

# SJ 25 Study Materials:

## Related pages from the ASCA-Liman Aiming to Reduce Time-in-Cell Report

At the September 2017 meeting, the LJIC received background materials and data about states' use of restricted housing in prisons. The data and some of the background came from a series of 3 reports by the Association of State Correctional Administrators (ASCA) and the Arthur Liman Public Interest Program at Yale Law School. The reports included a review of state policies related to restricted housing, as well as data reported from the states.

One of the reports, Aiming to Reduce Time-in-Cell, published in December 2016, includes a synopsis of states' planned or proposed policy changes. Those pages are included in this packet. The report is lengthy (100+ pages), so I didn't include the full report. However, you can access all 3 reports online at the LJIC's page for the SJ 25 study at [www.leg.mt.gov/ljic](http://www.leg.mt.gov/ljic).

The link for Aiming to Reduce Time-in-Cell is <https://law.yale.edu/system/files/area/center/liman/document/aimingtoreducetic.pdf>

March 19-20, 2018  
Law and Justice Interim Committee

# Aiming to Reduce Time-In-Cell:

Reports from Correctional Systems on the Numbers of  
Prisoners in Restricted Housing and on the  
Potential of Policy Changes to Bring About Reforms

Aiming to Reduce Time-In-Cell

Association of State Correctional Administrators  
The Arthur Liman Public Interest Program  
Yale Law School

November 2016

November 2016

# ASSOCIATION OF STATE CORRECTIONAL ADMINISTRATORS

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Embargoed until 3pm on November 30, 2016

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### ***Aiming to Reduce Time-In-Cell: Correctional Administrators and Yale Law School's Liman Program Release New Report on Efforts to Reduce the Use of Isolation in State and Federal Prisons***

New Information from Prison Officials Reflects the National Consensus  
on the Need to Reduce Reliance on Restricted Housing

A new report, jointly authored by the Association of State Correctional Administrators (ASCA) and the Arthur Liman Program at Yale Law School, reflects a profound change in the national discussion about the use of what correctional officials call “restrictive housing” and what is popularly known as “solitary confinement.” Just published, *Aiming to Reduce Time-In-Cell* provides the only current, comprehensive data on the use of restricted housing, in which individuals are held in their cells for 22 hours or more each day, and for 15 continuous days or more at a time. The Report also documents efforts across the country to reduce the number of people in restricted housing and to reform the conditions in which isolated prisoners are held in order to improve safety for prisoners, staff, and communities at large.

The 2016 publication follows the 2015 ASCA-Liman Report, *Time-In-Cell*, which documented the use of restricted housing as of the fall of 2014. As ASCA explained then, “prolonged isolation of individuals in jails and prisons is a grave problem in the United States.” Today, a national consensus has emerged focused on limiting the use of restricted housing, and many new initiatives, as detailed in the report, reflect efforts to make changes at both the state and federal levels.

The 2016 Report is based on survey responses from 48 jurisdictions (the Federal Bureau of Prisons, 45 states, the District of Columbia, and the Virgin Islands)—that held about 96% of the nation’s prisoners convicted of a felony. That number excludes people held in most of the country’s jails (housing hundreds of thousands of people), in most of the country’s juvenile facilities, and in military and immigration facilities.

Tallying the responses, the new 2016 Report found that 67,442 prisoners were held, in the fall of 2015, in prison cells for 22 hours or more for 15 continuous days or more. The percentages of prisoners in restricted housing in federal and state prisons ranged from under 1%

to more than 28%. Across all the jurisdictions, the median percentage of the prison population held in restricted housing was 5.1%.

How long do prisoners remain in isolation? Forty-one jurisdictions provided information about the length of stay for a total of more than 54,000 people in restricted housing. Approximately 15,725 (29%) were in restricted housing for one to three months; at the other end of the spectrum, almost 6,000 people (11%) across 31 jurisdictions had been in restricted housing for three years or more.

The Report also chronicles efforts throughout the country and the world to reduce the use of restricted housing. In August of 2016, the American Correctional Association (ACA) approved new standards, calling for a variety of limits on the use of isolation, including a prohibition against placing prisoners in restricted housing on the basis of their gender identity alone. The standards also included provisions that pregnant women, prisoners under the age of 18, and prisoners with serious mental illness ought not be placed for extended periods of time in restricted housing. Further, in some jurisdictions, prison systems (sometimes prompted by legislation and litigation) have instituted rules to prevent vulnerable populations from being housed in restricted housing except under exceptional circumstances and for as short an amount of time as possible.

As the Report also details, several jurisdictions described making significant revisions to the criteria for entry, so as to limit the use of restricted housing, as well as undertaking more frequent reviews to identify individuals to return to general population, thereby reducing the number of people in restricted housing by significant percentages.

In short, while restricted housing once was seen as central to prisoner management, by 2016 many prison directors and organizations such as ASCA and the ACA have defined restricted housing as a practice to use only when absolutely necessary and for only as long as absolutely required. The goals of ASCA and the ACA are to formulate and to apply policies to improve the safety of institutions and communities by ensuring that the *separation* of individuals to promote safety and well-being need not be accompanied by *deprivation* of all opportunities for social contact, education, programming, and other activities.

As Leann K. Bertsch, President of ASCA, explained:

“What we are seeing is that prison systems are motivated to reduce the use of isolation in prisons and are actively putting into place policies designed to reduce the use of restrictive housing. Restricted housing places substantial stress on both the staff working in those settings as well as the prisoners housed in those units. Our highest priority is to operate institutions that are safe for staff and inmates and to keep communities to which prisoners will return safe.”

For more information, please contact George and Camille Camp, Co-Executive Directors of ASCA, at 301-791-2722, and Judith Resnik, Arthur Liman Professor of Law at Yale Law School, at 203-432-1447. The full report may be downloaded, free of charge, at [www.asca.net](http://www.asca.net) or <https://www.law.yale.edu/centers-workshops/arthur-liman-public-interest-program/liman-publications>.

**Aiming to Reduce Time-In-Cell:  
Reports from Correctional Systems on the  
Numbers of Prisoners in Restricted Housing  
and on the Potential of Policy Changes  
to Bring About Reforms**

**Association of State Correctional Administrators  
The Arthur Liman Public Interest Program, Yale Law School**

**November 2016**

### 3. *Transgender Prisoners*

We asked about transgender prisoners in the general population and in restricted housing. Of the 33 jurisdictions providing data on transgender prisoners,<sup>225</sup> 10 reported having no transgender prisoners in their total custodial population. The remaining 23 jurisdictions reported a total of 754 transgender prisoners in their prison systems. Of these, eight jurisdictions reported that no transgender prisoners were in restricted housing. In the 15 jurisdictions that had transgender prisoners in their restricted housing population, we tallied a total of 55 transgender prisoners in restricted housing.<sup>226</sup> In sum, of the 754 transgender prisoners reported by 33 jurisdictions, 55 (7.3%) were reported to be housed in restricted housing.

