740, which was 33% higher than the average general population per-prisoner cost of \$58,324.⁵ Further, a 2009 report by California’s Office of the Inspector General estimated “the annual correctional staff cost of a standard ASU bed to be at least \$14,600 more than the equivalent general population bed. For the 8,878 ASU beds statewide, this additional cost equates to nearly \$130 million a year. While ASUs are an important part of prison population management, unnecessary ASU housing is a waste of taxpayer dollars.”⁶

Further, supermax facilities and other prisons with solitary confinement units are more expensive to build. According to Solitary Watch,⁷ the federal Bureau of Prisons’ ADX Florence facility was constructed at a cost of \$60 million, or more than \$122,000 per bed; the supermax Pelican Bay State Prison in California cost \$230 million to build, or over \$217,000 per bed; and the Tamms Correctional Center in Illinois was built at a cost of \$73 million, or around \$146,000 per bed.⁸ These costs are significantly higher than the typical cost of constructing medium-security prisons, which is around \$65,000 per bed.⁹

Therefore, unsurprisingly, closing supermax or solitary confinement units can result in substantial savings. According to Mississippi DOC Commissioner Christopher Epps, the 2010 closure of Unit 32 at the Mississippi State Penitentiary at Parchman, a segregation unit, resulted in annual savings of approximately \$5.6 million.¹⁰ And when Illinois Governor Pat Quinn ordered the closure of the Tamms supermax facility in June 2012, he cited estimated savings of \$21.6 million during the current fiscal year and \$26.6 million in 2014.¹¹

Despite the high costs of building and operating supermax prisons and keeping prisoners in solitary confinement for lengthy periods of time, most states apparently are willing to pay such expenses due to a lack of political will and capitulation to corrections officials who contend the systemic use of segregation is necessary to maintain safety and security.

³ *Id.*

⁴ www.aclu.org/files/assets/aclu_testimony__for_solitary_confinement_hearing-_final.pdf

⁵ www.cdcr.ca.gov/COMIO/Uploadfile/pdfs/Pelican_Bay.pdf

⁶ <http://www.oig.ca.gov/media/reports/ARCHIVE/BOA/Reviews/Management%20of%20the%20California%20Department%20of%20Corrections%20and%20Rehabilitation's%20Administrative%20Segregation%20Unit%20Population.pdf>

⁷ www.solitarywatch.com

⁸ www.solitarywatch.com/wp-content/uploads/2012/01/fact-sheet-the-high-cost-of-solitary-confinement.pdf

⁹ www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/State-based_policy/PSPP_prison_projections_0207.pdf

¹⁰ www.judiciary.senate.gov/pdf/12-6-19EppsTestimony.pdf

¹¹ http://thesouthern.com/news/local/quinn-s-office-claims-m-in-savings/article_6c2e1cb8-d92e-11e1-bba0-0019bb2963f4.html

This Statement is submitted on behalf of the
Human Rights Defense Center by:

Executive Director Paul Wright. Mr. Wright founded the Human Rights Defense Center and serves as the editor of *Prison Legal News*. He was incarcerated for 17 years in the Washington State prison system.

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ADDENDUM

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Solitary Confinement: Bad for Chimps, Okay for Humans?

by Lance Tapley

Maine Republican Senator Susan Collins is a key cosponsor of legislation that, among other provisions, would outlaw psychologically damaging solitary confinement for more than 500 chimpanzees caged for research in federally supported laboratories. In July 2012 the bill bipartisanly passed the Senate's Environment and Public Works Committee on its way to a floor vote.

But the legislation, which also protects gorillas and other ape species if they are used for research, doesn't protect the dominant primate species, *Homo sapiens*. Experts say at least 80,000 prisoners are in solitary confinement in tiny cells in this country.

Some prisoner-rights advocates think it's ironic when laws give rights to animals that aren't extended to humans. Prison Legal News editor Paul Wright noted that, for example, "there are existing laws saying how much living space primates should have in captivity. By contrast, no such laws apply to humans in captivity."

