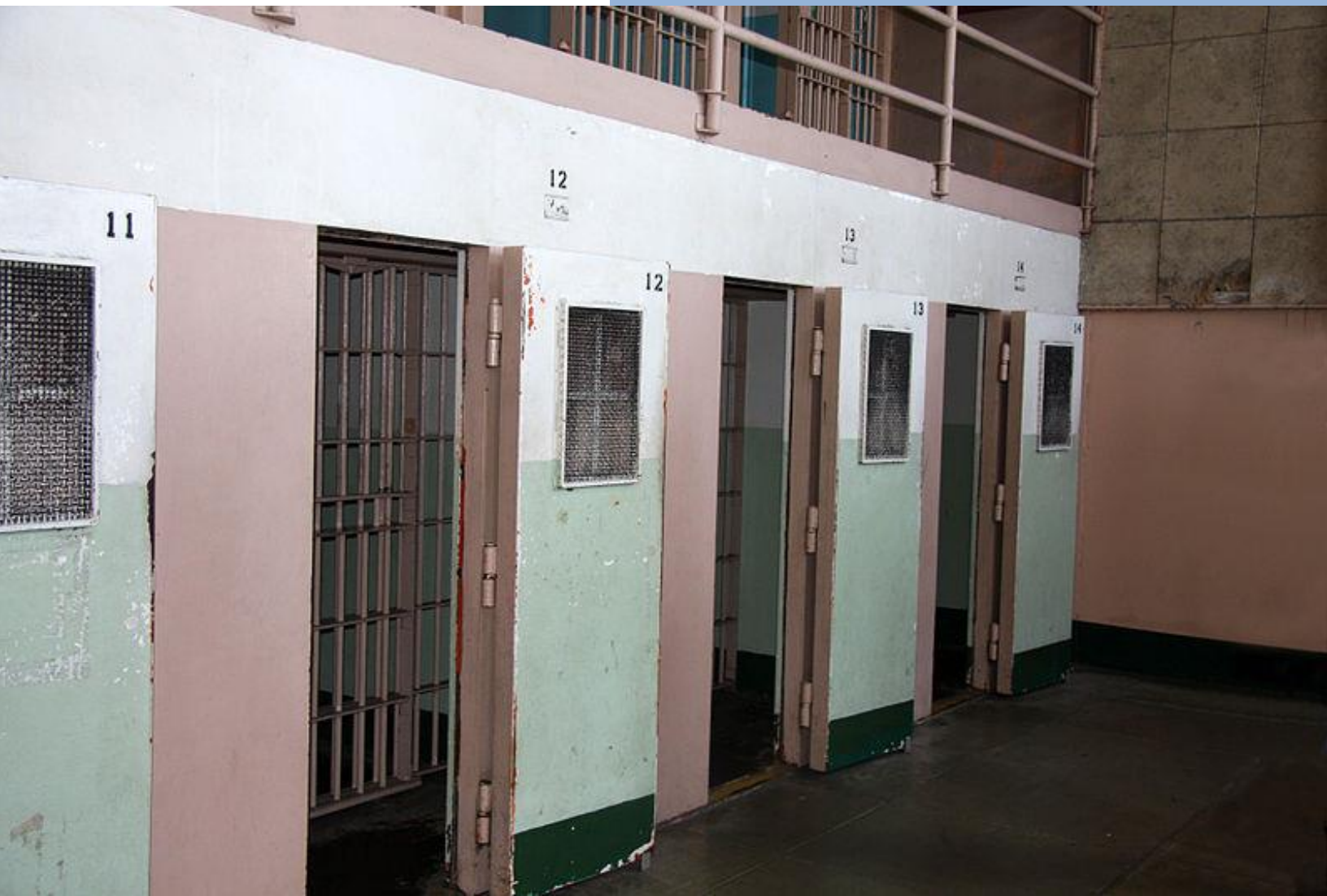


WORSE THAN SECOND-CLASS:



Solitary Confinement of Women in the United States



April 2014

Worse Than Second-Class

Solitary Confinement of Women in the United States

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INTRODUCTION

Solitary confinement—locking a prisoner in isolation away from most, if not all, human contact for twenty-two to twenty-four hours per day for weeks, months, or even years at a time—is inhumane. When used for longer than fifteen days, or on vulnerable populations such as children and people with mental illness, the practice is recognized by human rights experts as a form of torture.¹ Prisons and jails across the United States lock prisoners in solitary confinement for a range of reasons—punitive, administrative, protective, medical—but whatever the reason, the conditions are similarly harsh and damaging. Experts in psychology, medicine, and corrections agree that solitary confinement can have uniquely harmful effects;² this consensus has led experts to call for the practice to be banned in all but the most extreme cases of last resort, when other alternatives have failed or are not available, where safety is a concern, and for the shortest amount of time possible.³

Across the United States, jails and prisons hold more than 200,000 women. These prisoners are routinely subjected to solitary confinement. Yet the use of solitary on women is often overlooked.⁴ Although the negative psychological impacts of solitary confinement are well known, the unique harms and dangers of subjecting women prisoners to this practice have rarely been examined or considered in evaluating the need for reforms in law or policy. As the number of incarcerated women climbs at an alarming pace, women and their families and communities are increasingly affected by what happens behind bars. It is critical to address the treatment of women in prison—especially those women subjected to the social and sensory deprivation of solitary confinement.⁵

“After just two months in solitary confinement, **my mind began to slip**. I would spend large portions of my day crouched down on all fours by a small slat in my cell door listening for any sounds that might distract me from the sheer terror of my isolation. I suffered from insomnia, nightmares, hallucinations, and emotional detachment, and often had violent panic attacks. More than once, I completely lost control and began screaming and beating at the walls of my cell until my knuckles bled. I started to realize that there **was a slow disintegration, really, of my personality**, my sense of who I was . . . You are existing in this kind of vacuum.”

-Sarah Shourd¹

WOMEN BEHIND BARS

All prisoners are entitled to humane treatment, a safe and secure environment, and access to rehabilitative services. But there are some key areas where women prisoners are different from their male counterparts, and effective criminal justice policies and practices must take those differences into account. Women face many physical, medical, psychological, and socio-cultural challenges in prison. A higher percentage of women than men find themselves in prison for non-violent offenses.⁶ Indeed, even as the rate of imprisonment for women has risen dramatically in recent years, the percentage sentenced for violent crimes has fallen.⁷ A staggering proportion of incarcerated women suffer from

Pregnant in Solitary

Meghan,* who had battled depression for years, found herself pregnant behind bars in a system designed without thinking about her health.

Because of her pregnancy, Meghan had to **discontinue some of her mental-health medications**. She also needed extra sleep. When, one day, a guard decided Meghan didn't get up fast enough for mealtime, she was sent to solitary confinement as punishment.

Placement in solitary caused Meghan to miss her prenatal vitamins. It also meant **social isolation for an expectant mother who was fighting clinical depression**.

The extreme isolation made Meghan highly anxious. Her requests for water from guards were denied—sometimes for several hours, despite the heat in her isolation cell and the known danger of dehydration during pregnancy.

**Anonymous female prisoner in Illinois*

mental health problems. Among prisoners in federal facilities, almost fifty percent more women than men have been diagnosed with mental health conditions.⁸ And much higher numbers of women in state prisons and local jails are reported to suffer from mental health problems than similarly situated men.⁹ Women also report past physical or sexual abuse, as well as other traumas, at a higher rate than their male counterparts.¹⁰

Women in custody are frequently guarded during their most private moments by men without a female guard present, despite the potential for abuse and degradation.¹¹ International bodies have repeatedly warned of the sexual humiliation inherent when male guards watch female prisoners in their most intimate moments—such as dressing, showering, or using the toilet—and political leaders have begun to take note, as new federal regulations place stricter standards on cross-gender viewing and searches by prison guards.¹² The loss of privacy experienced by people in prison is especially damaging to the many incarcerated women who are also victims of past sexual abuse, since close supervision and discipline by male guards can reinforce feelings of vulnerability and can re-traumatize women who have experienced violence by men.¹³ The presence of male guards in women's facilities also increases the danger of staff sexual misconduct,¹⁴ which remains a serious problem in spite of increased awareness of the issue.¹⁵

Children are also among the collateral consequences of the United States' high incarceration rates. Since women are more likely than men to be the primary or sole caretaker of their children prior to incarceration,¹⁶ children and families are profoundly affected by the rising numbers of women sent to prison.¹⁷ Between 1991 and 2007, the number of children with a mother in prison more than doubled.¹⁸ About sixty-two percent of women in state prisons, and fifty-six percent of women in federal prison, have minor children.¹⁹ The very existence of the parental relationship can be endangered when a parent is incarcerated.²⁰ In addition to the devastating consequences of parental incarceration on families, children's future prospects also dim; children with mothers in custody are more likely to develop depression and anxiety, are at heightened risk of future substance abuse problems, and are more likely to become involved in the criminal justice system.²¹ Women's experiences behind bars—especially in solitary confinement—too frequently negatively affect their families.