## VII. **Planned or Proposed Policy Changes in Restricted Housing: 2013-2016**

In ASCA-Liman's prior 2015 *Time-In-Cell* Report, 40 jurisdictions reported that they had reviewed their policies and practices of administrative segregation within the prior three years, that is, between 2011 and 2014. Many discussed efforts to make changes, including by reducing isolation, using less restrictive means of confinement, improving mental health services, and adding staff training.<sup>227</sup>

For this 2016 Report, we asked jurisdictions to report policies implemented or plans to revise policies on restricted housing, and we focused on the time period between 2013 and the fall of 2015. Thereafter, at the request of some correctional administrators, ASCA-Liman circulated a follow-up questionnaire in March of 2016 to inquire about any more recent changes. Some jurisdictions provided additional information, including after the August meeting, and thus this discussion includes materials received through the early fall of 2016.

We specifically inquired about changes in policies regarding restricted housing related to the "criteria for entry to restricted housing," "criteria for release to restricted housing," "oversight in restricted housing," "mandated time out-of-cell for restricted housing prisoners," "programming in restricted housing," "opportunities for social contact in restricted housing," "physical environment of restricted housing," "programming for mentally ill prisoners who have been in restricted housing," "policies or training related to staffing of restricted housing," and "other." We also asked jurisdictions to send the underlying policies related to placement in restricted housing. We did not ask questions about the reasons for changes, but as reflected in answers, some revisions to policies have come in the wake of litigation and legislative mandates.

Jurisdictions' responses to these policy questions included varying levels of detail. Further, we did not provide or ask for measures of implementation, such as whether revised entry criteria had resulted in a decline in the number of entrants or whether increased out-of-cell time opportunities were used in practice. Thus, we know how correctional systems *described* their efforts, but we do not have independent metrics of the impact of changes made.

Of the 53 jurisdictions surveyed, 45 provided responses to these questions.<sup>228</sup> Twelve of these 45 jurisdictions provided copies of policies or court-based settlement agreements as well.<sup>229</sup> A few jurisdictions responded with reports of reduced populations in restricted housing or with other kinds of information. Several jurisdictions that reported policy changes later

provided additional information.

Most of the responding corrections departments reported making or considering policy changes. Areas of revision included narrowing the criteria for entry; creating different forms of restricted housing; developing alternative housing options that removed individuals from the general population, but without such restrictive conditions; increasing oversight over the process of deciding who is to be placed in restricted housing; and creating pathways for release or limits on the time to be spent in restricted housing. Several jurisdictions reported that, for those people remaining in segregation, they sought to diminish the degrees of isolation by increasing out-of-cell time; improving access to programs, education, work, and exercise; and creating opportunities for social interaction with people in and outside of prison. In terms of the process for making changes, some jurisdictions reported that they had consulted with outside institutions—from prisoner and disability advocacy groups to organizations such as the Vera Institute of Justice—in their planning efforts.<sup>230</sup>

Below, we first provide an overview of what correctional systems reported they were trying to do to reduce their use of long-term isolation. We then describe changes underway in the federal system at the direction of the U.S. Department of Justice and in five states, all of which were putting into place new policies focused on reducing the use of restricted housing. We detail the proposals in the DOJ report on restricted housing that the March 2016 Presidential order indicated should be implemented within 180 days.<sup>231</sup> Thereafter, we provide information from five states—Colorado, North Dakota, Ohio, South Carolina, and Utah—that indicated that they were making substantial changes in restricted housing policies and procedures.

#### A. *Reducing Placement in Restricted Housing: Narrowing Criteria for Entry and Creating Alternatives*

Many jurisdictions reported changing the criteria for placement in restricted housing. For example, Colorado stated that it no longer allowed “female or youthful offenders” to be placed into “Restricted Housing – Maximum Security Status.”<sup>232</sup> Texas reported that members of what it called the “Texas Mafia” were “no longer placed in restrictive housing based solely on their affiliation.” California reported many changes in restricted housing policies, including no longer placing prisoners in restricted housing “solely based” on gang membership.<sup>233</sup> Pennsylvania reported that it had “eliminated self-injurious behaviors, self-mutilation, other forms of self-injury, and behaviors associated with these sentinel events from the list of rule violations that could lead to segregation or other types of informal sanctions.”<sup>234</sup> A few of these states have also been involved with litigation regarding restricted housing prisoners, and some of the changes interact with provisions of settlement agreements.

Other jurisdictions described taking steps to alter criteria for placement in restricted housing. North Dakota said that it was in the “process of [a] policy review related to using restrictive housing as a last resort.” South Dakota stated that it was revising the criteria for placement in restricted housing “to be based on more clearly defined violent/dangerous behaviors.” Utah, as detailed below in Part VII, changed both the criteria for placement and created an individualized review process for each prisoner in restricted housing.

Along with narrowing criteria for entry to restricted housing, some jurisdictions explained that they were seeking ways to divert prisoners from restricted housing, while also removing prisoners from the general population. Ohio, for example, reported that it planned to expand what it termed “Limited Privilege Housing,” described as “a non-restrictive housing alternative” for some individuals who would otherwise have been placed in restrictive housing. Oregon stated that it was revising policies to allow “low level” misbehavior to be addressed through some alternative to restricted housing. New York (another jurisdiction in which major litigation related to these issues was resolved in 2016) stated that it was planning “[a]lternative programming units,” including drug and alcohol treatment programs and step-down programs, “to reduce the number of inmates being held in restrictive housing.” Pennsylvania related that it had recently developed several diversionary treatment units. Texas reported expanding its “Mental Health Therapeutic Diversion Program” to 420 beds.

### *B. Focusing on Release: Time Caps, Step-Down Programs, and Increased Oversight of Retention Decisions*

Many jurisdictions reported having implemented or planning to change criteria and procedures for release from restricted housing or to the oversight of decisions to continue to house individuals in restricted housing. Reported efforts included placing limits on the amount of time in segregation, implementing structured programs to transition prisoners back to the general population (“step-down” or “step-up” programs), and increasing oversight or reviews of prisoners who were placed in segregation.

A few jurisdictions reported imposing a limit on the total time prisoners could spend in at least some forms of restricted housing. For example, Colorado described a 12-month limit on placement in Maximum Security restricted housing, which could be extended if “approved by the director of Prisons as well as the deputy executive director, and . . . based upon documented exigent circumstances.” South Dakota stated that it has made changes to “Disciplinary Segregation to reduce maximum duration in disciplinary segregation.”<sup>235</sup> Ohio reported that it had adopted a policy under which prisoners in “long-term restrictive housing (Level 5 or 4B)” were to be presumptively released after a set period of time unless they were found to “have committed an offense so dangerous it exempts them from this policy.” Under Ohio’s plan, prisoners in the most restrictive housing environment were presumptively downgraded to a lower level of restriction after 90 days, after which they were presumptively released to a lower restriction level after 15 months.

