

Proceedings of a Colloquium to further a National  
Consensus on Ending the Over-Use of Extreme Isolation  
in Prisons

John Jay College of Criminal Justice

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Prisoner Reentry Institute

With support from

The Jacob and Valeria Langeloth Foundation

**A Colloquium to Further a National Consensus on Ending the Over-Use of Extreme Isolation**

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## Executive Summary

With support from the Jacob and Valeria Langeloth Foundation, on September 30, 2015 John Jay College of Criminal Justice convened a colloquium including 15 corrections agency heads and a like number of attorneys, academics and experts from the community of those seeking to reform the use of social isolation, often called “solitary confinement,” in U.S. Prisons and Jails. The purpose of the colloquium was to determine if consensus might be achievable about ways to achieve the sought after reforms by common agreement and without resort to litigation. To facilitate discussion, all participating agreed to be bound by the “Chatham House Rule,” that provides that the outcomes and discussion would be limited to the participants and that the report would not identify discussants by name or affiliation and that in the future the participants would not make reference to statements or admissions by other participants.

What resulted was a remarkable two day experience that generated a great deal of argument and debate as well as an equally exciting degree of agreement and consensus. One attorney representing inmate interests called the gathering “worthwhile” in a subsequent email to the organizer, and a corrections administrator said it was “great.” Another participant, a medical expert commented after the colloquium, “Thanks so much for including me in the colloquium; I had no idea how many folks in Corrections we could trust, admire, and have a feeling of friendship with. What a transformation since I first got involved with these issues 30-odd years ago! I was delighted to realize it did not have to be “us versus them”, but instead a shared mission and goal, but with different intelligences about the pathways to and barriers resisting change. That is certainly how it felt in my work group.”

The gathering provided a first opportunity for many to meet with “adversaries,” often for the first time and to listen to and consider the other side’s point of view. New friendships and alliances were forged and the basis for constructive conversation was established. It would be difficult to say that any minds were changed but it can be said without equivocation that emerging from the meeting was an energized group united in the belief that the United States can do better in how it employs social isolation and ameliorate many of the most damaging results from the overuse of extreme social isolation.

As a result of the deliberations several clear themes and areas of agreement are apparent:

- The use of social isolation is greater than it has to be, in large measure because prisons have been called upon to do things they were never intended to do and inadequately resourced to do it.
- Persons with mental illness and other vulnerable populations who do not require imprisonment should be treated elsewhere.

- The only criterion for confining a person to social isolation within prison should be behavior; persons should not be confined based upon their affiliation or status.
- When it is used at all, separation from general population should be for the least amount of time necessary and in the least restrictive conditions.
- Separation from general population must always provide for adequate living conditions and for meaningful routine, and periodic medical and mental health assessments.
- Transparency and accountability in the use of segregated housing is essential.
- Decisions about the use of social isolation in prison for disciplinary reasons should be made using an appropriate due process procedure.
- Prison discipline should incorporate a continuum of measures to hold incarcerated persons proportionately accountable for their behavior and the use of isolated confinement should be the last resort. Alternatives to isolated confinement as punishment are desirable and should be found.
- Decisions about the use of segregation in prison for other reasons should be made by multi-disciplinary teams with a view toward improving outcomes.
- The confinement of individuals in isolated confinement other than for disciplinary reasons should not feel punitive to the affected individual.
- The purpose of isolated confinement must be to improve the outcome for the affected individual and to make the prison and the community safer, to that end there must be meaningful interventions designed to address the reasons for the confinement and attainable means for the individual to transition back to the general population of the prison.
- Wherever and whenever possible opportunities to relieve the social isolation of the confined individual should be employed.
- Corrections administrators and advocates for incarcerated persons must work together to obtain political and financial support for the changes needed.
- Line corrections staff can and must be made to see the utility of reform.

These themes are reflected in the 23 specific recommendations contained at the end of this report. Our intent in convening this colloquium was to try to establish a “roadmap” for reform. What is clear is that the road to a state of affairs we can all be proud of is long and

there remains much to be done. But as the proverb says, a journey of a thousand miles begins with a single step and these recommendations can serve as the map to the first turn.

## Introduction

Over the last three decades, corrections systems have increasingly relied on isolation and segregation as a prison management tool, even building entire “supermax” prisons, where prisoners are held in extreme social isolation, often for years or even decades. The massive increase in the numbers of men, women, and children behind bars placed extreme stress on existing facilities, corrections systems, and criminal justice budgets which struggled to accommodate the unprecedented growth in population without the resources or political support necessary to create rehabilitative environments. Prison administrators were left with few tools to keep their prisoners safe and to enforce reasonable prison rules. This fostered an environment where the use of extreme social isolation and segregation became the default approach to addressing many of the complex challenges faced in operating places of detention and incarceration. On an average day in 2011–12, up to 4.4% of the state and federal inmates and 2.7% of jail inmates were held in administrative segregation or extreme social isolation. Based on current prisoner populations this translates into 660,000 state and federal prisoner and 201,000 jail inmates.<sup>1</sup> Both legal and medical professionals have come to criticize extreme social isolation as unconstitutional and inhumane, pointing to the well-known harms associated with placing people, especially those with mental illness in extreme social isolation.<sup>2</sup> And now, research is emerging which suggests that extreme social isolation can actually have a negative effect on public safety.<sup>3</sup> The results of this questioning of the status quo can be seen in administrative and legislative reform now occurring in jurisdictions around the country.<sup>4</sup> Corrections organizations are engaging on the topic and beginning to develop guidelines for the field.<sup>5</sup> Civil rights and human rights organizations, faith community leaders, lawyers, and mental health organizations, have called for reforms in policy and practice. There is a broad and emerging sense that the use of solitary

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<sup>1</sup> Beck, Allen J. Use of Restrictive Housing in U.S. Prisons and Jails, 2011-2012. Washington, D.C.: Bureau of Justice Statistics, U.S. Department of Justice, and October 2015. Also see, Carson, E. Ann. Prisoners In 2014. Washington, D.C.: Bureau of Justice Statistics, U.S. Department of Justice, September 17, 2015, and Milton, Todd and Zeng, Zhen, Jail Inmates at Midyear 2014. Washington, D.C.: Bureau of Justice Statistics, U.S. Department of Justice, June 2015.

<sup>2</sup> *In re Medley*, 134 U.S. 160, 168 (1890) (“[Prisoners subject to solitary confinement] fell, after even a short confinement, into a semi-fatuous condition, from which it was next to impossible to arouse them, and others became violently insane; others still, committed suicide; while those who stood the ordeal better were not generally reformed, and in most cases did not recover sufficient mental activity to be of any subsequent service to the community.”). See also, “Solitary Confinement is Cruel and Ineffective,” Scientific American, vol. 309, issue 2 July 2013.

<sup>3</sup> See, e.g., KERAMET REITER, PAROLE, SNITCH, OR DIE: CALIFORNIA’S “SUPERMAX” PRISONS & PRISONERS, 1987-2007 47-51 (2010); MAUREEN L. O’KEEFE, COLO. DEP’T OF CORRECTIONS, ANALYSIS OF COLORADO’S ADMINISTRATIVE SEGREGATION 25 (2005).

<sup>4</sup> See for example, “Prison officials target solitary confinement, mental health treatment in effort to avoid another Nikko Jenkins,” Omaha.com. [http://www.omaha.com/news/legislature/prison-officials-target-solitary-confinement-mental-health-treatment-in-effort/article\\_361583dd-f22d-5ec6-89b3-d4242b0d7782.html](http://www.omaha.com/news/legislature/prison-officials-target-solitary-confinement-mental-health-treatment-in-effort/article_361583dd-f22d-5ec6-89b3-d4242b0d7782.html). November 8, 2015.

<sup>5</sup> Mohr, Gary and Raemisch, Rick, “Restrictive Housing: Taking the Lead.” Corrections Today. March 20, 2015. [http://www.aca.org/ACA\\_PROD\\_IMIS/Docs/Corrections%20Today/2015%20Articles/March%202015/Guest%20Editorial.pdf](http://www.aca.org/ACA_PROD_IMIS/Docs/Corrections%20Today/2015%20Articles/March%202015/Guest%20Editorial.pdf), see also, Association of State Correctional Administrators, Resolution # 24- Restrictive Status Housing Policy Guidelines, adopted September 2, 2013.

confinement has gone too far in American correctional facilities. Promising approaches are emerging in some jurisdictions, and political space is opening up for reform in numerous states.

While opinions on how to reform isolation differ across the board, the remarkable common ground that exists between the corrections field, experts, and advocates on the need for reform provides a unique opportunity to form unlikely partnerships and explore alternative approaches to public engagement on one of the most pressing challenges to the safe, effective, and humane management of our prisons and jails: the over-use of prolonged social isolation.

The moment is ripe for correctional reform. Experts across the political spectrum have reached consensus that America's incarceration levels are unsustainably high.<sup>6</sup> Many attack the morality of mandatory minimums, while others highlight the budgetary impact of maintaining large swathes of the population behind bars.

On September 30, 2015 John Jay College of Criminal Justice with support from the Langeloth Foundation convened a remarkable two day meeting between 15 corrections leaders, including state corrections directors and leading officials from the major urban jails; and 15 experts, academics, and leaders in the advocacy community working for reform of isolation practice to leverage this common ground. The meeting was, by agreement of all participants, subject to the "Chatham House Rule," which states, "*When a meeting, or part thereof, is held under the Chatham House Rule, participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed.*"<sup>7</sup> The goal was to bring together these leaders to plan next steps, forge greater connections and collaborations, to identify "lessons learned" from efforts to date, and formulate plans to ensure sustainability for a reform effort that still has much to accomplish. Seizing on the increasingly recognized need for reform, the Colloquium facilitated a candid and productive discussion among key figures of the prison policy community regarding the use of extreme social isolation. From top correctional officials to the ACLU, the Center for Constitutional Rights and the National Alliance for the Mentally Ill, many contrasting perspectives were brought to the table. While disagreements remain, a single thread united the two days of spirited discussion: we have arrived at an extraordinary moment in time where real change is possible.

The outcome of the convening was intended be a written reform agenda bearing the imprimatur of the participants and carrying "weight" in each of their communities of practice. This is that agenda. In subsequent reports John Jay will document the changes and improvements resulting in the participating jurisdictions, and identify the barriers that impeded reform.

The participants are listed below:

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<sup>6</sup> See for example, Jeremy Travis and Bruce Western, Editors; Committee on Causes and Consequences of High Rates of Incarceration; Committee on Law and Justice; Division of Behavioral and Social Sciences and Education; National Research Council. [The Growth of Incarceration in the United States: Exploring Causes and Consequences.](#) Washington, D.C.: The National Academies Press, 2014.

<sup>7</sup> See more at: <http://www.chathamhouse.org/about/chatham-house-rule#sthash.NhS71S3u.dpuf>

Corrections Officials:

John Baldwin: Illinois Department of Corrections

Jeffrey Beard: California Department of Corrections and Rehabilitation

Leann Bertsch: North Dakota Department of Corrections and Rehabilitation

Marshall Fisher: Mississippi Department of Corrections

Carol Higgins O'Brien: Massachusetts Department of Corrections

Gary Lanigan: New Jersey Department of Corrections

Gregg Marcantel: New Mexico Corrections Department

Terri McDonald: Los Angeles County Sheriff's Department

Shirley Moore Smeal: Pennsylvania Department of Corrections

Joe Ponte: City of New York Department of Correction

Rick Raemisch: Colorado Department of Corrections

Scott Semple: Connecticut Department of Corrections

Bryan Stirling: South Carolina Department of Corrections

Bernie Warner: Washington State Department of Corrections

Heidi Washington: Michigan Department of Corrections

Advocates:

Sarah Baumgartel: Yale Law School, New Haven CT

Jack Beck: Correctional Association of New York, New York NY

Brett Dignam: Columbia University School of Law, New York NY

Jamie Fellner: Human Rights Watch, New York, NY

Amy Fettig: American Civil Liberties Union, Washington DC

Robert Fleischner: Center for Public Representation, Northampton MA

Stuart Grassian, MD: Chestnut Hill MA

Ron Honberg: National Alliance on Mental Illness, Arlington VA

Terry Kupers, MD: Institute for Global Communications, Oakland CA

Jules Lobel: CCR & University of Pittsburgh, Pittsburgh PA

Joe Luppino-Esposito: Right on Crime/Texas Public Policy Foundation, Washington DC

Laura Markle Downton: National Religious Campaign Against Torture, Washington DC

Taylor Pendergrass: New York Civil Liberties Union, New York NY

Heather Rice Minus: Prison Fellowship/Justice Fellowship, Landsowne PA

Margo Schlanger: University of Michigan School of Law, Ann Arbor MI

Facilitators:

Brian Fischer: NYS Department of Corrections and Community Supervision, Retired

Andie Moss: The Moss Group Inc., Washington DC

Michael Mushlin: Pace University School of Law, White Plains NY

Invited Observers:

Andre Bethea: U.S. Department of Justice's Bureau of Justice Assistance, Washington DC

Andrea Fionda: Jacob & Valeria Langeloth Foundation, New York NY

Marie Garcia: National Institute of Justice, Washington DC

Lila Kazmeian: John Jay College of Criminal Justice, New York NY

Jeff Mellow: John Jay College of Criminal Justice, New York NY

Scott Moyer: Jacob & Valeria Langeloth Foundation, New York NY

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Fred Patrick: Vera Institute of Justice/ Center on Sentencing and Corrections, New York NY

Sara Sullivan: Vera Institute of Justice/ Center on Sentencing and Corrections, New York NY

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Erica Danielsen: Pace University School of Law, New York NY

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Nick Reck: Columbia University School of Law, New York NY

Susruta Sudula: John Jay College of Criminal Justice, New York NY.

