

SOLITARY CONFINEMENT IN AMERICA: TIME FOR CHANGE AND A PROPOSED MODEL OF REFORM

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ABSTRACT

The following Article describes current solitary confinement practices in American prisons and the beginnings of a movement toward reform in light of international treaty obligations and national exposure to the horrific conditions and effects of long-term solitary confinement. The second part of the article highlights some of the more successful state reform efforts that can be used as models by other states wishing to implement reform. And finally, in part three, I argue that in order to implement lasting reform, advocates must work to implement change not only through litigation on behalf of individual or even classes of prisoners, but also must target legislators to revise existing laws and policies, educate the public about the realities of prison life, and seek support from within state Departments of Corrections to implement changes that will ensure both the safety of correctional staff, prisoners, and the public at large.

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INTRODUCTION: INCARCERATION AND SOLITARY CONFINEMENT IN THE UNITED STATES

The United States incarcerates more people than any other country in the world, accounting for more than 25% of the world's incarcerated population, while having only 5% of the world's total population.¹ This means that the United States alone incarcerates more than 2.2 million people, or 1 for every 110 Americans.² Such mass incarceration practices have the biggest impact on non-violent drug offenders, persons of color, and those with mental illness.³ Overall in the United States, the number of persons with mental illness in prisons and jails is ten times the number of mentally ill persons in state hospitals, and continues to grow each year.⁴ This has prompted some scholars to declare prisons and jails to be the newest form of "asylums" in America.⁵

It is well established that prison environments are not conducive to rehabilitation of offenders, and in fact, often exacerbate existing physical and psychological conditions.⁶ Persons with mental illness are also disproportionately subjected to abuse and more often placed in solitary confinement.⁷ Solitary confinement (or segregation) in most states is the practice of housing prisoners separately from the general population, usually twenty-three hours or more a day in their cells.⁸ The one hour prisoners have outside of the cell is also spent in isolation from fellow inmates, and often involves an hour of "recreation" that takes place in an enclosed, outdoor cage known as a "kennel" or "dog run."

Solitary confinement, or segregation, is most commonly used as a punishment within prisons, but is also used as a "management" tool by prison officials, citing a need to preserve order and security within a facility.⁹ There are five main types of segregation used in prison facilities across the country, two of which are very common across jurisdictions.¹⁰ "Disciplinary segregation" refers to the purposeful isolation of prisoners as punishment for a specific institutional rule violation.¹¹ Contrary to popular belief, disciplinary segregation is not reserved

¹ David H. Cloud, et al., *Public Health and Solitary Confinement in the United States*, 105 AM. J. PUB. HEALTH 18, 18 (2015).

² LAUREN E. GLAZE & DANIELLE KAEBLE, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, CORRECTIONAL POPULATIONS IN THE UNITED STATES, 2013 1–2 (2014).

³ Cloud et al., *supra* note 1, at 22; *See generally*, MICHELLE ALEXANDER, *THE NEW JIM CROW* (2012).

⁴ TREATMENT ADVOCACY CTR. & NAT'L SHERIFF'S ASS'N, *THE TREATMENT OF PERSONS WITH MENTAL ILLNESS IN PRISONS AND JAILS: A STATE SURVEY 101* (2014).

⁵ *Id.* at 6.

⁶ *See generally* Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 WASH. U. J.L. & POL'Y 327 (2006); Craig Haney, *Mental Health Issues in Long-Term Solitary and "Supermax" Confinement*, 49 CRIME & DELINQ. 124 (2003).

⁷ Cloud et al., *supra* note 1, at 22.

⁸ *Id.* at 20.

⁹ Angela Browne, Alissa Cambier & Suzanne Agha, *Prisons Within Prisons: The Use of Segregation in the United States*, 24 FED. SENTENCING REP. 46, 46 (2011).

¹⁰ *Id.* at 47.

¹¹ *Id.*

only for the “worst of the worst,” but rather more commonly houses prisoners who have committed minor rule infractions, such as spitting, bartering with another prisoner, or talking back to a correctional officer.¹² “Administrative segregation” refers to purposeful isolation of prisoners for some other reason than as a punitive measure in response to a specific rule violation.¹³ For example, an inmate may be placed in administrative segregation if he is believed to be a threat to others or the security of the institution, if an investigation of an incident is pending, or if the prisoner is suspected of perpetuating gang activity (or merely suspected of being a gang member).

There are three other forms of segregation that are somewhat less common than disciplinary and administrative segregation. “Protective custody” refers to the purposeful isolation of a prisoner from the general population for his or her own safety.¹⁴ For example, prison “snitches,” transgender inmates, other particularly vulnerable inmates, and sex offenders are often placed in this form of segregation. Some institutions also use “temporary confinement” to house prisoners pending a disciplinary hearing – for most prisoners, this means being placed in disciplinary segregation before a hearing officer determines this would be the appropriate form of punishment.¹⁵ Finally, “supermax” facilities are special prison facilities composed entirely of segregated housing – all inmates are kept in one form of solitary or another for very long periods of time, sometimes the length of their entire sentences.¹⁶ Regardless of the type of segregation, a typical solitary cell is usually sixty to eighty square feet, contains a small metal toilet and sink, and a concrete slab to hold a prison-issued mattress.¹⁷ This is the reality for more than 80,000 incarcerated individuals on any given day in the United States.¹⁸ However, change in segregation practices is on the horizon.

In 2014 alone, more states passed solitary confinement reforms than in the past sixteen years combined, including Arizona, California, Colorado, Indiana, Michigan, Nebraska, New Mexico, Ohio, and Wisconsin.¹⁹ Maine and Mississippi, which implemented reforms in 2010, have been pioneers in scaling back the use of solitary confinement, adopting more beneficial practices, reducing prison violence, and saving significant taxpayer dollars.²⁰ Other states are reexamining their own reliance on solitary confinement, and how to initiate overdue change.

This Article will proceed in three Parts. The first Part will describe solitary confinement practices in more detail and outline the problems associated with its use, namely its adverse mental health consequences, label as “torture” by international organizations such as the United

¹² Cloud et al., *supra* note 1, at 20.

¹³ Browne et al., *supra* note 9, at 47.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Cloud et al., *supra* note 1, at 19–20.

¹⁸ *Id.* at 18.

¹⁹ ELI HAGER & GERALD RICH, THE MARSHALL PROJECT, SHIFTING AWAY FROM SOLITARY, <https://www.themarshallproject.org/2014/12/23/shifting-away-from-solitary> (last visited Jan. 19, 2015).

²⁰ *Maine's Dramatic Reduction of Solitary Confinement*, INSIDE CRIMINAL JUSTICE (Jul. 20, 2011), <http://www.thecrimereport.org/news/inside-criminal-justice/2011-07-maines-dramatic-reduction-of-solitary-confinement>; Randall Pinkston & Phil Hirschorn, *Mississippi rethinks solitary confinement*, CBS NEWS (May 18, 2013), <http://www.cbsnews.com/news/mississippi-rethinks-solitary-confinement>.

Nations, its inefficacy in reducing prison and community violence, and its high financial and social costs. The second Part will highlight particularly successful reforms that have been implemented in various states, including Mississippi, Maine, and Colorado. Finally, Part three will propose a model reform plan that can be followed by states hoping to reduce their own reliance on segregation.