Several jurisdictions referenced implementing step-down or similar programs that create a series of stages to facilitate the transition of individuals from restricted housing back to the general population.<sup>236</sup> For example, South Carolina (discussed in greater detail below) reported that it had implemented a minimum year-long step-down program for prisoners requiring “intensive management,” and a minimum six-month-long step-down program for prisoners who commit less serious infractions. The Virginia Department of Corrections described its efforts at implementing “Steps to Achieve Reintegration” (STAR), a program for prisoners who refused to leave segregated housing “because of their fear of living with others”<sup>237</sup> so as to equip prisoners with “skills to safely enter [general] population housing.”<sup>238</sup> Utah (also detailed below) created a



tiered program aimed at moving people from restricted housing to general population within a year or less.

Several jurisdictions reported adding reviews of decisions to keep individuals in restricted housing. For example, New Jersey described the formation of a committee to conduct “a formal review of each inmate” housed in a management control unit (MCU) every three months “to determine whether an inmate’s release from MCU is appropriate.”<sup>239</sup> Oregon stated that it was implementing a “90-day review process” to ensure prisoners do not remain segregated longer than necessary.

A few jurisdictions described adding new administrative positions at various levels to oversee their restricted housing programs and units. New York said that it had “added an Assistant Commissioner position for oversight.”<sup>240</sup> South Dakota reported that it added the position of “Restrictive Housing Manager” in order “to oversee the development and maintenance of the level program and to ensure institutional compliance with new policy changes regarding restrictive housing.” Pennsylvania reported “many systemic changes to the ways mental health services are provided to state inmates housed in various types of restricted housing units,” including reorganizing the central office responsible for mental health care and augmenting oversight to enhance “the delivery of mental health services.” Utah added a new committee, the Placement/Advancement Review Board, to consider each prisoner in restricted housing on a regular basis.

Another form of oversight can come from improving data collection. A few jurisdictions described changing their information tracking systems. For example, Illinois explained that its Department of Corrections regulations were revised to require creation of a new file for each person in restricted housing to track “all relevant documentation pertaining to the administrative detention placement.”<sup>241</sup>

Jurisdictions have also sought to prevent the release of individuals from segregation directly to the community. *Time-In-Cell* described 30 jurisdictions that, as of 2013, reported that 4,400 people had been released to their communities without any transition from isolation.<sup>242</sup> A few jurisdictions responding to the 2015 survey described taking steps to prohibit or discourage the direct release of individuals from restricted housing to the outside world. Connecticut stated that it prohibited release of prisoners to the community directly from administrative segregation. Similarly, Colorado policy required the Department to “make every attempt to ensure offenders will not release directly to the community from Restrictive Housing Maximum Security Status” and to do so by considering transition in the 180 days preceding release to the community.

### C. *Mandated Time Out-of-Cell*

Another strategy described by several jurisdictions was mandating a certain number of hours per day or week that prisoners in segregation would spend outside of their cells. Several jurisdictions reported reforming policies to increase time out-of-cell for prisoners removed from the general population.<sup>243</sup>

For example, Ohio stated that it had a pilot program to provide “10 hours out-of-cell time for structured activity and 10 hours out-of-cell time for unstructured activity for severely mentally ill prisoners who must be held in restrictive housing for safety reasons.” Pennsylvania stated that prisoners in particular segregated units were scheduled for a minimum of 20 hours of out-of-cell activity per week. California noted that certain segregated prisoners were granted either 15 or 20 hours out-of-cell per week. Utah related increasing mandated time out-of-cell per week.

#### *D. Conditions: The Physical Environment and Programming*

In addition to criteria for entry to and release from restricted housing, jurisdictions reported revisiting conditions *within* restricted housing. Oregon, for example, reported that it created a “blue room” in its Intensive Management Unit in one prison, where images of nature were projected onto the walls. South Dakota described several changes, including building “outdoor recreation enclosures,” installing windows to provide additional natural light to prisoners, and installing televisions outside of cells, so that segregated prisoners could watch “news/weather channel” during “the daytime hours.”

Other jurisdictions described efforts to increase programming opportunities for prisoners in restricted housing, sometimes in groups. New Jersey stated that it planned to build modules for programming in administrative segregation units. Missouri described its new “reintegration unit” for people in restricted housing, which had additional programming. Texas reported on programs allowing administratively segregated prisoners to “participate in group recreation and group treatment.”

Several jurisdictions mentioned using “security desks” or “security chairs,” which physically restrain prisoners to enable them to sit together in small groups and share in programs or activities. For example, South Dakota described its step-down program as incorporating “out-of-cell group programming.” Some jurisdictions, including South Dakota, related installing security desks to permit small group activities. Washington reported that security chairs installed in its Intensive Management Unit classrooms enabled “up to eight offenders at a time [to] interact with other offenders and staff facilitators while participating in programming.” Nebraska planned to install such chairs to allow some segregated prisoners to have congregate programming.

#### *E. Staffing: Policies and Training*

As the *Time-In-Cell* Report detailed, the staffing of restricted housing units poses challenges for both institutions and individual correctional officers.<sup>244</sup> In the 2015 survey, we returned to these issues to learn about policy changes focused on staff, and several jurisdictions described focusing on these issues. For example, New Jersey reported that it had established a special training module for restricted housing staff. Pennsylvania stated that it had added training for employees who work with seriously mentally ill prisoners and for employees who staff restricted housing units. Utah said that it had completed a new policy to direct particular training for officers working in restricted housing facilities. The District of Columbia reported that it did not permit officers with less than 18 months of experience to work in these special units.

Wisconsin stated that it rotated staff out of restricted housing units every 14 weeks and that restricted housing staff received special training in subjects including suicide prevention and professional communication.

### *F. Jurisdictions Seeking Substantial Reductions in Restricted Housing Use*

We asked all jurisdictions to provide additional information on efforts to reform restricted housing. Below, we provide brief descriptions of changes, drawn from reports provided by the Department of Justice (DOJ) and from five states—Colorado, North Dakota, Ohio, South Carolina, and Utah—all of which describe themselves as seeking to achieve major shifts in the use of restricted housing.

#### *1. The Federal Prison System: Changes Recommended in the 2016 Department of Justice Restricted Housing Report*

As noted at the outset, the Justice Department issued a report in January of 2016 that included numerous specific recommendations for changes in how the federal government handles restricted housing.<sup>245</sup> That month, the President discussed the findings of the report and the harms of “solitary confinement,” and called for the practice to be “limited, applied with constraints and used only as a measure of last resort.”<sup>246</sup> In March of 2016, the President issued a Presidential Memorandum, “Limiting the Use of Restrictive Housing by the Federal Government,”<sup>247</sup> that directed prompt implementation of the DOJ’s recommendations by the Justice Department, which was required to rewrite many of its policies. Below we summarize some of the major changes recommended by the DOJ report.<sup>248</sup>