WHAT IS SOLITARY CONFINEMENT?

The use of solitary confinement on women and men alike is ongoing and pervasive in American correctional facilities.²² Solitary confinement consists of isolating a person in a cell for twenty-two to twenty-four hours per day and severely limiting human contact and environmental stimulation of any kind. Brief interactions with correctional staff, and perhaps an occasional cell-front visit from a medical provider, may be a prisoner's only human contact for days, weeks, or months.²³ Prisoners in solitary confinement are often denied access to reading materials and to meaningful educational and life-skills programming. Solitary confinement frequently means reduced or no natural sunlight²⁴ and forced idleness, including little, if any, opportunity to exercise. In spite of the diminished human contact, solitary confinement can also bring a near-total lack of privacy, with guards able to view prisoners at all times via video.²⁵

Solitary confinement goes by many names, whether it occurs in a so-called "supermax prison" or in a separate unit within a regular prison. These separate units are often called disciplinary segregation, administrative segregation, control units, security housing units (SHU), special management units (SMU), or simply "the hole." Recognizing the definitional morass, the American Bar Association (ABA) has created the following general definition of solitary confinement, which it calls "segregated housing": "The term 'segregated housing' means housing of a prisoner in conditions characterized by substantial isolation from other prisoners, whether pursuant to disciplinary, administrative, or classification action. 'Segregated housing' includes restriction of a prisoner to the prisoner's assigned living quarters."²⁶ By any name, solitary confinement is always an extreme form of punishment.

The harms of solitary confinement extend far beyond the misery of spending almost every hour locked alone in a small, bare cell. One of the most unfortunate and heartbreaking consequences of solitary confinement is that visitation with loved ones, including a prisoner's own children, is greatly restricted. Contact visits—visits during which the prisoner can actually shake hands with or hug her loved one—are often entirely out of the question, since a physical barrier, such as a Plexiglas partition or steel mesh window, typically separates a prisoner from the visitor.²⁷ As video visitation becomes increasingly available, actual contact with family may become even more restricted in the future.²⁸ And in some cases, prison and jail officials may deny a prisoner in solitary all visits with friends and family.

Solitary confinement is psychologically damaging; prisoners subjected to it exhibit increased psychiatric symptoms as well as higher rates of suicide, suicide attempts, and self-harm.²⁹ Access to rehabilitative programming and transitional services is often denied to prisoners in solitary confinement because programming in segregated housing units is typically de-prioritized and often simply unavailable.

Despite the popular misconception that solitary confinement is used to house only "the worst of the worst," this is not true.³⁰ In fact, solitary is often used on the most vulnerable: pregnant women,³¹ individuals with mental illness,³² transgender women, and—in a particularly disturbing trend—victims of sexual assault by prison guards.³³ The reality is that, depending on discretionary prison policies, prisoners can be placed in solitary confinement for any number of infractions, such as possessing "contraband" like postage stamps or banned reading material, refusing meals, or "mouthing off" at an

officer or another prisoner.³⁴ Mental illness can contribute to these kinds of behavioral infractions; untreated drug addiction can also lead to placement in solitary when addicts gain access to narcotics in prison.³⁵ And because many cases come down to the word of a prisoner against the word of a corrections officer, a guard's bad day can easily turn into a solitary confinement sentence for a prisoner for retaliatory reasons, such as a prisoner's filing a grievance.³⁶

Because classification programs often are structured to have multiple "steps" or "phases," prisoners can spend months or years at a time in solitary confinement. Often prison regulations and policies controlling solitary practices are not transparent and available to the public, or even to prisoners themselves, and sometimes prisoners serve indeterminate periods in solitary confinement with no opportunity for meaningful review of their placement. Ultimately, some prisoners are released from solitary confinement directly into their communities without any preparation for living with others—a practice shown to increase recidivism.³⁷

PROBLEMS FOR WOMEN IN SOLITARY CONFINEMENT

Solitary confinement can exacerbate mental illness.

- Mental illness is common among women in prison. Nearly seventy-five percent of women in prison are diagnosed with mental illness—a much higher rate than for men in prison.³⁸ Solitary confinement has been shown to exacerbate underlying mental health conditions. The broad consensus among mental health experts is that long-term solitary confinement is psychologically harmful, especially to those with pre-existing mental illness. In studies of prisoners held in solitary confinement for ten days or longer, prisoners have deteriorated rapidly, with elevated levels of depression and anxiety, a higher propensity to suffer from hallucinations and paranoia, and a higher risk of self-harm and suicide.³⁹
- Women prisoners with mental illness are held in solitary confinement in alarming numbers. In June 2012, for example, fifty of the women in solitary confinement in one California institution—more than half of the total solitary confinement beds for women—were identified as mentally ill.⁴⁰
- Because prisoners with mental illness often suffer in ways that make their behavior difficult to manage, many women prisoners can end up in solitary confinement as a result of behavior that is beyond their control. They are essentially punished for their illness.⁴¹ In 2011, following a visit to the United States, the United Nations Special Rapporteur on Violence Against Women concluded that "[w]omen should not be punished, through administrative segregation or otherwise, for behavior associated with their mental illness."⁴²
- There has been little judicial scrutiny of solitary confinement practices in women's facilities. However, the particularly harsh toll that solitary confinement takes on those with mental illness is receiving increased attention from lawyers and judges across the country. As the

United States Department of Justice recently noted, solitary confinement of prisoners with serious mental illness can constitute a violation of Title II of the Americans with Disability Act and the Eighth Amendment of the U.S. Constitution, which prohibits cruel and unusual punishments.⁴³ Many federal courts agree; increasingly, judges are ruling that housing people with serious mental illness in solitary is unconstitutional.⁴⁴ As legal action is taken, prisons have been forced to react, and administrators across the country are beginning to reform their practices. Responding to litigation that was settled in 2012, the Massachusetts Department of Correction rewrote its mental health care policies to exclude prisoners with severe mental illness from long-term segregation and designed two maximum security mental health treatment units to divert the mentally ill out of segregated housing.⁴⁵ In Colorado, as of December 2013, all state wardens have been directed that any prisoners with “major mental illness” are no longer to be placed in administrative segregation.⁴⁶ And by the end of 2013, in the wake of mounting public scrutiny of its overuse of solitary confinement, the New York City Department of Correction had reassigned all prisoners with mental illness who were held in “punitive segregation” at Rikers Island jail to units with more therapeutic resources.⁴⁷

Solitary confinement can re-traumatize victims of past abuse—and can render incarcerated women more vulnerable to abuse by correctional officers.

- Because a majority of women in state prisons across America report being victims of past physical or sexual abuse, the potential is high for re-traumatizing women who are already vulnerable.⁴⁸ The isolation, enforced idleness, and absence of healthy stimulation can all contribute to further psychological deterioration in vulnerable women. Women in solitary confinement, especially those who have been victimized by men in the past, can experience acute psychological suffering when they are closely watched, with virtually no privacy, by male guards.⁴⁹
- Human rights organizations have repeatedly condemned the use of male prison guards to supervise female prisoners, yet women in American prisons are regularly supervised by male guards during their most private moments.⁵⁰ Particularly for women in solitary confinement, who can be under close supervision during showers, when undressing, and when using the toilet, such an arrangement entails a profound loss of privacy that affects most if not all other experiences, especially because this is many times the only contact, or knowledge of human contact, a female prisoner has in solitary.
- Women held in solitary confinement are also particularly vulnerable to physical and other types of abuse by correctional officers. The use of excessive force, misuse of restraints and chemical agents, abuses of power, and sexual abuse by guards are all very real dangers to prisoners held in solitary confinement.⁵¹ Particularly because isolation cells are separate from the general population, such abuses can be difficult to detect.⁵²

Solitary confinement is sometimes used as retaliation against women who have reported sexual abuse or other harmful treatment while in prison.