I. PROBLEMS WITH SOLITARY CONFINEMENT

Over the past few decades, research and scholarship have been highlighting the negative aspects of solitary confinement. On a national scale, there is no single definition or label for the practice of isolating prisoners from the general population. In many states, prison administrators refer to the practice as “segregation,” “administrative segregation,” “disciplinary segregation,” or simply refer to “special” housing or management units.²¹ Prisoners’ advocates, on the other hand, describe the practice as “isolation,” or its most popular descriptor, “solitary confinement.”²² Regardless of its label, most experts agree that in order for a prison practice to be considered solitary confinement, prisoners must be isolated from the general population of inmates within a prison.²³ In most states, this means the prisoner is forced to remain in a special cell or housing area for approximately twenty-three hours a day.²⁴ A typical cell is only sixty to eighty square feet, may lack natural light, and in some cases, may even be soundproofed so that neighboring prisoners are unable to communicate.²⁵ The one or two hours the prisoner is allowed to be outside of the cell, is also spent alone, either showering or “exercising” in a recreation cage commonly referred to as a “kennel” or “dog run,” often devoid of any recreational equipment whatsoever.

In addition to special isolation cells built into medium or maximum security prisons, most states have also gone one step further, and have built entire prisons that house only isolated prisoners — the so-called “supermax” facilities. The first supermax in the United States was built in Marion, Illinois as a replacement facility for the infamous Alcatraz.²⁶ Other states quickly followed Illinois’ example, and today, forty-four of the fifty states have at least one supermax facility.²⁷ Throughout this Article, the problems and reforms described will include both “regular” forms of solitary confinement/segregation, as well as isolation practices utilized in supermax facilities. The terms “isolation,” “segregation,” and “solitary confinement” will be used interchangeably throughout to refer to the practice of isolating prisoners described above.

²¹ Hope Metcalf, et al., *Administrative Segregation, Degrees of Isolation, and Incarceration: A National Overview of State and Federal Correctional Policies* 3 (Yale Law School, Public Law Working Paper No. 301, June 25, 2013), <http://papers.ssrn.com/sol3/papers.cfm?abstract-id=2286861>.

²² *Id.* at 1.

²³ *Id.*

²⁴ *Id.* at 2.

²⁵ Cloud et al., *supra* note 1, at 19–20.

²⁶ Bruce A. Arrigo & Jennifer L. Bullock, *The Psychological Effects of Solitary Confinement on Prisoners in Supermax Units: Reviewing What We Know and Recommending What Should Change*, 52 INT’L J. OFFENDER THERAPY & COMP. CRIMINOLOGY 622, 624 (2008).

²⁷ *Id.*

A. Mental Health Consequences of Solitary

A general consensus has long existed among psychologists, psychiatrists, and other mental health professionals that solitary confinement poses detrimental effects to isolated prisoners.²⁸ In recent years, even public health officials and general physicians have joined the mental health community in denouncing solitary confinement as hazardous to the health of those isolated and have called upon colleagues within the prison systems to urge for its cessation.²⁹ One prisoner who had spent over twenty-seven years in isolation described the intense loneliness and how other prisoners reacted to their long-term segregation:

I've experienced times so difficult and felt boredom and loneliness to such a degree that it seemed to be a physical thing inside so thick it felt like it was choking me, trying to squeeze the sanity from my mind, the spirit from my soul, and the life from my body. I've seen and felt hope becoming like a foggy ephemeral thing, hard to get ahold of, even harder to keep ahold of as the years and then decades disappeared while I stayed trapped in the emptiness of the SHU [Special Housing Unit] world. I've seen minds slipping down the slope of sanity, descending into insanity, and I've been terrified that I would end up like the guys around me that have cracked and become nuts. It's a sad thing to watch a human being go insane before your eyes because he can't handle the pressure that the box exerts on the mind, but it is sadder still to see the spirit shaken from a soul. And it is more disastrous. Sometimes the prison guards find them hanging and blue; sometimes their necks get broken when they jump from their bed, the sheet tied around the neck that's also wrapped around the grate covering the light in the ceiling snapping taut with a pop. I've seen the spirit leaving men in SHU and have witnessed the results.³⁰

Prisoners can experience adverse health and mental health effects within just a few days of being isolated – electroencephalograms (“EEGs”) taken of isolated prisoners reveal abnormal patterns of brain waves characteristic of medical patients experiencing delirium.³¹ Prisoners lose their ability to focus or even respond to normal stimuli.³² Other environmental stimuli can become almost unbearable — small noises sound cacophonous, smells from the unit and the inmate's toilet facilities become terribly overwhelming, and minor physical sensations may become an obsession.³³ When these prisoners do have a chance to interact with other human beings, they cannot respond to social cues or even tolerate the prolonged stimulation of a normal

²⁸ See generally Grassian, *supra* note 6; Haney, *supra* note 6.

²⁹ Cloud et al., *supra* note 1, at 21–22; Jeffrey L. Metzner & Jamie Fellner, *Solitary Confinement and Mental Illness in U.S. Prisons: A Challenge for Medical Ethics*, 38 J. AM. ACAD. PSYCHIATRY & LAW 104, 106–07 (2010).

³⁰ William Blake, *A Sentence Worse than Death*, VOICES FROM SOLITARY (Dec. 25, 2014), <http://solitarywatch.com/2014/12/25/voices-from-solitary-a-sentence-worse-than-death-2>.

³¹ Grassian, *supra* note 6, at 331.

³² *Id.*

³³ *Id.*

conversation.³⁴ One inmate who had spent over a decade in isolation described how in a meeting with his attorney, her body language sent him into a panic attack, and as a result, he actually requested to go back to his cell.³⁵

Some inmates, especially those with pre-existing psychological conditions or other vulnerabilities can become overtly psychotic, paranoid, and delusional.³⁶ Prisoners may hear voices calling their name, telling them to commit violent acts against themselves or other people.³⁷ They engage in acts of self-mutilation and attempt to commit suicide at rates significantly higher than the general population inmates.³⁸ They start to believe the correctional officers are plotting against them, poisoning their food, or making noises just to irritate them.³⁹ They engage in revenge fantasies against their captors.⁴⁰ They often appear in a stupor, yet cannot have a restful sleep – their circadian rhythms become highly disturbed.⁴¹ They fly into impulsive rages and aggressive outbursts, often physically injuring themselves in the process.⁴² In many states, regulations permit prisoners to be released directly into the community without any transitional step-down or mental health programming.⁴³ For example, in Colorado, prior to implementing drastic solitary reforms, 40% of Colorado’s segregated prisoners were released directly to the street and would often commit violent crimes that landed them back in the state’s penitentiaries.⁴⁴

B. Solitary Does Not Make Prisons or Communities Safer

When isolated prisoners are released directly into the community, their recidivism rates can be higher than those released from the general population.⁴⁵ Considering the mental health effects described above, this hardly seems surprising. Prisoners that have spent weeks, years, or decades in isolation cannot be reasonably expected to return to society as fully-functioning,

³⁴ *Id.* at 332–33.