The DOJ organized its mandates under certain “Guiding Principles” followed by “Policy Recommendations.”<sup>249</sup> Central changes included limiting the placement of juveniles, pregnant women, and seriously mentally ill individuals in restricted housing, absent exigent circumstances, and banning the use of restricted housing for lesbian, gay, bisexual, transgender, intersex, and gender nonconforming individuals, where such placement is based solely on sexual or gender identity. The Justice Department also mandated the use of the least restrictive alternative, revised the in-prison infractions that could result in placement in restricted housing, and lowered the numbers of days individuals could spend in restricted housing. Thus, the DOJ called for the BOP to end the practice of placing juveniles (defined as “those adjudicated as juveniles, and those under age 18 who were convicted and sentenced as adults”) in restricted housing, except as a “temporary response to a behavioral issue that poses a serious and immediate risk to any individual.”<sup>250</sup>

A change with a wider application was the goal that all prisoners be housed “in the least restrictive setting necessary” to ensure their safety and that of others.<sup>251</sup> The DOJ stated that correctional systems “should always be able to clearly articulate the specific reason(s)” for placement in restricted housing, that these reasons should be supported by “objective evidence,” and that prisoners should remain in restricted housing “no longer than necessary to address the specific reason(s) for placement.”<sup>252</sup> The DOJ also called for initial and ongoing reviews of any placement in restricted housing and recommended that, for every prisoner, correctional staff develop “a clear plan for returning the inmate to less restrictive conditions as promptly as possible.”<sup>253</sup> Further, to divert individuals placed in protective custody, the DOJ recommended

that the Bureau of Prisons expand its use of “Reintegration Housing Units,” which allow certain prisoners to be removed from the general population but continue to live in conditions less restrictive than solitary confinement.<sup>254</sup>

The DOJ recommended that prisoners not be sent to restricted housing as sanctions for certain kinds of misbehaviors, organized in the federal system by “levels.” Thus, a low level offense would no longer result in a sanction of disciplinary segregation, and a moderate level offense would not result in a sanction of disciplinary segregation for a first violation or more than 15 days of segregation for a subsequent violation. Previously, moderate offenses could have resulted in 90 days for the first violation or 180 days for a subsequent violation.<sup>255</sup>

The DOJ also called for significant reductions to the time prisoners could be held in restricted housing for disciplinary infractions. For example, the DOJ urged that the maximum time a prisoner be placed in disciplinary segregation for the most serious category of offense be reduced from 365 days for a first offense and 545 days for a subsequent offense to 60 days for a first offense and 90 days for a subsequent offense.<sup>256</sup>

The DOJ also urged that, whenever possible, the BOP seek “to avoid releasing inmates directly from restrictive housing back to the community.”<sup>257</sup> To implement this goal, the DOJ recommended revising policies to discourage placing prisoners in restricted housing near the end of their prison terms and to consider releasing prisoners from segregation beginning 180 days before the end of their sentences, if that movement could be done safely.<sup>258</sup>

Like some other jurisdictions, the DOJ recommended changes that would increase total time out-of-cell for individuals in restricted housing. According to the DOJ’s recommendations, wardens should be directed to “develop individualized plans for maximizing out-of-cell time for restrictive housing inmates.”<sup>259</sup> The DOJ also reported that the BOP was revising its rules governing the use of “secure programming chairs” and “intends to purchase 610 of these chairs” to allow “in-person educational and mental health programming in a less restrictive manner than currently used.”<sup>260</sup>

For mentally ill prisoners, the DOJ recommended additional investment to hire mental health staff and expand diversion programs. Under these recommendations, the BOP would create “108 additional psychology positions,” which would allow the BOP to “dedicate at least one staff psychologist to each” restricted housing unit.<sup>261</sup> The DOJ also recommended expanded use of “secure mental health units” to divert seriously mentally ill prisoners from solitary confinement into “less restrictive housing.”<sup>262</sup> To this end, the DOJ recommended that the BOP “expand its network of residential mental health treatment programs” with the goal of “building sufficient capacity to divert inmates with [serious mental illness] from all forms of restrictive housing . . . whenever it is clinically appropriate and feasible to do so.”<sup>263</sup>

The DOJ recommended some measures to increase oversight of the use of restricted housing, including initial and ongoing reviews of a prisoner’s placement in restricted housing by “a multi-disciplinary staff committee” which would include institutional leadership and medical and mental health professionals.<sup>264</sup> The DOJ also recommended that the BOP publish monthly system-wide restricted housing data on its external website (to allow the public to track the

number of prisoners in federal restricted housing) and upgrade its data-collection software.<sup>265</sup> (As noted in the introductory materials, in the fall of 2016, several senators introduced a Solitary Confinement Reform Act which, if enacted, would have requirements additional to those outlined above.

## 2. Colorado

According to an article by Rick Raemisch, Director of the Colorado Department of Corrections (CDOC) and Kellie Wasko, Deputy Director of the CDOC, efforts to reduce the use of profound isolation were initiated in Colorado by Tom Clements, who served as the Executive Director of the CDOC from 2011 until 2013. Director Clements was murdered by a person who was released into the community directly from a CDOC restricted housing unit. In 2011, about 1,500 people (7% of the state's prison population) were in restricted housing. Under Director Clements, the population was reduced to 700 people.<sup>266</sup> At that time, 49% of those released went directly to the outside community.

When Rick Raemisch, who had previously served as the Director of Corrections in Wisconsin, assumed the leadership of Colorado's correction system in 2013, he sought to continue to limit the use of isolation. Raemisch and Wasko reported that, as of the spring of 2016, policy changes had produced a 67% reduction in CDOC's restricted housing population. As the data in Section IV indicated, in the fall of 2015, Colorado recorded 217 people, or 1.2% of its population, in restricted housing.

CDOC reported that it used what it termed a "progressive Management (Step down) Process," to provide prisoners with social contact within a highly structured and controlled close custody environment.<sup>267</sup> New units—the Close Custody Management Control Unit (MCU) and Close Custody Transition Unit (CCTU)—were "designed specifically to assist offenders with pro-social stabilization and cognitive intervention programming" before these individuals could enter the general population.<sup>268</sup> The CDOC system required that prisoners in these two units have Behavior Modification Plans, designed, implemented, and monitored by a multidisciplinary team.<sup>269</sup>

CDOC stated that individuals assigned to the MCU were allowed out of their cells for a minimum of four hours per day, seven days per week and that prisoners could be in groups along with several other prisoners when out-of-cell.<sup>270</sup> MCU prisoners could participate in recreational, social, and programming activities, including a minimum of three hours of indoor or outdoor recreation each week. Every 30 days, CDOC reviewed the mental health and management plans for such individuals.<sup>271</sup> According to Raemisch and Wasko, CCTU prisoners were permitted outside their cells six hours per day, seven days per week, in a group of 16 or fewer prisoners.<sup>272</sup> CCTU prisoners were required to participate in the program "Thinking for a Change," described as aiming to increase awareness of and alter criminal thought processes, promote positive peer interactions, and improve problem-solving skills.<sup>273</sup>

Raemisch and Wasko described the most restrictive offender management status—Maximum Security Status (MSS)—as reserved for prisoners who had "demonstrated through their behavior that they pose a significant risk to the safety of staff and other offenders."<sup>274</sup> The length of time spent in the Maximum Security unit was reported not to exceed 12 months.<sup>275</sup>