- Correctional officials sometimes lock prisoners in solitary confinement in retaliation for speaking out against abusive or negligent treatment. Again and again, stories arise in which women who report rape and other abuse by corrections officers are sent to solitary confinement.⁵³ Women who have been sexually abused by prison guards are thus faced with another painful dilemma, forced to decide between reporting the attack and risking retaliation, or not reporting it and risking further assault.
- The lack of privacy in solitary confinement can further victimize women who have been assaulted, because they can be seen by their attacker while they are sleeping, eating, and using the toilet in their solitary cells.⁵⁴
- This pattern of women reporting abuse and then being sent to solitary confinement is not only unjust on an individual basis, but it has also been shown to chill reports of abuse by other prisoners who fear the same outcome, thwarting the efforts of prison officials who seek to remedy prisoner abuse.⁵⁵

Solitary confinement can jeopardize the relationship between mother and child, harming children.

- One of the terrible consequences of placing women prisoners who are mothers in solitary confinement is the collateral damage it causes their children. When parents are incarcerated, maintenance of their relationships with their children largely depends on regular visitation.⁵⁶ While prisoners may also write letters and make limited phone calls, a child's need to see and hold his or her parent can only be satisfied by in-person visits that reinforce the physical and psychological parental bond. Yet visitation for prisoners in solitary confinement is extremely limited, with contact visits often forbidden, and sometimes all visitation privileges revoked.
- These visitation restrictions mean that, when a parent is held in solitary confinement, her children are often forced to interact with her through a physical barrier, such as a glass partition, or, as prisons increase their use of videoconference for visitation, via video monitors.⁵⁷ Through a partition, a child cannot give his or her mother a hug, or hear her voice clearly. Even for prisoners

Re-Traumatized in Solitary

“When I was eleven, I was raped [While I was in isolation,] I was so upset....and a lot was **surfacing from my past** I don't like feeling alone.”

-Melanie H., who spent three months in solitary confinement when she was fifteen.

Source: HUMAN RIGHTS WATCH & THE AMERICAN CIVIL LIBERTIES UNION, GROWING UP LOCKED DOWN: YOUTH IN SOLITARY CONFINEMENT IN JAILS AND PRISONS ACROSS THE UNITED STATES (2012), available at <http://www.aclu.org/growinguplockeddown>, citing Human Rights Watch interview with Melanie H. (pseudonym), Florida, April 2012.

housed at lower levels of security, prison visitation can be a huge strain on a parental relationship, requiring travel and compliance with complicated prison rules, for visits that last only for short periods of time. Holding mothers in solitary confinement can make an already challenging situation even more painful for children, as well as mothers. Solitary punishes children.

- Many mothers in prison were their children’s primary or sole caregiver prior to incarceration; in 2004, over sixty-four percent of incarcerated mothers reported having lived with their minor children within a month of being arrested or just prior to incarceration.⁵⁸ Upon imprisonment, this means that many children must be moved to the home of another family member, or even to foster care.⁵⁹ Continued contact with the primary or sole caregiver is critical for children’s healthy growth and development. For children placed in foster care, visitation is vital to a continued relationship with their parent. Restricting visitation can erode the relationship by drastically limiting a mother’s opportunities to function as a supportive figure in the child’s life.

Solitary Confinement as Retaliation

Carol Lester, a **73-year-old mother and grandmother**, found herself in solitary confinement in a New Mexico prison for almost five weeks. According to Lester and her attorneys, officials placed her in solitary confinement when she spoke out against her inadequate medical care.

Ms. Lester was serving a three-year sentence for the non-violent crime of embezzlement. As part of ongoing cancer treatment, she was taking prescription hormones; although she brought her medications to prison and appropriately handed them over to staff upon arrival, she was subsequently prescribed different medication in prison. Ms. Lester’s **health rapidly deteriorated**, and she complained to prison staff and to local politicians, requesting better care for her life-threatening condition. Soon after she complained, Ms. Lester was administered a urine test, which registered a positive result suggesting methamphetamine use. The drug test, which according to court filings was a false positive, was listed as the reason for placing Ms. Lester in solitary confinement.

Ms. Lester told officials that she had never used methamphetamine in her life—and the new medications she was receiving in prison are known to produce false positives in drug tests. Despite her pleas and serious medical condition, the prison left her in solitary for over a month. She recently filed suit against the prison administration, alleging that officials subjected her to solitary confinement in **retaliation for her complaints about the prison’s dangerously inadequate medical treatment**.

See Complaint for the Recovery of Damages Caused by the Deprivation of Civil Rights, *Lester v. Hickson*, 1:13-cv-01118-KBM-ACT, Doc. 1, at 1-7 (D. N.M., Nov. 20, 2013).

Solitary confinement of pregnant women is harmful and internationally condemned.

- Pregnant women are at particularly high risk of harmful psychological effects of solitary confinement. International standards set by the United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders—known as the Bangkok Rules—prohibit the placement of pregnant or nursing women in solitary confinement.⁶⁰ Nevertheless, pregnant prisoners in America can still find themselves in solitary confinement.
- In addition to the extreme psychological harms that solitary confinement can wreak on pregnant women, locking them in isolation can jeopardize their access to prenatal care. Solitary confinement impedes access to important health care services because providing medical services to individuals in solitary confinement requires more resources, many policies and practices are male-standardized and do not take into account the unique medical needs of pregnant women, and pregnant women in solitary confinement are often unable to request medical care.⁶¹

TRANSGENDER WOMEN IN SOLITARY

Solitary confinement presents additional problems for transgender women. “Transgender” is an umbrella term for people who live differently than the gender representation and roles expected of them by society. Due to their unique vulnerabilities, transgender women are often sent to male prisons and then placed in “protective custody.” Although sometimes justified by a need to separate a prisoner from general population for her own protection, this form of custody is, in practice, often simply another form of solitary confinement. Transgender women are at heightened risk of sexual assault and other violence while incarcerated and placing them in the general prison population may create risks of victimization.⁶² But solitary confinement should not be a tool used to protect vulnerable prisoners.

When a transgender woman is placed in solitary, she can be greatly harmed by the isolation and depression of constant lockdown; by the strip searches that are required any time a prisoner leaves her cell, even just to shower; and by the lack of appropriate medical care, including necessary hormones. The psychological consequences of solitary confinement can also be particularly devastating for transgender individuals, whom studies have shown to be at a generally elevated risk of suicide.⁶³ Further, the denial of education, exercise, and contact visits for prisoners in protective custody exacerbates these problems, as the conditions of protective custody often mirror disciplinary segregation.

Maria Benita Santamaria’s case is in many ways typical of the plight of transgender women in solitary confinement.⁶⁴ Although assigned male at birth, Ms. Santamaria lived as a woman. She had been undergoing hormone treatment and was preparing for gender confirmation surgery prior to her incarceration. After entering

prison, according to her attorney, Ms. Santamaria did not receive her medically-necessary hormones

Despite the threat of being raped by male prisoners in general population, Ms. Santamaria, a transgender woman, became so **desperate in solitary confinement** that she repeatedly asked to be removed.

and started to grow facial hair. Officials at Central Virginia Regional Jail initially placed Ms. Santamaria in solitary confinement because they feared she would be raped by male prisoners, but her life in solitary was even worse than in general population. In solitary confinement, Ms. Santamaria was treated no differently than prisoners on punitive lockdown, allowed out of her cell for one hour a day, and only allowed to shower every three days. In the lockdown unit, officers reportedly referred to Ms. Santamaria as “it.” Due to these harsh conditions, she began to consider suicide. And despite the threat of being raped by male prisoners, Ms. Santamaria became so desperate she repeatedly asked to be removed from solitary and placed back in general population.

This kind of trauma is all too common for transgender women in prisons and jails across the country. In fact, the devastating impact of solitary confinement on transgender people is so well-recognized that the Prison Rape Elimination Act (PREA) regulations, recently promulgated by the U.S. Department of Justice (DOJ) to safeguard prisoners from the risk of sexual assault, contain a number of specific safeguards for transgender prisoners. These require individualized housing assessments that may be based on a prisoner’s gender identity rather than physical anatomy,⁶⁵ include protections against abusive searches of transgender individuals,⁶⁶ impose strict limits on the use of protective custody, and require that transgender prisoners held in solitary confinement for their own protection be moved to alternative housing as soon as possible.⁶⁷

RECOMMENDATIONS

- **Solitary confinement is so harsh and damaging that it should be used only when prisoners pose a current, continuing, and serious threat to their own safety or that of others.**

Although a few women prisoners may meet this requirement and there may be some instances where some period of solitary confinement is justifiable, in practice this should be very rare. The majority of incarcerated women are non-violent offenders who pose a low security risk.⁶⁸ Prisons can physically separate prisoners, when necessary, without resorting to solitary confinement. Solitary for women should not be a pervasive practice and when a woman prisoner is placed in solitary confinement, she should be housed there for as short a period as possible, and only where a threat of serious harm to self or others is documented.