He concluded: "Sadly, I don't think most people, at least not in this country, see any connection between animal and human rights."

Laurie Jo Reynolds, an anti-solitary-confinement activist in Illinois who also is a strong supporter of animal rights, said, "Acknowledging that we must stop inflicting solitary confinement on chimpanzees is also a recognition that we must stop the practice for humans."

S. 810, the Great Ape Protection Act, "corrects the pain and psychological damage that apes often experience as a result of needless experiments and solitary confinement," Senator Collins said in a recent statement. Repeated requests to her office for her views on human solitary confinement did not get a response.

But Maine's First District Democratic Representative Chellie Pingree, who is a cosponsor of a parallel bill in the House, H.R. 1513, agreed that the damaging effects of solitary confinement extend to humans: "A growing number of experts describe it as cruel and unusual punishment, and I agree with them."

Michael Michaud, Maine's Second District congressman, is also a H.R. 1513 cosponsor. In repeated attempts, he could not be reached on the question of whether human solitary confinement should also be banned.

A ban or restrictions on prisoner isolation, however, may soon be debated in Congress. In June 2012, Senator Richard Durbin, the Illinois Democrat and chairman of the Senate's Subcommittee

on the Constitution, Civil Rights and Human Rights, presided over the first-ever congressional hearing on solitary confinement. He's preparing legislation to reform its use.

Wayne Pacelle, president of the Humane Society of the United States, said he refers to the damaging effects of solitary confinement on humans in his speeches in support of S. 810, but banning isolation of chimpanzees was "really not the impetus" for the legislation.

He said forbidding the invasive experiments chimps are subject to is a more important motivation behind the bill. These include, as the bill's language states, experiments that cause injury, trauma or death in drug testing, "intentional exposure" to harmful substances, and removing body parts.

But S. 810 would also ban "isolation" and "social deprivation" that "may be detrimental to the health or psychological well-being of a great ape." The legislation notes that apes are "highly intelligent and social animals."

Kathleen Conlee, vice president of the Humane Society, pointed to research appearing in the *Journal of Trauma & Dissociation* that shows how chimps subject to laboratory conditions express Post Traumatic Stress Disorder-like symptoms. Isolation is listed as a common stress.

Chimpanzee PTSD symptoms include violence, self-injury, screaming and "highly anxious states" – symptoms humans often show after long-term solitary confinement.

"Great apes" is a term encompassing gorillas, bonobos, orangutans, gibbons and chimpanzees, but only chimpanzees are currently kept for research, according to the Humane Society. The federal Institute of Medicine has concluded that most chimp research is unnecessary. Violations of the Great Ape Protection Act could result in a fine of \$10,000 a day for each animal mistreated.

S. 810's full title is the Great Ape Protection and Cost Saving Act of 2011. Proponents claim it would save the government \$25 million a year by relocating chimpanzees from laboratories to wildlife sanctuaries, which have freer living conditions. Proponents of ending human solitary confinement also say there are cost-saving reasons to stop that practice. The cage-like cells of "supermax" prisons and prison units are so labor-intensive for guards that they cost two times as much as regular imprisonment, experts say.

Independent Senator Bernard Sanders of Vermont, like Collins another S. 810 lead cosponsor, was quoted in a recent Humane Society press release: "We remain the only country besides Gabon to continue holding these animals in laboratories as possible subjects for invasive research."

Similarly, the U.S. is the only nation that practices human solitary confinement in large numbers. Pingree said it's time to take a careful look at how prisons use solitary confinement: "Perhaps there are some times when it is important to temporarily isolate a prisoner for his safety or the safety of other inmates, but using solitary confinement as a routine punishment technique is too harsh."

She added, "If one of the goals of putting people in prison is to rehabilitate, long-term solitary confinement doesn't advance that goal."