Those prisoners were permitted one hour a day, five days a week out of their cells and monthly out-of-cell “meaningful contact” visits with case managers and mental health clinicians.<sup>276</sup>

Further, CDOC described installing restraint tables (which, as noted, some jurisdictions describe as “security chairs”) to facilitate group programming in the Maximum Security Units.<sup>277</sup> After three months of good behavior, CDOC stated that Maximum Security prisoners could earn a television in their cell.<sup>278</sup> In the fall of 2015, CDOC reported three women in restricted housing. In its spring 2016 report, CDOC stated that it has adopted policies prohibiting the placement of female or youthful offenders into Maximum Security Restrictive Housing status.<sup>279</sup>

The question of the treatment of the mentally ill has drawn attention from the state legislature as well as from CDOC, which helped to shape legislation reducing isolation for mentally ill offenders. In June 2014, Governor John Hickenlooper signed Senate Bill 14-064,<sup>280</sup> which prohibits the placement of seriously mentally ill prisoners (SMI) in “long-term isolated confinement except when exigent circumstances are present.”<sup>281</sup> Before this legislation was enacted, CDOC reported that in 2014 all prisoners with SMI had been evaluated and “moved out of administrative segregation to either a Residential Treatment Program or a general population setting.”<sup>282</sup> SMI prisoners in the residential treatment units were, according to Colorado, permitted to leave their cells for 10 hours of structured therapeutic interventions and 10 hours of non-structured recreational programming each week.<sup>283</sup> Again, CDOC said it relied on restraint tables, which accommodate up to four prisoners, for group interactions with therapists and clinicians.<sup>284</sup>

CDOC described using screenings of prisoners upon entry to prison in order to identify individuals with serious mental illness.<sup>285</sup> Further, if prisoners violated prison rules, assessing committees were charged with determining whether mental illness contributed to the person’s committing a violation; if so, the person was to be assigned to a Residential Treatment Program that entailed significant restrictions on time out-of-cell but was not the same kind of management control unit to which non-mentally ill violators were assigned.

Like other departments, CDOC reported that some individuals who had been in profound isolation had difficulty leaving it.<sup>286</sup> CDOC described its Divisions of Clinical Services and Prison Operations staff as developing programs to encourage individuals to leave their cells; initiatives including having dogs in treatment groups, constructing de-escalation rooms with soothing music, and art therapy classes.<sup>287</sup>

CDOC characterized these policy changes as successful, reporting that the two facilities with Residential Treatment Programs have experienced significant declines in forced cell entries and in prisoner-on-staff assaults.<sup>288</sup> CDOC explained that its senior executives provided weekly messages to the entire department to describe ongoing reforms, explain their rationale, and invite feedback. Further, Raemisch and Wasko described giving management teams at the facility level the autonomy to determine what methods to use to engage staff in and gain their commitment to change.<sup>289</sup> CDOC also reported that there were no suicides in restricted housing in 2015.<sup>290</sup> The average length of time spent in restricted housing by CDOC prisoners was approximately 7.5 months.<sup>291</sup>

### 3. North Dakota

Reports of reforms in the North Dakota Department of Correction and Rehabilitation (ND-DOCR) come from its director, Leann Bertsch, whose essay, *The History of Restricted Housing at the ND-DOCR*, details the evolution of using segregation from the era of “dark cells” where no light could reach prisoners to modern-day segregation.<sup>292</sup> She described the expanding use of segregation despite the absence of any “apparent correlation between institutional violence, escapes, weapons, or riots that would account for” that increase.<sup>293</sup> Thus, North Dakota has identified segregation as a *problem* to be solved and outlined how the Department aimed to reduce dramatically its reliance on isolation.<sup>294</sup> In a March 2016 discussion of “strategic planning” to reduce segregation, the Department listed what segregation “can’t do,” (improve institutional behavior, reduce violence or recidivism) and what segregation had been “proven to do” (increase violence, aggression, self-harm, psychosis, and other physical and mental health harms in men who have spent time there).<sup>295</sup>

Thus, the aim was to use the least “restrictive housing level,”<sup>296</sup> and the new “goal of segregation” was “to separate, assess, and equip people to function at a reduced risk to themselves, the institution, and others.”<sup>297</sup> ND-DOCR’s strategy was to “divert people from segregation and strictly limit the types of behaviors that can result in segregation.”<sup>298</sup>

At the front end, ND-DOCR reported that it had limited the behaviors that could result in placement<sup>299</sup> and had encouraged alternative interventions, such as increasing monitoring in general population or restricting prisoners within their general population cells, so as to use segregation as a last resort.<sup>300</sup>

The ND-DOCR also implemented reforms to reduce the population in their restricted housing units. Leadership identified over 30 people in the Administrative Segregation Unit who no longer required restricted housing, and moved them into a new Administrative Transition Unit (ATU) to prepare them for the transition to general population.<sup>301</sup> People housed in the new ATU were permitted more opportunities for social interaction and special programming to help them prepare for the return to general population.<sup>302</sup> The Special Assistance Unit (SAU), the housing unit for people with mental illness, also expanded opportunities for socialization by allowing its residents to engage in group treatment and to spend days visiting the general population floor.<sup>303</sup> The SAU also created a new transition floor, with supportive services, to help improve reentry outcomes for this population.<sup>304</sup>

In addition, through a psychological assessment process, the ND-DOCR identified the “most acutely impulsive and dangerous people” in their restricted housing units.<sup>305</sup> These people were assigned behavior management plans to help them develop the skills and behaviors needed to transition out of restricted housing. For those remaining in restricted housing, these plans “have increased the amount of interaction, out-of-cell time, enrichment, and reinforcement . . . .” All new admissions to Administrative Segregation are assessed immediately by a multi-disciplinary team and provided with a personalized behavior management plan that indicates what progress is necessary to begin the transition out of restricted housing.<sup>306</sup>

Like Colorado, North Dakota indicated that it sought to engage correctional officers in all stages of program development, which included surveying staff to identify perceived problems,

educating correctional officers about the psychological and physical harms of solitary confinement, and stressing rehabilitation as a means of achieving security within facilities.<sup>307</sup>

Since implementing these reforms, North Dakota's DOCR reported that it has reduced its segregated population from 82 prisoners in April 2015 to 27 in April 2016.<sup>308</sup> Director Bertsch highlighted staff support<sup>309</sup> and prisoner reports of more positive exchanges with staff.<sup>310</sup> North Dakota also reported a reduction in the use of force<sup>311</sup> and no increase in incidents of violence since shifting its approach.<sup>312</sup>

#### 4. Ohio

In the fall of 2015, ODRC described a “[m]ajor overhaul of the entire system as part of a comprehensive reform.” In a May 2016 Executive Briefing by staff to Director Gary Mohr, the ODRC outlined reforms at three facilities—the Grafton Correctional Institution (GCI), the Belmont Correctional Institution, and the Ohio State Penitentiary.<sup>313</sup> Those efforts were part of making “a substantive change to our entire disciplinary process and the types/kinds of sanctions we use to address inmate misbehavior.”<sup>314</sup>