³⁵ Robert “Bobby” Dellelo, Solitary Confinement Survivor, Address at Harvard Law School to Students of The Effects of Mass Incarceration: Experiences of Prison and Parole Reading Group (Nov. 17, 2014) (notes on file with author).

³⁶ Grassian, *supra* note 6, at 335–36.

³⁷ *Id.* at 336.

³⁸ Fatos Kaba, Andrea Lewis, Sarah Glowa-Kollisch, James Hadler, David Lee, Howard Alper, Daniel Selling, Ross MacDonald, Angela Solimo, Amanda Parsons & Homer Venters, *Solitary Confinement and Risk of Self-Harm Among Jail Inmates*, 104 AM. J. PUB. HEALTH 442, 445 (2014).

³⁹ Grassian, *supra* note 6, at 336.

⁴⁰ *Id.*

⁴¹ *Id.* at 332.

⁴² *Id.* at 336.

⁴³ Cloud et al., *supra* note 1, at 22.

⁴⁴ Erica Goode, *Prisons Rethink Isolation, Saving Money, Lives and Sanity*, N.Y. TIMES, March 10, 2012, http://www.nytimes.com/2012/03/11/us/rethinking-solitary-confinement.html?pagewanted=all&_r=0.

⁴⁵ Elizabeth Bennion, *Banning the Bing: Why Extreme Solitary Confinement is Cruel and Far Too Usual Punishment*, 90 IND. L.J. 742, 743 (2015).

productive members. Instead, these prisoners are overwhelmed by the outside world, try to avoid any social interaction, experience panic attacks around other people, and often struggle to manage their conduct.⁴⁶

When these prisoners are re-incarcerated, they are unable to interact with the general population inmates, commit disciplinary offenses, and often end up back in solitary confinement. States that have used step-down procedures alone or in combination with mental health programming for inmates being released into the community have seen dramatic reductions in recidivism rates.⁴⁷ In those states that have reduced the number of inmates housed in segregation, rates of overall prison violence have dropped as well.⁴⁸ This is not only a positive change for prisoners, but also for correctional staff. Some studies have even suggested that correctional officers feel safer and happier on the job in institutions that have minimal to no isolation units.⁴⁹ The safety and mental health concerns surrounding the issue of solitary confinement has led to its reevaluation as a permissible penal practice not only in the United States, but also around the world.

C. International Pressure to Abolish Solitary

The United States was the first nation to implement solitary confinement as a punitive measure in the early 1800s, and other nations soon followed its example.⁵⁰ As a powerful and standard-setting nation, the United States has long been under an international microscope, with organizations reviewing its solitary prison practices. In 2011, the United Nations commissioned “Special Rapporteur of the Human Rights Council on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment” declared that segregation practices amount to inhumane treatment — and, in prolonged cases, to torture — and urged that any form of segregation be used only in exceptional circumstances and as a last resort.⁵¹ The Special Rapporteur defined

⁴⁶ Bruce A. Arrigo & Jennifer L. Bullock, *The Psychological Effects of Solitary Confinement on Prisoners in Supermax Units: Reviewing What We Know and Recommending What Should Change*, 52 INT’L J. OFFENDER THERAPY & COMP. CRIMINOLOGY 622, 627–28 (2008).

⁴⁷ See, e.g., THE PEW CENTER ON THE STATES, STATE OF RECIDIVISM: THE REVOLVING DOOR OF AMERICA’S PRISONS 21 (2006) available at

[\[sentencing_and_corrections/staterecidivismrevolvingdooramericaprison20pdf.pdf\]\(http://www.pewtrusts.org/~media/legacy/uploadedfiles/wwwpewtrustsorg/reports/sentencing_and_corrections/staterecidivismrevolvingdooramericaprison20pdf.pdf\) \(noting that “figures from the Michigan Department of Corrections show that parolees released through \[a reentry program that includes mental health treatment and counseling\] are returning to prison 33 percent less frequently than similar offenders who do not participate in the program.”\); David Lovell, L. Clark Johnson and Kevin C. Cain, Recidivism of Supermax Prisoners in Washington State, 53 CRIME & DELINQ. 633, 636, 643 \(2007\) \(noting that Washington state prisoners released directly from supermax to the community without transitioning through general population settings had much higher recidivism rates than those who did transition\).](http://www.pewtrusts.org/~media/legacy/uploadedfiles/wwwpewtrustsorg/reports/</p>
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⁴⁸ Goode, *supra* note 44.

⁴⁹ Cloud et al., *supra* note 1, at 22.

⁵⁰ Arrigo & Bullock, *supra* note 46, at 623-24.

⁵¹ Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Human Rights Council, 22d Sess., GAOR, U.N. Doc. A/66/268 (Aug. 5, 2011) (by Juan E. Méndez).

prolonged solitary confinement as isolation lasting longer than fifteen days.⁵²

The Special Rapporteur also found no reasonable justification to confine someone in isolation as merely a punitive measure, and held that to do so would violate not only the Convention Against Torture, but also the International Covenant on Civil and Political Rights.⁵³ The Rapporteur recommended abolishing solitary confinement as a punitive measure along with discontinuing practices of indefinite isolation, as well as banning any isolation practices of juveniles and those with mental illness.⁵⁴ The Rapporteur also suggested that non-punitive forms of segregation could only be used with implementation of both internal and external procedural safeguards, and only then in exceptional circumstances.⁵⁵ Other international human rights groups, such as *Amnesty International*, have also joined the movement to end solitary confinement as a form of torture, with a special domestic focus on the United States.⁵⁶

D. Solitary's Cost Conundrum

Solitary has adverse mental health consequences, actually increases prison violence and recidivism rates, and has been condemned by various international entities. On top of these concerns, segregation is extremely costly and does not appear to offer much benefit for its high price tag. The cost of staffing segregation units is often more than double the price of staffing regular housing units in a maximum-security facility.⁵⁷ According to the American Civil Liberties Union (“ACLU”), it costs about \$14,933 to \$21,485 more per inmate in Colorado, per year, to house someone in administrative segregation in its supermax prisons than in a regular maximum-security prison.⁵⁸ The costs of building and staffing supermax facilities are even higher – constructing a supermax facility can cost two to three times more than constructing a maximum-security facility.⁵⁹ And of course, closing such facilities can save states millions of dollars each year. When Mississippi closed down its supermax facility, for example, it incurred savings of over \$5 million in the state budget.⁶⁰

The facts and figures demonstrate that solitary confinement incurs too great a social, financial, and moral cost to justify its continued use. Some states are no longer willing to stomach the high costs of isolating prisoners, and have begun to reform their own solitary confinement

⁵² *Id.* at 9.

⁵³ *Id.* at 20. See also Convention Against Torture, *opened for signature* Dec. 10, 1984, 1465 U.N.T.S. 81 (entered into force June 26, 1987) available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>; Covenant on Civil and Political Rights, *opened for signature* Dec. 16, 1966 999 U.N.T.S. 171 (entered into force Mar. 23, 1976) available at <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

⁵⁴ Special Rapporteur, *supra* note 52, at 22–23.

⁵⁵ *Id.* at 23–25.

⁵⁶ Amnesty International, STOP TORTURE CAMPAIGN, <http://www.amnestyusa.org/our-work/campaigns/security-with-human-rights/demand-accountability-for-torture> (last visited Jan. 21, 2015).