- **Prisoners with mental illness should never be held in solitary confinement.**

Solitary confinement exacerbates mental illness and harms already vulnerable prisoners by subjecting them to sensory and social deprivation. Mentally ill prisoners should receive treatment and programming appropriate to their mental health needs.

- **Pregnant and nursing women should never be held in solitary confinement.**

The practice is medically unsound as well as inhumane. The risk of placing pregnant and nursing women in solitary confinement cannot be justified.

- **Transgender women must be protected both from violence in general population and from the dangers of solitary confinement.**

The PREA standards should be enforced to classify transgender individuals on a case-by-case basis, including serious consideration of placing transgender women in female facilities. Corrections officials must protect vulnerable prisoners without the use of damaging isolation. Individuals requiring extra protection in a correctional environment should have access to the same programs, privileges, and services available to prisoners in general population.

- **Solitary confinement should never be imposed as a retaliatory measure.**

Prisons and jails must ensure that policy and practice abide by this principle and that staff training and disciplinary measures include clear regulations that retaliatory use of solitary confinement will not be tolerated. Qualified PREA auditors should also be specifically tasked with ensuring that prisoners' reports of abuse are seriously investigated and that such reports are not met with retaliatory placement in solitary confinement.⁶⁹

- **Women should undergo mental and medical health evaluations by competent and qualified mental and medical health practitioners to assess their condition before any placement in solitary confinement.**

Women's histories of mental illness, trauma, abuse, and sexual assault should be taken into account before they are placed in solitary confinement and should appropriately inform decisions to divert women from such confinement. Women who have experienced sexual assault should be provided appropriate mental-health programming, including counseling. Women who are vulnerable to re-traumatization should be guarded by female correctional officers.

- **Contact visits with children aged 18 and under should be allowed for all prisoners, and family visitation should be encouraged.**

Robust visitation privileges have been shown to have a positive impact on prisoners' rehabilitation and on the well-being of their children.⁷⁰ Visitation with children helps to create a more stable environment for children whose lives have been seriously upended by having a parent in prison.

- **All prisons and jails should be required to have uniform written policies controlling solitary confinement practices and procedures.**

Such policies must be public and include a written notification process to inform prisoners of their assignment to solitary confinement, the reason, duration, and review opportunities; processes by which the prisoner can earn privileges while in solitary, including access to commissary and visitation; and the process by which a prisoner may earn release from solitary itself.

- **All prisons and jails should be required to regularly and publicly report details on individuals in solitary confinement including the number, gender, reason, available alternatives, reason alternatives are not utilized, duration, periodic review details, and other information.**

Correctional systems should be held to strict reporting and accountability measures that limit, monitor, and standardize the reasons prisoners are sent to solitary confinement. Because there are no state or federal uniform data available, the extent of this problem cannot be ascertained.

- **Prisoners should never be directly released to the community from solitary confinement.**

To promote successful reentry, correctional institutions should ensure that step-down programs to less restrictive environments are available to all prisoners in solitary prior to release without extending the length of an individual's sentence.

CONCLUSION

Solitary confinement is damaging to all prisoners—men, women, and children alike. Women prisoners, including transgender women, can be particularly vulnerable to the harms of solitary confinement. These harms cannot be justified. Not only is solitary confinement devastating to women, it hurts their children and can undermine rehabilitation and women's ability to return to the community as productive citizens. Prisons and jails in the United States must cease the unnecessary and harmful solitary confinement of women.

¹ See Interim Report of the Special Rapporteur of the Human Rights Council on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, at 2, 7, 22 United Nations General Assembly, A/66/268 (Aug. 5, 2011), *available at* <http://solitaryconfinement.org/uploads/SpecRapTortureAug2011.pdf> (describing solitary confinement of longer than fifteen days as torture; and solitary of any duration for children or persons with mental illness as cruel, inhuman, or degrading treatment).

² AMNESTY INTERNATIONAL, USA: THE EDGE OF ENDURANCE 39 (2012), *available at* <http://www.amnestyusa.org/sites/default/files/edgeofendurancecaliforniareport.pdf> (discussing research on the harmful effects of solitary confinement).

³ American Bar Association, Standards on Treatment of Prisoners (2010), §§ 23-2.6-2.9, *available at* http://www.americanbar.org/publications/criminal_justice_section_archive/crimjust_standards_treatmentprisoners.html. The American Bar Association's Standards for Criminal Justice, Treatment of Prisoners, address all aspects of solitary confinement (to which the Standards refer as "segregated housing") and impose strict limits on its use. The solutions presented in the Standards represent a consensus view of representatives of all segments of the criminal justice system who collaborated exhaustively in formulating the final ABA Standards. See generally Interim Report of the Special Rapporteur of the Human Rights Council on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *supra* note 1, at 2 (asserting that solitary confinement should only be used, if at all, as a practice of last resort, used for brief periods).

⁴ See Heather C. West & William J. Sabol, *Prison Inmates at Midyear 2008 – Statistical Tables 17* (tbl. 16), Bureau of Justice Statistics (2009), *available at* <http://www.bjs.gov/content/pub/pdf/pim08st.pdf> (reporting that over 207,000 women were incarcerated in federal and state prisons and local jails as of 2008); See Joane Martel, *Telling the Story: A Study in the Segregation of Women Prisoners*, 28 Soc. JUST. 196, 196-197 (2001) (giving an overview of the literature on solitary confinement and finding almost no literature on women in solitary confinement); Cherami Wichmann & Kelly Taylor, *Federally Sentenced Women in Administrative Segregation: A Descriptive Analysis* (2004) (first quantitative study on segregation of federally sentenced women in Canada). While until now few have focused on the plight of women in solitary confinement, the subject has lately begun to receive more attention. In February 2014, *Orange is the New Black* author Piper Kerman gave oral testimony before the Senate Judiciary Committee Subcommittee on the Constitution, Civil Rights, and Human Rights. See Official Hearing Notice/Witness List, Reassessing Solitary Confinement II: The Human rights, Fiscal, and Public Safety Consequences, Senate Judiciary Committee Subcommittee on the Constitution, Civil Rights and Human Rights, Feb. 25, 2014, *available at* <http://www.judiciary.senate.gov/hearings/hearing.cfm?id=f00b2bec76ceca7ac77335d8aa01e76a>. Kerman's testimony drew attention to the unique issues faced by women in solitary confinement by telling the stories of individual women, including those who spent long periods in solitary confinement as punishment for minor infractions, and by noting the chilling effect that the threat of isolation can have on women prisoners' willingness to report assaults and other abuses.

⁵ The percentage of women behind bars grew 757% between 1977 and 2004—nearly twice the rate at which the incarcerated male population increased during the same period. See Judith Greene & Kevin Pranis, *Part I: Growth Trends and Recent Research*, in INSTITUTE ON WOMEN & CRIMINAL JUSTICE, WOMEN'S PRISON ASS'N, HARD HIT: THE GROWTH IN THE IMPRISONMENT OF WOMEN 9, 9 (2006), *available at* <http://www.wpaonline.org/institute/hardhit/HardHitReport4.pdf>. Between 2000 and 2011, the rate of imprisonment for women increased from 59 per 100,000 to 65 per 100,000, peaking at 69 per 100,000 in 2007 and 2008. E. ANN CARSON & WILLIAM J. SABOL, BUREAU OF JUST. STAT., PRISONERS IN 2011 6, tbl. 6 (2012), *available at* <http://www.bjs.gov/content/pub/pdf/p11.pdf>.

⁶ In 2010, 37% of women in state prison were held for a violent offense, compared with 54% of men. CARSON & SABOL, *supra* note 6, at 9, tbl. 9.