The first day of the Convening began with presentations setting forth three case studies of reform, such as: reduction of segregation in Washington; removal of the seriously mentally ill from administrative segregation in Colorado; and reforms for youth at Rikers' Island in New York City. This opening session framed the successes and challenges of these approaches and built in time for lively discussion and comparative analysis between participants. This initial discussion raised several themes that would recur throughout the Colloquium, namely, definitional difficulty; goals for reform, including interventions that provide positive incentives; challenges to reform, including staff culture, insufficient political support, constrained resources, and the challenge of responding to the large number of incarcerated persons with mental illness.

Following the case studies, participants moved into small groups designed to confront the core areas where reform is necessary but hard questions about achieving real and meaningful change remain. These key areas include the following questions:

- What does meaningful, effective and humane order maintenance within correctional facilities without the use of isolation look like?
- How can correctional institutions deal with prison gangs and dangerous predatory individuals effectively and safely without the use of segregation/isolation housing?
- How can vulnerable individuals, such as the seriously mentally ill, pregnant women and adolescents be protected adequately without the use of isolation?

For each key area, the following three questions were to be addressed:

- What strategies and programs can be used to ameliorate social isolation effectively where segregated housing is necessary for the safety and security of an individual/institution?
- What is necessary to effectuate reform?
- What are the barriers to reform and how can we overcome them?

While the full group had different perspectives and agendas to some extent, the goal of the meeting was to establish specific areas of commonality to forward a national roadmap for supporting the reduction in the use of long-term isolation. Progress towards realizing these principles will be self-reported by participants to the John Jay Coordinator (Martin F. Horn) over the course of the next two years. John Jay will periodically publish a report on the progress of these reform efforts and lessons learned.

Emerging from the Colloquium are advocates and administrators unified in the belief that we must seize the momentum of the day to address and reduce the overuse of extreme social isolation—across its myriad incarnations. The Colloquium demonstrated that while different constituents have different priorities, they share the overarching goal of creating a safe, measured, and humane correctional environment. Just as importantly, a reasoned discussion is not only possible, but also essential to progress.

At the outset of the Colloquium, one correctional administrator recalled a conversation with a good friend and academic who said, “Solitary confinement is torture.” The administrator then wondered aloud, “If that is true, does that make me a torturer?” Though disconcerting for some, this first animating question held the seed of hope for collaboration. No one in the room wants to be a torturer. No participant wished to do harm. Rather, all participants shared the goal of an efficient and humane correctional regime. This commonality served as the bedrock on which these recommendations were built.

One of the first challenges encountered was the lack of a uniform definition of solitary confinement. Administrative, disciplinary, and protective segregation are defined and treated differently across jurisdictions. Despite these distinctions, a common definition is key to reform, as failure to reach definitional consensus may lead to the continued misuse of extreme social isolation—albeit under a different name. The Colloquium largely settled on the Mandela Rules definition—22 hours of social isolation a day—as the base point for discussion but was unable to reach consensus on an absolute limit to the length of that confinement.<sup>8</sup>

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<sup>8</sup> “For the purpose of these rules, solitary confinement shall refer to the confinement of prisoners for 22 hours or more a day without meaningful human contact. Prolonged solitary confinement shall refer to solitary confinement for a time period in excess of 15 consecutive days.” 44 United Nations Standard Minimum Rules for the Treatment of Prisoners, proposed, Commission on Crime Prevention and Criminal Justice Twenty-fourth session Vienna, 18-22 May 2015.

The participants also discussed the goals of reform. Curbing the negative effects of social isolation on the mental and physical wellbeing of incarcerated persons is a primary concern. Concurrently, the physical safety and mental health of the correctional staff is of paramount importance, and must be a central focus for any reforms on the use of social isolation. One participant offered the following formulation:

- When we talk about “segregated confinement” we need to distinguish between two concepts: “Separation” versus “Deprivation.”
  - Separation is the need to keep an incarcerated person separated from some or all others because of danger. (This would include, for example, isolation for infectious disease, restricted confinement to prevent harm to a suicidal patient, isolation of vulnerable persons from would-be aggressors, etc.).
  - Deprivation is the restriction of meaningful (anchoring, as opposed to aversive/noxious) perceptual, social, and occupational stimulation. This leaves the individual with an inadequate basis upon which to maintain an adequate state of attention and alertness (thus resulting in the specific solitary confinement syndrome, basically in the realm of stupor and delirium, along with a multiplicity of other burdens (loneliness, free-floating anxiety, etc.).
- In practice, these two concepts are often not distinguished; an individual who needs to be separated is often exposed without cause to extensive deprivations. Moreover, imposing extensive deprivation, especially over long periods of time, creates problems, and danger, rather than reducing them.

Participants frequently noted that social isolation is a form of intervention. Many people agreed that a shift from punitive, isolation-dependent models might well be displaced by positive reinforcement and incentive-based models. Such programs have shown positive outcomes, including decreased institutional violence, and improved facility safety<sup>9</sup>. There is no real penological justification to put an individual in segregation for an administrative (as opposed to punitive or investigative) purpose without attempting to enrich his environmental opportunities as much as possible. (Conjoint recreation, education, and religious worship; books, writing material, letters, phone calls, books, visits, etc.)

And even in the case of punitive confinement, do the deprivations - especially when imposed for more than a short period of time - serve any purpose in keeping the prison safe, or

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<sup>9</sup> See for example, presentations of Bernie Warner, Joe Ponte and Rick Raemisch infra.

in preparing the individual for return to general population or to release to the larger community after his prison sentence ends? Or, does it just create more danger for everyone?<sup>10</sup>

Numerous impediments to reform were also identified. Staff can be resistant to decreasing the use of isolation, for fear that prison safety might be compromised if incarcerated persons are placed in less restrictive housing. Prison administrators noted that correctional professionals could be won over by highlighting that, in many instances, reducing the use of social isolation is correlated with lower rates of violence.

Colloquium participants also noted that political support for reform, though growing, must be expanded significantly. The public is frequently resistant to increased expenditures on prisons. People might be more willing to invest in prison reform if advocates remind them that more than 90% of all incarcerated persons return to the community: prison policy directly affects public safety, as the treatment prisoners experience while incarcerated will determine their abilities and behavior after release.<sup>11</sup> Advocates can be partners in communicating the financial and safety benefits of a responsible policy to both the general public and interest groups, such as correctional staff and labor unions.

Resource constraints are another significant barrier to change. Even where prison administrators are able to cut costs, state legislatures frequently will not allow correctional officials to reallocate those funds within the correctional system. Instead, state legislature will reclaim the newly freed funds by reducing correctional budgets.<sup>12</sup>

Participants also noted that current prison architectural infrastructure can be an impediment to reform. Supermax prisons were not designed for any useful purpose beyond detention, and correctional administrators strain to re-appropriate them usefully as institutions that facilitate social interaction.

Lastly, participants noted that correctional facilities were never meant to be mental health care facilities. Yet, the 20<sup>th</sup> century deinstitutionalization of the mentally ill has led too often to correctional re-institutionalization.<sup>13</sup> Reform must address the abysmal shortcomings of the patchwork American mental health care system and the counter therapeutic environment of prisons.

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<sup>10</sup> Labrecque, Ryan M, "The Effect of Solitary Confinement on Institutional Misconduct: A Longitudinal Evaluation." A dissertation submitted to the Division of Research and Advanced Studies, University of Cincinnati, 2015.

<sup>11</sup> Beijersbergen, Dirkzwager, & Nieuwbeerta, , "Reoffending after release: Does procedural justice during imprisonment matter?" Criminal Justice and Behavior, October 2015.

<sup>12</sup> One participant, a corrections administrator observed, " We are closing 15 ad. seg. and shu units and converting them to general population, this will result in a savings of about 250 staff or an average of 16 staff per unit." But the administrator noted that State budget officials were refusing to allow the corrections department to reinvest the savings into better operations.

<sup>13</sup> Doris J. James and Lauren E. Glaze, Mental Health Problems of Prison and Jail Inmates. Washington, D.C.: Bureau of Justice Statistics, U.S. Department of Justice. (revised December 2006).

## Major Presentations

Bernie Warner, Secretary of Corrections, State of Washington—Appendix A

Joe Ponte, Commissioner of Correction, City of New York—Appendix B

Rick Raemisch, Executive Director, Colorado Department of Corrections—Appendix C

## Discussion Following Presentation and Comments from Bernie Warner and Jack Beck

Several participants expressed common concern on the following points:

- Additional research needs to be conducted on the impact of various isolation methods on mental health;
- A common definition for isolation or solitary confinement is necessary but difficult to pin down;
- A common definition for disciplinary, administrative, and long term segregation; Are such distinctions useful?
- Some programs purporting to curtail isolation practices might continue severe isolation under euphemistic titles;
- Trauma suffered by corrections officers is weighty and must be addressed;
- Culture change among corrections officers is necessary to effect change;
- Hiring practices may need to be significantly changed
- “Merit” based approaches to getting out of social isolation/segregation may not properly capture what is not a given individual’s fault;
- Opportunities for additional transparency and access to prisons for outside groups;
- The reluctance of unions to embrace change where there is perceived risk;
- The “danger” of releasing individuals directly from segregation into the general population, or to the community.

With regard to culture within facilities, several participants voiced their opinion that telling corrections officers that new policies will promote officer safety would be, and has been, effective in reforming facility culture.

### Discussion Following Presentation and Comments from Joe Ponte and Ron Honberg

Participants raised concerns, including:

- The importance of corrections officials expressing how the failures of the American mental health system has impacted corrections;
- Lack of commitment from elected officials to recognize the problem in the American mental health system and a lack of understanding how such reform can be institutionally vital to corrections;
- The “deinstitutionalization [of the American mental health system] led to a different kind of institutionalization”
- The importance of understanding different categories of responses to and impacts of isolation: social, perceptual, occupational;
- Definitions of isolation are not “black and white”

### Discussion Following Presentation and Comments from Rick Raemisch and Laura Markle

Participants raised many concerns, including:

- Prisons must respect an incarcerated person’s inherent dignity
- Disparate racial outcomes in use of social isolation must be addressed;
- Incentive structures are more effective in reforming problematic behavior, even among people with mental illness, and should be broadly implemented.
- Recognizing gender differences: women very rarely need and rarely respond positively to isolation.
- The difficulty of re-purposing supermax prisons for any other purpose
- Perhaps culture is not as much of a barrier as is often discussed; see Colorado’s quick turnaround as an example of what energized leadership can accomplish.
- Therapy dogs are an example of an effective intervention as a means of reducing isolation.
- Simply noting the trouble with America’s mental health system may serve to pass the buck.

## Work Group Discussions

Following these presentations, participants were organized into three groups of ten, to facilitate detailed discussion. Each group focused on questions about social isolation in a particular context:

- What does meaningful, effective and humane order maintenance within correctional facilities without the use of isolation look like?
- How can correctional institutions deal with prison gangs and dangerous predatory individuals effectively and safely without the use of segregation/isolation housing?
- How can vulnerable individuals, such as the seriously mentally ill, pregnant women and adolescents be protected adequately without the use of isolation?

These groups were tasked with reaching consensus on as many specific reform recommendations as possible. The discussions of each are laid out in turn.

### Group 1:

- What does meaningful, effective and humane order maintenance within correctional facilities without the use of isolation look like?

Maintaining the Colloquium's commitment to voicing a diverse range of opinion a robust discussion ensued on the role of segregation as a correctional tool. The discussion was generally limited to disciplinary segregation – participants explicitly did not focus on administrative segregation or other forms of isolation. Discussion was focused on four strands: the criteria for using segregation, viable alternatives to segregation, the role of transparency, and the barriers to reform.

### Criteria

Consensus was reached on several key points. First, all participants agreed that segregation should be used for the minimum time and in the least restrictive conditions necessary to resolve the condition that led to isolation. Participants further agreed that all isolation should have an incentive component, which would restore certain privileges if the individual is able to reach certain behavioral goals. Ideally, these incentive programs would operate on relatively short timeframes—e.g., two days of good behavior earns a reward—so that the individual would quickly begin to see their good behavior rewarded. Participants also agreed that isolation should have a goal of changing specific behavior and an individualized achievable path to reach it.