According to the Department, the GCI has converted half of its Special Management Unit (SMU) cells into Limited Privilege Unit (LPU) cells, for use by prisoners who are deemed not to pose “a significant threat to the safety and security of the facility.”<sup>315</sup> These prisoners are given “more out-of-cell time, access to telephones and email, as well as additional recreational time activities.”<sup>316</sup> Most significantly, prisoners on LPU were offered the opportunity to gain early release from restricted housing by participating in pro-social structured and unstructured activities.<sup>317</sup> The Department reported that these activities included programming on problem-solving, community service, recovery, anger management, and mental and physical wellness. The Department enabled LPU prisoners to attend these programs in general population classrooms and to leave the unit for mental health and medical appointments.<sup>318</sup>

Ohio reported that, at its Belmont Correctional Institution (BeCI), it launched a pilot program on “alternative disciplinary sanctions” adapted from the HOPE Model (Hawaii Opportunity Probation with Enforcement).<sup>319</sup> The premise of the model, which Ohio adapted to fit the corrections environment, is that violations should result in sanctions that are prompt, proportionate to the severity of the offense, and take into consideration the individual behavioral history of the prisoner.<sup>320</sup>

In addition to adopting the HOPE Model, BeCI introduced other reforms intended to reduce the population in restricted housing, including new pro-social programming, congregate activities, and targeted case planning.<sup>321</sup> BeCI also introduced new programming to address the specific needs of prisoners with mental illness, including group psychotherapy, medication education, and programs promoting adjustment.<sup>322</sup>

BeCI also introduced alternative sanctions to reduce reliance on restricted housing, such as imposing bunk restrictions, commissary restrictions, and personal electronics restrictions.<sup>323</sup> Like North Dakota, Ohio's BeCI has reassessed its response to certain offenses that previously would have led to placement in restricted housing.<sup>324</sup> Instead of placing “Rule 39” violators in restricted housing—that is, prisoners who use or possess drugs and alcohol—BeCI has created



special “Rule 39 Unit” dormitories.<sup>325</sup> No individual is placed in restricted housing until a third positive drug test.<sup>326</sup> Ohio also explained that, while at first it put all prisoners who tested positive for substance use in the same unit, concerns emerged that placing casual users with addicts encouraged drug use. As a result, BeCI redesigned the unit to create two different tracks: a disciplinary track for more addicted users, and a programming track for casual users.<sup>327</sup>

The Department described efforts at Ohio State Penitentiary (OSP) to alter criteria for releasing prisoners from restricted housing. OSP houses the system’s most dangerous prisoners, and as of April 1, 2016, there were 335 prisoners in this facility housed in extended restricted housing.<sup>328</sup> Ohio reported that in the fall of 2015, it instituted a new policy, under which each prisoner’s security level is presumptively reduced within a set time period, with the exception of prisoners who committed “very serious” offenses such as “murdering another inmate” or “taking a staff member hostage.”<sup>329</sup> Absent such circumstances, however, Ohio reported that each prisoner is given an individually-tailored Behavior Management Plan (BMP) that specifies the maximum time that the prisoner will spend in each restricted housing status.<sup>330</sup> Each status brings increased privileges and prisoners can accelerate their progress through the levels by demonstrating pro-social behaviors and participating in programs.<sup>331</sup>

For those prisoners who were ineligible for presumptive reduction, the Department reported that OSP had “developed a separate management strategy based on good conduct, increased quality of life, and social interaction.”<sup>332</sup> For these prisoners, Ohio reported increasing out-of-cell time by 30 minutes, five days a week; increasing telephone access from 30 minutes a month to two hours per month; and increasing the number of permitted visits from two to three per month.<sup>333</sup> In addition, OSP reported that it offered prisoners the ability to have a tablet in-cell and to email and download games through a kiosk in the unit; the ability to purchase a keyboard for in-cell and congregate programming; and the opportunity to participate in a monthly incentive program to earn more privileges.<sup>334</sup> Ohio reported that these prisoners are evaluated annually for release, with consideration given to recent behavior and programmatic involvement.<sup>335</sup>

Ohio also reported efforts to update its data collection system to monitor its prisoners’ placements. As of May 2016, Ohio was seeking weekly updates from its facilities on prisoners in restricted housing.<sup>336</sup> Ohio reported that it had reduced the use of restricted housing and that violence had likewise fallen. Belmont Correctional Institution described a 90% reduction in the use of restricted housing since 2010, coupled with a 25% reduction in the violence rate since 2014.<sup>337</sup> Ohio’s leadership reported that “there is cause to believe that these reforms have made [their] prison[s] safer.”<sup>338</sup>

### *5. South Carolina*

South Carolina provided policies on entry into, activities in, and oversight of restricted housing.<sup>339</sup> To reduce the use of restricted housing, South Carolina’s Department of Corrections (SCDC) adopted a Step-Down Program (SDP) “to create a pathway for offenders to ‘step down’ from the Restricted Housing Unit (RHU) to general population in a manner that maintains public, staff, and offender safety, while also reducing their criminogenic risk factors.”<sup>340</sup>

Director Bryan Stirling provided materials tracking the number of prisoners in Restricted Housing from 2012 to March of 2016. The total “lockup” numbers in 2012 were 1,691 (including 1,251 individuals described as non-mentally ill and 420 people termed “mentally ill”). In March of 2016, the total number was 755, of which 266 were “mentally ill.”<sup>341</sup>

SCDC launched its Step-Down initiative at McCormick Correctional Institution in June 2015 and, by March of 2016, reported that the program had expanded to 17 of the state prison system’s 26 facilities.<sup>342</sup> SCDC explained that prisoners accepted into the Step-Down program are divided into two categories: Intensive Management (IM) and Restrictive Management (RM). IM prisoners were those with “the potential for extreme and deadly violence that have been a threat to the physical safety of other inmates or staff at one time.”<sup>343</sup> RM prisoners, by contrast, were individuals who were “continually” placed in restricted housing due to “poor adjustment in general population” but who “do not pose a deadly threat to staff or inmates.”<sup>344</sup>

SCDC reported that prisoners in the IM program had to complete a minimum yearlong, three-phase program before rejoining the general population.<sup>345</sup> The program’s timeframe could be extended if the individual had “disciplinary infractions or poor adjustment.”<sup>346</sup> Like most step-down programs, prisoners received incremental privileges as they progressed. In the most restrictive Phase I, prisoners were granted certain privileges, referred to as “Phase I incentives,” which include out-of-cell time each day from 8:00 a.m. until 4:00 p.m.; lunch in the cafeteria (breakfast and dinner were provided in-cell); and recreation time in the gym twice a week.<sup>347</sup>

Phase I was designed to span at least three months, during which time prisoners were required to participate in programming.<sup>348</sup> To advance to Phase II, prisoners could not be involved in assaultive behavior during the time they were in Phase I.<sup>349</sup> In Phase II, incentives included out-of-cell time from 8:00 a.m. to 6:00 p.m.; lunch and dinner in the cafeteria; and the ability to have one visit per month even if on visitation restriction.<sup>350</sup> To advance from Phase II, prisoners were required to meet all Phase I requirements, complete an additional 90 days of programming, demonstrate “openness to constructive feedback” and “[d]emonstrate management and control of impulsive behavior.”<sup>351</sup> Prisoners who successfully completed Phase II could move to Phase III. In Phase III, incentives included out-of-cell time from 5:30 a.m. to 8 p.m.; job assignments outside of their dorm; all meals in the cafeteria; and two visits per month, if on visitation restriction.<sup>352</sup> After six months in Phase III, prisoners were to be considered for placement in general population.<sup>353</sup>

As South Carolina staff also explained, the Phase I incentives were automatic when a prisoner entered the program; if a prisoner misbehaved repeatedly, that prisoner would be required to repeat the first phase or be returned to restricted housing, and thereafter, be able to start the step-down program again.