⁵⁷ Cloud et al., *supra* note 1, at 20.

⁵⁸ Am. Civil Liberties Union of Colo., THE HIGH COST OF SOLITARY CONFINEMENT (2011).

⁵⁹ DANIEL P. MEARS, URBAN INSTITUTE, EVALUATING THE EFFECTIVENESS OF SUPERMAX PRISONS ii (2006).

⁶⁰ Goode, *supra* note 44.

practices.

II. STATE REFORMS – VARIOUS APPROACHES TO THE SOLITARY PROBLEM

In 1998, West Virginia became the first state to pass a measure prohibiting the solitary confinement of juveniles, banning the practice for periods exceeding ten days.⁶¹ Sadly, West Virginia marks a prime example of the difficulty in implementing meaningful reform in this area—the measure was not consistently applied until 2012, when two isolated prisoners sued the Division of Juvenile Services.⁶² The next legal reform in the United States did not occur until 2007, almost a decade after West Virginia’s reform, when New York restricted the amount of time prisoners with mental illness could spend in isolation and moved to provide “improved” mental health services.⁶³ Unlike West Virginia, however, New York went further in codifying comprehensive requirements for prisoners with mental illness in legislation that took effect in 2011.⁶⁴ Several states have implemented small reforms since 2012 that address the practice of isolating juveniles or those with mental illness, but only three states have thus far introduced and implemented more sweeping solitary reforms: Maine, Mississippi, and Colorado.⁶⁵ Though reforms in these states took somewhat different paths, the lessons from each can be used to create an ideal path of implementing reform in other states ready to join the movement to stop solitary in the United States.

A. Maine

Big reforms in Maine did not become a reality until at least two decades worth of advocacy, research, lobbying, and official investigations into correctional solitary practices.⁶⁶ Various civil and human rights groups spent years filing lawsuits and educating state legislators, leading up to the most drastic reforms in 2010. Although a solitary bill that would have reformed the system to much of what it looks like today in Maine was proposed that year, it was rejected.⁶⁷ However, the effort did lead to the development of a state government committee tasked with investigating whether solitary practices in Maine’s prisons were violating prisoners’ due process rights.⁶⁸ The committee developed recommendations that would end the civil rights violations they uncovered in Maine’s prisons.⁶⁹ The next step was to get the Maine Department of Corrections to implement the internal recommendations provided by the oversight committee.

⁶¹ Hager & Rich, *supra* note 19.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ See ZACHARY HEIDEN, AM. CIV. LIBERTIES UNION OF ME., CHANGE IS POSSIBLE: A CASE STUDY OF SOLITARY CONFINEMENT REFORM IN MAINE 18–19 (2013).

⁶⁷ *Id.* at 23.

⁶⁸ *Id.* at 23–24.

⁶⁹ *Id.* at 25–26.

Solitary reform became a reality because prisoners' rights advocates were able to find a corrections administrator who was not only willing to hear them out, but also implement the much needed and recommended reforms: Commissioner Joseph Ponte.⁷⁰ Prior to the dramatic shift in solitary policies in 2010, Maine incarcerated over 100 prisoners in its Special Management Unit ("SMU"), twenty-three hours a day on weekdays and twenty-four hours a day every weekend.⁷¹ Prisoners sent to the SMU could be there for years, and with walls too thick for conversation with neighboring prisoners, confined individuals were isolated from all human contact other than "fleeting interactions with correction staff."⁷² Like in many states, prisoners could be isolated for small disciplinary infractions or for administrative purposes, such as internal investigations of prison incidents.⁷³ Prisoners who had served their disciplinary sentence in isolation were sometimes denied access to the general population due to insufficient bed space.⁷⁴ The Maine prison system also released isolated prisoners directly to the streets without transitional support, a practice that may have increased recidivism costs and harmed Maine's communities.⁷⁵

Commissioner Ponte, riding on the momentum of decades of advocacy work, cut Maine's solitary population in half in just a few months, and reduced the average stay from three months to two weeks.⁷⁶ Time sentenced to solitary became reviewable on a case-by-case basis, and some mentally ill prisoners and juveniles no longer spent months in isolated confinement.⁷⁷ The Commissioner also improved general living conditions on the SMU, increased access to health and mental health care services, and also established clear guidelines for prisoners to "earn" their way out of solitary.⁷⁸ Solitary was no longer a frontline punishment, but rather used only as a last resort with much stricter admission requirements. Now, in order to be sent to solitary for disciplinary or administrative reasons, a Maine prisoner must commit a "serious offense" and satisfy at least one of the following requirements: (1) constitute an escape risk in a less restrictive status; (2) pose a safety threat to others in a less restrictive status; (3) pose a threat to his/her own safety in a less restrictive status; or (4) there is a threat to the prisoner's own safety in a less restrictive status.⁷⁹

Some of Maine's most important reforms focused on how correctional staff were trained and the institutional view of segregated prisoners as "the worst of the worst." Correctional officers received mandatory training in verbal skills and conflict resolution, with less focus on

⁷⁰ Michael Winerip, *De Blasio Setting Up a Test: Prison Reformer vs. Rikers Island*, N.Y. TIMES, Apr. 4, 2014, http://www.nytimes.com/2014/04/05/nyregion/joseph-ponte-new-yorks-new-corrections-commissioner-faces-challenge-at-rikers.html?_r=0.

⁷¹ HEIDEN, *supra* note 66, at 10.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.* at 11.

⁷⁵ *Id.*

⁷⁶ Winerip, *supra* note 70.

⁷⁷ *Id.*

⁷⁸ HEIDEN, *supra* note 66, at 12.

⁷⁹ *Id.* at 15.

hand-to-hand combat and weapons training.⁸⁰ Prisoners were no longer viewed as hopeless cases, but rather as an opportunity for special intervention. Each prisoner sent to segregation now had a team of correctional and mental health professionals assigned to create a plan to get the prisoner back to the general population as quickly and safely as possible.⁸¹ After three years as Commissioner of the Maine Department of Corrections, Joseph Ponte accepted the challenge of reforming one of the most disturbing facilities in the United States: Rikers Island.⁸² In addition to Maine, two other states have made significant progress in reforming solitary confinement practices: Mississippi and Colorado.

B. Mississippi

As is true in many instances of state reform, litigation by prisoners' rights activists is the main catalyst behind change. Mississippi was no exception. In 2002, reform arose out of litigation challenging prison conditions in the state's largest supermax facility: Mississippi State Penitentiary, Parchman.⁸³ In January of that same year, prisoners of Unit 32 began a hunger strike to protest their severe isolation in dimly lit, mosquito-infested cells lacking climate control, where most inmates stayed for the duration of their sentences, if not for life.⁸⁴ The Mississippi ACLU then used litigation, originally on behalf of death row inmates, to leverage better conditions for Unit 32, the most severely isolated prisoners in the state.⁸⁵ Following the suit, prison administrators agreed to cooperate with the ACLU in reforming prison conditions, and both sides reached a consent decree with a plan that included revisions to how prisoners were being classified as warranting severe isolation.⁸⁶

However, progress was slow in integrating a new classification system, and before the task force recommendations were adopted the prisoners erupted into gang violence.⁸⁷ Fortunately, Commissioner Epps and his team decided this violence was further evidence that reforms were needed and implemented the task force recommendations, reducing Unit 32's population by 80%, moving most prisoners to general population.⁸⁸ By 2007, the number of prisoners in Unit 32 had dropped from 1,000 to 150.⁸⁹ What was even more astonishing was the fact that the number of serious incidents, including prisoner-on-staff and prisoner-on-prisoner violence also decreased

⁸⁰ *Id.* at 16–17.