As to the conditions of social isolation, consensus emerged that segregation must include mental health rounds, health care rounds, and basic adequate conditions (physical space, light, air etc.) Participants also agreed that there should be a minimum amount of family contact

allowed while individuals are in segregation, as the loss of family contact can be extremely agitating for both the incarcerated person and the family; increasing family contact and visits in response to improved behavior can provide a strong incentive.

Group 1 also reached consensus that there must to be due process protections in place. These must include procedural safeguards for placement in segregation, periodic review during segregation, and an exit mechanism. This process should consider the severity of the offense, length of time spent in segregation, fairness, and the ability of individual to comply with imposed conditions.

About half of the participants agreed that disciplinary segregation must be for a determinate length of time, and recommended that disciplinary segregation not exceed 15 days, unless extenuating circumstances otherwise dictate. Of those who disagreed with a hard 15-day upper limit, several participants indicated that 15 days would be an acceptable limit, if the 15 days would only trigger a procedural review for extending the time rather than a hard upper limit. Other participants also suggested that the 15-day limit might be used to trigger a different type of segregation with increased access to, for example, television or some type of congregate activity with other individuals. Others felt that a year would be an acceptable limit for serious offenses, such as rape or seriously assaulting a guard.

### Alternatives to Segregation

The use of alternatives to the default use of segregation was raised. These participants agreed that punishment should be imposed on a continuum, with segregation as the tool of last resort. Less serious punishments might include loss of commissary or personal property. Loss of programming, social contact and family contact should be reserved for more serious infractions or after other punishments have proved ineffective. It was also agreed that the loss of privileges needs to be proportionate to the infraction, and must include a prosocial incentive system to restore the privileges.

### The Role of Transparency

Both advocates and administrators were quick to acknowledge the importance of transparency in furthering reform. That is, transparency increases awareness and trust for the public, prison staff, and incarcerated people. Advocates tended to focus on the importance of granting faith-based, academic, civil rights, and rehabilitation organizations internal access to correctional facilities and data collection. Correctional administrators were more interested in internal feedback loops between prison administrators, the staff, and the incarcerated regarding behavior and punishment expectations. There was agreement that such communication between advocates and correctional administrators may avoid needless litigation, assure the responsible stewardship of funds, and help both correctional staff and the public at large to understand reform in public safety terms. It was agreed that statistics would support reform. In turn, transparency of statistics and narrative will educate all interested parties about public safety and other benefits of reducing long-term isolation.

## Barriers to Reform

Consensus was most easily reached on the multitude of problems both advocates and administrators face in effecting change. It was agreed that efforts must be made to get staff “buy in” on reforms from the outset. Correctional management should find ways to “celebrate courage in the service of public safety through small victories.” In other words, corrections officers must find ways to celebrate the .1% improvement in some small way and, when the inevitable tragic but isolated incident occurs, we must resist the impulse to abandon all reform. If staff are invested, change will be more collaborative than totalitarian. Absent such involvement, their staff will have no incentive to implement change amid a perceived risk to safety and opposition from unions, victims’ rights advocates, and other interest groups.

All were quick to agree that resource limitations are a significant barrier to reform. Supermax prisons do not easily lend themselves to rehabilitative programming spaces. Legislatures have little political cover or incentive to lead reform. One administrator noted that when he implemented new efficiencies to save money, the legislature decreased his budget rather than allowing for a re-appropriation of funds. In many jurisdictions, correctional staff is grossly underpaid and have little incentive to see themselves as part of the rehabilitative process rather than “just a guard.”

The difficulty of promoting the public safety narrative as a means of fighting inertia was acknowledged. Correctional staff, —who face considerable mental and emotional trauma in addition to physical danger—the media, general public, and immediate community around a prison need to understand how changes that might appear risky in fact generate safer environments at every juncture of contact. That is, the “tough on crime” opposition to reform is really being “tough on the community.” It is clear that a partnership between advocates and correctional administrators can be a vital part in fostering reform through a public safety narrative.

### Group 2:

- How can correctional institutions deal with prison gangs and dangerous predatory individuals effectively and safely without the use of segregation/isolation housing?

Participants addressed eight questions about segregation and predatory persons. The early conversation demonstrated the range of perspectives on some of the major themes of discussion, such as who should be put in segregation, for what reasons, under what rules, with what types of transparency, etc. The answers arrived at demonstrate that there was significant agreement on some questions, particularly the categories of people and/or behaviors that should or should not be eligible for segregation. There was also significant divergence of opinion, though, notably on the appropriate conditions of confinement.

The scope of the questions sparked one participant to ask a more fundamental question: Is segregation ever necessary? There was a clear division here. Some participants argued that segregation does not achieve its intended results in terms of behavior change, deterrence, or safety; therefore, they argued that it should not be used except for logistical reasons (e.g. during

an investigation). Other participants suggested that it is appropriate to use segregation as punishment for egregious transgressions and/or to manage individuals who are seriously dangerous. It was agreed to discuss the various dimensions of segregation in detail, since the most “realistic” intermediate goal is to reduce the use of segregation – not to eliminate it. Still, some participants maintained that the longer-term goal should be to eliminate its use. The group agreed that the prison system’s goal should be to get those in segregation out of segregation – or to less restrictive housing – as soon as possible.

Several participants argued that there is no evidence that segregation deters either the individual or the general population. It was agreed that segregation often makes people worse, and that reducing the use of segregation creates a safer institution. Additionally, several participants said that there is little evidence – research or anecdotal – about “what works” to change behavior during segregation – that is, a theoretically “different way” of practicing segregation. Nevertheless, everyone agreed that since segregation is widely used and can cause harm, it is important to develop rules and guidelines to reduce its use and its harshness as much as possible

Based on this discussion, consensus was reached that could be converted into recommendations. There was robust debate about the other themes that eventually led to a “compromise” recommendation. On a few topics, there were strongly divided views and agreement was not reached. Time ran out before every topic on the list could be addressed, and so, for a few areas, further discussion is recommended.

### Behaviors as the Criteria for Segregation

First, it was agreed that the criteria for segregation should be for behaviors only, and not for other “status” reasons. Therefore, it is recommended that segregation should never be used because of a person’s gang affiliation. On the question of behaviors that do merit segregation, there was consensus only on including the most serious violent behaviors: murder, rape, or assault. After some discussion, it was agreed that “threats of violence” – such as one individual ordering another to commit violence – should also be included in this category. Everyone agreed that segregation is not appropriate for minor rule infractions, but there was less clarity on what counts as a major infraction, as well as whether segregation is an appropriate response to a major infraction. Some participants argued that major “disturbances” – such as participating in a riot, attempting escape, or trafficking drugs inside prison (not simply possession) – justify segregation, while others argued that these actions merit a disciplinary response, but not necessarily segregation, since the individual does not pose a risk of harm to others. Another area of disagreement was what constitutes “assault” on a staff member. Most participants agreed that prison staff can abuse their discretion and can call a minor slight (such as profanity or spitting toward a staff) an “assault” – and that segregation is not an appropriate response to such incidents. However, no agreement was reached on the level of serious violence that constitutes the type of assault that merits segregation. Moreover, some participants noted that prison officials used harsher discipline – including segregation – for lesser levels of violence toward a staff member, while an equivalent level of violence against another person would not result in segregation. Responding to this assertion, other participants contended that an assault against a staff member implies a level of “disturbance” to the prison environment and is thus

more serious. There was no clear consensus on defining a “serious” assault or distinguishing assaults on staff versus on another incarcerated person. Additionally, there was not agreement on how to determine whether a seemingly “minor” altercation or fight could count as a “major” infraction if the staff has reason to believe it will escalate.

### Defining Types of Segregation

A few of the participants held the view that segregation is almost never justifiable, except in a very few cases of extremely violent or predatory individuals – what was colloquially termed “the Hannibal Lecters.”<sup>14</sup> The discussion on how to handle these few individuals is addressed below. More broadly, those who favored the most extreme limits on the use of segregation acknowledged that, since segregation remains a widely used tactic, they would support talking about a spectrum of “types” of segregation, with the goal of using the harshest type the least often. All participants agreed that this “spectrum” is a useful concept, since this can reflect the different rationales for segregation, such as punitive versus risk-management.

Since this group was addressing segregation only for predatory or dangerous individuals (i.e. not for protection from others), the participants agreed to consider the types of segregation in this framework: short-term for investigative purposes, short-term for disciplinary reasons, short-term for “cooling-off” reasons, and longer-term for reasons of risk of violence or harm. It was agreed that more austere conditions are acceptable for short-term segregation, but not for longer-term segregation – but there was rigorous debate about the amount of time constituting “short term” and about acceptable minimum conditions.

It was generally agreed that too many people are in the “longer-term” category than should be. One participant offered the example of prison systems that put condemned persons in long-term segregation because of the conventional view that they are risky due to their “I have nothing to lose” position. Yet, according to this participant, when condemned persons were housed in non-restricted housing, they did not exhibit more violent or risky behavior, and in fact showed improvements in mental health and social interactions.

### Conditions for Short-Term Segregation

The most common “definition” of the harshest form of segregation is being confined to a cell for 22 hours every day. It was agreed that setting a specific number of hours as a minimum standard was not as important as defining the minimum standards for various dimensions: physical, food, services, staff interaction, interaction with other people, programming, etc. After some debate, agreement was reached on a specific phrasing for these basic conditions – which is set out in the recommendations.

It was agreed that in order for short-term segregation to serve a punitive purpose, it would have to have more restrictions and more austere conditions than the conditions in the

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<sup>14</sup> **Hannibal Lecter** (born 1933) was a serial killer, notorious for his habit of consuming his victims, earning him the nickname “Hannibal the Cannibal.” [http://hannibal.wikia.com/wiki/Hannibal\\_Lecter](http://hannibal.wikia.com/wiki/Hannibal_Lecter)

general population or any separated population. These aforementioned minimum conditions are meant to represent the “floor” for what constitutes humane confinement. Some participants mentioned examples of privileges that should not be offered in short-term segregation, including additional recreation, TV, phone calls, and contact visits. Participants explained that in order to create positive incentives, prison officials would need to have the ability to offer privileges. Thus, prison officials cannot offer all the privileges as a minimum standard. Other members agreed with this premise but maintained that this should not mean that persons in segregation do not get any of these privileges.

### Conditions of Longer-Term Segregation

It was agreed that only people posing more serious or ongoing risks of violence to others should be in longer-term segregation, and that this risk should be determined by professional clinicians through regular inter-disciplinary assessments. It was also agreed that there should be a clear decision to “transfer” a person from short-term to longer-term segregation– rather than simply shifting them automatically after a certain period of time.

Some participants argued that the risk of harm posed by longer-term segregation is only justifiable if the facility provides interventions or programs that attempt to address the underlying cause of the risk of violence – that is, if there is an effort to give the individual a path out of the longer-term segregation. The other participants agreed with this view in principle, but expressed concerns about resource requirements for such programs. The group agreed that, in theory, this approach could also involve a graduated program, in which behavior improvements could lead to more time out of the cell. It was acknowledged that such interventions would not necessarily work for everyone, but that it is important to offer them. All the participants agreed that these interventions should address behavior and not merely be recreational in nature.

Group 2 frequently mentioned having a minimum standard of 20 hours per week of programming activities for those in longer-term segregation.<sup>15</sup> A few participants noted that some of this programming could occur with some level of restraint, if necessary, rather than denying it completely to those needing restraint.

It was generally agreed that the term “step down” could be unhelpful. They briefly discussed how the “levels system”, which is meant to be a path out of segregation, could be a trap for people who have underlying behavioral or mental health problems. There was no agreement explicitly on whether to recommend eliminating it.

Several participants stressed that the conditions in longer-term segregation needed to be more restrictive than the conditions in the general population. The rationale for this was that, if individuals had nearly equal access to services and privileges in segregation and the general population, but a “private cell” in segregation, they might try to get into longer-term segregation

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<sup>15</sup> Sometimes referred to as “10 and 10” meaning 10 hours a week of outside recreation and 10 hours of therapeutic intervention, averaging about 3 hours daily.

on purpose. Given this, there was agreement to add the caveat that conditions in longer-term segregation should typically be more restricted than in general population.

### Maximum Length of time for Short-Term/ Punitive Segregation

The group agreed that the current length of time used for disciplinary segregation is too long – many years, in some cases – and that those in segregation for “risk” reasons tend to be re-assessed too infrequently.