⁷ In the late 1970s, the rate of imprisonment for women was 10 per 100,000 in the state prison system, with 49% being sentenced for violent crimes. NATASHA A. FROST ET AL., WOMEN'S PRISON ASS'N, HARD HIT: THE GROWTH IN THE IMPRISONMENT OF WOMEN 7, 10 (2006) (noting imprisonment rate in 1977 and percent convicted of violent crimes in 1979). By 2011, the imprisonment rate had risen to 65 per 100,000, but less than 37% of women in state prisons as of 2010 were sentenced for violent crimes. CARSON & SABOL, *supra* notes 6 & 7, tbls. 6, 9. For an analysis of the ways in which the war on drugs has resulted in higher incarceration rates of women for drug crimes, see generally LEONORA LAPIDUS ET AL., CAUGHT IN THE NET: THE

IMPACT OF DRUG POLICIES ON WOMEN AND FAMILIES (2005), *available at* https://www.aclu.org/sites/default/files/images/asset_upload_file431_23513.pdf.

⁸ DORIS J. JAMES & LAUREN E. GLAZE, BUREAU OF JUST. STAT., MENTAL HEALTH PROBLEMS OF PRISON AND JAIL INMATES 1 & 4 Tbl. 3 (2006), *available at* <http://www.bjs.gov/content/pub/pdf/mhppji.pdf> (“An estimated 73% of females in State prisons, compared to 55% of male[s] had a mental health problem[.]. In Federal prisons, the rate was 61% of females compared to 44% of males; and in local jails, 75% of females compared to 63% of male[s].”).

⁹ *Id.*

¹⁰ In state prison, 57.6% of women reported past physical or sexual abuse, compared to 16.1% of men. In federal prisons, 39.9% of women reported past abuse, compared to 7.2% of men. In jails, 47.6% of women reported past abuse, compared to 12.9% of men. CAROLINE WOLF HARLOW, BUREAU OF JUST. STAT., PRIOR ABUSE REPORTED BY INMATES AND PROBATIONERS 1 (1999), *available at* <http://www.bjs.gov/content/pub/pdf/parip.pdf>. More than a third of women in state prisons or local jails reported being physically or sexually abused before the age of eighteen. *Id.*

¹¹ *See, e.g.*, AMNESTY INTERNATIONAL, USA: THE EDGE OF ENDURANCE: PRISON CONDITIONS IN CALIFORNIA’S SECURITY HOUSING UNITS, *supra* note 3, at 39-40 (reporting the percentage of male guards supervising female prisoners in solitary confinement in one California unit); Brenda V. Smith, *Watching You, Watching Me*, 15 YALE J.L. & FEMINISM 225 (2003), *available at* <http://www.justdetention.org/pdf/Watching%20You,%20Watching%20Me.pdf> (giving an overview of international and domestic challenges to instances of cross-gender surveillance); Andrea Estes, *Males’ Taping of Female Strip-Searches Spurs Lawsuit*, BOSTON GLOBE, Sept. 15, 2011, *available at* http://www.boston.com/news/local/massachusetts/articles/2011/09/15/males_taping_of_female_strip_searches_spurs_lawsuit/?page=full (reporting on a lawsuit challenging the videotaping by male guards of strip searches of women prisoners during transfers in and out of segregation units). International standards clearly prohibit cross-gender supervision. Rule 53 of the UN Standard Minimum Rules for the Treatment of Prisoners (SMR) explicitly prohibits all cross-gender surveillance and provides for a female guard to accompany any male personnel in a women’s facility. First U.N. Congress on the Prevention of Crime and the Treatment of Offenders, *Standard Minimum Rules for the Treatment of Prisoners*, Rule 53 (1955), *available at* http://www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_the_Treatment_of_Prisoners.pdf [hereinafter SMR 53]; *see also* Interim Report of the Special Rapporteur of the Human Rights Council on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *supra* note 1, at para. 46 (noting the SMRs are “widely accepted as the universal norm for the humane treatment of prisoners”).

¹² For a discussion of the Prison Rape Elimination Act’s protections against abusive cross-gender supervision, see Cross Gender Supervision, National PREA Resource Center, *available at* <http://www.prearesourcecenter.org/node/1069> (“DOJ is hopeful that adequate training of staff on conducting searches in a professional and respectful manner will decrease the likelihood of reports of sexual abuse due to an intrusive or improperly conducted search.”). For discussions of this problem and the international human-rights community’s response, see Smith, *Watching You, Watching Me*, *supra* note 11 (summarizing challenges to cross-gender surveillance and arguing for an end to the practice in the United States); Amnesty International of the United States of America: “*Not Part of My Sentence*”: *Violations of the Human Rights of Women in Custody* (1999), *available at* <http://www.amnesty.org/en/library/asset/AMR51/019/1999/en/7588269a-e33d-11dd-808b-bfd8d459a3de/amr510191999en.pdf> [hereinafter *Not Part of My Sentence*] (describing how cross-gender surveillance and searches distress women, and connecting such surveillance to the largely underreported problem of sexual abuse in women’s facilities); Human Rights Watch, *Nowhere to Hide: Retaliation Against Women in Michigan State Prisons* (1998), *available at* <http://www.hrw.org/reports98/women/Mich.htm> [hereinafter *Nowhere to Hide*] (calling upon corrections departments to limit male guards’ access to community showers, toilets, and dormitories during changing times).

¹³ *See* Cassandra Shaylor, *It’s Like Living in A Black Hole: Women of Color and Solitary Confinement in the Prison Industrial Complex*, 24 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 385, 390-2 (1998) (describing the vulnerability to sexual harassment and abuse caused by constant surveillance by men and the possibility of re-traumatization for women with a history of abuse).

¹⁴ Human Rights Watch, *All Too Familiar: Sexual Abuse of Women in U.S. State Prisons* (1996), available at <http://www.hrw.org/legacy/reports/1996/Us1.htm> [hereinafter *All Too Familiar*] (“One of the clear contributing factors to sexual misconduct in U.S. prisons for women is that the United States, despite authoritative international rules to the contrary, allows male correctional employees to hold contact positions over prisoners, that is, positions in which they serve in constant physical proximity to the prisoners of the opposite sex.”).

¹⁵ See, e.g., Report of the Special Rapporteur on Violence Against Women: Addendum, para. 34, Mission to the United States of America, 6 June 2011, United Nations General Assembly A/HRC/17/26/Add.5, available at http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.26.Add.5_en.pdf [hereinafter *Violence Against Women*], (describing continued sexual abuse of women in custody, both physically forced and otherwise coerced); Kim Shayo Buchanan, *Impunity: Sexual Abuse in Women’s Prisons*, 42 HARV. CIV. RIGHTS- CIV. LIBERTIES L. REV. 45, 55-7 (2007), available at <http://www.wcl.american.edu/endsilence/documents/ImpunitySexualAbuseinWomensPrisons.pdf> (describing sexual abuse of women including the variety of forms the abuse takes); Elizabeth Chuck, MSNBC, ‘Frequent and severe’ sexual violence alleged at women’s prison in Alabama, http://usnews.nbcnews.com/_news/2012/05/23/11830574-frequent-and-severe-sexual-violence-alleged-at-womens-prison-in-alabama?lite (May 23, 2012).

¹⁶ In 2004, 64.2% of mothers in prison reported living with their minor children in the month prior to arrest or just prior to incarceration, compared to 46.5% of men. Further, 41.7% of mothers reported they were single parents in the month prior to arrest or just prior to incarceration. Nearly 11% of mothers in custody reported that their children were currently in foster care, compared to 2.2 % of men. While 88.4% of men in prison reported their children were being cared for by another parent, only 37% of women in prison reported the same. LAUREN E. GLAZE & LAURA M. MARUSCHAK, BUREAU OF JUST. STAT., PARENTS IN PRISON AND THEIR MINOR CHILDREN 2, 4, & 5 TBLs. 7 & 8 (2008), available at <http://www.bjs.gov/content/pub/pdf/pptmc.pdf>.

¹⁷ *Violence Against Women*, *supra* note 15, at para. 49; Dorothy E. Roberts, *Prison, Foster Care, and the Systemic Punishment of Black Mothers*, 59 UCLA L. REV. 1474, 1479-83 (2012), available at [https://www.law.upenn.edu/cf/faculty/roberts1/workingpapers/59UCLALRev1474\(2012\).pdf](https://www.law.upenn.edu/cf/faculty/roberts1/workingpapers/59UCLALRev1474(2012).pdf) (describing how the increasing number of incarcerated black mothers is destroying “critical family and community ties”).