⁸¹ *Id.* at 17.

⁸² Winerip, *supra* note 70.

⁸³ See generally Terry A. Kupers et al., *Beyond Supermax Administrative Segregation: Mississippi's Experience Rethinking Prison Classification and Creating Alternative Mental Health Programs*, 36 CRIM. JUSTICE & BEHAVIOR 1037 (2009).

⁸⁴ *Id.* at 3.

⁸⁵ *Id.* at 3–4.

⁸⁶ *Id.*

⁸⁷ *Id.* at 4.

⁸⁸ *Id.* at 5.

⁸⁹ *Id.*

during this time, by almost 70%.⁹⁰ By March of 2009, the state of Mississippi reduced the total number of isolated prisoners in the state to 181, excluding death row inmates.⁹¹ In 2010, Unit 32 was closed completely, saving the state over \$5 million in operating costs.⁹²

The hard-earned reduction of numbers came after years of reform, including creation of a step-down unit with treatment and services for prisoners with serious mental illness.⁹³ In addition, correctional staff received mental health training; use of force became a last resort and allegations of inappropriate staff behavior became subject to automatic investigation.⁹⁴ Finally, prisoners remaining in segregation could earn their way to progressively less-restrictive environments through good behavior.⁹⁵ Training, treatment, and new incentives for positive behavior paved the way for a reduction in solitary confinement in Mississippi.

C. Colorado

In addition to work by various advocates, the Colorado Department of Corrections (“CDOC”) was instrumental in revealing the inconsistencies in its solitary confinement practices. In 2005, the CDOC performed an in-house study with the intent to analyze characteristics of its own administrative segregation population, which was spread out over four separate facilities.⁹⁶ The study revealed that CDOC placed prisoners in solitary confinement at almost five times the national average, that prisoners were spending an average of eighteen months in administrative segregation as opposed to those in disciplinary segregation (often only a few months), and that the segregation population was composed mostly of those suspected of gang violence (typically Hispanic prisoners) and those with mental illness.⁹⁷ Not only were there more prisoners with mental illness in administrative segregation relative to the general population, those in administrative segregation also experienced more severe symptoms, including hostility, suspicion, and overt psychosis.⁹⁸ The report also revealed that those prisoners who had transitioned through general population prior to release into the community, were less likely to recidivate than those released directly to the street.⁹⁹ Finally, the report concluded that state “budget cuts” had adversely impacted CDOC’s ability to incorporate more programming and address the special needs of this population.¹⁰⁰

⁹⁰ *Id.* at 7.

⁹¹ *Id.* at 9.

⁹² Goode, *supra* note 44.

⁹³ Kupers et al., *supra* note 83, at 6–7.

⁹⁴ *Id.* at 7–8.

⁹⁵ *Id.* at 11.

⁹⁶ See generally MAUREEN L. O’KEEFE, COLORADO DEP’T OF CORRECTIONS OFFICE OF PLANNING & ANALYSIS, ANALYSIS OF COLORADO’S ADMINISTRATIVE SEGREGATION (2005).

⁹⁷ *Id.* at ii, 3, 7, 11, 15, 33.

⁹⁸ *Id.* at 14–15, 17–20, 29.

⁹⁹ *Id.* at 25.

¹⁰⁰ *Id.* at 29.

Around the same time, CDOC began building a new supermax facility that would contain 948 new solitary confinement cells.¹⁰¹ Although vigorously opposed by advocates, including the Colorado Criminal Justice Reform Coalition, state legislators were more convinced by forecasting studies of the Colorado prison population and lobbying efforts by corrections officials and officer unions that the prison population was only becoming more dangerous.¹⁰² In fact, the prison population actually decreased during this time, and as a result, the new facility stood nearly empty for several years, at a cost of \$208 million to taxpayers.¹⁰³

In response to such a gross waste of state resources, in 2011, the newly elected Governor of Colorado appointed Tom Clements as the new Executive Director of the CDOC.¹⁰⁴ During his two-year reign, Clements implemented a variety of progressive correctional reforms, including improvements to sex offender treatment programs, reduced sentencing for drug crimes and improved substance abuse treatment services, as well as implementation of a new classification system to determine at which level of security prisoners could appropriately be housed (including segregation).¹⁰⁵ Most importantly, he invited technical assistants from the National Institute of Corrections to examine CDOC's solitary confinement practices,¹⁰⁶ and discovered that there were over 1,500 prisoners currently placed in administrative segregation, with another 670 being isolated for disciplinary violations.¹⁰⁷

Disturbingly, despite an overall decrease in the prison population, the administrative segregation population had actually increased since 2005, with Colorado housing 7% of its population in administrative segregation.¹⁰⁸ This number did not include any of CDOC's special behavioral units,¹⁰⁹ which also meet the criteria for solitary confinement described in the introductory sections. On top of this, the study revealed an average two-year length of stay, and that some housed in segregation had actually met behavioral criteria to transition to a lower form of custody, but were waiting on bed space.¹¹⁰ The experts concluded that CDOC was not implementing enough programming, there were grossly insufficient amounts of recreation time, that administrative segregation was actually being used for disciplinary purposes, and that prisoners were automatically being considered for placement in solitary upon returning to prison

¹⁰¹ *Id.* at 7; David Olinger, *Colorado Spending \$208 Million on Empty Solitary Confinement Prison*, DENVER POST, Nov. 4, 2012, http://www.denverpost.com/news/ci_21924289/colorado-spending-208-million-empty-solitary-confinement-prison.

¹⁰² *See* Olinger, *supra* note 101 (noting, for example, problems with the data and model that the department of corrections used in reaching its conclusions about prison dangerousness).

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ Christopher N. Osher, *Colorado Prison Chief Tom Clements Pushed Reforms Before his Killing*, DENVER POST, Mar. 20, 2013, http://www.denverpost.com/ci_22834189/colorado-prison-chief-tom-clements-pushed-reforms-before.

¹⁰⁶ *Id.*

¹⁰⁷ JAMES AUSTIN & EMMITT SPARKMAN, NAT'L INST. OF CORRECTIONS, PRISONS DIV., COLORADO DEPARTMENT OF CORRECTIONS ADMINISTRATIVE SEGREGATION AND CLASSIFICATION REVIEW 3 (2011).

¹⁰⁸ *Id.* at 17.