The notion of a 15-day limit on short-term segregation, for disciplinary or cooling-off reasons, under the most austere of conditions was discussed next. The 15-day limit is a clear reference point because it is defined as “prolonged solitary confinement,” in the Mandela Rules<sup>16</sup> and recommended by the UN Rapporteur. All conceded that this is a relatively arbitrary number, without a clear rationale from social science. Some members strenuously argued that the maximum amount of time allowed in the harshest of segregation should be less than 15 days, regardless of whether the individual is suffering harm (e.g. mental health deterioration). Other participants suggested that the maximum amount of time should be short but could depend on how resilient the individual is to the harms of segregation, based upon clinical assessments. Views on an appropriate maximum length of time for the harshest segregation ranged dramatically – from one day to more than a year. There was agreement to recommend the “briefest possible period” – a phrase that conveys the urgency of a short time, without prescribing a number of days. The issue of a segregation time clock being “suspended” when a person misbehaves during segregation was also discussed. Some participants argued that this tactic is not effective as a deterrent, and can make a person more angry and violent. Although no explicit recommendation on this issue emerged, there was agreement on the notion that “time suspended” is not a helpful or effective practice.

Some members repeatedly said that imposing an absolute 15-day limit on short-term segregation would be “too much, too fast” for some prison officials, and that having such a number risks causing a backlash. Given this and the fact that other members would not accept a higher number of days, no consensus on a maximum time limit was reached.

### Alternatives to Segregation

Agreement was easily reached on the recommendation that alternatives to segregation should be used more widely and that segregation should be used as a last-resort. A main alternative to segregation is separation. In the case of predatory individuals, one example is gang members who are predatory towards specific individuals, but not toward all, and staff. All the participants agreed that gang members could be kept in a separate area, with others to whom they are not a risk, and with access to a communal space, programs, etc. The main obstacle to this alternative is that many facilities do not have the structure or space for this type of physical separation. Some participants also pointed out that classification systems attempt to

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<sup>16</sup> see fn 6 *supra*.

do this to some extent, but that prison staff and buildings often do not have the resources to build a separation system with enough levels and categories.

Other types of separation, including transferring individuals from segregation to the general population of another facility or another state system were suggested. Participants noted that in many cases, the individual's behavior problems were contextual, and thus stopped after the transfer. It was agreed that such transfers should be promoted as another version of separation, which is an alternative to segregation.

### Due Process

Issues of due process in the hearings on incidents of misconduct and disciplinary decisions were briefly discussed. Several participants commented that because the administrative systems are overloaded with cases, hearings are often delayed for weeks or months, and sometimes officials do not have time to consider each case in sufficient detail. Participants underlined the dilemma that incarcerated persons face: If they accept a short disciplinary segregation "sentence" without a full hearing, they de facto incriminate themselves. However, if they insist on a hearing, they can be in segregation for several months, waiting for the disciplinary hearing. Some members suggested that the hearings are not fair, because most of the accused are found guilty. A few people suggested that individuals are pleading guilty – regardless of actual guilt – simply to reduce their time in segregation. Overall, there were many concerns about due process, but all agreed that additional external oversight or interventions might not solve the problem. Due to a lack of time, a consensus or recommendation on this topic was not reached, and therefore listed it as requiring further discussion in the future.

### Transparency and Accountability

There is agreement that there is clear need for more data to be collected and analyzed. Some noted that states have different capacities for in-house data analysis. Therefore, there was consensus that there should be flexibility in whether the capacity for data analysis exists via the agency or through partnerships with universities. Many participants pushed for more detail as to the type of data that is made available pertaining specifically to segregation. It was agreed to recommend that agencies should collect and make data available on a specific set of issues related to segregation.

### Staff Buy-In

In the initial exercise, several participants listed lack of staff buy-in as an obstacle to change. During the discussion, administrators argued that even if everyone agrees on the end goal in terms of how to reduce the use of segregation, the implementation should be gradual, as staff is often resistant to change. Members suggested that changes in recruiting and hiring of staff – for example, selecting people for their social-work skills and orientation – could shift the level of buy-in. A few participants commented several times that even the best-designed policies require consistent understanding and implementation by staff, and that in some facilities, high staff turnover is more of an obstacle than staff resistance to change. A concrete

recommendation on this topic was not agreed upon, although this was more because there was not a clear suggestion than because there was explicit disagreement.

### Strategies for Change

All participants agreed that sustainable change to segregation policies requires some change in legislation. They also agreed that there should be a concerted effort to focus on this arena.

Another strategy dilemma related to resources. Everyone recognized that reducing the number of people in segregation and the length of segregation may save money – but some members noted that, typically, state governments reabsorb any savings resulting from changes in prison expenditures, rather than reinvesting them in other prison services or expanding buildings or staff. Removing people from isolation may require new resources and incur new costs.

It was agreed that advocating for the reduced use of segregation on a cost-savings rationale alone is unhelpful, as it contradicts the equally important need for additional resources for more restorative services. Several participants noted that the problem of the over-use of segregation is in some ways self-generated by the under-resourcing of prisons: when incarcerated persons are under pressures due to overcrowding and lack of services, they are more likely to lash out, which leads to discipline and the over-use of segregation, which in turn drains resources away from better conditions and services for the general population.

With regard to how to “sell” changes in segregation policies to the public and to politicians, some members cautioned against using the advocacy strategy that reducing segregation results in reduced recidivism within prison. Given the punitive public attitudes, they suggest that the only argument that resonates with the public is that reducing segregation has clear public safety outcomes.

Finally, the tradeoffs of prescriptive recommendations versus general guidance were debated. Some members suggested that when guidance too directive, many prison officials might balk. Rather, they contend that general guidance backed up by examples of successful outcomes of new initiatives or changes in policy would be more persuasive.

All participants agreed that this meeting was a unique and crucial opportunity for generating real change – and that if this change process is not done quickly and well, the window will vanish.

It was frequently noted during the discussion that the key point or conclusion would only apply to prisons and not jails, particularly on topics of clear differentiations of physical space and programs for different categories of individuals, given that there is less space and resources, and more flux in jails and that different types of infractions and incentives are common in jails versus prisons. The group recommended that separate discussions be held on the topic of the over-use of segregation with specific reference to jails and (separately) to the juvenile justice system.

### Group 3:

- How can vulnerable individuals, such as the seriously mentally ill, pregnant women and adolescents be protected adequately without the use of isolation?

The group was charged with discussing issues involving reforming the use of social isolation for vulnerable individuals such as the mentally ill, youth, and protective custody populations. Currently, many facilities in the United States use extreme social isolation to manage these vulnerable individuals. Is there consensus on proposals to reform this system and if so how best can we implement change?

There was initial disagreement on how to interpret the questions posed by Conference organizers. One participant raised concern about whether to start the discussion with identifying individuals who need protection or whether to start the discussion with a discussion of individuals who need services. Also mentioned was that not all individuals who may be labeled vulnerable will be dangerous to others. Vulnerable individuals can be dangerous to others but they also may be vulnerable, dangerous, and need protection from themselves. Some members interpreted these questions as asking “who is vulnerable and who should be placed in a special environment” while others interpreted the questions as asking “which categories of individuals should we worry about when taking those individuals out of general population and placing them in a separate unit.”

A participant suggested that the discussion should not begin with labeling and discussing protection for certain individuals but rather the discussion should begin with determining what services and programs individuals should be provided. It was suggested that inadequately treated individuals are the ones who could potentially be vulnerable and if those individuals were treated adequately then they would not need protection.

To focus the group back to its goal, the facilitator clarified that there are two conversations to have based on the interpretations of the questions posed. The questions would address:

- (1) Whether, if individuals are treated with services and programs, would they still need to be isolated; and
- (2) If those individuals do need to be isolated, what conditions of confinement and services should they have?

Additionally, the questions could also be interpreted by asking whether an individual is:

- (3) Vulnerable to the general population; and/or
- (4) Vulnerable to the problems of segregation.

## Who are vulnerable?

The old DSM<sup>17</sup>, AXIS I, and AXIS II diagnoses relating to manic depression, bipolar, and functional impairments that define serious mental illness (SMI) is in litigation. However, the new DSM has moved away from a pure diagnostic approach to a functional approach. Some believed SMI is too broad a description and that there are circumstances where an individual may not fall under SMI but may still require protection. It was also suggested that the specific individual needs must be managed and not the specific diagnosis. Suggestions were again raised that rather than using separation and isolation for the mentally ill, programs to treat the mentally ill should be implemented in order to allow persons with mental illness to become functional in general population.

Agreement was reached on the following categories of individuals who are potentially vulnerable in the general population:

- Serious Mental Illness “SMI”
- People with intellectual disabilities
- Juveniles
- Old/Elderly
- Infirm
- Intakes
- LGBT<sup>18</sup>
- Protective custody
- Pregnant
- Chronically ill
- Sex offenders

However, one size does not fit all. Individuals need to have personalized and individual treatment plans and not merely be placed in populations solely based on being labeled as being

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<sup>17</sup> The Diagnostic and Statistical Manual of Mental Disorders (DSM), published by the [American Psychiatric Association](#) (APA), offers a common language and standard criteria for the [classification of mental disorders](#). The DSM is now in its fifth edition, [DSM-5](#), published on May 18, 2013.

<sup>18</sup> Although LGBT was included as a potential vulnerable population Group 3 did not come to a consensus for LGBT and therefore LGBT was taken off the list of vulnerable populations.

in a vulnerable category. Placing an individual from a vulnerable group solely based on status is not a solution to the problem. Corrections officials should not be forced to place these individuals in segregation in order to protect them but rather these individuals should be provided opportunities to find ways to live in general population.

### Should Vulnerable Individuals Be Held In Separate Groups Or Can They Live In The General Prison Population?

It was suggested that the default analysis is that all incarcerated persons should be in general population irrespective of their classification, whether they are LGBT, an informant, etc. The job of corrections officials is to maintain a safe environment for all. Corrections officials could create separate units that place vulnerable individuals with other informants, sex offenders, etc. but this can get dicey. For example, would that just create an LGBT ghetto?

Several participants agreed that isolation is not a solution to the problem and should not be used to as a means to protect people. An individual in segregation, merely because of their status and not because of their behavior, should not be isolated but rather should be provided programs. Therefore, the question becomes how do we create living units for vulnerable individuals to live, which are separate from the general population, but are not isolated and do not create ghettos? No one should be isolated based on status.

It was further suggested that the analysis be as follows:

- (1) What is the person's status? Based on status alone, a person should not be placed in segregation;
- (2) What special needs this individual has that correction officials must address?
- (3) If the individual has a vulnerable status and also has behavioral issues, how do we respond? If the individual is mentally ill, that person should receive therapeutic programs that travel with the individual;
- (4) What do we do with people who cannot be in the general population because of their status or because of what they have done; and
- (5) What resources will we need to do this?

### Discipline for Vulnerable Populations

A participant then posed the question of how to handle an individual who is not isolated based on status but rather isolated because of disruptive behavior. Another suggested that this type of situation be addressed with therapeutic intervention, which goes back to the discussion of these individuals needing services. It was emphasized that status is different than behavior and something has to be done with regard to disruptive behavior. It was suggested that the service travel with the incarcerated person wherever that person is.

It was also recommended not to base the discussion upon individuals who are out of control. One participant strongly advocated what is called an “intermediate care unit.” For example, if an individual with mental illness gets in trouble for hitting an officer, that individual’s disciplinary plan should stay within the intermediate care unit. Another asked would this just be segregation within segregation? The response was no, because individuals in an intermediate care unit can still receive their services and join the general population.

The facilitator clarified the question asked, “what happens to a vulnerable person who does something in violation of prison rules?” There was agreement that if an individual is mentally ill that person will at some point do something in violation of prison rules.

It was noted that in the State of Washington, discipline is capped at 30 days. It was suggested that there is a difference in isolation based on status and isolation based on discipline. If a person is separated because of their need for protection that person’s experience should not feel punitive. There is no reason to deny that person visitation or anything else that they would otherwise have if they were in general population.

### Resources

In order to change this process and to do it right we will require resources. A comparison was made to aging individuals outside of the prison context. When an individual ages and cannot live in their home any longer the question arises as to where they should go. Prisons can be compared to a town or city that builds facilities that can house smaller populations. Just as when a person ages and is placed in different facilities, individuals in prison should be put in different facilities.

However, resources are an issue. For example, in Illinois there are few doctors and social workers that are willing to travel to southern Illinois where the prisons are located. Southern Illinois cannot provide services that are normal or typical to a bigger city because it lacks the means and resources.

One participant suggested that it might be that we cannot run our current prison systems the way we want them to run with the current resources and funding we have. States will have to invest in creating new prison environments in locations that will support the needs of vulnerable populations.

### Extreme Social Isolation (22-Hour A Day Lockdown) Of Vulnerable Prison Populations

Next discussed was, “to what extent should people in these categories be held in cells for 22 hours a day because of their status?” A consensus was quickly reached that no one in a vulnerable category should be held in their cell for 22 hours a day solely because of their status. It was suggested that vulnerable populations should have as close to the level of amenities that the general population has, in a setting as similar to the general population as possible, while still being afforded the rights and privileges an individual would otherwise have in the general population. The accommodation should be customized to the risk of harm presented, with the

same range of services as the general population. It was even suggested that these populations should receive more amenities than the general population.