¹⁸ GLAZE & MARUSCHAK, *supra* note 17 at 2.

¹⁹ See *id.* at 2.

²⁰ See Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115 (legislation incentivizing adoption of children in foster care in the name of finding a permanent home) (codified in scattered sections of Title 42 of the United States Code); Deseriee A. Kennedy, *Children, Parents & the State: The Construction of A New Family Ideology*, 26 BERKELEY J. GENDER L. & JUST. 78, 104-7 (2011), available at http://genderlawjustice.berkeley.edu/wp-content/uploads/2011/04/Kennedy_macro4.pdf (describing and criticizing how ASFA in conjunction with state laws has increased terminations of parental rights due to incarceration for more than 15 months); *Violence Against Women*, *supra* note 15, at para. 49 (noting the danger of ASFA leading to termination of parental rights of mothers who leave their children in foster care due to incarceration).

²¹ Roberts, *supra* note 18, at 1481-2 (noting that “[s]eparation from imprisoned parents has serious psychological consequences for children, including depression, anxiety, feelings of rejection, shame, anger, guilt, and problems in school”); THE REBECCA PROJECT FOR HUMAN RIGHTS & NAT’L WOMEN’S LAW CTR., MOTHERS BEHIND BARS: A STATE BY-STATE REPORT CARD AND ANALYSIS OF FEDERAL POLICIES ON CONDITIONS OF CONFINEMENT FOR PREGNANT AND PARENTING WOMEN AND THE EFFECT ON THEIR CHILDREN 9, 12-3 (2010), available at <http://www.rebeccaproject.org/images/stories/files/mothersbehindbarsreport-2010.pdf> (noting the prevalence of “significant attachment disorders,” substance abuse, sexual promiscuity, and criminal behavior among children affected by maternal incarceration).

²² There are only a handful of studies that give any focused attention to the plight of women in solitary confinement—two are about the recently-moved solitary unit in California, one is a review of fourteen women in Colorado, and another is a more recent but limited review of women in solitary confinement in California. Shaylor, *supra* note 14, at 386-387

(compiling information based on interviews with women in solitary confinement in Chowchilla, California). *See also Not Part of My Sentence*, *supra* note 13, at 18-19 (recognizing the lack of studies on solitary confinement of women and describing the two available, one study of fourteen women in Colorado and one report on forty-six women in California); AMNESTY INTERNATIONAL, USA: THE EDGE OF ENDURANCE: PRISON CONDITIONS IN CALIFORNIA'S SECURITY HOUSING UNITS, *supra* note 3, at 39-40 (describing a limited review of the women in a solitary unit in California, many of whom spent several months to a year at a time in solitary confinement); Richard Korn, *The Effects of Confinement in the High Security Unit at Lexington*, 15 Soc. JUST. 8 (1988) (detailing the negative effects of solitary confinement in general while criticizing its use on a group of women in Kentucky).

²³ *See, e.g.*, Interim Report of the Special Rapporteur of the Human Rights Council on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *supra* note 1, at para. 25-6; Shaylor, *supra* note 14, at 387; AMERICAN FRIENDS SERVICE COMMITTEE, LIFETIME LOCKDOWN: HOW ISOLATION CONDITIONS IMPACT PRISONER REENTRY, 18-19 (2012), available at http://afsc.org/sites/afsc.civicactions.net/files/documents/AFSC-Lifetime-Lockdown-Report_0.pdf [hereinafter LIFETIME LOCKDOWN].

²⁴ Shaylor, *supra* note 14, at 387 (describing how corrections staff covered windows to block out the sun for women held in solitary confinement).

²⁵ *See, e.g., id.* at 389-390; *Not Part of My Sentence*, *supra* note 13, at 19.

²⁶ ABA Crim. Just. Standards on the Treatment of Prisoners, Standard 231.0(r) (2010), available at <http://www.abanet.org/crimjust/policy/midyear2010/102i.pdf>.

²⁷ *See, e.g.*, Eric Lanes, *The Association of Administrative Segregation Placement and Other Risk Factors with the Self-Injury-Free Time of Male Prisoners*, 48 J. OF OFFENDER REHAB. 529, 532 (2009); LIFETIME LOCKDOWN, *supra* note 24, at 26-7 (describing all visits in Arizona lockdown as non-contact and through plexiglass and a telephone).

²⁸ Interview with Gail Smith, Exec. Dir., CLAIM IL (April 29, 2013) (noting that some Illinois prisons allow only video visits with mothers held in solitary confinement).

²⁹ Terry Kupers, *What to Do with the Survivors? Coping with the long-term effects of isolated confinement*, 35 CRIM. JUST. & BEHAVIOR 1005, 1005-10 (2008), available at http://www.nrcat.org/storage/documents/usp_kupers_what_do_with_survivors.pdf (reviewing the research on the effects of long-term isolation and noting that about half of completed prison suicides are committed by the small portion of the population held in solitary at some point during their prison stay); *see also* Atul Gawande, *Hellhole*, NEW YORKER (Mar. 30, 2009), available at http://www.newyorker.com/reporting/2009/03/30/090330fa_fact_gawande (describing the harms of loneliness and severely limited social interaction, including the story of one prisoner who, “[a]fter a few months without regular social contact . . . started to lose his mind”).

³⁰ *See, e.g., Not Part of My Sentence*, *supra* note 13, at 18 (finding many of the 14 women reviewed in Colorado suffered from mental illness or were sent to solitary confinement for minor rule violations).

³¹ *See, e.g.*, Testimony by the Correctional Association of New York Before the Senate Judiciary Committee's Subcommittee on the Constitution, Civil Rights and Human Rights, Reassessing Solitary Confinement, at 4 (June 19, 2012), available at <http://www.correctionalassociation.org/wp-content/uploads/2012/10/testimony-solitary-confinement-june-2012.pdf> (describing challenges pregnant women in isolation can face in trying to access medical care).

³² *See, e.g.*, James Ridgeway & Jean Casella, *Locking Down The Mentally Ill: Solitary Confinement Cells Have Become America's New Asylums*, THE CRIME REP., Feb. 18, 2010, available at <http://www.thecrimereport.org/news/inside-criminal-justice/locking-down-the-mentally-ill>; MARY BETH PFEIFFER, *CRAZY IN AMERICA: THE HIDDEN TRAGEDY OF OUR CRIMINALIZED MENTALLY ILL* 42-49 (2007); JENNIFER R. WYNN, ET AL., *CORRECTIONAL ASS'N OF NEW YORK, MENTAL HEALTH IN THE HOUSE OF CORRECTIONS: A STUDY OF MENTAL HEALTH CARE IN NEW YORK STATE PRISONS* 48 (2004).

³³ Buchanan, *supra* note 16, at 66.

³⁴ See SCARLET KIM, TAYLOR PENDERGRASS, & HELEN ZELON, *BOXED IN: THE TRUE COST OF EXTREME ISOLATION IN NEW YORK'S PRISONS* 17, 30-31, New York Civil Liberties Union (2012); see generally Leena Kurki & Norval Morris, *The Purposes, Practices, and Problems of Supermax Prisons*, 28 *CRIME AND JUST.* 385, 388-89, 411-12 (2001) (discussing disciplinary violations resulting from mental illness and noting the discretion afforded to prison authorities).

³⁵ See Craig Haney, *Mental Health Issues in Long-Term Solitary and "Supermax" Confinement*, 49 *CRIME & DELINQUENCY* 124, 127 (2003); Kurki & Morris, *supra* note 34.

³⁶ See *infra* notes 53-55 and accompanying text, discussing retaliatory solitary confinement. Other factors, in addition to problems associated with retaliation, mental illness, pregnancy, and sexual assault, can also contribute to the overuse of solitary confinement. A recent report on women in solitary by the Office of the Inspector General of California—apparently the first report of its kind—found that nearly one third of all women held in solitary in the state were sent to solitary confinement for refusing a housing assignment or “enemy/safety concerns.” See Special Review: Female Inmates Serving Security Housing Unit Terms in the California Department of Corrections and Rehabilitation 2, Office of the Inspector General, State of California (Dec. 2013) (identifying a total of 52 prisoners, out of 160 women in solitary in California during the period studied, in solitary for refusing housing or “Refusal to Accept Assigned Housing or Enemy/Safety Concerns”), available at <http://www.oig.ca.gov/media/reports/Reports/Reviews/Special%20Review%20-%20Female%20Inmates%20Serving%20Security%20Housing%20Unit%20Terms%20in%20CDCR.pdf>. Because these women need extra protection or are afraid to be placed in a certain housing unit, the State subjects them to solitary confinement—not because they are violent or dangerous themselves. In response to this overuse of solitary on women the Inspector General recommends “develop[ing] a process to ensure that the safety concerns raised by inmates who refuse to accept their assigned housing are thoroughly investigated,” so that prisoners do not have to choose between solitary confinement and endangering their personal safety. See *id.* at 2, 15. The Inspector General’s report points to another likely cause of the overuse of solitary on women nationwide—the lack of adequate housing options for women prisoners and the resulting reliance on solitary confinement to “protect” vulnerable individuals. See *id.* at 2, 15.