¹⁰⁹ *Id.*

¹¹⁰ *See id.* at 17–18.

if they had been housed there during a previous sentence.¹¹¹ Clements began a series of reforms that would reduce the solitary confinement population and prompted a unanimous vote by the Colorado state legislature in 2012 to close the superfluous administrative segregation facility.¹¹²

Unfortunately, Clements' reform efforts were cut short when he was shot and killed in his home by a former prisoner confined in solitary and released directly to the street.¹¹³ Upon Clements' untimely death, Rick Raemisch was appointed as the new executive director of CDOC.¹¹⁴ Where Clements had been a more of a quiet reformer, Raemisch brought more public attention to the problem of solitary confinement when he spent 20 hours in solitary confinement himself in 2014¹¹⁵ and even wrote an op-ed of his experience for the *New York Times*.¹¹⁶ Since his appointment in 2012, Raemisch has claimed to have brought down the numbers of mentally ill prisoners in solitary from 140 to 8, though there remains some controversy as to what the CDOC actually considers "major mental illness."¹¹⁷ Despite this controversy, Colorado advocates and the CDOC continue to work together toward reform.

III. A MODEL REFORM PLAN: COMBINING THE LESSONS OF MAINE, MISSISSIPPI, AND COLORADO

Although no state has yet accomplished (and may never accomplish) perfect correctional reform, looking at the combined lessons of Maine, Mississippi, and Colorado, a pattern of advocacy efforts emerges that can be replicated by other states. The first and most obvious efforts are through litigation. In all three model states, advocates from various human rights and civil rights organizations made efforts to improve prison conditions and reduce the use of solitary confinement. At the same time, advocates were also lobbying for improved transparency in corrections and against laws that would build new facilities or give the Department of Corrections more authority over its solitary confinement classification system. Third, advocates engaged the popular media through various exposés and personal stories coming out of solitary cells to educate the public about the realities of solitary confinement. Finally, and perhaps most

¹¹¹ *Id.* at 17–21.

¹¹² Osher, *supra* note 105.

¹¹³ Susan Greene, *Tom Clements Death: Prison Officials Acknowledge Chief's Death Tied to Solitary Confinement Policies*, COLORADO INDEPENDENT, July 8, 2013, <http://www.coloradoindependent.com/128438/co-prison-officials-acknowledge-chiefs-murder-tied-to-solitary-confinement-policies>.

¹¹⁴ *Id.*

¹¹⁵ Andrew Cohen, *Colorado's Prison Director Spent 20 Hours in Solitary—But That's Not Enough*, THE ATLANTIC (Feb. 24, 2014), <http://www.theatlantic.com/national/archive/2014/02/colorados-prison-director-spent-20-hours-in-solitary-but-thats-not-enough/283991/>.

¹¹⁶ See Rick Raemisch, *My Night in Solitary*, N.Y. TIMES, Feb. 20, 2014, http://www.nytimes.com/2014/02/21/opinion/my-night-in-solitary.html?hp&rrref=opinion&_r=1.

¹¹⁷ *New Department of Corrections Executive Director Rick Raemisch Pledges Changes, Transparency*, THE DENVER POST (Dec. 30, 2013), http://www.denverpost.com/news/ci_24815391/new-colorado-corrections-director-pledges-changes; see also AM. CIVIL LIBERTIES UNION OF COLO., OUT OF SIGHT, OUT OF MIND: COLORADO'S CONTINUED WAREHOUSING OF MENTALLY ILL PRISONERS IN SOLITARY CONFINEMENT (2014) (discussing the persistent problem of moving mentally ill prisoners to "Residential Treatment Programs" that may not be much better than solitary confinement).

importantly, advocates in states that have made the most advanced reforms partnered with Department of Corrections to accomplish some of the most drastic changes.

A. Litigation

Perhaps the easiest way for advocates to start the fight against solitary in their own states is through the mechanism they often know best: litigation. There are several relevant statutes and Constitutional Amendments that can be utilized by advocates, with perhaps the most popular methods of challenging solitary confinement arising under the Eighth and Fourteenth Amendments.

The Eighth Amendment of the United States Constitution reads: “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”¹¹⁸ For prisoners’ advocates, the most relevant portion of this amendment comprises the last phrase: “nor cruel and unusual punishments inflicted.” Unsurprisingly, prisoners have brought thousands of claims alleging that the use of solitary confinement constitutes cruel and unusual punishment, and is therefore unconstitutional. Such claims have been relatively unsuccessful for many years. Courts have held that the Eighth Amendment may certainly be applied to conditions of confinement, but in order to be successful on their claims, prisoners must generally show both injury and an objective state of mind on the part of prison officials comprising “deliberate indifference” to the alleged injurious condition – not all pains of imprisonment are actionable.¹¹⁹

Gaining little traction with the Eighth Amendment, advocates often turn to the Fourteenth Amendment to bring claims alleging that how prisoners are actually confined in solitary is not in accordance with standards of procedural due process, especially the standards of notice and a meaningful opportunity to be heard. The Fourteenth Amendment in part states that no State shall “deprive any person of life, liberty, or property, without due process of law.”¹²⁰ Advocates who cannot successfully challenge the condition of confinement itself, may challenge the classification and process of placing a prisoner in solitary. However, such challenges are rarely successful if the prisoner was notified in advance of the placement and had some opportunity to protest the classification.¹²¹

The Civil Rights of Institutionalized Persons Act (“CRIPA”) was passed in 1980 to encourage litigation in an attempt to improve various social institutions that housed vulnerable populations in the United States.¹²² Relevant sections for prisoners’ advocates include: section 1997, which defines “institution” to mean a “jail, prison, or other correctional facility;” section 1997a, which provides for civil actions; and section 1997e, which provides for suits by

¹¹⁸ U.S. CONST. amend. VIII. The Eighth Amendment is applicable to state penitentiaries through the due process clause of the Fourteenth Amendment. U.S. CONST. amend. XIV, § 1.

¹¹⁹ See generally *Farmer v. Brennan*, 511 U.S. 825 (1994) (discussing the standard of deliberate indifference as applied to prison condition cases).

¹²⁰ U.S. CONST. amend. XIV, §1.

¹²¹ See, e.g., *Wolff v. McDonnell*, 418 U.S. 539, 563–65 (1974); *Landman v. Royster*, 333 F. Supp. 621, 651–53 (E.D. Va. 1971).

¹²² See 42 U.S.C § 1997g (2012) (discussing the intent of Congress to correct deplorable conditions in correctional institutions through litigation and other efforts).

prisoners.¹²³ CRIPA is one of the statutes that the Civil Rights Division of the Department of Justice has been charged to uphold and enforce.¹²⁴ In a very important case arising out of Pennsylvania, the Department of Justice issued a findings letter that stated solitary confinement clearly violated both CRIPA and the Americans with Disabilities Act when used as a management tool for offenders with serious mental illness.¹²⁵

The Prison Litigation Reform Act (“PLRA”) was passed as part of an omnibus bill and was codified in two sections of the U.S. Code. 18 U.S.C. § 3626 concerns appropriate remedies with respect to prison conditions.¹²⁶ Basically, this provision limits all forms of potential relief, with the exception of compensatory damages, for civil actions filed by incarcerated persons. A court may grant relief only if “[it] finds that such relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right.”¹²⁷ In addition, courts are required to analyze any safety concerns that may arise from granting the relief.¹²⁸ The second section, 28 U.S.C. § 1932, condones the revocation of earned release (“good time”) credit by a court, if the court finds that in a civil action, the prisoner’s claim was filed with a malicious purpose, filed solely to harass the opposing party, or included false testimony or knowingly presented false evidence.¹²⁹

Finally, some advocates are using the Americans with Disabilities Act (“ADA”) as a new tool to target prisoners with disabilities being placed into solitary confinement, including those with mental illness.¹³⁰ The ADA was originally passed in 1990 and defines disability as “a physical or mental impairment that substantially limits one or more major life activities.”¹³¹ Both courts and the DOJ have determined that the ADA applies to prisons as public entities under Title II,¹³² and requires institutions to provide reasonable accommodations to those with both physical and mental disabilities (including mental illness),¹³³ unless such accommodations would

¹²³ 42 U.S.C §§ 1997, 1997a, 1997e.