However, this raises the issue of some individuals wanting to be placed in these units because they will receive a quiet, single cell while still receiving all the same amenities as the general population. Certain individuals prefer to be placed in special needs units because it makes prison life easier for them. We need to be careful in extending social interactions and services beyond what is offered in general population because if it becomes better in these separate units then individuals may seek to get these additional privileges.

### Services and Programs for Vulnerable Populations

Overall, services available in the general population are insufficient for vulnerable populations. Units with vulnerable populations need additional services, socialization directed towards a goal, and progress should not be based on a behavior plan, which is impossible for the individual to meet. A negative reinforcement and punishment-based system should be opposed because individuals with mental disabilities cannot meet these requirements. Rather, a positive incentive based program should be used.

Additionally, individuals with mental illness can be mixed with the general population as long as they are receiving services. The goal should be to figure out programs that work for the majority of people and not the outlier for now, as special programs will be needed for those individuals. One participant cautioned that designing a program for the special outlier prisoners was how we ended up with supermax prisons in the first place. These comments however drew the question of how then do we manage the 2% of the outliers?

The question was posed, “how do you meet the needs of individuals who are in a vulnerable population who want to participate in programs that are only available to the general population such as congregative religious activities or school?” It was suggested:

- (1) Using escorts to take the individuals to the services or programs;
- (2) Allowing the individuals to interact with other incarcerated people they trust and are in their same status; and
- (3) Allowing the individuals out of cell time with staff and outside personnel who come to fill the day of the individual (art, conversation, passive recreation, e.g.).

Consensus was reached that the mere fact an individual is in a vulnerable population, they should not deprive them of the same services that are provided to the general population.

### Individuals who are Vulnerable to Being Placed in Segregation

The discussion changed to individuals who, if placed in segregation, can become dangerous to themselves and who can be vulnerable to the conditions of isolation. It was also agreed upon that juveniles should never be held in an adult facility.

It was agreed that vulnerable individuals should not be placed in extreme social isolation just because of their characteristics or vulnerabilities. It was also agreed to use the term “solitary confinement” as defined by the Mandela Rules. This rule defines solitary confinement as “22-hour lockdown without meaningful human contact.” Furthermore, the group determined that in its deliberations it considered two types of vulnerable persons:

- (1) Vulnerable individuals who are susceptible to harm in the general population; and
- (2) Vulnerable people who are in special danger of harm when they are placed in solitary confinement.

When, if ever, can isolation be imposed on vulnerable individuals?

The first proposal considered dealt with when, if ever, 22-hour a day lockdown should be imposed for vulnerable populations. The various risks and resources available to prison officials to deal with vulnerable populations were discussed. There were special considerations raised such as separate units for pregnant women. Small county jail facilities, which do not have sufficient resources to adequately care for mentally ill people, were also raised. A correctional administrator commented that until he can assess and stabilize an individual who has slashed someone, he knows that the individual is going to present a risk, and he struggles with how to allow this person contact with others while still protecting others. . An advocate conceded that the current practice is to put these individuals in isolation but the advocate wants to see a more flexible system that acknowledges that prolonged confinement is not the answer. The advocate stressed that the risk to the individual needs to be balanced with the risk to others and that even in violent situations these individuals should not be placed in isolation. An administrator also suggested that ignoring the behavior of an incarcerated person who slashed someone does not help the situation.

At this point how long an individual could be held in isolation before services are provided and he or she is evaluated was considered. Placing a vulnerable individual in 22-hour a day lockdown for an indefinite period is not the answer. Rather, there should be an initial period of isolation to calm and address the threat and thereafter isolation cannot extend to a longer period of time. These individuals can be contained until the issue is addressed but then they need to be transferred to another unit that will address the vulnerable person’s needs. One advocate proposed that individuals could stay in isolation for a few days while the situation is calmed and addressed. However, a strategy needs to be developed and then the individual should be placed in a specialized unit as soon as practicable. Another advocate countered that an individual should be placed in isolation only when all other alternatives to de-escalation of the immediate dangerous situation fail. The restraint needs to end when the emergency ends and there needs to be time limits for when the individual should be released, specifically when the individual is no longer dangerous to themselves or others.

An issue that arose with these limitations and time limits is that, as a practical matter, there is a possibility of a lack of hospital beds being available, limited resources in smaller or more rural facilities, or the lack of other alternatives to remove the individual from isolated

confinement. In such circumstances a suggestion was made to assess the individual within 24 hours of being placed in isolation, to have access to mental health and medical services, immediately if possible while in isolation, and to make an assessment to place the individual, which will all mitigate the effects of isolation. However, it was recognized that there may not be another facility, unit, or alternative placement available because of a lack of resources especially in areas which have small prison populations. Adding on to this suggestion, one advocate commented that the individual should be seen by a physician within an hour of being placed in isolated confinement, then they must be reassessed a certain number of hours later, followed by a disciplinary team meeting to determine a treatment plan, and a reassessment once they are out of isolation.

This suggestion met some disagreement with one advocate who asserted that vulnerable individuals in isolation should not just be assessed only when something goes wrong but rather they should be assessed immediately. If the individual is assessed and held for longer than 7 to 10 days, two weeks, etc. then an alternative needs to exist because these vulnerable populations cannot stay in isolated confinement without being especially harmed. Next debated was what the alternative to isolation should be, acknowledging that a higher standard or threshold should exist for vulnerable individuals to put them in isolated confinement in the first place. Most participants suggested 10/10<sup>19</sup>, which averages to about 3 hours out of cell per day.

What should be done once the incarcerated persons are in isolation and how isolation should be used was then addressed. A corrections official suggested that when an individual presents a clear risk to themselves or others and the individual needs to initially be placed in isolation, the goal should be to address the needs of the individual within a specialized unit or a restricted environment, with a plan to get the individual out and back to general population while appropriately addressing the individual's need for services.

An advocate suggested that no disciplinary segregation should ever be imposed on these individuals, but rather a mental health standard should be used. Thus, only individuals who are dangerous to themselves or others should be placed in isolation.

The decision to place an individual in an Intensive Treatment Unit can be made by custodial staff but then must be validated by a physician. The discharge from isolation is up to the physician. There ensued debate about the procedures to be followed, with some believing that only mental health workers and doctors should be allowed to order physical restraints on the vulnerable individuals and others who wanted to allow the prison official to be able to physically restrain the individual.

Multiple placements and the frequency of isolated confinement were next considered. Many ideas were suggested including a limit of only 15 out of 30 days a month, dependent on the circumstances, and no more than 15 days at a time without at least 7 days of non-isolation between being released and before placing the individual back in again. One corrections official

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<sup>19</sup> 10/10 – 10 hours of structured therapy or education and 10 additional hours of recreation and other forms of “unstructured activities” – comes out to 3 hours a day of out-of-cell time

did not agree with these set number of days and gave an example that an individual could be released and then officials will know that in, for example 3 more days, they can put that individual back into isolation.

A corrections official was concerned about an offender who is put through an incentive based program, and within one hour of being released back into general population assaults another person and is placed back in solitary. It needs to be recognized that there are some individuals who do not want to be placed in general population, and who will act out to avoid being placed there. There needs to be provisions for recognizing that these individuals do exist and to develop standards for how to address their behavior. One corrections official pointed out that the goal is not to craft standards that will cover every conceivable circumstance, but instead to figure out what will work for 99% of the population and not consider the outliers at this point. It was argued however that there should be an exigent circumstances provision, or a "carve out" for these individuals who are the tough cases.

The discussion then turned to the specificity and precision of language used to define extreme isolation and also how to mitigate the effects of isolation on an individual. Extreme isolation needs to be defined (example of solid doors vs. bars or glass on doors) as these distinctions make an important difference.

#### Is there a Limit to the Number of Days a Vulnerable person can be placed in Isolation?

Whether 15 days was workable for vulnerable people to be held in 22-hour lockdown was then considered. One administrator argued that 15 days is not workable, but he thought that 30 days was an acceptable upper limit, and that 45 days was excessive. Another commented that any system we devise should allow flexibility and we should not set up the system to fail. Another participant suggested that 10/10 could be the plan but not 22-hour lockdown. Several states do exclude mental illness from isolation and give them 10/10 but the question then arose, if the person is in segregation but is allowed out of his or her cell for 20 hours a week is this still isolation?

#### When should a Vulnerable Person in Isolation be assessed?

The practical issues of how fast medical attention or assessment can occur and how detailed or specific a rule should be was considered next. Connecticut uses a 30-day rule and it was thought that 15 days is not enough time. It was suggested that 15 days should be the baseline but with a procedure to allow for another 15 days with a mental health assessment if necessary. Many seemed to think that it would only take 2 or 3 hours after a vulnerable person is put in isolation to have that person assessed by a medical professional or a corrections official and that a treatment team should meet with the individual on day one. However, this assumption runs counter to the current standard of 72 hours to assess and formulate a plan for the person. A concern were raised about what information a treatment team can get on the first day to understand what the behavior is about and how long is necessary for medication to take effect?

## Who is Especially Susceptible to Harm in Isolated Confinement?

The group then resumed the discussion from Wednesday about which vulnerable people are particularly vulnerable to the effects of isolated confinement. The issue of the elderly and infirm was addressed first. Agreement was reached that the elderly and infirm should be included under the vulnerable to isolated confinement list but did not want to get into age specifics. No consensus emerged whether LGBT, Protective Custody, the chronically ill or sex offenders should be included in this particular list.

The issues of pregnant women were addressed and it was argued that women do not get what they need (healthcare, exercise, and nutrition) to keep their babies healthy when they are in isolation. There was some push back to this notion because it was argued that women in prison might receive better healthcare than they would on the street and that prisons are exceptional care givers for some mothers and babies. It was clarified that we were only discussing pregnant women in isolated confinement and not in prison generally. The conversation continued with one correction official sharing the story of a pregnant woman who was jumping and diving off of her prison bed in order to abort her baby. The state has a moral obligation to protect an unborn child from such attempts to harm it and the woman was placed in isolated confinement in order to protect her life and the life of her unborn child. It was acknowledged that if someone is harming herself or others then the prison needs to protect her, however, she should not be in 22-hour isolated confinement for more than 30 days. Following this discussion consensus was reached that pregnant women are a population that is especially vulnerable to the harms of isolated confinement.

In sum, it was agreed that the following persons are significantly vulnerable to the effects of isolation and the above principles should apply to them:

- Serious Mental Illness
- Intellectual Disabilities
- Serious Cognitive Limitation/Impairments
- Juveniles (18 and under/defined by state law)
- Elderly/Infirm (without a specific age)
- Pregnant Women

Group 3 also reached consensus quickly on populations that are vulnerable in general population. This category was defined as including the following people:

- Serious Mental Illness
- Intellectual Disabilities/Developmental Disabilities

- Juveniles (18 and under/defined by state law)
- Elderly/Infirm (without a specific age)
- Protective Custody
- Chronically Ill
- Sex Offenders

Although there was discussion, there was no consensus on LGBT people.

### Should there be a Classification Appeal for Vulnerable Individuals?

Group 3 reached consensus that a multi-disciplinary approach should be used but there was disagreement as to whether the incarcerated person should have a say in his or her classification and placement into a separate unit. One advocate argued that the individual should have input, not necessarily a vote, but input into the decision citing PREA. There was disagreement from a corrections official that he was not in favor of such input and did not want to put it into the principles because it would set an expectation that he did not believe warranted. It was also suggested that classification moving people into separate units is a decision that is made at the facility level by mental health professionals. It was decided, that:

The procedures for determining whether to place a vulnerable person in the general population or in a separate unit should be reached through a multidisciplinary process, which includes input from the individual, regarding which special unit they should be placed in. The procedure need not be a formal procedure such as an Individual Education Plan or a disciplinary due process hearing.

This question arises when an individual wants to be housed in general population but the decision is to place him in a special unit and it also arises when the individual is placed in general population but feels that he should be held in a special unit for vulnerable persons. No consensus was reached on this issue. There was a discussion over liberty interests, due process issues, and the fact that in many systems classification is not grounds for a grievance. One of the corrections administrators stated that there are procedures for an appeal can be pursued in order to challenge one's classification. The conversation ended with no consensus of what the appeals process would be for an individual wanting to challenge a classification decision of whether or not to place him in a special unit.