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Report: BOP Fails to Monitor Effects, Conditions of Segregated Housing

by Derek Gilna

In May, 2013, the U.S. Government Accountability Office (GAO) issued a report critical of the federal Bureau of Prisons' (BOP) use of segregated housing. The report found that the percentage of prisoners held in segregated housing, including Special Housing Units (SHUs), Special Management Units (SMUs) and Administrative Maximum (ADX), had increased 17% over the past five years from 10,659 to 12,460, while the BOP's overall population had increased 6% in the same time period.

BOP prisoners held in segregated housing are generally confined to their cells for 23 hours per day, for indeterminate lengths of time.

The GAO criticized the BOP for failing to consistently manage or implement its regulations uniformly from institution to institution and for not having adequate controls in place to address what the GAO termed "document deficiencies." The BOP was unable to show that it provided "minimum conditions of confinement and procedural protections" for segregated prisoners, or that it had implemented adequate computer systems to monitor its compliance with written procedures for segregated housing.

Human rights activists have long advocated the abolition of most forms of segregation based upon studies that show prolonged isolation "may have an adverse effect on the overall mental status of some individuals." [See, e.g., *PLN*, Oct. 2012, p.1]. The BOP has acknowledged that it has no data regarding the psychological effects of such isolation, but stated as of January 2013 that it plans to study segregated housing and is "considering conducting mental health case reviews for inmates held in SHUs or ADX for more than 12 continuous months." Additionally, the BOP began using a new software program to "document conditions of confinement in SHUs and SMUs."

The GAO also noted that the BOP, although claiming that segregated housing enhances the protection of prisoners, staff and the general public, "cannot determine the extent to which segregated housing achieves its stated purpose." SHUs are generally used for shorter-term stays for disciplinary or administrative reasons, SMUs are often used to transition prisoners to a lower-level security and ADX units provide the highest level of security for allegedly more dangerous prisoners.

The GAO made several recommendations for the correction of the problems it identified in its report, including "(1) develop ADX-specific monitoring requirements; (2) develop a plan that clarifies how BOP will address documentation concerns GAO identified, through the new software program; (3) ensure that any current study to assess segregated housing also includes reviews of its impact on institutional safety; and (4) assess the impact of long-term segregation."

What stands out in the report is the lack of apparent concern on the part of the BOP – and by extension the Justice Department, Attorney General and the executive branch of the federal government – for the more than 12,400 federal prisoners who are confined in segregation. In

an era where many states, including Illinois and Maine among others, are phasing out segregated housing, the BOP has increased the number of prisoners held in segregation units.

David Fathi, director of the ACLU's National Prison Project, is especially critical of the use of segregation. "It's astonishing that the [BOP] has steadily increased its use of solitary confinement and other segregated housing while failing to assess whether this expensive and inhumane practice has any actual effect on prison safety. The Bureau needs to follow the lead of the growing number of states that have reduced solitary confinement while preserving prison safety and saving millions of dollars in the process."

Left unaddressed by the GAO report is the incalculable psychological damage being inflicted on BOP prisoners held in segregation, and the human and financial costs stemming from their confinement in segregated housing.

Sources: *"Improvements Needed in Bureau of Prisons' Monitoring and Evaluation of Impact of Segregated Housing,"* Government Accountability Office (May 1, 2013); www.dcaclu.org

Solitary Confinement's Invisible Scars

I spent more than five years of my sentence in “the box,” for trivial violations. It’s time we saw this casual abuse for what it is: torture.

by Five Oman Mualimm-ak

As kids, many of us imagine having superpowers. An avid comic book reader, I often imagined being invisible. I never thought I would actually experience it, but I did.

It wasn’t in a parallel universe – although it often felt that way – but right here in the Empire State, my home. While serving time in New York’s prisons, I spent 2,054 days in solitary and other forms of isolated confinement, out of sight and invisible to other human beings – and eventually, even to myself.

After only a short time in solitary, I felt all of my senses begin to diminish. There was nothing to see but gray walls. In New York’s so-called special housing units, or SHUs, most cells have solid steel doors, and many do not have windows. You cannot even tape up pictures or photographs; they must be kept in an envelope. To fight the blankness, I counted bricks and measured the walls. I stared obsessively at the bolts on the door to my cell.