¹²⁴ *Department of Justice Activities Under the Civil Rights of Institutionalized Persons Act Fiscal Year 2014*, DEP’T OF JUSTICE, 2 (2014), http://www.justice.gov/sites/default/files/crt/legacy/2015/04/24/split_cripa14.pdf.

¹²⁵ Press Release, Office of Pub. Affairs, Dep’t of Justice, Justice Department Finds Pennsylvania State Prison’s Use of Solitary Confinement Violates Rights of Prisoners Under the Constitution and Americans with Disabilities Act (May 31, 2013), <http://www.justice.gov/opa/pr/justice-department-finds-pennsylvania-state-prison-s-use-solitary-confinement-violates-rights>.

¹²⁶ 18 U.S.C. § 3626 (2012).

¹²⁷ *Id.* § 3626(a)(1)(A).

¹²⁸ *Id.*

¹²⁹ 28 U.S.C. § 1932 (2012).

¹³⁰ 42 U.S.C. §§ 12101-(2012).

¹³¹ 42 U.S.C. § 12102(1)(a) (2012).

¹³² Letter from Thomas E. Perez, Assistant Attorney General, United States Department of Justice, Civil Rights Division & David J. Hickton, United States Attorney, Western District of Pennsylvania, to Honorable Tom Corbett, Governor of Pennsylvania 1 (May 31, 2013) *available at* <http://www.justice.gov/sites/default/files/crt/legacy/>

2013/06/03/cresson_findings_5-31-13.pdf (stating that solitary confinement at a Pennsylvania state prison “violates the rights of prisoners with serious mental illness, as well as prisoners with intellectual disabilities, under Title II of the Americans with Disabilities Act”).

constitute an undue burden or fundamentally alter the nature of a correctional program.¹³⁴

For advocates who would like to use litigation as part of their reform efforts, I would recommend starting with the lowest hanging fruit — assisting those with disabilities, especially mental illness, to bring claims that they are being held illegally in solitary confinement, under the Eighth Amendment, CRIPA, and the ADA. If such action is happening more systemically, advocates can also file a complaint with the DOJ. At the same time, advocates can encourage individual prisoners who may not qualify as a person with a disability or serious mental illness to file internal grievances. Such administrative exhaustion will remove some of the PLRA's barriers to conditions of confinement claims. Finally, civil rights advocates should continue to bring claims under the Eighth and Fourteenth Amendments, with the hope that a Supreme Court ruling one day will declare use of solitary confinement unconstitutional for all prisoners, not just those considered the most vulnerable.

B. Lobbying and Legislation

As advocates well know, litigation is costly, time-consuming, and, in the realm of prisoners' rights, often an uphill battle. Advocates may be able to accrue a series of smaller wins for the cause through more traditional forms of lobbying and education of state legislators. Recently, some state advocates have been able to make headway by lobbying for more transparency in corrections, including data bills or bills requiring external oversight. For example, advocates in many states have been trying to pass bills that would require Departments of Correction to report population data concerning solitary confinement, and disaggregate such data by type of segregation, length of stays, offender characteristics (including race, level of education, medical diagnoses, and disabilities), number of self-harm incidents and completed suicides, use of force by correctional officers, transfers to hospitals, and number of releases directly to the community.¹³⁵ Some of these bills even require the establishment of legislature-appointed committees to oversee prisoner segregation practices and their impact.¹³⁶

In addition to the data reporting bills, advocates in some states have been successful in memorializing settlements as legislation.¹³⁷ Still others are lobbying for bills that directly ban

¹³³ See, e.g., *Ball v. LeBlanc*, 792 F.3d 584, 596 (5th Cir. 2015); *Nunes v. Mass. Dep't of Corr.*, 766 F.3d 136, 146 (1st Cir. 2014).

¹³⁴ 28 C.F.R. § 35.150(a)(3) (2015) (noting that a public entity does not have to provide reasonable accommodations if it "can demonstrate [such accommodations] would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens").

¹³⁵ See, e.g., H.R. 1381, 189th Gen. Ct. (Mass. 2015), <https://malegislature.gov/Document/Bill/189/House/H1381.pdf>.

¹³⁶ See, e.g., S. 1255, 189th Gen. Ct. (Mass. 2015), <https://malegislature.gov/Bills/189/Senate/S1255> ("A segregation oversight committee shall be convened to gather information regarding the use of disciplinary segregation and non-disciplinary segregation in Massachusetts correctional institutions, jails and houses of correction, to determine the impact of such confinement on prisoners, rates of violence and self-harm within correctional institutions, recidivism, and incarceration costs...members of the oversight committee shall be appointed by the judiciary committee of the Senate.")

¹³⁷ *Cases: Medical & Mental Health*, PRISONERS' LEGAL SERVICES OF MASSACHUSETTS, <http://www.plsma.org/cases/medical-mental-health/> (discussing how one case settlement's key provisions were ultimately codified in Massachusetts state law).

solitary confinement for special populations, often juveniles and those with mental illness.¹³⁸ Lobbying, much like litigation, can be an arduous process, but the benefit of lobbying is that it brings awareness of solitary confinement practices directly to state lawmakers. Political allies are essential to ensuring lasting and pervasive reforms, unlike court consent decrees, which may only serve a limited population for a limited period of time. Advocates also need allies in the legislature to be informed about potentially harmful correctional bills, including those that reduce oversight, transparency, and reporting requirements for Departments of Correction. Such bills can do a lot of harm with few words, and need to be lobbied against or significantly revised in committee through the efforts of legislative allies. Other effective means of promoting or killing a bill can be accomplished through public outreach via the media and reform coalitions.

C. Media, Coalitions, and Community Outreach

Perhaps one of the easiest ways to gain both political strength and extend influence is to join or form a coalition with other organizations advocating for correctional reform. Coalitions can also serve to educate organizations that should be involved with reforms. For example, with advocates searching for new tools to end solitary confinement, some have been looking to the ADA as a means of assisting persons with disabilities within correctional institutions. Pursuant to federal law, each and every state has a Protection and Advocacy Service (“P&A”) (sometimes organized under a different name, such as Disability Rights [State Name]), that is sworn to protect and advance the rights of all persons with disabilities.¹³⁹ The P&As have open access to any institution where persons with disabilities reside, including prisons and jails.¹⁴⁰ Such access can be a powerful tool for advocates who may otherwise have limited access to correctional facilities. In addition to P&As, some states also have state-funded Prisoners’ Legal Services organizations, including New York,¹⁴¹ Massachusetts,¹⁴² and North Carolina,¹⁴³ that are charged with assisting all incarcerated persons within that state, including in conditions of confinement cases.