## General Approach and Step-Down Program for these Separate Units

Group 3 briefly discussed this issue and commented that a step down program<sup>20</sup> is a very good idea and should be the goal but that some prisons have small populations of vulnerable individuals and therefore do not always have the resources for a step-down program. A correction official stated he would endorse a step down program but asked how we can do it when it is not always suitable. It was also noted that before attempting to initiate a step down program there should be improvements to amenities and incentives that will lead to the next step with good behavior. Since time was running out the it was agreed that they would endorse that step-down programs were a good idea but that it should be indicated in the notes of their deliberations that there was not enough time to discuss the details of this program. There was an understanding that resources or certain circumstances may not allow for a step-down program. One advocate wanted to note that incarcerated persons should never be serving “dead time”<sup>21</sup> and there should always be a next step where they receive services and mentioned that the mental health treatment programs function similarly to the step-down program.

## Accountability and Transparency

The members of Group 3 were unanimous in their belief that accountability and transparency is essential to reform efforts. It was suggested that anyone and everyone should be brought into the fold, people should be allowed into the prisons, critical advisory boards should be in place, outside monitoring, and that everything should be public. Transparency and accountability is important for the overall effort. An additional point was that in the process of accountability more data should be collected as to the performance of correctional institutions’ treatment of vulnerable populations. This is because over time we must be able to show that the implementation of our recommendations makes a difference and that these units are successful. We cannot just focus on the bad data that comes out; rather, the good data will prove right more than wrong. It was agreed that:

- Transparency is mission critical, ensures ethical and moral appropriateness, and ensures a commitment to positive performance.
- Transparency, external and internal accountability, and robust data supporting measuring outcomes, are essential and critical to the success of these units and should be publicly available.

Some measures that would help guarantee success were agreed upon. These measures included data on institutional force and violence, suicide attempts, grievances, disciplinary tickets, assaults on staff, and cell extraction. Internal accountability gives people the awareness

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<sup>20</sup> A step down program is an incentive-based, multi-step process that provides those placed in isolation the opportunity to earn enhanced privileges by refraining from participation in Security Threat Group (STG) affiliations and behaviors. The ultimate goal of SDP is to release the persons from the isolation unit.

<sup>21</sup> Meaning time with no intervention or opportunity to improve one’s condition or term of imprisonment.

that outside people are watching their behavior and their behavior will be considered when decisions are made about them.

### Barriers to Reaching these Goals

The last question tackled by was the barriers to reform measures. Everyone said lack of resources is a barrier. It was discussed that many of those most at risk present an expensive problem for the system therefore it was suggested that money and resources need to be reinvested in separation units to address these vulnerable individuals. The more problematic an individual, the more resources they need. To bolster that point it was suggested that a needy person will often act out as a way to get attention and this would not happen as often in a healthy system that would address the incarcerated persons needs before they act out. To express these thoughts it was agreed that:

- There are barriers to achieving reform that will be distinct based on the facility and jurisdiction.
- Resources will vary by the system and state and each jurisdiction is ultimately going to have to come up with a solution for adequate resources that will work for their system through new funding or redistribution.

The group contemplated two different vulnerabilities that we used as the main goal to approach our discussion. The first vulnerability occurs when an individual is vulnerable to the harm associated with isolation and the second vulnerability is when an individual is vulnerable to other prisoners. As soon as someone in the first category, vulnerable to isolation, is placed in isolation, the goal is to work on getting him or her out as soon as possible. When an individual from the second category is placed in isolation we need to work on alternatives.

It was also suggested that for those individuals who are separated, but not in isolation, that separation should not deprive those individuals of habilitative, rehabilitative, educational, similar opportunities, or even additional opportunities to those available to the general population. Separation should not result in a lack of access to opportunities.

### Number of Days that Vulnerable Individuals can be held in Isolation

Group 3 recommended that vulnerable populations should not be placed in isolation for longer than 30 days. Some participants were not willing to come up with an exact time limit but rather suggested that it should be the shortest amount of time necessary.

It was stated that in litigation involving individuals with Serious Mental Illness (SMI) a complete prohibition on their placement in isolation has resulted. However, others were not aware of case law that says short-term isolation is unconstitutional. Some people stated that case law allows for the use of short-term isolation for these individuals. For example, Massachusetts and New York allow for short-term isolation up to 30 days. This short term isolation provides corrections officials with time to figure out the right medications Colorado

provides for no segregation for individuals with SMI, however, they would receive 10/10, while escorted, in restraints, at restraint tables, etc. until they are safe.

Strong opposition was voiced to the 30-day limit for SMI and reference was made to the American Psychiatric Association's Position Statement on Segregation of Prisoners with Mental Illness:

*Prolonged segregation of adult inmates with serious mental illness, with rare exceptions, should be avoided due to the potential for harm to such inmates. If an inmate with serious mental illness is placed in segregation, out-of-cell structured therapeutic activities (i.e., mental health/ psychiatric treatment) in appropriate programming space and adequate unstructured out-of-cell time should be permitted. Correctional mental health authorities should work closely with administrative custody staff to maximize access to clinically indicated programming and recreation for these individuals.<sup>22</sup>*

The consensus proposal was that the recommendation should be much less than 30 days. Opinions were that 30 days is punishment; nothing is served by 30 days; and that 30 days should be the limit but less is better.

#### Discussion as to Services

The services available in prison do not compare to the services of a psychiatric hospital. We need to recognize the limitations of correctional resources that are available during the time an individual is in isolation. Individuals with mental illness need to be helped in order to regain control when they act out rather than just placing them in isolation. Most prison systems do not have enough psychiatric beds and sometimes there are worse conditions of confinement in psychiatric cells than in isolation. There should be daily mental health services that involve contact with mental health staff, interaction, and programs. Individuals with SMI need to receive treatment and out of cell time. Individuals in isolation should receive treatment immediately. If a person placed in isolation has a mental illness there should be an immediate evaluation. For an acute incident, it should not take more than an hour after the person enters isolation to evaluate them.

#### Discussion of Discipline

When an individual with SMI also has a behavioral issue that person may need to be separated to keep everyone safe, however, this issue is separate and apart from what services the person receives from the first day he is separated. Group 3 did not contemplate isolation as being used in any way to punish a vulnerable person such as an incarcerated person with SMI \.

In Colorado, if an individual with SMI commits an act caused by their mental illness, it is believed that punishment is not appropriate and that intervention to address the underlying

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<sup>22</sup> American Psychiatric Association Position Statement on segregation of prisoners with Mental Illness, approved by Board of Trustees, December 2012.

mental illness is called for. In Colorado, even for discipline, they use a 10/10 plan and some individuals stay in 10/10 forever. However, there should be caution in trying to determine whether the mental illness caused the person's behavior. There is no easy way to determine whether mental illness is the cause of the behavior. Disruptive behavior should be thought of separately and not a reason for punishment. We need to find alternatives to isolation if punishment is the goal. We should not punish someone in a way that will cause him or her serious harm. For example, we cannot punish a diabetic by not giving them insulin. This does not mean that you can never discipline someone with a mental illness. Rather, it needs to be clarified that an incarcerated person can be held accountable without the use of social isolation.

## **RECOMMENDATIONS**

- 1 Segregation should be used for the minimum time and in the least restrictive conditions necessary to resolve the condition that led to the segregation.
  - 1.1.1 For those in segregation or restricted housing, the goal should be to get them into the least restrictive housing possible. If they are separated from the general population, it should be for the shortest amount of time necessary. We urge correctional officials to consider alternatives to segregation or restricted housing.
- 2 Separation is one alternative to segregation or restricted housing. This can be through moving someone to a different area of a facility, a different facility, or a different prison system.
- 3 Positive incentives should be incorporated into the management of all incarcerated people, including those in segregation or restricted housing.
  - 3.1 All isolation should have an incentive component, which would restore certain privileges if the individual were able to reach certain behavioral goals. Ideally, these incentive programs would operate on relatively short timeframes—e.g., two days of good behavior earns a reward—so that incarcerated persons would quickly begin to see their good behavior rewarded. Participants also agreed that isolation should have a goal of changing specific behavior and an individualized achievable path to reach it.
- 4 Even for the most restrictive segregation, the conditions should be humane. These conditions should include, at a minimum: access to natural light, control of light in cells, basic sanitary and safe environmental conditions including adequate space, ventilation and temperature, adequate nutrition, adequate medical and mental health services, and reading materials. There should be initial and subsequent periodic mental health evaluations of those in segregation or restricted housing, to determine whether changes in conditions of confinement are warranted for mental health reasons.
  - 4.1 Segregation must include meaningful mental health rounds, health care rounds, and adequate basic conditions.
  - 4.2 Apart from the briefest possible initial period, all incarcerated persons in segregation or restricted housing should have some access to out of cell time, congregate activity, meaningful social interaction, programming/interventions, phone calls, and visits, recognizing that the extent of these privileges may be more limited than in general population. The most restrictive segregation should be for the shortest amount of time necessary.

- 4.3 Segregation or restricted housing for investigation purposes should be brief and may require a brief period of restricted contact with others.
- 5 We recognize that there is a small number of people who will require prolonged separation from the general population because they pose a threat of violence to incarcerated persons or staff.
  - 5.1 Their separation from the general population is not punitive and should not be experienced that way. For these people, the conditions should be humane and as close to general population conditions as possible (in addition to the basic conditions listed in item 4 above).
  - 5.2 These people should be provided with interventions to address their needs and to promote their safe transition back to less restrictive settings.
- 6 All people in segregation or restricted housing should be periodically reviewed to determine whether they could be released to a less restrictive environment (e.g. having met treatment goals).
- 7 Responses to disciplinary infractions should be imposed on a continuum, with segregation as the tool of last resort.
  - 7.1 Segregation or restricted housing for disciplinary or management purposes should be used only for the most serious behavioral offenses, such as violence or threats of violence.
  - 7.2 It should not be used for problems such as gang affiliation, status or political belief or minor infractions, except for a brief segregation period for investigation or cooling-off purposes.
- 8 There must to be due process protections in place.
  - 8.1 These must include procedural safeguards for placement in segregation, periodic review during segregation, and an exit mechanism.
  - 8.2 This process should consider the severity of the offense, length of time spent in segregation, fairness, and the ability of individual to comply with imposed conditions.
- 9 The loss of privileges needs to be proportionate to the infraction, and must include a pro-social incentive system to restore the privileges.
- 10 There should be family contact allowed while incarcerated people are in segregation, as the loss of family contact can be extremely agitating for both the incarcerated person and the family; increasing family contact and visits for improved behavior can provide a strong incentive.

- 11 Loss of programming, social contact and family contact should be reserved for more serious infractions or after other punishments have proved ineffective.
- 12 Anyone who is in segregation or restricted housing for more than a brief period of time should be provided with interventions to address their needs and promote their safe transition back to less restrictive settings.
- 13 Incarceration should be avoided whenever possible to prevent bringing vulnerable populations<sup>23</sup> into the prison system in the first place (e.g. juveniles should be in youth systems and should never be in adult prisons; people with mental illness should receive treatment and services elsewhere; elderly and infirm released on parole; etc.).
- 14 Where incarceration cannot be avoided, every reasonable effort should be made to manage the vulnerable individual within the general population environment and provide adequate services to meet their needs while in the general population.
  - 14.1 The determination to place a vulnerable person in the general population or in a separate unit should be through a multidisciplinary process, which includes input from the prisoner, regarding which special unit they should be placed in. The procedure need not be a formal procedure such as an IEP or a disciplinary due process hearing.
- 15 Where general population placement cannot be effectively managed without posing an unacceptable risk, vulnerable populations should be assigned to separate living units where their needs can be appropriately met with a goal of maximizing congregative activity, habilitative, rehabilitative, and programmatic opportunities.
  - 15.1 The separation accomplished in these living units is separation from the risk posed by general population, not separation or isolation from all other individuals. The conditions of confinement in these separate units should never be punitive.

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<sup>23</sup> Vulnerable individuals who are so vulnerable to 22 hour lockdown that regardless of their behavior they should have additional limitations on solitary confinement.

Significantly Vulnerable Individuals who are at high risk of harm in solitary:

- SMI (serious mental illness)
- Intellectual disabilities
- Serious cognitive impairments
- Juveniles
- Infirm (elderly without specific age)
- Pregnant women

- 16 For significantly vulnerable individuals at high risk of harm in extreme isolation, it should be imposed only as a very temporary emergency measure, for no more than 15 days, when absolutely necessary to address immediate serious safety needs. No later than 72 hours following placement in extreme isolation:
  - 16.1 Measures to reduce social isolation, to ameliorate the risks from extreme isolation, and to soften the environment should begin. E.g., for prisoners with serious mental illness, structured therapeutic activities (i.e., mental health/psychiatric treatment) in appropriate programming space and adequate unstructured out-of-cell time; measures to allow pregnant women adequate access to large-muscle exercise; etc.
  - 16.2 Efforts to assess the prisoner's behaviors and the best strategies towards a goal of alternative long-term housing should begin.
- 17 In extraordinary cases in which a stay of longer than 15 days is essential any extension must be based on an authorization by medical or mental health care professionals in the exercise of their independent professional judgment, with additional review each 7 days thereafter or more often if needed and in no case shall extreme isolation for significantly vulnerable individuals extend beyond 30 days.
- 18 There is a consensus on endorsing step down programs for vulnerable individuals, but no exact procedures for step down were agreed upon.
- 19 We acknowledge the importance of transparency in furthering reform and believe transparency and accountability further the goals of public safety. Transparency increases awareness and trust for the public, prison staff, and incarcerated persons. Transparency is mission critical and ensures ethical and moral appropriateness and ensures the commitment to positive performance.
- 20 Every agency should have data on the use of segregation or restricted housing, including:
  - 20.1 Demographics of individuals in segregation/restricted housing,
  - 20.2 The nature of segregation/restricted housing,
  - 20.3 Length of time in segregation/restricted housing,
  - 20.4 Where individuals were released (internally or to the community).
  - 20.5 Agencies should track the outcomes of those who are released from segregation.