There was nothing to hear except empty, echoing voices from other parts of the prison. I was so lonely that I hallucinated words coming out of the wind. They sounded like whispers. Sometimes I smelled the paint on the wall, but more often I just smelled myself, revolted by my own scent.

There was no touch. My food was pushed through a slot. Doors were activated by buzzers, even the one that led to a literal cage directly outside of my cell for one hour per day of “recreation.”

Even time had no meaning in the SHU. The lights were kept on for 24 hours. I often found myself wondering if an event I was recollecting had happened that morning or days before. I talked to myself. I began to get scared that the guards would come in and kill me and leave me hanging in the cell. Who would know if something happened to me? Just as I was invisible, so was the space I inhabited.

The very essence of life, I came to learn during those seemingly endless days, is human contact, and the affirmation of existence that comes with it. Losing that contact, you lose your sense of identity. You become nothing.

Everyone knows that prison is supposed to take away your freedom. But solitary doesn’t just confine your body; it kills your soul.

Yet neither a judge nor a jury of my peers handed down this sentence to me. Each of the tormented 23 hours per day that I spent in a bathroom-sized room, without any contact with the outside world, was determined by prison staff.

Anyone lacking familiarity with our state prison system would probably guess I must have been a pretty scary, out-of-control prisoner. But I never committed one act of violence during my

entire sentence. Instead, a series of “tickets,” or disciplinary write-ups for prison rule violations, were punished with a total of more than five years in “the box.”

In New York, guards give out tickets like penny candy. During my nine years in prison I received an endless stream of tickets, each one more absurd than the last. When I tried to use artwork to stay sane, I was ticketed for having too many pencils. Another time, I had too many postage stamps.

One day I ate an entire apple – including the core – because I was starving for lack of nutrition. I received a ticket for eating the core since apple seeds contain arsenic, as spelled out in the prison handbook. The next time I received an apple, fearful of another ticket, I simply left it on the tray. I received a ticket for “refusing to eat.”

For the five years I spent in the box, I received insulin shots for my diabetes by extending my arm through the food slot in the cell’s door (“therapy” for prisoners with mental illness is often conducted this way, as well). One day, the person who gave me the shot yanked roughly on my arm through the small opening and I instinctively pulled back. This earned me another ticket for “refusing medical attention,” adding additional time to my solitary sentence.

My case is far from unusual. A 2012 study by the New York Civil Liberties Union found that five out of six of the 13,000 SHU sentences handed out each year are for nonviolent misbehavior, rather than violent acts. This brutal approach to discipline means that New York isolates its prisoners at rates well above the national average.

On any given day, some 4,300 men, women and children are in isolated confinement in the state, many for months or years. Those with more serious prison offenses have been held in solitary for 20 years or more.

Using this form of punishment is particularly absurd for minor rule infractions. But in truth, no one should be subjected to the kind of extreme isolation that is practiced in New York’s prisons today. I have no doubt that what is going on in prisons all over our state is torture. Many national and international human rights groups – including UN Special Rapporteur on Torture Juan E. Méndez – concur. Yet it continues, unseen and largely ignored by the public.

The scars that isolated confinement leaves behind may be invisible, too, but they are no less painful or permanent than physical scars. Even now that I am out of prison, I suffer major psychological consequences from those years in isolation.

I know that I have irreparable memory damage. I can hardly sleep. I have a short temper. I do not like people to touch me. I cannot listen to music or watch television or sports. I am only beginning to recover my ability to talk on the phone. I no longer feel connected to people.

Even though I am a free man now, I often feel as though I remain invisible, going through the motions of life. Feeling tormented by a punishment that has ended is a strange and unnerving anguish. But there are thousands like me, and until New Yorkers choose to bear witness to the soul-destroying torture taking place in their own backyards, our suffering, too, will remain invisible.

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