There are other reputable organizations that have national influence, that also have offices or affiliates in most, if not every, state. These organizations include the American Civil

¹³⁸ Casey Tolan, *Bill Banning Solitary Confinement for Inmates Under 21 Moves Forward in New York State*, FUSION (June 15, 2015), <http://fusion.net/story/150973/bill-banning-solitary-confinement-for-inmates-under-21-moves-forward-in-new-york-state/>; Zeninjor Enwemeka, *Amid Push For Criminal Justice Reform, State Lawmakers Take Up Solitary Confinement Bills*, WBUR (Oct. 15, 2015), <http://www.wbur.org/2015/10/15/massachusetts-solitary-confinement-legislation>.

¹³⁹ Admin. for Community Living, *Administration on Intellectual and Developmental Disabilities: State Protection & Advocacy Systems*, U.S. DEP’T OF HEALTH & HUMAN SERVS., <http://www.acl.gov/Programs/AIDD/Programs/PA/index.aspx> (last visited Nov. 5, 2015).

¹⁴⁰ 42 U.S.C. § 10805(a)(3) (2012) (mandating that P & As “have access to facilities in the State providing care or treatment” to those with disabilities); 42 U.S.C. § 10802(3) (2012) (“Facilities” may include “hospitals, nursing homes, community facilities for individuals with mental illness, board and care homes, homeless shelters, and jails and prisons.”).

¹⁴¹ PRISONERS’ LEGAL SERVICES OF N.Y., <http://plsny.org/> (last visited Feb. 20, 2016).

¹⁴² PRISONERS’ LEGAL SERVICES OF MASS., <http://www.plsma.org/> (last visited Feb. 20, 2016).

¹⁴³ N.C. PRISONER LEGAL SERVICES, <https://www.ncpls.org/> (last visited Feb. 20, 2016).

Liberties Union,¹⁴⁴ Human Rights Watch,¹⁴⁵ and the Vera Institute of Justice.¹⁴⁶ All of these organizations have gathered lots of data and resources on solitary practices nationwide, and the Vera Institute even provides technical assistance to states trying to reduce their reliance on solitary confinement through its Segregation Reduction Project.¹⁴⁷ Advocates should reach out to existing organizations to enlist their help in bringing impact cases, lobbying state legislatures, and producing community campaigns to raise awareness. Creative community outreach campaigns can include presenting formerly incarcerated speakers, having members of the public spend time in a reconstructed model of a typical solitary confinement cell, inviting state legislators (or even the President¹⁴⁸) to tour prison facilities, and handing out information sheets to voters.

In addition to community outreach, advocates can also harness the power of the media to both reveal their struggle toward reform, as well as highlight ongoing human rights and civil rights violations. Several reputable media outlets have already released stories that have prompted public outcry and official investigations. For example, the *New York Times* series of articles on the civil rights violations of juveniles incarcerated at Rikers Island prompted an investigation by the Department of Justice.¹⁴⁹ Advocates should not restrict the tools available to them, including those that may be at first glance be unpalatable, such as partnering directly with Departments of Correction to implement reform.

D. Support from Within Corrections Departments

In each of the state reform efforts described above, there was a high-ranking official within the Department of Corrections who was willing to both investigate and implement needed reforms, promoting institutional buy-in. Support from within the DOCs was crucial to overhauling correctional practices, including those around solitary confinement. Because this is so important, advocates' lobbying efforts should also be directed at who is being appointed to leadership positions within corrections whenever possible. Where this is not possible or leadership is settled for the time-being, advocates need to open a line of negotiation with correctional leadership as part of their advocacy efforts. First, they should put together a small team of advocates that represent the various coalition members, and then ask for a meeting with leadership. The goal is to express concerns about how the particular system is being run as well as hear directly from leadership what concerns they have about implementing reforms.

¹⁴⁴ *We Can Stop Solitary*, AM.CIVIL LIBERTIES UNION, <https://www.aclu.org/feature/we-can-stop-solitary> (last visited Feb. 20, 2016).

¹⁴⁵ *Criminal Justice*, HUMAN RIGHTS WATCH, <https://www.hrw.org/united-states/criminal-justice> (last visited Feb. 20, 2016).

¹⁴⁶ *Sentencing and Corrections*, VERA INSTITUTE OF JUSTICE, <http://www.vera.org/topics/sentencing-and-corrections> (last visited Feb. 20, 2016).

¹⁴⁷ *See Segregation Reduction Project*, VERA INSTITUTE OF JUSTICE, <http://www.vera.org/project/segregation-reduction-project> (last visited Feb. 20, 2016).

¹⁴⁸ *See* Geoff Earle, *Obama Visits Prison in Call for Justice Reform*, N.Y. POST, July 16, 2015, <http://nypost.com/2015/07/16/obama-becomes-first-president-to-visit-prison-in-call-for-justice-reform/>.

¹⁴⁹ Benjamin Weiser & Michael Schwirtz, *U.S. Inquiry Finds a 'Culture of Violence' Against Teenage Inmates at Rikers Island*, N.Y. TIMES, Aug. 4, 2014, http://www.nytimes.com/2014/08/05/nyregion/us-attorneys-office-reveals-civil-rights-investigation-at-rikers-island.html?_r=0.

Even if leadership is not willing to hear the group, the advocates have still accomplished two important steps. One, they have demonstrated that the DOC is not willing to cooperate with them directly, and can use this as additional evidence of administrative exhaustion when bringing lawsuits. Two, the coalition will have demonstrated their strength and cohesive purpose, sending a clear message that advocacy efforts will not cease until the system has been reformed. If correctional leadership is willing to cooperate, members should express their interest in partnering with the Department to implement needed reforms. Advocates can offer various avenues of assistance, including lobbying for correctional resources, such as increased budgets for trainings and mental health services, and recommending experts to assist with on-the-ground changes, including the classification process by which prisoners are placed in solitary confinement.

Correctional leadership will have invaluable knowledge about key stakeholders in the current regime, characteristics of the offender population, and institutional knowledge of tried and failed reforms. Since most successful lawsuits end in settlement discussions anyways between leadership and the advocates who brought suit, taking initiative early on can save both parties significant time and resources, as well as start the process of reform much earlier. An allied correctional leader can also begin the difficult process of institutional buy-in, wherein he or she slowly changes minds and attitudes across the staff and leadership of an entire institution.

IV. CONCLUSION

Solitary confinement has become a hot topic in the world of prisoners' civil rights in light of international scrutiny on prison conditions around the world. Unfortunately, the United States has been a world leader not only in the number of people it incarcerates, but also a leader in its reliance on solitary confinement. This has created a firestorm of backlash against prison officials by human rights and civil rights organizations, both domestic and international, concerned about the detrimental impacts on prisoners' mental and physical health. Some states have been exemplars of reform and can be used as models for other jurisdictions hoping to reduce reliance on solitary confinement. However, the road to reform is paved with obstacles, including entrenched practices and biases toward prisoners, especially those most commonly subjected to solitary confinement. Advocates will have to rely on a variety of strategies both within and outside of correctional institutions to ensure lasting change and respect for prisoners' rights.