- 20.6 It is essential there be robust data collection which measures the outcomes critical to the success of these units. This should be publicly available. Data should include:
  - 20.6.1 Institutional violence
  - 20.6.2 Cell extraction
  - 20.6.3 Suicide attempts
  - 20.6.4 Grievances
  - 20.6.5 Disciplinary tickets
  - 20.6.6 Assaults on staff
- 20.7 Agencies should also:
  - 20.7.1 Have the capacity to undertake research and data collection.
  - 20.7.2 Make data publicly available on their website on a regular basis.
  - 20.7.3 To the extent possible, be open to outside research projects for both external and internal accountability.
- 21 Communication between advocates and correctional administrators may avoid needless litigation, assure the responsible stewardship of funds, and help both correctional staff and the public at large to understand reform in public safety terms.
- 22 Advocacy should also focus on legislation to ensure sufficient resources, including reallocation of resources saved by reducing segregation or restricted housing. There are barriers to achieving reform that will be distinct based on the facility and jurisdiction. There is consensus that adequate resources will be needed to meet the recommendations set out above either through new funding or reallocation of savings.
- 23 Efforts must be made to get staff “buy in” on reforms from the outset. Correctional management should find ways to “celebrate courage in the service of public safety through small victories.
- 24 We call for a separate conversation and set of recommendations on segregation or restricted housing for jails and juvenile justice facilities.

## Next Steps

Although the colloquium resulted in the consensus recommendations above, much remains to be done and areas of disagreement and questions remain. The participants in the colloquium specifically recommended continuing discussions like this specifically directed to the unique challenges facing jails and juvenile corrections institutions.

The first step that should be taken is to further publicize and write about the recommendations herein. Jurisdictions that have not participated will require assistance to understand and implement these recommendations. Opportunities to incorporate the ideas emanating from this colloquium exist in the work of the VERA Institute's "Safe Alternatives to Segregation," initiative to provide assistance to state and local jurisdictions interested in implementing some of these ideas. We have already discussed and shared these recommendations with them and are exploring opportunities to support their work and incorporate these recommendations into their practice.

As important as the recommendations themselves, what emerged from this colloquium was the beginning of meaningful and respectful dialogue between parties on both sides of the issue and with competing views of the problem. The dynamic that was begun here can and should be continued by bringing the group together again both to hear about progress that continues to be made, learn from the research being done by VERA and others about "what works," and to advance the discussion of outstanding issues and narrow the range of disagreement."

Learning from the medical profession, this colloquium can serve as the beginning of a "consensus development" effort within corrections to address the use of social isolation. Consensus methods have been used productively to solve problems in medicine and health. Their main purpose is to define levels of agreement on controversial subjects. Advocates suggest that, when properly employed, consensus strategies can create structured environments in which experts are given the best available information, allowing their solutions to problems to be more justifiable and credible than otherwise. The challenge moving ahead will be selecting problems, choosing members for consensus panels, specifying acceptable levels of agreement, properly using empirical data, obtaining professional and political support, and disseminating results.<sup>24</sup>

Examples for further discussion include the best ways to manage the process of "stepping down" an individual from social isolation in prison; specific time limits on the use of extreme social isolation; definitions of "serious" disciplinary infractions as distinguished from minor infractions that do not warrant the use of social isolation as punishment. The goal would be to identify common definitions and "best practices."

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<sup>24</sup> "Consensus Development at the NIH: Improving the Program".  
<http://www.ncbi.nlm.nih.gov/books/NBK235517/>

Finally, the strong recommendation from the colloquium for transparency and accountability requires further work to determine accurately the state of knowledge and available data in each jurisdiction regarding the prevalence and frequency with which different forms of social isolation are being employed, how they are defined, and what the outcomes are. Efforts have begun including the ground breaking work by the Liman Center at Yale Law School and the Association of State Correctional Administrators to quantify the use of “Administrative Segregation.”<sup>25</sup> Studies such as that must be continued and supported. A first step would be to survey jurisdictions to determine where their segregation policies meet, exceed, or fall short of the articulated consensus principles. And next to assess what policies re-write to at least meet the principles looks like. Subsequent reports could analyze how changes based on the principles have impacted policy and program outcomes. Following on that, there may be an opportunity to revisit the principles in a few years to see where greater consensus or new principles have emerged as a result of implementation experience on the ground.

John Jay and the Prisoner Reentry Institute look forward to continuing our efforts to advance these efforts.

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<sup>25</sup> Sarah Baumgartel, Corey Guilmette, Johanna Kalb, Diana Li, Josh Nuni, Devon Porter, and Judith Resnik, “Time in Cell: the ASCA-Liman 2014 National Survey of Administrative Segregation in Prison,” New Haven: Liman Center, Yale Law School, September 2015. <http://nicic.gov/library/030161>

## Acknowledgements

First, and most importantly we wish to thank the Jacob and Valeria Langeloth Foundation whose commitment to promote and support effective and creative programs, practices and policies related to healing from illness, accident, physical, social or emotional trauma, and to extend the availability of programs that promote healing to underserved populations allows efforts like this to be pursued. The Foundation has taken a leading position in supporting efforts to ameliorate the effects of extreme social isolation and through their efforts have moved the conversation forward in important ways.

This colloquium could not have been possible without the assistance and support of the staff of the Prisoner Reentry Institute (PRI) at John Jay College of Criminal Justice. PRI takes seriously John Jay's mission of Education for Justice and works hard to support our "fierce advocates for justice." Particularly we wish to thank Daonese Johnson-Colon and Aimee Baker whose skill and perseverance ensured that the colloquium would be a success.

Finally, the outcome of the colloquium, these discussions, and our recommendations are the result of the commitment and hard work of our facilitators, Brian Fischer retired Commissioner New York State Department of Corrections and Community Supervision, Andie Moss President of Moss Associates, and Professor Michael Mushlin of Pace University Law School. Their leadership was supported and documented by our able team of reporters Susruta Sudula and Jennifer Peirce of John Jay, Abigail Marion and Nick Reck of Columbia Law School, and Erika Danielsen and Sarah Lusk of Pace University Law School.

# Appendix A

Presentation by Bernie Warner, Secretary of Corrections, State of Washington

IMU Education



1/2/2015

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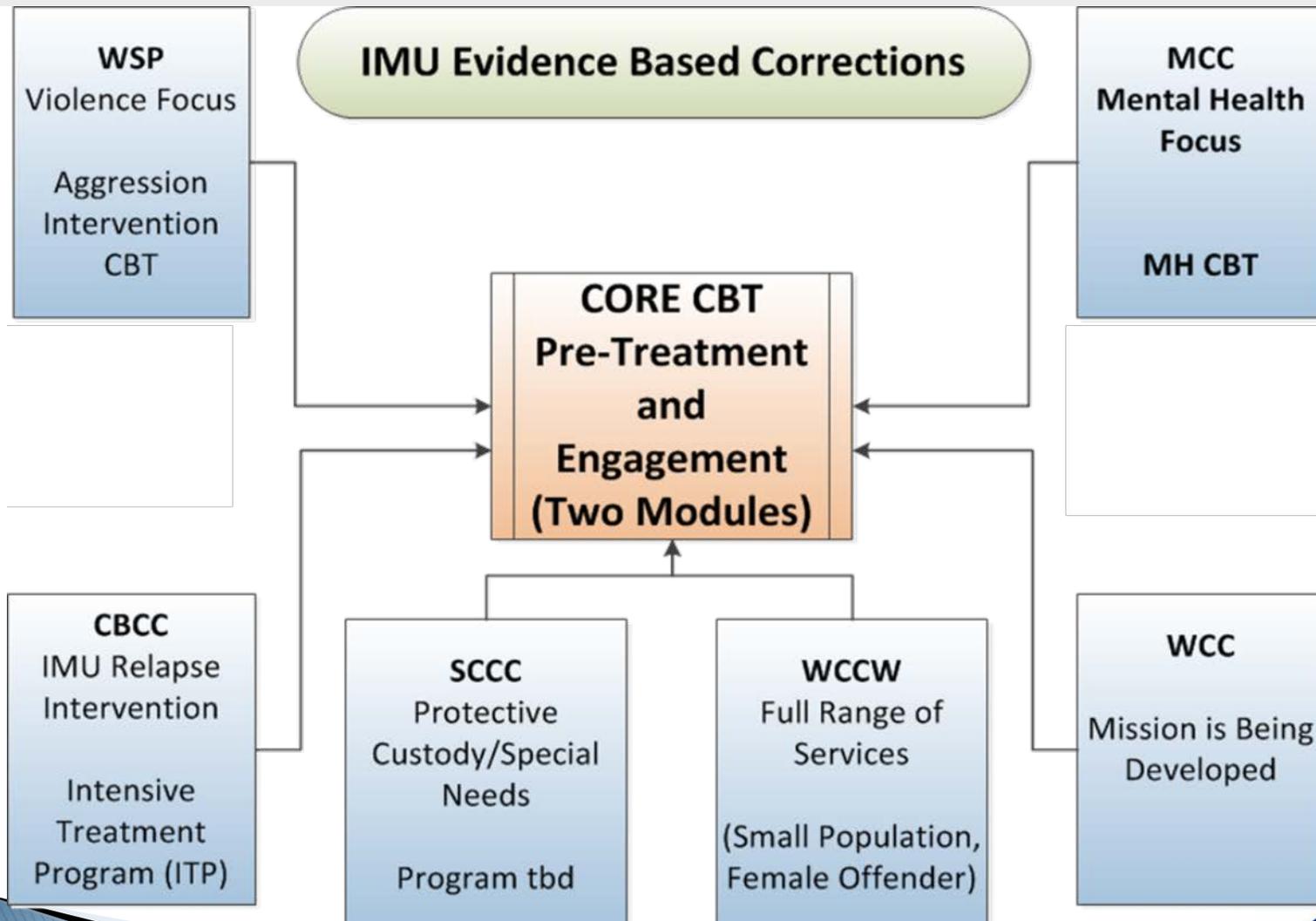
# Restricted Housing



# Changes to solitary housing

FROM		TO
Suppression and containment		<b>Intensive programming</b>
Use as punishment		Use as a <b>management tool</b> when they cannot be safely managed in population
Managing different types of prisoners the same		Mission-specific housing to target <b>risk, need, responsivity</b>
IMS structured as a time-driven system		Behavior change through programming and <b>congregate activity</b>

# Missioned Housing



# Washington State Penitentiary (WSP)

## ▶ Motivating Offender Change (MOC) Program

- Targets Security Threat Group (STG/Gang) prisoners
- General population STG units co-located at WSP
- Anger Control Training
- Four phases of behavior change and development
- Incremental reinforcers to encourage behavior change