SCDC explained that the RM program was similar to the IM program, but ran for six months rather than a year.<sup>354</sup> RM prisoners had more incentives earlier, more recreation time each week, more visitation opportunities, and more out-of-cell opportunities.<sup>355</sup> For example, in Phase I, incentives in the RM program included schooling for prisoners who did not have their high school diploma, three visits per month, and job assignments.<sup>356</sup>

SCDC's Step-Down Program also included educational programming. If accepted to the SDP, prisoners were to be screened for completion of a GED or high school diploma. Prisoners who had not obtained either were enrolled in education courses beginning in Phase III (IM) or Phase II (RM).<sup>357</sup> If prisoners had not completed educational requirements by the end of the SDP, they continued their education upon return to general population.<sup>358</sup>

SCDC described its Step-Down Program as including a wide array of classes, such as art and music, philosophy, creative writing, foreign languages, and some other life-skills programs, as well as anger management, managing anxiety and depression, and budgeting for individuals and families.<sup>359</sup> Upon graduation from the Step-Down Program, prisoners had restrictions on canteen, telephone, and visitation privileges lifted.<sup>360</sup> Further, prisoners were given the option of transferring to other programs within SCDC or remaining to become a facilitator for incoming prisoners in the Step-Down Program.<sup>361</sup>

In terms of program administration, decisions on prisoner movement through the steps were made by the SDP Review Team, which consisted of a Warden or his/her designee, the SDP unit manager, the SDP caseworker, and a mental health counselor.<sup>362</sup> SCDC reported that for prisoners who did not advance, the team informed them of what was required to do so.<sup>363</sup>

Further, if any prisoner was found to have committed a serious, major disciplinary infraction or refused to participate in any part of the program, that prisoner could be returned to the previous phase, as decided by the SDP Review Team. Consideration was given to time spent in restricted housing, the reason the prisoner was originally placed in restricted housing, the prisoner's mental health status, his/her risk level, his/her willingness to participate in the program, and the safety and security of staff and other prisoners.<sup>364</sup>

Issues of mental illness have been a part of the concerns of the SCDC, which on January 12, 2015, entered into a settlement with Protection and Advocacy for People with Disabilities, Inc., and agreed to improve conditions for mentally ill prisoners incarcerated at the SCDC.<sup>365</sup> In 2015, the Department agreed to seek \$8.6 million in funding for three years to increase the number of mental health personnel and to improve facilities. Some planned facility improvements included adding a recreation yard to the Behavioral Management Unit, cordoning off a Crisis Intervention Unit for prisoners arriving with or developing a condition that warrants an immediate response, and adding cameras in cells for monitoring/surveillance.<sup>366</sup> The Department was also developing a program for screening and evaluating prisoners to identify those in need of mental health care, as well as a training curriculum that included crisis-intervention training for staff.<sup>367</sup>

The Step-Down Program operated in the context of the SCDC policies governing restricted housing. For example, prisoners classified as "Level 1" Substantiated Security Risk (SSR), who were permitted to exercise outside of cells five days a week, one hour per day,<sup>368</sup> were to be "restrained according to their status; and "strip-searched prior to being removed from their cell and at the conclusion of exercise," for most levels.<sup>369</sup> SCDC policy also encourages an "in-cell exercise program"—providing directions on forms of exercise inside cells and to be distributed to prisoners in any form of restricted housing.

## 6. Utah

Utah revised its rationale for restricted housing in 2016, according to the Director of the Division of Institutional Operations, Jerry Pope, who was charged by Executive Director Rollin Cook to oversee changes but, prior to the adoption of its 2016 policy, Director Pope described, restricted housing was a way to warehouse people whom the prison viewed as problems. In contrast, Utah has changed that approach to limit the reasons for placement in restricted housing and to develop a program for those placed in restricted housing to move back to the general population as soon as possible. As Director Pope explained, this new approach was “the right thing to do,” especially because most people in restricted housing would eventually be released back into the community.<sup>370</sup>

The 2016 policy, promulgated in January,<sup>371</sup> was finalized after consultation with the American Civil Liberties Union of Utah (ACLU), the Disability Law Center of Utah, and Utah Prisoners Advocate Network.<sup>372</sup> The 2016 policy statement explained that its purpose was to provide the “procedure, rationale and guidelines for the management and operation of Restricted Housing,” which was that “when circumstances make it necessary to place an inmate in Restricted Housing that a structured, progressive program be available that creates an opportunity for an inmate to progress out of Restricted Housing to general population within 12 months.”<sup>373</sup>

The policy’s “Vision Statement” described a commitment to “becoming industry leaders in restricted housing management” that fostered “positive change.”<sup>374</sup> The “Mission Statement” explained that the “team will provide inmates with opportunities for education, mental health, programming, recreation, religious services, and visiting in a safe, secure, and cost-effective environment,” that encouraged “transition to less restrictive housing through a structured and progressive program.”<sup>375</sup> Director Pope reported that staff posted the Mission Statement and Vision Statement on placards in each unit in order to raise and maintain awareness about changes to restricted housing.<sup>376</sup>

Central to the new policy was an individualized review of decisions to move people in and out of restricted housing. This review also narrowed the criteria for placement in restricted housing. To do so, the 2016 policy created an “Objective Review Panel” to conduct an initial review of each individual placed in restricted housing.<sup>377</sup> Thereafter, a multi-disciplinary team (the Placement/Advancement Review Board) was to have a weekly review of each person placed in restricted housing to determine whether he or she met—and continued to meet—specified criteria for restricted housing.<sup>378</sup>

The Placement/Advancement Review Board was initially planned to include several correctional officials, including the Division Director, the Director of Inmate Placement Programs, wardens, deputy wardens, and captains from the Central Utah Correctional Facility and Utah State Prison, as well as a “qualified health professional,” a representative of the ACLU, and a representative of the Utah Disability Law Center.<sup>379</sup> Thereafter, the staff determined that confidentiality concerns precluded the outside organizations from having relevant information, and decided instead to conduct an “annual policy review” with those organizations.<sup>380</sup>