³⁷ See *LIFETIME LOCKDOWN*, *supra* note 24, at 4-5, 8-9, 11, 25, *passim*; David Lovell & Clark Johnson, *Felony and Violent Recidivism Among Supermax Prison Inmates in Washington State: A Pilot Study*, U. WASHINGTON (2004), available at <http://www.son.washington.edu/faculty/fac-page-files/Lovell-SupermaxRecidivism-4-19-04.pdf>; Email from Dr. Brackette F. Williams, primary researcher on Project Homecoming (April 30, 2012) (recounting that of the three women she interviewed, each held in solitary confinement for at least one period of more than 12 months, none was able to participate in any programming prior to release after the long stay in solitary, and one was released directly from solitary confinement to the community). Although there are not yet comprehensive national data comparing the recidivism rates of those released directly from solitary with those released from general population, reports from several states consistently show that recidivism rates of prisoners released directly from solitary are much higher than statewide averages. See, e.g., KERAMET REITER, *INST. FOR THE STUDY OF SOC. CHANGE, PAROLE, SNITCH, OR DIE: CALIFORNIA'S SUPERMAX PRISONS & PRISONERS, 1987-2007*, 49-50 (2010), available at <https://www.ncjrs.gov/App/Publications/Abstract.aspx?id=262396> (supplying data suggesting that the rates of return to prison in California are nearly 20% higher for prisoners released directly from solitary confinement compared to the average rate of all prisoners); MAUREEN L. O'KEEFE, *CO. DEPT. OF CORRECTIONS, ANALYSIS OF COLORADO'S ADMINISTRATIVE SEGREGATION* 25, Tbl. 17 (2005), available at <http://www.doc.state.co.us/sites/default/files/opa/AdSegReport.pdf> (noting that, in Colorado, two thirds of prisoners in solitary confinement who were released directly to the community returned to prison within three years, but prisoners who transitioned from solitary confinement into the general prison population before community re-entry experienced a six percent reduction in their comparative recidivism rate for the same period); LEGISLATIVE PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE, *RECIDIVISM IN CONNECTICUT* 41, Tbl. IV-6 (2001), available at <http://www.ct.gov/opm/lib/opm/cjppd/cjresearch/recidivismstudy/2001recidivismconnecticut.pdf> (finding that 92% of Connecticut prisoners who had been held in administrative segregation were rearrested within three years of release, while only 66% of prisoners who had not been held in administrative segregation were rearrested in the same time period).

³⁸ See JAMES & GLAZE, *supra* note 8, and accompanying text.

³⁹ See Haney, *supra* note 36, at 124; Stanley L. Brodsky & Forrest R. Scogin, *Inmates in Protective Custody: First Data on Emotional Effects*, 1 FORENSIC REP. 267 (1988); Stuart Grassian, *Psychopathological Effects of Solitary Confinement*, 140 AM. J. PSYCHOL. 1450 (1983); Holly A. Miller & Glenn R. Young, *Prison Segregation: Administrative Detention Remedy or Mental Health Problem?*, 7 CRIM. BEHAVIOR & MENTAL HEALTH 85 (1997). See generally HANS TOCH, *MOSAIC OF DESPAIR: HUMAN BREAKDOWN IN PRISON* (1992).

⁴⁰ AMNESTY INTERNATIONAL, USA: THE EDGE OF ENDURANCE, *supra* note 3 (explaining that a total of 68 women were held in the SHU at one state prison, and that a few more solitary confinement cells were available throughout the institution which were not included; of fewer than 100 women held in the SHU and ASU, combined, at the California Institute for Women, 50 women suffered from documented mental illness).

⁴¹ *Id.* (describing how some of the women in the California SHU were placed in solitary for behavior that can be a sign of mental health problems).

⁴² *Violence Against Women*, *supra* note 15, at ¶ IV.C.g.

⁴³ Letter from Thomas E. Perez, Assistant Attorney General, and David J. Hickton, United States Attorney, U.S. Department of Justice, to Pennsylvania Gov. Tom Corbett 4, 1 (May 31, 2013), available at http://www.justice.gov/crt/about/spl/documents/cresson_findings_5-31-13.pdf (regarding DOJ's investigation of the State Correctional Institution at Cresson and notifying the state of DOJ's expanded investigation).

⁴⁴ See *Indiana Prot. & Advocacy Servs. Comm'n v. Comm'r, Indiana Dep't of Correction*, 1:08-CV-01317-TWP, 2012 WL 6738517 (S.D. Ind. Dec. 31, 2012); *Madrid v. Gomez*, 889 F.Supp. 1146 (N.D. Cal. 1995) (ordering prisoners with serious mental illness removed from the secure housing unit at Pelican Bay State Prison); Settlement Agreement, *Jones'El v. Berge*, Case No. 00-C-421-C (W.D. Wis. Jan. 24, 2002) (providing that prisoners with serious mental illness would be removed from and no longer assigned to supermax housing). In California, a pending lawsuit seeks to extend the Pelican Bay order from *Madrid* to all facilities statewide. See Plaintiffs' Reply in Support of Motion for Enforcement of Court Orders and Affirmative Relief Regarding Improper Housing and Treatment of Seriously Mentally Ill Prisoners in Segregation, *Coleman v. Brown*, Case No. Civ S 90-0520 LKK-JFM (Aug. 23, 2013 E.D. Ca.). In December 2013, the judge in the *Coleman* case approved the state's offer to limit the time severely mentally ill prisoners who have committed no rules violations can be held in isolation to 30 days. See Paige St. John, *Judge Adds Solitary Confinement to Prison Crowding Negotiations*, L.A. TIMES, Dec. 11, 2013, available at <http://www.latimes.com/local/political/la-me-ff-judge-solitary-confinement-prison-crowding-negotiations-20131211,0,3111292.story#axzz2sl7U4rPX>. The judge also ordered improved conditions for death row prisoners with serious mental illness. See Sam Stanton & Denny Walsh, *Federal Judge Orders Improved Conditions for Mentally Ill Death Row Inmates*, SACRAMENTO BEE, Dec. 10, 2013, available at <http://www.sacbee.com/2013/12/10/5989776/federal-judge-orders-improved.html>.

⁴⁵ See Press Release, U.S. District Court Approves Settlement Reached in Five-Year Litigation Over Solitary Confinement of Mentally Ill Prisoners, Bingham McCutchen (Apr. 12, 2012), available at <http://www.dlc-ma.org/prisonsettlement/index.htm> ("As a result of the litigation, DOC already has implemented significant systemic reforms, including a mental health classification system, a policy to exclude inmates with severe mental illness from long-term segregation, and the design and operation of two maximum security mental health treatment units as alternatives to segregation."); Settlement Agreement, *Disability Law Center, Inc. v. Massachusetts Department of Correction, et al.*, Civil Action No. 07-10463 (MLW).

⁴⁶ See Memorandum from Lou Archuleta, Interim Director of Prisons, Colorado Department of Corrections, to Wardens, Offender Services (Dec. 10, 2013) (directing wardens to no longer refer prisoners with "major mental illness" or "MMI Qualifiers" to administrative segregation, reproducing the wording of a new administrative code section describing the policy, and noting that the Department is "working to move" MMI prisoners out of administrative segregation), available at <http://aclu-co.org/sites/default/files/Memo%20Mental%20Health%20Qualifiers%20Ad%20Seg%20MEMO%20%282%29.pdf>.

⁴⁷ See Sean Gardiner, *Solitary Jailing Curbed: New York City Department of Correction Stops Solitary Confinement for Mentally Ill Inmates Who Break Rules*, WALL ST. J., Jan. 5, 2014, available at http://online.wsj.com/news/articles/SB10001424052702304617404579302840425910088?mod=rss_newyork_main.