# Monroe Correctional Complex (MCC)

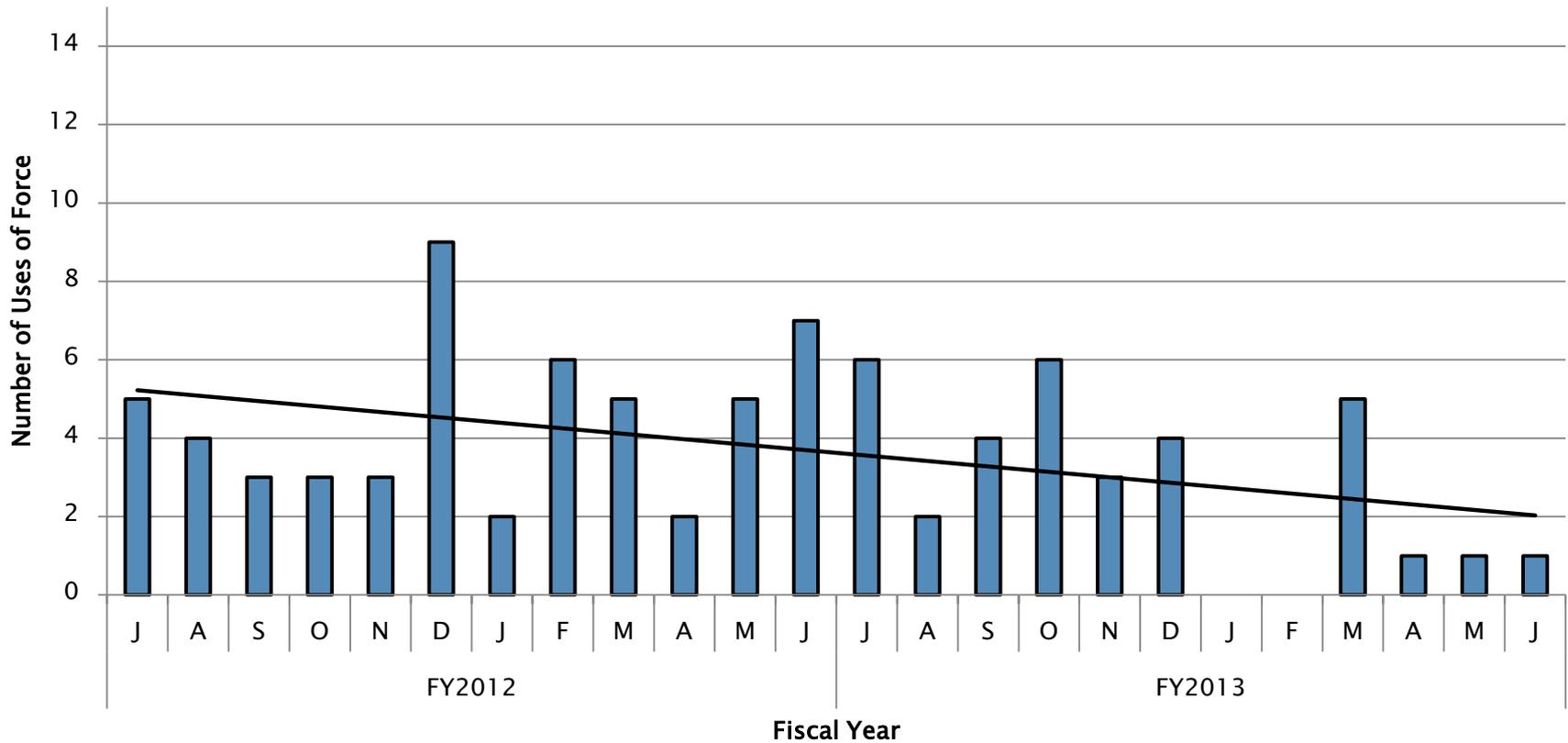
## ▶ Reintegration and Regression Programming (RAPP)

- Targets mentally ill prisoners
- Co-location of Intensive Treatment Unit, mental health facility at MCC
- Cognitive Behavior Therapy
- One mental health professional per 50 prisoners
- Individualized Treatment/ Behavior Management Plan



# Use of Force Incidents in WSP – IMU Have Decreased

Number of Uses of Force over Fiscal Year in WSP – IMU



# Clallam Bay Corrections Center (CBCC)

## ▶ Intensive Transition Program (ITP)

- Targets chronic IMU recidivists
- Provides prisoners pro-social skills to successfully live in general population
- Includes mixed cognitive-behavioral therapy curriculum with phases and congregate activity

## ▶ 80% success rate

- Of the 131 program graduates ITP; 107 have not returned

# Organizational culture change

- ▶ Give staff professional development tools
  - Core Correctional Practices
  - Motivational interviewing
- ▶ Engage staff in the change process
  - Encourage interaction between prisoners and staff through physical setting and interactive tools
  - Having staff build programs, set up classroom, etc.

# One Size Does Not Fit All

- ▶ Missioned Housing
  - Skill Building unit
  - Crossroads transitional mental health program
  - Sage unit – intermediate nursing care
  - Senior living unit
  - Veterans living units
  - Treatment units – sex offender; chemical dependency; mental health

# Appendix B

Presentation by Joe Ponte, Commissioner of Correction, City of New York

# The 14 point antiviolence reform agenda will improve DOC

## Supporting the Culture Change at Rikers

### Reducing Violence



Keep weapons and drugs out of Rikers



Create an integrated classification and housing strategy



Comprehensive security camera coverage



Design effective inmate education opportunities and services



Redefine First Line Incident Response



Improve leadership development and culture



Redefine Investigations Division



Design a recruitment, hiring, and staff selection plan



Design a staff performance management plan



Implement operational performance metrics and analysis



Create a well-defined supply distribution process



Improve custody management processes



Expand targeted training



Raise Facilities to a state of good repair



Implement immediate improvements



Improve internal & external communications



# The Ending of Punitive Segregation for 16-17 year-olds

October 1, 2014

- 50 adolescents in Punitive Segregation (25 in RHU + 25 in regular P-Seg)
- 257 in custody
- 1,477 days owed total

December 31, 2014

- 0 adolescents in Punitive Segregation
- 176 in custody

January/February 2015

- 0 days owed

September 29, 2015

- 0 adolescents in Punitive Segregation
- 205 in custody



## **CAPS - Clinical Alternative to Punitive Segregation**

- Specialized mental health treatment of seriously ill inmates who have committed violence.
- DOC established CAPS in 2013 (Opened Oct 17, 2013, CAPS began with 4 inmates at AMKC)
- CAPS has 30 inmates (September 28, 2015)
- The Use of Force in CAPS was 40% lower than the rate on Restricted Housing Unit (RHU) during the first 6 months of 2015



## **PACE (Program to Accelerate Clinical Effectiveness)**

- Non-punitive model
- Created in January 2015 to build on the CAPS.
- 57 inmates (September 28, 2015)
- Designed to encourage adherence to treatment.
- Continuity of care and a team-based approach.



# **Commissioner Joseph Ponte at the New York City Department of Correction**

## **April 2014**

- Commissioner Ponte Appointment

## **Summer 2014**

- CAPS Program Expansion

## **December 2014**

- Punitive Segregation for Adolescent Inmates ends

## **January / February 2015**

- Enhanced Supervision Housing Created
- Elimination of Time Owed

## **April to July 2015**

- PACE Units 1 & 2 Open

## **September 2015**

- DOC Punitive Segregation Population declines  
2/3

## **February 2016**

- Punitive Segregation for Young Adult Inmates to  
End

# Appendix C

Presentation by Rick Raemisch, Executive Director, Colorado Department of Corrections



**COLORADO**  
Department of Corrections

Rick Raemisch  
Executive Director

*“Colorado Department of Corrections Chief Shot Dead”  
Associated Press*

*“Tom Clements, Executive Director of Colorado Prisons, Killed in his Home in Monument”  
Denver Post*

# MARCH 19, 2013

*“Colorado Department of Corrections Director Murdered”  
CBS Denver*

*“Colorado Department of Corrections Chief Tom Clements Shot, Killed When He Answered His Front Door”  
New York Daily News*



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***JUST OPEN THE DOOR...***



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# *Residential Treatment Programs*



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# *Residential Treatment Program*

Purpose: To provide a treatment program with incentive level systems for offenders with mental illness and/or intellectual and developmental disabilities, and criteria for movement/transition for RTP offenders.

Deter offenders being placed into Restrictive Housing for behaviors that are directly related to their mental illness.



# *Residential Treatment Programming*

Colorado has 3 Residential Treatment Programs:

255 Bed Acute Needs Facility for males

240 bed Chronic/long term Facility for males

48 bed acute/chronic unit for females



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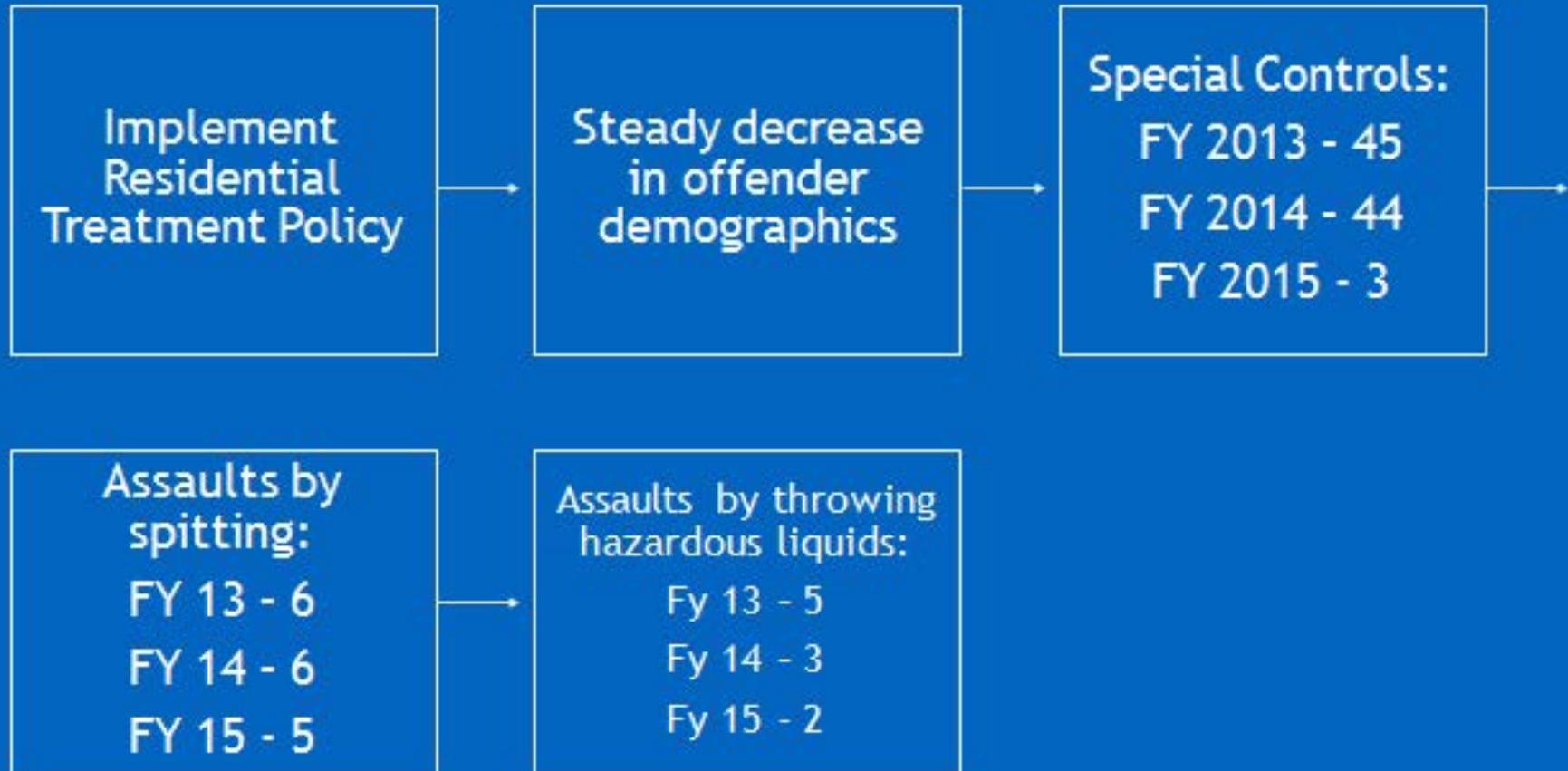


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# San Carlos Correctional Facility Residential Treatment Program



**UNITED NATIONS**

***Rule 82(2).***

***“Prisoners who suffer from other mental diseases or abnormalities shall be observed and treated in specialized institutions under medical management”***

**COLORADO DEPARTMENT OF CORRECTIONS**

***AR 650-04***

***It is the policy of the Department of Corrections to offer specialized programs to offenders with mental illness and/or intellectual and developmental disabilities.***



# July 2014 Administrative Segregation Reform



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## UNITED NATIONS RECOMMENDATION

*“Restrict the criteria in determining whether a person can be sent to isolated confinement or an alternative therapeutic confinement setting to the most serious acts”*

*“Indefinite solitary confinement should be abolished”*

## COLORADO DEPARTMENT OF CORRECTIONS

### AR 650-03

It is the policy of the Department of Corrections (DOC) to establish and provide effective restrictive housing management procedures for offenders who have demonstrated through their behavior that they pose a significant risk to the safety and security of staff and other offenders, as well as to the safe and orderly operation of general population. The use of Restrictive Housing, to include Maximum Security Status is an offender management process requiring specific action and review for placement and/or progression.



**May 2011:**

**1,484**

**Administrative Segregation  
Offenders**



***BY OPENING THE DOOR...  
YOU OPEN OPPORTUNITIES***



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## *What is next for the Colorado DOC?*

2015 -

Colorado is working on evolution of policy to address female sanctions.

Installing restraint tables in restrictive housing for out of cell programming to offenders serving long term sanctions

Development of alternative and immediate sanctions versus referral to Restrictive housing

Visitation technology for those in restrictive housing



The result of Colorado's Restrictive Housing reforms is an empty maximum security prison.



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