The criteria for placement were revised to provide that the bases for placement in restricted housing included, but were not limited to, “Security Threat Group activity,” “riot,” “serious safety concerns,” and “involvement in a serious threat to life, property, staff or to the orderly operation of a unit or facility.”<sup>381</sup> The policy provided that if the Placement/Advancement Review Board deemed that an individual was inappropriately housed in restricted housing, the individual “shall be referred to his/her respective Offender Management Review for reassessment and proper housing.”<sup>382</sup>

Further, under the 2016 policy, individuals placed in restricted housing were to have a mental health assessment within 72 hours, and receive a review by the Placement/Advancement Review Board within 10 days.<sup>383</sup> Further, if a prisoner was found to have a serious mental illness, that person “shall be moved to a mental health treatment unit.”<sup>384</sup>

As Director Pope reported to us, Utah’s first step was to complete an evaluation of every prisoner in restricted housing. After that review, the Department concluded that many individuals should be moved out or, for those with serious mental health needs, transferred to a mental health unit. As of the fall of 2016, implementation was underway to provide for what has come to be known as “ten and ten” in the mental health unit—10 hours of time out-of-cell for mental health treatment and an additional 10 hours out-of-cell per week for other activities.

In addition to reviewing why a person was initially placed in restricted housing, Utah’s 2016 policy provided means, through its “Step-Up Tier Program,” for people to leave restricted housing. As its title reflected, the policy was designed to return people to general population within one year; it also allowed for an earlier return if an individual successfully completed the steps earlier.<sup>385</sup>

Under this policy, a prisoner in restricted housing was to begin at Tier 1, with a “minimum of 5 hours out-of-cell each week,” as well as “in-cell programming, in-cell education, volunteer work, . . . [and] individual mental health counseling.”<sup>386</sup> Further, prisoners “on Tier 1 with little or no contact with other individuals” were to be “monitored daily by medical staff and at least once a week by mental health staff.”<sup>387</sup>

After 45 days, a prisoner so confined could, after a review, be advanced to Tier 2, where he or she would become eligible for two-cell recreation at 5-10 hours per week, as well as work opportunities, “group education,” and “group programming.”<sup>388</sup> After another review at 120 days, a prisoner could advance to Tier 3, in which “quad cell recreation” is permitted out-of-cell for 10 to 14 hours per week.<sup>389</sup> Security desks were installed for education and group therapy, and recreation center enclosures were also added to allow more time out-of-cell.<sup>390</sup> The policy permitted visiting and phone privileges based on a reward system, and provided that all visits be conducted through a barrier.<sup>391</sup> After another 150 days, another review could make a prisoner eligible for a return to the general population.<sup>392</sup>

The 2016 policy also included a provision that prioritized staff working in Restricted Housing units for “Crisis Intervention Training.”<sup>393</sup> Utah reported that all custody staff received two hours of in-service training on restricted housing.<sup>394</sup> In addition, Utah revised its data collection system to track information on restricted housing. Those changes were underway as of

this writing. The state's Research and Planning Bureau was identifying metrics based on the guiding principles of the new restricted housing policy in order to generate quarterly reports that would help determine the effectiveness of the restricted housing program and provide bases for modifying the program as well.<sup>395</sup>

Utah further explained that, had it answered the 2015 survey with data from the summer of 2016, its numbers would have been different. Rather than 14% of its population in restricted housing, 6% were in-cell for 22 hours or more (380 out of 6,112, of whom seven (1.6%) were women). Further, 268 people were in-cell for 20-21 hours, resulting in a total of 648 or 10.6% of the population confined in those settings.<sup>396</sup> In addition, Utah had detailed information on the demographics of the populations.<sup>397</sup> In short, as a result of these substantive policy changes, the number of prisoners in restricted housing dropped from 912 in the fall of 2015 to 380 in August, 2016, with another 268 prisoners in-cell for 20-21 hours.

### **VIII. Reflecting on Efforts to Reduce Time-In-Cell**

In the course of conducting this research and writing this Report, correctional administrators repeatedly contacted us to discuss their efforts to reduce the numbers of persons confined in restricted housing. In addition, many Directors stressed the efforts to shift from the 22 or more hours in-cell model to forms of restrictions that provided more time out-of-cell. Indeed, as this Report was circulated in draft, system administrators sought us out to explain how the numbers detailed were out of date, for they had succeeded in reducing restricted housing prison populations from the levels described here.

These efforts reflect the profound shift that has occurred in the last few years, since ASCA and Liman began this series of research projects. While once restricted housing was seen as central to prison management, by 2016 many prison directors and organizations such as the ACA and ASCA had defined restricted housing as a practice to use as little as possible for as short a duration as possible. Moreover, the large numbers of people in restricted housing are enduring conditions that are harmful not only to them, but also to staff and the communities to which prisoners will return. Indeed, some prison administrators are “abolitionists,” in the sense that they would—if they could—end solitary confinement and find methods to ensure that no person remain for more than 15 days in 22-in-cell hours continuously.

Yet, as the data in this Report reflect, unraveling the practices of isolation requires sustained work. This Report identified 67,442 prisoners in restricted housing and that number, as noted at the outset, excludes most jails in the United States. Some 5,909 prisoners in 32 jurisdictions have been kept in-cell for 22 hours a day or more for three years or more. Yet the Nelson Mandela Rules—formulated with input from U.S. correctional officials—call more than 15 days a form of prolonged isolation that should be understood as degrading and inhumane treatment.

Moreover, a question emerges about why 22 hours or more should be definitional of isolation. The question is whether a move to 21 (rather than 22) hours in-cell responds to alleviate the harms of isolation. Equally important is the length of time a person is subjected to isolating conditions, and how to assess the number of hours in-cell within the context of the

length of time confined in that manner. How many hours in continual confinement in a cell for how many days should be seen as impermissible? Moreover, prisoners may be held in their cells for days (if not 15 consecutive days) for 22 hours or more. Further, in many systems, the small amount of time out-of-cell that is permitted is spent in enclosed cubicles, sometimes without any natural light.

In short, neither a shift to 21 hours nor time out-of-cell in very tight spaces responds to the goals—expressed by ASCA, the ACA, among many others—of changing the conditions of confinement in significant ways. Thus, at its core, the issue is whether—as the proposed 2016 Senate solitary confinement reform legislation reflects—the isolation denoted by solitary confinement should be ended. Doing so would reflect that the *separation* of individuals to promote safety and well-being need not be accompanied by *deprivation* of all opportunities for social contact, education, programming, and other activities.

We return as we began—to the larger context. From the inception of this joint work by ASCA and Liman, we have always understood that isolation ought not itself be understood “in isolation.” Restricted housing practices are on a continuum with the placement of prisons in rural settings, far from the homes of many of the prisoners and imposing difficulties in having both able staff and volunteers, as well as regular visits by family members.

As the nation revisits its decades of over-incarceration, it must address restricted housing in the context of prison policies and criminal justice practices in general. This Report makes plain that correctional leaders in many jurisdictions are reconsidering their own systems, and joining with prisoners, their families, advocates, and members of all branches of government, the academy, and many others—who are seeking to achieve lasting changes in the use of incarceration itself.