⁴⁸ See HARLOW, *supra* note 11, at 1; see also LAPIDUS ET AL., *supra* note 7, at 47-48 (describing the vulnerabilities of women in prison and in particular the phenomenon of re-traumatization experienced by incarcerated women who have been victims of physical and sexual abuse prior to their incarceration).

⁴⁹ See *supra* note 11 and accompanying text; *supra* note 48 and accompanying text.

⁵⁰ AMNESTY INTERNATIONAL, USA: THE EDGE OF ENDURANCE, 39-40, *supra* note 3; SMR 53, *supra* note 12.

⁵¹ Kurki & Morris, *supra* note 34, 409 (2001); CAROLINE ISAACS & MATTHEW LOWEN, AM. FRIENDS SERV. COMM., BURIED ALIVE: SOLITARY CONFINEMENT IN ARIZONA'S PRISONS AND JAILS 14 (2007).

⁵² ISAACS & LOWEN, *supra* note 51, at 16.

⁵³ For example, Lisa Jaramillo served over one hundred days in solitary confinement for allegedly lying about a sexual assault. In fact, the assault was not fabricated, and in a lawsuit for damages for multiple sexual assaults, Ms. Jaramillo was ultimately awarded \$66,000 in damages. See Complaint in *Collins v. Bustamante*, 1:09-CV-00634-JCH-WDS at ¶¶ 87-95 (D. N.M. 2009); Amended Final Judgment in *Collins v. Bustamante*, 1:09-CV-00634-JCH-WDS at 2 (D. N.M. 2014). See also *Ortiz v. Jordan*, 131 S. Ct. 884, 888 (D. N.M. 2011); James Ridgeway & Jean Casella, *Woman Prisoner Sent to Solitary for Reporting Rape by Guard*, Mother Jones (May 8, 2010), available at <http://www.motherjones.com/mojo/2010/05/woman-prisoner-sent-solitary-reporting-rape-guard>; *Nowhere to Hide*, *supra* note 13; *All Too Familiar*, *supra* note 15; Victoria Law, Women in Solitary Confinement: Sent to Solitary for Reporting Sexual Assault, Solitary Watch (Dec. 12, 2013), available at www.solitarywatch.com/2013/12/12/women-solitary-confinement-sent-solitary-reporting-sexual-assault.

⁵⁴ Interview with Gail Smith (April 29, 2013), *supra* note 29; *Not Part of My Sentence*, *supra* note 13, at 17.

⁵⁵ STOP PRISONER RAPE, THE SEXUAL ABUSE OF FEMALE INMATES IN OHIO 10 (2003), available at <http://www.justdetention.org/pdf/sexabuseohio.pdf>.

⁵⁶ SUSAN D. PHILLIPS, THE SENTENCING PROJECT, VIDEO VISITS FOR CHILDREN WHOSE PARENTS ARE INCARCERATED: IN WHOSE BEST INTERESTS? 1-2 (2012), available at http://sentencingproject.org/doc/publications/cc_Video_Visitation_White_Paper.pdf (describing the importance of and barriers to visitation of incarcerated parents).

⁵⁷ *Id.*, at 3-5 (recognizing that video visitation is not a substitute for face-to-face visits, but can be useful when used in addition to face-to-face visits); THE UNIVERSITY OF VERMONT, PRISON VIDEO CONFERENCING 2 (noting in-person visitation is most effective and advising that virtual visitation should be used to increase parent-child contact, not to replace in-person visitation); *Graham v. Graham*, 794 A.2d 912, 915 (Pa. Super. Ct. 2002) (noting virtual visitation is not equivalent to in-person visitation for a parent).

⁵⁸ GLAZE & MARUSCHAK, *supra* note 17, at 4.

⁵⁹ *Id.*, at 5.

⁶⁰ G.A. Res. 65/229, ¶ 7(b), U.N. Doc. A/RES/65/229 (March 16, 2011) (commonly known as the “Bangkok Rules”).

⁶¹ See Testimony by the Correctional Association of New York Before the Senate Judiciary Committee’s Subcommittee on the Constitution, Civil Rights and Human Rights, *supra* note 31, at 4 (“[I]solation can compromise women’s ability to fulfill their particular needs related to reproductive health care, for instance by impeding pregnant women’s access to critical obstetrical services, preventing them from getting the regular exercise and movement vital for a healthy pregnancy. Similarly, women in isolation may be dissuaded from requesting care related to sensitive gynecological issues because they are required to inform correction officers about details of their medical problem, may have serious difficulty accessing appropriate medical staff when they do reach out, may be shackled during gynecological appointments that do occur, and

will often interact with medical providers in full view of correction officers and/or receive superficial evaluations through closed cell doors.”); Interview with Gail Smith, Exec. Dir. CLAIM IL (May 15, 2013).

⁶² FACT SHEET: LGBTQ DETAINEES CHIEF TARGETS FOR SEXUAL ABUSE IN DETENTION, JUST DETENTION INT’L (Feb. 2009), *available at* http://www.prearesourcecenter.org/sites/default/files/library/25-jdifactsheetlgbtq_0.pdf.

⁶³ See Debra Cassens Weiss, *Report: “Staggering” Rate of Attempted Suicides by Transgenders Highlights Injustices*, ABA JOURNAL, Feb. 4, 2011, *available at* http://www.abajournal.com/news/article/staggering_rate_of_attempted_suicides_by_transgenders_highlights_injustices/ (reporting on a survey by the National Gay and Lesbian Task Force and the National Center for Transgender Equality, which found that, of 6,400 transgender individuals surveyed, 41 percent said they had attempted suicide).

⁶⁴ Freeman Klopott, *Va. Transgendered inmate locked down for six months*, WASH. EXAMINER, Dec. 31, 2009, *available at* <http://washingtonexaminer.com/va.-transgendered-inmate-locked-down-for-six-months/article/18864>; Jean Casella & James Ridgeway, *Solitary Confinement for Transgender Inmate in Virginia*, SOLITARY WATCH, Jan. 5, 2010, *available at* <http://solitarywatch.com/2010/01/05/solitary-confinement-for-transgender-inmate-in-virginia/>.

⁶⁵ 28 C.F.R. § 115.42, *available at* <http://www.law.cornell.edu/cfr/text/28/115.42> (c) (“In deciding whether to assign a transgender or intersex inmate to a facility for male or female inmates, and in making other housing and programming assignments, the agency shall consider on a case-by-case basis whether a placement would ensure the inmate’s health and safety, and whether the placement would present management or security problems”), (e) (providing that a prisoner’s personal gender identity should be taken into account in making housing assignments).

⁶⁶ 28 C.F.R. § 115.15 (e) (providing that a transgender woman should not be searched or physically examined to identify her genital status).

⁶⁷ 28 C.F.R. § 115.43 (c), (e).

⁶⁸ BUREAU OF JUST. STAT., WOMEN OFFENDERS 6 (1999, rev. 2000), *available at* <http://www.bjs.gov/content/pub/pdf/wo.pdf>.

⁶⁹ The Prison Rape Elimination Act of 2003 (PREA), and its implementing regulations, which were promulgated by the Department of Justice in 2012, puts in place a system for auditing the sexual abuse of prisoners in American prisons, jails, and juvenile detention facilities. In auditing PREA compliance, the Department of Justice should be particularly careful to record instances of improper assignments to solitary confinement, including retaliatory placements in solitary. See Prison Rape Elimination Act of 2003, Pub. L. 108-79, Sept. 4, 2003 (7)(d)(2)(N) (providing for “an assessment of existing Federal and State systems for reporting incidents of prison rape, including an assessment of whether existing systems provide an adequate assurance of confidentiality, impartiality and the absence of reprisal”), *available at* <http://www.ojjdp.gov/about/PubLNo108-79.txt>.

⁷⁰ CHESA BOUDIN, ET AL., PRISON VISITATION POLICIES: A FIFTY STATE SURVEY, at 23-24 n. 58-9, 61 (2012) (gathering citations on positive effect of family visitation), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2171412. For a discussion of the negative impacts that incarceration can have on children of incarcerated people, see Tamar Lerer, *Sentencing the Family: Recognizing the Needs of Dependent Children in the Administration of the Criminal Justice System*, 9 NORTHWESTERN J. L. & SOC. POL’Y 24, 30-35 (2013).